DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 260, 261, 262, 263, 264, and 265

RIN 0970–AB77

Temporary Assistance for Needy Families Program (TANF)

AGENCY: Administration for Children and Families, HHS.

ACTION: Final rule.

SUMMARY: The Administration for Children and Families (ACF) issues regulations governing key provisions of the new welfare block grant program enacted in 1996—the Temporary Assistance for Needy Families, or TANF, program. It replaces the national welfare program known as Aid to Families with Dependent Children (AFDC) and the related programs known as the Job Opportunities and Basic Skills Training Program (JOBS) and the Emergency Assistance (EA) program.

These rules reflect new Federal, State, and Tribal relationships in the administration of welfare programs; a new focus on moving recipients into work; and a new emphasis on program information, measurement, and performance. They also reflect the Administration's commitment to regulatory reform.

EFFECTIVE DATES: These regulations are effective October 1, 1999.

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

SUPPLEMENTARY INFORMATION: On November 20, 1997, the Administration for Children and Families published a Notice of Proposed Rulemaking that covered key provisions of the new welfare block grant program, known as Temporary Assistance for Needy Families, or TANF. We provided an extended 90-day comment period, which ended on February 18, 1998. We offered commenters the opportunity to submit comments by mail or electronically via our Web site. A number of commenters took advantage of the electronic access, but a significant portion of the comments we received electronically duplicated comments we received in the mail.

Eight major national organizations (three associations representing State groups, three advocacy groups, and two labor organizations) and one Congressman requested the opportunity to present their comments to us orally. We granted their requests, holding four meetings in Washington in June, July, and August 1998. The national organizations focused largely on those issues that they had identified as priority concerns in their written statements. In a few instances, they modified their suggestions, endorsed comments that had been offered by other commenters, or provided clarifying information. The Congressman expressed his interest in: (1) Providing States more flexibility in operating their programs; (2) collecting data that would be adequate for the effective enforcement and oversight of TANF; and (3) placing sufficient emphasis on ensuring that States met their maintenance-of-effort (MOE) requirements and did not supplant existing State spending.

The discussions did not introduce any new policy concerns or proposals. They are part of the public record, and individuals interested in reviewing notes on these meetings have the same access to that information as they do to other comments that were submitted in written form.

Before discussing the comments in more detail, we want to point out that we changed the part and section references for this TANF rule. One commenter noted that our use of parts 270 through 275 for the TANF rules would likely cause confusion because the major Food Stamp rules used similar section numbers. In response to that comment, we have shifted all our part and section numbers down by ten; thus, for example, the provisions that appeared in part 270 of the NPRM appear in part 260 of this final rule.

To help you make your way through these changes, we include both NPRM and final-rule section references in this preamble discussion.

Comment Overview

After accounting for the duplications, we received nearly 270 comments on the NPRM. The largest number of comments came from State welfare agencies and social services departments, followed by advocacy groups and other State-level organizations. We also heard from a significant number of Governors, national associations, local government offices, Federal legislators, community-based organizations, State legislators, and the general public. We received a lesser number of comments from other Federal agencies and members of the educational, business, child care, research, Tribal, and organized labor communities.

The only policy area that generated a significant number of ''single-issue'' comments was domestic violence. We received about 25 comments from women's, legal, and other groups that focused exclusively on the domestic violence provisions in the NPRM. We also received a handful of comments, mostly from the general public, that focused exclusively on the role of education in promoting self-sufficiency.

A substantial majority of the comments that addressed our regulatory framework were positive. Commenters generally seemed to agree that it was helpful for our rules to provide specific guidance on how we intended to implement the penalty process and make penalty determinations. In fact, based on the detailed questions and comments we received, one could conclude that some commenters were looking for an expansion on the amount of detail contained in the rule.

On the positive side, in addition to support of particular policies, commenters indicated that the rules provided some helpful clarifications of the statute, expressed appreciation for our regulatory development process, noted ''positive steps'' we had taken, and noted numerous places where our proposed rules appropriately reflected the statute.

In general, however, many commenters had mixed views on the policy proposals on the NPRM, supporting some, but opposing others. For example, with respect to the domestic violence policies, most commenters supported the general approach and commended our encouragement of State implementation of the Family Violence Option. However, most also expressed a number of concerns about specific provisions in the proposed rules.

Likewise, many of the States, advocates, and national organizations supported the proposed rule in a number of areas (such as the flexibility afforded States to define work activities and the reduction in penalty liability for States that failed only the two-parent participation rate), but expressed objections to our approach on other major issues.

The policy issues that generated the most consistent negative reactions were separate State programs, child-only cases, and continuation of waivers. Commenters expressed major concerns that: the proposed rules would stifle

innovation; they were overly prescriptive and burdensome; they undermined the partnership between State and Federal governments and contravened Congressional intent; we presumed State guilt without evidence; and these policies could ultimately harm recipients.

We also received numerous negative comments from States and State representatives on the proposed data collection and reporting requirements. However, these same requirements generated a largely favorable reaction from other types of commenters.

In the preamble to the proposed rule, we discussed our general approach on the major cross-cutting issues up front, prior to the section-by-section analysis. Many of the commenters organized their comments in the same way, addressing the issues thematically instead of following the specific structure of the rule. This preamble follows that same basic format, presenting a separate discussion of our policies on the major cross-cutting issues (separate State programs, child-only cases, waiver continuations, and domestic violence) before proceeding to the section-by-section analysis.

We present most of the discussion of data collection and reporting issues in two places—the preamble for part 265 and the preamble discussion entitled the ''Paperwork Reduction Act'' in the ''Regulatory Impact Analyses'' section of the preamble.

We believe that structuring the preamble this way enables us to provide a clearer framework for the specific regulatory provisions and to represent the commenters' concerns most accurately.

For several reasons, we decided not to attempt precise numerical counts of the comments received. Based on the nature of the comments, we did not believe that the number of comments was a particularly meaningful statistic. First, because several of the comments had multiple signatories and some commenters provided general endorsements of the comments of other parties, we would have had to create somewhat arbitrary rules for developing counts. Also, commenters presented their views of the many overlapping and cross-cutting issues in many different ways; for example, some spoke generically about the major provisions of the rule, while others provided very specific suggestions about individual words and phrases. This diversity in the approach of commenters also hampered our ability to create meaningful counts. Nevertheless, we are confident that this preamble accurately conveys the scope and nature of the comments received.

We appreciate the time and attention that commenters gave to reviewing the NPRM and preparing their comments. As a result of their efforts, we have been able to resolve certain technical problems, incorporate numerous regulatory clarifications, and consider some alternative regulatory approaches.

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I. Overview: The Personal Responsibility and Work Opportunity Reconciliation Act

On August 22, 1996, President Clinton signed ''The Personal Responsibility and Work Opportunity Reconciliation Act of 1996''—or PRWORA—into law. This bipartisan welfare plan built upon previous Administration and State efforts to reform welfare. Even before PRWORA was enacted, many States were well on their way to changing their welfare programs into jobs programs. By granting Federal waivers, the Administration allowed 43 States—more than all previous Administrations combined—to require work, time-limit assistance, make work pay, improve child support enforcement, and encourage parental responsibility. The vast majority of States have chosen to continue or build upon these welfare demonstration projects.

PRWORA is dramatically changing the nation's welfare system into one that requires work in exchange for time-limited assistance. The law contains strong work requirements, performance bonuses to reward States for moving welfare recipients into jobs and reducing out-of-wedlock births, State maintenance-of-effort requirements, comprehensive child support enforcement, and supports for moving families from welfare to work—including increased funding for child care. It provides opportunities for State and local governments, working in partnership with communities groups and other agencies, to serve families in new, more creative, and more effective ways.

With the help of the strong economy, and new Federal and State policies, the percentage of welfare recipients working has tripled since 1992 and an estimated 1.5 million people who were on welfare in 1997 were working in 1998. All States met the first overall work participation rates required under TANF, and welfare caseloads have fallen to the lowest levels in 30 years.

The first title of this new law (Pub. L. 104–193) created a program called Temporary Assistance for Needy Families, or TANF, in recognition of its focus on moving recipients into work and time-limiting assistance. It repealed the existing welfare program known as Aid to Families with Dependent Children (AFDC), which provided cash assistance to needy families on an entitlement basis. It also repealed the related programs known as the Job Opportunities and Basic Skills Training program (JOBS) and Emergency Assistance (EA).

The new TANF program went into effect on July 1, 1997, except in States that elected to submit a complete plan and implement the program at an earlier date.

The new law reflects widespread, bipartisan agreement on a number of key principles:

- Welfare reform should help move people from welfare to work.
- Welfare should be a short-term, transitional experience, not a way of life.
- Parents should receive the child care and the health care they need to protect their children as they move from welfare to work.
- Child support programs should become tougher and more effective in securing support from absent parents.

• Because many factors contribute to poverty and dependency, solutions to these problems should not be ''one size fits all.'' The system should allow States, Indian tribes, and localities to develop diverse and creative responses to their own problems.

• The Federal government should focus less attention on eligibility determinations and place more emphasis on program results.

• States should continue to make substantial investments of State funds in addressing the needs of low-income families.

This landmark welfare reform legislation has dramatically affected not only needy families, but also intergovernmental relationships. It challenges Federal, State, Tribal and local agencies to foster positive changes in the culture of the welfare system and to take more responsibility for program results and outcomes. It also challenges them to develop strong interagency collaborations and improve their partnerships with legislators, advocates, businesses, labor, community groups, and other parties that share their interest in helping needy families successfully transition into the mainstream economy.

The new law provides an unparalleled opportunity to achieve true welfare reform. It also presents very significant challenges for families and State and Tribal entities in light of the changing program structure, loss of Federal entitlements, creation of time-limited assistance, and new penalty and bonus provisions.

Most of the resources in the AFDC program went to support mothers raising their children alone. In the early years, the expectation was that these mothers would stay home and care for their children; in fact, in a number of ways, program rules discouraged work. Over time, as social and economic conditions changed, and more women entered the work force, the expectations changed. In 1988, Congress enacted the new JOBS program to provide education, training and employment that would help needy families avoid long-term welfare dependence. By 1994, 20 percent of the nonexempt adult AFDC recipients nationwide were participating in the JOBS program.

In spite of these changes, national sentiment supported more drastic change. Policy-makers, agency officials, and the public expressed frustration about the slow progress being made in moving welfare recipients into work and the continuing decline in family stability. States lobbied for more flexibility to reform their programs. While the Clinton Administration had supported individual reform efforts in almost every State, approving 80 waivers in its first five years, the waiver process was not an ideal way to achieve systemic change. It required separate Federal approval of each individual reform plan, limited the types of reforms that could be implemented, and enabled reforms to take place only one State at a time. Governors joined Congress and the President in declaring that the welfare system was ''broken.''

After more than two years of discussion and negotiation, PRWORA emerged as a bipartisan vehicle for comprehensive welfare reform. As President Clinton stated in his remarks as he signed the bill, ''. . . this legislation provides an historic opportunity to end welfare as we know it and transform our broken welfare system by promoting the fundamental values of work, responsibility, and family.''

The law gives States, and federally recognized Indian tribes, the authority to use Federal welfare funds ''in any manner that is reasonably calculated to accomplish the purpose'' of the new program. It provides them broad flexibility to set eligibility rules and decide what benefits are most appropriate. It also enables States to implement their new programs without getting the ''approval'' of the Federal government. In short, it offers States and Tribes an opportunity to try new, far-reaching changes that can respond more effectively to the needs of families within their own unique environments.

PRWORA redefines the Federal role in administration of the nation's welfare system. It limits Federal regulatory and enforcement authority, but gives the Federal government new responsibilities for tracking State performance. In a select number of areas, it calls for penalties when States fail to comply with program requirements, and it provides bonuses for States that perform well in meeting new program goals.

Under the new statute, program funding and assistance for families both come with new expectations and responsibilities. Adults receiving assistance are expected to engage in work activities and develop the capability to support themselves before their time-limited assistance runs out. States and Tribes are expected to assist recipients making the transition to employment. They are also expected to meet work participation rates and other critical program requirements in order to maintain their Federal funding and avoid penalties.

Some important indicators of the change in expectations are: time limits; higher participation rates; the elimination of numerous exemptions from participation requirements; and the statutory option for States to require individual responsibility plans. Taken together, these provisions signal an expectation that we must broaden participation beyond the ''job-ready.''

In meeting these expectations, States need to examine their caseloads, identify the causes of long-term underemployment and dependency, and work with families, communities, businesses, and other social service agencies in resolving employment barriers. In some cases, States may need to provide intervention services for families in crisis or may need to adapt program models to accommodate individuals with disabilities or other special needs. TANF gives States the flexibility they need to respond to such individual family needs. However, in return, it expects States to move towards a strategy that provides appropriate services for all needy families.

II. Regulatory Framework

A. Pre-NPRM Process

In the spirit of both regulatory reform and PRWORA, we implemented a broad and far-reaching consultation strategy prior to the drafting of the Notice of Proposed Rulemaking (NPRM). In Washington, we set up numerous meetings with outside parties to gain information on the major issues underlying the work, penalty, and data collection provisions of the new law. In our ten regional offices, we used a variety of mechanisms—including meetings, conference calls, and written solicitations—to garner views from ''beyond the Beltway.''

The purpose of these discussions was to gain a variety of informational perspectives about the potential benefits and pitfalls of alternative regulatory approaches. We spoke with a number of different audiences, including: representatives of State, Tribal, and local governments; nonprofit and community organizations; business and labor groups; and experts from the academic, foundation, and advocacy communities. We solicited both written and oral comments, and we worked to ensure that information and concerns raised during this process were shared with both the staff working on individual regulatory issues and key policy-makers.

These consultations were very useful in helping us identify key issues and evaluate policy options, and several commenters commended ACF on this process.

B. Related Regulations Under Development

This rule addresses the work, accountability, and data collection and reporting provisions of the new TANF program. We have also issued NPRM's and program guidance on several related provisions of the new law including: high performance bonuses (TANF–ACF–PI–98–1 and TANF–ACF–PI–98–05); illegitimacy reduction bonuses (63 FR 10263, March 2, 1998); and the Tribal TANF and Native Employment Works (i.e., ''NEW'') programs (63 FR 39365, July 22, 1998).

With a couple of minor exceptions, this rule does not address the provisions of the Welfare-to-Work (WtW) program at section 403(a)(5) of the Act, as created by section 5001(a)(1) of Pub. L. 105–33. The Secretary of Labor issued interim rules on these provisions and the provisions at section 5001(c), regarding WtW grants for Tribes, on November 18, 1997. A copy of the interim rules and other information about this program are available on the Web at http://wtw.doleta.gov.

The WtW provisions in this rule include the amendments to the TANF provisions at sections 5001(d) and 5001(g)(1) of Pub. L. 105–33. Section 5001(d) allows a State to provide WtW assistance to a family that has received 60 months of federally funded TANF assistance and specifies that ''noncash'' assistance under the WtW program is not treated as TANF ''assistance'' for purposes of the TANF time limit. Section 5001(g)(1) provides a new penalty that takes away WtW funds when a State fails to meet the basic MOE requirements.

Also, this rule does not include the provision at section 5001(g)(2), which requires repayment of WtW funds to the Secretary of Labor following a finding by the Secretary of Labor of misuse of funds. Since the Department of Labor is responsible for administering this penalty and receives any repaid funds, it would not be appropriate for us to issue rules on this provision.

Under section 5001(e) of Pub. L. 105–33, we have responsibility for regulating the WtW data reporting requirements, under section 411(a) of the Act, as amended. On October 29, 1998, we issued an interim-final rule that addresses these requirements, following consultation with the Department of Labor, State agencies, Private Industry Councils, and other affected parties (63 FR 57919).

As we pointed out in the NPRM preamble, there is an important relationship between this rulemaking and the rulemaking on Tribal programs. Under section 412 of the Social Security Act, federally recognized Tribes may elect to operate their own TANF programs, and Tribes that operated their own JOBS programs may continue to receive those funds to operate Tribal work programs. We published the NPRM for Tribal TANF programs on July 22, 1998 (see 63 FR 39365).

Tribal decisions on whether to elect the TANF option will depend on a number of factors, including the nature of services and benefits that will be available to Tribal members under the State program. Thus, Tribes have a direct interest in the regulations governing State programs.

Tribes also have an interest in these regulations because some of the rules we develop for State programs could eventually apply to the Tribal programs. In particular, we urge Tribes to note the data collection and reporting requirements at part 265. While the statute allows Tribes to negotiate certain program requirements, such as work participation rates and time limits, it subjects Tribal programs to the same data collection and reporting requirements as States.

We would also like to direct the Tribes to the maintenance-of-effort (MOE) policies discussed at § 263.1. In that section, we provide that State contributions to a Tribal program could count toward a State's MOE. Tribes should be aware of the important implications of this provision for both the funding of Tribal programs and State-Tribal relations.

In order for welfare reform to succeed in Indian country, it is important for State and Tribal governments to work together on a number of key issues, including data exchange and coordination of services. We remind States that Tribes have a right under law to operate their own programs. States should cooperate in providing the information necessary for Tribes to do so.

Likewise, Tribes should cooperate with States in identifying Tribal members and tracking receipt of assistance.

On December, 5, 1997, we issued a final rule to repeal the obsolete regulations for the EA, JOBS, and the IV–A child care programs and a few provisions covering administrative requirements of the AFDC program (see 62 FR 64301, December 5, 1997). This action resulted in the elimination of about 82 pages from the Code of Federal Regulations.

We have yet to issue a more detailed conforming rule that deletes or replaces obsolete AFDC and title IV–A references throughout chapter II. This second rulemaking will take additional time because the AFDC provisions are intertwined with provisions for other programs that are not repealed. Also, it is not clear that we should repeal all the AFDC provisions because Medicaid, foster care, and other programs have linkages to the AFDC rules. Because of these complexities and the nonurgent nature of the conforming changes, this latter rule is not an immediate agency priority.

PRWORA also changed other major programs administered by ACF, the Department, and other Federal agencies that may significantly affect a State's success in implementing welfare reform. For example, title VI of PRWORA repealed the child care programs that were previously authorized under title IV–A of the Social Security Act. In their place, it provided two new sources of child care funding (which we refer to collectively as the Child Care Development Fund). These funds go to the Lead Agency that administers the Child Care and Development Block Grant program. A major purpose of the increases in child care funding provided under PRWORA is to assist low-income families in their efforts to be self-sufficient. We issued final rules covering the Child Care and Development Fund on July 24, 1998 (see 63 FR 39935).

We encourage you to look in the **Federal Register** for actions on these related rules, take the opportunity to comment, and work to understand the important relationships among these programs in developing a comprehensive strategy that can provide support to all families that are working to maintain their family structure and become self-sufficient.

C. Statutory Context

These proposed rules reflect PRWORA, as enacted, and amended by Pub. L. 104–327, Pub. L. 105–33, Pub. L. 105–89, Pub. L. 105–178, and Pub. L. 105–200.

As we indicated in the NPRM preamble, the changes made by Pub. L. 104–327 are fairly limited in scope; we discuss them in the preamble on Contingency Fund MOE requirements at §§ 264.71, 264.72, and 264.77.

Pub. L. 105–33 (also known as The Balanced Budget Act of 1997) created the new Welfare-to Work (WtW) program, made a few substantive changes to the TANF program, and made numerous technical corrections to the TANF statute. We attempted to incorporate those amendments that were in our purview in the NPRM. However, commenters identified a couple of places where we did not fully

or correctly incorporate these amendments. We found a few more. We note these in the preamble discussion that follows and have made appropriate changes in the regulatory text.

We want to note a couple of additional legislative developments since the drafting of the NPRM that might affect a State's liability for penalties and the use of Federal TANF funds. We have made a couple of conforming changes in the rules to reflect these developments.

Under Pub. L. 105–89, known as the Adoption and Safe Families Act of 1997, Congress decreased the amount of money available to States through the ''Contingency Fund'' and increased the amount that States receiving contingency funds must remit, using a proportionate reduction. We discuss this provision in more detail in the preamble for subpart B of part 264, and we have changed the regulatory text to reflect this change.

Under Pub. L. 105–178, known as The Transportation Equity Act for the 21st Century, Congress: (1) (Effective in fiscal year 2001) reduced the cap on the amount that a State could transfer to the Social Services Block Grant from 10 percent to 4.25 percent; (2) created the ''Job Access'' competitive grant program to help communities develop transportation services that will help current and former welfare recipients and other low-income individuals access employment; and (3) specified that States could use their Federal TANF funds as part of the nongovernmental cost-sharing required under a Job Access program. None of these provisions directly affect the TANF rules, but they do change what would be an allowable use of Federal TANF funds. It is important that States understand these provisions if they wish to avoid a penalty for misuse of Federal TANF funds.

Under section 403 of The Child Support Performance and Incentives Act of 1998, Pub. L. 105–200, Congress amended section 404 of the Social Security Act to address the use of Federal TANF funds within the Job Access and Reverse Commute program. It imposed: (1) restrictions on the use of Federal TANF funds for this purpose, including ''new spending'' and ''nonsupplantation'' requirements; (2) a requirement that the preponderance of funds go to TANF recipients, former TANF recipients, certain noncustodial parents, and low-income individuals at risk of qualifying for the TANF program; and (3) a requirement that the services provided support participation in TANF work activities. It also imposed a cap on the total amount of Federal TANF funds that a State could use for this purpose, computed as the difference between 30 percent of the State Family Assistance Grant (SFAG) amount and the amount that a State was transferring that year to the Child Care and Development Block Grant or the Social Services Block Grant.

Consistent with treatment of the other restrictions on the grant at section 404, we have not directly incorporated these restrictions into the TANF rule. However, we note that we would consider expenditures in violation of these new provisions a misuse of funds.

We also point out that these provisions do not conflict with the restrictions at section 409(a)(7)(B)(iv) of the Act or § 263.6(a) and (c) of these rules. The TANF rules deal with the converse situation—the circumstances under which other State expenditures do not qualify under TANF's basic maintenance-of-effort provisions. The new provisions address the circumstances under which Federal TANF funds may count as nongovernmental expenditures under a separate program. They do not give States the authority to use Job Access funds for basic MOE purposes.

Further, the use of Federal TANF funds to support Job Access activities does not constitute a transfer of Federal TANF funds within the meaning of section 404(d)(1). Thus, they do not affect the ''adjusted SFAG'' amount that we use in determining the administrative cost cap and penalty amounts.

The Child Support Performance and Incentives Act also added a ''rule of interpretation'' to section 404(k)(3) of the Social Security Act, which indicates that the provision of transportation benefits to an individual who is not otherwise receiving TANF assistance would not be considered assistance. We have made a conforming change to our definition of assistance at § 260.31 to reflect this policy.

D. Regulatory Reform

In its latest *Document Drafting Handbooks*, the Office of the Federal Register has supported the efforts of the National Partnership for Reinventing Government and encouraged Federal agencies to produce more reader-friendly regulations. In drafting the proposed and final rule, we paid close attention to this guidance and worked to produce a more readable rule. We also provided electronic access to the document and gave readers the option to submit their comments electronically. We received a number of positive comments about how the NPRM was written and the electronic access.

Based in part on the positive reaction to the proposed rule, and in the spirit of facilitating understanding, we decided to retain much of the NPRM preamble discussion. We believe it will be useful for some readers in providing the overall context for the final regulations. However, where we are changing our policy in the final rule, or the context has changed since we issued the NPRM, we have made appropriate changes to the preamble. We also exercised some editorial discretion to make the discussion more succinct or clearer in places. Wherever we made significant changes in policy, the preamble notes and explains those changes.

In the proposed rule, we decided to incorporate a few statutory provisions as a frame of reference even though we did not intend to regulate or enforce State behavior in those areas. We thought the inclusion of this additional preamble discussion and regulatory text would help establish the broader context for other parts of the rulemaking document. These additions were primarily explanatory in nature or restatements of the statutory requirements. We indicated that readers could probably identify these additional provisions based on the language used and the surrounding preamble discussion and noted that subparts A and G of part 271 (which addressed the work provisions other than participation rates and penalties) and § 270.20 (which included the statutory goals of the program) as specific examples.

Commenters identified an additional item that would be helpful to include as a frame of reference—the nondiscrimination provisions found at section 408(d) of the Act. We decided to accept the suggestion and include these provisions in the final rule since commenters had not generally objected to including such material in the regulatory text of the NPRM, the inclusion will have informational value, and the change does not materially alter the scope of the rule. (See the discussion on ''Recipient and Workplace Protections'' for additional information.)

Likewise, based on comments we received on the domestic violence provisions in the proposed rule, we incorporated the statutory provisions on the Family Violence Option at a new § 260.52.

In the spirit of providing access to information, we included draft data collection and reporting forms as appendices to the proposed rules even though we did not intend to publish the forms as part of the final rule. We thought that the inclusion of the draft

forms would expand public access to this information and make it easier to comment on our data collection and reporting plans.

We believe that we succeeded in accomplishing these goals. Commenters responded in large numbers and specific detail to both the Paperwork Reduction Notice and the Proposed Rule. The changes to the final rule and to the companion appendices reflect our consolidated response to both sets of comments.

E. Scope of This Rulemaking

The NPRM and final rule reflect our decision to incorporate the work, data collection, and penalty provisions in a single regulatory package. While this decision resulted in a large rule, we think it enabled us to develop a more coherent regulatory framework and provided readers an opportunity to look at, and comment on, the many interconnected pieces at one time.

One downside of this decision was that the concentration of all these accountability provisions in one rule could have contributed to the perception among some commenters that the tone was punitive and the rule too penalty-focused. It is important to keep our broader regulatory and program agenda in mind as you assess the impact and meaning of this package. The total agenda includes rewards, as well as penalties, and tracks State performance along a variety of different measures, including job entries, success in the workplace, reductions in out-of-wedlock childbearing, and child poverty rates. It also includes annual reports to Congress on State program characteristics, recipient characteristics, and performance.

Our agenda also includes extensive research, evaluation, and technical assistance efforts. Throughout this preamble, you will find examples of how our efforts in these areas respond, in a nonregulatory fashion, to commenter concerns. It would be impractical and inappropriate to use this rulemaking as the vehicle for informing the public about the full agenda, but the ''Promising Practices National Conferences'' held in September 1998 and in Fiscal Year 1999 provide a good example. These meetings, which have the financial support of the Department of Health and Human Services (including both the Administration for Children and Families and the Substance Abuse and Mental Health Services Administration) and the Department of Labor, will provide State and local staff and other practitioners with practical ideas on a range of topics, such as preparing for the difficult task of moving clients with multiple barriers into work, creating jobs in isolated and high-risk communities, increasing support from noncustodial parents, promoting collaboration and achieving seamless delivery of services, changing welfare offices to job centers, promoting success in the workplace, and maintaining the investments in needy families.

F. Applicability of the Rules

As we indicated in policy guidance to the States and the NPRM, a State could operate its program under a reasonable interpretation of the statute prior to our issuance of final rules. Thus, in determining whether a State is subject to a penalty, we would not apply regulatory interpretations retroactively. We retained this basic policy, but modified it to clarify that the ''reasonable interpretation'' standard applies until the effective date of these final rules. You can find additional discussion of this policy at § 260.40 of the preamble.

III. Principles Governing Regulatory Development

A. Restrictions on Our Regulatory Authority

Under the new section 417 of the Act, the Federal government may not regulate State conduct or enforce any TANF provision except to the extent expressly provided by law. This limitation on Federal authority is consistent with the principle of State flexibility and the general State and congressional interest in shifting more responsibility for program policy and procedures to the States.

We interpreted this provision to allow us to regulate in two different kinds of situations: (1) Where Congress has explicitly directed the Secretary to regulate (for example, under the caseload reduction provisions, described below); and (2) where Congress has charged the Department of Health and Human Services (HHS) with enforcing penalties, even if there is no explicit mention of regulation. In this latter case, we believe we have an obligation to States to set out, in regulations, the criteria we will use in carrying out our express authority to enforce certain TANF provisions by assessing penalties.

In the preamble to the proposed rule, we indicated that we endeavored to regulate in a manner that did not impinge on a State's ability to design an effective and responsive program. A large number of commenters felt that our regulations would in fact have such a negative effect. In the subsequent discussion, you will note that we have revised provisions in key program areas that respond to these concerns.

At the same time, however, we remain committed to ensuring that States remain accountable for meeting TANF requirements. Thus, we will continue to monitor program developments so that we can make appropriate adjustments if programs fail to remain focused on TANF's statutory objectives.

B. State Flexibility

In the Conference Report to PRWORA, Congress stated that the best welfare solutions come from those closest to the problems, not from the Federal government. Thus, the legislation creates a broad block grant for each State to reform welfare in ways that work best. It gives States the flexibility to design their own programs, define who will be eligible, establish what benefits and services will be available, and develop their own strategies for achieving program goals, including how to help recipients move into the work force.

Under the law and the proposed rules, we indicated that States could implement innovative and creative strategies for supporting the critical goals of work and responsibility. For example, they could choose to expend funds on refundable earned income tax credits or transportation assistance that would help low-wage workers keep their jobs. They could also extend employment services to noncustodial parents, by including them within the definition of ''eligible families.''

To ensure that our rules supported the legislative goals of PRWORA, we indicated our commitment to gather information on how States were responding to the new opportunities available to them. We said that we reserved the right to revisit some issues, either through legislative or regulatory proposals, if we identified situations where State actions were not furthering the objectives of the Act.

A large number of commenters felt we had unduly limited State flexibility to design their programs, particularly with respect to expending funds in separate State programs, providing assistance to child-only cases, and continuing waivers, but also in areas like the definition of administrative costs, restrictions on domestic violence waivers that affected reasonable cause, and the definition of assistance.

We included some restrictions on State flexibility in the NPRM to protect against possible State policies that might undermine TANF goals or divert the Federal share of child support collections. However, in response to

these concerns and in recognition of the positive steps States have been taking to implement welfare reform, we have decided to remove some of the direct and perceived restrictions on State flexibility. We have also provided some important preamble language that helps clarify State flexibility to define needy families and spend both Federal TANF and State MOE funds in ways that support a wide range of families in diverse ways. We provide additional discussion of these changes and clarifications in subsequent sections of the preamble.

C. Accountability for Meeting Program Requirements and Goals

In the NPRM we recognized that States have enormous flexibility to design their TANF programs in ways that strengthen families and promote work, responsibility, and self-sufficiency. At the same time, however, TANF reflects a bipartisan commitment to ensuring that State programs support the goals of welfare reform. To this end, the statutory provisions on data collection, bonuses, and penalties are crucial because they allow us to track what is happening to needy families and children under the new law, measure program outcomes, and promote key program objectives.

Work

As we indicated in the NPRM, we believe the central goal of the new law is to move welfare recipients into work. The law reflects this important goal in a number of ways:

- Work receives prominent mention in the statutory goals at section 401 and the plan provisions in section 402;
- Section 407 establishes specific work participation rates each State must achieve;
- Section 409 provides significant financial penalties against any State that fails to achieve the required participation rates;
- Section 411 provides specific authority for the Secretary to establish data reporting requirements to capture necessary data on work participation rates; and
- Section 413 calls for ranking of States based on the effectiveness of their work programs.

The proposed and final rules reflect a similar, special focus on promoting the work objectives of the Act and ensuring that States meet the statutory requirements at sections 407, 409, and 411 of the Act. You should look at the rules in part 261, and the related preamble discussion, for specific details.

This Administration has repeatedly shown its commitment to promoting the work objectives of this new law. Before and since the legislation was passed, the President and the Administration have worked very hard to ensure that Congress passed strong work provisions and provided adequate child care funding and other program supports to help families making the transition from welfare to work.

These include the new Welfare to Work program (WtW), the Welfare-to-Work Tax Credit enacted in the Balanced Budget Act, Welfare-to-Work housing vouchers included in the Fiscal Year 1999 budget for the Department of Housing and Urban Development, and Job Access transportation grants.

WtW provides grants to States, localities, Indian Tribes, and other grantees to help them move long-term welfare recipients and certain noncustodial parents into lasting, unsubsidized jobs.

The Welfare to Work Tax Credit provides a credit equal to 35 percent of the first $10,000 in wages in the first year of employment, and 50 percent of the first $10,000 in wages in the second year, to encourage the hiring and retention of long-term recipients. (It complements the Work Opportunity Tax Credit, which provides a credit of up to $2,400 for the first year of wages to employers who hire long-term welfare recipients.)

Welfare-to-Work Housing vouchers will help current and former welfare recipients who need housing assistance to get or keep a job. Most of the housing vouchers (50,000 in FY 1999) will go to communities on a competitive grant basis.

The Transportation Equity Act for the 21st Century (TEA–21) authorizes $750 million over five years for competitive grants to communities to develop innovative transportation activities to help welfare recipients and other low-income workers (i.e., those with income up to 150 percent of poverty) get to work. (You can find more information about the Administration's initiatives at http://www.whitehouse/gov/wh/welfare.)

The President has also challenged America's businesses, its large nonprofit sector, and the executive branch of the Federal government to help welfare recipients go to work and succeed in the workplace.

In May 1997, the President helped to launch a new private-sector initiative to promote the hiring of welfare recipients by private-sector employers. The Welfare-to-Work Partnership, which started with 105 participating businesses, now includes over 10,000 businesses that have hired 410,000 welfare recipients. This partnership has produced a variety of materials to support businesses in these efforts, including the ''Blueprint for Business'' hiring manual and ''The Road to Retention,'' a report of companies that have achieved higher retention rates for former welfare recipients. You can find information about the Welfare to Work Partnership at http://www.welfaretowork.org.

The Small Business Administration (SBA) is addressing the unique and vital role of small businesses, which account for over one-half of all private-sector employment. It is helping small businesses make connections to job training organizations and job-ready welfare recipients. It is also providing training and assistance to welfare recipients who wish to start their own businesses. Businesses can receive assistance through SBA's 1–800–U–ASK–SBA and through its network of centers, shops, and district offices. Information on SBA's Welfare to Work initiative (W2W) and other activities are available through the SBA home page at http://www.sba.gov.

In addition, the Vice President has developed a coalition of national civic, service, and faith-based groups committed to helping former welfare recipients succeed in the workforce—by providing mentoring, job training, child care, and other supports.

On March 8, 1997, the President directed all Federal agencies to submit plans describing the efforts they would make to respond to this challenge. Under the Vice President's leadership, Federal agencies committed to hiring at least 10,000 welfare recipients over the next four years. Agencies have already fulfilled this commitment—nearly two years ahead of schedule. (You can find additional information on this effort at http://www.welfaretowork.fed.gov.)

Meeting the Needs of Low-Income Families and Children

In a number of different ways, the new law works to ensure that the needs of low-income children and families are met. First, it provides a guaranteed base level of Federal funding for the TANF programs. Then, in times of special financial need, it makes nearly $2 billion in additional funding available through a Contingency Fund and up to $1.7 billion available for loans to States. It also authorizes several studies to monitor changes in the situations of needy children and families that occur after enactment. For example, it requires us to report on how certain children are affected by the provisions of the new law. It also requires us to track whether a State's child poverty rate increases as the result of the State's TANF program and requires States to initiate corrective actions when such increases occur.

These regulations work to further the objectives of these statutory provisions.

Most importantly, they work to ensure that the use of Federal and State funds is consistent with the provisions and purposes of TANF, that States maintain their investments on needy families, that recipients and other workers have the protections available to them that are intended under Federal law, and that we collect data from States that are necessary to assess program performance.

IV. Discussion of Cross-Cutting Issues

Overview of Comments

As we indicated earlier in the preamble, commenters expressed a number of major concerns with respect to our policies on separate State programs, child-only cases, and waiver continuations. In particular, they said: (1) In part because of the uncertainty they created, the proposed rules would stifle innovation and undermine the States' ability to meet the needs of their families; (2) the proposed rules were overly prescriptive and burdensome, too concerned about accountability and the taking of penalties, and not focused on outcomes; (3) they undermined the partnership between the State and Federal governments, fostered an adversarial relationship, violated the compact between the States and Washington in creating TANF, or contravened Congressional intent (if not the law) in regulating State behavior in these areas; (4) we presumed State guilt when there was no evidence that States were taking advantage of loopholes to evade the TANF provisions; and (5) our strict penalty policies, promotion of ''work first'' strategies, and inattention to recipient protections could ultimately harm recipients (e.g., prevent them from attaining jobs that paid a living wage or accessing appropriate treatment).

We disagree with commenters that claimed that we exceeded our regulatory and statutory authority in the NPRM. However, because of the evidence we have seen about States' commitment to develop programs that are consistent with the goals of TANF, these final rules reflect some significant changes in our policies on these three issues. You will find additional details in the following discussion.

A. Separate State Programs

Background

Section 409(a)(7) of the Social Security Act permits States to assist eligible families by expending maintenance-of-effort funds (MOE) under ''all State programs.'' Thus, we recognize expenditures under the State's TANF program and/or separate State program(s). However, eligible families assisted through a separate State program are not generally subject to TANF requirements, including work participation requirements, child support collection requirements, the time limit on receipt of assistance, and data collection and reporting requirements. In other words, by definition, States operating separate programs avoid TANF requirements; they have more flexibility to use the funds available in these programs to help eligible families.

In the NPRM preamble, in a section entitled ''Maintenance-of-Effort (MOE),'' we stated that one of the most important provisions in the new law designed to protect needy families and children is the basic maintenance-of-effort (basic MOE) requirement in the TANF statute. This provision requires States to maintain a certain level of spending on welfare, based on historic (i.e., fiscal year (FY) 1994) expenditure levels. Because this provision is critical to the successful implementation of the law, Congress gave us the authority to enforce State compliance in meeting this requirement, and it received significant attention in the proposed rule.

We also directed readers to the data collection, work, and penalty provisions of the proposed rule, at parts 271–275, for provisions designed to: (1) ensure that States continue to make the required investments in meeting the needs of low-income children and families; (2) prevent States from either supplanting funds or using their MOE funds to meet extraneous program or fiscal needs; (3) give us adequate information to meet our statutory responsibility to determine what is happening in State programs; and (4) take a broad view of work effort, caseload reduction, and program performance.

We recognized that States have more flexibility in spending their State MOE funds than their Federal TANF funds, especially when they expend their MOE funds in separate State programs. However, at the same time, we reiterated concerns that we had first expressed in our policy guidance of January 1997, TANF–ACF–PA–97–1, that States could design their programs to avoid the work requirements of the new law or to avoid returning a share of their child support collections to the Federal government. Therefore, we proposed four measures to mitigate these potential negative consequences.

First, if we detected a significant pattern of diversion of families to a separate State program that achieves the effect of avoiding either the work participation rates or returning the Federal share of child support collections, we proposed to deny reasonable cause for certain penalties. For avoiding the work participation rates, reasonable cause relief would not be available with respect to penalties for failure to: meet minimum participation rates, implement time limits, maintain assistance to a custodial parent who cannot obtain child care for a child under age 6, and reduce assistance for recipients refusing without good cause to work. For diverting the Federal share of child support collections, reasonable cause would not be available with respect to the penalties for failure to: meet minimum participation rates, implement time limits, reduce assistance for recipients refusing without good cause to work, and cooperate with paternity establishment and child support enforcement requirements.

Second, for the same two diversion situations and penalties that we just discussed, we proposed that a State would not be eligible for a penalty reduction on the basis of making substantial progress during corrective compliance unless it corrected the diversion.

Third, we proposed to deny a State access to two possible reductions in the penalty for failing to meet work participation rates unless it ''demonstrates that it has not diverted cases to a separate State program for the purpose of avoiding the work participation requirements.''

Finally, we proposed to require that a State collect case-record data on participants in separate State programs if it wished to receive a high performance bonus; qualify for work participation caseload reduction credit; or be considered for a reduction in the penalty for failing to meet the work participation requirements.

In making these proposals, we noted that the Secretary has considerable discretion in determining whether to reduce penalties or grant a good cause exception. We argued that work was the most critical component in achieving the purposes of TANF and these limits on the relief on the work penalty were appropriate to prevent circumvention of this purpose.

We went on to say that implementation of the child support provisions was the other key component to achieving self-sufficiency. We spoke about the major Federal role in child support enforcement (particularly with regard to the operation of the New Hire Directory and the Federal Parent Locator Service), the continuing Federal interest in the effectiveness of these programs, and the continued Federal financial

commitment, under TANF, for needy families whose children have been deprived of parental support and care.

We expressed concern not just about the unintended, negative consequences of diverting cases to separate State programs for the Federal budget and the Federal government's ability to ensure an effective child support program, but also about reduced State accountability for ensuring that needy families take appropriate steps towards achieving self-sufficiency. We indicated that, in the interest of protecting the key goals of TANF, it was appropriate for the Secretary to use the discretion available to her to forgive penalties and set penalty amounts so as to ensure that States do not divert cases inappropriately.

We announced plans to monitor States' actions to determine if they constituted a significant pattern of diversion. For example, if, based on an examination of statistical or other evidence, we came to the conclusion that a State was assigning people to a separate State program in order to divert the Federal share of child support collections, or in order to evade the work requirements, we would conclude that this is a significant pattern of diversion and would deny the State the specified types of penalty relief.

We said a State would have opportunity to prove that this pattern was actually the result of State policies and objectives that were entirely unrelated to the goal of diversion, but we would make the final judgment as to what constitutes a significant pattern of diversion.

We placed the specific regulatory provisions associated with these policies in §§ 271.51(a), 271.52(b), 272.5(c) and (d), and 272.6(i)(2) of the proposed rule.

We also indicated our intent to propose that States seeking to receive high performance bonuses would be required to report on families served by separate State programs in the coming NPRM on high performance bonuses.

Comment Overview

We received dozens of comments on these proposals related to implementation of separate State programs. The commenters universally opposed the proposals and presented a variety of objections. Most wanted the provisions deleted entirely, but some suggested specific changes that we could make to the regulatory provisions if we did not delete them.

In summarizing these extensive comments, we first address those directed at deleting the provisions. Then we address the comments about possible refinements that we could make.

Commenters objected to both the negative tone of these rules and their effect in undermining State and local flexibility to serve needy families, including those with multiple barriers to employment. They noted that several States have created or were considering separate State programs to serve their most vulnerable families, such as legal noncitizens with poor language and literacy skills; single parents taking care of a disabled child; citizens not disabled enough to qualify for SSI, but unable to work 20 to 30 hours a week; refugees; and victims of domestic violence. They expressed fears that the proposed rules, if not modified, could have a significant chilling effect on the development of innovative approaches to serve working families and the most vulnerable populations. That is, States would be conservative in extending assistance to hard-to-serve or working families out of fear of incurring more and larger penalties. In fact, some commenters argued that, since TANF was not an entitlement program, some States might choose not to give such individuals assistance due to concerns about the penalty consequences.

Some argued that the proposals were contrary to the statute and Congressional intent. Their comments encompassed the following general points: (1) There is no statutory basis for the links between penalty relief and the operation of separate State programs. In deciding penalty relief, we should be looking only at the TANF program. (2) The statute clearly authorizes States to spend their basic MOE funds in separate State programs that are not subject to TANF requirements. Our proposals would punish States that elected to use this authority and preempt State and local authority over their own programs. (3) Our proposals would deny penalty relief where the statute requires such relief. (For example, the statute says that the Secretary ''shall'' reduce work participation penalties based on degree of noncompliance; thus, this reduction is not discretionary. The statute also provides that the Secretary could impose lesser penalties on a State that fails to correct a violation fully under corrective compliance.) Categorically denying penalty relief because of a State's legal and allowable actions on separate State programs is not appropriate.

In lieu of the proposed policies, many commenters recommended that we monitor State actions to determine if a State is pursuing legitimate policy objectives or avoiding TANF-related requirements. They noted the lack of evidence so far that States were abusing the flexibility available under the law; their view was that States have been using separate programs for constructive and appropriate purposes. One noted, if a few States try to take advantage of the flexibility in the law, Congress and the Department can work together to figure out an effective way to stop them.

Commenters also argued that the penalty consequences for operating separate State programs exceeded the magnitude of the purported offense. As a case example, a State could be operating a separate State program that represented only a small percent of its MOE expenditures, it barely missed its participation rate, and it had suffered a catastrophic natural disaster during the course of the year. The argument is that the State should get reasonable cause or penalty reduction because the State's failure could be attributed entirely to the natural disaster, the separate State program was an incidental matter, and, by any objective measure, the State's degree of noncompliance was minimal. Absolute loss of penalty relief in such a case would be arbitrary, at a minimum.

A related comment was that we should limit denial of penalty relief to situations where there is a direct relationship between the penalty at issue and the conduct of the State. Commenters argued that we should not deny penalty relief on four penalties when the State actions at issue were probably only directly connected to one penalty.

One suggestion for making the consequences more proportionate to the ''offense'' would be to not totally preclude eligibility for penalty relief, but to consider State policies on separate State programs as one of several factors affecting how difficult the penalty standard was for a State to achieve.

Others noted that we had not used clear or consistent language when articulating how a separate State program might affect the availability of penalty relief. The lack of clarity would make it difficult for States to predict the effect of these provisions and could produce unfair, arbitrary, and inconsistent outcomes. It could also mean that we unduly deter States from assisting needy families.

Commenters raised the following questions about the meaning of our proposals: (1) What is meant by ''purpose'' and ''effect''? (2) Are the terms meant to define different concepts? (3) Does ''purpose'' refer to ''sole purpose'' or ''one of the purposes''? (4) How would we determine, or a State prove, whether a

separate State program has the specified ''purpose'' or ''effect''? (5) What is meant by a ''significant'' pattern of diversion? and (6) What criteria would we use to judge whether a State adequately demonstrated that it had not diverted cases to avoid penalties or divert child support? Relatedly, they objected to the fact that our proposed rules shifted the burden of proof about intent onto the States and to the difficulties attendant in proving a negative proposition.

Among the suggestions offered for addressing these concerns were: (1) Clarify the circumstances when a State will not face loss of penalty relief (e.g., identify reasonable and legitimate policy bases for separate State programs, using examples); (2) allow an up-front assessment of the acceptability of separate State programs that States could rely upon in deciding what options to pursue under separate State programs; (3) create clear, objective criteria for determining when a separate State program would trigger adverse consequences; and (4) err on the side of flexibility if we cannot make highly accurate determinations that programs are deliberately designed to avoid Federal rules.

Overall Response

When we were developing the proposed rules, obviously we were very concerned that States would use the flexibility available through separate State programs to avoid work participation requirements, divert the Federal share of child support collections, and otherwise undermine the goals or provisions of TANF. Within the authority that we have to make decisions on State penalties and bonuses, we proposed specific regulatory policies with respect to penalties, bonuses, and reporting in response to that concern.

However, as we have seen these programs evolve, our concerns about possible abuses have diminished. As commenters pointed out, States are generally using separate State programs to serve a variety of policy purposes consistent with the goals and provisions of PRWORA. For example: (1) They are supporting work and self-support—through State earned income credits, transportation, child care, or other work-related assistance; (2) they are helping families with special needs who are unable to engage in work activities for the requisite number of hours—e.g., families dealing with substance abuse, incapacity (or caring for a disabled child), literacy or ESL needs; (3) they are working to increase the economic viability of families—by providing financial aid for post-secondary education and support for other education or training activities, including activities for noncustodial parents; and (4) they are assisting individuals ineligible for the TANF program (e.g., using State funds to provide ''Food Stamp'' benefits for legal aliens who lost eligibility for assistance under PRWORA).

In the few cases where separate State programs are serving families that we would normally expect to see in the TANF program, we often see the same or similar level of work activity required under TANF; e.g., Florida's two-parent program and Maine's Parents-as-Scholars program are part of separate State programs, but expect parents to participate at the TANF level of hours, or more.

As commenters pointed out, if we developed policy to force States to provide services to families within the confines of the TANF statute, we would not necessarily achieve that end. An equally possible outcome could be that States would elect not to serve families, especially those hard-to-serve families that would be the most difficult to accommodate under the standard TANF rules.

We considered ways to redraft the NPRM policy so that we would not have the ''chilling'' effect on State innovation that commenters feared. A variety of options were available to us, ranging from wording changes, to clarifications of key terms, to setting up a process for pre-clearance of State proposals, to reducing the potential negative consequences to States if we found inappropriate diversion.

However, we were concerned that: (1) None of these options totally eliminated the potential ''chilling'' effects on State innovation; and (2) existing evidence did not indicate that there was a problem sufficient to justify such a strong policy response.

Thus, the final rules eliminate the proposed link between a State's decisions on implementing a separate State program and its eligibility for penalty relief. In particular, we removed the provisions related to separate State programs that were in the proposed rules at §§ 271.51(a), 271.52(b), 272.5 (c) and (d), and 272.6(i)(2).

However, we remain concerned about the possibility that States could use separate State programs to avoid the TANF work requirements (particularly for two-parent families) and to divert the Federal share of child support collections. Thus, at §§ 261.41(e) and 265.3(d)(1), we retained the NPRM provisions (which were at §§ 271.41(e) and 275.3(d)(1)) that, as a condition for receiving caseload reduction credits or a high performance bonus, States must report data on separate State programs and the recipients in them, through the SSP–MOE Data Report. However, we deleted the language that was in § 275.3(d)(1)(iii) indicating that States needed to submit the SSP–MOE Data Report if they wanted to be considered for a reduction in the penalty for failing to meet the work participation requirements. Also, as we discuss in the next section of the preamble, by changing the definition of assistance, we have limited the types of programs covered by this reporting. We have also reduced the types of data elements that must be reported.

This data collection is part of a broad strategy to monitor the scope and nature of separate State programs. This strategy starts with four data sources: (1) The quarterly TANF Financial Report (Appendix D); (2) the MOE section of the annual report (at § 265.9(c) and Appendix I); (3) the quarterly SSP–MOE Data Report; and (4) quarterly reports on child support collections. We would review data from these sources to identify States that might be using separate State programs either for the purpose of avoiding work or diverting the Federal share of child support collections. We would then make a preliminary assessment whether these States were operating separate State programs that were consistent with TANF goals. If we needed additional information for this assessment, we could supplement the official information with information gathered in single State audits or special studies (such as studies conducted by the Department's Office of the Inspector General).

The data collection on separate State programs will help enable us to: (1) Monitor the nature of these programs; (2) determine the extent to which cases are being shifted to separate State programs; (3) determine whether such shifts are having an adverse effect on the two work participation rates or the Federal share of child support collections; (4) develop a sound policy response in the event of adverse effects; (5) better assess a State's claim for a caseload reduction credit or high performance bonus; and (6) decide if a State's policies with respect to separate State programs should affect its ranking under section 413(d) of the Act.

In the proposed rule, we did not mention that the creation of separate State programs might affect the annual rankings of States based on the success of their work efforts. However, we have concluded that there could be circumstances under which we would

want to alter a State's ranking on this basis. For example, suppose the State with the highest percentage of placements in long-term jobs for its TANF cases achieved its placement rate and ranking by shifting all of its hard-to-serve cases from TANF to separate State programs. Obviously, this State would not merit a ranking as one of the five most successful States. We will consider if a State's separate State program had the effect of avoiding work requirements as one factor in determining the annual ranking of successful State programs.

We will incorporate a full analysis of the information that we have gathered on what has been happening with separate State programs in our annual report to Congress. For example, we intend to address issues such as: (1) What is the basic nature of these programs; (2) have there been changes in their size or scope; (3) who do these programs serve; (4) how do they differ from TANF recipients; (5) what types of benefits do they provide; (6) to what extent do work participation rates apply; (7) what participation rates are being achieved; and (8) is there any evidence of the diversion of Federal child support collections. By looking at this range of issues, we will be better able to assess whether States have diverted individuals from TANF with the apparent purpose of avoiding TANF program requirements.

In the High Performance Bonus guidance that we issued on March 17, 1998 (TANF–ACF–PI–98–01), we noted that a State's success in meeting TANF performance goals could be affected by its decision to fund a separate State program with its maintenance-of-effort (MOE) dollars and that such actions might advantage one State over another. For example, if a State had a separate State program similar to TANF in which it put recipients who were more difficult to employ, its TANF performance results could be unfairly inflated. In such cases, we would need to consider including outcomes for the caseload in separate State programs in the performance measures. We said we would analyze separate State program data, as well as other information we receive on the characteristics of the caseload and the nature of benefits provided in separate State programs, in assessing how and whether to adjust a State's TANF performance data.

On the issue of child support collections more specifically, while States have new flexibility in the way that they administer their TANF programs, they must continue to share a portion of child support collections with the Federal government. The need to share TANF-related collections could serve as a possible disincentive for States to pass through the full amount of child support to families and could create an incentive for States to serve needy families through separate State programs. State spending in these separate State programs continues to count under the basic MOE requirements, but States do not need to share the child support collected on behalf of families served by these programs.

At this point, we have no evidence that States are diverting child support collections. For example, we are not seeing dramatic decreases in the Federal share of collections or changes in the average collection per case. In the meantime, the Administration is engaged in a dialogue with stakeholders on child support program financing issues to look at ways to address these and other related concerns. We will work with these stakeholders and with Congress to develop any necessary legislation.

As a number of commenters suggested, under these final rules, we have adopted a strategy that includes gathering information, monitoring developments, and keeping our options open regarding future actions. Through our data collection, we will obtain substantial information on the characteristics of separate State programs, the families they serve, and the benefits they provide. This information will help us assess their potential impact on the achievement of TANF goals. We will consider proposing appropriate legislative or regulatory remedies, consistent with our legal authority, if we find that States are using the flexibility available under these rules to avoid work requirements, divert child support collections, or otherwise undermine the goals of TANF. However, we will not put any significant policy change into effect without appropriate prior consultation with States, Congress, and other interested parties.

Separate State Program Reporting

Comment: Commenters also argued that the stringent reporting requirements and the potential loss of caseload reduction credits, eligibility for high performance bonuses, and certain penalty relief for States that failed to comply with the reporting requirements also discouraged States from implementing innovative separate State programs.

Response: As we discuss in the preamble for § 260.31, we have made significant changes to the proposed definition of assistance. These changes have a significant effect on the scope of the disaggregated and aggregate reporting for both TANF and separate State programs. Like the TANF Data Report, the SSP–MOE Data Report only captures information on families receiving ''assistance.'' Therefore, States do not have to provide detailed program and family characteristics data for families receiving other kinds of benefits and work supports. Thus, the data collection in the final rules responds to the commenters' concerns about the problems that would be inherent in requiring detailed reporting of case-record information from programs that bore little or no relationship, in substance or administration, to those providing traditional welfare benefits.

However, information on separate State programs is still very important under the final rule. Thus, we still expect States to submit SSP–MOE Data Reports containing data on separate State programs that are similar to the TANF program data as a condition of receiving caseload reduction credits or high performance bonuses. Also, we have strengthened the information we will collect on SSP–MOE spending by expanding reporting under the TANF Financial Report and expanding information on all MOE programs in the annual report (as discussed in § 265.9 and presented in Appendix I). Taken in combination, these data will help us ensure that each State has met its basic MOE requirement, properly evaluate State reports on caseload reduction credits, assess overall State performance, and report on program characteristics to the public, to the Department, and to Congress. We could also use the information to identify areas in which regulatory or legislative changes may be necessary.

Under the final rule, we do not require that States submit the SSP–MOE Data Report in order to qualify for penalty relief because the information in the report is not germane to the determination of its penalty amount.

The information in the SSP–MOE Data Report is germane to determining if States have achieved creditable caseload reductions and to assessing a State's overall performance under TANF. Thus, as stated previously, the final rule does require that a State submit an SSP–MOE Data Report if it wants to receive either a High Performance Bonus or a caseload reduction credit (though with reduced data elements).

Failure of a State to submit the MOE information required in either the TANF Financial Report or the annual report could affect a State's liability for a

reporting penalty or an MOE penalty, depending upon the nature of the failure.

You should review the preamble discussion at § 265.9 and Appendix I for information on annual aggregate reporting for MOE programs and the regulation at § 265.3(b) and (d) and appendices E, F, and G for more detailed information on the data collection for separate State programs in the SSP–MOE Data Report.

Finally, in the policy announcement and proposed rule, we advised States to think carefully about the risks to the long-term viability of their TANF programs if they relied too extensively on separate State programs to meet their MOE requirements. States cannot receive contingency funds unless their expenditures within the TANF program are at 100 percent of historic State expenditures. Thus, excessive State reliance on expenditures outside the TANF program to meet MOE requirements could make access to contingency funds difficult during economic downturns.

This restriction on Contingency Fund MOE raised some concerns on the part of commenters. However, it represents a clear reading of the statutory language. Thus, we have made no change in this final rule.

B. Waivers

Background

We have no direct interest in regulating section 415 of the Act; however, the continuation of waivers by a State might affect our application of certain of the penalty provisions within a State, specifically those regarding work and time-limit requirements. Thus, in order to administer the penalty provisions, we are providing notice concerning the rules that we will use in applying the penalties.

To improve access to, and understanding of, the regulations on waivers, we have moved all the waiver provisions to a new subpart C of part 260 of the final regulation and consolidated our preamble discussion in this section of the preamble. First, we summarize the NPRM provisions that appeared in various places in the NPRM and provide an overall summary of the comments. Then we discuss each provision in the final regulation, section by section, as well as the related comments.

Summary of NPRM Waiver Provisions

Under section 415, States that received approval for welfare reform waivers under section 1115 before enactment of PRWORA (August 22, 1996) have the option to operate their TANF programs under some or all of these waivers. For States electing this option, provisions of TANF that are inconsistent with the waivers do not take effect until applicable waivers expire.

Section 415 also provides for delaying the effect of provisions of TANF related to waivers approved after enactment, but prior to July 1, 1997. However, we do not address this specific provision in these rules because we approved no section 1115 waivers after enactment.

The meaning of the term ''waiver'' is important because it governs the scope of section 415. The NPRM defined waiver as consisting of both the specific technical provisions in the approved waiver list and the AFDC and JOBS requirements under prior law that did not need to be waived, but were integral and necessary to achieve the policy objective of the waived provision. Thus, the proposed definition of waiver depended on determining a State's intent.

The meaning of the term ''inconsistent'' is important because it governs the extent to which a State may delay the implementation of certain TANF requirements under section 415. The NPRM defined inconsistent to mean that complying with a TANF requirement would require a State to change a policy reflected in an approved waiver.

The proposed rule applied these definitions to determine when a State's waivers were inconsistent with the TANF work and time-limited assistance requirements under sections 407 and 408(a)(7) of the Act, respectively. To the extent that we determined inconsistencies existed, we would have based the work participation rates and time-limit exceptions on the waiver provisions rather than the requirements of sections 407 and 408(a)(7).

In particular, the NPRM allowed inconsistencies in two areas covered by section 407 (i.e., related to work). The first related to the types of activities that could count as work activities. Under the proposed definition, in addition to the expanded or revised activities specifically included in the technical waiver list (such as increased hours of job search), a waiver would have included the JOBS work activities that did not require waivers in order to be part of the State's program. The NPRM recognized that: (1) States had asked for waivers of the statutorily prescribed JOBS activities in order to provide what they considered to be the right mix of work activities; and (2) part of that mix included activities that did not require waivers under prior law. Thus, we would have considered such activities to be part of the waiver.

The second work inconsistency recognized in the NPRM related to the hours of participation necessary for a recipient to be counted as engaged in work for the purpose of calculating the participation rates. To the extent that the mandated hours of work in the waiver reflected the individual circumstances of the participant, either due to criteria in the waiver itself or under an individual self-sufficiency plan, we would have recognized an inconsistency with the fixed hours required by section 407.

The NPRM did not recognize, as inconsistent, waivers that served to increase the mandated hours of work for classes of recipients. The NPRM reasoned that there was no inconsistency in this case because TANF required those classes of recipients to participate for a greater number of hours than prior law required.

Further, the NPRM did not recognize any inconsistencies for exemptions that the State had had for work participation under AFDC. Under the demonstrations, States had obtained waivers to change the exemptions of individuals from participation in JOBS. We had assumed that the purpose for changing the exemptions was to require more individuals to participate. Since we believed the State's purpose was increasing participation, we reasoned that maintaining the AFDC statutory exemptions was not necessary or integral to achieving the waiver's purpose. Therefore, the NPRM did not recognize the AFDC statutory exemptions as part of the waiver for determining inconsistency with TANF.

In applying the definitions of ''waiver'' and ''inconsistent'' to time limits, the proposed rule recognized only those waivers that provided for terminating cash assistance because of the passage of time. We said that if a State would have to change its waiver policy on terminating assistance, due to the TANF time limit at section 408(a)(7), it could apply its waiver time limit instead of the TANF time limit. In general, individuals subject to a State time limit would concurrently be subject to the TANF time limit. Those individuals who were exempt from the State waiver time limit would not be subject to the TANF time limit until the State's waiver expired. In addition, if the extensions of the receipt of assistance under the State waiver limit exceeded the 20-percent limit on extensions allowed under TANF, the State's extensions would govern.

The NPRM did not recognize inconsistencies for States with waivers that: (1) had time limits that triggered work requirements, but did not result in the termination of assistance; or (2) had implemented comprehensive welfare reform initiatives under waivers that consciously chose not to include policies time-limiting assistance. Thus, in either of these situations, the State would have had to comply with the TANF time-limit requirements.

The NPRM also recognized one other type of inconsistency. TANF cases that were part of a research group, whose treatment policies were being maintained for the purpose of continuing an impact evaluation, could continue to be fully subject to prior law policies, except as modified by waivers. Further, the NPRM allowed for exclusion of such cases from the numerator and denominator of the work participation rates. Maintaining different requirements for these groups was necessary to avoid compromising the evaluation. Information on the research group would be the primary basis for impact and cost-benefit analyses of the effects of demonstration provisions and would be essential to all major components of an evaluation.

In the interest of balancing State flexibility with accountability and preserving the purposes of TANF (particularly those of encouraging work and focusing TANF on the provision of temporary support to families as they move to self-sufficiency), the NPRM also proposed certain other requirements. Specifically it: (1) Required Governors to certify waiver inconsistencies that a State believed apply in order to have the waiver rules apply in the penalty determinations; (2) denied certain forms of penalty relief to States continuing waivers that were inconsistent with TANF if States failed to meet work participation rates or time-limit requirements; and (3) proposed that we would publish information related to a State's success in meeting work participation rates and time-limit restrictions, as measured against both TANF and waiver requirements.

Because States operating under alternative waiver requirements could have an advantage compared to other States, we proposed that States continuing inconsistent waivers would not be eligible for a reasonable cause exception from a related work participation or time-limit penalty. Nor would they be eligible for a work participation rate penalty reduction based on severity of the failure or under our discretionary authority, as otherwise allowed in accordance with § 271.51(b)(3) or (c) of the NPRM. Further, in developing a corrective compliance plan, the NPRM proposed that a State would have to consider modifying its alternative waiver requirements as part of that plan. If a State then continued its waivers and failed to correct the violation, the NPRM proposed that it would not be eligible for a reduced penalty for noncompliance regardless of whether the State made significant progress towards achieving compliance or if the State's failure to comply was attributable to natural disaster or regional recession.

Overview of Comments

With few exceptions, the comments from States, organizations representing States, other organizations, and Congress relating to the proposed rules governing waiver inconsistencies strongly opposed our proposals.

Specifically, most commenters argued that our application of the proposed rule violated the spirit of the law and Congressional intent to encourage waivers. To support this argument, they cited the language at section 415(c), which directs the Secretary to encourage States to continue operating their waivers. They argued that our narrow interpretation of waiver inconsistencies, along with our decision to deny penalty relief, would discourage continuation of waivers and violated the principle of State flexibility in PRWORA. They asserted that the proposed policies would force States to abandon their waiver programs.

Finally, a number of commenters indicated that they found the definitions of ''waiver'' and ''inconsistent'' difficult to understand and apply to specific factual situations.

Overall Response

In response to the many comments we received, the final rules take a different approach to the relationship between the continuation of AFDC waivers and the TANF requirements. While the definition of ''inconsistent'' remains substantially the same, we have modified the definition of ''waiver'' to eliminate the proposed focus on intent. The new definition reflects the common use of the term, which refers to the policies that implement a particular area of reform in the demonstration. The revised definition allows the waiver to include a cluster of AFDC provisions with regard to work participation. Thus, it modifies how we would determine when work waivers are inconsistent.

We also made one change in the application of the term ''inconsistent'' to time limits; after further review, we believe that the NPRM did not adequately recognize a certain type of inconsistency.

Generally, the revised definition of ''waiver'' continues to reflect the philosophy that a narrow, technical definition would be inappropriate. Rather, as reflected in common usage, the term should recognize that States rarely implemented the technical waivers of the former section 402 of the Act in isolation. Instead, technical waivers were generally part of a cluster of policies and requirements related to administering a component of a State's welfare program. For example, States implemented components related to time limits, family caps, work activities and requirements, treatment of teen parents, income and resource eligibility, and treatment of two-parent families. Although the substantive policies making up the components and the combination of components differed from demonstration to demonstration, these component areas were the core elements of the reform efforts in various State demonstrations and were commonly referred to as waivers.

In the discussion that follows, the term ''waiver'' could have two distinct meanings; it could refer to either the technical waiver that was explicitly approved or the component of the demonstration. To avoid confusion, when we mean the technical use of the term (i.e., the waiver of an actual provision of former section 402 as reflected in the waiver list in the demonstration's terms and conditions), we will use the term ''technical waiver.'' When we simply use the term ''waiver,'' we are using it (as defined in these regulations at § 260.71) to mean the cluster of demonstration policies that the State implemented under its technical waiver. It is this broader definition that we will use to determine inconsistencies. The requirements and policies making up a waiver begin with one or more technical waivers, but could also include one or more related provisions of prior law.

The NPRM recognized this concept of including prior law provisions as part of its definition of waiver, but it depended on the State's intent in seeking the technical waiver to determine which AFDC provisions should be included. Many commenters objected to this reliance on the State's intent to operationalize a broader waiver definition. The final rule contains a simpler and more objective definition based on the demonstration component of which the technical waiver is a part.

Since our penalty authority that might be affected by waiver inconsistencies is related to work requirements at section 407 and time limits at section 408(a)(7),

we use those two sections to define the waiver components of work and time limits. We also limit our regulatory consideration of waivers to whether the waiver components that relate to work requirements and time limits are inconsistent with the respective provisions of the Act (i.e., section 407 for the work participation component and sanctions and section 408(a)(7) for the time-limit component). To the extent that a State's policies in the component area differ from the TANF policies, we will follow the waiver policies in making penalty determinations. You can find further discussion of the application of this definition in the section-by-section discussion that follows.

Although some commenters objected to our attempt to balance State flexibility and accountability, accountability to the purposes of TANF remains important under the final rule. We believe our modified approach will ensure accountability while allowing waiver policies to continue. We recognize that States, whether continuing waivers or not, have generally made serious and concerted efforts to promote the TANF objectives as they have implemented their programs. Further, as more and more States reach or approach the end of their waivers, our concerns about delays in the implementation of the TANF provisions have diminished. By the effective date of these rules, waiver authority will have expired for 14 States, and it will expire for the remaining 32 demonstration States within a few years. Moreover, for some of the remaining demonstration States, the limited scope of their waivers (e.g., limited to pilot sites or limited classes of recipients) means that the TANF provisions will be implemented broadly within the State, in spite of continuing waivers. Also, some of the remaining demonstration States have chosen to terminate waivers or to adopt modified policies that are more consistent with TANF than the original waivers.

Discussion of Specific Comments and Responses, by Section

(a) Section 260.70—What Is the Purpose of This Subpart?

We added this section to the regulation to clarify that the Department's authority and interest in identifying waiver inconsistencies is limited to the determination of penalties in three areas: (1) Failing to meet the work participation requirement; (2) failing to impose sanctions on nonparticipants; and (3) failing to meet the time-limit requirement.

Comment: A number of commenters asserted that we had totally exceeded our authority in regulating in this area. Some cited section 417 and said its provisions prohibited us from defining waiver inconsistencies at all, leaving authority for reasonable interpretation to individual States. Also, some commenters believed we should give States full authority to determine the extent to which waiver inconsistencies apply.

Response: We added this section to the final rule to clarify our interest in promulgating regulations on State waiver policies. In neither the NPRM nor the final rule have we shown any direct interest in regulating section 415, per se; however, continuation of waivers might affect the application of certain of the penalty provisions for a State, specifically those regarding work and time-limit requirements (under sections 407 and 408(a)(7) of the Act). Thus, we have the authority and responsibility to regulate in this area. In order to administer the penalty provisions on work and time limits fairly, we need to provide notice concerning the rules that we will use in applying these penalties. We limit our regulatory consideration of waivers to whether the waiver components relating to sections 407 and 408(a)(7) are inconsistent with the respective provision. To the extent that a State's policies in the component area are inconsistent with TANF policies, we will follow the waiver policies in making penalty determinations.

Comment: A few commenters specifically questioned the legitimacy of our stated objective for regulating in this area—to try to balance State flexibility to continue and test innovations begun under welfare reform waivers with accountability to the purposes of the TANF, particularly related to work and time-limit requirements. As some commenters noted, section 415 does not ''ask HHS to balance State policies against the virtue of the law.''

Response: Section 415 contains ambiguity in using the terms ''waiver'' and ''inconsistent'' without defining them. The Department's exercise of its work and time-limit penalty authority in a rational manner requires that we define those terms. As they are ambiguous on their face, we must look at Congressional intent. In this case, we find it necessary to try to balance the two potentially conflicting purposes of accountability and State flexibility to determine the meaning of the terms.

(b) Section 260.71—What Definitions Apply to This Subpart? (§ 270.30 of the NPRM)

In the final rule, we retain the definition of ''inconsistent'' given in the NPRM. We define inconsistent to mean that complying with the TANF work participation rates 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.

However, as previously discussed, we have revised and simplified the definition of waiver. In the final rule, we define a waiver as consisting 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 technical 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.

Thus, the final rules for determining whether an inconsistency related to work exists depend on the existence of a technical waiver corresponding to any of the cluster of provisions included in section 407. These provisions include: allowable work activities; mandated hours of, and exemptions from, work participation; and applicable sanctions for noncompliance with work requirements. Under the modified definition of waiver, if a State has any single technical waiver enumerated in its list of approved waivers that corresponds to any provision of section 407, it may incorporate prior AFDC (and the related JOBS) work participation rules that were part of the cluster of policies implemented under the waivers. Under the final rule, the inclusion of prior law as part of the waiver does not depend on the original purpose or objective of the State in seeking approval of the waiver.

Finally, we have added definitions for ''control group'' and ''experimental group'' that recognize the definitions included in the terms and conditions of the State's demonstration. The NPRM had special rules for research, control, and experimental groups in States that were continuing evaluations to avoid tainting the evaluations. However, it did not define any of those terms. The final rule retains the basic policies that were in the proposed rules, but refers only to ''control'' and ''experimental'' groups. The revisions have the effect of making the policy clearer and addressing the concern of one commenter that the original terminology was not consistent

with its waiver approval and could undermine its ability to continue its evaluation.

Comment: Commenters generally supported certain inherent concepts of the proposed definitions for ''waiver'' and ''inconsistent.'' In particular, they agreed that ''waiver'' should not include only the technical provisions listed in the documents approving the State's waivers, but should also encompass related and integral provisions of prior law. Similarly, they generally agreed that the term ''inconsistent'' should apply where a State would need to change its waiver policies in order to comply with TANF.

However, many commenters asserted that the proposed rules did not sufficiently recognize prior law as being integral to specific waivers. Thus, they argued the NPRM provisions would compel States to abandon policies they had implemented under waivers.

Many also objected that we presupposed State objectives in obtaining work and time-limit waivers and thus arbitrarily narrowed the breadth of applicable inconsistencies. In particular, they disagreed with our characterizations of the purpose of the waivers that eliminated exemptions from JOBS participation requirements under AFDC law and that increased the number of hours of mandatory work participation for certain classes of recipients, believing they were too limited. (Under the proposed rules, we would have disallowed inconsistencies applicable to these types of waivers based on the rationale that TANF itself eliminated prior law work exemptions and expanded hours of required work participation for these affected classes of recipients, and thus TANF requirements were consistent with the purpose of State waivers.) In effect, the commenters argued that States increased their work requirements to establish the appropriate universe of recipients who should be required to work and the appropriate level of work participation. They noted that these stated purposes were analogous to the purpose we had already recognized in the NPRM for accepting AFDC work activities as part of the waiver, i.e., to find the appropriate mix of participation activities.

A number of commenters further argued that section 415 did not confer on the Secretary the authority to judge a State's objectives.

Response: The final rules reflect our continued belief that regulating on how a State's waiver policies would affect the application of certain penalty provisions is well within our statutory authority. However, we recognize that the NPRM's reliance on our ability to judge the State's purpose in seeking a specific technical waiver was problematic, given the limited documentation available on the specific purposes of particular waivers. Therefore, we have recast the definition in terms of an objective demonstration component. Components were commonly recognized as parts of the demonstration and are readily identifiable for penalty determination purpose; one merely has to associate a technical waiver relating to work requirements or time limits with the corresponding TANF provision that is subject to penalty. Thus, while maintaining the concept that ''waiver'' includes both the technical waiver and some portion of the former AFDC provisions, we have revised the definition to remove its reliance on the State's purpose.

You can find a further discussion of the application of the new definition for work and time-limit policies at §§ 260.73 and 260.74.

Comment: Some of these commenters offered the perspective that a waiver should encompass the whole of prior AFDC law as part of the State's welfare reform strategy, not just specific individual waivers and limited related extensions of prior law.

Response: We disagree with the commenters that Congress intended waivers to cover the whole of prior AFDC law. Section 415 allows States to continue ''one or more waivers to the extent they are inconsistent.'' The fact that it refers to one or more waivers and does not use the broader term, demonstration, in describing what is to be compared for inconsistency, indicates that Congress intended the determination of inconsistencies to be made on a more specific basis.

Comment: A number of commenters recommended that we modify the definition of ''inconsistent'' to include any prior law policy in effect under its demonstration that, if continued, but not recognized as inconsistent, would give the State reason to believe that it was at risk of being subject to a TANF penalty.

Response: We addressed this concern to some degree in the final rule by changing the definition of ''waiver.'' A State may continue prior law policy that is part of a demonstration component area (e.g., work requirements) for which the State has a waiver. Continuation of prior law policy that is not in a policy area that is subject to penalties under TANF (i.e., not related to sections 407 or 408(a)(7)) is outside the scope of this final rule and is left to State discretion.

We declined to change the definition of ''inconsistent'' to mean a situation in which the State believes that continuing the policy would put it at risk of a penalty. Congress did not intend to eliminate penalties for States with waivers. Rather, it intended that we judge the conduct of such a State based on the requirements in the waiver, rather than in those in TANF, in determining whether a penalty is appropriate. If the State has waivers that are inconsistent with TANF, then the State may be subject to penalties if it fails to submit the required certification, fails to take the appropriate sanctions, fails to achieve the required participation rates under its own waiver policies, or otherwise violates its own waiver policies (e.g., exempts from time limits individuals subject to the State's demonstration time limit).

(c) Section 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? (§ 272.8 of the NPRM)

In the final rules, we have eliminated those NPRM provisions that would have denied penalty relief to States that continued waivers that were inconsistent with TANF, but failed to meet work participation rates or time-limit requirements. Specifically, the NPRM had proposed that waiver States ought not be eligible for: (1) A reasonable cause exception from any of four related work participation or time-limit penalties; or (2) a reduction of work penalty amounts based on severity of the failure or under our discretionary authority, as otherwise allowed in accordance with § 271.51(b)(3) or (c). We have also eliminated proposed rules that would have required a State, in developing a corrective compliance plan to address work or time-limit requirement failures, to consider modifying its alternative waiver requirements as part of its corrective compliance plan. Finally, we have decided not to deny a State that continues its waivers eligibility for a reduced penalty based on making significant progress towards achieving compliance with the work or time-limit requirements (as we had proposed and described in subparts B and C of part 271 and §§ 274.1 and 274.2 of the NPRM).

We had proposed imposing these rules on the basis that States operating under alternative waiver requirements were at an advantage compared to other States in being able to meet participation rates and comply with time-limit requirements. However, a

large number of commenters questioned whether the advantage that a waiver State had over other States in complying with specific TANF requirements was so great as to warrant such absolute restrictions; some noted the proposed rule was arbitrary in that we did not consider the degree of any advantage vis-a-vis other legitimate factors and situations that might result in noncompliance. Based on our assessment that our proposals might discourage States from continuing successful demonstration efforts, we have removed these restrictions on penalty relief.

In the final rules, at § 260.73(d), we retain the regulatory expectation to publish information about a State's success in meeting work participation rates, as measured against both TANF and waiver requirements. We do not expect to publish dual time-limit figures for States that have waivers of time limits that are inconsistent with the TANF requirements. Upon further review, for such States, we do not believe that it will be possible to compute the percentage of cases with an adult recipient that received more than 60 months of Federal TANF benefits under the standard TANF rules. Data reported in accordance with section 411(a) will not be sufficient to allow this calculation. We do not have the authority under section 411(a) to require waiver States to report the data that this calculation would require, and they are not germane to our penalty determinations. Therefore, we have deleted this specific regulatory expectation. However, we will be able to calculate dual work rates, and the final rules indicate our commitment to follow through on that proposal.

The final rules also clarify other necessary conditions that apply if a State wants us to use its inconsistent waiver policies and requirements in the penalty determination process.

First, the inconsistencies claimed must be within the scope of the approved waivers, both in terms of geographical coverage and coverage of the types of cases specified in the waiver approval package. For example, a State could not claim a statewide inconsistency if we approved its waiver policies for an eight-county pilot. Similarly, a State could not extend waivers to all adults when the approved waivers applied only to teen parents. Nor could waivers applicable only to two-parent families apply to other types of cases. However, a State that is no longer maintaining control group cases for the purpose of completing an impact evaluation may choose to apply approved waiver policies to cases formerly assigned to a control group.

Second, the State must have applied its waiver policies on a continuous basis from the date that it implemented its TANF program. Section 415(d) allows the State to ''continue'' one or more individual waivers (which, under the definitions enumerated in these final rules, means one or more individual demonstration components). Section 415(c) requires the Secretary to encourage States to ''continue'' their waivers. Implicit in both these provisions is that continuation of the waivers is necessary for a finding of inconsistency.

This ''continuation'' requirement does not prevent a State from modifying policies begun under waivers. TANF clearly provides States with the authority to modify waiver policies inconsistent with prior law, but consistent with TANF (e.g., related to eligibility rules such as income and resource standards). These rules clarify that a State may modify waiver provisions that are inconsistent with TANF, provided that, in doing so, it makes its policies more consistent with TANF. For example, a State could choose to reduce the geographical scope of waivers, applying waivers approved for statewide implementation in only certain parts of the State, or a State could choose to eliminate some exemptions applicable to work participation or time-limited assistance, retaining other exemptions that are still inconsistent with TANF.

We recognize that the issue of whether a State has continued waivers since the advent of TANF may be difficult to determine. Although ACF requested voluntary information on continuation, absent a final regulation, it never indicated a formal process or requirement for the States to submit such information about the continuation of the waiver policies. And, since States need not conduct evaluations as a condition of operating waivers, some States may have indicated that they were discontinuing their waivers, when in fact they intended only to notify us that they were discontinuing evaluations of the demonstration, not their waiver policies. Further, in the absence of final rules, some States may not have clearly understood how they should identify and report inconsistencies under their TANF plans. Also, although some may have indicated that they were continuing waivers with policies inconsistent with TANF, they may not have identified subsequent modifications in their operating policies.

Under these final rules, to determine if a State has continued its work participation or time-limit waiver component and, therefore, may claim applicable inconsistencies, we will accept the certification of the Governor regarding the actual practice of the State. Many of the former waiver policies (for example, variations in the counting of income and resources for eligibility purposes) are unrelated to work and time limits and need not be addressed in the certification. A State need address only the inconsistencies related to work provisions in section 407 and time limits in section 408(a)(7), as explained further below.

However, we wish to note that if a State has abandoned a policy provision that is inconsistent with TANF, the State has voided its waiver authority. Thus, it has lost its right to claim an inconsistency related to that provision. For example, a State that had technical waivers that allowed it to exempt all adult caretakers from work may have changed its policy to require participation of adult caretakers after it implemented TANF. While the State always had the flexibility subsequently to reinstate a policy exempting adult caretakers, we would not recognize this policy as an inconsistency in determining the work participation rates because the State had discontinued the prior technical waiver.

We treat each technical waiver separately for continuation purposes. If a State discontinues one technical waiver, we will continue to recognize other continuing technical waivers related to work (for example, when a State discontinues an exemption waiver, but continues unlimited job search as a work activity). However, there is no authority in section 415 to restore discontinued policies; the statute allows for consideration only of continued inconsistent policies.

Similarly, if a State had modified its implementation of the technical waiver to be more consistent with TANF, we would recognize only the modified policy as a continuation of the waiver.

Third, the Governor must certify the waiver inconsistencies that the State is claiming, including an affirmation that the State has not expanded the scope of its policies and has continued the policies under section 415 in the interim period since implementing TANF, as discussed above. This requirement continues a provision of the proposed rules, but provides new detail about the expected content of the certification, particularly as it pertains to claiming specific inconsistencies related to work and time-limit requirements. See §§ 260.73 and 260.74

for a more detailed discussion of work and time-limit inconsistencies.

Finally, these final rules clarify that, despite broadening the scope of inconsistencies that a State may claim compared to the NPRM, inconsistencies with sections 407 or 408(a)(7) do not create inconsistencies with the penalty provisions at section 409. Thus, they do not have the general effect of delaying the application of the work participation rate or time-limit penalties at §§ 261.50, 261.54, 264.1, and 264.2 or the data collection requirements at part 265.

We came to this decision because we never approved any waivers eliminating compliance with JOBS work participation rates (while they were operable) or voiding their applicability should they become operable. Our work component waivers only changed the substance of the work requirement. As for applicable data requirements, we never approved waivers that relieved States of data reporting requirements; thus, we approved no waivers that would be inconsistent with section 411 of the Act. The work and time-limit components affected by sections 407 and 408(a)(7) do not, of themselves, create inconsistencies because neither encompasses data collection requirements.

Comment: One commenter noted that when the waiver expires for a State providing extensions of assistance in excess of the 60-month Federal time limit, a State would need to comply fully with the 20-percent limit on extensions and that this could cause serious transition problems. The commenter recommended that we provide that ''reasonable cause'' include a reasonable transition time in the case of a State that had been implementing an inconsistent policy under an approved waiver.

Response: The ''waiver terms and conditions'' for demonstration projects affected by these regulations generally included a requirement that the State provide, and the Department approve, a plan to phase down and end the demonstration on the date the waiver approval expires. We did not authorize any waiver-related activities or costs to extend beyond the project period. Given that the project period for a waiver demonstration already includes a phase-down period, States should not require an additional transition period. In addition, we would remind States that they may fund cases above the 20-percent cap with State MOE dollars.

(d) Section 260.73—How Do Existing Welfare Reform Waivers Affect the Participation Rates and Work Rules? (§ 271.60 of the NPRM)

If a State is implementing a work participation component under a waiver as defined in this subpart, the requirements of section 407 of the Act will not apply in determining whether a penalty should be imposed, to the extent that they are inconsistent with the State's waiver work demonstration component.

To determine that the State's demonstration has a work component, the waiver list for the demonstration work participation component must include one or more specific provisions that directly correspond to provisions enumerated in section 407 (i.e., that cover allowable work activities, exemptions from participation, required hours of participation or sanctions for noncompliance with participation). In other words, the State's waiver list must include at least one technical waiver that changed the allowable JOBS activities, exemptions from JOBS participation, hours of required JOBS participation, or sanctions for noncompliance with JOBS participation.

After the Governor has certified the inconsistencies with section 407, we will calculate the State's work participation rates, if applicable, by: (1) Excluding cases exempted from participation under the demonstration and experimental and control group cases and not otherwise exempted; (2) defining work activities as defined in the demonstration in calculating the numerators of the rates; (3) including cases meeting the required number of hours of participation in work activities in accordance with waiver policy in calculating the numerators of the rates; and (4) excluding other cases exempt from participation under the waiver in calculating the denominators of the rates.

We will also determine whether a State is taking appropriate sanctions when an individual refuses to work based on the State's certified waiver policies. These final rules explicitly recognize waiver inconsistencies related to sanctions for noncompliance with work requirements; the proposed rules were silent on this matter. They also recognize exemptions from work and changes to the required hours of work. Finally, they continue to recognize inconsistencies related to allowable work activities, as we proposed in the NPRM.

It is important to stress that a State need not have a technical waiver in a particular part of the work component (e.g., work activities or exemptions) to claim that the *related* AFDC provisions for that part of the component are part of its waiver. Rather, the State needs one or more technical waivers related to a provision of section 407 to claim applicable prior law in all areas that are part of section 407.

Thus, a State with a waiver work component may delay implementing TANF requirements for work participation for individuals exempt from JOBS if such exemptions have been part of the State's continuing demonstration policies. A State with a demonstration work component, but without a technical waiver modifying JOBS exemptions, may still include all prior law exemptions (or a modification of these exemptions that is more consistent with TANF), if such exemptions have been part of the State's continuing policies for work participation. For States with waivers that eliminated some (but not all) JOBS exemptions, the remaining exemptions would apply, if they have been part of the State's continuing demonstration policy. However, because all States will need to conform to all TANF rules once their waivers expire, we urge States to plan accordingly.

Under these final rules, a State may claim inconsistencies applicable to hours of work if it has technical waivers related to section 407 and could, in an audit, provide written evidence (e.g., terms and conditions or policy manuals) to document that its waiver policies, as implemented, expressly provided for alternative rules with respect to the hours of work required of nonexempt individuals.

The ability to provide such written evidence is necessary because prior law did not generally have requirements for the number of hours an individual must work to be considered participating. Rather, prior law had a calculation methodology that included any JOBS participants as long as including them did not reduce average hours below 20 hours per week. If no written policy was in effect, we would hold the State to the TANF hours-of-work requirements.

Finally, a State may also choose to exempt, from the participation rate calculation, experimental and/or control group cases that are not otherwise exempt. It may remove experimental group cases as a class, control group cases as a class, or both experimental and control group cases on a class basis. However, it may not exclude such cases on an individual basis.

Comment: All those commenting on the subject supported counting towards the work participation rate calculation those work activities allowed under

waiver authority without regard to TANF restrictions, as we proposed in the NPRM. However, many commenters asserted that the rules should not restrict inconsistencies related to prior law exemptions from work participation, where those policies were part of a State's welfare reform program. In support of their position, several organizations and States argued that, because section 415(a)(2)(B) specifies that waivers approved after enactment may not affect the applicability of section 407 (concerning compliance with work participation rates), Congress fully intended the inverse to apply to waivers approved before enactment. Therefore, we should recognize all continued policies related to compliance with TANF work requirements as inconsistencies.

Response: Our revised waiver definition would allow the States with waiver work components to include all prior law exemptions, and other AFDC (and JOBS) work policies, as part of the waiver, if such policies were part of the welfare reform demonstration that the State implemented under its technical waiver(s).

Comment: A number of commenters asserted that hours of mandated work that were related to waivers and increased the JOBS requirements for a class of individuals should be claimable as an inconsistency.

Response: These comments addressed a problem with the reference to a State's intent in our proposed definition of waiver (an issue that we addressed earlier). Since the final rules rely on the existence of waiver work components, rather than intent, they recognize increased hours as part of the waiver. If the amount of the required hours under the waiver is inconsistent with the required hours under section 407, the Governor can certify the inconsistency.

Comment: Some commenters asserted that we could not even hold States operating under waivers to a work participation rate requirement—i.e., that we should delay the effect of section 407 in its entirety until State waiver authority expires.

Response: Under section 1115, there were limits on what we approved as part of a demonstration project. The Secretary only had authority to waive provisions of the AFDC program that were included in former section 402. That section contained the provisions regarding the determination of eligibility, the amount of assistance, and required procedures for State administration of the plan. The Secretary could, and did, grant waivers concerning the content of the JOBS program (the AFDC work program), which was included at section 402(a)(19). However, the required work participation rate associated with JOBS was at the former section 403(l). Since the Secretary had no authority to waive this provision, we never approved any requests from States to waive it.

Thus, no State has a waiver of participation rates that would conflict with the work participation rate penalty provision at the former section 409(a)(3). For a State to argue that the work penalty does not apply, it would have to show a technical waiver that is inconsistent with any application of the work penalty. However, waivers that create the content or substance of a State's demonstration work program are just that—definitions of the content of a work program. As such, they may be inconsistent with the content of the TANF work program at section 407 and may allow the State to substitute the substance of the work program in its demonstration for the program specified in section 407, to the extent that the State determines there is an inconsistency. However, there would be no inconsistency in applying the section 409(a)(3) work participation penalty as long as participation was determined under the State's demonstration work program.

Since the final rule bases the penalty under section 409(a)(3) on what was required participation under the State's demonstration work program, there is no inconsistency. Delay of the work participation penalty itself in these circumstances would fall outside any reasonable definition of waiver or inconsistency.

(e) Section 260.74—How Do Existing Welfare Reform Waivers Affect the Application of the Federal Time-Limit Provisions? (§ 274.1(e) of the NPRM)

If a State is implementing a time-limit component under a waiver, until the waiver expires, the provisions of section 408(a)(7) of the Act will not apply in determining whether to impose a penalty, to the extent that they are inconsistent with the waiver.

To determine that the State's demonstration has a time-limit component, the waiver list for a demonstration time-limit component must include provisions that directly correspond to the time-limit policies enumerated in section 408(a)(7) (i.e., that 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).

In general, the final rule requires a State with a waiver time-limit component to count, toward the Federal five-year limit, all months for which the adult who is subject to the State time limit receives assistance with Federal TANF funds, just as it would if it did not have an approved waiver.

The State need not count, toward the Federal five-year limit, any months for which an adult receives assistance with Federal TANF funds while the adult is exempt from the State's time limit under the State's approved waiver. Nor need the State count, toward the Federal five-year limit, months for which an adult subject to an adult-only State time limit under the State's waiver receives assistance with Federal TANF funds.

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.

After the Governor certifies time-limit inconsistencies, we 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, any month in which the adult(s) (or children where a waiver only terminated assistance to adults) were exempt from State's time limit under the terms of the State's approved waiver; and (2) applying the State's waiver policies with respect to the availability of extensions to the time limit.

The changes that we have made to the framework of how we define waiver inconsistencies have less effect on inconsistencies related to time-limiting assistance than to work. The main reason for this difference is that no prior law policies existed governing time-limited assistance. All time limits were the result of waivers. Thus, there are fewer issues about what a time-limit waiver includes. However, there are significant issues about what is allowable as an inconsistency; under these rules, the constraining factor is whether a State's demonstration project has a time-limit component related to the provisions in section 408(a)(7).

Prior to the passage of PRWORA, a ''time limit'' could take any number of forms. However, under TANF, the penalty relates to the time limit in section 408(a)(7), which recognizes only time limits that terminate assistance with the passage of time (i.e., that terminate assistance to families with adults who received Federal TANF assistance for 60 months). Other parts of TANF address time limits in different contexts, such as those that trigger work requirements. However, these latter types of provisions are not subject to the penalty provision under section

408(a)(7), and we do not address them in this regulation.

Therefore, as we proposed under the NPRM, we are allowing time-limit inconsistencies only for those States with waiver policies that terminate assistance solely as the result of the duration of receipt. Under these rules, if a State has a technical waiver meeting this requisite, we compare its provisions with those at section 408(a)(7) to determine whether there are inconsistencies.

As with work participation, States may also choose to exempt experimental and/or control group cases that are not otherwise exempt from time limits. However, a State may exclude such experimental and control group cases only on a group basis, not on an individual basis.

Comment: Commenters generally agreed that inconsistencies should be recognized that allowed a State to: (1) exempt certain cases from having months counted toward the 60-month time limit; and (2) provide extensions to more than 20 percent of the caseload after reaching the limit.

Response: We have retained these policies in the final rule.

Comment: Some commenters argued that section 415 was designed to allow States to continue their welfare reform initiatives as a whole. On this basis, they maintained that any State that consciously chose not to include time-limited assistance provisions in the comprehensive welfare reform initiatives that it implemented under waivers should be able to claim a time-limit inconsistency.

Response: Section 415 was not designed to carry over prior law in its entirety, nor to delay TANF requirements where waivers did not exist prior to implementation. Rather, it allows delay in implementing new TANF provisions ''to the extent such amendments are inconsistent with the waiver.'' Thus, we find no statutory basis for allowing inconsistencies to be claimed in this particular situation because no waiver exists.

Comment: Some commenters argued that we should also allow time-limit inconsistencies to apply where a State has implemented time limits that serve to trigger work requirements.

Response: We do not recognize other waiver provisions, such as those where States used ''time limits'' to trigger work requirements, as inconsistent with time limits. The purpose of this section of the regulation is to determine the applicability of the time-limit penalty at section 409(a)(9). This penalty applies to any failure to meet the time-limit requirements at section 408(a)(7). Time limits triggering work requirements are found in sections 402 and 407, not section 408(a)(7). Therefore, such policies do not fit within the definition of a waiver related to the time-limit component associated with 408(a)(7).

Comment: One commenter recommended that, if we retained the proposed rules related to time-limit waiver inconsistencies, the preamble discussion should clarify that ''reduction waivers'' (adult-only time limits) represent an inconsistency.

Response: We have incorporated this change in the final rule. States with waivers terminating assistance for adults only may choose to delay counting months toward the Federal 60-month time limit for as long as they continue to apply adult-only policies under their State time limit. While the proposed rules had required that time against the Federal time clock be counted for any month in which an adult was subject to the State time limit (i.e., that the Federal and State clocks would run concurrently), this policy would have had an effect that was inconsistent with the waiver policy. Because time charged against an adult would have ultimately resulted in the termination of benefits to the whole family under TANF, the proposed policy would have resulted in time being counted against child recipients. While children are protected from termination of benefits while the waiver is operable, counting time against adults in the case would have, in effect, counted time against the family's (and children's) length of receipt of assistance. This result would have been contrary to the purpose of the adult-only time-limit waivers, which was to exempt children from any effect of the time limit. Thus, in submitting a Governor's certification of continuing waiver inconsistencies, the State may claim a time-limit inconsistency for its adult-only time limit.

Comment: Another commenter said that we should allow all cases subject to a time limit adequate prior notice before a clock begins to count against them. Thus, States that have applied a reasonable statutory interpretation of section 415 to exempt cases from the Federal time limit should not have to count time retroactively against these cases (i.e., count time accrued prior to the effective date of the final rules).

Response: As we have previously stated, these rules apply only prospectively; until they are effective, the State's reasonable interpretation of the statute applies. An individual who was considered exempt from the Federal time limit under the State's reasonable interpretation of its waiver would only have the Federal limit apply prospectively, beginning October of 1999. This policy will allow States time to provide the recipient with adequate notice.

(f) Section 260.75—If a State Is Claiming a Waiver Inconsistency for Work or Time Limits, What Must the Governor Certify? (§ 272.8(a) of the NPRM)

If a State is claiming waiver inconsistencies, the Governor must certify that the State has continuously maintained applicable policies in operating its TANF program and that the inconsistencies claimed by the State do not expand the scope of the approved waivers. Further, the certification must identify the specific inconsistencies that the State chooses to continue with respect to work and time limits.

If the waiver inconsistency claim includes work provisions, the certification must specify the standards that will apply in lieu of the provisions in section 407. Specifically, it must include, as applicable: (1) Descriptions of two-parent and other cases that are exempt from participation, if any, for the purpose of determining the denominators of the work participation rates; (2) the rules for determining whether nonexempt two-parent and other cases are ''engaged in work'' for the purpose of calculating the numerators of the work participation rates, including descriptions of the countable work activities and minimum required hours; and (3) the penalty against an individual or family when an individual refuses to work. Again, 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.

If the waiver inconsistency claim includes time-limit provisions, the Governor's certification must include the standards that will apply in lieu of the provisions at section 408(a)(7). It must specify the standards that will apply in determining: (1) Which families are not counted towards the Federal time limit; and (2) whether a family is eligible for an extension of its time limit on federally funded assistance.

If the State is continuing policies for evaluation purposes, the certification must specify any special work or time-limit standards that apply to the experimental and control group cases. The State may choose to exclude cases assigned to the experimental and

control groups that are not otherwise exempt, for the purpose of calculating the work participation rates or determining State compliance related to limiting assistance to families including adults who have received 60 months of TANF assistance. Thus, the State may exclude all experimental and control group cases, not otherwise exempt. However, it may not exclude such cases on an individual, case-by-case basis.

A State must provide the initial Governor's certification by October 1, 1999. It would be very helpful to receive the certification by July 1, 1999, in order to assess how inconsistencies will apply for data collection and reporting efforts before the effective date of the new requirements. We would like to resolve any issues about the treatment of waiver cases before the reporting requirements take effect, because it is much easier to code information correctly the first time than to modify the codes retroactively. In light of the number of States continuing waivers and some of the detailed, case-specific questions that we anticipate might arise, we want to build in ample time to resolve all issues by October 1, 1999. It will certainly be in a State's interest if we can resolve all questions by the effective date of the new requirements.

Also, we would point out that, until a State has submitted its Governor's certification, we will treat the State as a nonwaiver State in determining its compliance with work participation rate and time-limit standards. Likewise, if we determine that a Governor's certification does not comply with the requirements of this subpart, we will advise the State of the inconsistency and give it an opportunity to revise the certification. We will accept alternative rules for determining penalties related to work participation rates and time-limit exceptions only to the extent that they comply with the requirements of this part.

If a State modifies its waiver policies, after it provides the certification, in a way that has a substantive effect on the calculation of its work participation rates, time-limit exceptions, or sanctions, it must submit an amended certification by the end of the fiscal quarter in which the modifications take effect.

Comment: A few commenters questioned whether we had the authority specifically to require that Governors certify which waivers States were continuing. Some of these saw this requirement as an added burden that duplicated information already submitted in their State TANF plans or documented as part of their waiver approval.

Response: We disagree that we have no authority to require the certification. As discussed, the Department has had no formal process for determining a State's decisions on the continuation of waivers. The information that has been provided has been sporadic and is not necessarily current or complete. Since we will be relying on the State's determination that it has continued an inconsistent waiver component in making penalty determinations, we must have accurate, up-to-date information on the State's decision to continue its inconsistent work and time-limit components in order to make those penalty determinations correctly and on a timely basis. As such information is necessary to our implementation of the penalty provisions, we have authority under those provisions to collect it.

(g) Section 260.76—What Special Rules Apply to States That Are Continuing Evaluations of Their Waiver Demonstrations? (§ 271.60(c) and (d) and § 274.1(e)(4) of the NPRM))

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

We have added definitions for experimental and control groups at § 260.71 (and cross-references at § 260.30). These definitions reference the terms and conditions in the State's demonstration.

Comment: One commenter suggested that we should allow any State in which more than half of its families are subject to waiver policies as part of a research group to apply the same waiver policies to the rest of the families in the State, as long as the State does not expand the geographical scope of the waiver authority. The same rule would apply to a county operating a waiver demonstration in a county-administered State. Another commenter indicated that States may be less likely to continue an evaluation if we do not allow a State to apply policies permitted for the research group to a broader set of families.

Response: While we sympathize with the commenters' desire to reduce administrative complexity, we do not see why the complexity is any greater when a majority of the caseload is in the experimental and control groups than when a minority is. Furthermore, implementing this policy would introduce complexities of its own in terms of the measurement required to determine what rules apply in a given jurisdiction. Since both the number of families in the experimental and control groups currently on assistance and the total number of families currently on assistance vary from month to month, rules could vary month to month. In contrast, the experimental and control groups are well-defined; a family is either assigned to them or not. Therefore, under the final rule, determining when and to which families to apply the pre-TANF policies is relatively simple.

C. Child-Only Cases

Background

The calculations for work participation rate and time-limit penalties center around the concept of ''family.'' Under the proposed rules, we indicated that a State could develop its own definition of ''family,'' with the proviso that States could not create definitions that excluded adults from cases solely for the purpose of avoiding penalties. To monitor that restriction, we proposed that States report annually on the number of cases excluded from penalty calculations, and the reasons for each exclusion. We said we would add families back into the calculation if we found they were excluded for the purpose of avoiding penalties. You may find the specific proposals in §§ 271.22(b)(2), 271.24(b)(2), and 274.1(a)(3) of the proposed rule.

These provisions reflected our concern that States might convert cases to child-only cases to avoid the statutory work participation and time-limit requirements. In part, our concern was a reaction to public comments that States and advocates made shortly after PRWORA's enactment suggesting that States might take such actions. It also reflected our view that such conversions would seriously undermine critical provisions of welfare reform.

Overview of Comments

Several commenters supported our decision to recognize that States had the primary authority to define ''family.'' However, a large number of commenters, from a diversity of groups, opposed or expressed concerns about our specific proposals in this area. The comments generally objected to our distrust of States and the pre-emption of State decisions to define families as they deemed appropriate.

Several commenters challenged the statutory basis for our proposal. Some did not directly challenge our authority, but questioned the practicality of our proposed approach. Commenters pointed out inconsistencies in the language that we had used in different parts of the regulation and noted that

the determination of whether States created definitions for the sole purpose of avoiding penalties would involve subjective determinations of motive. To minimize these problems, they offered several suggestions about how we might clarify what types of cases might be subject to recalculation.

Under one proposal, States would describe their child-only cases in the State plan or procedures. We could then discuss beforehand with States the appropriateness of these cases. Other commenters offered a related suggestion that we set up a process for States to get approval of reasons for conversions up-front, but did not identify a specific format for the State submissions.

Another suggestion was that State definitions would automatically prevail, but that HHS would inform Congress if distortions of legislative intent seemed to result. In other words, in the absence of any documented abuses, we would simply gather information on what States are doing and permit States to use any definition of family that has a reasonable policy basis. Then, if we discover evidence that States were trying to subvert the TANF provisions, we could work with Congress in developing solutions.

Some commenters noted that child-only cases existed under AFDC and enumerated examples of child-only cases that we should acknowledge as acceptable, including: cases in which the adults have no legal liability for the care of the children, cases with recipients of SSI or other disability payments, cases with adults not receiving assistance because they exhausted shorter State-imposed time limits, cases with noncitizen parents or adults ineligible for other reasons (e.g., SSI receipt or a drug felony conviction), cases that were previously converted under approved waiver policies, and cases with elderly caretakers.

We also received suggestions that we should explicitly permit States to continue to provide assistance to children: (1) once the parent/relative loses eligibility due to the expiration of the five-year time limit; (2) whose parent/relative was sanctioned for failure to participate in work or cooperate with child support enforcement requirements; and (3) whose parent or caretaker would be better served by some other State program, such as if she is disabled.

In addition to specific objections or questions, many commenters expressed the overall concern that our proposal to control for inappropriate child-only cases may inhibit the State flexibility essential to TANF. State anxiety about Federal recalculation of penalty liability could create a ''chilling effect'' that caused States to limit child-only cases unnecessarily and inappropriately. In the words of one commenter, ''the uncertainty of knowing whether their policy basis will be considered legitimate and how work participation rates and time-limit compliance will be measured by HHS could simply lead States to avoid serving children as child-only cases even if the result is not to serve the children at all.''

Commenters did not want to see assistance to valid child-only cases undermined by our rules. Of particular concern was the effect of our proposals on State efforts to keep children in the homes of relatives, in lieu of foster care placements.

Others noted that, up to this point, we do not have evidence that States are converting cases to child-only cases for the purpose of avoiding TANF requirements; we have not observed significant changes in State policy or practice to create new child-only cases. Only if such changes actually occur should HHS develop corrective procedures.

Overall Response

When we were developing the proposed rules, we were very concerned that States would use the flexibility available in defining families to avoid work participation requirements, time limits, and other TANF requirements. Within the authority that we have to collect participation rate information and make decisions on State penalties, we proposed specific regulatory policies with respect to penalties and reporting in response to that concern. However, as we have seen the TANF programs evolve, our concerns about possible abuses have diminished.

While the number of child-only cases has been increasing over time, commenters correctly observed that the increases began well prior to TANF and that there is little indication so far that States are converting cases merely to avoid penalties. In fact, a couple of internal State analyses (i.e., in Florida and South Carolina) have found no evidence of conversion of cases to child-only cases from other statuses.

Also, commenters correctly noted that there were numerous child-only cases that were considered valid under prior law. Their existence under TANF therefore does not suggest that States are working to subvert TANF requirements in this manner. Over the past several years, there were a number of social and demographic changes underway that could have contributed to much of the growth in child-only cases. For example: (1) Because of the ''crack'' epidemic, some infants moved from the care of their mothers to the care of their grandmothers or other adult relatives (who may or may not have been needy); (2) in some places, immigration changes could have caused a growth in the number of eligible children with ineligible alien parents; and (3) in other places, States have made an effort to establish eligibility for SSI. (If parents became SSI-eligible, the children normally received assistance as child-only cases.)

Recently, we have seen a reduction in the total number of child-only cases. However, because the number of other types of cases has been declining faster, the proportion of child-only cases has not gone down. Thus, State success in moving more families to work may actually be causing an increase in the proportion of child-only cases.

At the same time, we disagree with the suggestion that it would be appropriate to provide federally funded assistance to children in child-only cases when their parents reach the 60-month limit on Federal assistance. Such a result would be consistent with an adult-only time limit, but does not seem consistent with the intent of the specific provision in the law. For example, the provisions on transfers to the Social Services Block Grant program suggest that children in families whose adults reached their 60-month limit were not expected to continue receiving federally funded TANF assistance.

While we disagree with the commenters' suggestion that we did not have legal authority to regulate in this area, we understand commenters' concern that the provisions in the proposed rules may do more harm than good. In the absence of clear evidence that States are converting cases to avoid the TANF rules, we have decided that the most appropriate response at this point is to give States leeway to define families in ways that they think are most appropriate while gathering better information on how child-only policies might be affecting the achievement of TANF goals.

However, the possible conversion of cases to child-only status to avoid TANF requirements remains a major policy concern. For example, such conversions could effectively eliminate restrictions on the amount of time that any family could receive federally funded TANF assistance or could undermine the statutory provisions on the treatment of sanction cases in the participation rate calculations. We therefore intend to track it closely. To that end, we have added one data element to the disaggregated case-record reporting that will identify cases that have been

converted to child-only status since the past month. We will use the quarterly TANF Data Report to monitor trends both in the aggregate number and type of child-only cases and the number of conversions. By monitoring these trends, we should be able to identify changes in State practice or caseload characteristics that would merit further investigation. If we saw a significant number of conversions to child-only status in a particular State (i.e., a number that was out of line with prior State numbers or the numbers for other States), we would look more closely at that State.

We have a variety of investigative tools available to us, including detailed analysis of the case-record information reported to us, the Single State Audit, supplemental reviews, and targeted studies (like the current ASPE study mentioned below).

We will incorporate a full analysis of the information we have gathered on what has been happening with child-only cases in our annual report to Congress.

As a number of commenters suggested, under these final rules, we have adopted a strategy that includes gathering information, monitoring developments, and keeping our options open regarding future actions. Through our data collection, we will obtain substantial information on the characteristics of child-only cases, trends in their number and type, and conversions. This information will help us assess the possible effect of such cases on the achievement of TANF goals. We will consider proposing appropriate legislative or regulatory remedies if we find that States are using the flexibility available under these rules to define families to avoid work requirements or time limits or otherwise undermine the goals of TANF. However, we will not put any significant policy change into effect without appropriate prior consultation with States, Congress, and other interested parties.

Tracking of Child-Only Cases

Comment: A significant number of commenters also objected to our proposals at §§ 271.22(b)(2)(i), 271.24(b)(2)(i), 274.1(a)(3)(i), and 275.9(a)(1) that States annually report to us on their child-only cases and advise us of the specific nature of each of the cases. Commenters generally felt it was an unjustified additional burden for States. Some objected to the specific wording of the requirement because it suggested that we expected case-by-case reporting of such cases rather than aggregated reporting.

Response: We have removed the requirement for annual reports on families excluded from work-rate and time-limit calculations and the reasons for their exclusion. The proposed language was not consistent in different parts of the NPRM package and caused some confusion.

Monitoring trends in the number and type of such cases remains an important issue. However, we decided that a different type of data would be more helpful in helping us track conversions. Thus, we have added a new data element to the TANF Data Report that will identify the specific cases that have become child-only cases. These new data will supplement other data on child-only cases available through the TANF and MOE–SSP data reports and give us a solid basis of information for assessing national and State trends in the number and nature of child-only cases. From other data elements in those reports, we will get disaggregated, case-level data on parents and other individuals who are in the household, but not in the family receiving assistance. We will get information on whether there are parents who are ineligible for receipt of Federal benefits, whether the cases are under sanction, and whether cases have no parent in the home. To provide still further supplemental information, the Office of the Assistant Secretary for Planning and Evaluation is undertaking a study in three States to explore the circumstances of child-only cases in more detail.

Together, these information sources will provide valuable insight into the nature of child-only cases and the types of services and assistance States are providing them. We will be able to track any significant changes in the number and types of such cases and be in a better position to determine if we need to pursue further action. Depending on what specifically is happening, an appropriate response could be information-sharing, consultations, technical assistance, or regulatory or legislative proposals.

To reflect our other decisions on child-only cases, we deleted the provisions at §§ 271.22(b)(2), 271.24(b)(2), and 274.1(a)(3) of the proposed rule that prohibited conversion of child-only cases for the purpose of avoiding penalties, indicated that we would add cases back into the work participation rate and time-limit calculations if we found that they had, and required separate annual reporting on child-only cases. We also deleted comparable annual reporting language at § 275.9(a)(1). We believe that we will have sufficient information through the TANF Data Report to monitor child-only cases; we determined that the separate annual reporting requirements were redundant.

D. Treatment of Domestic Violence Victims

Background

The Administration has shown a strong commitment to reducing domestic violence and helping victims of domestic violence access the safety and supportive services that they need to make transitions to self-sufficiency. In the proposed rule, we showed this commitment by promoting implementation of the Family Violence Option (FVO), a TANF State plan provision that provides a specific method for addressing the needs of domestic violence victims receiving welfare.

Under section 402(a)(7) of the Act, States may elect the FVO. This State plan option provides for identification and screening of domestic violence victims, referral to services, and waivers of program requirements for good cause. In the NPRM, we proposed to grant ''reasonable cause'' to States that either failed to meet the work participation rates or exceeded the limit on exceptions to the five-year time limit because of program waivers granted under this provision. To be considered for this purpose, a ''good cause domestic violence waiver'' would need to incorporate three components: (1) Individualized responses and service strategies, consistent with the needs of individual victims; (2) waivers of program requirements that were temporary in nature (not to exceed 6 months); and (3) in lieu of program requirements, alternative services for victims, consistent with individualized safety and service plans.

In addition, to be considered in determining reasonable cause for exceeding the time-limit exceptions, such waivers had to be in effect after an individual had received assistance for 60 months, and the individual needed to be temporarily unable to work.

Our proposed rules attempted to remain true to the statutory provisions on work and time limits and to ensure that election of the FVO was an authentic choice for States. In deciding to address these waiver cases under ''reasonable cause'' rather than through direct changes in the penalty calculations, we tried to both reflect the statutory language and maintain the focus on moving families to self-sufficiency. At the same time, we were giving States some protection from penalties when their failures to meet the

standard rates were attributable to the granting of good cause domestic violence waivers that were based on individual assessments, were temporary, and included individualized service and safety plans. We hoped our proposal would alleviate concern among States that attention to the needs of victims of domestic violence might place them at special risk of a financial penalty.

We welcomed comments on whether our proposed approach and language achieved the balance we were seeking.

Also, to ensure that these policies have the desired effect, we proposed to limit the availability of ''reasonable cause'' to States that have adopted the FVO. We indicated that we reserved the right to audit States claiming ''reasonable cause'' to ensure that good cause domestic violence waivers that States include in their ''reasonable cause'' documentation met the specified criteria. And we said we intended to monitor the number of good cause waivers granted by States and their effect on work and time limits. We wanted to ensure that States identify victims of domestic violence so that they may be appropriately served, rather than be exempted and denied services that could lead to independence. We also wanted to ensure that the provision of good cause waivers did not affect a State's overall effort in moving families towards self-sufficiency. Thus, we said we would be looking at information on program expenditures and participation levels to see if States granting good cause waivers were making commitments to assist all families in moving toward work.

If we found that good cause waivers were not having the desired effects, we said we might propose regulatory or legislative remedies to address the problems that we identified.

For additional discussion of our proposals, we referred readers to §§ 270.30, 271.52 and 274.3 of the preamble and proposed rule.

In the final rule, we have consolidated the provisions in a new subpart in order to make our policies more coherent. We have also made some changes to align the regulatory text more closely with the statutory language. For example, we modified the six-month time limit placed on good cause domestic violence waivers. Recognizing that the statute authorizes waivers for ''as long as necessary,'' we have incorporated similar language in the rule, but called for six-month redeterminations. We have also incorporated statutory language describing the Family Violence Option, including its reference to confidentiality.

Comments and Responses

(a) General Approach

Most commenters generally approved of the way that the proposed rule attempted to protect victims of domestic violence. A significant number commended DHHS for recognizing the significance of domestic violence as a national problem and acknowledging the link between domestic violence and poverty. Many expressed the view that the approach we took was reasonable and provided States with the penalty protection that they needed. However, a few disagreed with the basic approach we took, and a substantial number of commenters raised concerns about specific aspects of the proposed rule.

Response: Our rules do not limit a State's authority to grant ''good cause'' waivers under the Family Violence Option, but they do limit the circumstances under which we will provide special penalty relief to States granting such waivers. In other words, if a State's waivers do not comply with the standards in these rules, the State does not get special consideration in our penalty determinations if it fails to meet the work participation requirements or exceeds the limit on Federal time-limit exceptions.

To emphasize this distinction, in the final rules, we created a new term ''federally recognized good cause domestic violence waivers'' at § 260.51. A ''good cause domestic violence waiver'' refers to any waiver granted by a State consistent with the FVO. A ''federally recognized good cause domestic violence waiver'' refers to a waiver that also meets the standards that we have established for special consideration in our penalty determinations.

As we discuss in more detail below, we made some additional changes to the proposed rule in response to the comments that we received. We also moved the provisions on domestic violence (including the definition provisions that were in § 270.30 of the proposed rule) to a new subpart B of part 260. In addition, we revised the language at § 264.30(b). The revised language explicitly recognizes that individuals may receive waivers of child support cooperation requirements under the FVO and that our rules would treat such waivers like good cause exceptions granted under the child support statute (at section 454(29) of the Act).

In summary, the final rule retains the same basic approach as the proposed rule—i.e., it gives States penalty relief if their failure to comply with the work participation rate or time-limit standards is attributable to the granting of good cause domestic violence waivers that meet certain Federal standards. It retains a requirement for service and safety plans, but makes important modifications related to policies on the duration of the waivers that we would recognize, confidentiality protections, work expectations, information that the State must provide with respect to its service strategies, and the standards for time-limit waivers. In addition, the preamble clarifies the flexibility available to States in delivering services to victims of domestic violence and the mechanisms in place for protecting victims from unfair penalties.

Comment: A minority of the commenters argued that we should exclude individuals granted waivers of work requirements under the FVO from the calculation that determines a State's overall work participation rates for each month in the fiscal year.

Response: We chose to address this as a State penalty-relief issue, in large part because we believe that keeping victims of domestic violence in the denominator of the work participation rates represents a better reading of the statute. Section 407 makes no reference to domestic violence cases or to a State's good cause waiver of work requirements under the Family Violence Option. In the statutory provisions on calculating work participation rates (at section 407(b)), there are only two explicit exemptions from the calculation: one for a single custodial parent of a child under 12 months old and the other for a recipient who is being sanctioned. There is no mention of the victims of domestic violence or cross-reference to the waivers granted under the FVO.

We believe that victims of domestic violence and the objectives of the Act will best be served if we maintain the integrity of the work requirements and promote appropriate services to the victims of domestic violence. We do not want our rules to create incentives for States to waive work requirements routinely, especially in cases where a recipient can work; service providers who work closely with victims of domestic violence attest that work is often a key factor in helping victims escape their violent circumstances.

We do realize that, in certain cases, working or taking steps toward independence may aggravate tensions with a batterer and place the victim in further danger. Under the final rule, States may provide temporary waivers of work requirements in such cases. Also, States may grant waivers to extend time limits to families that were not able to participate in work activities or to make due progress towards achieving

self-sufficiency within 60 months; we would give Federal recognition to waivers granted to extend time limits under such circumstances. We have revised the language on service plans to provide that work elements in a service plan should be consistent with the statutory expectations about ensuring safety and fairness. We have also modified the language on waivers to extend time limits (as discussed in a subsequent comment and response).

We continue to believe that removing victims of domestic violence from the work participation rate calculation could result in inappropriate exemptions or deferrals of work requirements for victims of domestic violence. As an alternative, commenters suggested that we could protect against this result by requiring States to give waiver recipients access to appropriate education and training services. However, we do not believe such a requirement would suffice; States will have an inherent interest in focusing their resources on individuals who are part of the participation rate calculations and who could put them at penalty risk.

Comment: Many commenters expressed general concerns about the proposed definition of the good cause domestic violence waiver. They argued that it should be more in line with the statutory language and less prescriptive.

Response: We added the extra criteria related to Federal recognition of waivers (at § 260.55) because we wanted to assure that victims of domestic violence would receive appropriate protections and services and the goals of TANF would be sustained. At the same time, as we have discussed, we have made a few modifications to the provisions that make the rules more consistent with the statute and responsive to the specific concerns that commenters raised.

To ensure that our rules promote access to appropriate services, we have added reporting requirements at §§ 260.54 and 265.9(b)(5) designed to ensure that States seeking Federal recognition of their good cause domestic violence waivers implement meaningful alternative service strategies for victims of domestic violence. The new reporting will tell us and other interested parties about the strategies and procedures States have put in place to ensure that these families receive appropriate supports. It will also give us information on the aggregate number of good cause domestic violence waivers granted by the State each year.

Comment: One commenter expressed concerns about the administrative burden that States would face in filing a claim of reasonable cause.

Response: We have not regulated specific requirements that States must meet in filing reasonable cause claims. While States must provide information sufficient to justify their claims, the burden associated with demonstrating reasonable cause should not be great. In fact, we would encourage States to present their reasonable cause arguments as succinctly as possible.

State data reporting systems will contain information on the number of cases that received federally recognized good cause domestic violence waivers every month. States will be able to rely on that data in justifying their reasonable cause claims.

(b) Time Limits on Good Cause Waivers

Comment: A significant number of commenters objected to the six-month durational limit that we placed on good cause domestic violence waivers. They said that six months did not provide enough time and that the length of waivers should be determined on a case-by-case-basis. They also argued that our proposed rule could create an additional administrative burden on States for cases where a waiver needed to be renewed. They noted that the six-month limit is neither required by statute nor consistent with the statutory language that waivers continue ''as long as necessary.'' Finally, commenters noted that they found our policy authorizing extension or renewal of waivers only in the preamble language; at a minimum, they wanted this policy to be added to the regulatory text.

Response: In the NPRM we said that we did not intend that all good cause waivers should last six months. Rather, the length of the waiver should reflect the State's individualized determination of what length of time a client needs. This was our way of giving States significant leeway in how they implemented their Family Violence Option programs. However, we agree with the commenters that our rules should be more consistent with the statute and have revised the final rule accordingly. At the same time, the rule continues to assure that these cases will receive periodic attention from service workers. More specifically, like the statute, it allows for the waiver to be granted for ''as long as necessary.'' However, at § 260.55(b) and (c), it also requires that a reassessment will take place every 6 months to determine if the waiver is still necessary and if the service plan is still appropriate.

(c) Adoption of the Family Violence Option

Comment: A small number of commenters expressed concern that, by providing special consideration only to States that have opted for the FVO, we could be penalizing States that did not choose the option.

Response: As we stated in the proposed rule, we consciously tied penalty relief to State implementation of the FVO because we felt the FVO provided a constructive framework for identifying, screening, and serving victims of domestic violence. Also, because the FVO is a State plan provision, there are some statutory expectations on States that adopt it, the public will have access to information about it, and consultation with local governments and private sector organizations will take place.

Comment: A couple of commenters said that we should mandate that any State seeking relief from penalties for not meeting work participation rates or for exceeding the cap on exemptions to the time-limits must officially adopt and properly implement the FVO within 60 days as part of the corrective plan.

Response: States have the option of submitting corrective plans for our review, and this final rule provides wide latitude to States in developing the content of those plans. In that context, we do not believe it would be appropriate to be very prescriptive about what a State must include related to adoption of the FVO. Also, we want States to adopt the FVO based on broad policy and programmatic considerations, not because such a step would give them a quick way to avoid penalty liability.

It is important that States understand that, to us, compliance means more than adoption of the Family Violence Option. In deciding whether a corrective compliance plan is acceptable, we will consider the strides that a State has already taken toward developing and implementing a broad strategy to serve victims of domestic violence and ensure their safety.

Comment: A small number of commenters expressed concern that the regulations should require all States to demonstrate that the Family Violence Option is being implemented statewide.

Response: We reviewed the TANF State plan provisions at section 402 and found no specific requirement that the provisions there be implemented on a statewide basis. In fact, because the statutory language at section 402(a)(1)(A)(i) refers to TANF as a ''program, designed to serve all political subdivisions in the State (not necessarily in a uniform manner),'' it would be a reasonable interpretation of the statute to conclude that plan provisions need not be implemented statewide.

If we were sure that a statewide requirement would produce the optimal policy results, we would have the authority to add such a requirement to our standards for waivers in determining penalty relief. However, we are not convinced that a statewideness requirement would result in better protections or more appropriate services for victims of domestic violence. For example, if a State could not enact statewide legislation for political reasons or could not implement a program in remote areas of the State for administrative reasons, a statewideness requirement might preclude any residents of the State from benefiting from the FVO.

Thus, under the statute and this rule, there can be variations in the implementation of the FVO across a State. However, we hope that all States will work toward statewide implementation because we believe that recipients would generally be better served under a statewide program. Also, we point out that States can expect broader protection against penalties if they implement statewide.

We would like to take this opportunity to clarify the meaning of the phrase ''optional certification'' in section 402(a)(7). Under this provision, election of the Family Violence Option is optional, i.e., States may use their own discretion in deciding if they will elect the option. However, for States that have adopted the option, the State plan certification is not optional. States adopting the option must submit the certification with their State plan or submit a State plan amendment and notify the Secretary of DHHS within 30 days.

(d) Scope of Penalty Relief Available

Comment: A couple of commenters pointed out that our ''reasonable cause'' proposal gave States very limited penalty relief with respect to FVO waivers. If a State did not fully meet the work participation rates or time-limit cap when we removed waiver cases from the calculations, it could get no other consideration. For example, our proposed rules did not consider such waivers in deciding whether a State qualified for penalty reductions under § 271.51 or in deciding the potential size of reductions under that provision.

Response: In the revised language at § 260.58(b), we indicate that we will consider good cause domestic violence waivers in deciding eligibility for, and the amount of, penalty reduction under § 261.51. In §§ 260.58(c) and 260.59(b), we indicate that we may take waivers into consideration in deciding if a State qualifies for penalty relief as the result of its performance under a corrective compliance plan.

Also, while §§ 260.58 and 260.59 set specific criteria for automatic reasonable cause determinations based on domestic violence waivers, under the revised language at § 262.5(a), the Secretary has some discretion to grant reasonable cause in cases where a State could not attribute its failure entirely to one of the established ''reasonable cause'' criteria. Thus, a State could request that we grant ''reasonable cause'' in cases where federally recognized good cause domestic violence waivers did not justify ''reasonable cause'' in and of themselves, but were one of several factors contributing to its failure.

Taking waivers into consideration in deciding penalty reduction under § 261.51 seemed to be a logical extension of our proposed ''reasonable cause'' provision. Under the statute and rules, the penalty reduction under § 261.51 is available based on the degree of noncompliance. If two States had the same participation rate, but one could attribute its failure in part to the granting of federally recognized good cause domestic violence waivers and the other could not, we think that the State granting waivers is complying to a greater degree and deserves a smaller penalty. The revised rules at § 260.58(b) reflect this philosophy.

The revised rules do not provide for automatic penalty relief for waivers granted during a corrective compliance period. As we have indicated in the response to another comment, we do not want States to look to the FVO as a quick fix for their penalty problems. Under these rules, at §§ 260.58(c) and 260.59(b), we reserve discretion whether to give an individual State credit for good cause domestic violence waivers in determining whether it has achieved compliance during the corrective compliance period. In making this decision, we would expect to look at evidence provided by the State that it had adopted the FVO and had implemented a broad, thoughtful, and long-term strategy for identifying and serving victims of domestic violence.

(e) Service Plans and Work Requirements

Comment: We received a number of comments on the requirement in the proposed rule that waivers be accompanied by service plans that ''lead to work.'' They argued that this language diverted the focus of the FVO away from the safety considerations emphasized in the statute and that the reference to work had no statutory basis.

Response: As we indicated in the proposed rule, we believe that work is an important part of service plans because many victims of domestic violence need to make progress on that front in order to escape their abusive situations. In § 270.30 of the proposed rule, we indicated that good cause domestic violence waivers must be designed to lead to work. However, we recognize that, in the short-term, safety issues and other demands on the family may preclude specific steps toward work. Thus, we have added new regulatory text at § 260.55(c) to clarify that States have the ability to postpone work activities when safety or fairness issues would so indicate. For example, if a victim of domestic violence needs time to recover from injuries, secure safe and stable housing, and get her children resettled, or needs to stay at home or in a shelter to avoid danger, there may be a need to postpone work activities.

We encourage States to incorporate work activities as a key component of the service plan for victims of domestic violence, to the extent possible. Also, we note that, with our removal of the 6-month limit on the duration of waivers, these final rules may make it more feasible to do so.

Comment: Several commenters expressed concerns that the service plan requirements in the proposed rules would make victims of domestic violence more vulnerable to sanctions (i.e., penalty reductions) for not meeting welfare agency expectations. TANF caseworkers are trained to sanction participants who do not adhere to the caseworkers' instructions or who do not comply with eligibility conditions. Additionally, they stated that, in certain circumstances, an appropriate service plan for a victim may be to do nothing. Forcing victims to take specific steps within a fixed time frame may make their situation more precarious. They also argued that services provided by domestic violence counselors would be better for victims since these workers understand that developing a plan for the family's safety can be emotionally painful and may involve continuous reassessments.

Response: The FVO provides for waiver of program requirements ''where compliance with such requirements would make it more difficult for individuals receiving assistance * * * to escape domestic violence or unfairly penalize such individuals. * * *'' Thus, it would be inconsistent with the FVO for domestic violence victims to be more at risk of program sanctions than other individuals receiving assistance. In other words, States should be giving victims of domestic violence the same, or greater, access to ''good cause'' for failing to comply or cooperate with

work, personal responsibility, and child support requirements. They also should consider the needs of victims of domestic violence in deciding eligibility for State time-limit exemptions and exceptions.

In general, we view service plans not as additional requirements for victims of domestic violence, but as alternatives to normal program requirements. In developing these plans, and determining if an individual has good cause for not complying with a plan, States should take the other demands on the family and the family's ability to respond into account. States should also recognize that a battered woman often does not have control over her own actions and respect a victim's judgment of whether she can safely take certain action steps (e.g., move out of her home).

Comment: A significant number of commenters asked that we delete the requirement for a service plan because they felt it placed an additional burden on TANF caseworkers who may not be equipped to engage in this type of work and raised potential privacy issues. Commenters also wanted to see a requirement that States provide referrals to supportive services, as specified in the statute.

Response: Implicit in these comments seems to be an assumption that TANF caseworkers would have full responsibility for developing and enforcing service plans. This is not our assumption, and it is not consistent with the evolving nature of the TANF program. The TANF statute does not have the same statutory or regulatory requirements for ''single State agency'' administration that the AFDC program did. Thus, under TANF, other public and private agencies can make discretionary decisions on behalf of the TANF agency.

In the context of the FVO, States have a lot of flexibility in deciding the appropriate roles for TANF staff and domestic violence service providers in administering these provisions. The statutory language in section 402 provides for State referral of domestic violence victims to counseling and supportive services. It makes no distinction as to who will provide these services. Thus, services may be provided within the TANF agency, with referrals to specially trained agency staff, or by referrals to an outside agency. There is also no specification as to when these referrals can occur; for example, they could occur before or after the service plan is in place.

If there are concerns about the ability of TANF staff within a State to perform certain roles, e.g., because of resource constraints or expertise, the TANF agency can and should work with third parties on the development of service plans and the delivery of supportive services.

Also, readers should note that we modified the regulatory text in § 260.55 to include an expectation that assessments and service plans be developed by persons trained in domestic violence. This regulatory text does not prescribe any specific training curriculum, any specific staff credentials, or any specific administrative structure for delivering services. However, it does require that staff performing these functions have some training in domestic violence. The regulatory change reflects our view and the view of commenters about the critical importance of these activities. Staff need some level of special knowledge and expertise in order to make appropriate decisions in these highly sensitive case situations.

At the Federal level we have been investing resources to improve the capacity of TANF staff to screen, identify, and serve victims of domestic violence. We supported a project in Anne Arundel County, Maryland, to pilot test such an effort. In 1997, ACF awarded a grant to train all of Anne Arundel County's Department of Social Services staff on domestic violence. This training has now been incorporated into the regular training for all new employees. This project is one of the first in the nation and has become a model for other States considering adopting a State domestic violence curriculum. In addition, we are developing resource materials that agencies can use as part of our

Welfare and Domestic Violence Technical Assistance Initiative, under the National Resource Center on Domestic Violence. The first two ''practice papers'' issued under this initiative address the subjects of ''Building Opportunities for Battered Women's Safety and Self-Sufficiency'' and ''Family Violence Protocol Development.'' You may contact the National Resource Center at its toll-free number, 1–800–537–2238.

Comment: A couple of commenters felt that our rules should specify that service plans should also provide for referrals to appropriate alternative support, such as SSI and child support.

Response: One of the expectations for all TANF recipients is to cooperate in establishing paternity and obtaining child support. Under both the Family Violence Option and the rules of the Child Support Enforcement program, the State may waive these requirements if the individual has ''good cause'' for not cooperating. Thus, we would expect child support referrals except in cases where it creates a risk to the family or is otherwise inappropriate.

Our rules generally expect that service plans will help enable victims to attain the skills necessary to ''lead to work'' and to become self-sufficient because economic self-sufficiency is a major goal of the TANF program. However, our rules also envision that the plans will reflect individualized assessments of the needs and circumstances of victims and their families. The rules recognize that work requirements are not necessarily appropriate in some cases and that some women will need extra time on assistance because of their current or past circumstances.

We would not prescribe the specific content of a State's assessments or the specific nature of its referrals. However, we would point out that, for a State's TANF program to achieve long-term success, families will need to receive appropriate supports and referrals. Also, based on State practice in recent years, it seems fairly clear to us that States understand the value of making appropriate referrals to SSI.

(f) Waivers of Time Limits

Comment: Some commenters felt that our regulatory interpretation on time-limit waivers appeared to be contrary to the purpose of the welfare reform statute. A majority recommended that the final regulations should allow States to ''stop the clock'' for families and give them good cause domestic violence waivers at the time they are at risk of violence, not just at the time that they approach the 60-month time limit. A number of commenters had similar concerns about the proposed language that only recognized time-limit waivers for cases that were ''unable to work.''

They felt that the proposed definition of good cause domestic violence waiver would not necessarily be consistent with an individual's circumstances. They argued that some domestic violence victims might need an extended period of time to set up a new household, help their children adjust to new surroundings, and receive counseling. If the trauma of the abusive relationship is substantial, a woman might not be psychologically ready to develop the employment skills that are required under TANF. In these types of cases, the clock should be stopped until the victim is healthy and feels safe enough to engage in work activities. Similarly, the clock should be stopped if States determine that abused women are not able to comply with the Federal work requirements. They also expressed concerns that our proposed policies

would treat victims inequitably, based on the particular timing of their domestic abuse situations.

Response: Although we have not adopted the specific suggestion of commenters to recognize waivers that ''stop the clock'' and automatically exempt families from the time limit, we have revised the final rules to give Federal recognition to a much broader array of waivers to extend the time limits. Under the final rules, we will recognize such waivers, based on need, due to current or past domestic violence or the risk of further domestic violence. Thus, States will be able to provide victims with specific assurances that: (1) They can receive assistance for as long as necessary to overcome the effects of abuse; and (2) extensions will be available in the future based on their current inability to move forward. For example, States could look at whether victims were unable to pursue work or child support for any period of time while they were on assistance or whether a current or prior unstable housing situation creates a need for extended assistance. As a result, States could advise a victim that the family will receive an extension for as long as necessary if the family accrues 60 months of assistance.

We encourage States to give victims the assurance they need that: (1) They will not be cut off assistance when they reach the Federal time-limit if they still need assistance; and (2) they will be able to return for assistance if the need recurs. Such assurances are important because they will alleviate pressure on victims to take steps that might jeopardize their personal or their family's safety. We intend to defer to State judgments on the need for such waivers and the length of time such waivers are needed. For example, if a State granted a waiver that extended a family's eligibility for assistance based on the length of time that the victim was unable to participate in work activities, we would recognize a State waiver that extended assistance for that period of time.

The disaggregated data reporting will indicate those cases whose time limit has been extended based on a federally recognized domestic violence waiver, as reported by the State. (We will also get information on the aggregate number of waivers granted under the annual report.)

As we have stated previously, we remain concerned that individuals granted waivers receive appropriate attention from TANF staff, access to services, and appropriate consideration of their safety issues. Therefore, we have added new annual reporting requirements at § 265.9(b)(5) that should give us insight into actual State practice in these waiver cases and tell us how frequently such waivers are being granted. In addition, at §§ 260.54, 260.58, and 260.59, we have specified that a State may receive special penalty consideration under these regulatory provisions if it submits this information. The primary purpose for creating criteria for Federal recognition of a State's good cause domestic violence waivers was to set in place a structure for ensuring that victims receive appropriate alternative services. In addition, the reporting will provide a public description of the basic strategies that the State has put in place.

Comment: A few commenters expressed concern about the proposed language in § 274.3 that appeared to require that the victim of domestic violence receive both a hardship exemption from the 60-month time limit and a separate good cause domestic violence waiver based on inability to work. The language in the NPRM stated that, in order to qualify for exclusion from the calculation of work participation rates, families must have good cause domestic violence waivers that were in effect after the family received a hardship exemption from the limit on receiving assistance for 60 or more months. They expressed concern that the effect of this requirement would be that a State wishing to use the FVO must include domestic violence as part of the hardship extension criteria. Commenters stated that this is not supported by law and could result in some States not being able to benefit from the penalty relief that we were trying to provide.

Response: The language in the NPRM apparently did require that both a hardship exemption and a good cause domestic violence waiver be in effect. We agree with the commenters that waivers should not have to meet both requirements, and we have deleted the problematic language from the final rule.

(g) Confidentiality

Comment: A large number of commenters expressed concerns about the lack of attention paid to confidentiality. Commenters argued that individual case files should not be kept. Such files could have a negative effect on victims, potentially discouraging them from seeking services and even endangering them, if special attention is not paid toward protecting the files. They asked us to clarify in both the preamble and final regulation that we would neither require nor expect States to include sensitive information in their files that could jeopardize a woman's safety or security. They recommended that States retain and report information in an aggregated form to protect the anonymity of victims and their children.

Response: We have revised the regulation to incorporate the statutory language on confidentiality found in the FVO (see § 260.52). We also encourage States to consider the special needs of victims of domestic violence and to consult with providers of domestic violence services as they develop procedures to ''restrict the use and disclosure of information'' on recipients, pursuant to section 402(1)(A)(iv). The experience of domestic violence service providers should help shed light on questions such as what information is sensitive, what particular cautions should be taken with victims of domestic violence, and what practices work best in ensuring confidentiality.

We recognize the importance of this issue. However, in order to administer these provisions and have effective and accountable programs, it will be necessary for States to maintain records that identify victims and recipients of good cause domestic violence waivers. Since it is vital to keep this information, States should consider whether their standard confidentiality safeguards are sufficient to protect victims or whether they should institute additional safeguards. For example, these could include establishing special safeguards for both computer and paper files, training TANF staff about the importance of confidentiality for domestic violence victims and specific procedures to be used in their workplace, using extreme caution when determining whether to release the whereabouts of victims to anyone, and handling disclosures of abuse with extreme sensitivity.

(h) Notice Requirements

Comment: A small number of commenters asked to see language in both the preamble and the text of the regulation requiring that States provide TANF applicants written notice when a request for a good cause domestic violence waiver is denied.

Response: Under section 402(a)(1)(B)(iii), in their TANF plans, States must set forth objective criteria for fair and equitable treatment and explain how they will provide opportunities for hearings for recipients who have been adversely affected. Although we are not regulating this provision, in light of the restrictions on our regulatory authority at section 417, we encourage States to send notices in these cases as a matter of fairness and

equity and to treat these waiver denials as adverse actions.

E. Recipient and Workplace Protections

Background

A number of commenters expressed concerns that the NPRM focused too much on penalties and was unacceptably silent on protections for needy individuals and families, including the protections available through Federal nondiscrimination and employment laws.

One concern of commenters was that the stringency of the proposed rules on issues like penalty relief, waivers, child-only cases, and separate State programs would make it less likely that hard-to-serve families would receive appropriate services and treatment. Throughout the final rule you will find responses to this latter concern.

However, commenters also had some specific suggestions as to how we could incorporate specific protections available in the TANF law and other Federal laws into these rules. It is this latter set of comments that we address in this section.

You will find discussion of some related comments and our response in the sections of the rules dealing with nondisplacement (at subpart G of part 261) and individual sanctions (at subpart A of part 261).

Comments and Responses

(a) Applicability of Other Federal Laws

Comment: Several commenters noted that there was no reference in the TANF regulations to the applicability of Federal employment laws to TANF-funded positions, such as the Fair Labor Standards Act (FLSA), the Occupational Safety and Health Act (OSHA) and title VII of the Civil Rights Act. They noted that welfare recipients are not exempted from such laws; rather they are entitled to a safe, healthy employment environment, per OSHA, and to equal protection under all other statutes that apply to the workplace.

We received a number of related comments about the lack of reference to Federal nondiscrimination laws, including the Americans with Disabilities Act, Equal Pay Act, and Age Discrimination in Employment Act.

In both cases, commenters argued that we needed to take a more active role in the enforcement of these laws. There were a variety of suggestions about how we should do that.

At one end of the spectrum, commenters want us to speak to the applicability of such statutes under the TANF program, reference guidance put out by the Department of Labor and EEOC, inform welfare systems about existing laws and enforcement procedures, and acknowledge the role of EEOC in addressing individual complaints.

At the other end were comments saying that we should actively engage in litigation or promote actions through other agencies with enforcement authority upon evidence of systemic violations or a pattern of substantiated complaints. One commenter explicitly indicated that we could defer to agencies of proper jurisdiction for enforcement.

Response: In the NPRM preamble, we had noted that our proposed rules did not cover the nondiscrimination provisions at section 408(d) of the Act. These provisions specify that any program or activity receiving Federal TANF funds is subject to: (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. We had decided not to include the provisions in the NPRM because ACF was not responsible for administering these provisions of law, and they were not TANF provisions.

We suggested that individuals with questions about the requirements of the nondiscrimination laws, or concerns about compliance of individual TANF programs with them, should address their comments or concerns to the Director, Office of Civil Rights, Department of Health and Human Services, 200 Independence Ave, SW, Room 522A, Washington, DC 20201.

We recognize that this language and approach did not adequately represent this Administration's commitment to the enforcement of civil rights and labor laws. In that context, we have decided that we should focus more attention on these protections in the final rule. We can do that without violating section 417 (in letter or spirit) or interfering with the jurisdiction of other Federal agencies. In light of the concerns raised in these comments, we believed it would be helpful to include the nondiscrimination provisions referenced at section 404(d) of the Act in the regulation. They appear at § 260.35(a).

In § 260.35(b), you will find new regulatory language designed to further clarify the protections applicable to TANF programs and activities. In this new clarifying language, we make the point that section 417 of the Act does not limit the effect of other Federal laws, including those that provide workplace and nondiscrimination protections. We also indicate that Federal employment laws and nondiscrimination laws apply to TANF beneficiaries in the same manner as they apply to other workers.

Based on comments we received in this subject area and on some of the fiscal issues being raised, we were concerned that some States were reading the limitations in section 417 more broadly, in effect to free States from all provisions of Federal law, except those in the new title IV–A. In fact, section 417 only limits regulation and enforcement of the TANF provisions. It does not affect the applicability of other Federal laws or the authority of other Federal agencies to enforce laws over which they have jurisdiction.

In addition to adding this new regulatory text at § 260.35, we added a new reporting requirement at § 265.9(b)(7). Under this provision each State must include a description of the grievance procedures that are in place in the State to resolve complaints that it receives about displacement.

Each State must create nondisplacement procedures under section 407(f) of the Act. This provision and the related provision at section 403(a)(5)(J) of the Act (which applies to the WtW program) reflects long-standing concern among unions, labor groups, and others about the possibility that placement of welfare recipients at work sites could displace other workers from their jobs.

States also are concerned about displacement because of its potential negative effect on their labor force and the long-term success of their TANF programs. At the same time, States are facing economic and programmatic pressures to move applicants and recipients into the workforce. For example, they want to avoid work participation rate and time-limit penalties, and they want to increase their job placements in order to qualify for a High Performance Bonus. In light of these countervailing pressures, we believe that it is important that we monitor State activity in this area. Thus, we are asking for information on the procedures available in the States to protect against displacement. We will incorporate a summary of this information on nondisplacement procedures as part of the characteristics of State programs that we feature in the annual report to Congress (pursuant to section 411(b)(3)). We can also make the descriptions publicly available to interested parties within the State.

To the extent that a State includes such a description in its State TANF plan, it could merely cross-reference the plan material in the annual report. It

would not need to resubmit the information.

In addition to these specific regulatory changes, we encourage States to exercise due care as they promote work and implement new job development, placement, and referral activities. They should not use TANF programs in any way that would cause displacement or compel people to endure discriminatory work places, unsafe work environments, or unfair work conditions in order to obtain assistance.

There is a potential that States without adequate nondisplacement procedures may have an unfair advantage in obtaining job placements. Therefore, as we work on developing proposed rules for the High Performance Bonus, we will consider State grievance procedures or the record of a State with respect to displacement complaints as potential factors in determining eligibility for, or the size of, a High Performance Bonus. We look forward to receiving public comments on this issue and other issues when we publish the High Performance Bonus NPRM shortly.

Finally, we wanted to use this opportunity to provide additional information to State agencies, employers, and the public about the workplace and nondiscrimination protections that do apply in TANF. We will not attempt to provide detailed information on how various other Federal laws would apply to the TANF program or to TANF recipients. Rather, our goal is to give enough background information so that readers will understand the basic context and know where to go for further information.

As commenters pointed out, the four Federal laws that are cited in section 408(d) of the Act are not the only Federal nondiscrimination and employment laws that are applicable to, and relevant for, the TANF program. Other laws that may come into play include the Fair Labor Standards Act (which covers issues like minimum wage and hours of work), the Family and Medical Leave Act, the Occupational Safety and Health Act, title IX of the Education Amendments of 1972, title VII of the Civil Rights Act of 1964 (title VII), and the Equal Pay Act. A variety of Federal agencies are responsible for enforcing these laws, and the enforcement tools available differ by program.

The Department is developing guidance that will provide an overview of the applicable civil rights laws and the enforcement mechanisms for each. We advise you to consult this guidance for information on which Federal agencies have jurisdiction over which types of complaints; for example, as one commenter pointed out, the Department's Office of Civil Rights may be the appropriate reference for certain issues, but the EEOC generally handles individual complaints of employment discrimination. We will provide access to the guidance through the Web, when it is available.

The U.S. Department of Labor (DOL), and the Equal Employment Opportunity Commission (EEOC) have also issued guidance on the applicability of Federal discrimination and employment laws to welfare recipients. In part, this guidance indicates that welfare recipients participating in certain types of activities may be ''employees'' and thus covered by the FLSA, OSHA, and title VII. You may access these two documents through links on our Web site. The DOL guidance is entitled ''How Workplace Laws Apply to Welfare Recipients (May 1997),'' and the EEOC guidance is entitled ''Enforcement Guidance: Application of EEOC Laws to Contingent Workers Placed by Temporary Employment Agencies and Other Staffing Firms (Dec. 3, 1997).''

Likewise, the Internal Revenue Service (IRS) has issued guidance on the ''Treatment of Certain Payments Received as Temporary Assistance for Needy Families (TANF).'' IRS Notice 99–3, dated December 17, 1998, addresses the treatment of TANF payments under certain income and employment tax provisions. For example, it notes that, under the Internal Revenue Code, earned income for Earned Income Credit (EIC) purposes does not include amounts received for service in community service and work experience activities, to the extent that TANF subsidizes those amounts. It also specifies the conditions under which TANF payments would not be includible in an individual's gross wages, would not be earned income for EIC purposes, and would not be wages for employment tax purposes.

(b) Effect on Recipient Sanctions and State Penalties

Comment: We received a couple of comments saying that our regulations should provide that a person whose failure to comply with work participation requirements is caused by a violation of employment standards (e.g., a woman who leaves her job due to unremedied sexual harassment) may not suffer reduction or elimination of assistance, under section 407(e). Likewise, a few commenters suggested that we provide that State definitions of good cause (e.g., for failure to participate in work or meet responsibilities under an Individual Responsibility Plan) include workplace rights and/or discrimination situations.

Response: We have not directly required States to provide a good cause exception from the sanction provisions, as some of these comments suggest, because it is not clear that we have the authority to do so. Section 417 generally limits our regulatory authority, and the language at the end of section 407(e) indicates that State sanction decisions are ''subject to such good cause and other exceptions as the State may establish.'' Thus, we believe that we should defer to State decisions on the specific definition of ''good cause.''

At the same time, we do not want to see TANF programs fostering work or participation that is in violation of Federal law. If we learn that violations are occurring, we will pursue additional enforcement, administrative, regulatory, or legislative remedies, as appropriate.

Comment: A commenter also suggested that we deny reasonable cause and penalty relief if a State does not have an adequate process in place for recipients to raise good cause.

Response: We have not made any changes to our regulation in response to this comment. Section 402(a)(1)(B)(iii) requires that the State plan must explain how the State ''will provide opportunities for recipients who have been adversely affected to be heard in a State administrative or appeal process.'' Also, as we previously mentioned, section 407(e) indicates that States have discretion in establishing rules on good cause exceptions to sanctions. In light of these provisions, section 417, our lack of plan approval authority, and the general expectation under the TANF statute and rules that States will have discretion in deciding how services are delivered, we do not think it be appropriate to regulate a State's good cause process in this manner.

Comment: A couple of commenters said that we should not penalize States for failing to meet work requirements when their failure could be attributed to compliance with certain laws, such as employment discrimination. A related set of comments was that we should consider State efforts to comply with employment laws in determining whether a State gets reasonable cause or penalty reduction. For example, one said we should require States to develop ''an effective enforcement plan for the employment rights of recipients in work programs'' that include monitoring of laws as a prerequisite for getting a reduced penalty under § 261.51(a). One commenter said we should deny reasonable cause and penalty reductions if the State has no system in place for

monitoring and enforcing of compliance.

Response: We have not included any changes in our regulation in response to these comments. First, it was not clear to us that we should reward States for complying with other Federal laws. We thought it would be better to start with the presumptions that: (1) All States would comply with applicable Federal laws; and (2) we should rely on the procedures available under those other laws as the appropriate mechanisms for promoting compliance. We also had concerns about how we could incorporate such factors into our penalty determination decisions. We would not want to be making independent judgments about the level of State compliance with laws for which other agencies had jurisdiction. Further, it would be difficult for us to get timely, complete, and definitive compliance information from other agencies. Looking beyond Federal law to State and local laws would exacerbate these difficulties. Furthermore, we would have little assurance that official actions on official complaints accurately represented the overall level of compliance within the State, and we would have difficulty developing objective standards that would help convert evidence on violations—or State efforts to comply or enforce compliance—into objective, quantifiable standards.

(c) Procedural Requirements

Comment: A few commenters suggested that we require States to inform recipients of their rights and/or procedures for addressing violations. One commenter said we should require that staff be informed as well. One commenter also said we should require posting of appropriate nondiscrimination notices following the model under title VII of the Civil Rights Act.

Response: We recognize the value of providing full information to recipients, staff, and employees on these matters. However, we do not believe that imposing these requirements would be consistent with section 417 of the Act or the basic principle of State flexibility of the TANF legislation. Through the efforts by our Office of Civil Rights and other Federal agencies, we are making information on protections more widely available to the public, but in a framework more consistent with the TANF legislation.

You can find additional discussion about workplace protections in the preamble for part 261.

F. Comments Beyond the Scope of the Rulemaking

General

A few comments we received were outside the scope of this rulemaking. However, we wanted to take the opportunity to speak briefly to them in this preamble because they raise important TANF issues that merit discussion.

Special Issues

(a) Work Standards

Comment: We received some comments expressing concerns about the statutory provisions—most notably about the work participation rate requirements. Readers noted two specific concerns—their failure to recognize certain kinds of educational activities as participation and the inordinately high standards applicable to two-parent families.

Response: While certain policy decisions in this regulation respond to these concerns, to the extent that they represent statutory, and not regulatory, issues, they are beyond the scope of this rule. You may find additional discussion of this issue and our response in the preamble and rules for part 261.

(b) Drug Testing

Comment: One organization expressed its opposition to urine drug testing, provided a number of suggestions about guidelines we could issue to protect clients against unfair sanctions, asked that we promulgate guidance to States on how to conduct testing in a way that ensures the due process rights of clients, and suggested that treatment for addiction would be a more cost-effective approach than sanctions, in the long run, for States. It also asked that we remind States that the law allows sanctions only against the person who tests positive, not other family members.

Response: We are working with the Substance Abuse and Mental Health Services Administration (SAMHSA) on developing guidance and technical assistance materials that will help States deal effectively and appropriately with needy families that have substance abuse problems. In fact, we have developed an action plan of activities that we could undertake jointly with SAMHSA. Under that plan, we are co-sponsoring some sessions on substance abuse and welfare reform as part of our FY 1999 ''Promising Practices'' Conferences.

Regarding the commenter's last point, we assume the commenter is referring to section 902 of PRWORA, which says that the Federal government would not prohibit States from sanctioning welfare recipients who test positive for use of controlled substances. Clearly, this language envisions that sanctions in such cases would not extend beyond the individual to other family members.

Technically, we could claim the authority to regulate this provision because the limits to our regulatory authority at section 417 cover only those provisions in part IV–A of the Act. (Part IV–A of the Act incorporates section 103(a) of PRWORA, but not section 902 or the other sections.) However, requiring States to continue TANF benefits to other family members would contravene the intent of section 401(b) of the Act, which eliminates the entitlement to assistance under TANF, and the spirit of the TANF statute, in giving States discretion in deciding which families should receive benefits. Thus, while we might advise against sanctioning other family members, we decided not to regulate State decisions in this area.

(c) State Plan Requirements

Comment: One commenter asked that our regulations include specific requirements about State plan descriptions, due process, and notifications to recipients.

Response: In general, these are areas where we do not have clear, direct regulatory authority. However, there are places in the final rule where we have made changes that address this concern. One is in the section dealing with MOE expenditures. Because MOE expenditures must be made on behalf of ''eligible families,'' in order for us to determine if State MOE expenditures are ''qualified expenditures,'' State plans must contain information on how the State defines ''needy families.'' The revised rule at § 263.2(b) contains a reference to this State plan requirement. Also, in the sections of the rule and preamble that deal with appropriate implementation of the work sanction provisions (§§ 261.54 through 261.57), we draw a connection between the adequacy of a State's notification and hearings processes and its eligibility for penalty relief. We believe these provisions are clearly within our regulatory authority, because of their connection to penalty enforcement, even though we do not have general regulatory or enforcement authority in these areas.

However, we would point out to States that the absence of regulation does not eliminate the requirements as the statute does address State responsibilities in these areas. Under section 402(a)(1)(B), the State plan must

set forth objective criteria for the delivery of benefits and the determination of eligibility and for fair and objective treatment. It must also explain how the State will provide opportunities for recipients who have been adversely affected to be heard in a State administrative or appeal process. Section 402(b) requires that States must notify the Secretary of plan amendments within 30 days, and section 402(c) requires that States make summaries of the plan and plan amendments available. Section 407(e) provides that State penalties against individuals (i.e., sanctions) are subject to such good cause and other exceptions as the State establishes, and it prohibits penalties against single custodial parents with children under age 6 who refuse to work and have a demonstrated inability to obtain needed child care.

(d) Tribal Issues

Comment: We also received a couple of comments concerned about the Tribal regulations and the consultation process used in that rulemaking.

Response: We have referred those comments to the Division of Tribal Services in the Office of Community Services for further consideration. At the same time, we would like to address a couple of concerns raised by the comments.

Comment: One commenter asked that we require States to coordinate with Tribes as part of the planning process. Another noted that the proposed rule did not provide specific mechanisms for building State-Tribal relationships. The commenter indicated that history of State-Tribal relationships over the past 200 years was primarily negative and suggested we add specific financial penalties or sanctions to foster cooperation.

Response: We believe it would be contrary to the spirit of this legislation and the restrictions placed on our regulatory authority by section 417 to require States or Tribes to take specific actions in this area. However, as indicated by our subsequent comments on State-Tribal coordination, for welfare reform to succeed in Indian country, States and Tribes need to work together in addressing administrative, economic, and service delivery issues. Thus, we have spent some time trying to identify ways to make coordination between States and Tribes easier and more beneficial, and we have included a few provisions in this rule designed to foster better coordination. More specifically, this rule: (1) allows State contributions to Tribal TANF programs to count towards the State MOE; (2) exempts individuals covered by Tribal TANF reporting from the State case-record reporting sample; and (3) gives States an option whether to include individuals in Tribal programs in the State work participation rate calculations. Also, we continue to look for opportunities outside of this rule—such as in our technical assistance and outreach initiatives—to enhance coordination of State and Tribal programs.

Comment: One commenter spoke about the concerns of Tribes and Tribal organizations in meeting the proposed TANF data collection and reporting requirements, in light of the limited resources available to Tribes. The commenter said that these requirements might prevent Tribes from implementing their own TANF programs and place those who do participate at risk of sanction. Because Tribes lack the same infrastructure as States, we should provide them administrative resources.

Response: Because the statute imposes the same reporting requirements on Tribes as States and specifies many of the data elements that must be reported, we have limited ability to reduce the reporting burden for Tribes. However, we have made a few adjustments, as we discuss in part 265. Also, we would point out that: (1) there are some reports that Tribes do not have to submit, including the MOE-SSP data report, which is inapplicable to Tribal programs; (2) Tribes are not subject to a penalty if they fail to submit complete, accurate, and timely reports; (3) in these rules, we try to facilitate State support of Tribal programs in the form of MOE expenditures, systems support, and infrastructure; and (4) we will be providing technical assistance to Tribal programs to help address their infrastructure needs.

G. Additional Cross-Cutting Issues

Pregnancy Prevention

Comment: One commenter asked that we address pregnancy prevention in the rules.

Response: This issue did not get much direct attention in the NPRM because of the scope of the regulatory package and our limited regulatory authority. However, it is clear from the statement of findings in section 101 of PRWORA, the stated TANF goals at § 260.20, the preamble discussions on allowable uses of Federal and MOE funds, and activities underway outside the scope of these rules that: (1) the TANF legislation recognizes out-of-wedlock pregnancy prevention as a critical component of welfare reform; and (2) subject to some general restrictions, States may spend Federal TANF and State MOE funds on pregnancy prevention efforts.

Because of the significance of this issue, in the final rule, we have added a limited amount of new reporting to capture information on State activities related to out-of-wedlock pregnancies. First, at § 265.9(b)(8), as part of their annual report, we are asking States to include a description of the out-of-wedlock pregnancy prevention activities they provide under their TANF program. Second, in the TANF Financial Report, we are asking States annually to provide a break-out of their expenditures on these activities—to the extent that such expenditures are not reflected in other reporting categories. (We have added similar requirements for reporting on activities related to the formation and maintenance of two-parent families.)

The TANF bonus provisions, which are the subject of separate rulemakings, also address this concern. First, there is a bonus under section 403(a)(2) for States that achieve the greatest reductions in their rates of out-of-wedlock childbearing (without increasing their abortion rates). We will also be considering inclusion of pregnancy prevention measures as we develop proposed rules for the High Performance Bonus, awarded under section 403(a)(4).

We would also point out that, under section 413(e) of the Act, we must rank States based on their rates of out-of-wedlock births for families receiving TANF assistance and conduct annual reviews of those States with the highest and lowest rankings. The TANF Data Report contains data collection related to this provision.

Program Coordination

Comment: One commenter complained that the lack of coordination between the U.S. Department of Agriculture and the Department of Health and Human Services shackled State efforts to meet Federal agency goals.

Response: We have worked diligently over many years to deal with some of the program inconsistency issues that have created administrative problems for States. We will continue our interagency efforts to coordinate program policies and minimize inconsistencies through active dialogue with the Department of Agriculture.

Rural and Transportation Issues

Comment: One commenter offered several suggestions in response to concerns about the effects of TANF in rural areas, including: (1) a rural set-aside of TANF evaluation funds to

determine whether there were inequities for rural areas; and (2) the use of existing rural networks to provide information on the effects of welfare reform in rural areas and lessons learned.

The commenter also suggested that we set guidelines for State implementation in rural areas.

The commenter's final suggestion was that we come up with a method to encourage innovative programs in rural areas as an alternative to State waivers or exemptions of rural residents.

Response: We referred the first two comments to the Director of the Office of Planning, Research and Evaluation for further consideration. At the same time, we would point out that a critical part of our overall research strategy is to ensure that our studies cover a broad diversity of geographic and demographic situations so that we can get a fuller understanding of the effects of our programs. In that context, in July of 1998, we announced that we would be awarding grants to State agencies to stimulate research of emerging approaches for welfare reform programs and policies in rural America. In the first phase of this project, we have awarded planning grants to increase knowledge about current rural strategies, develop new strategies that can be tested, and design evaluations for assessing these strategies. Contingent upon the availability of funds, we would then enter a second phase to fund implementation and evaluation activities.

With regard to rural implementation, we believe that setting guidelines would violate the principle of State flexibility in TANF and the restrictions on our regulatory authority at section 417. However, we will give consideration to rural concerns as we continue to develop our research and evaluation, technical assistance, and outreach agendas.

One of our goals in developing our technical assistance and outreach strategies is to foster efforts that help programs reach all families, including those in isolated communities. An area where we have made significant early progress is in the area of connecting needy individuals to work through more innovative uses of transportation resources and networks. We have been working with the Departments of Labor and Transportation to identify how new and existing resources can be used to address the transportation needs of low-income families and to highlight innovative approaches that have been developed at the community level. We expect these activities to develop further in response to the new Job Access program authorized under the Transportation Equity Act. You can find additional information on these transportation initiatives, including guidance on how TANF and other funds can support these activities and descriptions of program models, through the ACF Web site.

Comment: We received a related comment from a national public transportation group, which urged that TANF plans be developed at the local level with local public transit systems and metropolitan transportation planning organizations.

Response: We recognize the value of these local collaborations and are working on a variety of fronts to foster them. However, we have not included anything in our rule to require them because such a requirement would be beyond the scope of this rule and inconsistent with the limits of our regulatory authority at section 417.

Introduction to Section-by-Section Discussion

Following is a discussion of the regulatory provisions we have included in this package. The discussion follows the order of the regulatory text, addressing each part and section in turn.

V. Part 260—General Temporary Assistance for Needy Families (TANF) Provisions (Part 270 of the NPRM)

Subpart A—What Provisions Generally Apply to the TANF Program?

This subpart of the rules helps set the framework for the rest of the rule. For the convenience of the reader, it reiterates the goals stated in the new section 401. It also includes a set of definitions that are applicable to this part.

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

Section 260.10—What Does This Part Cover? (§ 270.10 of the NPRM)

This section of the rules indicates that part 260 includes provisions that are applicable across all the TANF regulations in this rulemaking.

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

Section 260.20—What Is the Purpose of the TANF Program? (§ 270.20 of the NPRM)

This section of the rules repeats the statutory goals of the TANF program. In brief, they include reducing dependency and out-of-wedlock pregnancies; developing employment opportunities and more effective work programs; and promoting family stability.

While we did not elaborate on the statutory language in the proposed rule, in the preamble we pointed out that, in a number of ways, the new law speaks to the need to protect needy and vulnerable children. We advised States to keep this implicit goal in mind as they implement their new programs.

Comment: A couple of commenters argued that we should do more in our rules to promote job preparation and/or marriage. One expressed explicit concern about the negative effect of the two-parent work participation rate on State support for two-parent families.

Response: This section of the regulation directly incorporates the statutory language and reflects the premise that States need and merit flexibility in deciding how to meet these goals. However, we have incorporated policies in other sections of the regulation to support State efforts in these areas. For example, our policy to let States define work activities will enable States to better support job preparation. Likewise, we have limited disincentives for States to serve two-parent families in TANF under our policy to limit the potential penalty States face when they fail only the two-parent participation rate (i.e., by basing the penalty on the proportion of the total caseload that two-parent cases represent). Also, we revised the calculation of caseload reduction credits in a couple of ways that address the commenters' latter concern. First, we allow the State an option of applying a credit based either on the two-parent caseload or on the overall caseload. Secondly, we provide for offsets in cases where the State has made eligibility changes that have the effect of increasing the caseload.

We have also made changes to help focus more attention on State efforts to promote the formation and maintenance of two-parent families. In recognition of the significance of this issue, we have added a limited amount of new reporting to capture information on State activities in this area. First, at § 265.9(b)(8), as part of their annual report, we are asking States to include a description of their activities to promote two-parent families. Second, in the TANF Financial Report, we are asking States annually to provide a break-out of their expenditures on these activities—to the extent that such expenditures are not reflected in other reporting categories. (We have added similar requirements for reporting on activities related to the prevention of out-of-wedlock pregnancies.)

In a related effort, the formula that we created to award high performances, under separate guidance, encourages State efforts to prepare recipients for work, by setting aside a substantial share of the monies for States whose recipients succeed in the workplace (i.e., retain jobs and show earnings gains).

Section 260.30—What Definitions Apply Under the TANF Regulations? (§ 270.30 of the NPRM)

General Explanation

(a) Scope

This section of the rule includes definitions of the terms used in parts 260 through 265. It also includes references to definitions that pertain only to individual parts or provisions. You can find the definition of terms that are specific only to individual parts or provisions in the appropriate individual parts of the final rules.

In drafting this section, we defined only a limited number of terms used in the statute and regulations. We understood that excessive definition of terms could unduly and unintentionally limit State flexibility in designing programs that best serve their needs. Commenters were generally supportive of this approach, but had specific concerns about specific terms, that we address below.

(b) General Terms to Note

In the proposed rule, we pointed out our use of the term ''we'' throughout the regulatory text and preamble—to mean the Secretary of the Department of Health and Human Services or any of the following individuals or agencies acting on her 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.

We also cited the terms ''family'' and ''head-of-household'' as examples of terms that we did not define. We said that States were thus free to define what types of families would be eligible for TANF assistance. (However, we also advised readers to look at several sections of the proposed rule because, while not defining the term ''family,'' they addressed key requirements on the State that related to the State's definition. These sections included: work participation rates (§§ 271.22 and 271.24 of the NPRM), MOE requirements (subpart A of part 273), time limits (§ 274.1), and data collection definitions (§ 275.2). We received a number of comments on the proposed policies in these related areas, including the proposed provisions on child-only cases. Thus, you will find related discussion in those other sections of the preamble.)

In the final rule, we have added a definition of noncustodial parent. It clarifies that, under TANF, this term is not used in the narrow legal context to refer to parents lacking legal custody, but to parents who do not live in the same household as the minor child. It also does not refer to parents who live outside the State and are beyond the reach of the State's TANF program. We felt it was necessary to include a basic definition because we received so many questions about how the TANF rules on expenditures, data collection, work requirements, and time limits applied to this group of individuals. You will find additional discussion of noncustodial parent issues throughout the preamble that follows.

We decided not to define the individual work activities that count for the purpose of calculating a State's participation rates. We directed readers to the preamble discussion for § 273.13 and subpart C of part 271 in the NPRM, respectively, for additional discussion. While commenters generally supported our decision not to define work activities, we received a few comments in this area. We discuss these comments in the preamble to subpart C of part 261. (NOTE:

The reference to § 273.13 in the NPRM preamble was incorrect, and we deleted it.)

For reference purposes, we noted the use of the term ''Act'' to refer to the Social Security Act, as amended by the new welfare law, and ''PRWORA'' for the new law itself. Any section reference is a reference to a Social Security Act section, unless otherwise specified.

This part incorporates the major definitions from the PRWORA statute, including: ''adult,'' ''minor child,'' ''eligible State,'' ''Indian, Indian Tribe and Tribal organization,'' ''State,'' and ''Territories.'' (Readers should note that the term ''State'' includes the ''Territories,'' unless specifically noted.) We include these definitions largely for the readers' convenience.

This part also incorporates some clarifying definitions, commonly used acronyms (such as ACF, AFDC, EA, IEVS, JOBS, MOE, PRWORA, TANF, and WtW), and commonly used terms and phrases (such as the Act and the Secretary). While the meaning of many of these terms is generally understood, we included them to ensure a common understanding and enable some reductions in regulatory text.

(c) Significant Fiscal Terms

This part also incorporates a number of definitions that have substantial policy significance, which we included for clarification purposes. For example, it incorporates terms that distinguish among several types of expenditures. These distinctions are critical because the applicability of the TANF requirements vary depending on the source of funds for the expenditures. In particular, it distinguishes between expenditures from the Federal TANF grant and from the State funds expended to meet MOE requirements (either within the TANF program or in separate State programs), as follows:

Federal expenditures. This is short-hand for the State expenditure of Federal TANF funds.

Qualified State Expenditures. This term refers to expenditures that count for basic MOE purposes (at section 409(a)(7)). (By regulation, many, but not all, of the requirements that apply for countable basic MOE expenditures also apply for Contingency Fund MOE purposes.)

Basic MOE. This term refers to the expenditure of State funds that a State must make in order to meet the basic MOE requirement for the TANF program and avoid the penalty specified at section 409(a)(7). (In the NPRM, we used the term ''TANF MOE,'' but we changed the term in response to comments and concerns about confusing readers.)

Contingency Fund MOE. This term refers to expenditures of State funds that a State must make in order to meet the Contingency Fund MOE requirements under sections 403(b) and 409(a)(10). States must meet this MOE level in order to retain contingency funds made available to them for the fiscal year. Note that this term is more limited in scope than the term ''basic MOE.'' See discussion at subpart B of part 264 for additional details.

State MOE expenditures. This term refers generically to any expenditures of State funds that may count for basic MOE or Contingency Fund purposes. It includes both State TANF expenditures and expenditures under separate State programs, where allowable.

State TANF expenditures. This term encompasses the expenditure of State funds within the State's TANF program. It identifies the only expenditures that can be counted toward the Contingency Fund MOE. It includes both commingled and segregated State TANF expenditures.

Commingled State TANF expenditures. This term identifies the expenditure of State funds, within the

TANF program, that are commingled with Federal TANF funds. Such expenditures may count toward both the State's basic MOE and Contingency Fund MOE. To the extent that expended State funds are commingled with Federal TANF funds, they are subject to the Federal rules.

Segregated State TANF expenditures. This term identifies State funds expended within the TANF program that are not commingled with Federal TANF funds. Such expenditures count for both basic MOE and Contingency Fund MOE purposes. They are not subject to many of the TANF requirements that apply only to Federal TANF funds (including time limits).

Separate State program (SSP). This term identifies programs operated outside of TANF in which the expenditure of State funds counts toward the basic MOE requirement, but not for Contingency Fund MOE. Expenditure of State funds must be made within the TANF program in order to count as MOE for Contingency Fund purposes.

It also incorporates terms to distinguish among different categories and amounts of TANF grant funds. These distinctions are important because they affect the size of grant adjustments and total funding available to the State. In some cases, different spending rules apply to different categories of funds.

State Family Assistance Grant (or SFAG). This term refers to the annual allocation of Federal TANF funds to a State under the formula at section 403(a)(1).

Adjusted State Family Assistance Grant, or ''Adjusted SFAG.'' In the NPRM, we indicated this term refers to the grant awarded to a State through the formula and annual allocation at section 403(a)(1), minus any reductions due to the implementation of a Tribal TANF program to serve Indians residing in the State. In the final rule, we modified the definition to also exclude any funds transferred from TANF pursuant to section 404(d) of the Act. We explain this change in the Comment/Response section below. The distinction between ''Adjusted SFAG'' and ''SFAG'' is significant in determining spending limitations and the amount of penalties that might be assessed against a State under parts 261–265.

Federal TANF funds. This term includes not just amounts made available to a State through the SFAG, but also other amounts available under section 403, including bonuses, supplemental grants, and contingency funds. In expending Federal TANF funds, States are subject to more restrictions than they are in expending State MOE monies, as discussed under subpart B of part 263. (The NPRM used this term and the terms ''Federal funds'' and ''TANF funds'' interchangeably.)

(d) Cross-References

In § 260.30, you will find cross-references for the definitions of ''assistance'' and ''WtW cash assistance.'' In the NPRM, the definition of ''assistance'' appeared at § 270.30. In the final rule, we decided to move it to its own separate section. You will find it in § 260.31. The discussion of the comments on our proposed definition appears in the corresponding preamble section. ''WtW cash assistance'' was not defined in the NPRM; in the final rule, it appears in § 260.32.

In the NPRM, we included definitions for the terms ''Family Violence Option (FVO),'' ''good cause domestic violence waiver,'' and ''victim of domestic violence'' in section § 270.30 and explained them in this section of the preamble.

In the final rule, § 260.30 only contains cross-references for the definitions of the domestic violence terms. As we discussed earlier in the final rule, we have moved the domestic violence provisions to a new subpart B of part 260. The definitions appear at § 260.51. For the discussion of these provisions, you should go to the earlier preamble section entitled ''Treatment of Domestic Violence Victims.''

Likewise, in the final rule, we have moved the waiver definitions (including the definitions of ''waiver'' and ''inconsistent'') to a new subpart C of part 260. For the discussion of the waiver definitions and waiver policies, you should go to the earlier preamble section entitled ''Waivers.''

We received a few comments on the definition of child care terms that are relevant to the issue of whether single parents with children under age 6 may be sanctioned for failing to meet work requirements. For a discussion of those comments, you should go to §§ 261.56 and 261.57.

Finally, we would like you to note that we added a reference to § 263.0(b), which contains a definition of ''administrative costs.'' We decided not to define ''information technology and computerization costs needed for tracking or monitoring required by or under title IV-A of the Act.'' However, we do provide some regulatory language to explain the scope of the exclusion at §§ 263.2(a)(5) and 263.13(b). You will find a discussion of this language in the preamble for § 263.0. (These terms are important because States are subject to 15-percent caps on the amount of Federal TANF and State MOE funds that they may spend on administrative activities, exclusive of such computer-related costs.)

Additional Definitional Issues in § 260.30

(a) Fiscal Terms

Comment: A few commenters pointed out that the proposed rule had an apparent inconsistency in that the base for determining the administrative cost cap and the base for determining penalty amounts were different in States that chose to transfer funds to CCDBG (the Discretionary Fund of the CCDF).

Response: Not all commenters presented this as a definition comment, but we think the appropriate place to address it is by revising the definition of the ''adjusted SFAG.'' The revised definition excludes amounts transferred to SSBG and the Discretionary Fund of the CCDF. This change has the effect of removing the transferred amounts from the base for both the administrative cost cap and the penalty calculations. We believe the exclusion is most consistent with the statutory provision at 404(d), which provides that transferred amounts are subject of the rules of the program to which they are transferred. You can find additional discussion of this issue in the preamble for § 263.0.

Comment: One commenter indicated that we had too many financial and program terms in the list of definitions and asked that we delete some. Of particular concern were: (1) the distinction between SFAG and TANF funds; and (2) State MOE expenditures versus State TANF expenditures, TANF funds and TANF MOE. The commenter recommended that a different term be used for either TANF MOE or State MOE expenditure.

Response: First, while ''SFAG'' and ''TANF funds'' are similar terms, they are not identical. It is important to make and understand the distinction. ''SFAG'' refers only to the basic Federal TANF block grant, the amount given to the State based on prior AFDC, JOBS, and EA payments. ''Federal TANF funds'' refers to Federal funds awarded to the State under section 403 of the Act, except for WtW funds. It thus includes any supplemental grants, bonuses, contingency funds. The ''SFAG'' amount (adjusted) is the base amount for determining any penalties assessed on the State. Most of the provisions on use of funds apply to all ''Federal TANF funds,'' and thus extend to the funding provided under section 403, not just the basic TANF block grant amount.

We have modified the definition of Federal TANF funds slightly to clarify

that the term does not include WtW funds provided under section 403(a)(5). By statute (section 403(a)(5)(C)(v)), the restrictions on the use of TANF funds do not generally apply to WtW funds and the Secretary of Labor is responsible for administering the WtW grants. The exceptions are the TANF provisions on use of funds for administrative costs, Individual Development Accounts, and Employment Placement Programs. The Department of Labor has addressed the restriction on administrative costs for WtW funds separately in its WtW rules, we have made a conforming change to our IDA rules (at § 263.21), and we have not addressed use of WtW funds for Employment Placement Programs because the TANF rules do not directly address this issue. While the proposed rule contained three definitions related to maintenance-of-effort—Contingency Fund MOE, MOE, and TANF MOE, we believe it is best to keep three terms. Since the statute applies some different rules for the basic MOE requirement and Contingency Fund MOE, the rules need to include at least two terms. We included the third term—MOE—because there are many places where the same rules apply to both types of State expenditures, and it is more efficient to use the one short acronym than two longer terms.

As we noted earlier, we did decide to change the term ''TANF MOE'' to ''basic MOE.'' We recognized that the term ''TANF MOE'' could cause confusion because States could expend funds outside the TANF program in meeting the basic MOE requirement; the term ''TANF MOE'' suggested that we were looking only at MOE expenditures under the TANF program.

The proposed rule also contained three terms for Federal TANF funds—TANF funds, Federal funds, and Federal TANF funds. In this case, the three terms were duplicative. We chose to eliminate the first two from the list of terms at § 260.30 and keep the definition for Federal TANF funds. We have made changes throughout the preamble and regulatory text to reflect this decision.

Comment: One commenter noted that our definition for ''Contingency Fund MOE'' contained an incorrect reference to child care expenditures.

Response: The commenter correctly noted that our proposed definition did not conform to the amendments in the Balanced Budget Act. We have revised the definition in the rules to remove the reference to child care expenditures. We also made conforming changes to the preamble discussion.

(b) Miscellaneous Issues

Comment: One commenter indicated that we needed a definition of Governor and that we should include the Mayor of the District of Columbia in that definition.

Response: We have added a standard definition that includes the Mayor of the District of Columbia and the chief executive officer of the eligible Territories as well.

Comment: One commenter wanted us to establish a Federal definition for ''violating a condition of their parole or probation,'' like the one used in New York State. The commenter's suggestion would have the effect of limiting the scope of the ''fugitive felon'' provision at section 408(a)(9) by providing for uniform standards that exclude certain ''technical violations.''

Response: For several reasons (including the limits to our regulatory authority under section 417 and existing variations in State law), we believe that this definition is an appropriate area to leave to State discretion. Therefore, we have not included a Federal definition.

Miscellaneous Technical Changes To Note

Finally, we made a few minor changes based on our own internal reviews. First, we noted that the proposed definition of ''eligible State'' did not reflect the amendment made by the Balanced Budget Act. Under PRWORA, as enacted, an ''eligible State'' was one that had submitted a complete plan in the two-year period immediately preceding the fiscal year. Under the change, ''an eligible State'' is one that submitted a complete plan in the ''27-month period ending with the close of the first quarter of the fiscal year.'' The final rule incorporates this revised language.

According to the Committee Report (H.R. Rep. No. 78, Part 1, 105th Cong., 1st sess., p. 38), the purpose of the amendment was to give States an additional quarter to submit their plans. However, the meaning of the new statutory language is a little more complicated. If you would like additional information, you may refer to guidance that we sent out on May 15, 1998 (OFA-TANF–PA–98–3). A copy of this document is available through the OFA Web page (at http://www.acf.dhhs.gov/ofa).

Secondly, we have added some cross-references to terms defined in other parts of the TANF rules, including ''Individual Development Accounts'' and ''administrative costs.''

Thirdly, as we have previously discussed, we created a new subpart A in part 260 for the definitions and other general provisions that were in part 270 of the NPRM, and we moved the definition of terms related to domestic violence and welfare reform waivers to new subparts of part 260. We believe this new structure will make our policies in these latter areas clearer and more coherent.

Finally, we added definitions for ''Social Services Block Grant,'' ''SSBG,'' ''State agency,'' ''CCDBG,'' and the ''Discretionary Fund of the Child Care and Development Fund'' because these terms were helpful in describing other provisions of these rules. These definitions are straightforward references, based on existing statutory and regulatory language.

§ 260.31 What Does the Term Assistance Mean? (New Section)

This is a new section in the final rule. The proposed rule contained the definition of assistance in § 270.30, with the other TANF definitions. However, because of the length and significance of this term, we decided to give it its own section.

(a) Background

In the NPRM we advised readers to note the definition of ''assistance'' proposed in this section. We indicated that PRWORA uses the terms ''assistance'' and ''families receiving assistance'' in many critical places, including: (1) most of the prohibitions and requirements at section 408, which limit the provision of assistance; (2) the numerator and denominator of the work participation rates in section 407(b); and (3) the data collection requirements of section 411(a). Largely through reference, the term also affects the scope of the penalty provisions in section 409. Thus, the definition of ''assistance'' is very important. At the same time, because TANF replaces AFDC, EA and JOBS, and provides much greater flexibility than these programs, what constitutes assistance is less clear than it was in the past.

Because TANF is a block grant, and it incorporates three different programs, a State may provide some forms of support under TANF that would not commonly be considered public assistance. Some of this support might resemble the types of short-term, crisis-oriented support that was previously provided under the EA program. Other forms might be more directly related to the work objectives of the Act and not have a direct monetary value to the family. We proposed to exclude some of these forms of support from the definition of assistance.

The general legislative history for this title indicated that Congress meant for this term to encompass more than cash assistance, but did not provide much specific guidance (H.R. Rep. No. 725, 104th Cong., 2d sess.). Likewise, our pre-NPRM consultations did not provide clear guidance or direction.

In our January 1997 guidance (TANF–ACF–PA–97–1), we expressed the view that the definition of assistance should encompass most forms of support. However, we recognized two basic forms of support that would not be considered welfare and proposed to exclude them from the definition of assistance. In brief, the two exclusions were: (1) services that had no direct monetary value and did not involve explicit or implicit income support; and (2) one-time, short-term assistance.

In the proposed rule, we clarified that child care, work subsidies, and allowances that cover living expenses for individuals in education or training were included within the definition of assistance. For this purpose, child care included payments or vouchers for direct child care services, as well as the value of direct child care services provided under contract or a similar arrangement. It did not include child care services such as information and referral or counseling, or child care provided on a short-term, ad hoc basis. Work subsidies included payments to employers to help cover the costs of employment.

We also proposed to define one-time, short-term assistance as assistance that is paid no more than once in any twelve-month period, is paid within a 30-day period, and covers needs that do not extend beyond a 90-day period. In response to the policy announcement, we had received a number of questions about what the term ''one-time, short-term'' meant. Based on our experience with the EA program, we realized that a wide range of interpretations was possible, and we were concerned that States might try to define as ''short-term'' or ''one-time'' many situations where assistance was of a significant and ongoing nature. Thus, we proposed to limit what was excluded as one-time, short-term assistance to items that were paid no more than one time a year over no more than a 30-day period for needs that did not extend beyond 90 days. We expressed the hope that our proposal would give States the flexibility to meet short-term and emergency needs (such as an automobile repair), without invoking too many administrative requirements and undermining the objectives of the Act. We welcomed comments on whether the proposed policy achieved this end.

In drafting the NPRM, we had considered allowing States to include additional kinds of benefits and services as assistance, at their option. However, we were concerned that varying State definitions would create additional comparability problems with respect to data collection and penalty determinations. Also, we were concerned that an expanded definition might have undesirable program effects (e.g., in extending child support assignment to cases where it would not be appropriate). Thus, we did not give States the option to expand the definition.

For those concerned about the inclusion of child care in the definition of assistance, we pointed out that the child care expenditures made under the Child Care and Development Fund (CCDF) are not subject to TANF requirements, and States have the authority to transfer up to 30 percent of their TANF grant to the Discretionary Fund of the CCDF program.

We also proposed to collect data on how much of the program expenditures were being spent on different kinds of ''assistance'' and ''nonassistance.'' We referred readers to the discussion of the TANF Financial Report at part 275 of the NPRM for additional details.

We said that, if the data show that large portions of the program resources are being spent on aid that fell outside the definition of assistance, we would have concerns that the flexibility in our definition of assistance is undermining the goals of the legislation. We would then look more closely at the aid being provided outside the definition and try to assess whether work requirements, time limits, case-record data and child support assignment would be appropriate for those cases. If necessary, we would consider a change to the definition of assistance or other remedies.

Since we issued the NPRM, Congress enacted the Child Support Performance and Incentives Act of 1998. As we discussed earlier in the preamble, section 403 of that legislation included several provisions on the use of Federal TANF funds to help pay for transportation benefits for welfare recipients under the Job Access program. In a new section 404(k)(3) of the Social Security Act, there is a ''rule of interpretation'' indicating that the provision of transportation benefits to an individual who is not otherwise receiving TANF assistance, pursuant to these provisions, would not be considered assistance. We have added a new exclusion to the definition of assistance to reflect this provision. (Also, as we discuss later, the final rule incorporates other changes that exclude transportation benefits for employed families from the definition of assistance.)

(b) Overview of Comments

We received a number of comments supportive of the definition in our January 1997 guidance and the definition in the NPRM (which was derived from this guidance).

At the same time, a wide range of commenters—including States, advocates, and union groups—wanted to see changes to one or both of our proposed exclusions. A significant number of commenters indicated that this was one of the most important issues in the NPRM for them. All these commenters wanted to narrow the scope of benefits that would be considered within the definition of assistance; many expressed a particular concern about the treatment of supports for working families under the definition. Some wanted modest changes to the proposed definition, while a significant number sought significant additional exclusions, such as: (1) child care, transportation, and other work supports; and (2) work-based assistance, such as wage subsidies.

Moreover, subsequent discussions and materials that we have received suggest increasing concern about the proposed definition over time, as individuals have had more time to ponder its implications, States have further explored supports needed by families as they transition from welfare to work, and commenters have shared their concerns with other parties.

As the result of these comments, we have made some significant modifications to the definition of assistance. The modifications address the concerns of commenters both about the treatment of work supports and the exclusion for one-time, short-term assistance. We found substantial merit in the arguments made by commenters in both areas. Also, as States proceed with their implementation of TANF, they continue to explore and develop new, innovative ways to support low-income working families and to address the goals of the TANF program. As a result, their programs are beginning to look less like traditional welfare. TANF program requirements were created with a particular program model in mind. Applying the TANF requirements much more broadly makes limited policy sense.

Under the narrower definition of assistance in the final rule, States will have more flexibility in how they serve families—particularly working families—with their Federal TANF and

State MOE funds. They will also experience a significant reduction in the administrative burden associated with serving working families, providing refundable earned income tax credits, and administering Individual Development Accounts (because they will not have to provide disaggregated data in such circumstances).

With the change in the definition of assistance under the final rule, we will not be collecting disaggregated data on work supports and other types of benefits and services that are not assistance. To compensate for this loss, we have significantly revised the TANF Financial Report by adding a number of new reporting categories. We have also provided for new information on diversion programs to be included in the annual report.

At the same time, we remain concerned about the potential impact of this definition on the achievement of TANF goals. While we believe the revised definition in the final rule is sound, it is difficult to envision all of the consequences. Thus, we will monitor State programs and expenditures and periodically assess whether our definition continues to support the goals of the program. If aspects of the definition become problematic, we will pursue appropriate changes.

A detailed discussion of the comments and our policy decisions follows.

(c) The Appropriateness of a Federal Definition

Comment: A couple of commenters said we should let States create their own definitions of assistance.

Response: We do not believe this is a viable option. The definition is too central to all the accountability provisions in the statute. If we did not define this term, States might define assistance so narrowly as to undermine the key TANF provisions on child support, work requirements, and time limits. Also, wide variations in State definitions would exacerbate issues about the consistency of data collection, program information, work participation rates, time limits, and other penalty provisions.

Readers should understand that the definition of assistance does not substantially impede the flexibility each State has to set eligibility rules or to expend funds on a broad range of benefits, services, and supports for needy families in the State. The major effect of the definition is to determine the applicability of key TANF requirements to the benefits that a State does elect to provide. It does not circumscribe the types of allowable benefits; these may be inside or outside the definition of assistance.

We had indicated in the proposed rule that the definition did not apply to the MOE provisions at subpart A of part 273. We have included similar language in the final rule at § 260.31(c)(1). (We also made a conforming change in that paragraph that references Contingency Fund MOE as part of this exception). In addition, at § 260.31(c)(2), we have added language clarifying that the definition of assistance does not limit the types of benefits and services that States provide to individuals and families under the first statutory goal of TANF. This first statutory goal authorizes the provision of assistance, but does not mention other forms of benefits or services. However, in other places, the statute specifically authorizes expenditures of State and Federal funds that are ''in any manner reasonably calculated to accomplish the purpose'' of the program. Thus, the statute indicates that the word ''assistance'' needs to be interpreted more broadly in the context of this first TANF goal. (The new regulatory text refers only to the first goal of TANF; the other TANF goals do not use the term ''assistance'' and thus did not require clarification.)

Comment: Although one commenter said the proposed rule ''effectively incorporates'' the policy from the guidance (with clarification and elaboration), a number of respondents commented that the proposed definition represented a retreat from the definition provided in the guidance.

Response: We agree that the changes we proposed in the NPRM related to the exclusion for ''one-time, short-term assistance'' had the effect of narrowing what could have been excluded under our policy announcement. As discussed in the next comment, we have decided to ease the proposed restrictions on one-time, short-term assistance.

We do not believe that our proposed definition otherwise deviated from the definition in the guidance. It is our view that benefits such as child care and transportation subsidies, while not directly mentioned, were part of the definition of assistance in the January 1997 policy announcement (TANF–ACF–PA–97–1), as they involved subsidies or other forms of income support. Our intent in inserting the references to child care and transportation in the NPRM was to provide a clearer and more complete definition, not to make a substantive change.

(Nevertheless, as we discuss in the next section, on ''Work Supports,'' the final rule excludes such supports for working families from the definition of assistance.)

Comment: Several commenters suggested that we should exclude assistance that was not cash assistance or financial assistance from our definition.

Response: As we discuss in the following comments, the legislative history does not support this approach. Rather, for both TANF and WtW, it suggests that Congress envisioned inclusion of at least some noncash benefits as assistance. Otherwise, it would have been superfluous to specifically exclude noncash WtW assistance from the time-limit requirement. In addition, wholesale exclusion of noncash benefits from the definition would create some peculiar incentives for States and could substantially distort their decisions about how to provide benefits.

(d) Work Supports

Comment: A significant number of commenters called for additional exclusions from the definition of assistance. While there was a fair amount of diversity in the specific suggestions, a significant number of commenters sought exclusions of: (1) assistance that is not like traditional welfare, but directed at achieving the work objectives of the Act (e.g., child care, transportation, and other work supports); and/or (2) work-based assistance, provided as either work subsidies to employers (especially payments to employers to cover the costs of supervision and training) or as compensation for work. Many commenters expressed specific concerns about the appropriateness of child support assignment and time limits in these cases. A number objected to our standard of ''direct monetary value.''

Some commenters spoke broadly about excluding work subsidies, assistance directed at achieving the work objectives of the Act, or work supports. Others focused on specific items such as child care, transportation, and earned income tax credits. A few commenters suggested that we borrow language from the caseload reduction provisions of the proposed rule and exclude ''cases receiving only State earned income tax credits, transportation subsidies or benefits for working families that are not directed at their basic needs.''

We received more comments in support of excluding child care than for other types of supportive services. Commenters expressed strong objections to the inclusion of child care, in large part due to concerns about the time-

limit implications. They also expressed disagreement with our proposition that States could transfer funds to the Child Care and Development Block Grant in order to avoid time limits for child care benefits; they argued that there were legislative and administrative barriers associated with these transfers. Some commenters argued that child care and transportation are not like cash. Since they are not fungible (i.e., available to meet a family's basic needs), they should be excluded from the definition of assistance on that basis. Other commenters said that it was unclear that Congress intended to extend child support assignment to additional forms of aid, such as child care and JOBS-related benefits; at a minimum, they requested that we clarify that States can take an assignment of less than the amount of assistance.

In addition to some of the prior arguments, the principal arguments that commenters presented for the exclusion of work subsidies (or payments to employers to cover the costs of employment and training) were: (1) such benefits primarily benefit employers, not recipients, and thus do not have direct monetary value to the family; (2) they should be viewed as the equivalent of tax credits or like other expenditures on training; (3) employees may use up their time limit by going through a series of subsidized jobs from which employers benefit, but that give employees no prospect of long-term employment; and (4) their inclusion will create administrative problems and make it difficult to jointly fund work subsidy programs.

Commenters also presented arguments for excluding assistance for which recipients worked. They argued that this assistance represented compensation for work, rather than assistance. Since recipients ''earned'' this assistance, commenters felt that it was inappropriate for the months to accrue against the time limit on assistance and for child support assignment to apply.

Response: We agree that there are good arguments for narrowing the definition of assistance to exclude work supports such as child care and transportation. While neither the statute nor the legislative history directly suggests that a significant subset of benefits should be excluded from the definition, there is also little direct evidence that Congress intended for time limits and data collection to apply to an array of new benefits (such as IDAs and new work supports) or to working families that have not traditionally been part of the welfare system. Rather, in reforming the welfare program, it seems Congress was trying to end dependence on welfare as a way of life for families and to facilitate the ability of families to work and become self-sufficient. Two of the main effects of defining a TANF benefit as assistance are to require that a family work so that it can become self-sufficient and to time limit that assistance. However, a work requirement is unnecessary if the adult is already working and the benefit that the family receives is a work support. Further, the need to time-limit work supports is mitigated since the family is already moving toward self-sufficiency; working families should eventually become independent.

One statutory provision that raised questions about Congressional intent was section 404(k)(3). This provision, which was part of the Child Support Performance and Incentives Act of 1998, provided a ''rule of interpretation'' that specified that transportation benefits provided under Job Access to an individual who was not otherwise receiving assistance under TANF would not be considered assistance. It suggests that Congress envisioned transportation to otherwise be included within the TANF definition of assistance. However, another, equally viable, interpretation of this Congressional action exists. The child support legislation was enacted while our interim guidance was in effect. Thus, Congress could have been providing a clarification of what was excluded from assistance in that context. In fact, the legislative history did not express any opinions about the interim definition in the policy guidance that we had issued (TANF–ACF–PA–97–1).

You will note that we have incorporated an exclusion that reflects this specific statutory provision. We recognize that it is largely duplicative of the general exclusion for work-related supportive services, including transportation, in § 260.31(b)(3). However, it is possible that some Job Access transportation benefits are not covered by the general provisions, and we wanted to ensure that the statutory exclusion received full weight. Under § 260.31(b)(7), therefore, we provide a categorical exclusion for transportation benefits received under Job Access by individuals who are not otherwise receiving TANF assistance.

The definition in these rules is generally consistent with commenter suggestions, but more specific in some areas. It provides that supports for working families (such as child care and transportation) would be excluded. This exclusion covers supportive services needed to cover employment-related needs and time spent by an employed individual in education and training needed for job retention and career advancement. (As discussed below, the education and training is also excluded.)

Except as provided in paragraphs (b), the exclusion does not cover supportive services related to participation in education, training, job search and related employment activities for nonworking families. Supportive services provided in this situation look more like traditional welfare than work supports. Also, the same rationale for excluding these individuals from the TANF program requirements, including work participation and time limits, does not exist for these families as exists for families that are already working.

The education and training activities themselves are generally excluded under paragraph (b)(6). The one exception would be if education or training benefits included allowances or stipends designed to provide income support; these particular types of education and training benefits would be considered assistance. Also, we would remind readers that under sections 401 and 407 of the Act education and training services should be directed at preparing individuals for work and moving them to self-sufficiency; they should not be of a general nature.

Our definition also specifies the types of items that would be considered as part of basic needs. The listed items (food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses) reflect those items that were represented in the majority of the State needs standards under prior law. The term ''incidental expenses'' covers items States included as part of basic needs such as telephones; small allowances for child care or transportation needs associated with keeping appointments, going to the store, or fulfilling other basic responsibilities; basic supplies for the medical cabinet; insurance premiums; and miscellaneous fees and expenses, to the extent consistent with State practice.

The definition excludes contributions to, and distributions from Individual Development Accounts (IDAs). Although the TANF statute includes IDA provisions, commenters did not specifically raise questions about the treatment of IDA benefits under the definition of assistance. However, interest has grown since the passage of the Assets for Independence Act (under title IV of Pub. L. 105–285). Since then, we have received numerous questions from interested parties, including State agencies and potential grantees, about how IDA benefits would be treated

under the TANF rules. We have several reasons for the specific exclusion in the final rule. First, many of the assets in IDA accounts represent deposits from the earnings of low-income families and the interest on those deposits. Thus, many of the assets do not represent assistance from TANF or any other governmental source. Second, when contributions are made into an IDA account from the TANF agency or other third parties, they only represent potential assistance at that point. The individuals whose funds are in the account are potential beneficiaries, but have very limited access to the funds in that account. The funds are not available to meet their basic needs. Furthermore, distributions from IDA accounts would normally be excluded under other provisions of our definition (e.g., as emergency benefits, for education, and as nonrecurrent, short-term benefits). Because the residual cases might be insignificant in terms of the amount of assistance involved and the tracking of such amounts might create very significant administrative burdens, we believed it would be appropriate to provide an umbrella exclusion for IDA benefits.

While we were convinced by the arguments for excluding supportive services for working families from the definition of assistance, we have noted a few consequences of this narrower definition of assistance that were of some concern. For example, many of the funding restrictions in section 408 are restrictions on which families may receive ''assistance,'' section 404(e) of the Act only authorizes States to use the ''rainy day'' funds that they reserve for future years ''for providing assistance,'' many working families will not be included in the TANF work participation rate calculations, and we will receive data on fewer families and types of benefits from the aggregated and disaggregated reporting.

In order to compensate for the loss of reporting, we have added some additional detail to the expenditure information required in the TANF Financial Report (see Appendix D). (See the preamble for § 263.11 and the Instructions for Completion of ACF–196 (the TANF Financial Report) in Appendix D for additional information on the use and reporting of reserved funds.)

Comment: One commenter asked whether expenditures on ''work activities'' were the same as expenditures on ''employment services.''

Response: We assume this commenter wanted to know if all expenditures on work activities, as specified in section 407(d) of the Act, would be excluded from the definition of assistance. The exclusions we provide in the final rules would generally cover the specified work activities, including on-the-job training, subsidized employment, and most education and training activities (i.e, since most do not represent income support). They would also cover payments to employers and third parties for supervision and training and payments under performance-based contracts for success in achieving job placements and job retention. As discussed above, there may be types of education and training benefits (e.g., stipends or allowances) that fall within the definition. Also, the definition does not generally exclude payments to individuals participating in work experience or community service (or any other work activity). Nor does it exclude needs-based payments to individuals in any work activity whose purpose is to supplement the money they receive for participating in the activity.

The distinction we make between work subsidies paid to employers and payments to participants in work experience and community service is similar to distinctions made under tax law. For example, we would refer you to Notice 93–3, issued by the Internal Revenue Service on December 17, 1998. This notice explains that TANF payments that meet certain conditions would not be income, earned income, or wages for Federal income and employment tax purposes. The notice provides that: ''Payments by a governmental unit to an individual under a legislatively provided social benefit for the promotion of the general welfare that are not basically for services rendered are not includible in the individual's gross income and are not wages for employment tax purposes, even if the individual is required to perform certain activities to remain eligible for the payments. * * * Similarly, these payments are not earned income for Earned Income Credit (EIC) purposes.'' It also notes that, under amendments to the Internal Revenue Code under the Taxpayer Relief Act of 1997, Pub. L. 105–34, ''earned income for EIC purposes does not include amounts received for [TANF work experience and community service activities] to which the taxpayer is assigned * * *, but only to the extent such amount is subsidized under [TANF].' ''

Our definition of assistance distinguishes between work subsidies paid to employers and community service and work experience on a similar basis. We believe that payments to participants in work experience and community service are closely associated with traditional welfare benefits and are designed primarily to meet basic needs rather than as compensation for services performed. This view is also reflected in the Conference Report, H. Rep. 105–217, for Pub. L. 105–34, which added the WtW program. In discussing the treatment of WtW cash assistance for time-limit purposes, it indicates that wage subsidies are indirect cash assistance. We believe the reference to wage subsidies as cash assistance is to such payments as part of work experience and community service where, as in the tax provisions, welfare law determines the size of the payments and limits the hours of work so that it is, in effect, assistance received indirectly. Thus, we generally include such subsidies in the definition of assistance.

We do not believe that the mere fact that the benefits received by recipients in work experience or community service activities are conditional on work is sufficient to view it as nonassistance. The expectation under TANF is that adult recipients will generally participate in work activities as a condition of receiving TANF. This expectation is evident in the work requirement in section 402(a)(1)(A)(ii) and the fact that Congress based the calculation for work participation in section 407 on all families with adults, instead of retaining the numerous exemptions that existed under JOBS.

The regulatory text also indicates that benefits conditioned on other work activities (e.g., job search) are not excluded from the definition of assistance. We do not think that anyone would conclude that such benefits would be excluded, because there would be no historical basis for such a conclusion. However, we decided to include the broader reference to foreclose any future questions.

Comment: One commenter said we should exclude on-site case management services provided by an employer under contract from the definition of assistance.

Response: Our definition already excludes case management services provided under the TANF program. It is irrelevant who provides the case management services.

Comment: One commenter noted that the preamble in the NPRM excluded ''information about child care, child care referral services, child care counseling services and child care provide on an ad hoc basis'' and asked that we add that language to the regulatory text.

Response: We do not believe it is appropriate or even possible to specify all types of excluded services in the regulatory text. However, we have inserted ''child care information and referral'' as an example of an excluded service.

(e) Nonrecurrent, Short-Term Benefits

Comment: We received a significant number of comments from respondents who were concerned about the narrowed exclusion for ''one-time, short-term'' assistance. The major concern of commenters was that the 30 existing State welfare diversion programs, together with their local variations, could not meet such a tight definition because they might provide more than one payment in a year if a family encounters an unforeseen subsequent crisis. They suggested broader language that would exclude short-term, episodic assistance for families in discrete circumstances and encompass nonrecurrent, short-term payments that could occur more than once in 12 months. They questioned the basis for creating restrictions based on the old EA definitions. They raised concerns about the negative effect on State innovation. They also raised concerns about the administrative burdens associated with tracking eligibility, especially when outside providers, such as emergency shelters, deliver emergency services or when a State is operating both diversion and emergency assistance programs and has not administratively connected those programs.

Response: In part, the narrower language in the proposed rule reflected a concern that States could avoid TANF requirements by changing the manner in which they assisted families. We did not believe that it would be appropriate to exempt families that received a substantial amount of assistance, assistance over a significant period of time, or assistance provided on a recurring basis from child support assignment, work requirements, and time limits. Based on prior experience with the Emergency Assistance program, we believed that States could expand the concept of one-time, short-term assistance to cover benefits that extended over time and encompassed substantial expenditures.

At the same time, we did not intend our definition to undermine existing State efforts to divert families from the welfare rolls by providing short-term relief that could resolve discrete family problems. Based on both the comments we received and other sources of information, we realize that diversion activities are an important part of State strategies to reduce dependency and that restrictive Federal rules in this area could stifle the States' ability to respond effectively to discrete family problems. We also understand that subjecting families in diversion programs to all the TANF administrative and programmatic requirements would not represent an effective use of TANF or IV–D resources. For example, it does not necessarily make sense to require that, for a single modest cash payment, the State must open up a TANF case, collect all the case-record data which that entails, require the assignment of rights to child support, open up a IV–D case, and start running a Federal time-limit clock.

Much of the aid provided through these programs is work-focused, and, under our definition, the benefits to these families are nonrecurrent and short-term in nature. Thus, we believe that excluding this aid from the definition of assistance does not undermine the TANF provisions on work, time limits, or self-sufficiency. However, as we proposed in the NPRM, we will be collecting aggregate information on expenditures on aid that is not assistance (i.e., on ''nonassistance''). This information will be valuable in helping us to assess the extent to which benefits being provided with TANF and MOE funds fall under, or outside of, the major TANF program requirements.

Finally, we recognize that this is a policy area where policy and programs are evolving quite rapidly. Within the next year or two, we would expect to have a better knowledge base for assessing diversion programs and making policy judgments. For example, the Office of the Assistant Secretary for Planning and Evaluation and ACF are jointly sponsoring a study by George Washington University to examine the State diversion programs and activities and explore their Medicaid implications.

Thus, the final rules include a revised definition that excludes more than one payment a year, so long as such payments provide only short-term relief to families, are meant to address a discrete crisis situation rather than to meet ongoing or recurrent needs, and will not provide for needs extending beyond four months. The revised definition uses the term ''nonrecurrent'' rather than ''one-time'' because the former term is more consistent with the intended policy. A family may receive such benefits more than once. However, the expectation at the time they are granted is that the situation will not occur again, and such benefits are not to be provided on a regular basis. We believe the revised exclusion is limited enough in nature and scope not to undermine the statutory provisions of the TANF program, while giving States the flexibility to design effective diversion strategies.

The definition also would exclude supports provided to individuals participating in applicant job search. Applicant job search is a common form of diversion that clearly fits within the goals of TANF and within this exclusion's view of a ''short-term'' benefit. (The job search itself would be excluded under the general services exclusion at paragraph (6).)

Similarly, the definition would exclude supports for families that were recently employed, during temporary periods of unemployment, in order to enable them to maintain continuity in their service arrangements. Unnecessary disruptions in these arrangements could negatively affect the family's ability to re-enter the labor force quickly and, in the case of child care, could negatively affect the children in the family.

The four-month limitation reflects our belief that we could not maintain the integrity of the short-term exclusion without providing some regulatory framework. As written, the four-month limitation does not restrict the amount of accrued debts or liabilities (such as overdue rent) that a State may cover or impose a specific monetary limit on the amount of benefits that the State may provide.

You should note that we have added a new requirement at § 265.9(b)(6) for States to report annually on the nature of nonrecurrent, short-term benefits. More specifically, we are asking States to describe the benefits they are providing, including their eligibility criteria (together with any restrictions on the amount, duration, or frequency of payments), any policies they have instituted that limit such payments to families eligible for assistance or that have the effect of delaying or suspending eligibility for assistance, and any procedures or activities developed under the TANF program to ensure that individuals diverted from TANF assistance receive appropriate information about, referrals to, and access to Medicaid, food stamps, and other programs that provide benefits that could help them successfully transition to work.

To the extent that a State provides the required information either in the State plan or in the data it reports under § 265.9(b)(6), it would not have to duplicate this information.

Because of the tremendous importance of food stamp and Medicaid as supports for working families, we

strongly encourage States to maintain critical linkages among these programs because accessing these other program benefits could further the goals of TANF. In addition, diverting individuals from programs where they have an entitlement to benefits or to prompt action on a request for assistance could represent a violation of rules in the other programs.

According to the Health Care Financing Administration (HCFA), section 1931 of the Social Security Act establishes rules for Medicaid eligibility for low-income families based on the income and resources of the family. Under section 1931, States must provide Medicaid coverage at least to families with a dependent child living with them whose income and resources would have qualified them for AFDC benefits under the State plan in effect on July 16, 1996. Therefore, Medicaid eligibility is not tied to or based on eligibility for TANF-financed assistance. Also, States cannot limit Medicaid eligibility to families receiving TANF.

Medicaid regulations (at 42 CFR 435.906) require States to provide the opportunity for families to apply for Medicaid without delay.

In States that use joint TANF-Medicaid applications or utilize the State TANF agency to make Medicaid eligibility determinations, the TANF office is considered a Medicaid office. Therefore, in this situation, a TANF agency, like any Medicaid agency, must immediately furnish a Medicaid application (joint or separate) upon request and act upon that application promptly. If there is a delay in accepting or filing an application for TANF assistance (e.g., because the family is served through a diversion program, is subject to up-front job search requirements, or faces other behavioral or administrative requirements that delay assistance), the agency must make a Medicaid application available immediately. If there is a delay in processing the TANF portion of a joint application, the agency must process the Medicaid portion of the application immediately.

According to the Food and Nutrition Service (FNS), at the Department of Agriculture, in enacting PRWORA, Congress thoroughly reviewed the Food Stamp Act of 1977, as amended, and made changes to many of its provisions. However, it made clear that the Food Stamp Program continued to have a distinct set of nationwide application rights and responsibilities. Section 11(e) of the Food Stamp Act sets forth requirements that a State agency administering the Food Stamp Program must follow. Among other things, it requires that the Agency: (1) provide timely, accurate, and fair service for applicants for, and participants in, the Food Stamp Program; (2) develop an application containing the information necessary to comply with the Act; (3) permit an applicant household to apply to participate in the program on the same day the household first contacts the food stamp office in person during office hours; and (4) consider an application that contains the name, address, and signature of the applicant to be filed on the date the applicant submits the application.

Where PRWORA did not amend the Food Stamp Act, current food stamp regulations remained in effect. The regulations at 7 CFR 273.2(c) provide that: (1) each household has the right to file an application on the same day that it contacts the food stamp office during office hours; (2) the State agency must advise the household that it does not have to be interviewed before filing an application, and it may file an incomplete application as long as the applicant's name and address are recorded on an appropriately signed form; (3) State agencies shall encourage households to file an application form the same day the household contacts the food stamp office and expresses interest in obtaining food stamp assistance. If individuals express interest in the Food Stamp Program, or have concerns about food security, States have a responsibility to inform them about the Food Stamp Program and their right to apply; and (4) the State agency must make application forms readily accessible to potentially eligible households.

Although PRWORA amended section 11(e) of the Food Stamp Act by eliminating the requirement for joint processing of food stamp and TANF applications, State agencies that continue to do so must abide by the food stamp regulations at 7 CFR 273.2(j). These regulations set forth requirements regarding interviews, verification, and application processing procedures for joint applications. Most importantly, the regulations at 7 CFR 273.2(j)(1)(iii) provide that households whose public assistance applications are denied shall not be required to file new food stamp applications, but shall have their food stamp eligibility determined or continued on the basis of the original applications filed jointly for public assistance and food stamp purposes.

We advise you to look for additional guidance on food stamp and Medicaid requirements through the HCFA and FNS web sites (www.hcfa.gov/medicaid/medicaid.htm and www.usda.gov/fcs/, respectively).

We strongly believe that effective procedures to ensure that diverted individuals access Medicaid, food stamps, or other programs are critical to the success of TANF programs in achieving lasting employment for the families they serve. In addition, such procedures might help States avoid compliance and legal problems in the other programs. Given the importance of this issue, the additional information on State practices that we are requiring in the annual report will be extremely helpful in assuring the role TANF agencies are playing with individuals receiving diversion benefits.

While we dropped our proposal for a separate annual program and performance report, we still need information on key aspects of State programs in order to prepare the annual report to Congress required at section 411(b)(3) of the Act. To the maximum extent possible, we will draw upon data available through the State plans and other reports submitted by the States. However, because diversion benefits fall outside of the definition of assistance, and we have chosen not to set standards of completeness for State plan submissions, we may not have adequate information on this major feature of TANF programs to fulfill our responsibilities under section 411(b)(3).

The new reporting focuses on diversion because it is one of the major new tools States are using to achieve the work objectives of the Act and, under section 413(d), Congress has shown an interest in looking at State performance in this specific area. Also, the burden associated with providing this aggregate program information is substantially less than the burden that would be associated with providing disaggregated data; because diversion payments fall outside the definition of assistance, the disaggregated data requirements do not apply.

Comment: Several commenters also expressed concerns about the proposed limits on the amount of assistance and the meaning of the proposed 90-day restriction. Commenters were not sure whether the 90-day restriction represented a limit on the period of needs to be met or a limit on the total monetary value of assistance. They objected to both possible interpretations. While they generally seemed to prefer an interpretation that limited the duration of need that could be met, they also expressed concern about restrictions that would affect the States' ability to deal effectively with past debts or liabilities or meet needs that extended beyond 90 days.

Response: As discussed previously, we have replaced the 90-day limitation

with a more flexible four-month limitation. The new provision is more flexible with respect to past debts or liabilities; it merely limits the extent to which payments for future needs can be excluded from the definition of assistance. We also clarified in the preamble that the four-month limitation does not impose a specific monetary limit on the amount of benefits that may be excluded. Rather, the limitation reflects the period of time for which future needs can be addressed by a single ''nonrecurrent, short-term'' benefit.

When we issued the proposed rule, we did not necessarily envision a single Federal interpretation of the 90-day limitation. Our intent was to keep State payments for needs that were ongoing or extended over a significant period of time within the definition of assistance. We did not want a State to bundle several months' worth of assistance into a single assistance payment in order to avoid TANF requirements for itself or the family.

Our expectation for the language in the final rule is no different. It is appropriate for States to treat short-term assistance that addresses discrete episodes of need as ''nonassistance.'' It is not appropriate for States merely to condense the time period over which they pay assistance to needy families so that they can categorize the benefits as ''nonassistance'' and avoid TANF requirements. Also, if a family's emergency is not resolvable within a reasonably short period of time, the State should not keep the case indefinitely in emergency status, but should convert it to a TANF assistance case.

At the same time, if a family receives aid in one month that falls under the nonrecurrent, short-term exclusion, but suffers a major set-back later in the year, develops a need for ongoing aid, and starts receiving TANF assistance, we would not require the State to re-define the month of initial aid as assistance and retroactively subject the family to TANF requirements.

(f) Benefits and Supports for Noncustodial Parents

Comment: Commenters also expressed some concern about the potential effects on the custodial parent and children (especially under time limits) when a noncustodial parent receives benefits. This issue was of particular concern in light of the focus given to assistance for noncustodial parents under Welfare-to-Work.

Response: Many services and supports that States might provide to noncustodial parents (such as transportation and most work activities) are excluded under the final definition of assistance. Also, as we discuss in the preamble to § 264.1, assistance provided to noncustodial parents does not count against the time limit of the custodial parent or children living in a different household unless the noncustodial parent is receiving assistance as a member of that same family and is the spouse of the head of the TANF household.

Comment: A couple of commenters expressed concern about the effect of assistance that might be paid to a noncustodial parent. For example, a noncustodial father is paying support. However, the noncustodial parent of a second child in the family is receiving assistance. The State takes the support paid by the first noncustodial father and reimburses itself for assistance paid to the noncustodial parent of the second child. The mother and two children are not receiving any assistance for themselves and do not receive any child support because the State is retaining it. Commenters believe that it would be unfair to the custodial parent and children if assistance provided to a noncustodial parent resulted in the custodial parent's losing her right to receive child support and remaining subject to child support cooperation requirements.

Response: We do not believe that the statute intends or requires this absurd result. Rather, the assignment of the rights to support by the custodial parent is only intended to cover assistance paid to the custodial parent and the child(ren) living with the custodial parent. It does not cover assistance that the noncustodial parent receives based on his or her inclusion in the family as a noncustodial parent. Thus, the State may not reimburse itself for assistance given to the noncustodial parent, as a noncustodial parent, from child support paid for the children. However, if noncustodial parents of a TANF child are receiving assistance as the custodial parents or caretakers of another TANF child, they may be subject to separate assignment requirements. They might also have responsibility under individual State law to reimburse the State for assistance provided.

(g) Benefits and Supports From the WtW Program

Comment: A couple of commenters said that we should exclude noncash assistance paid through WtW funds from the definition of assistance. One commenter indicated that we had mentioned this exclusion in the preamble to the NPRM, but did not exclude it in the regulatory text. Another commenter expressed particular concern about child care assistance under WtW because States do not have the same authority to transfer WtW funds to the Discretionary Fund of the Child Care and Development Fund as they do with Federal TANF funds.

Response: Section 408(a)(7)(G) of the Act, which was added by the Balanced Budget Act, provides that noncash assistance paid by WtW funds ''shall not be considered assistance.'' However, this exclusion is only for the purpose of the time limit, and the regulation at § 264.1 provides that we will not count months of receipt of noncash WtW assistance against an individual's Federal clock.

We do not believe that the statutory language supports a broader exclusion of WtW assistance from the definition of assistance. However, the general changes we have made to the definition of assistance in this final rule should help alleviate this concern. Further, we would point out that many of the TANF requirements (such as participation rates) do not apply to WtW because they apply only to the ''State program funded under this part.'' This latter phrase refers to TANF only, not to WtW. (At the same time, the spending restrictions generally do apply to WtW, as they refer to grants under section 403 and WtW grants are provided under section 403(a)(5).)

The Department of Labor has received numerous questions from its grantees about the definition of ''noncash'' assistance and asked us to define the term in our rules. At the new § 260.32, you will find a definition for WtW cash assistance. If a benefit falls within the definition of assistance, but does not meet the definition of ''WtW cash assistance,'' it would be ''noncash'' assistance. Examples of ''noncash'' assistance would include housing vouchers or a State version of food stamps. You will find additional discussion in the preamble for § 260.32.

(h) Transitional Services

Comment: We received a few comments suggesting that we should explicitly exclude ''transitional assistance'' or services in support of continued employment from the definition of assistance.

Response: We do not believe it is possible to exclude ''transitional assistance'' from the definition of assistance without substantially altering the basic time-limited nature of the TANF program, and we find no statutory basis for such an exclusion.

The concept of ''transitional'' services for families that get a job and are no longer eligible for regular benefits is

recognized in the statute at section 411(a)(5), which requires a report on expenditures and a description of the services provided. However, the language there only addresses ''transitional services.'' Thus, it does not indicate that Congress envisioned a full array of transitional benefits, including ongoing needs-based payments, being available to former recipients.

To the extent that States provide only supports for working families, such as child care and transportation or work subsidies, or work-related services such as counseling, coaching, referrals, and job retention and advancement services under their transitional services programs, we already exclude those services from the definition of assistance. Also, we would exclude short-term benefits such as cash assistance to stabilize a housing situation as ''nonrecurrent, short-term'' assistance.

States wanting to provide ongoing transitional payments that meet the definition of assistance to former recipients have three options: (1) fund those programs under TANF as assistance, but use different need standards than they do for other forms of TANF assistance; (2) fund those programs with MOE money under a separate State program; or (3) transfer the funds from TANF under section 404(d). If they fund transitional benefits with State-only money, the Federal time limit will not apply, regardless of whether they provide the benefits within TANF or in separate State programs. States may also provide transitional services without invoking time limits by transferring funds to either the Discretionary Fund of the Child Care and Development Fund or the Social Services Block Grant.

(i) Housing and Related Benefits

Comment: One commenter said the short-term, one-time rules should exclude some of the former EA benefits for arrears and shelter.

Response: The proposed and final language would both exclude certain payments for rent arrears, utility arrears, security deposits and other shelter-related expenses that were previously covered in State EA programs.

However, we cannot categorically state that all former EA benefits would be excludable from the definition of assistance. For example, in some cases, States claimed shelter expenses under EA that addressed long-term, ongoing needs of families.

Comment: One commenter said that we should not consider housing and utilities to be part of ''income support.''

Response: We disagree with the comment. Housing and utilities have traditionally been major components in the definition of basic needs used in determining welfare payments. Further, the TANF statute provides no basis for excluding them from the definition of assistance under TANF. However, certain shelter or utility costs might be excludable under the two general exclusions (i.e., because they are ''nonrecurrent, short-term'' or they entail services such as counseling that do not provide income support).

(j) Foster Care and Child Welfare

Comment: A few commenters asked that we exclude payments for foster care, out-of-home placements, and substitute care from the definition.

Response: With regard to foster care or other out-of-home maintenance payments, we would note that such costs are not allowable TANF costs under section 404(a)(1) of the Act since they are not reasonably calculated to further a TANF purpose. However, in some cases, where a State previously covered such benefits under its IV–A plan, they could be allowable TANF costs under section 404(a)(2).

There are additional costs related to foster care or out-of-home maintenance payments that may be allowable and referred to, in short-hand, as foster care. For example, there are costs for family preservation activities, such as counseling, home visits, and parenting training, that would be allowable TANF costs because they are reasonably calculated to enable a child to be cared for in his or her own home.

There may also be other costs that were authorized under a State's EA program for which Federal TANF funds could be used, under section 402(a)(2). Examples include costs such as administrative costs for activities associated with determining whether an emergency exists and costs for the temporary placement of the child, if determined necessary, while an investigation takes place.

Comment: One commenter asked that we strengthen the definition of assistance to urge States to use this flexibility in order to maintain families intact, where services can achieve that end.

Response: Both the proposed and final definitions exclude certain services directed at family preservation and certain forms of crisis intervention from the definition of assistance. Some commenters would have liked us to go further and exclude foster care, substitute care, and out-of-home placements. As we just discussed, maintenance payments for foster care, substitute care, and out-of-home placements (except perhaps temporary emergency placements during an investigation of abuse) are not eligible TANF expenditures unless allowable under section 404(a)(2).

(k) Emergency Assistance

Comment: In different ways, a few commenters asked that we exclude assistance provided under the prior EA program from the definition of assistance. Among their underlying concerns were assistance that was paid for longer than 90 days, emergency shelter, and certain child welfare services.

Response: We can find no legal justification for categorically excluding prior EA benefits from the definition. The statute authorizes States to use Federal TANF funds for activities that were previously authorized under EA, but otherwise does not give EA special status.

Most assistance that was provided under EA is excludable under one or more of the general exclusions. However, there were EA programs that provided assistance to families for basic needs and extended periods of time. If we categorically excluded all prior EA benefits from the definition of assistance, we could be perpetuating some of the same problems that existed under prior law.

(l) Other Definitional Issues

Comment: One commenter requested exclusion of emergency shelters for victims of domestic violence; of particular concern was the potential running of the time-limit clock when individuals were receiving such assistance.

Response: Depending upon the form and duration of this assistance, it might be excludable under one of the general exclusions we provide. We do not think a special, categorical exclusion is justified for this type of benefit.

However, we would point out that, under section 402(a)(7) of the Act, known as the Family Violence Option, States may waive program requirements, including time limits, for victims of domestic violence. If States exceed the 20-percent cap on time-limit exceptions as the result of granting such waivers, they may be eligible for reasonable cause. You should see the prior discussion entitled ''Treatment of Domestic Violence Victims'' and the regulatory text at subpart B of part 260 for additional information.

Comment: One commenter expressed concern about inclusion of relatively insignificant amounts of assistance and the negative effect of such a policy on

a family's willingness to seek assistance in light of time limits.

Response: While we understand the commenter's concern, we have no basis for protecting families that receive small amounts of assistance from the time limits; nothing in the statute or legislative history suggests that a family would have to be receiving a threshold payment level in order to be considered to be receiving assistance.

We have some early indication that families who have other income and are eligible for smaller amounts of assistance are not necessarily choosing to forego aid in order to reserve their months of assistance. We will be paying attention to this issue over the coming months.

Comment: One commenter expressed concern about a broad definition of assistance because other programs might count any aid in the form of ''assistance'' as income in determining eligibility for benefits.

Response: We must create a definition that conforms with the TANF statute and the statutory intent of the TANF program. In that context, we cannot assure that our definition will have no negative spill-over effects on other programs. However, the additional exclusions from the definition in the final rule should alleviate this concern. Further, if we find out that definition is having adverse effects on other programs, we are willing to work with the other programs in exploring ways to resolve such problems. For example, we have worked with the Office of Child Support Enforcement in revising guidance on the child support distribution rules so that the interim definition of TANF assistance did not inadvertently cause child support collections intended for families to be diverted to government coffers.

Comment: One commenter asked that we explicitly exclude supportive services provided to applicants from the definition of assistance, particularly when the case does not get approved for regular TANF benefits.

Response: We do not believe it is necessary to add this situation as a separate exclusion. We would expect such applicant services to be covered by the exclusion for nonrecurrent, short-term benefits or as supports for working families. Also, if we explicitly excluded applicant benefits, we might create an incentive for States to leave a case open rather than to complete the eligibility determination process. We would not want to create such an incentive; it is important for States to act on applications and provide assistance in a timely manner.

Comment: One commenter said we should clarify the definition of assistance to exclude such items as State tax refunds. A few commenters specifically suggested that we exclude earned income tax credits.

Response: We have excluded refundable earned income credits, but have otherwise not given special consideration to tax refunds in the definition. We had two basic concerns. First, we did not want to suggest that tax refunds were categorically appropriate as either Federal TANF or State MOE expenditures. It would depend on what the nature and purpose of the ''refund'' was. Any payments have to meet at least two tests—be an ''expenditure'' and be consistent with the purposes of the program. In the case of MOE, it would also have to be targeted at needy families. We believe a refundable earned income credit can meet these tests. However, the vast majority of tax refunds probably would not. For example, if a family gets a refund of its income taxes because of over-withholding, that refund check does not represent an allowable expenditure for Federal TANF or State MOE purposes. If there were tax refunds (analogous to refundable tax credits) that were allowable expenditures for TANF-related purposes, they would be included or excluded from the definition of assistance based on the existing principles and language in the definition.

We provide an exclusion for refundable earned income tax credits because we consider them a work support rather than basic income support. They normally serve to compensate low-income working families for some of the tax-related costs of employment. Thus, they more closely resemble work supports than traditional welfare payments.

(m) Tracking of Exclusions

Comment: A number of commenters objected to language in the preamble of the NPRM indicating that we would track State expenditures on assistance and nonassistance and look more closely if we found a large portion of program resources being spent on ''nonassistance.'' We also received a few comments saying that we needed to collect more information on State TANF and MOE expenditures in order to maintain the integrity of the program and protect the interests of needy families.

Response: In the preamble of the proposed rule, we expressed concern that information showing large amounts of expenditures on nonassistance might indicate that the flexibility we provided in the definition of assistance might be undermining the goals of the legislation. We believe this is a valid concern and have not changed either the reporting requirements or our plans to look at this information. In fact, because we have significantly narrowed the definition of assistance (and thereby the categories of benefits and supports on which State must report disaggregated and aggregate data), we have decided to strengthen the fiscal reporting requirements. You will find a discussion of these changes in part 265 and the specific changes in Appendix D.

We are not saying that we will automatically change the definition of assistance or take other action if we find large amounts of resources on ''nonassistance.'' In fact, commenters noted some valid reasons why we might expect to see growth in the amount of ''nonassistance'' as welfare reform progresses. For example, we might see increasing investments in interventions and prevention strategies (such as work supports, case management, mentoring, and job retention services). Thus, we would not presume that growth in ''nonassistance'' was inappropriate. However, we would want to understand and be able to explain the reason for the growth.

At this point, we are not going to prejudge State actions or write rules that unduly limit State flexibility to develop innovative programs that can effectively serve their needy families. However, in light of our responsibility for ensuring program accountability, the evolving and increasingly diverse nature of State TANF and MOE programs, and the flexibility inherent in these rules, we believe it is appropriate to gather information and monitor what is happening.

Section 260.32 What Does the Term ''WtW Cash Assistance'' Mean? (New Section)

This is a new section in the final rule. As we discussed briefly in the last section, the Department of Labor has received numerous questions about the definition of the terms ''cash assistance'' and ''noncash assistance'' because if assistance provided under WtW is noncash, it does not count against the TANF time limit. Therefore, at the request of the Department of Labor, we have added a definition of ''WtW cash assistance'' in this new § 260.32. This definition (in conjunction with the regulation at § 264.1(b)(1)(iii)) clarifies the circumstances under which benefits received by a family under WtW count against the TANF 60-month time limit. By statute (section 408(a)(7)(G) of the

Act), WtW ''noncash assistance'' does not count for this purpose.

In defining ''WtW cash assistance'' (i.e., what does count), we started with the presumption that, to be considered ''WtW cash assistance,'' a benefit must fall within the definition of ''assistance.'' Thus, services, work supports, and nonrecurrent, short-term benefits that are excluded from the definition of assistance at § 260.31(b) are not ''WtW cash assistance.'' Also excluded are supportive services for nonworking families. Although they are assistance, these benefits are services designed to meet specific nonbasic needs and thus are not like cash.

Then, the definition clarifies what types of ''assistance'' under WtW would be considered ''WtW cash assistance.'' First, it includes assistance designed to met a family's ongoing, basic needs. Second, it includes such benefits as cash assistance to the family, even when provided to participants in community service or work experience (or other work activities) and conditioned on work; the Conference Report (H. Rept. 105–217) specifically mentions ''wage subsidies'' as an example of WtW ''cash assistance.'' Finally, our definition incorporates both cash payments and benefits in other forms that can be legally converted to currency (e.g., electronic benefit transfers and checks).

This definition does not limit the types of WtW benefits for which families that have received 60 months of TANF benefits are eligible. Under § 264.1(a)(3), State and local agencies may provide cash and noncash WtW assistance and other benefits to such families beyond the 60-month limit on assistance.

Section 260.33 When Are Expenditures on State or Local Tax Credits Allowable Expenditures for TANF-Related Purposes? (New Section)

As discussed previously, in § 260.30, we have added a definition of ''expenditure'' that helps define what would be a qualified expenditure of Federal TANF funds or State MOE funds. Within this definition of ''expenditure,'' we indicate that refundable tax credits could be an expenditure. The purpose of this section is to clarify how to determine the amount of allowable expenditures in this situation. More specifically, it says that, for an earned income tax credit or other allowable credit, we would count as an expenditure only the State's actual payment to the family for that portion of the credit that the family did not use to offset their tax liability.

The family generally determines its income tax liability by following a number of basic steps. First, the family determines its adjusted gross income (income subject to a State's income tax). Then it applies any allowable exemptions and deductions to reduce the adjusted gross income. The net figure is the total amount of income that is subject to taxation. The taxable income is the basis for determining the amount of taxes owed. Then, the family applies any allowable credits to reduce the amount of taxes that it owes.

For example, a wage earner qualifies for a $200 earned income tax credit. The family's tax liability prior to the application of any credits is $75. When reconciling at the end of the income tax year, the eligible family uses the first $75 of the credit to reduce its State income tax liability to zero. If the State elects to refund any part of the remaining $125 in EITC, then the amount that it actually pays out to the family is a qualified expenditure and counts toward the State's TANF MOE. The $125 represents an actual outlay from State funds to provide extra money to the family. In this regard, the State has spent its own funds to provide a benefit to the family that is consistent with a purpose of TANF.

For emphasis, this section also reiterates that, in order to count as an expenditure of Federal TANF funds or State MOE funds, the purpose of the tax credit program must be reasonably calculated to accomplish one of the four purposes of the TANF program. We recognize that tax credits might be an appropriate and highly efficient method for getting benefits to needy families and want to support those efforts. In particular, State earned income tax credits provide valuable supports and incentives for low-income working families, and we do not want to discourage more States from establishing these policies. At the same time, we want to be sure that our policies support the goals of TANF and promote continued State investments in needy families.

Also, because tax credits represent an area of significant interest to States, the Congress, and fiscal authorities, we have added new lines to the TANF Financial Report that will tell us how many Federal and State dollars are going to refundable earned income tax credits or other refundable State and local credits.

The mere fact that the State issues a tax refund check to a taxpayer does not necessarily indicate that the family has received a refundable tax credit. For example, a TANF-eligible family could receive a refund check simply because the aggregate amount withheld from its paychecks exceeded its tax liability. Such a refund would not meet the definition of a refundable EITC.

For example, assume an individual has a $75 State income tax liability for a year. Yet, through withholding, he or she paid a total of $150 in State income taxes throughout the year. After reconciliation at the end of the income tax year, the amount that the State owes the individual due to tax withholding is not considered a refundable tax credit. Nor is the return of an individual's overpayment of taxes an expenditure of the State.

In determining the amount of MOE that may be claimed, all credits would be subtracted from the amount of the tax liability. The family's tax liability is the amount owed to the State prior to any adjustments for credits or payments. Any excess credit remaining that the State refunds to the family may count as an expenditure if the program for tax credits is reasonably calculated to accomplish a purpose of the TANF program.

Taking another example, suppose the wage earner, who has paid $150 through withholding, actually qualifies for an earned income tax credit of $200. The $125 portion of the credit that exceeds the individual's $75 State income tax liability could qualify as an expenditure if the State pays it out to the family. The $150 withheld is irrelevant to the calculation because this does not represent the family's actual income tax liability. If the family were to receive a $275 refund, $125 (the balance remaining of the EITC after the tax liability is subtracted) would qualify as an expenditure.

Tax relief measures, including nonrefundable tax credits, as well as exemptions, deductions, and tax rate cuts, that serve only to offset a family's income tax liability do not qualify as expenditures.

In addition, tax credits that serve to rebate a portion of another State or local tax, including sales tax credits and property tax credits, are not expenditures under the definition of expenditure at § 260.30. This definition is consistent with longstanding Federal policy on the meaning of expenditure, as reflected in the single definition for outlays and expenditures at 45 CFR 92.3.

Also, if a State administers more than one tax credit program allowable for Federal TANF or State MOE purposes, the State may count as an expenditure the amount by which the combined value of the allowable credits exceeds a TANF-eligible family's State income tax liability prior to application of all allowable credits.

The questions about State tax credits generally arose in the context of what is a ''qualified State expenditure'' for MOE purposes. In particular, the issue principally centered on whether States might count the portion of an earned income credit attributable to revenue loss toward their MOE. To properly address this issue, it is important to note that, in addition to the ''eligible families'' requirement discussed at § 263.2, the statute requires two key criteria to be met for MOE purposes. These criteria are: (1) the State's cost must be an expenditure; and (2) the expenditure must be reasonably calculated to accomplish a purpose of the TANF program. The second criterion is not a difficult standard to meet. States just need to be able to demonstrate that the specific tax benefit program is ''reasonably calculated'' to accomplish a purpose of the TANF program. Because more questions were raised as to what is an expenditure, this issue required more extensive deliberation.

To consider fully the argument that the entire cost of an earned income credit might represent an expenditure, we had to consider this issue within the broader framework of the full range of potential tax relief measures. Since we published the NPRM, we have received several inquiries regarding whether the cost of other tax relief measures were expenditures for MOE purposes.

An earned income credit is but one example of a tax relief measure. Some States also have other credits available to residents. These include, but are not limited to, property tax and homestead credits, child and dependent care credits, sales tax credits, credits for families that purchase a car seat, and credits for individuals with significant medical expenses. Tax relief also takes the form of income tax deductions and exemptions. Some States also offer tax credits to investors and businesses, e.g., credits that help or promote employment of low-income residents such as a rent reduction program credits, neighborhood assistance act credits, an enterprise zone act credits, day-care facility investment tax credits, and major business facility job-tax credits.

Few of these activities result in refunds in excess of any tax liability (whether it be income, sales, property tax liability). But, all of these activities cost the State lost tax revenue. Therefore, we had to consider whether lost revenue equals an expenditure. While the statute under 409(a)(7) uses the term ''expenditures,'' it does not define it. However, since 1988, when the Department issued its common administrative rule at 45 CFR 92.3, the term expenditures has been defined as outlays, for purposes of Federal grant funds. Because Congress did not provide another definition of expenditure in the TANF statute, we have presumed that the existing regulation defining expenditure as an outlay is applicable.

To outlay is to expend, spend, lay out, or pay out. We therefore do not consider that a decrease in a State's revenue associated with a tax credit program or other tax relief measure meets the common rule definition of an ''expenditure.'' Accordingly, we conclude that tax provisions that only serve to provide a family with relief from State taxes such as income taxes, property taxes, or sales tax represent a loss of revenue to the State, but not an expenditure. However, the portion of a tax credit that exceeds a family's income tax liability and is paid to the family is an expenditure. That expenditure would count toward a State's TANF MOE requirement if it is reasonably calculated to meet a purpose of the TANF program.

Arguably, accepting less revenue (taxes) from the income of families (or business), provides a financial benefit to the family (or business) by allowing them to retain a greater share of their own money. As such, tax relief activities in general can serve to complement welfare reform efforts. However, tax relief measures that solely provide a family (or business) with relief from various State taxes are not expenditures.

In determining that the common rule Federal definition of expenditures was appropriate to use in the TANF context, we also examined the broader policy implications. Including nonrefundable credits and other tax relief measures that served solely to reduce tax liability could redirect Federal TANF and State MOE expenditures away from the neediest families (who get no direct benefit from nonrefundable credits) and could allow States to claim as MOE an extremely wide range of tax cuts. We do not think this result would be consistent with the intent of TANF.

At § 263.2, you will find additional discussion about the treatment of tax credits and other tax provisions.

Section 260.35—What Other Federal Laws Apply to TANF? (New Section)

As we indicated in the section of the preamble entitled ''Recipient and Workplace Protections,'' a number of commenters expressed concerns about the NPRM's failure to support the protections available to TANF recipients under Federal nondiscrimination and employment laws. We added this section to the regulations in response to those comments. Please see the earlier preamble section for a more detailed discussion of the commenters' concerns and our response.

Section 260.40—When Are These Provisions in Effect? (§ 270.40 of the NPRM)

Background

This section of the proposed rules provides the general time frames for the effective dates of the TANF provisions. As we noted in the NPRM, many of the penalty and funding provisions had statutorily delayed effective dates. For example, most penalties would not be assessed against States in the first year of the program, and reductions in grants due to penalties would not occur before FY 1998 because reductions take place in the year following the failure. We referred readers to the discussion on the individual regulatory sections for additional information.

We also made the important point that we did not intend to apply the TANF rules retroactively against States. We indicated that, with respect to any actions or behavior that occurred before final rules, we would judge State actions and behavior only against a reasonable interpretation of the statute.

As we reviewed the comments, we noted a discrepancy between this preamble discussion and the proposed regulatory text. The preamble indicated that States would operate under a ''reasonable interpretation of the statute'' until issuance of final rules; the regulatory text said that the ''reasonable interpretation'' standard would apply until the ''effective date'' of the final rules. As you will see in the regulatory text at § 260.40 of this final rule, the correct policy is that the ''reasonable interpretation'' standard applies to all State behavior prior to October 1, 1999, the effective date of these rules.

Also, in the proposed rule, at § 270.40(a), we incorporated language explaining when the statutory requirements went into effect for States implementing their TANF programs. Because States all implemented their TANF programs by July 1, 1997, as required by statute, this language is obsolete, and we deleted it from the final rule.

Comments and Responses

We received several comments on this section of the rule. Commenters' greatest concern was the effective date of the proposed rule.

Comment: A significant number of commenters asked that we delay the effective date of the final rule to allow

States time to implement all the regulatory provisions, e.g., to change their administrative rules, conduct staff training, make necessary computer systems modifications, and ensure data validity. Clearly, the major area of concern was the States' ability to implement new rules on data collection and reporting. We received three dozen comments that specifically asked for a phase-in period for meeting the reporting requirements.

A number of commenters did not offer a specific suggestion as to how long this phase-in period should be. Among the commenters who did make suggestions, the suggested period of time ranged from 9 months to 2 years. The most common suggestion was 12 months. Some commenters noted that States would be simultaneously addressing Year 2000 compliance problems and would need added time for that reason.

Response: In response to those comments, we have decided to make the effective date of the final rule the beginning of the next fiscal year. Our initial inclination was to make the rule generally effective within two to three months of publication, but to lag the data reporting requirements an additional six months. However, we realized that we could not successfully implement some of the general provisions until we had the revised data reporting in place. For example, we could not adjust a State's work participation rates based on the new welfare reform waiver provisions before the new reporting took effect. Also, many of the significant provisions in this rule (including the caseload reduction credit and the administrative cost caps) would be difficult to implement part way into a fiscal year.

To clarify the meaning of this effective date, States will continue program and fiscal reporting under the ''emergency reporting'' provisions for assistance provided, and expenditures made, through September 30, 1999. The last reports under this old system will be due November 14, 1999. States will begin reporting under these rules and the forms in the appendices effective with the first quarter of fiscal year 2000. The first TANF Data and Financial reports under these new requirements will be due February 14, 2000.

The timeframes we have provide in this final rule are fairly rigorous. Also, they are substantially shorter than many States requested. However, we think that States have sufficient resources to meet these deadlines, and they will receive our continued support in doing so. Any further delays could undermine the purposes of the law.

At the same time, we recognize that Y2K compliance and these new TANF requirements may be placing extraordinary, simultaneous demands on State staff and resources. For States that commit significant resources to achieve Y2K compliance in time, we have added a reasonable cause criterion at § 262.5(b)(1). This new provision will provide some penalty relief to States that cannot report one or both of their first two quarters of TANF data on time due to Y2K compliance activities. You will find additional discussion of that decision at §§ 262.5, 265.5, and 265.8.

Comment: Several commenters expressed support for our decision not to apply the rules retroactively. A few commenters expressed concerns about the ''reasonable interpretation'' standard we intended to apply prior to issuance of rules was too strenuous. One said we should exempt States from ''all but the most flagrant program infractions.'' Another expressed concerns about the level of Secretarial discretion in such a standard and the lack of clear criteria about what it meant. Another asked that we accept any behavior that did not ''contradict any provision of the law, court decisions or due process.''

Response: This section of the rule retains our proposal to judge State actions prior to the effective date of these rules under a ''reasonable interpretation of the statute'' standard. We understand the commenters' interest in clearer criteria. However, the standard in the rule is a term of art and does in fact give most parties a very good sense of where one would draw the line. Also, to develop very specific criteria at this point would in fact amount to retroactive rulemaking, which we promised we would not do.

At the same time, we want to assure States that we recognize that this statute is complicated and do not intend to penalize anyone who has exercised reasonable discretion and judgment during the period before final rules take effect.

For example, we understand that there is a broad range of views about the interpretation of section 415 on continuation of waiver policies. Thus, in determining whether a State is liable for a penalty for failing work participation rates for FY 1997, 1998, or 1999, we would give substantial deference to the State's proposal for rate adjustments based on waiver policies that it continued.

Also, we point out that States have the opportunity to dispute any penalty finding through the administrative processes available at part 262. These processes provide a vehicle for addressing and resolving any disagreements about whether a State was operating under a ''reasonable interpretation of the statute.''

We disagree with that the view that the standard we proposed is too strenuous. We do not necessarily want to provide cover to States that pushed the envelope beyond reasonable bounds in terms of interpreting the statute.

Subpart B—Domestic Violence

As we have noted earlier, we decided to consolidate the regulatory provisions on domestic violence in this new subpart to part 260. You can find a discussion of these provisions and the comments received on the proposed rule in the earlier section of the preamble entitled ''Treatment of Domestic Violence Victims.''

Subpart C—Waivers

As we have noted earlier, we decided to consolidate the regulatory provisions on section 1115 waivers in this new subpart to part 260. You can find a discussion of these waiver provisions and the comments received on the proposed rule in the earlier section of the preamble entitled ''Waivers.''

VI. Part 261—Ensuring That Recipients Work

Section 261.1—What Does This Part Cover? (§ 271.1 of the NPRM)

This section identifies the scope of part 261 as the mandatory work requirements of TANF.

We did not receive any comments that relate solely to the scope of this part.

Section 261.2—What Definitions Apply to This Part? (§ 271.2 of the NPRM)

This section cross-references the general definitions for the TANF regulations established under part 260. We did not receive any comments on this section. We have responded to cross-cutting comments under other sections of this part.

Subpart A—What Are the Provisions Addressing Individual Responsibility?

During our extensive consultations, a number of groups and individuals asked how the requirements on individuals relate to the State participation requirements and penalties. To help clarify what the law expects of individuals (as opposed to the requirements that it places on States), we have decided to outline a recipient's statutory responsibilities as part of this regulation. In so doing, we only paraphrase the statute, without interpreting these provisions. Inclusion of these provisions in the regulation does not indicate our intent to enforce these statutory provisions; rather, we

have included the requirements in the regulation for informational and contextual reasons. Nevertheless, our expectation is that States will comply with these requirements.

Section 261.10—What Work Requirements Must an Individual Meet? (§ 271.10 of the NPRM)

PRWORA promotes self-sufficiency and independence by expanding work opportunities for welfare recipients while holding individuals to a high standard of personal responsibility for the support of their children. The legislation expands the concept of mutual responsibility, introduced under the Family Support Act of 1988. It espouses the view that income assistance to families with able-bodied adults should be transitional and conditioned upon their efforts to become self-sufficient. As States and communities assume new responsibilities for helping adults get work and earn paychecks quickly, parents face new, tougher work requirements.

The law imposes a requirement on each parent or caretaker to work (see section 402(a)(1)(A)(ii) of the Act). That requirement applies when the State determines the individual is ready to work, or after he or she has received assistance for 24 months, whichever happens first. For this requirement, the State defines the work activities that meet the requirement.

In addition, there is a requirement that each parent or caretaker participate in community service employment if he or she has received assistance for two months and is neither engaged in work in accordance with section 407(c) of the Act nor exempt from work requirements. The State must establish minimum hours of work and the tasks involved. A State may opt out of this provision if it chooses. A State may impose other work requirements on individuals, but there is no further Federal requirement to work.

Readers should understand that these individual requirements are different from the work requirements described at section 407 of the Act. Section 407 applies a requirement on each State to engage a certain percentage of its total caseload and a certain percentage of its two-parent caseload in specified work activities. For the State requirement, the law lists what activities meet the requirement. A State could choose to use this statutory list for the work requirement on individuals described above, but is not required to do so. Subpart B below explains more fully what the required work participation rates are for States and how we calculate them. Subpart C explains the work activities and the circumstances under which an individual is considered ''engaged in work'' for the purpose of those rates.

We made a minor change to the text of the regulation from the NPRM, removing the reference to the date that the community service employment provision took effect, since that date has already passed.

In addition to the comments discussed below, we received several comments in support of the language that we used in this section.

Comment: A few commenters suggested that this section should reference the fact that these work requirements must be consistent with the provisions of section 407(e)(2) of the Act, exempting a single custodial parent who cannot obtain needed child care from work.

Response: We agree that the work requirements on individuals should more clearly refer to the child care exception and have amended § 261.10(a) and (b) accordingly.

Comment: One commenter urged us to specify that individuals in active military service or participating in a National Community Services Act program be considered to be meeting the individual work requirement.

Response: As we indicated above, it is the State's prerogative and responsibility to define the activities it considers to meet these requirements; therefore, we have not modified the regulations in this area.

Comment: One commenter expressed concern that States will classify recipients prematurely as ''job-ready'' and urged us to ensure that States assess the needs of recipients properly.

Response: The statute vests responsibility for determining when a recipient is ''job-ready'' in the State. It requires each State to assess the skills, prior work experience, and employability of each recipient who is either 18 years of age or who has not completed high school (or equivalent) and is not attending secondary school (see § 261.11).

We agree with the commenter that it is important for States to assess individuals adequately before requiring them to work or engage in any activity; however, as we indicated above, this section of the regulation is intended to paraphrase the statute rather than to interpret it. We have included these provisions to clarify the differing work expectations that the statute imposes on individuals and States.

Section 261.11—Which Recipients Must Have an Assessment Under TANF? (§ 271.11 of the NPRM)

Each 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.

With respect to the timing of assessments, the State may make the assessment within 30 days of the date on which the individual is determined to be eligible for assistance, but may opt to increase this period to as much as 90 days.

Several commenters expressed support for the inclusion of this section in the regulations.

Comment: One commenter urged us to define what an appropriate assessment is to ensure that the examination of each recipient is thorough and sensitive to barriers that a recipient may hesitate to identify, such as domestic violence or substance dependence. Another suggested including guidelines or standards for assessments. Others urged us to indicate how we would address a State's noncompliance with this provision or to include a penalty related to this requirement.

Response: Because we have included this provision in the regulations for informational purposes, it would be inappropriate to define its terms or include standards. We expect States to comply with the requirements of this subpart, but including them in the regulations does not indicate our intent to create regulatory expectations or to enforce these statutory provisions. We do not have the authority to add a penalty related to this requirement.

Comment: One commenter suggested that we do not have authority to require assessment of recipients. Others expressed concern about which clients must be assessed and urged us to interpret the requirement to apply only to certain recipients, such as those who are subject to work requirements.

Response: Section 408(b)(1) of the Act requires the State to assess each recipient who is at least age 18 or who has not completed high school (or equivalent) and is not attending secondary school. The regulations reflect this language. Because we have included this provision for informational purpose, we do not think it is appropriate to interpret the statute further in this area.

Comment: One commenter thought that the regulations lacked clarity concerning the timing of assessments for

TANF recipients who had been receiving AFDC compared to the timing for those who become eligible for assistance after the State began its TANF program. Another urged us to allow States more time for conducting assessments.

Response: Because the statute specifies the timeframes in which States may comply with the requirement for an assessment, we do not think it is appropriate to modify those timeframes. However, we agree that it was confusing to describe two different assessment periods for different segments of a State's caseload. Since all States should already have conducted assessments of any recipients that they converted from AFDC to TANF, we have included only the description of the assessment period for new TANF cases in these regulations.

Section 261.12—What Is an Individual Responsibility Plan? (§ 271.12 of the NPRM)

A State may require individuals to adhere to the provisions of an individual responsibility plan. Developed in consultation with the individual on the basis of the initial assessment described above, the plan should set forth the obligations of both the individual and the State. It should include an employment goal for the individual and a plan to move him or her into private-sector employment as quickly as possible. The regulation includes more detailed suggestions for the content of an individual responsibility plan.

Comment: One commenter, acknowledging the ultimate goal of private-sector employment, thought that the individual responsibility plan should recognize and address all barriers to employment, such as mental health or literacy problems. Another commenter suggested that the State's responsibilities to the individual should be more explicit. Another commenter thought that paragraph (d) did not accurately reflect the statute.

Response: We agree that the plan should include whatever activities the State, in consultation with the individual, deems appropriate for overcoming barriers to employment. We reiterated the statute's list of possible plan obligations in paragraph (b) as examples, not as an exhaustive list. We think that paragraph (d) ensures that the plan will describe the State's obligation to the individual. States have the flexibility to draft the plan as explicitly as they find appropriate. We also understand the commenter's concern about the accuracy of paragraph (d) and have amended it to reflect the statute's references to services that enable an individual to obtain and keep employment and to job counseling.

Comment: Some commenters thought that we had overstepped our authority by including anything in the regulations about individual responsibility plans or that our language was too restrictive, preventing States from including plan requirements that do not relate to work. Others commended our inclusion of this section.

Response: As we indicated above, we have included this provision for informational and contextual purposes. In doing so, we paraphrased requirements specified in the statute. For this reason, we do not think we have overstepped our authority or that the language is more restrictive than the statute. Moreover, neither the regulations nor the statute prohibits a State from including in the individual responsibility plan other requirements that it finds appropriate for the individual.

Section 261.13—May an Individual Be Penalized for Not Following an Individual Responsibility Plan? (§ 271.13 of the NPRM)

If the individual does not have good cause, he or she may be penalized for not following the individual responsibility plan that he or she signed. The State has the flexibility to establish good cause criteria, as well as to determine what is an appropriate penalty to impose on the family. This penalty is in addition to any other penalties that the individual may have incurred.

We received comments expressing support for the inclusion of this section in the regulations.

Comment: Several commenters urged us to ensure that the good cause exception referred to in this section protects a recipient from penalty where the individual failed to follow the individual responsibility plan due to a violation of employment laws, such as sexual harassment or other forms of job discrimination. Another suggested we define the term ''good cause'' to give States guidance about the appropriate circumstances for imposing a penalty and urged a broad definition to cover the many barriers to employment that welfare recipients face. Another commenter wanted us to ensure that victims of domestic violence are protected from penalty, i.e., to define good cause to cover these individuals, regardless of whether the State has adopted the Family Violence Option (FVO).

Response: We do not believe it is necessary to define ''good cause'' exceptions. States have substantial experience in this area based on prior law. We encourage States to recognize the special needs of victims of domestic violence elsewhere in the preamble. Although we recognize that it is optional for States, we promote adoption of the FVO. We also encourage States to coordinate their policies on good cause determinations to provide consistent protection for families.

While we have chosen not to regulate ''good cause'' criteria, in order to protect individuals from violations of other employment laws, we have included a new regulatory section at § 260.35 to reference employment protections that exist under other Federal laws. These laws apply equally to welfare beneficiaries and other workers.

Comment: One commenter thought the regulations should explicitly state that a State may define ''good cause'' differently in different subdivisions.

Response: As we indicated above, States have the flexibility to define ''good cause'' as they deem appropriate. Under section 402(a)(1)(A)(i) of the Act, they also have the flexibility to implement their programs differently in different parts of the State. Thus, a State could vary its good cause criteria from one subdivision to another. Since the language of this section tracks that of the statute, we do not think it necessary or appropriate to amend the regulatory text in this regard.

Comment: One commenter urged us to ensure that the individual responsibility plan includes the individual's right to challenge the contents of the plan.

Response: States may design individual responsibility plans as they determine suitable. Because we have included this provision for informational and contextual purposes, we do not think it is appropriate for us to expand upon the provisions of the statute, which we have tracked closely in this section. However, section 402(a)(1)(B)(iii) of the Act requires the State to provide opportunities for recipients who have been adversely affected to be heard in a State administrative or appeal process. States should consider when and how to accommodate this recipient right in the development and implementation of individual responsibility plans.

Section 261.14—What Is the Penalty if an Individual Refuses To Engage in Work? (§ 271.14 of the NPRM)

If an individual refuses to engage in work in accordance with section 407 of the Act, the State must reduce the amount of assistance otherwise payable to the family pro rata (or more, at State

option) with respect to any period during the month in which the individual refused, subject to good cause and other exceptions determined by the State. These exceptions include the statutory exception for single custodial parents of children under the age of six who cannot obtain needed child care, which is included in the regulations at § 261.15. The State also has the option to terminate the case.

In addition to the child care exception, each State may establish its own criteria for determining when not to impose a penalty on an individual, that is, when an individual has ''good cause'' for not engaging in work. States may also establish other rules governing penalties as needed.

Under the Family Violence Option, a State may waive work requirements in cases where compliance would make it difficult for an individual to escape domestic violence or would unfairly penalize individuals who are or have been victimized by such violence or individuals who are at risk of abuse. The State must determine that the individual receiving the program waiver has good cause for failing to engage in work.

The final regulations include a cross-reference to the State penalty for failure to impose sanctions in accordance with section 407(e) of the Act (at § 261.54). We added this reference for the convenience of the reader; it does not represent an additional requirement.

Comment: We received many comments urging us to change the language of the regulations concerning the pro rata reduction of a recipient's assistance. The commenters thought that the way in which we paraphrased the statute altered its meaning and excluded certain types of pro rata reductions. Most urged us to clarify that a State can make a pro rata reduction based on any reasonable method; some asked us to indicate that a pro rata reduction is based on the head-of-household's share of assistance or on the share of those refusing to work. A few commenters also noted that States should have the flexibility to define the timeframe for applying a pro rata reduction. Several commenters suggested that the NPRM inappropriately restricted a State's ability to impose a greater penalty.

Response: We recognize that the language we used in the NPRM may have caused confusion concerning the meaning of a pro rata reduction, and we have modified the regulations to reflect the statutory language more closely. It was not our intention to prescribe one method of proration or to proscribe other legitimate methods; a State may make a pro rata reduction based on any reasonable method. With respect to imposing a greater penalty, we think that the NPRM's regulatory text and preamble were very clear that a State could impose a penalty greater than a pro rata reduction, up to and including terminating the case, and thus have not substantially altered the regulations in that regard.

Comment: One commenter, concerned about the burden on caseworkers of tracking an individual's participation, urged us to establish specific, fixed penalties on an individual for certain periods of time for refusal to work. The commenter gave an example of reducing the grant by the individual's share for the first month of refusal and gradually increasing it.

Response: As we indicated above, a State may establish any method of pro rata reduction that it chooses that comports with section 407(e) of the Act. Since we do not intend to dictate one proration method over another, it would not be appropriate to adopt the penalty scheme that the commenter suggests.

Comment: Several commenters expressed the same concern in this section that they did in § 261.13 regarding the applicability of employment protections to welfare recipients. They urged us to ensure that good cause exceptions in this section protect recipients from penalty where the individual refused to work due to a violation of employment laws, such as sexual harassment or other forms of job discrimination. Others urged us to provide guidance about appropriate good cause exceptions.

Response: States have the flexibility to define ''good cause'' as they deem appropriate. Because of the States' extensive experience in this area, we think it is not necessary to provide specific guidance regarding what good cause exceptions a State should acknowledge. However, we have included a new regulatory section at § 260.35 to reference employment protections under other laws that apply to working welfare recipients. We certainly agree that welfare recipients should not have to choose between unsafe or discriminatory working conditions and losing benefits, especially where there are protections under Federal law.

Comment: A commenter urged us to exempt from the work requirements any foster parents with birth children in the home.

Response: The statute does not provide for an exemption from the work requirements for such individuals; however, States may define ''good cause'' as they find appropriate. Since the statute specifically gives States the authority to establish good cause and other exceptions, we do not intend to dictate specific good cause criteria, other than the child care exception provided for at section 407(e)(2).

Section 261.15—Can a Family Be Penalized if a Parent Refuses To Work Because He or She Cannot Find Child Care? (§ 271.15 of the NPRM)

A State may not reduce or terminate assistance to a single custodial parent caring for a child under age six for refusing to engage in required work, if the parent demonstrates an inability (as determined by the State) to obtain needed child care. This exception applies to penalties the State imposes for refusal to engage in work in accordance with either section 407 or section 402(a)(1)(A)(ii) of the Act. The parent's demonstrated inability must be for one of the following reasons:

- Appropriate child care within a reasonable distance from the individual's home or work site is unavailable;
- Informal child care by a relative or under other arrangements is unavailable or unsuitable; or
- Appropriate and affordable formal child care arrangements are unavailable.

This penalty exception underscores the pivotal role of child care in supporting work and also recognizes that the lack of appropriate, affordable child care can create unacceptable hardships for children and families.

We have substantially modified this section of the regulations, in part by moving much of what constituted § 271.15 under the NPRM to a new section, § 261.56. This new section specifies the State's responsibilities in carrying out the penalty exception, while § 261.15 describes the impact of the provision on the individual. We have also moved the State penalty provision associated with this child care exception (formerly § 274.20) to a newly created § 261.57. Our intent in making these changes is to preserve the informational and contextual nature of subpart A of part 261 and to make the State's responsibilities and the possible penalty associated with them easier to follow. In this section of the rule, we have added cross-references to these two new sections for clarity.

Readers can find all comments associated with this exemption in the preamble discussion for § 261.56.

Section 261.16—Does the Imposition of a Penalty Affect an Individual's Work Requirement? (§ 271.16 of the NPRM)

Section 408(c) of the Act, as amended by section 5001(h) of Pub. L. 105–33,

clarifies that penalties against recipients under TANF ''shall not be construed to be a reduction in any wage paid to the individual.'' In the NPRM, we indicated that imposing such a penalty does not require the State to reduce the number of hours of work required, as it would otherwise do if the individual's wages decreased, due to the provisions of the Fair Labor Standards Act.

In the final rule, we have modified this section of the regulations to reflect the statutory language more precisely. This change does not signify any shift in our interpretation of the provision: we continue to believe that Congress intended to permit a State to sanction an individual who is subject to the Fair Labor Standards Act (FLSA) without also being forced to reduce the individual's required hours of work. FLSA requirements, including the Federal minimum wage, apply to any welfare recipients that meet the broad definition of ''employees'' under that law, which includes participants in many work activities. By indicating that a penalty does not reduce the individual's wages, the State does not need to recalculate hours of work subject to FLSA. A State is, of course, free to decide to reduce the work hours of a sanctioned individual or to reassign the individual to activities that are not subject to FLSA.

In addition to the comments described below, we received several comments expressing support for the inclusion of this provision in the regulations. Others indicated that some readers were confused by the intent of this section; we hope the explanation above and the change in the regulatory text have reduced this confusion.

Comment: Some commenters urged us to delete the last clause in § 271.16 of the NPRM, which indicated that a penalty would not result in a reduction in the number of hours of required work. Others asked us to substitute the word ''participation'' for the word ''work'' in that clause.

Response: We have removed the last clause from the regulation because we did not want to preclude a State from reducing an individual's hours of work.

Comment: Some commenters thought this provision would act as an incentive for States to penalize recipients to avoid the minimum wage requirements and urged us to monitor sanctions under this provision by collecting data on State sanctions. Another commenter inquired whether this provision applied where the penalty is disqualification of the individual from the program, such as for an intentional program violation.

Response: The commenters seem to be suggesting that a State would have an incentive to penalize a recipient because this provision prevents the State from considering the penalty to be a reduction in wages and therefore it could engage the recipient in hours of work for which he or she is not compensated. We do not agree. An individual's hours of work are established in accordance with the FLSA based on the benefits the family receives, long before and independent of the sanctioning process. The State may only impose a work sanction for failure to engage in required work. If an individual thinks that the State has penalized him or her inappropriately, he or she has recourse to appeal the sanction decision; section 402(a)(1)(B)(iii) of the Act requires the State to provide opportunities for recipients who have been adversely affected to be heard in a State administrative or appeal process.

With respect to monitoring sanctions and application of this provision, readers should understand that no individual is sanctioned ''under this provision''; rather, this provision applies to any recipient who is sanctioned. Thus, no sanctioned recipient is considered to have had a reduction in wages as a result of the penalty.

Readers should also note that we have improved the information we are collecting about sanctions and should refer to Appendix A for further discussion of these data requirements.

Comment: Some commenters urged us to clarify that a penalty against a family is not a reduction in assistance or other payments. They thought the phrase ''reduction in any wage paid to the individual'' raised doubt about this point. One commenter specified that States should be relieved of FLSA liability regardless of whether the individual is in a wage or nonwage work assignment.

Response: We think the language of the provision is clear and does not need further interpretation. As we indicated above, the FLSA requirements apply to any welfare beneficiaries that meet the broad definition of ''employees'' under that law; thus, the term ''wage'' is the appropriate one to use.

Comment: One commenter thought we should specifically state that the FLSA does not apply where the State has sanctioned an individual, so as to protect a State from reducing an individual's hours out of fear of violating the FLSA to the point where he or she would no longer count toward the participation rate. As an alternative, the commenter suggested that we deem an individual's hours of work, as determined by the FLSA, as automatically meeting the work requirement or give States broader authority to include the value of other benefits when calculating an individual's work obligation.

Response: Because the FLSA includes other provisions not affected by this provision, it would not be accurate to state that the FLSA does not apply. We think the regulatory language explains the interaction of the FLSA and this provision adequately. Regarding the commenter's suggested alternative, the statute is very clear about the number of hours an individual must be engaged in work to count toward the participation rate (see subpart B). Regarding the comment suggesting broad authority for a State to include other benefits in calculating an individual's work obligation, this matter is governed by the FLSA and thus is outside the scope of these regulations.

Comment: One commenter urged us to clarify that, although a sanction would not result in a reduction in the number of required hours of work, it might result in a reduction in certain activities, in order to comply with Federal, State and local labor laws.

Response: As we have indicated, this provision is intended to avoid forcing a State to reduce the hours an individual must work because his or her benefits decreased as a result of a penalty imposed under TANF, as it would otherwise have to do in accordance with Federal labor law. If the State chooses to reduce the individual's hours of work, or to shift the individual to other appropriate activities, it has the flexibility to do so. If there are State or local labor laws that restrict the State's actions in this area, it is the State's responsibility to adhere to applicable laws.

Subpart B—What Are the Provisions Addressing State Accountability?

Section 261.20—How Will We Hold a State Accountable for Achieving the Work Objectives of TANF? (§ 271.20 of the NPRM)

Work is the cornerstone of welfare reform. Research has demonstrated that early connection to the labor force helps welfare recipients make important steps toward self-sufficiency. The rigorous work participation requirements embodied in the legislation provide strong incentives to States to concentrate their resources in this crucial area.

This summary section makes the legislation's focus on work and the requirements for work clear, while other sections address each of these areas in more detail.

This section describes what a State must do to meet the overall and two-parent work participation rates. It explains that a State must submit data to allow us to measure each State's success with the work participation rates. It notes that a State meeting the minimum rates will have a reduced MOE requirement, while a State failing to meet them risks a financial penalty.

We received only one comment relating to this section alone.

Comment: Regarding the reference to data that a State must submit for us to calculate the participation rates, the commenter contended that the process for calculating the participation rates is too complicated. As an alternative the commenter suggested that a State should calculate its own participation rate, which we should then review.

Response: Section 411(a) of the Act requires States to report to us various data necessary to calculate the participation rates. Therefore, we think that it is clear that Congress intended us to make the calculations of the participation rates and gives us the authority to specify the data elements we need. As we have done prior to the publication of final regulations, we will continue to work in partnership with States to ensure that data are accurate and correctly portray their participation rates.

Section 261.21—What Overall Work Rate Must a State Meet? (§ 271.21 of the NPRM)

Section 407(a) of the Act establishes two minimum participation rates that a State must meet beginning with FY 1997.

The first, the overall work rate, is the percentage of all families receiving assistance who must participate in work activities by fiscal year. This section lists the statutory overall participation rate that applies to each fiscal year.

The second is the work rate for two-parent families, which we address at §§ 261.23 and 261.24.

We received no comments concerning this section.

Section 261.22—How Will We Determine a State's Overall Work Rate? (§ 271.22 of the NPRM)

This section of the regulation restates in clear terms the participation rate calculation specified in the statute. In particular, without changing its meaning, we have phrased the denominator in a way that we think is easier to understand than the statutory language.

We received many requests for guidance concerning how, for purposes of the participation rates, we treat a family that the State exempts from work requirements.

A State has the flexibility to establish any exemptions it chooses; however, with two exceptions (discussed below), the legislation offers no room to remove categories of recipients from the denominator, as prior law did. PRWORA embodies the views that: (1) Work is the best way to achieve independence; and (2) each individual should participate to his or her greatest ability. As waiver projects have demonstrated, innovative State programs can often find meaningful ways for nearly every recipient to participate in work-related activities. Therefore, the statute and the regulation require nearly all families to be included in the calculation of the participation rates.

The two exceptions to this requirement are certain families that are subject to a penalty and, at State option, families in which a single custodial parent is caring for a child under 12 months of age. When directed by the State's reported data to do so, we will disregard from the calculation for a month—that is, not include in either the numerator or the denominator—families: (1) Receiving assistance that are subject to a penalty for refusing to engage in work required in accordance with section 407 of the Act, but that have not been subject to a penalty for more than three of the last 12 months; and (2) in which a single custodial parent is caring for a child under one year of age. The latter exception is limited by statute to a maximum of 12 months for any parent. Although the first exception is not a State option under the statute, a State may choose to include a sanctioned family in the rate even though it has been subject to a penalty for three or fewer months in the last 12 because the family is nevertheless working enough hours to count toward the participation rate. In such a situation, we would include the family in both the numerator and denominator of the calculation.

The policy described above with respect to families subject to a penalty is slightly different from that of the NPRM. We are removing ''excepted'' families from the entire calculation, rather than just the denominator. We have made this change after reexamining Congressional intent. We think it unlikely that very many individuals would have been subject to a sanction while still working sufficient hours to count in the numerator, but we believe it would not be consistent with Congressional intent to permit inclusion in the numerator but not in the denominator. By creating the exception to inclusion in the denominator, Congress intended to avoid penalizing a State when it tries to get a nonparticipating individual to participate. However, Congress did not intend to create an advantage for such a State by allowing ''excepted'' individuals to be included in the numerator when they were not in the denominator. Therefore, if a State wishes to count a family in the numerator, that family must also appear in the denominator.

The regulation makes clear that a State may count as a month of participation any partial months of assistance, if, in each full week of assistance in that month, an adult in the family is engaged in work for the minimum weekly average number of hours. These families are already included in the denominator since they are recipients of assistance in that month.

This provision ensures that a State receives credit for its efforts in the first and last months that a family receives assistance. Without it, a State would have an inadvertent incentive to start and end assistance as close as possible to the beginning of the month, rather than as families need it. We think that measuring work in full weeks of assistance during a partial month is consistent with the spirit of PRWORA. We have established the same policy for partial months of assistance under the two-parent rate at § 261.24.

In the preamble to the proposed regulation for this section, we included a significant discussion about the relationship among waivers granted under the Family Violence Option (FVO), work participation rates, and a State's access to penalty forgiveness under ''reasonable cause.'' We recognized that there were circumstances under which a State should and would temporarily waive work requirements for domestic violence victims. Two questions we considered were: (1) How such waivers would affect the calculation of the participation rates; and (2) how they would affect a State's penalty liability.

As we discussed earlier in the preamble, instead of changing the basic calculation of the work participation rates, we chose to address this situation through our penalty liability determinations. We chose this targeted approach so as not to provide blanket exemptions for those who have ever suffered domestic violence, but instead to provide appropriate protections and supports for TANF recipients who need them.

Because of the nature of the comments we received on the domestic

violence provisions in the proposed rule, we decided to consolidate the discussion of those comments in the preamble and to consolidate the regulatory provisions in a new subpart B of part 260. You can find the consolidated preamble discussion in the earlier section entitled ''Treatment of Domestic Violence Victims.''

As the result of the comments and the changes we made to part 260 of the rule, we have also revised the language that was proposed at § 271.52(b)(1). Under the revised language, we no longer define the criteria for ''reasonable cause'' related to federally recognized domestic violence waivers in this section, but cross-reference the regulatory provisions in part 260. Also, we have added language to § 261.52 indicating we would take waivers of work requirements granted under subpart B of part 260 into account in deciding if a State is eligible for a penalty reduction based on the degree of its noncompliance. Please see § 261.52 for further discussion of these issues.

We received many comments concerning our proposal to redefine ''family'' to include in the participation rate any families the State has excluded (based on defining a family as ''child-only'') for the purpose of avoiding a penalty. We have removed this provision from this section, as well as from § 261.24 describing the two-parent participation rate. Please refer to the earlier preamble discussion in the section entitled ''Child-Only Cases'' for further discussion of this decision and the comments that relate to it.

Comment: One commenter thought that the overall participation rate as we described it in this section could be interpreted as either having a State average the 12 monthly rates or calculate a weighted average, taking caseload size into account.

Response: The statute does not provide for a weighted average in calculating the participation rates; rather, it specifically states that the annual rate is the average of the State's monthly rates for the fiscal year. Moreover, readers should understand that States are not responsible for calculating the participation rates. We calculate the rates based on the data that States report to us. For further discussion of the required data and reporting provisions, please refer to part 265 of this chapter.

Comment: Several commenters suggested that we exclude certain groups of individuals from the participation rate, in addition to those specified in the regulations. In particular, various commenters urged us to remove from the rate calculation: women in the third trimester of a pregnancy; cases that include a child and a grandparent who is over 60 years of age; families not receiving cash assistance; individuals working for employers that engage in discriminatory conduct; cases engaged in federally mandated administrative reviews prior to a sanction; and individuals who have received assistance for fewer than 60 days and therefore are not required to participate. Another commenter agreed with our statement that States should establish whatever exemptions they choose, but thought those State-exempted individuals should be removed from the rate calculation.

Response: As we indicated in the NPRM and the above discussion, we believe the statute is very clear regarding the calculation of the participation rates and does not give us the flexibility to exclude additional categories of individuals from the calculations. The participation rates are written in terms of ''families receiving assistance'' that include an adult, thus we could not limit the rates to those receiving cash assistance. (For further discussion of the definition of assistance, please refer to § 260.30 of this chapter.)

Concerning individuals in work activities where the employer engages in discriminatory conduct, again, we do not think we have the latitude to remove such families from the denominator; however, we fully expect States to conduct programs that are lawful and uphold employment laws that apply to working welfare recipients. Please refer to the section entitled ''Recipient and Worker Protections'' for a more detailed discussion of this issue.

It is not entirely clear to us what the commenter means by ''federally mandated administrative review process prior to being placed in sanction.'' There is no longer a federally mandated conciliation process, as there was under the JOBS program. It is possible that the commenter is referring to the provision at section 402(a)(1)(B)(iii) of the Act, requiring an explanation in the State plan of how the State will provide opportunities for recipients who have been adversely affected to be heard in a State administrative or appeal process. If so, recipients appealing an adverse action may already be under a sanction and therefore would not be included in the rate, if they have not been subject to one for more than three months in the last 12. Further, there is nothing in the statute to suggest that State administrative or appeal process should be lengthy; on the contrary, we hope States will establish expedited processes, in the interests of both the families and the State. We think there is neither the need nor the authority to remove such families from the participation rates.

Regarding the commenter's concern that individuals are not required to participate in work activities until they have received 60 days of assistance, the commenter is confusing the requirement on individuals to work with the requirement on States to achieve certain participation rates. Although the activities may be the same, they are separate requirements under the law. Please refer to the discussion at § 261.10 for further explanation of this distinction.

The statute is clear in giving a State the flexibility to establish ''such good cause and other exceptions'' as it chooses, but does not remove those with good cause exceptions from the rate calculations. We encourage States to adopt fair and practical good cause exceptions. While we understand the commenter's concern that a State has no incentive to create good cause exceptions if the excepted families remain in the denominator, it is worth noting that the overall participation rate leaves room to grant good cause exceptions under a variety of different circumstances.

Comment: A commenter suggested that there should be follow-up on individuals for three months following employment and that such individuals should be included in the participation rate as an incentive to States to find employment for recipients. The commenter stated that currently individuals are not included in the rate once they become employed.

Response: Neither the statute nor the regulations excludes employed recipients from the participation rate, as long as they are still actually receiving TANF assistance. In fact, unsubsidized employment is the first work activity that permits TANF recipients to be considered ''engaged in work'' and other forms of employment immediately follow it. Moreover, recognizing that the participation rate calculations did not give States credit for those who became employed and left the welfare rolls, Congress created a ''caseload reduction credit'' for that purpose. (See subpart D for discussion of the Caseload Reduction Credit.)

We do require States to collect data on families no longer receiving assistance (please refer to § 265.3), but we believe it is burdensome and impractical to require all States to follow such families for any period of time. We do agree that this is important information in understanding the effect of the TANF program and encourage States to

conduct follow-up studies where possible. Also, we have designed the initial high performance bonus system to give us follow-up information on the employment of recipients without imposing a substantial new burden on State TANF agencies.

Comment: One commenter stated that the denominator of the participation rate changes daily and that we need a standardized formula to allow programs to meet their goals. Another asked whether the rate is calculated based on a sample or the universe of cases, suggesting that the universe was preferable where feasible.

Response: While the denominator of the participation rate can change from month to month, States will have ongoing access to information about their caseloads, which should enable them to adjust for shifts in the number and types of cases. The participation rates are based on monthly data of families receiving assistance that include an adult. Therefore, a family that receives assistance for even one day in a month contributes to the total number of families receiving assistance in that month. We think the participation rate calculations are quite clear. However, we have incorporated some opportunities in the penalty relief provisions to consider a State's special circumstances. For example, in reducing the work participation penalty, the final rule adds a new adjustment factor that could help States that substantially increase the number of participants, but fail the participation rate because they are experiencing significant caseload increases.

Regarding whether a State should report the universe of caseload data, § 265.5 permits a State to report participation and other data for the universe or a sample of cases and outlines acceptable sampling methods. States should weigh the advantages and disadvantages of sampling and make their own decisions about whether to report on a universe or sample basis.

Comment: One commenter urged modifying the regulations to ensure that, if one parent in a two-parent family is subject to a penalty but the other parent continues to work the minimum hours required for the overall participation rate, the family should count toward the overall rate. If the second parent subsequently is subject to a penalty, the commenter thought we should measure the months of sanction in the last 12 months separately for each parent, thus maximizing the time a family would be excluded from one or both participation rates.

Response: First, we think it is clear in both the statute and these regulations that families, and not individuals, are subject to penalties. The State has the flexibility to determine the amount of the penalty, up to and including terminating the case, but must impose a penalty that is at least a pro rata reduction of the family's assistance (see § 261.14 for further discussion of pro rata reductions). Thus, we would look at whether the family, not the individual, is a sanction case.

If the family continues to receive assistance and meets the standard for being ''engaged in work'' under the overall rate while being sanctioned, as it would in the commenter's example, then the State may choose to count that family in the numerator and denominator of the calculation. However, since it is a family and not an individual that is subject to a penalty, should the other parent subsequently refuse to work and the State take action, it would simply be a second sanction for the family and does not call for separate tracking for purposes of calculating the denominator.

Comment: One commenter objected to the fact that two-parent families are counted twice, once in the two-parent participation rate, and once as part of the overall rate. The commenter thought that two-parent families should be counted only in their own rate.

Response: The composition of the overall participation rate is statutory. The two-parent rate measures State success with that sub-population, while the overall rate measures success with the entire caseload of families that include an adult.

Comment: Several commenters expressed support of the provision excluding a single custodial parent caring for a child under 12 months of age from the participation rate calculation. However, some commenters thought that we should not tie the exclusion from the rate to whether the State has adopted the option not to require the parent to engage in work. In essence, they argue that there are two separate decisions: whether to require the parent to work and whether to exclude the parent from the rate. Others questioned whether this provision allows for a one-time exclusion of up to 12 months or whether the parent could be excluded again should he or she be caring for another child under one year old.

Response: Based on the comments and after reexamining the statutory provision, we agree that we need not link the State's option not to require a single custodial parent of a child under 1 to work to the exclusion of such parents from the rate calculations. The State can make separate decisions about exempting and excluding a family from its rate. The statute describes a certain individual, that is, ''a single custodial parent caring for a child who has not attained 12 months of age'' and then separately indicates that ''such an individual'' may be disregarded in calculating the participation rates. We have re-written the regulation to allow disregard of a family with such an individual, since the rates actually measure families and not individuals.

Regarding whether this is a one-time provision or is renewable, the law plainly states that a parent may be disregarded from the rate for not more than 12 months. We interpret this language to mean a cumulative, lifetime limit of 12 months for any single custodial parent, but not necessarily a one-time disregard. Thus, if a parent were disregarded from the rate for four months while caring for one child under a year old, he or she could be disregarded for as much as 8 months with a subsequent baby.

Comment: We received many comments in support of the provision to give a State credit for a month of participation if the individual is engaged in work for the minimum average number of hours in each full week the family receives assistance in a partial month; however, some commenters found the provision too narrow to accommodate States that assign an individual to an activity weeks after the beginning of a benefit period. Some urged us to count an individual's time in assessment toward the participation rate. Another suggestion was that we should only consider a month of assistance (partial or full) to begin from the time the individual is assigned to a countable activity. One commenter thought we should only count families in the denominator from the first full month of assistance. One commenter asserted that we should include only recipients, and no applicants, in the participation rate; thus, this provision would affect only partial months following approval of assistance.

Response: The law and these regulations permit participation in only 12 specific work activities to count toward the participation rates. (Please refer to subpart C.) While we appreciate the time it takes a State to assess an individual and assign him or her to an activity, we do not have the flexibility to add assessment to the list of allowable activities. By the same token, we cannot simply decide that some period of time for which an individual receives assistance—such as time prior to assignment in a work activity or a partial month of assistance—should not

be considered a period of assistance and therefore exclude the individual's family from the participation rate for that month. On the contrary, if a family receives assistance for any portion of a month, then we must include the family in the denominator of the participation rate for that month, subject to the caveat in the paragraph below.

With respect to the assertion that we should not include applicants in the participation rate, we agree that States should not be forced to count individuals in the participation rates while their applications are pending. At the same time, we do not want to deny States that are successful in moving applicants into work activities credit for their efforts. It is for this very reason that we wanted to give States credit in the participation rates for a partial month of assistance where an adult works at a level equivalent to the standard for a full month. Further, under these final rules, we will give States some discretion to decide when a family begins to receive assistance, for the purposes of the participation rates. If a State pays benefits retroactively, i.e., for the period between application and approval, the State would have the option to consider the family to be receiving assistance either during the retroactive period or only during the month of payment.

This comment included an example in which the State ''prorated [benefits] from the date of application,'' even though it did not approve the application until about four weeks later. Each State has some flexibility to decide when benefits begin; in this example, the State chose the date of application. The statute is unclear whether receipt of assistance for a prior period is assistance in that prior month or only during the month of payment. Thus, when a State chooses to pay retroactively back to the date of application, it has the option to choose whether the recipient is receiving assistance during the month or part of the month covered by the retroactive payment. Because many States require applicants to engage in some form of work, such as job search, this partial month provision should prove to be an advantage for States that pay benefits retroactively for the application period.

Section 261.23—What Two-Parent Work Rate Must a State Meet? (§ 271.23 of the NPRM)

As in § 261.21, this section restates the minimum work participation rates for two-parent families established in the statute.

As States are aware, the two-parent participation rate increases sharply. Congress has high expectations that States will help the vast majority of adults in two-parent families find jobs or participate in other work activities. We note that most States had difficulty meeting the less ambitious JOBS participation rates for unemployed parent families (UPs), the primary two-parent cases under AFDC, and about half the States subject to the rates in FY 1997 failed the two-parent TANF participation rate. For several reasons, the new rates under TANF are much more demanding than they were under JOBS. First, the TANF rate is a ''two-parent'' rate, not a rate just for UPs. Secondly, the denominator includes much more of the caseload; it recognizes many fewer exemptions. Finally, PRWORA lifted the restrictions on providing assistance to two-parent families. Thus, in some States, many more two-parent families could be eligible for assistance and subject to the work requirements than under prior law.

We strongly encourage each State to consider carefully what it must do to get two-parent families working. In some cases, States may need to make substantial changes to their program designs. In the first few years of operating TANF, the participation rates are at their lowest and caseload reduction credits may significantly reduce the minimum required rates. We think it is important for States to capitalize on this initial period to invest in program designs that will allow them to achieve the higher participation rates in effect in later years. We intend to assist States in this endeavor through technical assistance and by sharing promising models as they emerge.

We received only one comment relating to this section.

Comment: A commenter urged us to eliminate the two-parent participation rate once the two-parent caseload represents less than five percent of a State's overall caseload.

Response: We do not have the authority to eliminate the participation requirement related to the two-parent caseload. The statue is very clear about the required minimum rates that States must achieve and the penalty associated with failing to meet participation rates. We have tried to give States some relief with respect to the demanding two-parent participation rate through both the structure of the caseload reduction credit and the penalty reduction provisions. Please refer to subparts D and E for further discussion of these areas.

Section 261.24—How Will We Determine a State's Two-Parent Work Rate? (§ 271.24 of the NPRM)

The regulations express the two-parent work participation rate in terms very similar to those we used for the overall rate. Any family that includes a disabled parent is not considered a two-parent family for purposes of the participation rate. Thus, we do not include such a family in the numerator or denominator of the two-parent rate.

It is important to note that, in accordance with the statute, we calculate both participation rates in terms of families, not individuals. Whether we include the family in the numerator depends on the actions of individuals, but an entire family either counts toward the rate or does not. In the case of a two-parent family, whether a family counts may depend on the actions of both parents.

In response to issues raised by the comments, and questions raised by States dealing with interim participation rate calculations, we have added language to the final regulations clarifying what constitutes a two-parent family in the two-parent participation rate calculation. We have found that States had divergent readings of which parents to consider in determining whether a family was a two-parent family. Therefore, we included this provision to ensure greater consistency across States in measuring participation among two-parent families.

The final regulations state that, for the purposes of this calculation, a two-parent family includes, at a minimum, all families with two natural or adoptive parents (of the same minor child) receiving assistance and living in the home, unless both are minors and neither is a head-of-household.

The preamble to the NPRM indicated that providing a noncustodial parent with TANF services need not cause a State to consider the family a two-parent family for the participation rate. This policy has not changed in the final regulations and is consistent with the new definition of a two-parent family. A State may, but is not required to, treat a family in which a noncustodial parent receives TANF assistance as a two-parent family.

As in § 261.22, where States direct us to, we exclude from the participation rate calculation for a month the families that are subject to a penalty for refusing to engage in work required in accordance with section 407 of the Act, but have not been subject to a penalty for more than three of the last 12 months. This is a change from the NPRM, which only excluded them from

the numerator of the calculation. Please refer to the discussion at § 261.22 for an explanation of this change.

Section 408(a)(7) of the Act limits the receipt of Federal TANF assistance to 60 months for any family, unless the family qualifies for a hardship exception or disregard of a month of assistance. (In our discussion of § 264.1, we explain that months of receipt are disregarded when the assistance was received either: (1) by a minor child who was not the head of a household or married to the head of a household; or (2) while an adult lived in Indian country or in an Alaska Native Village with 50 percent or greater unemployment.) We have received inquiries concerning the effect of a time-limit exception or disregard on the participation rates. In fact, the time limit does not have a bearing on the calculation of the participation rate. All families must be included in the participation rate, unless they have been removed from the rate for one of the two work-related exemptions (i.e., the family is subject to a penalty, but has not been sanctioned for more than three of the last 12 months; or the parent is a single custodial parent of a child under one year of age and the State has opted to remove the family from the rate).

We received many of the same comments about the calculation of the two-parent participation rate that we received in connection with the calculation of the overall participation rate. In particular, please refer to the preamble for § 261.22 for discussion of the comments and our responses about excluding groups of recipients from the participation rate and counting partial months of participation.

As we indicated in § 261.22, we have not kept in the final rules our proposal to redefine families to include in the participation rate any families that the State has excluded (based on its defining a family as a child-only family) for the purpose of avoiding a penalty. Please refer to the earlier preamble section entitled ''Child-Only Cases'' for further discussion of this decision and the comments that relate to it.

Comment: One commenter asked what the definition of a two-parent family is and whether it includes a household in which both parents are not available for work. Another commenter stated a family's status as two-parent or not often changes in the course of a month and that, therefore, a family should not be considered a two-parent family in a month in which its status change.

Response: We believe that Congress did not intend to exclude from the definition of a two-parent family a family with two parents receiving assistance, neither of whom is disabled, even if they are ''not available for work'' or the family's status changed during the month. We interpret the statute to mean that, if a State grants assistance for both parents in a family (and neither is disabled), then it must be considered and reported as a two-parent family. If one parent is coming and going from the family in the month and the State does not provide assistance for that parent, then it seems reasonable not to consider it a two-parent family.

Comment: Several commenters noted that the NPRM did not define the term ''disabled parent,'' thus making it unclear which families should be excluded from the two-parent participation rate. Some urged us to leave the definition to States or to define it broadly to accommodate State policy. Others specifically urged defining it to include people who are temporarily disabled or incapacitated.

Response: We have not defined the term ''disabled parent'' in the final regulations so that each State may define the term as it deems appropriate.

Comment: Commenters urged removing from the denominator all persons exempt from work requirements based on valid State welfare reform waivers in effect prior to enactment of PRWORA.

Response: Please refer to subpart C of part 260 for discussion of how we will treat welfare reform waivers under the participation rates.

Comment: One commenter thought that we should remove families that are subject to a penalty from the calculation for the entire duration of a penalty rather than only if they have been in penalty status for less than three of the last 12 months. Alternatively, the commenter thought we should remove such a family if it has been subject to a penalty for less than three months in a fiscal year instead of the preceding 12 months.

Response: We do not have the authority to make either of the changes the commenter suggested because the statute is very precise about this provision. It specifies that sanctioned families are removed from the rate, but not if the family has been subject to the penalty for more than three months within the preceding 12-month period.

Section 261.25—Does a State Include Tribal Families in Calculating These Rates? (§ 271.25 of the NPRM)

States have the option of including in the participation rates families in the State that are receiving assistance under an approved Tribal family assistance plan or under a Tribal work program. If the State opts to include such families, they must be included in the denominator as well as the numerator.

Comment: A commenter urged that any rewards or bonuses a State receives due to including Tribal participants in the calculations should be shared with the Tribes in question.

Response: Nothing in these regulations precludes a State from sharing rewards or bonuses with Tribes; however, we do not have the authority to require a State to do so.

Comment: One commenter was confused by our discussion in the preamble to the NPRM. We said that where the State opts to include families receiving assistance under a Tribal TANF or Tribal NEW program, the families must be in the denominator as well as the numerator ''where appropriate.'' The commenter asked us to clarify whether a State is free to include or exclude such families from the numerator and denominator. The commenter also asked us to clarify the standards of participation and activities that applied for a State to count such a Tribal family.

Response: A State may, at its option, include or exclude families receiving assistance under a Tribal TANF or Tribal NEW program from the denominator of the State TANF participation rates. To be included in a State participation rate numerator for a month, a family must meet the standards for counting a family in that rate, both with respect to hours of participation and allowable activities. These standards apply whether the family receives assistance under a State TANF program, a Tribal TANF program, or a Tribal NEW program. We realize that many Tribal programs will have different standards of work and different activities, but to count toward a State rate, the family must meet the standards associated with that rate.

We wanted to be clear that, if a State did plan to count a family receiving assistance in a Tribal program, that family had to be included in just the same way that a State TANF family would be included, that is, in the denominator of the rate as well as the numerator. But since inclusion in the numerator is not automatic (because the family must meet the hours of participation in allowable activities), we added the phrase ''where appropriate.'' Since this was confusing, we modified the preamble discussion in the final rules.

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

Section 261.30—What Are the Work Activities? (§ 271.30 of the NPRM)

Section 407(d) of the Act specifies the 12 work, training, and education activities in which individuals may participate in order to be ''engaged in work'' for the purpose of counting toward the work participation rate requirements. Congress did not define these activities further. While some have commonly understood meanings from their use over time or from prior employment and training programs, several of the activities, such as ''vocational educational training'' and ''job readiness assistance,'' are subject to interpretation.

In considering whether to provide greater definition of the activities as part of the NPRM, we examined legislative intent and sought the views of a variety of groups on the matter. Most groups urged us to leave further definition to the States. Some urged us to define work activities in ways that fostered education while promoting work, emphasizing the importance of education and training in empowering many recipients to find meaningful employment, let alone to advance. Ultimately, we chose not to define the individual work activities in the NPRM in favor of giving States greater flexibility; we have not changed that position in the final regulations.

Because this flexibility could also be used in ways that do not further Congressional intent, under the data collection requirements at § 265.9, we are requiring each State to provide us with its definitions of work activities for its TANF program and with a description of work activities for any separate State program that requires them. We are concerned that different TANF definitions could affect the vulnerability of States to penalties for failure to meet the participation rate. This data collection will help us determine whether this is in fact a serious problem; to the extent possible, we want to ensure an equitable and level playing field for the States. Over the next several years, we will carefully assess the types of programs and activities States develop and will share the results of our findings. If necessary at some time in the future, we will initiate further regulatory action.

We would also like to remind States about some key research findings from prior welfare-to-work programs. According to the Manpower Demonstration Research Corporation's publication, Work First, the most successful work first programs have shared some characteristics: a mixed strategy including job search, education and training, and other activities and services; an emphasis on employment in all activities; a strong, consistent message; a commitment of adequate resources to serve the full mandatory population; enforcement of participation requirements; and a cost-conscious management style.

While the most successful programs consistently and strongly emphasize work, the actual program designs recognize and address the critical role education plays in preparing adults for work. As more and more recipients engage in work, State caseloads may reflect higher proportions of the educationally disadvantaged. In combination with other work activities, education may become more important in improving basic communication, analytical, and work-readiness skills of recipients. Thus, States may need to integrate adult basic skills, secondary education, and language training with high-quality, vocational education programs. Such program designs encourage recipients to continue acquiring educational skills necessary for higher-skill, higher-wage jobs.

We encourage States to adopt program designs that take advantage of existing educational opportunities. States may use the statutory flexibility to design programs that promote educational principles by:

- Actively encouraging adults and children to finish high school or its equivalent;
- Expecting family members to attain basic levels of literacy and to supplement their education in order to enhance employment opportunities;
- Encouraging family literacy; and
- Promoting community-based work-related vocational education classes, created in collaboration with employers.

States could also make it easier for individuals to combine school and work. For example, they could develop on-campus community work experience program positions, where child care is also available. They could also encourage schools to use work-study funds for students on welfare and then count the hours worked in those programs toward work requirements.

While we have not regulated the definition of work activities, we want to ensure that recipients and children both experience positive outcomes. This is a particularly significant issue when child care is the work activity. For this to happen, child care arrangements should be well developed, implemented and supported.

Research has found that quality child care is critical to the healthy development of children and that providers who choose to care for children create more nurturing environments than those who feel they have no choice and are providing care only out of necessity. Thus, States should assess whether recipients have an interest in providing child care before assigning them to this activity.

In addition, States should provide training, supervision and other supports to enhance caregiving skills if they wish recipients to attain self-sufficiency. Such supports, including training in health and safety (e.g., first aid and CPR), nutrition, and child development, would assist the development of both the caregivers and the children in care.

Finally, the stability of child care arrangements affects outcomes for both parents and the children in care. When parents feel comfortable with their child care arrangements, their own participation in the work force becomes more stable. This stability, in turn, fosters emotional security for children. Thus, States should take stability into account when assigning participants to child care as a work activity.

The majority of those who commented on this section of the proposed regulations supported our decision not to define work activities beyond the statutory list. We discuss other comments below.

Comment: Several commenters made suggestions about the content of work activities. Some urged us generally to ensure the quality of work activities by establishing minimum standards for the activity and for the provider. Others made suggestions about specific activities, urging us to give guidance or make requirements concerning particular elements of an activity. For example, one commenter thought that vocational educational training should conform to the definition of vocational education in the Carl D. Perkins Vocational Education Act; another suggested discontinuing on-the-job contracts with employers that do not provide long-term employment. In essence, these commenters wanted us to define certain of the activities or ensure that certain activities would be counted as work.

Response: We appreciate and share the commenters' concerns that work activities be designed to meet the needs of recipients and be effective in helping them become self-sufficient. However, we think that the goals and objectives of the legislation will be better served by having each State define the work activities. We believe States will use the flexibility of the statute to formulate a variety of reasonable interpretations leading to greater innovation,

experimentation, and success in helping families become self-sufficient quickly. It is true that States could conceivably include a range of activities that may not enhance work skills or might not be considered valid work experience by potential employers. However, in light of the five-year time limit and the criteria for the high performance bonus, we expect that States will work to establish programs that promote a family's long-term success in the workplace.

Comment: One commenter pointed out that we omitted the statute's limitation of the activity of ''work experience'' to instances where sufficient private-sector employment is not available.

Response: We have amended the regulations to reflect the statute's limitation.

Comment: A couple of commenters urged us to require that work activities comport with Federal employment laws in order to count for participation. One suggested that we require employers to post appropriate nondiscrimination notices. Another stated that Congress failed to include any provision limiting work activities to work at the minimum wage.

Response: We agree fully with the commenters that all TANF work activities should be lawful and should not subject participants to discrimination, unsafe working conditions or other circumstances prohibited by employment law. Nevertheless, we do not think the appropriate way to address the issue is to exclude certain work activities from the participation rate calculation in some States. Adjusting the rates would be administratively cumbersome and not necessarily equitable. As we have discussed earlier in the section of the preamble entitled ''Recipient and Workplace Protections,'' there are other entities, such as the EEOC, DOL and our Office of Civil Rights, that enforce compliance with civil rights and employment laws. Their mechanisms for monitoring and enforcing compliance are not linked to the timing of the participation rate calculation. In other words, a finding of noncompliance that they might issue would not necessarily be available within our timeframes for calculating participation rates. Moreover, even if we did receive timely information about noncompliance with employment requirements, because the participation rates may be based on sample data, it might be very difficult to determine the appropriate adjustments to make to the rates based on such findings.

Given these complications, we have not modified the regulation as the commenters suggest. We think it makes better sense to support the enforcing entities in carrying out their responsibilities. If, over time, we find significant problems that could warrant adjustments within the TANF program, we will consult with States, labor interests, Congress, and other interested parties about the appropriate steps to address these problems.

We have also included a new regulatory section at § 260.35 that addresses employment protections available to TANF recipients. Please refer to the preamble section entitled ''Recipient and Workplace Protections'' for a discussion of additional comments related to this issue.

We have addressed the Fair Labor Standards Act (FLSA) at § 260.35 of the final rule, in the preamble to § 261.16, and in the preamble discussion entitled ''Recipient and Workplace Protections.'' Please refer to those preamble sections for further discussion of the application of FLSA, including the minimum wage requirement, to TANF work activities.

Comment: We received support from a number of commenters for the discussion of the importance of education to TANF recipients that we included in the preamble to the NPRM. In response, we have repeated much of that discussion in this preamble to the final rule. We also received support for our guidance concerning the provision of child care as a work activity.

A couple of commenters urged us to incorporate that discussion, particularly our program design suggestions, into the text of the regulation itself. They argued that States would not create broader activities that combine work and education unless we specifically regulated in this area. Similarly, one commenter urged us to specify that we would not penalize a State for including a range of educational activities, from literacy programs through post-secondary education, in its definitions of work activities.

One commenter thought the proposed rule did not truly support the integration of work and education because it allowed each State to define the work activities. Instead, the commenter urged us to provide definitions that guide States in integrating work and education.

Response: We have not included our discussion of program designs within the text of the regulation. That discussion is intended to spark creative thinking about State choices in implementing TANF, rather than to prescribe a particular design for all States. It is also intended to underscore the important role we think education can play in TANF.

We have not included the kind of blanket statement the commenter suggests absolving States of any potential penalty liability for including a wide array of educational components in its work definitions. There are statutory limits on counting educational activities in the participation rates; a State that exceeded those limits could be subject to a penalty. Readers should refer to § 261.33 for a discussion of the limits on counting participation in educational activities in the participation rates.

As we indicated above, we have opted not to define the work activities to a greater degree than the statute does. We think that the preamble discussion gives States ample suggestions of ways to integrate education with work activities. We are also available to work with any State and its education community to help them design programs that will meet their particular needs.

Comment: One commenter stated that there is no provision to count participants in a GED program, adult basic education or English as a Second Language (ESL) in the participation rates and urged making them countable work activities. Another commenter urged adding a basic skills ''refresher'' course for those already holding a GED. A third commenter encouraged us to include student internships as a work activity.

Response: While we have no authority to add to the list of 12 work activities, a State could provide the education programs described in the first two comments under the existing activities. In particular, we point out that GED is explicitly part of the eleventh activity: ''satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence for a recipient who has not received a high school diploma or a certificate of high school equivalency.'' Similarly, student internships, depending on their content, may well meet a State's definition of one or another of its work activities. We would be glad to provide technical assistance to a State that has questions about incorporating activities such as these into its program design.

Comment: One commenter urged us to require States to include vocational educational training among their work activities.

Response: We understand the commenter's interest in seeing that recipients have the opportunity to enroll in training programs that will give them the skills to qualify for and keep higher paying jobs; however, we do not have

the authority to require a State to provide any specific work component.

Comment: One commenter expressed support for the development of micro-enterprises and other forms of self-employment, particularly in rural settings. The commenter urged increasing flexibility in this area by counting the period necessary to develop a business as participation.

Response: Again, the State has the flexibility to design and define work activities that meet the needs of its caseload, including creating a micro-enterprise development program. It is unclear from the comment precisely what activities the commenter believes should be considered work that are excluded either by statute or by a State's policies. We agree that any legitimate hours of work in the development of a business could contribute to the participation rate; however, for example, if the recipient is waiting for a loan approval, but not otherwise participating, it hardly seems reasonable to count that time as participation. The fact that something has value or is integral to a countable activity does not necessarily mean it can count as participation. We would be happy to work with States that would like technical assistance in this area.

Comment: One commenter expressed support for the requirement that a State provide us with its work definitions, citing its value for research into effective employment-related services. Another commenter objected to this requirement, maintaining that States must already submit this information as part of the State TANF plans.

Response: We think it is important to know how States are defining the activities because of the implications they have for penalties. We want to ensure that we enforce the requirements of TANF in a way that is as equitable to States as possible. We also agree that the definitions will help with research into effective program designs. We think it is reasonable to collect these definitions as an annual addendum to other data collection. Unfortunately, the TANF State plans do not necessarily include a State's work activity definitions. However, we have revised the reporting requirements at § 265.9(d) to allow a State that included such information in its plan to reference the plan or attach the appropriate plan pages.

Comment: One commenter objected to ''such a restricted list of countable work activities'' protesting that low-grant States will not be able to make use of several of the components because recipients will have too much income to continue receiving assistance. The commenter also stated that low-grant States will be adversely affected by the minimum wage requirements of the Fair Labor Standards Act (FLSA).

Response: States must weigh carefully their decisions about grant amounts and earnings disregards as they formulate State policy. The commenter is correct that a State's benefit rules may have implications for its participation rates, as well as for a family's time limit and for State budgets. However, these are largely matters of State discretion; the regulations reflect the statutory work activities. Readers should refer to the preamble at § 261.16 for a more detailed discussion of the FLSA and its effect on TANF work activities.

Section 261.31—How Many Hours Must an Individual Participate To Count in the Numerator of the Overall Rate? (§ 271.31 of the NPRM)

Section 407(c) of the Act specifies the minimum hours an individual must participate to count in the State's overall participation rate calculation. There are two related requirements. First, there is a minimum average number of hours per week for which a recipient must be engaged in work activities. The average weekly hours are reflected in the following table:

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

Second, the law requires that at least an average of 20 hours per week of the minimum average must be attributable to certain specific activities. These activities are:

- Unsubsidized employment;
- Subsidized private-sector employment;
- Subsidized public-sector employment;
- Work experience;
- On-the-job training;
- Job search and job readiness assistance for no more than four consecutive weeks and up to six weeks total in a year;
- Community service programs;
- Vocational educational training not to exceed 12 months;
- Provision of child care services to an individual who is participating in a community service program.

(Note: the limitation that at least 20 hours come from certain activities does not apply to teen heads of households; however, there are other limitations related to teen heads of households. Please refer to § 261.33 below.)

After an individual meets the basic level of participation, the following activities may count toward the total work requirement hours of work:

- Job skills training directly related to employment;
- Education directly related to employment for those without a high school diploma or equivalent;
- Satisfactory attendance at a secondary school or GED course for those without a high school diploma or equivalent.

In our consultations prior to drafting the NPRM, several people asked whether a State may average the hours of participation of different recipients to reach the minimum average hours required by the work participation rate, as they could in the JOBS program. PRWORA does not permit combining and averaging the hours of work of different individuals. However, the regulation and the statute permit averaging an individual's weekly work hours over the month to reach the minimum average number of hours per week required for that individual to be engaged in work.

We have reorganized the regulatory text slightly from the way it appeared in the NPRM for the sake of clarity, but this section still paraphrases the statute in simple, understandable terms.

The final regulations do not contain the chart we included in the NPRM depicting which work activities count in the first 20 hours and which count thereafter. We decided the chart no longer added to readers' understanding of the provision since legislative changes simplified the rules and its inclusion disrupted the regulatory text, making the policy more difficult to follow.

Comment: We received several comments expressing support for our clarification in the NPRM that a State may average an individual's weekly hours of work over a month. One commenter supported averaging, but without reference to an individual's hours in a month.

Response: For clarity, we would like to reiterate that the statute does not permit combining and averaging of hours of work of different individuals in the overall participation rate. Rather, it is an individual's hours of work from different weeks within a month that may be averaged.

Comment: Several commenters expressed concern about the effects of the FLSA in restricting the number of hours a State may require an individual to participate in certain work activities,

particularly work experience and community service. They emphasized the importance of these activities to individuals not ready for unsubsidized employment.

Concerned that the FLSA will impede a State's ability to meet the participation rate requirements, some commenters urged us to exempt these activities from the wage and hour requirements of the FLSA.

Response: We have no authority to exempt an activity from the requirements of the FLSA. We have tried to explain the basic effect of the requirements on TANF work activities in the preamble to § 261.16, but we urge interested parties to consult the Department of Labor's guidance entitled ''How Workplace Laws Apply to Welfare Recipients (May 1997)'' for more information. We would also like to point out that States have the option of increasing the amount of a family's grant and thus permitting an individual to engage in more hours of work in accordance with the FLSA. States should weigh policy decisions in this area very carefully; the interrelated effects on participation rates, a family's remaining months under the Federal time limit, and State spending on the TANF program are crucial aspects of TANF program design.

Comment: A couple of commenters expressed opposition to separating the work activities into those that count for the first 20 hours and those that count thereafter, questioning the regulation's support for educational attainment despite the preamble's discussion of its importance.

Response: The requirement that the three education-based activities can only count for participation after the first 20 hours is a statutory one; thus, we have no authority to alter it. That fact does not change our commitment to education for recipients who need it. We have suggested several possible models for combining education with other activities and stand ready to help States that would like technical assistance in this area.

Comment: A commenter urged us to make GED preparation and English as a Second Language (ESL) ''stand alone, countable'' activities because substantial portions of some State caseloads need basic education and language skills before they can hold even entry-level jobs.

Response: Clearly, both GED preparation and ESL fit within the list of 12 work activities enumerated in the statute.

We presume that the commenter's real concern is that the State cannot receive full participation credit for such educational activities because of the requirement that the first 20 hours of participation be attributable to the noneducational activities. This is a statutory requirement that we have no authority to change in the regulations. We urge States and localities to consider combining work and educational activities where it is appropriate in order to maximize participation credit. Although some individuals will not be able to engage in multiple activities, this could be a viable solution for many recipients.

Comment: One commenter, in stressing the importance of education to permanent self-sufficiency, urged us to include time spent on homework and fieldwork when calculating an individual's hours of participation.

Response: As we have indicated, it is each State's responsibility to define its work activities in a reasonable manner; thus a State could choose to include homework time as part of an activity. However, we encourage States to consider carefully how Congress intended to treat homework in determining ''engaging in work'' to ensure that its interpretation is reasonable.

It is unclear to us exactly what the commenter means by ''fieldwork''; if this refers to practical, career-based experience within the context of an educational activity, it might meet a State work activity definition. We have spoken to this issue in response to a comment about student internships above in the comments to § 261.30.

Comment: A commenter urged us to give partial credit for placing individuals in countable activities for fewer than the minimum average number of hours. For example, if the required hours are 20 and the individual participates for 10 hours per week, the commenter would have us count the case as 0.5 in the participation rate for that month. Another urged us to develop a means of giving a State credit for an individual's participation over a longer period of time than one month.

Response: The statute does not provide for counting a portion of a case in the participation rate and measures participation on a monthly basis; either the adult is engaged in work and the family counts in the rate or it does not and is not in the rate.

Comment: One commenter urged us to modify this section to include the provisions of § 261.35 or to include a cross-reference to it. That section indicates that we will count a single custodial parent caring for a child under the age of six as engaged in work if the parent participates in work activities for an average of at least 20 hours per week.

Response: The language of this section is consistent with the statute and does not need to incorporate the provisions of § 261.35 to take into account the full range of ways in which a family may meet the participation rate. We have tried to make these regulations easy to read. This means, in part, keeping sections reasonably short and separating different ideas into new sections. In this subpart in particular, we have tried to group all the provisions that relate to counting hours of work; it would be simply impractical to include all these provisions in one section.

We have decided not to reference § 261.35 to avoid multiple references to the other sections in subpart C, which we think readers will readily notice due to their proximity.

Comment: A couple of commenters urged us to give a State credit for an individual's ''excused'' absences from work, such as holidays or jury duty, as opposed to counting only actual hours of work. They thought that an absence beyond the individual's control should count as participation. Another commenter suggested that we count at least a portion of an individual's commute time when he or she must travel an extended distance to reach the job.

Response: The statute specifies the standard by which we must measure whether an individual is engaged in work. That standard is that a recipient ''is participating in work activities for at least the minimum average number of hours per week'' specified in the table in this section. Although the JOBS program gave us the discretion to establish a participation standard that considered scheduled hours and actual hours worked, TANF does not provide that flexibility.

However, consistent with ordinary practice for counting work time, a State could base the hours of work it reports on an employer's record of hours for which an employee is paid, thus accounting for paid holidays and jury duty days. Similarly, consistent with the ordinary practice for counting work time, we do not believe that commuting time can reasonably be considered ''engaging in work'' for any activity and therefore will not count it toward the participation rates.

Section 261.32—How Many Hours Must an Individual Participate To Count in the Numerator of the Two-Parent Rate? (§ 271.32 of the NPRM)

For two-parent families, section 407(c) of the Act specifies that the parents must be participating in work activities for a total of at least 35 hours per week and that a specified number of

hours be attributable to specific work activities. A State may have one parent participate for all 35 hours, or both parents may share in the work activities. 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 parents must be participating for a total of at least 55 hours per week. As before, a specified number of hours must be attributable to certain activities (listed below).

In the first situation (where the weekly total must be at least 35 hours), at least 30 hours must be attributable to the same narrow group of activities that applies to the 20-hour standard in the overall rate. In the second situation (where the weekly total must be at least 55 hours), 50 hours must be attributable to this narrow group of activities. Again, these are:

- Unsubsidized employment;
- Subsidized private sector employment;
- Subsidized public sector employment;
- Work experience;
- On-the-job training;
- Job search and job readiness assistance for no more than four consecutive weeks and up to six weeks total in a year;
- Community service programs;
- Vocational educational training (for not more than 12 months);
- Provision of child care services to an individual who is participating in a community service program.

Therefore, no more than five of the relevant minimum hours may be attributable to education related to employment, high school (or equivalent), or job skills training activities.

During our consultations prior to developing the NPRM, many thought it was unclear whether the 35-hour requirement was a minimum for each week or a minimum weekly average, as is the case in the overall rate. For example, if a parent participated 40 hours one week and 30 hours the next, the question arose whether he or she would meet the minimum requirement for both weeks. To provide maximum flexibility for States to meet the program goals, we clarified in the proposed rule and have maintained in the final regulations that, as long as the parents' average total hours equal at least 35 hours per week, the individual meets the participation requirement.

Other than this clarification, we have mirrored the statute. As in § 261.31, we have reorganized the regulatory text slightly from the way it appeared in the NPRM to make it clearer, but this section still paraphrases the statute in simple, understandable terms.

The majority of the comments on this section expressed support for our interpretation that the weekly hours requirement was a weekly average within a month and not a fixed number of hours for each week. Commenters emphasized that this will help States work flexibly with families and respond to emergencies or other family needs that affect hours of work in a particular week.

We also received many of the same comments in this section that we received in connection with the hours of work required for the overall participation rate. In particular, please refer to the preamble for § 261.31 for discussion of the comments and our responses about: the requirements of the FLSA; counting ''excused'' absences from work toward the participation rate; giving partial participation credit for participating below the hours of work standard; and reporting requirements for a week that spans two months.

Comment: A commenter noted that this section refers to ''an individual'' counting as engaged in work and urged us to substitute the word ''family'' instead.

Response: We recognize that both parents may actually be participating and contributing to the total number of hours required to be engaged in work, 35 or 55 hours depending on whether they receive federally-funded child care. We used the word ''individual'' because the statute, at section 407(c)(1)(B), uses that term. While this is not necessarily strictly accurate, it is no more accurate to describe the ''family'' as working; a family is counted in the participation rate, but it is one or two individuals who engage in work. We thought that relying on the language of the statute would be less confusing in this case.

Comment: One commenter advised us to modify this section to indicate that a family with a disabled parent should not be considered a two-parent family for the purposes of the participation rate calculations in accordance with the statute.

Response: The commenter is correct that the statute excludes families with a disabled parent from the two-parent participation rate calculation. We included this provision in subpart B where we describe the calculations for the participation rates. Please refer to § 261.24(d).

Section 261.33—What Are the Special Requirements Concerning Educational Activities in Determining Monthly Participation Rates? (§ 271.33 of the NPRM)

Section 407(c)(2)(C) of the Act provides that a teen who is married or the single head-of-household is deemed to be engaged in work for a month if he or she maintains satisfactory attendance at a secondary school or the equivalent or participates in education directly related to employment for an average of at least 20 hours per week. Paragraph (b) of this section paraphrases the language of this statutory provision.

To reinforce the emphasis on work, section 407 of the Act limits educational activities in two ways:

(1) An individual's participation in vocational educational training may count for participation rate purposes for a maximum of 12 months; and

(2) For each participation rate, not more than 30 percent of individuals determined to be engaged in work for a month may count by reason of participation in vocational educational training. In fiscal year 2000 and thereafter, this 30-percent limit also includes the teens deemed to be engaged in work by reason of maintaining satisfactory attendance at secondary school (or the equivalent) or participating in education directly related to employment, whom we described above.

When PRWORA was enacted, there was substantial controversy about precisely how the second limitation would apply. However, Pub. L. 105–33 modified this provision, making the limitation much clearer. The description above and the regulation at § 261.33 reflect the new provision, as amended by Pub. L. 105–33.

Based on some of the comments we received, we have made some minor modifications to the regulatory language as it appeared in the NPRM. The proposed regulatory language inadvertently suggested that only married heads-of-households, as opposed to any married teen, could be deemed to be engaged in work by virtue of this provision. In addition to correcting that error, we have modified the wording of the 30-percent cap to reflect the statute more closely.

We also want to explain the technical details of how we will interpret the provision relating to counting teens in educational activities for the purposes of calculating the participation rates. We are interpreting the deeming of teens as engaged in work based on satisfactory attendance in secondary school (or the equivalent) or 20 hours per week of

education directly related to employment to apply to both participation rates. While the provision might appear at first glance to apply to the overall rate alone, after considering Congressional intent and the legislative history, we think it is appropriate to apply it in the two-parent rate as well.

Because the two-parent rate, as amended by Pub. L. 105–33, permits the hours of the two parents to be combined to achieve the required weekly average, we needed to determine how many, if any, additional hours the parents would need to work in order to count in the two-parent rate when one parent was maintaining satisfactory attendance in high school or the equivalent. It seemed unreasonable and contrary to the spirit of the law to count the family without any additional hours; for example, that would allow a two-parent family to count based solely on the attendance of one parent in a GED class. Such a policy would support neither the educational welfare of the other parent nor the economic self-sufficiency of the family, faced with time-limited benefits.

To address these concerns, our rules incorporate the following policy for two-parent families: (1) we will consider satisfactory attendance at secondary school or the equivalent of a single head-of-household or married recipient under the age of 20 to equate to 20 hours per week of participation; thus, the parents would need a combination of 15 or 35 additional average hours per week (depending on which standard of hours applied to them) to count for the two-parent participation rate; and (2) if both parents in the family are under 20 years of age, we will consider them to be engaged in work if both meet the conditions of § 261.33(b), that is, if both are either satisfactorily attending school or equivalent or participating in education directly related to employment for at least 20 hours per week. Our rationale for equating satisfactory attendance in secondary school with 20 hours of participation is that the statute makes the presumption that such attendance is equivalent to 20 hours in education directly related to employment.

Comment: One commenter, while acknowledging the statutory origin of the 30-percent cap, nevertheless objected to the provision as it relates to teens in secondary education. The commenter stated that a mandated activity cannot have a cap.

Response: The commenter is correct that the 30-percent limitation is required by the statute; however, we would like to address the question of secondary education as a mandated activity. The commenter is referring to section 408(a)(4) of the Act, which prohibits a State from using TANF funds to assist a single parent under the age of 18 who has not completed high school (or equivalent) unless he or she attends high school (or equivalent) or a State-approved alternative education or training program. Both provisions underscore the importance of basic education for teens but are distinct in their effects within TANF. Even if the teen populations and the activities described were identical, which they are not, the central difference between the two provisions is that one mandates what the teens must do and the other restricts what a State receives credit for in the participation rate.

Comment: We received several comments urging us to count post-secondary education toward the participation rate and recommending that the regulations explicitly indicate that it is a TANF work activity.

Response: As we have indicated above, we do not have the authority to create additional work activities beyond the 12 statutory activities. Nevertheless, depending on whether and how the State chose to incorporate it into its TANF structure, post-secondary education could fit within the definition of 1 or more of the 12 activities. The appropriateness of categorizing it as one activity versus another would depend on the nature of the post-secondary program, such as whether it were vocational training.

We would also like to emphasize that States have the flexibility to design programs that allow recipients to combine school and work. We have suggested some possible models for this in the preamble to § 261.30 and are ready to work with States that want help in pursuing such program designs.

Comment: A couple of commenters objected to the limitations on vocational educational training, both an individual's limit to 12 months and the 30-percent cap. They stressed that States should be free to design vocational programs that are effective in moving participants into permanent employment, which may require more than one year of training.

Response: States are free to design and operate vocational programs that take longer than one year to complete; the limitation is strictly about the period of time for which a State could receive credit for a recipient's participation in that program. The limitation, while potentially discouraging States from designing certain long-term programs, is statutory and beyond our authority to modify. Again, we would like to point out that combining vocational training with practical experience that could count as another activity may be a viable approach in many cases. Moreover, States should consider that effective vocational education programs, or other programs that succeed in moving recipients from welfare to work, will contribute to the likelihood that the State will qualify for a high performance bonus or caseload reduction credit. We are awarding the high performance bonuses based on several criteria, including the number of new hires, increases in earnings and job retention. Thus, in spite of the limits on counting vocational educational training as participation, there are other incentives to designing effective vocational education programs.

Comment: A commenter noted that the proposed regulations and preamble did not indicate that a State has discretion to determine how to measure the 12-month limit on counting an individual's participation in vocational educational training.

The commenter also urged us to amend the regulations to indicate that a State that combines education with other activities would necessarily be able to count these activities in the participation rates.

Response: States have limited flexibility in this area. If a family is included in the numerator of a participation rate for a month by virtue of participation in vocational educational training, then that month counts against the 12-month limit for that individual.

If a State reports hours of participation in an activity that meet the requirements of this subpart, then the hours would count in the participation rates, and the month would count as a month or participation in the activity, regardless of whether the individual performed them in combination or separately.

We have stressed the possibility of combining education and work activities in part because of the statutory limits, reflected in these regulations, on how educational activities may count for participation purposes. In addition, we believe that encouraging recipients to acquire new and more advanced skills after they have entered the work world will help them attain and keep higher-paying jobs, leading to more economic security for families.

Section 261.34—Are There Any Limitations in Counting Job Search and Job Readiness Assistance Toward the Participation Rates? (§ 271.34 of the NPRM)

Section 407(c)(2)(A)(i) of the Act limits job search and job readiness assistance in several ways.

First, an individual generally may not count as engaged in work by virtue of participation in job search and job readiness assistance for more than six weeks. No more than four of these weeks may be consecutive. During our consultations prior to drafting the NPRM, we were asked whether these limitations applied for the lifetime of the individual, per spell of assistance, or per fiscal year.

Based on those consultations, after an analysis of the statute, we decided in the NPRM to interpret it as a fiscal-year limit for two policy reasons. First, since the participation rate itself is tied to the fiscal year, it makes sense to apply the limitation to the same timeframe. Second, a different policy could force States to place individuals in other, less appropriate activities just to meet the participation rate. Moreover, research indicates that job search activities are an instrumental component in effective work program designs.

The statutory language supports the fiscal-year interpretation. The job search language at section 407(c)(2)(A)(i) of the Act limiting the weeks of participation states that the limit is ''notwithstanding paragraph (1).'' Paragraph (1) refers to the determination of whether a recipient is engaged in work for a month ''in a fiscal year.'' Thus the reference to paragraph (1) puts the job search limitation in the context of a calculating whether an individual is engaged in work in the fiscal year. Based on these considerations, we clarified in the proposed rules that the six-week limitation applies to each fiscal year and have not changed that interpretation in the final regulations.

The legislation and our rules allow the 6-week limit on job search and job readiness assistance to extend to 12 weeks if the unemployment rate of a State exceeds the national unemployment rate by at least 50 percent, or if the State could qualify as a needy State for the Contingency Fund.

Finally, our rules paraphrase the statute (at section 407(c)(2)(A)(ii) of the Act) in allowing a State to count three or four days of job search and job readiness assistance during a week as a full week of participation on one occasion for the individual.

Comment: We received many comments in support of our interpretation that the job search and job readiness limit applies on a fiscal-year basis. However, one commenter thought we were too specific and should allow States to interpret the limitation.

Response: We have not modified the regulation as the commenter suggests. We think it is reasonable to apply one standard to all States. Given the overwhelming support for the fiscal-year interpretation and the statutory and policy support we provided for it above, the final regulations maintain that policy. This policy only limits the maximum job search and job readiness that count for participation purposes. States still have flexibility in determining how much an individual should actually participate in such activities, including the flexibility to apply the job search and job readiness limit on a lifetime basis for an individual if they so choose.

Comment: A commenter thought that the way in which we paraphrased the statute's limit on job search and job readiness to not more than four consecutive weeks was confusing and urged us to use the statutory wording.

Response: We have modified this section to follow the statute's language more closely. We have left the provision limiting the number of consecutive weeks separate in paragraph (c) because we think it is easier to follow this way, but have changed the wording within the paragraph in response.

Comment: A few commenters objected to limiting job search and job readiness to four consecutive weeks, arguing that there is no rationale for stopping at that point or that it is simply too short a period of time to ensure that recipients will find jobs. A couple of other commenters objected to the six-week total limitation for essentially the same reasons and urged us to create a longer time period.

Response: There is no limit on the amount of job search and job readiness a State may require of an individual. However, the statute imposes limitations on how much the activity counts toward the participation rate. We have no authority to extend the it counts, other than when a State meets the criteria for counting 12 weeks of job search and job readiness assistance instead of 6.

Comment: Two commenters recommended that we separate job search assistance from job readiness assistance and establish separate limits on each activity.

Response: In determining whether an individual is ''engaged in work'' for the participation rates, the statute provides for 12 different work activities. One of those activities is ''job search and job readiness assistance''; the statute does not recognize them as separate components. As we indicated in the discussion at § 261.30, we do not have the discretion to add to those activities or to separate job search from job readiness. If a State has two different activities as part of its TANF program, it would have to count an individual's participation in either one toward the limits described in this section.

Comment: A commenter suggested that we clarify the regulations to allow a State to apply the extended job search and job readiness provision to a ''needy political subdivision'' as it would if the State were a ''needy State.''

Response: The statute is very specific in describing the two conditions under which 12, rather than 6, weeks of job search and job readiness can count toward the participation rates. One of those conditions is when the ''State'' qualifies as ''needy'' under the Contingency fund definition. That definition applies to a State as a whole; therefore, there is no mechanism by which to apply it to a political subdivision.

Comment: One commenter recommended that the regulations ensure that a State has advance notice of whether it qualifies to count individuals for the extended 12 weeks of job search and job readiness in a fiscal year. The commenter argued that this would let the State plan which activities to make available to its recipients in order to meet its work participation rate.

Response: As we indicated above, there is no limit on the amount of job search and job readiness a State may require of an individual; the limitation is on how many hours of the activity count toward the participation rates. We hope that a State would not, as the commenter suggests, withhold access to job search and job readiness—or any activity, if it were the most appropriate for a recipient—and require participation in another activity, solely for the purpose of meeting the participation rate. The participation rates represent a requirement on the State, not a requirement on specific individuals, and the State can inherently meet the participation rates even if every individual is not in a countable activity.

Further, we have no ability to make an advance determination that a State qualifies for a 12-week job search limit because the data are not available in advance and the statute authorizes the 12-week limit based on a State's current situation.

Comment: One commenter objected to the provision permitting a State to count three or four days of job search and job readiness assistance as a full week of participation because the data collection system in the commenter's State does not allow it to count hours of participation on that basis.

Response: This provision is not a requirement. Any State that does not wish to count three or four days of this

activity as a full week of participation is not required to do so. The origin of the provision is statutory; we presume the intent was simply to make it easier for States to receive participation credit for this activity.

Section 261.35—Are There Any Special Work Provisions for Single Custodial Parents? (§ 271.35 of the NPRM)

Section 407(c)(2)(B) of the Act provides a special participation rule for single parents or caretakers with young children. A single parent or caretaker with a child under the age of six will be deemed to be engaged in work for a month if he or she participates in work activities for an average of at least 20 hours per week.

This provision has little relevance in FYs 1997 and 1998, when, for the overall rate, the required number of hours for all individuals is 20 hours per week. But, when the required number of hours rises to 25 hours per week in FY 1999 and to 30 hours per week thereafter, this provision allows single parents or caretakers to spend time with younger children. It also may enable those with young children to fulfill their work obligations while their children are in preschool activities.

The regulations paraphrase this statutory provision.

There were no substantive comments on this section.

Section 261.36—Do Welfare Reform Waivers in a State Affect the Calculation of a State's Participation Rates? (§ 271.36 of the NPRM)

This section is simply a cross-reference to subpart C of part 260, which addresses welfare reform demonstration waivers. We thought it would be helpful to include it so that readers would know to refer to this important exception to the work activities and hours specified in subpart C. We have changed the reference from what it was in the NPRM, in light of our consolidation of the regulatory provisions relating to waivers under part 260.

There were no comments on this section.

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

Section 261.40—Is There a Way for a State to Reduce the Work Participation Rates? (§ 271.40 of the NPRM)

To ensure that States receive credit for families that have become self-sufficient and left the welfare rolls, Congress created a caseload reduction credit. The credit reduces the required participation rate that a State must meet for a fiscal year. It reflects the reduction in the State's caseload in the prior year compared to its caseload under the title IV–A State plan in effect in FY 1995, excluding reductions due to Federal law or to State changes in eligibility criteria.

This provision enhances the inherent interest of States to help families become independent. As a State reduces its caseload, its risk of incurring a penalty lessens because lower work participation rates are easier to achieve. This provision also increases a State's chance of qualifying for a lower basic MOE requirement, which would reduce its risk of incurring an MOE penalty.

To establish the caseload base for FY 1995, we proposed using the number of AFDC cases and AFDC Unemployed Parents reported on ACF–3637. To avoid artificial reductions in the minimum participation rates, the NPRM included cases in any separate State program used to meet the maintenance-of-effort (MOE) requirement in determining the prior-year caseload. Under the proposed rules, we would not have granted a caseload reduction credit unless the State reported case-record information for its separate State programs.

Comment: Some commenters suggested that allowing States to reduce their work participation rates emphasizes caseload reduction over the goal of self-sufficiency. Others strongly supported the caseload reduction concept.

Response: By including this provision in the statute, Congress sought to recognize State success in moving individuals off assistance. We believe this provision comports closely with both statutory language and intent.

Comment: One commenter asked us to include explicit language to the effect that we would apply the caseload reduction credit to reduce the participation standards before evaluating State performance.

Response: Different groups will evaluate State performance in a variety of ways. For purposes of determining potential penalty liability, we will compare a State's actual participation rates with the rates that apply following any adjustments due to caseload reduction credits.

Comment: A substantial number of comments addressed our proposed method of using reported AFDC data to establish the 1995 caseload baseline. First, several correctly pointed out that the Statistical Report on Recipients Under Public Assistance is ACF–3637, not ACF–3697. In addition, many commenters thought that, to conform to the statute, the base-year calculation should include not only the AFDC population, but also recipients of assistance under the Emergency Assistance program (EA) funded under title IV–A and cases receiving At-Risk and transitional child care benefits.

Other commenters suggested that two-parent families receiving TANF assistance are not comparable to AFDC Unemployed Parent (AFDC–UP) cases because TANF does not restrict two-parent families as AFDC–UP eligibility rules did. They argued that, to be fair, we ought to compare ''apples to apples'' and ''oranges to oranges.'' Most recommended either not counting two-parent cases at all or allowing States to adjust the base-year caseload reports to include any two-parent cases that were not AFDC–UP cases. They also recommended adjusting the reports to correct inaccuracies.

Response: We agree with these commenters that, to some extent, our proposal compared ''apples to oranges.'' In developing the NPRM, we recognized that the calculation should reflect an unduplicated count of cases receiving ''assistance'' under either AFDC or EA. However, from the data reported to us, we could not unduplicate the AFDC and EA case counts or determine which, if any, of the EA benefits constituted ''assistance.'' In our consultations, many State staff told us that they would also not now be able to unduplicate AFDC and EA cases for fiscal years 1995 and 1996. Thus, for consistency, we limited the base-year data to AFDC cases reported on the ACF–3637. Based on the comments and further internal discussion, however, we believe it would be fairer to afford States the opportunity to adjust and correct baseline data if they can do so because adjustments would make the base-year and prior-year caseload figures more comparable. For example, it would not be appropriate to include certain EA cases in the base-year caseload because, as recipients of ''one-time, short-term'' benefits, such cases would not be receiving TANF ''assistance'' and do not show up in the prior-year TANF caseload. However, if there were EA cases in 1995 that received ''assistance'' and that did not receive both EA and AFDC benefits, it would be appropriate to include those cases in the base-year caseload.

To allow for more comparable caseload data, we have modified the final rule. We will adjust the base-year case count for any State that can provide accurate adjustment data or unduplicated case counts, for example, through a computer match of each month's 1995 AFDC and EA caseload and subsequent years. This includes reliable information on the actual

number of two-parent cases in its AFDC caseload for applicable years. However, we will only include EA cases to the extent that the assistance provided under EA would meet the TANF definition of assistance.

Comment: Some commenters suggested that some types of cases from FY 1995, such as State General Assistance (GA) cases, are not included in the baseline, but should be. They argued that analogous cases are served in separate State programs and thus will be included in the comparison year.

Response: We appreciate the commenter's point and agree that, in this regard, we are not comparing like cases. However, we cannot include GA or similar cases in the base-year because the statute specifies that we compare cases ''that received aid under the State plan approved under part A (as in effect on September 30, 1995) during fiscal year 1995.'' To the extent that such cases are in the prior-year caseload, but not in the 1995 base because the State has expanded its eligibility criteria since 1995, the net caseload decrease calculation will adjust for this difference. Please refer to § 261.42 for additional discussion.

Section 261.41—How Will We Determine the Caseload Reduction Credit? (§ 271.41 of the NPRM)

In the proposed rule, we explained how difficult it was to develop an appropriate methodology to quantify the different types of caseload reductions. We had considered and rejected two alternatives, i.e., the use of Medicaid records to estimate the effect of eligibility changes (since Medicaid eligibility is based on the July 1996 AFDC eligibility rules) and a computer simulation model. Neither alternative could produce reasonably accurate estimates of the effect of eligibility changes on the caseload size. Nor did our extensive consultations provide a straightforward methodology that could be universally applied.

As a result, the NPRM proposed a caseload reduction methodology based on State-submitted information and estimates. These regulations incorporate the same basic approach. Under the final rules, we determine the appropriate caseload reduction for each State using the following process:

Step 1—We compare 1995 AFDC and Unemployed Parent caseload data to State-reported TANF and SSP-MOE caseload data for the prior-year.

Step 2—The State submits a Caseload Reduction Report that provides: a complete listing and implementation dates of State and Federal eligibility changes since FY 1995; a numerical estimate of the impact on the caseload since 1995 of each eligibility change; an overall estimate of the net cases diverted from assistance as a result of eligibility changes; an estimate of the State's caseload reduction credit; the number and distribution of caseload closures and application denials, by reason; a description of the methodology for the estimate, as well as supporting data to document the information in the report; a certification that it incorporated all net reductions, there was an opportunity for public comment on the content of the report, and it considered such comments; and a summary of all public comments. (We have included the Caseload Reduction Report form and instructions at Appendix H.)

Step 3—We compare and analyze each State's methodology, estimates, and data to determine whether they are plausible. We may request that a State submit additional information within 30 days to support the estimates. In addition, we will conduct periodic on-site visits and examine case records to validate the information we have received.

Because eligibility changes often affect two-parent cases differently from the overall caseload and the two-parent rates are distinct, the NPRM required States to submit separate estimates and information for the overall and two-parent rates to receive a caseload reduction credit.

Comment: Many comments noted how difficult it is to measure the impacts of policy changes and achieve comparability or equity among States. One suggested that the only accurate way to determine the caseload impact of a policy change is to use experimental and control groups. A few commenters suggested using a ''quality control'' model or system based on sampling, exception criteria, and audits to establish the estimates of policy changes.

A number claimed that we had shifted the statutory burden and responsibility for calculating the caseload reduction credit from us to the States, with mixed views as to whether this was appropriate. One cited the specific statutory language requiring that the regulations ''shall place the burden on the Secretary to prove that such families were diverted as a direct result of differences in such eligibility criteria.'' Some expressed concerns about the standards to which we might hold States seeking caseload reduction credits (i.e., in quantifying the effects of eligibility changes).

Another suggested that the Secretary has an obligation to pay for obtaining such data.

Others, while expressing concern with the proposal, agreed that it would be difficult for us to develop a sounder methodology that could be used in every State. Several commenters noted that the methodology imposed a tremendous burden because States may not have retained or may never have collected the information needed to make estimates. Some urged working with States to find a reasonable or less burdensome method of measuring the caseload reduction. Others suggested that, working in partnership with States, we should provide technical assistance to help States do the required analysis.

Response: We are glad that commenters clearly understood the difficult dilemma posed in developing a caseload reduction methodology, and we are sympathetic to their concerns about the burden our proposed methodology would impose on States. However, we believe that the specific recommendations for methodological alternatives, such as a quality control model, ultimately would impose an even greater information collection burden on States, without a guarantee of more precise estimates. Therefore, in the final rule, we are retaining the same general approach, while adopting some suggested improvements. We have clarified that we will accept State estimates of the impact of eligibility changes and the resultant caseload reduction credit, unless they appear to be implausible, based on the common experience of other States. In these situations, we will ask the State to re-examine its estimate in light of this new or additional information.

At the same time, we have clarified our expectation that States provide aggregate information on the number and distribution of case closures, by reason. At a minimum, States must provide this information for the base year (1995) and prior year. The NPRM asked for a listing of reasons, but did not directly say we were looking for quantitative information that might reveal any significant shifts in the causes of case closures that might be associated with changes in State policies. We also decided to ask for similar data on application denials and added an explicit requirement that States report an overall estimate of the net number of cases diverted due to eligibility changes.

We understand that the caseload closure and application denial information that we are requesting may not directly measure the caseload effects of eligibility changes, especially over time as the effects of changes decay and reporting practices may shift. However, it is useful information for a State to consider in preparing its Report, it will give the public a context for assessing and commenting on the State's methodology and estimates, and it will give us a national set of data that will

enable us to judge the plausibility of individual State determinations.

As suggested, we have consulted—and intend to work in partnership with—States, State groups, and advocates to develop appropriate estimates, complete the caseload reduction analysis, and refine their estimating methodologies.

We thought it would be helpful for States to have all forms related to the rule published together. As a result, we have included, under Appendix H, the Caseload Reduction Report form and instructions for completing it. Although the form itself was not part of the NPRM, we addressed the burden associated with the caseload reduction estimates in our paperwork burden estimate. Anyone wishing to comment on the form or burden should submit comments to the Office of Management and Budget. Please refer to the section of the preamble titled ''Paperwork Reduction Act'' for further information.

Regarding the suggestion that the Secretary pay for obtaining such data, we would say: (1) Congress did not appropriate funding for this purpose; (2) many States can draw upon analyses done for other purposes to reduce the cost burdens associated with these determinations (For example, in proposing changes to eligibility rules, some States will routinely prepare estimates of caseload and budgetary impacts of those changes as part of the State budgetary and legislative process.); (3) if such estimates are not otherwise available, because of caseload reductions and the strong economy, in general, States have substantial funds available to do research and analysis; and (4) we expect the burden of these reports to diminish over time because State program rules should become less subject to change and States will have developed the methodological framework for producing their estimates.

Comment: Several commenters objected to using case closure information as the basis for estimates, because the reason for closure is often unknown and the coded reason is sometimes incorrect. Others suggested that different eligibility rules affect applicants as well as recipients and thus the reason for an application denial is just as important as case closure information in determining the effect of a policy on the caseload.

Response: While we recognize the deficiencies in both case closure information and application denial information, it is generally the most readily available State information that we can use to help assess the impact of policy decisions. Therefore, we have retained the requirement of submitting case closure information in the final rule. Also, we have added a requirement to submit similar application denial information. In addition, we have clarified that we are looking for quantitative information.

While we are not requiring it, a State may conduct surveys or in-depth reviews to establish more accurate estimates of the effect of policy changes and use this information in place of case closure and application denial data from case files.

Comment: Numerous comments noted that the statute does not address whether there should be separate caseload reduction calculations for the overall and two-parent rates. Some thought that, if the State had achieved an overall caseload reduction, it was unfair to penalize it for an increase in two-parent households (especially when it implemented these policies to help keep families together—a purpose of the statute). Some commenters recommended applying an overall caseload reduction credit to both rates. Others liked our proposed approach of two separate calculations, each based on reductions in the applicable caseload. Many suggested that States should be afforded the option to choose whether to use one or two calculations. One commenter suggested that, if we retained the approach of two separate calculations, we should allow a State to request and submit estimates on only one rate, if a reduction credit were not appropriate for the other.

Response: Resolving this issue is critically important because of its impact on preparing families for work and self-sufficiency, the potential penalty liability of States, and the lack of guidance on Congressional intent. We were persuaded by the comments that providing an option would be an appropriate way to ensure that States that adopt policies to promote two-parent families would not be penalized. In particular, we thought it made sense to allow States credit for success with its total population, since the two-parent caseload is a subset of that total, generally a very small subset. It also allows us to give flexibility to States to accommodate differing circumstances. At the same time, we were concerned that allowing an option could reduce the strong Congressional mandate for two-parent families to prepare for and engage in work, because States that were particularly successful in achieving overall caseload reductions could reduce their target two-parent participation rates to minimal levels.

To help us make this decision, we analyzed caseload data for fiscal years 1995, 1996 and 1997, TANF participation rates for FY 1997, and preliminary participation rates for FY 1998. We determined that providing a State option would not nullify the two-parent participation requirements, as we had feared. In fact, our analysis showed that more States derive a greater caseload reduction credit from calculating two separate credits, i.e., applying the two-parent caseload reduction to the two-parent rate.

Based on this analysis and to accommodate State circumstances better, we have decided to allow States an option regarding the caseload reduction credit for the two-parent participation rate. A State may use the overall reduction credit for its two-parent rate or may opt to submit separate caseload reduction information on its two-parent caseload and base the credit for the two-parent rate on reductions in the two-parent caseload alone. States do not have the option of applying to the overall rate a reduction credit based on reductions in the two-parent caseload.

Comment: A commenter asked that the rules clarify that the State's methodology must account for the ongoing effects of an eligibility change beyond the initial year.

Response: We agree with this comment. The final rule requires estimates of the effects of all eligibility changes since FY 1995.

Comment: Many State commenters noted that it would be better to know their caseload reduction credits earlier in the year, but then noted that two weeks might not be enough time to provide any additional information requested by ACF. Several suggested that States need at least one month to provide supplemental information. Others suggested that we negotiate an appropriate deadline with each State, based on the information needed.

Response: We recognize that States may need more than two weeks to provide additional information. Therefore, we have modified the final rule to allow a State to negotiate the information deadline or submit it within 30 days of the request. We believe that it is important to resolve such matters within a short timeframe so that States will know what participation rates they must meet as soon as possible.

Comment: Several commenters suggested that States and the Department would both benefit from making each State's methodology and plan available for public review and comment. That way, other organizations would be able to provide another perspective on eligibility changes and their impacts on the caseload. For the

purpose of public review and comment as well as sharing methodologies and approaches among States, several commenters suggested that we electronically post each State's estimates and methodology.

Response: We agree that both States and the Department would benefit from public input on the estimates and methodology. Therefore, in the final rule, we have required a State to certify that it has provided the public an appropriate opportunity to comment on the estimates, methodology, and reductions. To allow time for public input, we have extended the due date of the Caseload Reduction Report until December 31 of each year. We also require a summary of the public input. To enable us to learn effective estimating techniques from each other, we intend to post electronically useful illustrative estimates, techniques, and comments on the ACF World Wide Web page at http://www.acf.dhhs.gov.

Comment: Several commenters objected to the requirement that the Governor certify the caseload reduction figures, e.g., ''the not-too-subtle implication that States will not be truthful is both offensive and unnecessary.'' One suggested that surely the Governor's designee should be able to ''certify'' that the State had taken into consideration all reductions.

Response: We agree with the suggestion and have made the appropriate change in the rule.

Comment: A number of comments suggested that we strike the provision that requires a State to report disaggregated data on families in separate State programs in order to qualify for a caseload reduction. Some maintained that requirements for disaggregated data on separate State program cases exceed our authority. As an alternative, some suggested that aggregated caseload data should suffice.

Response: If a State moves a family receiving TANF assistance to a separate State program where it receives benefits meeting the definition of assistance, this change in the family's status would represent an eligibility change if we did not include separate State program (SSP) cases in the caseload count. Therefore, unless we require and receive the SSP information, it would be impossible to calculate the appropriate caseload reduction credit. However, we point out that, under the final rule, we have significantly reduced the amount of data we are requesting on SSP cases. Most of this cutback is due to a reduction in the number of programs and types of cases for which States must report data. This is one of the effects of changing the definition of assistance. We have also reduced the burden by changing some data elements and changing the amount of data we expect on other individuals in the family (i.e., those not receiving assistance).

Comment: Some comments suggested reducing the data collection burden by actually treating a transfer to a separate State program as a change in eligibility and estimating the impact on the caseload reduction.

Response: We do not agree with this suggestion. Since we are expecting States to report case-record information on separate State programs, we believe actual caseload numbers will be available and there is no reason to develop or accept estimates.

Also, States and other commenters argued that, to the extent possible, the methodology should compare ''apples'' with ''apples,'' not ''oranges.'' We believe that including the SSP cases in the prior-year caseload best serves that objective. Because SSP cases will be receiving benefits that address their basic needs, we expect that, generally, they will be comparable to AFDC cases.

Section 261.42—Which Reductions Count in Determining the Caseload Reduction Credit? (§ 271.42 of the NPRM)

Congress enacted the caseload reduction provision to give States credit toward participation for families that have achieved self-sufficiency or left the welfare rolls due to work, marriage, child support, or other means of support. The statute does not give caseload reduction credit for Federal or State eligibility changes that deny assistance to vulnerable families.

In the NPRM we gave States full credit for caseload reductions, except when those caseload reductions arose from changes in rules that directly affect a family's eligibility for benefits (e.g., more stringent income and resource limitations, time limits, grant reductions, more restrictive residency, age, demographic or categorical factors). States could take credit for the calculable effects of mechanisms or procedural requirements used to enforce eligibility criteria (such as fingerprinting or other verification techniques) only to the extent that they identify or deter ineligible families under the State's rules.

We also proposed that, in order to qualify for a caseload reduction, a State must report data on families in separate State programs. Based on the type of family served or the nature of benefits provided, we proposed that we would exclude some families in separate State programs from this calculation, if a State demonstrated that the cases would not have been included under AFDC or EA, based on specific data on the family.

Comment: In determining the Federal and State eligibility changes that do not count for the caseload reduction credit, a number of commenters recommended using a concept of net caseload change. They suggested that eligibility changes that result in caseload reductions should be offset by the positive policy choices of States that increase the caseload. To illustrate: if a State-imposed time limit resulted in the termination of 1,000 cases in a year, but the elimination of the ''100-hour rule'' and the ''attachment to the workforce'' requirements to encourage two-parent family formation added 300 families, only 700 cases would not count toward the State's caseload reduction credit. These commenters suggest that an alternative reading discourages States from adopting proactive policies that are consistent with the intent of the law, such as making work more attractive and encouraging and supporting the formation of two-parent families.

Response: Like commenters who offered these suggestions, we are very supportive of policies that promote work, enhance family formation and help make work pay. Given our desire to encourage family-supportive policies, we found this proposal to mitigate caseload reduction incentives appealing. We also think that the concept of a net eligibility decrease, taking all eligibility changes into consideration, provides an opportunity to improve the comparability of caseloads, i.e., it would result in comparing ''apples to apples'' rather than ''apples to oranges.'' Many States have dramatically increased their earned income disregards and resource limits and eliminated various categorical requirements. Thus, many current recipients would not have been eligible under the 1995 AFDC criteria. To avoid penalizing States for such positive changes, we have adopted the recommendation of using the net number of cases diverted from TANF due to eligibility changes in determining the caseload reduction credit.

Two examples illustrate how the concept will actually work. Consider a State in which the caseload was 100,000 in FY 1995 and fell to 75,000 in FY 1997. The State estimates a caseload decrease of 15,000 due to time limits and other restrictive eligibility rules and a caseload increase of 10,000 because of increased earnings disregards and resource standards. In this example, the net caseload reduction due to eligibility changes is 5,000. This means that, of the actual decline of 25,000 cases, 20,000 count toward the caseload reduction

credit. Thus, the State's caseload reduction credit for FY 1998 is 20 percent, (because 20,000 is 20 percent of 100,000).

To demonstrate what happens when caseload increases due to eligibility changes exceed eligibility-related decreases, we simply reverse the example above. The State's caseload fell 25 percent, from 100,000 to 75,000 between FYs 1995 and 1997. In this example, the estimated decline attributable to time limits and other restrictions is 10,000. The estimated increase due to higher earnings disregards and resource limits is 15,000. Because the net effect of eligibility changes is a 5,000 increase in the caseload, there would be no net number of cases diverted from TANF as a result of eligibility changes. Since there is no net reduction, we do not disregard any cases from the actual decline of 25,000. Thus, the State would be entitled to the entire 25-percent caseload reduction credit.

Comment: Several commenters suggested that cases analogous to some cases in separate State programs were not included in the FY 95 baseline and therefore would improperly inflate the comparison year caseload, if included. All these commenters asked that we exclude families in separate State programs from the caseload reduction calculation. Others noted that, while the statute does not directly address this issue, there is a legitimate need to look at cases in separate State programs in the calculation. Otherwise, a State could do something like simply move half of its cases to a separate State program and assert a 50-percent caseload reduction.

Response: Congress did not intend to give States credit for caseload reductions resulting from changes in eligibility. We believe that when a State moves a family receiving TANF assistance to a separate State program, it would represent an eligibility change if we did not include it in the caseload count; therefore, we have not modified the regulation as some of the commenters suggest. However, as noted elsewhere, we have modified the reporting for separate State programs. This change has the effect of reducing the number and type of SSP cases reported by the State.

Comment: Commenters objected that we had inappropriately retained discretion (by using the language, ''we will consider excluding cases'') to exclude cases in separate State programs that duplicate TANF cases or were made ineligible for Federal benefits by Pub. L. 104–193. Several found that the three categories of exclusions appear to be more ambiguous and discretionary than appropriate. Some commenters thought the third category—cases receiving tax credits, child care or transportation subsidies or other benefits for working families that are not directed at their basic needs—was particularly confusing. Most recommended that we explicitly exclude from the caseload reduction calculation, cases in separate State programs that: (1) duplicate cases in the TANF caseload; (2) provide assistance to immigrants made ineligible for Federal benefits; and (3) provide income support or services to low-income, working families for whom employment provides the primary source of income.

Response: Generally, we agree with the comments and have made appropriate changes in the final rule. If a State provides documentation on cases in separate State programs that meet either of the following conditions, we will exclude them from the caseload count: (1) cases that duplicate TANF cases; or (2) cases made ineligible for Federal benefits by PRWORA and that are receiving only State-funded cash assistance, nutrition assistance, or other benefits. We did not include the third exception suggested by commenters since these cases are no longer reported as SSP cases under the revised definition of assistance.

However, we note that these are the only circumstances under which we will exclude separate State program cases from the caseload reduction calculations. As we have indicated already, we believe that moving a family receiving TANF assistance to a separate State program where they are receiving assistance would represent a change in eligibility criteria if we did not include such programs in the caseload reduction calculation.

Comment: We had wide-ranging and divergent comments on the methodology and supporting data required of States. Several commenters noted that a State policy that denies assistance when an individual does not comply with work requirements, child support cooperation requirements, or other behavioral requirements is the same as any other eligibility requirement—it defines the categories of families that do or do not qualify for assistance. Some commenters suggested that enforcement mechanisms such as fingerprinting also deter eligible families. They recommended that States receive credit only to the extent that the number of families removed exceeds the number wrongly denied, deterred or removed. Several commenters requested that the final rule explicitly consider full-family sanctions, burdensome verification requirements, and requirements that applicants engage in certain activities to be changes in conditions of eligibility. Most recommended that a State should not receive credit for any such changes in its policy. Others suggested just the opposite, that full caseload reduction credit is appropriate for all denials of assistance for failure to comply with a behavioral requirement.

Response: Under the final rules, we consider behavioral requirements that divert families to be eligibility changes, and we exclude them from assistance from the caseload reduction credit. We believe it is appropriate to treat both full-family sanctions and behavioral requirements as eligibility changes. Based on the comments, we have tried to clarify explicitly that no type of Federal or State eligibility change since FY 1995 that directly affects a family's eligibility for assistance will count in a State's caseload reduction credit. These changes include more stringent income and resource limitations, time limits, full-family sanctions, and other new requirements that deny families assistance when an individual does not comply with work requirements (e.g., applicant job search), cooperate with child support, or fulfill other behavioral requirements. 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.

Section 261.43—What Is the Definition of a ''Case Receiving Assistance'' in Calculating the Caseload Reduction Credit? (§ 271.43 of the NPRM)

To determine the caseload reduction credit, we proposed to consider caseloads in both TANF and in any separate State programs that are used to meet the maintenance-of-effort (MOE) requirement. Using the definition of assistance proposed under part 270, we proposed to base the calculation on all cases in the State receiving AFDC in FY 1995 and TANF assistance for all other fiscal years.

Comment: Several commenters asked us not to use the definition of ''assistance'' to calculate caseloads for periods prior to the State's implementation of TANF. They argued that, since there was no definition of assistance similar to the TANF definition, many States granted assistance based on broader criteria. In particular, they pointed out that EA cases often did receive one-time, short-

term assistance. Since they were legitimate IV–A cases, the commenters maintained that the cases should be included in the number of cases receiving assistance in 1995.

Response: In the NPRM, we specified that the definition of ''assistance'' should be applied to the caseload count, but our methodology did not actually allow a State to use the definition until it had implemented the TANF program. The caseload information reported by States on ACF–3637, which applied to a State until it implemented the TANF program, reflected the AFDC and EA definitions. Under the final rule, to get caseload data that are comparable to TANF, we adjust the baseline AFDC and EA data, as appropriate, to estimate the unduplicated cases receiving benefits under State programs in those years that would have met the TANF definition of ''assistance.''

We point out that this final rule does not dictate the determination of caseload reduction credits for fiscal years 1997, 1998, or 1999. Thus, it does not cover the determination of credits for periods when States were still operating AFDC and EA programs. For such earlier periods, it would be appropriate to keep all unduplicated AFDC and EA cases in the calculations because the base-year and prior-year caseload figures would be comparable.

These rules cover caseload reduction credits that apply in FY 2000 and thereafter—after States had converted to TANF. Since the definition of ''assistance'' determines the prior-year caseload numbers, it is appropriate to adjust the 1995 caseload numbers to mirror the TANF definition of assistance, in order to compare ''apples with apples.'' In some instances, that could mean that EA cases should not be part of the 1995 base.

Comment: One commenter recommended that we clarify this section to ensure that, in calculating the caseload reduction credit, we only include a percentage of the separate State program cases that equals the State's MOE requirement (either 75 or 80 percent). Otherwise, the commenter argued, the policy would discourage States from investing more than the required MOE amount.

Response: We agree with the comment and have revised the final rule accordingly.

Section 261.44—When Must a State Report the Required Data on the Caseload Reduction Credit? (§ 271.44 of the NPRM)

Under the NPRM, we required a State to submit its caseload report and estimates for each fiscal year by November 15. We proposed to approve or reject a State's estimated reduction credit within 90 days, that is, by February 15.

Comment: Commenters expressed mixed feelings about the timeframes. On the one hand, nearly everyone wanted States to receive the caseload reduction credit and net participation requirement as early as possible. On the other hand, most commenters, and especially State commenters, suggested that the timeframes for responding to additional information requests from the Department and for resolving issues were not sufficient.

Response: To give the public an opportunity to comment on State estimates and ensure that States have adequate time to provide additional requested information, we have modified the final rule. The caseload reduction report and estimates are now due from States on December 31. States may negotiate the deadline for additional information or submit it within 30 days. As a result, we will provide States with their caseload reduction credits no later than March 31. Any extensions for submitting additional data that we grant to States must be consistent with this deadline.

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

While PRWORA embodies State flexibility in program design and decision-making, it also embodies the principle of accountability. Where a State does not live up to the minimum standards of performance, it faces serious financial penalties. One of the principal areas of accountability is the State's provision of work and work-related activities to promote employment and self-sufficiency. The work participation rates are demanding, but designed to ensure that recipients move as quickly as possible into work and toward independence. This is especially important given the time-limited nature of Federal TANF benefits.

In structuring this part of the regulations, we have attempted to balance the imperative of State accountability in the work participation rates with the knowledge that each State enters TANF from a different standpoint and with different ideas about the best way to help its recipients.

Section 261.50—What Happens if a State Fails To Meet the Participation Rates? (§ 271.50 of the NPRM)

In accordance with section 409(a)(3) of the Act, as amended by Pub. L. 105–33, if we determine that a State has not achieved either or both of the minimum participation rates in a fiscal year, we must reduce the SFAG payable for the following fiscal year. The initial penalty is five percent of the adjusted SFAG and increases by two percentage points for each successive year that the State does not achieve the participation rates. We reduce the penalty amount based on the degree of noncompliance, as discussed at § 261.51. The total work participation penalty can never exceed 21 percent of the adjusted SFAG. (See § 262.1(d) for a discussion of the total penalty limit under TANF.)

If a State fails to provide complete and accurate data on work participation, as required under section 411(a) of the Act and § 265.8 of the regulations, we may determine that a State has not achieved its participation rates, and the State will be subject to a penalty under this part. We also have the authority to penalize a State that does not report its work participation data for failure to report (under section 409(a)(2) of the Act). However, in this case, we thought it would be more appropriate to penalize the State for failure to meet its work rate. First, this policy is consistent with the approach we are taking when a State fails to report information related to other penalty determinations. Also, we did not want to create a situation where nonreporting States would face lesser penalties than reporting States, and we did not believe duplicate penalties were warranted.

We received some comments regarding the year in which we will impose a penalty. We have addressed these comments at § 262.1 of this chapter.

Comment: We received quite a few comments concerning our preamble language indicating that we would impose a penalty for failure to meet the work participation rates if a State failed to report complete and accurate data on the work participation rates. Some commenters objected to the policy altogether. Others suggested that we should only impose the work participation penalty where, as a result of incomplete or inaccurate data, we are unable to determine whether the State failed the participation rates. Another commenter suggested that we specify what ''complete and accurate'' means for the purposes of calculating the participation rates.

Response: Our intent in including this policy in the preamble was only to impose a work participation penalty based on a State's failure to report complete and accurate data if the lack of data impeded our ability to determine whether the State actually achieved the required rates. In fact, at § 262.3 of this chapter, we indicate that this is our

policy, stating that we will impose the participation rate penalty ''if we find information in the reports * * * to be insufficient or if we determine that the State has not adequately documented actions verifying that it has met the participation rates.'' For clarity, we have changed the wording above to indicate that we ''may'' impose such a penalty, and we will implement the policy as explained in § 262.3.

Comment: One commenter urged us to penalize a State where an entity with jurisdiction or group of people affected finds a systemic violation of any applicable Federal law (e.g., title VI of the Civil Rights Act).

Response: We think it is appropriate to defer to the entity that enforces a given Federal law to penalize a State that violates that law. In general, the laws the commenter alludes to include specific remedies for individuals that are adversely affected. At the same time, we encourage States to make sure recipients are informed of their rights to remedies under Federal, State and local laws.

If, at a later date, we learn of a specific problem in this regard, we will consider further action, but we think it is unnecessary to include such penalties in the regulation at this time.

Section 261.51—Under What Circumstances Will We Reduce the Amount of the Penalty Below the Maximum? (§ 271.51 of the NPRM)

The statute requires us to reduce the amount of the penalty based on the degree to which the State is not in compliance with the required participation rate. The required rate for a State is the rate at § 261.23, adjusted for any applicable caseload reduction credit; however, it specifies neither the measures of noncompliance nor the extent of reduction. The statute also gives us the discretion to reduce the penalty if the State's noncompliance resulted from certain specific causes; we address this latter issue separately, in the section entitled ''Discretionary Reductions.''

As we indicated earlier, we have not included in the final regulations the NPRM proposals that would have linked a State's decisions about implementing separate State programs to its eligibility for penalty relief. Thus, we have removed from § 261.51 the provision that would have denied penalty reduction to a State that diverted cases to a separate State program for the purpose of avoiding the work participation requirements. Please refer to the section entitled ''Separate State Programs'' for a discussion of this policy and the comments that we received relating to it.

Required Reduction

We have significantly modified this part of the penalty reduction section after considering the comments we received. In the NPRM, we defined degree of noncompliance first by which of the rates a State missed and second by how far it came from meeting the required rate. Thus, if a State missed only the two-parent participation rate, we proposed imposing a penalty that equaled, as a percentage of the maximum possible penalty, no more than the State's percentage of two-parent cases. Second, if the State missed the overall rate (or both rates), we proposed reducing the penalty only if the State achieved a threshold of 90 percent of the required rate. Above 90 percent, the reduction was to be proportional.

The final regulations use five basic criteria to measure the degree of noncompliance: which participation rate the State failed; the amount by which it failed; how well it succeeded in increasing the number of recipients engaged in work (despite failing the participation rate(s)); the number of consecutive years in which the State failed the rates; and the number of rates that the State failed.

First, as in the NPRM, we will measure noncompliance on the basis of whether the State failed one or both rates for the fiscal year and which participation rate it failed, if only one. We believe that a State that fails the two-parent rate should be subject to a smaller penalty than a State that fails the overall rate or both. In addition, we believe that it is appropriate to consider the size of the two-parent caseload in deciding how much weight to give a failure of only the two-parent rate.

In looking at the data for FY 1996, we noted that the two-parent participation rate, on average, affected a very small percentage of a State's entire caseload—the mean State percentage was about 6.6 percent, but the median was only about 2.4 percent. We think a State that failed with respect to only a small percentage of its cases should not face a huge penalty. At the same time, we want to ensure that States make adequate commitments to achieving the two-parent participation rate and that our policies support State efforts to extend benefits to two-parent families. We have attempted to balance these goals.

Under this rule, the maximum penalty a State could face for failure to meet only the two-parent rate depends directly on how much of the State's total caseload consisted of two-parent families. We have not created a similar proportional reduction for a State that fails only the overall rate because all cases, including two-parent cases, are reflected in the overall rate.

Second, we measure noncompliance on the basis of the severity of a State's failure to achieve the required rate. In drafting the regulation, we wanted to strike the right balance between the importance of work and the requirement to reduce the penalty based on the degree of noncompliance. Although our first inclination was to make reductions in direct proportion to the State's achievement toward the required rate, our experience in the JOBS program led us to consider creating a threshold below which we would grant no reduced penalty. We were concerned that, as in the JOBS Unemployed Parent participation rates, there would be States with negligible levels of achievement, particularly with respect to the two-parent caseload, and thus did not merit a reduced penalty. Given that experience, we thought it was essential to have a threshold.

In the NPRM, we set the participation threshold at 90 percent, in an effort to support the emphasis in the statute on making the work penalty meaningful. In particular, Pub. L. 105–33 amended the work penalty provision so that the amount was fixed, removing the discretion we had under PRWORA to set a lesser penalty amount. We thought (and continue to think) that this shows Congressional intent to provide a work penalty of consequence. To avoid undercutting this intent, our proposed rules required that a State make substantial progress in meeting the target rates before we would consider a reduction. We continue to believe that a threshold is a key part of the penalty structure.

We received extensive comments about the proposed 90-percent threshold. Some commenters accepted our reasoning for creating a threshold, but virtually all found a 90-percent standard to be excessively high. They argued that it bases large fiscal consequences on small and hard-to-measure differences in reported data. While the NPRM maintained that we did not want to give relief to States with negligible levels of achievement, thus leading us to a threshold, commenters asserted that a high threshold treats achievers and nonachievers the same. For example, a State that reaches 2 percent of the required rate and one that reaches 88 percent of that rate are subject to the same penalty. This, they argued, gives States a strong incentive not to serve families with significant barriers. Further, they pointed out that

it would also subject States with similar achievement levels to very different penalties. For example, with a 40-percent participation rate, a State that reaches 35 percent would be subject to a full penalty, but a State that reaches 38 percent would be subject to less than half the penalty. Although most commenters opposed having a threshold at all, believing that any threshold is arbitrary, many suggested that if we found it essential to have one, it should be set significantly lower. Most recommended a threshold of 50 to 75 percent. A few commenters suggested a lower threshold for the two-parent rate than for the overall rate.

After reviewing those comments and analyzing preliminary data, we have set the threshold at 50 percent. We chose this threshold both because it was the most widely recommended alternative level and because we believe it is a logical standard. Requiring States to reach at least half of the target rate draws a clear line between achievers and nonachievers. We think it is reasonable not to grant penalty reduction to States that are closer to a participation rate of zero than they are to achieving the requirement.

Under the final rules, we will reduce the penalty for any qualifying State in direct proportion to the State's level of achievement above a threshold of 50 percent. To achieve this, we will compute a ratio whose numerator is the difference between the participation rate a State actually achieved and the applicable threshold rate and whose denominator is the difference between the applicable required participation rate and the applicable threshold rate.

In the final rule, we have also clarified that the applicable required participation rate and the applicable threshold both reflect any caseload reduction credit that the State receives pursuant to subpart D of part 261. In other words, the standard against which we judge the degree of noncompliance recognizes that Congress wanted States to get credit for the caseload reductions they achieve, as long as they are not due to eligibility changes. If we did not include this clarification, the threshold standard for some States could actually be higher than the target (i.e., full compliance) rate provided under the statute.

For example, assume a State's adjusted target rate (i.e., after applying its caseload reduction credit) equals 30 percent. Further assume the State achieved 18 percent, which exceeds the threshold of 15 percent (one half of 30 percent) by 3 percentage points. The 3 percentage points equal 20 percent of 15 percent, the difference between the required rate and the threshold. Therefore, we would reduce the penalty amount by 20 percent.

Commenters also urged us to consider a wide range of alternative means of measuring noncompliance. On the whole, they urged us to give States credit for their level of effort, rather than looking specifically to a percentage of the participation rate. One commenter offered that, if the purpose of penalties is to give States a strong incentive to take the requirements seriously rather than to punish those that fail, then a broader view of State achievement is in order. In particular, several commenters suggested variations of the following alternative factors for determining penalty reduction:

- An increase in a State's caseload (in either the current year or prior year);
- Improvement in a State's performance over the prior year;
- Increase in the number of participants in countable work activities in a State, or in the number of participants in work activities but below the required number of hours to count for participation; and
- The extent to which a State exceeded the overall rate, even though it missed the two-parent rate.

Some also suggested that we should recognize a combination of alternatives, perhaps without even specifying a comprehensive list in the regulation.

One set of extensive comments on this issue put forward an argument for treating any penalty reduction factors that we adopt in a formulaic way so that a State's penalty liability is clear. Although this can make for a complex provision, we have responded to this concern by adding some detail to the final rule. We believe that this formula will help States foresee the possible fiscal consequences of their policy decisions.

We considered all these alternatives measures from the perspective that our primary interest in the participation rates is to encourage work. As a result, we have modified the regulations to include as our third measure of noncompliance an adjustment factor that reflects a State's success in engaging additional recipients in countable work activities. The factor rewards a State that increases the number of individuals it engages in work by at least 15 percent over the previous fiscal year. If the number of individuals engaged in work decreases, the State would not be eligible for a penalty reduction, beyond the proportional reduction for failing only the two-parent rate. For this calculation, we will use the average monthly participation data, just as we do in calculating the participation rates themselves.

We calculate the adjustment factor by dividing the change in the average number of individuals the State has engaged in work by 15 percent of the number it engaged in work the prior year. For example, if the State engaged an average of 2,000 individuals each month in the prior year, and 2,400 individuals in the current year, we would divide 400 (the change) by 300 (15 percent of 2,000, the prior year's average monthly number engaged in work). This would result in an adjustment factor of 1.33. In other words, in the example, the State's increase in participants exceeded 15 percent of the prior year's level by one third. Thus, under these rules, the State's penalty reduction would increase by one third, compared to the reduction it would have received if it had achieved only a 15-percent increase.

We chose to tie the adjustment factor to a 15-percent increase to approximate the average annual increase in the overall participation rate.

We based the adjustment factor on an increase in the number of participants in work instead of on an increase in the percentage of participants in work for two reasons. First, the proportional reduction above the threshold already takes a percentage of participants into account through the increase in the participation rate. Second, commenters made a persuasive argument that measuring individuals would reward States that actually showed greater success with work, where participation percentages would be affected by caseload changes that might have nothing to do with work or the State's efforts to engage individuals in work.

Readers will note that, in addition to the threshold, the adjustment factor also serves as a trigger for penalty reduction; the State must have an adjustment factor above zero to qualify for penalty reduction beyond the proportional reduction for failing only the two-parent rate. We needed to cut off the adjustment factor at zero because a negative number would actually increase the penalty above the amount described in § 261.50, which we have no authority to do. We then linked the presence of an adjustment factor to further penalty reduction because we did not want to reward a State with a decrease in the number of working recipients more than a State with a small increase (under 15 percent) in the number engaged in work.

Finally, we adjust the penalty reduction on the basis of whether the State failed both participation rates in

the current year and how many consecutive years it failed them. If the State met both participation rates in the previous year and only failed one rate in the penalty year, we will apply the full reduction to the penalty. If it failed both rates, but failed none the previous year, we will decrease the penalty reduction by one half.

For the second consecutive year of penalty liability, we will prorate the penalty reduction by 50 percent if the State failed just one rate; if it failed both rates, it is entitled to a 25 percent reduction.

If the State fails to meet the participation rates for three or more years in a row, we will not reduce the penalty at all. We think that this is a fair and reasonable approach to avoid rewarding a State that has not successfully addressed a persistent problem and that repeated failures is an appropriate indicator of the degree of noncompliance. A State with successive failures could still claim a discretionary work penalty reduction (as discussed below), claim a reasonable cause exception, or enter the corrective compliance process.

We have also added a paragraph indicating that we will adjust the calculations in this section to exclude cases for which a State has granted federally recognized good cause domestic violence waivers. Based on the comments we received in this area, and given our reasonable cause exception policy with respect to cases with federally recognized good cause domestic violence waivers, we thought these waivers should play a similar part in penalty reduction. For comments about domestic violence waivers, please refer to the preamble section entitled ''Treatment of Domestic Violence Victims.''

To summarize the entire penalty adjustment process, we begin with the proportional reduction based on the amount by which the State exceeded the 50-percent threshold. Second, we calculate the adjustment factor for increasing the number of individuals working and multiply the reduction by the adjustment factor if it is positive, arriving at an adjusted reduction. If the adjustment factor is zero or negative, there is no adjusted reduction. Then we multiply the adjusted reduction by the applicable penalty percentage, derived from whether the State failed just the two-parent rate. Finally, we adjust the penalty based on whether the State failed both rates and on the number of consecutive years of failure.

As we stated earlier, if a State does not qualify for an adjusted reduction, it still may be eligible for the proportional penalty reduction for failing only the two-parent rate.

In spite of our desire to make this regulation as simple as possible, we realize that this process is more complex than the approach we adopted in the NPRM. We have taken very seriously the commenters criticism that the proposed penalty reduction provision did not look broadly enough at State success in work. We think the new provision treats States more fairly and will be more effective at encouraging work. Factoring in multiple ways of looking at such success naturally makes the new methodology more complicated. In fact, we considered several of the other alternatives that commenters suggested, but ultimately decided that additional factors would make the calculation too convoluted, without adding to the balance or the work focus.

Comment: We received a great many comments about linking the size of the penalty for missing only the two-parent participation rate to the proportion that two-parent cases make up of the State's total caseload. Nearly all agreed with our approach; however, commenters put forward two additional ideas. First, one commenter suggested linking the size of the two-parent penalty to the national two-parent proportion, rather than varying the penalty based on each State's two-parent caseload. The second idea was to provide penalty relief for States that have made policy choices that have expanded the 2-parent caseload.

Response: We have not adopted either of these recommendations. While using a national caseload proportion would remove a possible inadvertent incentive for a State to reduce the size of its two-parent caseload, or a disincentive to expand eligibility, two-parent cases are not distributed evenly across the States. Moreover, we think the difference in penalty amounts would not be enough of an incentive to drive State policy regarding two-parent cases.

Regarding the issue of policies that increase the two-parent caseload, we think that our policy of adjusting the penalty base to reflect the two-parent caseload is the appropriate mechanism for helping States with the two-parent participation rate. (We also considered this issue in the context of the caseload reduction factor, as addressed above. Please refer to subpart D of this part for further discussion.)

Comment: As we indicated above, we received many comments suggesting alternative measures to use in penalty reduction. We listed above the ones that were most persuasive or appeared most frequently. The comments included others that we have not listed.

Response: We think the new penalty reduction methodology we have adopted gives States credit fairly for making substantive progress in reaching the participation rates and supports State efforts to engage recipients in work. It should be viewed as a whole because its various components are designed to work in combination to achieve a balanced result. While there are other factors that might also have worked well, we believe that we have selected elements that would achieve these goals and are easily calculable.

Comment: A few commenters urged us to require a State to have a system for monitoring and enforcing compliance with Federal employment laws within its TANF program in order to qualify for a penalty reduction.

Response: As we have indicated earlier, we fully expect States to conduct programs that are lawful and to uphold employment laws that apply to working welfare recipients. We have chosen not to adopt this suggestion out of deference to the enforcement mechanisms already available under Federal law. However, we have created a new regulatory section at § 260.35 to reference existing employment and recipient protections. Please refer to the section entitled ''Recipient and Workplace Protections'' for a more detailed discussion of this issue.

Discretionary Reductions

The final regulations reflect the discretion that we have to reduce the amount of the penalty if the State could qualify as a needy State for the Contingency Fund. The definition of ''needy State'' at § 260.30 is based on especially high unemployment or large numbers of Food Stamp recipients in the State. (See subpart B of part 264 for more discussion of how a State qualifies for the Contingency Fund.)

Pub. L. 105–33 gave us the added discretion to reduce the penalty if the State failed to meet the participation rate due to extraordinary circumstances such as a natural disaster or regional recession. We have modified this provision from the NPRM to include substantial caseload increases among the examples of extraordinary circumstances. Although this criterion is not given as an example in the statute, based on the comments we received, we believe such a condition could constitute an extraordinary circumstance and think it is appropriate to include it.

To ensure that we take any such circumstances into consideration, States should submit information describing

the extraordinary circumstances and their effects on the ability of the State to meet the participation rates. We must provide a written report to Congress to justify any penalty reductions that we grant under this provision.

One criterion for discretionary reductions is similar to the criterion at § 262.5(a)(1) for granting a reasonable cause exception to a penalty due to a natural disaster. We will evaluate any information a State submits concerning the effects of a natural disaster on its ability to achieve the participation rates. If the material does not support granting a reasonable cause exception, we will consider whether it is sufficient for penalty reduction purposes. For example, if the disaster caused a failure in only one small area of the State, but the State missed the required participation rate by a significant amount, we would not grant a reasonable cause exception, but we might reduce the penalty in proportion to the TANF caseload in that area. We intend to use a similar approach to evaluating the effects of a regional recession.

Comment: Some commenters urged us to add other factors to the examples of discretionary reductions. Some suggested an open-ended example such as ''other circumstances beyond the State's control'' while others gave specific suggestions, including: caseload increase; sub-state recessions; widespread economic disruption from the closing of a plant or significant numbers of lay-offs; chronic unemployment; bad weather; and mismatch between available jobs and skills of recipients.

Response: As we indicated above, we have added substantial caseload increases to the list of examples of extraordinary circumstances; however, it is simply a list of examples. We believe the provision leaves the flexibility for a State to make a claim of ''extraordinary circumstances'' based on other factors. The final regulation indicates, as did the NPRM, that we will consider the objective evidence of extraordinary circumstances that a State submits. We have not specified the basis on which we will evaluate that evidence or apply a reduction. We believe this responds to the recommendation of commenters that we should have flexibility under our rules to address situations that we could not foresee at this writing. Since the extraordinary circumstances are likely to be different in each case, we think it is most appropriate to use the discretion available to us to evaluate the materials that a State submits to determine whether its claim warrants a reduction in penalty amount.

Section 261.52—Is There a Way To Waive the State's Penalty for Failing To Achieve Either of the Participation Rates? (§ 271.52 of the NPRM)

Section 409(b) of the Act creates a reasonable cause exception to the requirement for certain penalties, including failure to meet the minimum participation rates. If we determine that a State has reasonable cause, we cannot impose a penalty.

We have included general reasonable cause criteria at § 262.5. These apply to any of the penalties for which there are reasonable cause exceptions. The preamble to § 262.5 discusses how we arrived at these criteria, as well as our general philosophy about the role of reasonable cause exceptions.

For the work participation rate penalty, two additional, specific reasonable cause exceptions apply. Under the regulation at § 261.52, a State may demonstrate that its failure can be attributed to its granting of federally recognized good cause domestic violence waivers under the Family Violence Option. In this case, the State must show that it would have achieved the required work rates if cases with these waivers were removed from both parts of the calculation (i.e., from the numerators described in §§ 261.22(b)(1) and 261.24(b)(1) and the denominators described in §§ 261.22(b)(2) and 261.24(b)(2)). A State must grant domestic violence waivers in accordance with criteria in subpart B of part 260 to be eligible to qualify as federally recognized good cause domestic violence waivers and to receive a reasonable cause exemption on these grounds. We have explained this policy and responded to comments on this subject in subpart B of part 260.

The regulation also provides that a State may receive a good cause exemption if it demonstrates that its failure to achieve the work participation rates can be attributed to the provision of assistance to refugees in a federally-approved alternative project.

Finally, this section of the regulation indicates that States may dispute our findings that they are subject to a penalty.

Comment: Many commenters urged us to expand the reasonable cause exceptions specifically available for failure to meet the work participation rates. They suggested a variety of additional criteria, such as a high incidence of recipients with severe employment barriers, a significant refugee population, correcting unlawful employment discrimination, conflicts with other Federal requirements (including the FLSA) or litigation, and enforcing the nondisplacement provisions. Some commenters, paralleling the domestic violence exception, suggested that the provision of targeted services to other groups of recipients with significant barriers to employment should entitle a State to a reasonable cause exception. Others recommended many of the same criteria suggested for reducing a participation rate penalty, including caseload increases, economic downturns, and increases in the number of recipients the State engages in work or places in countable activities but below the hours standard. Many also suggested granting a reasonable cause exception for a combination of factors. Also, a number of commenters urged us to leave the reasonable cause criteria in this provision open-ended so that a State could present its arguments for an exception as situations arise and each could be evaluated on its own merits.

Response: Although these comments appear in the context of exceptions to the work participation rate penalty, many commenters made the same arguments regarding the general reasonable cause criteria at § 262.5. We have addressed comments that apply broadly to reasonable cause exceptions in that section.

We continue to believe that the best way to address a State's difficulty in meeting a program requirement is through the corrective compliance process. This holds true for the participation rates as much as, if not more than, any other requirement. Families, States, and the Federal government are better served by solving the problem than by forgiving it, or by imposing a penalty. It is for this reason that we have chosen to limit reasonable cause exceptions, particularly those that relate to a specific provision, as in the case of the participation rates, and have not added the criteria suggested. Nevertheless, under § 262.5, a State may present a case for a reasonable cause exception outside the ones specifically listed. We think that the revised language in this section, together with a State's ability to dispute our finding of a penalty, the corrective compliance process, and the opportunities for work penalty reduction, sufficiently recognize the difficulties States may face in meeting the participation rates.

Section 261.53—May a State Correct the Problem Before Incurring a Penalty? (§ 271.53 of the NPRM)

The process for developing a corrective compliance plan does not differ from one penalty to the next,

although the content of the plan naturally would. Thus, the regulation refers to § 262.6, the general section on submittal of a corrective compliance plan for any penalty.

Readers should note that § 262.6(e) establishes a maximum corrective compliance period for failure to meet the work participation requirements. Since we measure participation annually, we will measure compliance based on performance during the fiscal year that ends at least six months after we receive the State's corrective compliance plan.

In this section, we establish a specific threshold that States must achieve in order to be considered for a reduced work penalty under § 262.6(j) for making significant progress toward achieving compliance. A State must increase its participation rate during the compliance period enough to fill at least half the gap between the participation rate it achieved in the penalty year and the required rate for the compliance period. In other words, we will divide the difference between the rate achieved during the compliance period and the rate achieved during the penalty year by the difference between the required rate for the compliance period and the rate achieved during the penalty year; a result of at least 0.50, qualifies the State for a possible reduction.

You should note that, in this final rule, the required rate for the compliance period reflects any caseload reduction credit that the State receives under subpart D of part 261. We believe that this adjusted rate reflects the performance standard that Congress intended would apply to States.

We also believe that making more progress toward the rate than failure—that is, achieving at least 50 percent—is a reasonable standard for significant progress. Thus, at the point at which a State reaches this threshold, we may reduce its work penalty under the corrective compliance provision.

This approach is similar to the one taken in § 261.51, with respect to potential reductions in work penalties based on degree of noncompliance. In both cases, we expect significant compliance in order to merit a reduced penalty. However, we look at performance over different periods in the two provisions.

Comment: Several commenters thought that the 50-percent standard of achievement measured against the ''new'' rate was restrictive and arbitrary. Commenters proposed two basic alternatives. Many urged us to set a threshold of achievement based on a particular State's circumstances or to negotiate a State's threshold in the corrective compliance plan process. Some thought that we should consider a State to be in compliance if it achieves the participation rate associated with the year for which it was subject to the penalty. (Presumably, if we were to use a threshold to reduce the penalty in this scenario, it would be applied against the latter rate.) One commenter thought that we should link the threshold to the average increase among States with corrective compliance plans, and another suggested that States should be able to show significant improvement by means other than reaching the threshold. Another commenter remarked that we made no provision for circumstances arising in the year following the penalty year that prevent a State from reaching the threshold.

Response: We note that this provision applies a second reduction to a State's penalty amount, the first (described at § 261.51) having been significantly expanded over the original proposal. This reduction follows a corrective compliance period in which the State should have been applying the steps of its plan to resolve the participation rate problem. Given these circumstances, we think it is appropriate to maintain a fairly rigorous standard for reducing a penalty still further. Moreover, we do not think that a 50-percent threshold is overly demanding—it simply requires a State to be more successful, rather than less successful, in coming into compliance. We measure progress against the ''new'' rate (i.e., the one that applies for the corrective compliance plan year) because to do otherwise would suggest that the State is not being held to the same standard as all the others for that year. Otherwise, we would effectively give a State an extra year to achieve the minimum participation rate. We expect a corrective compliance plan to allow a State to come into compliance with the applicable rates. Thus, the penalty reduction associated with corrective compliance should use that standard.

If circumstances arise during the corrective compliance plan period that prevent the State from achieving the threshold, it is free to claim a reasonable cause exception or develop a corrective compliance plan for the penalty year, but we do not think it is appropriate to reduce the prior penalty on that basis. In addition, the State might qualify for penalty relief under § 262.6(j)(2), relating to natural disasters or regional recessions during the compliance period.

Section 261.54—Is a State Subject to Any Other Penalty Relating to Its Work Program? (§ 271.54 of the NPRM)

In accordance with section 409(a)(14) of the Act, as amended by Pub. L. 105–33, if we determine that a State has violated 407(e) of the Act in a fiscal year, which relates to when a State must impose penalties on individuals who refuse to engage in required work, we must reduce the SFAG payable for the following fiscal year by between one and five percent of the adjusted SFAG.

Comment: One commenter thought we did not provide adequate guidance concerning the means by which we will judge whether a State has violated the sanctioning requirement. Without such guidance, the commenter thought that States might sanction families more severely than necessary to avoid a potential penalty.

Response: As we indicated at § 262.3, we will use the single audit to assess whether a State is complying with section 407(e) of the Act and thus whether it is liable for a penalty under this provision. We expect that, if there are widespread problems with States' sanctioning practices, our data collection and the audits will help identify them.

While we understand the commenter's concern that States will ''over-sanction'' to avoid this penalty, it is important to understand that this penalty applies both to a State's failure to sanction when it should have and to its imposition of a sanction when it should not have imposed one. Thus, a State that overreacts by sanctioning too readily could be equally liable for a penalty. If the commenter is concerned that States will impose larger sanctions than they would otherwise, we would point out that States have the explicit authority, independent of this penalty provision, to impose sanctions that are greater than pro rata reductions, up to and including terminating assistance to the case.

Comment: One commenter objected to our intention to collect sanction policy information via § 265.9, stating that such information was available in the TANF State plans.

Response: While some States may have included sanctioning policies in their TANF plans, the statute does not require it. Thus, we cannot count on obtaining this information through the plans. Also, at best, the plan information would only tell us about State policy, not State practice (e.g., the nature and scope of sanctions imposed).

Section 261.55—Under What Circumstances Will We Reduce the Amount of the Penalty for Not Properly Imposing Penalties on Individuals? (§ 271.55 of the NPRM)

The statute requires us to reduce the amount of the penalty based on the degree to which the State is not in compliance with the section 407(e) of the Act.

In determining the size of any reduction, we will consider two factors. First, we will examine whether the State has established a control mechanism to ensure that the grants of individuals are reduced for refusing to engage in required work. Second, we will consider the percentage of grants that the State has failed to reduce in accordance with the statute.

As we indicated in the preamble to § 261.14, States have the discretion to define the term pro rata reduction. Under § 265.9, as part of the annual report we require each State to provide us with a description of how it will carry out a pro rata reduction. This information will help us determine whether States are taking sanctions appropriately. Also, these definitions will help us determine whether States face an equitable and level playing field under this penalty provision.

Some commenters noted that the proposed rules incorrectly specified that reasonable cause and corrective compliance did not apply to this penalty. We have deleted the provision that included this inadvertent error.

Comment: One commenter urged us to clarify what we mean by control mechanisms.

Response: We did not want to limit a State's range of possible control mechanisms by creating a single definition. However, one example of a possible control mechanism would be a system that identifies cases in which an individual refused to participate, then cross-checks those cases against information on sanction actions, and corrects any errors in sanctioning.

Although we did not define a control mechanism in the regulation, there are some additional elements that we expect a State to include in a control mechanism to ensure appropriate sanctioning of recipients. Section 402(a)(1)(B)(iii) of the Act provides that a State must set forth objective criteria for fair and equitable treatment of recipients, including an explanation of how the State will provide an opportunity for recipients who have been adversely affected to be heard in a State administrative or appeal process. We think that any State mechanism that controls whether sanctions have been imposed properly should ensure that recipients are informed of their rights to fair hearings and advised of the process for invoking that right. In addition, we encourage States to consider adding procedures to advise recipients of their rights to pursue other remedies that might be available under State and local laws.

Comment: A commenter, citing the fact that States have a right under the regulations at § 262.7 to appeal a finding that it is subject to a penalty, urged us to ensure that individuals are accorded a similar right.

Response: As we explained in the previous comment, section 402(a)(1)(B)(iii) of the Act accords recipients the right to appeal adverse actions. While we are not regulating this provision itself, we do expect that States will address this requirement as part of their sanctioning control mechanisms, and we will take it into consideration in determining any reduction to the amount of this penalty.

Comment: A commenter expressed concern that examining only sanctioning data, without data from cases not sanctioned, as the basis for the penalty would lead to unnecessarily harsh sanctions. The commenter recommended basing the penalty determination solely on whether the State has established control mechanisms.

Response: As we indicated in the previous section, this penalty applies to all violations of the sanctioning requirement, whether failing to sanction inappropriately or imposing sanctions inappropriately. For example, we anticipate sampling sanctioned cases to determine whether a State has imposed sanctions without evidence of a recipient's refusal to participate. Thus, a State has just as much incentive to exercise restraint in sanctioning as to impose sanctions too readily. At the same time, States may impose sanctions that are greater than pro rata reductions without violating section 407(e) of the Act.

Comment: A commenter urged us to base the penalty amount on the amount of the sanctions that should have been imposed, as a percentage of the total amount of grants the State awards, or as a percentage of the total grants that should have been reduced but were not.

Response: This approach seems overly complex to us. We see no advantage to basing the reduction on dollar amounts instead of case percentages.

Comment: A commenter recommended that we allow a tolerance for errors before imposing a penalty under this provision.

Response: We have built a tolerance for errors into the reasonable cause exceptions at § 262.5. In addition, States have the right to dispute our determination that it is subject to a penalty, in accordance with the provision at § 262.4.

Comment: A commenter urged us to deem 80-percent compliance as full compliance with the requirement because the penalty amount must be between 1 and 5 percent.

Response: We have not established a specific formula for determining and reducing the amount of the penalty. We will factor in objective evidence of whether the State has established a control mechanism, as discussed above, and of how many cases have been improperly sanctioned.

Section 261.56—What Happens if a Parent Cannot Obtain Needed Child Care? (§ 271.15 of the NPRM)

Readers will note that we have moved the substance of this section from § 271.15 of the NPRM to § 261.56 of the final rule. The proposed rules contained two sections dealing with the question of sanctions for parents of young children who refuse to work because they cannot find needed child care. The first section specifically addressed the statutory protections from sanctioning available to such individuals who could not obtain child care; the second dealt with the penalties that a State would face if it sanctioned individuals in violation of the exception. Because of the close interrelationship between these two provisions and the number of comments we received on them, we thought that putting the regulatory sections adjacent to one another would make the provisions easier to follow. We have retained § 261.15 to ensure that subpart A, which relates to the responsibilities of individuals under TANF, continues to discuss the child care exception.

To support the intent of the statute to move people to work, section 407(e) of the Act requires that States reduce or terminate assistance to individuals who refuse to engage in work required by section 407 of the Act. However, as we discussed in the preamble to § 261.15, a State may not reduce or terminate assistance to a single custodial parent caring for a child under age six for refusing to engage in required work, if the parent demonstrates an inability (as determined by the State) to obtain needed child care. This exception applies to penalties the State imposes for refusal to engage in work in accordance with either section 407 or section 402(a)(1)(A)(ii) of the Act. The

parent's demonstrated inability must be for one or more of the following reasons:

- Appropriate child care within a reasonable distance from the individual's home or work site is unavailable;
- Informal child care by a relative or under other arrangements is unavailable or unsuitable; or
- Appropriate and affordable formal child care arrangements are unavailable.

Refusal to work when the State determines an acceptable form of child care is available is not protected from sanctioning.

Because each State has the authority to determine whether the individual has adequately demonstrated an inability to obtain needed child care, we expect the State to define the terms ''appropriate child care,'' ''reasonable distance,'' ''unsuitability of informal care,'' and ''affordable child care arrangements.'' The State must also provide families with the criteria (including the definitions) that it applies in implementing the exception and the means by which a parent can demonstrate an inability to obtain needed child care.

To keep families moving toward self-sufficiency and to promote State compliance with this penalty exception, our rules provide that States must have processes or procedures in place that: (1) enable a family to demonstrate its inability to obtain needed child care; (2) inform parents that the family's benefits cannot be reduced or terminated when they demonstrate that they are unable to work due to the lack of needed child care for a child under the age of six; and (3) advise parents that the time during which they are excepted from the penalty will still count toward the time limit on Federal benefits at section 408(a)(7) of the Act, if applicable.

In response to numerous comments, as discussed below, the language in §§ 261.56 and 261.57 reflects these expectations. In this section, which focuses on the responsibilities of the State to inform parents, we also require that the information States provide must include the definitions or criteria that the State uses in its determination process.

The regulations for the Child Care and Development Fund (CCDF) reinforce the importance of providing this vital information to parents by also requiring the child care lead agency, as part of its consumer education efforts, to inform TANF parents seeking child care in the CCDF system of the existence of the child care exception and how to demonstrate an inability to obtain needed child care.

The CCDF rule requires the lead agency for child care to coordinate with the TANF agency in order to understand how the TANF agency defines and applies the terms of the statute regarding the penalty exception and to include the definitions of the terms or criteria in the CCDF plan.

We took this child care rule into consideration in drafting our proposed rule. Under § 271.15, we required that the definitions and criteria be submitted, but did not specifically require that the TANF agency submit them. Our goal was to ensure that this information was available for audit and penalty purposes and that it be part of the public record, not to create an unnecessary burden for States. We have not altered this policy in these final regulations.

We received many comments on the provisions in this section and made changes as discussed below.

Comment: Most commenters objected to having the responsibility for informing families about the child care exemption in the hands of the child care lead agency and urged that we give the responsibility to the TANF agency.

Response: In the NPRM, we did not specifically require the TANF agency to inform clients about the exception to sanctioning because the CCDF NPRM (now the CCDF final rule) already required it. In the NPRM preamble, we stated our expectation that States would inform clients, but did not name the entity responsible. Our intent was to avoid imposing an additional Federal burden on the States where the CCDF requirement addressed the situation adequately. However, advocates and States alike made a compelling argument that not all TANF clients covered by this protection would necessarily be referred to the child care lead agency. Therefore, we have revised the regulatory language at § 261.56. In the final rule, the TANF agency must inform clients of the existence of the child care exception to sanctions and how to demonstrate an inability to obtain needed child care. This requirement is in addition to the requirement, in the CCDF rules, that the CCDF agency inform TANF parents about the exception.

Comment: Many States objected to our requiring criteria and definitions, arguing that we had shifted the burden of proof from the individual to the State. We also received a few general comments to the effect that our rules did not adequately protect individuals from harsh State policies.

Response: We do not believe that requiring States to inform parents of their rights, including the definition of key terms in those rights, shifts the burden of proof to States. The individual needs to know how the State defines key terms to determine whether the exception applies to his or her case.

Regarding the concern over harsh State policies, States have considerable latitude in implementing the child care protections. We think the final regulations protect families as much as possible, given the regulatory restraints of section 417.

Comment: A few commenters urged us to require States to inform recipients about available child care subsidies and to assist them in obtaining appropriate and affordable child care.

Response: While we agree that assisting recipients locate child care is a reasonable expectation, the statute at section 417 limits our ability to regulate in this area. Given that child care is widely recognized as a fundamental supportive service, necessary for recipients to obtain and maintain employment, we are confident that States will adopt practices that inform recipients about available child care providers. States understand the importance of employment retention and career advancement for recipients. In fact, the publication ''Working Out of Poverty'' by the NGA Center for Best Practices, recognizes the need to inform recipients of the availability of transitional supports such as child care and transportation assistance early, for example, during eligibility determinations and assessments, and as part of job search and job readiness programs.

Comment: Some commenters were concerned that the NPRM left room for a parent who wishes to use a particular type of child care that is not available to refuse appropriate available child care arrangements, without risk of a penalty. For example, they feared that a parent who wants only informal relative care, but has no relative available to provide care, could refuse affordable, suitable center-based care. States argue that this result would be contrary to Congressional intent and the goals of the Act. They urged us to make clear that refusing work under such circumstances is not protected under the child care exception to a sanction.

Response: This issue stems from an interpretation of the wording of the statute, which uses the phrase ''one or more'' in describing the reasons for a parent's demonstrated inability to obtain needed child care. However, we agree with the commenters that such a result would be contrary to Congressional intent, which was to protect individuals from sanction when there was no appropriate child care, not

to give families a loophole to avoid work requirements. Further, such an interpretation would be contrary to the best interest of the family, because the TANF clock continues to run during such a period. Therefore, we have revised the regulatory language at § 261.56 to clarify that refusing to work when an acceptable form of child care is available is not protected from sanctioning.

Comment: One commenter was concerned that the NPRM, as written, might create a larger problem of inadequate child care due to informal, uncertified or unlicensed child care providers. The commenter was concerned that this would result in caregivers with inadequate training in child development or basic life-saving skills, poor or no curriculum, or no health or dental care referrals.

Response: The statute, as reflected in the NPRM, intended to give parents some choice in child care arrangements. Informal care is only one possible type of child care arrangement that families could use. If the State uses CCDF funds to provide child care, the regulations governing the CCDF program require States to have standards for informal providers, as well as those providers who are licensed. Under TANF, we do not have the authority to regulate child care providers. Accordingly, we have not amended the rules in response to the comment.

Section 261.57—What Happens if a State Sanctions a Single Parent of a Child Under Six Who Cannot Obtain Needed Child Care? (§ 274.20 of the NPRM)

As we discussed in the prior section, the statute at section 407(e)(2) protects single custodial parents of children under age six from sanction for refusing to work when they cannot obtain needed child care. They must demonstrate that they could not obtain child care for one or more of the following three reasons: (1) Appropriate child care was not available within a reasonable distance from the parent's home or work site; (2) informal child care, by a relative or under other arrangements, was unavailable or unsuitable; and (3) appropriate and affordable formal child care arrangements were unavailable. However, refusal to work when an acceptable form of child care is available is not protected from sanctioning.

Section 409(a)(11)(A) of the Act directs the Secretary to reduce by no more than five percent of the adjusted SFAG, the SFAG payable to a State that violates this sanctioning protection. To determine that a State is liable for a penalty, we must find that the State reduced or terminated assistance to a parent who qualified for a sanctioning exception under the definitions or criteria that the State developed regarding a parent's ''demonstrated inability'' to obtain needed child care.

We will consider the following factors in determining whether a State has violated the exception to the sanctioning requirement at section 407(e)(2) of the Act:

- Whether the State informs families about the exception to the penalty for refusing to work, including the fact that the exception does not extend the time limit on benefits;
- Whether the State informs families about the process or procedures by which they can demonstrate an inability to obtain needed child care;
- Whether the State has defined ''appropriate child care,'' ''reasonable distance,'' ''unsuitability of informal care,'' and ''affordable child care arrangements,'' and informed parents of these definitions;
- Whether the State notifies the parent of its decision to accept or reject the parent's demonstration in a timely manner;
- Whether the State has developed alternative strategies to minimize the amount of time parents are excepted from work requirements due to their inability to obtain needed child care. For example, a State that uses the services of a child care resource and referral office might grant ''good cause'' based on a statement from that office attesting to the unavailability of appropriate or affordable child care. However, it could implement a system for automatically rechecking the availability of care every few weeks. If the inability to work were due to difficulty in arranging transportation, the State could use bus and rail rates and schedules to help the recipient find appropriate child care within a reasonable distance.

We are not specifying the process or procedures that States should develop or the documents, if any, States should require. However, we suggest that, if States plan to require documents, they select ones that are readily available to families. We recommend that the process or procedures be simple and straight-forward. In addition, we recommend frequent contact with parents, since the penalty exception does not stay the time limit and there may be fluctuations in the availability of child care services.

We will impose the maximum penalty if a State does not have a process or procedure in place that enables families to whom this provision applies to demonstrate that they have met the guidelines provided by the State. Additionally, we will impose the maximum penalty if there is a pattern of substantiated complaints from parents or organizations verifying that a State has reduced or terminated assistance in violation of the requirement at section 409(a)(11) of the Act. We may impose a reduced penalty if the State demonstrates that the incidents were isolated or that a minimal number of families were affected.

States faced with a penalty under this provision may claim reasonable cause and/or submit a corrective compliance plan as described in part 262.

We expect that, because of the interrelationship between TANF and CCDF, TANF staff will work in close coordination with the lead agency for child care. Our expectation is that TANF staff will provide families with information about the penalty exception and the process and procedures developed by the State to demonstrate an inability to obtain needed child care. Under the CCDF rule, ACF requires that the lead agency for the CCDF program provide the same information to TANF parents who are seeking child care in the CCDF system. In addition, ACF requires the lead agency for child care to include in the CCDF plan the TANF agency's definitions for ''appropriate child care,'' ''reasonable distance,'' ''unsuitability of informal care,'' ''affordable,'' and ''child care arrangements.'' Thus, we expect the State TANF agency to share its definitions of these terms with the child care agency. Both agencies will then be able to share them with families whom they may be assisting with child care arrangements.

We received few comments on this section. They are discussed below. We also made one minor editorial change to § 261.57(c); the word ''will'' was changed to ''may'' in recognition of the variables that we need to consider in a decision to impose a reduced penalty.

Comment: One commenter suggested that we should review a sample of cases of sanctioned individuals to ensure that they were actually informed of their rights and that the State did not disregard a demonstration of the lack of availability of care.

Response: We agree. Since the primary vehicle for monitoring the requirement will be the single State audit, we are developing procedures that include the review of a sample of cases in which benefits have been reduced or terminated due to a parent's failure to comply with the work requirements.

Comment: One commenter disagreed with the proposed regulation because States are threatened with penalties based on isolated instances when they do not follow the procedures they have reported to us. The commenter argued that imposing a penalty for isolated noncompliance would have a chilling effect on enforcing work-related sanctions.

Response: We disagree with the comment. In the proposed rule, we stated that we would impose the maximum penalty of five percent if: (1) The State did not have a statewide process in place that enables families to demonstrate their inability to obtain child care (although the State's process does not need to be uniform statewide, there simply needs to be a process in all areas of the State); and (2) there were a pattern of substantiated complaints that verifies that a State had terminated assistance in violation of the requirement. A ''pattern of substantiated complaints'' does not include isolated cases that affect few families and occur in relatively few jurisdictions. This means that we will not impose a maximum penalty based on a few aberrant situations when it is clear that the State established a statewide procedure. Accordingly, we have not modified the final rules in this regard.

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

Section 261.60—How Do Existing Welfare Reform Waivers Affect a State's Penalty Liability Under This Part? (§ 271.60 of the NPRM)

Based on our changes to the regulatory provisions relating to waivers, we have modified this section. Under the NPRM, this section described how welfare waivers affected the participation rates. In the final rule, it merely cross-references subpart C of part 260, which addresses welfare reform demonstration waivers comprehensively.

We have responded to all comments relating to waivers in the preamble section entitled ''Waivers.''

Subpart G—What Nondisplacement Rules Apply in TANF?

Section 261.70—What Safeguards Are There To Ensure That Participants in Work Activities Do Not Displace Other Workers? (§ 271.70 of the NPRM)

The regulations incorporate the statutory prohibition against allowing an individual participating in TANF work activities from displacing another employee. A participant in a work activity may not fill a vacancy that exists because another individual is on layoff from the same or equivalent job. Also, a participant may not fill a vacancy created by an involuntary reduction in workforce or by the termination of another employee for the purpose of filling a vacancy with a participant.

The statute and the final rule also require States to establish and maintain grievance procedures for resolving complaints of alleged violations of the restrictions on displacing workers. Readers should note that we have added a new reporting requirement at § 265.9(b)(7), under which each State must provide us with a description of its grievance procedures for resolving complaints of displacement as part of its annual report if it has not included a description in its State TANF plan.

We encourage States to take aggressive steps to ensure that the current work force is not harmed or their employment jeopardized in any way by a State's efforts to place welfare recipients in employment or work-related positions. Our ultimate goal, and that of States, is to increase the ranks of the employed, not to substitute one group of job-seekers for another. Displacing current workers is counter-productive and damages the overall stability of the labor force. We are confident that States will develop procedures for working with employers to protect against displacing other employees.

Comment: A few commenters urged us to establish minimum standards for State grievance procedures and to require that a State notify workers of those procedures and of the remedies available to displaced workers. Similarly, another commenter urged us to create standards for other aspects of this provision. At least one commenter recommended that, if we thought we did not have the authority to impose such requirements, then instead we should deny penalty reduction to States that do not establish effective grievance procedures or ensure widespread notice of their procedures.

Some commenters urged us to reference the WtW interim rules, which included more extensive nondisplacement provisions, and to recommend that States use one set of grievance procedures for both programs.

Response: Section 417 of the Act limits the authority of the Secretary to regulate the conduct of States or enforce TANF provisions, except where specifically provided for in the statute. Thus, it is not consistent with the principle of State flexibility embodied in PRWORA for us to regulate a State's administrative procedures. In particular, in this provision, there is an explicit expectation of deference to State and local laws, which we have reflected in paragraph (c) of this section. Moreover, we do not have penalty authority with respect to the enforcement of the nondisplacement provision and would be reluctant to create a structure that duplicates or conflicts with existing enforcement mechanisms that have a clear foundation under law. For these reasons, we have not modified the regulation to establish minimum standards for grievance procedures or to deny access to penalty reduction.

Using one set of grievance procedures for both programs should prove easier for States, employers, and workers alike. We urge States to consider adopting this approach. However, we note that not all States have established WtW programs, and there may be reasons that a unified grievance procedure would not be appropriate.

Comment: One commenter urged us to add several provisions to the nondisplacement section in order to prevent displacement more broadly. The suggested additions included prohibiting filling a position that: would otherwise be a promotional opportunity for a current employee; did not comply with applicable personnel procedures; was caused by a strike or other labor dispute; or was an established unfilled public agency position, unless unfunded in the budget.

Response: The nondisplacement provisions in the statute are very explicit. Under PRWORA, we do not have the authority through regulations to expand the definition of nondisplacement, even if we support the commenter's suggestions. However, expanded definitions may be available under State law or policy.

Comment: One commenter asked us to explain how we would educate State welfare administrators regarding compliance with the nondisplacement provisions.

Response: The section entitled ''Recipient and Workplace Protections'' describes initiatives by various agencies within our Department and elsewhere in the Federal government to inform State agencies about the requirements of Federal employment laws. Please refer to that section for further information on these efforts.

VII. Part 262—Accountability Provisions—General (Part 272 of the NPRM)

As we noted earlier in the preamble under our discussion of waivers, we moved the waiver provisions of § 272.8 of the NPRM to subpart C of part 260. You will find the comments that we received on § 272.8 there.

Section 262.0—What Definitions Apply to This Part? (§ 272.0 of the NPRM)

This section cross-references the general TANF regulatory definitions established under part 260.

We received no comments on this section.

Section 262.1—What Penalties Apply to States? (§ 272.1 of the NPRM)

Section 409 includes 15 penalties that may be imposed on States. This rule covers 14 of the 15. This rule does not include the specific penalty dealing with substantial noncompliance with requirements under title IV–D (section 409(a)(8)). Our Office of Child Support Enforcement is addressing this penalty in a separate rulemaking. However, since the penalty is one of the TANF penalty provisions, the general procedures and the appeal process in this rulemaking will apply.

The penalties that we are regulating are:

(1) A penalty for using the grant in violation of title IV–A of the Act, as determined by findings from a single State audit and equal to the amount of the misused funds;

(2) An additional penalty of five percent of the adjusted SFAG, based on our determination that such misuse was intentional;

(3) A penalty of four percent of the adjusted SFAG for the failure to submit an accurate, complete and timely required report;

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

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

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

(7) A penalty equal to the outstanding loan amount plus interest for the failure to repay a Federal loan provided for under section 406;

(8) A penalty equal to the amount by which qualified State expenditures fail to meet the appropriate level of historic effort in the operation of the TANF program;

(9) A penalty of five percent of the adjusted SFAG for the failure to comply with the five-year limit on Federal funding of assistance;

(10) A penalty equal to the amount of contingency funds that were received for a fiscal year, but were not remitted by a State, if the State failed to maintain 100 percent of historic effort in the operation of its TANF program in that 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 under § 262.1 in the fiscal year that immediately succeeds the year in which the reduction was made;

(13) A penalty equal to the amount of the State's Welfare-to-Work formula grant for failure to maintain the required historic effort during a year in which a State receives this formula grant; and

(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.

If applicable, in calculating the amount of the penalty, we will use the adjusted SFAG as defined in § 260.30. Except for the penalty at § 262.1(a)(12), all penalties are either a percentage of the adjusted SFAG or a fixed amount. In calculating the amount of these penalties, we will add all applicable penalty percentages together, and we will apply the total percentage reduction to the amount of the adjusted SFAG that would have been payable if we had assessed no penalties against the State. As a final step, we will subtract other (fixed) penalty amounts.

The penalty at § 262.1(a)(12) requires that we reduce a State's adjusted SFAG if, in the fiscal year immediately following the fiscal year when we have taken a penalty under this section, a State does not expend its own funds on the State's TANF program in the amount of the penalty (i.e., the amount by which we reduced the adjusted SFAG). Unlike the other penalties, this penalty represents both a percentage of the adjusted SFAG (up to two percent) and a fixed amount (the amount of the reduction a State has failed to expend replace with its own funds). We believe it is appropriate to calculate the amount of this penalty by including the amount of the penalty based on a percentage with other applicable penalty percentages. We will then subtract the fixed amount of this penalty with the other fixed-amount penalties. Finally, we will add the amount based on the percentage for this penalty and the fixed amount for this penalty to determine the total amount of this penalty.

We will not reduce a State's quarterly grant by more than 25 percent. If the 25-percent cap prevents us from recovering the full penalty imposed on a State all at once, we will apply the remaining amount to the SFAG payable for the immediately succeeding quarters until we have finally taken the penalty in full.

In preparing this final document, we noticed a few places where we should revise the regulatory text to be clearer.

- In both the preamble discussion and the regulations of the NPRM, we may not have described the Contingency Fund MOE penalty and the penalty for failure to replace penalty amounts clearly enough. Accordingly, we have clarified the regulation at § 262.1(a)(10) to say that we may penalize a State for failure to remit contingency funds if it does not incur State TANF expenditures (i.e., State expenditures within its TANF program) equal to at least 100 percent of its historical State expenditures. In determining Contingency Fund MOE requirements, historical State expenditures do not include expenditures under the IV–A child care programs.
- At § 262.1(a)(12), we have clarified that States must replace penalty amounts in the year after we actually take the penalties.
- At § 262.1(a)(2), we have clarified that the penalty for intentional misuse is in addition to the penalty for misuse.

We received some comments on the provisions in this section and have made a few changes to the regulations, as noted in our responses to the comments below.

Comment: Some commenters expressed the view that the regulations placed too much emphasis on penalties and included too many penalties. Another commenter mentioned that these provisions will lead to an adversarial relationship reminiscent of the one that previously surrounded quality control penalties under AFDC.

Response: The statute mandates all of the penalties included in these regulations. As we mentioned in the NPRM, it is clear that Congress intended for State flexibility to be balanced with State accountability. To assure that States fulfilled their new responsibilities under the TANF program, Congress established a number of penalties and requirements under section 409(a). The penalties indicate the areas of State performance that Congress found most significant and for which it gave us clear enforcement authority. While we want to maintain supportive partnerships with States, we cannot avoid our responsibilities under the statute. Although the regulation may seem unduly slanted toward penalties,

this is because we have limited authority to regulate outside the penalty provisions. Most of program policy and design is up to the States and is not the subject of regulations.

Comment: One commenter asserted that only one penalty, the one that will be imposed if a State fails to maintain assistance to an adult single custodial parent who cannot obtain child care for a child under age six, focuses on protecting and serving families and children.

Response: We do not agree with this observation. All of the penalties have been enacted to assure that States operate programs that promote the goals of the legislation. Many are designed to ensure that States use Federal and State funds appropriately to provide assistance to needy families and end dependence by promoting work and self-sufficiency. Even the penalty for failure to submit an accurate, complete and timely report supports program goals in that it requires States to submit information about what is happening to needy families and whether specific requirements are being met. Also, as we have said elsewhere in this preamble, the penalty system is part of a much broader structure that helps to protect families and promotes positive State responses to the opportunities under TANF.

Comment: A few commenters pointed out that some of the penalties are inter-related and can have an escalating impact on States, i.e., if a State fails one provision, it is likely to fail one or two others. A commenter suggested that instead of imposing penalties and requiring States to replace funds lost due to penalties, we should require States to reduce claims for disallowed costs. Another argued that States should reinvest penalty amounts since withholding funds may have the effect of making it more difficult for the States to achieve the goals of the program.

Response: In establishing this new block grant program, Congress wanted to give States flexibility to design programs that would best serve their families. It enacted the penalty provisions in order to assure that States use funds to achieve TANF program goals. The law requires States to replace penalty amounts with their own funds so that they will continue to serve needy families and meet the requirements of the Act. Congress also enacted a maximum on the total penalty amount that can be taken in any year in order to protect the interests of needy families and children in the State.

Comment: A commenter suggested that we should not design a system that perpetuates failure based upon failure, but, instead, we should design a system that rewards States for excellence.

Response: Although it felt the penalties were necessary to focus State performance, Congress did not rely solely on penalties to ensure that States work towards achieving program goals. As we previously discussed, it also enacted provisions to reward States for excellence when it established bonuses for high performance and for decreases in out-of-wedlock births.

Comment: One commenter noted that the statute specifies that the penalty for failure to meet the basic MOE requirement applies for fiscal years 1998 through 2003 and suggested that we include this limit in our regulations.

Response: Since the TANF program is currently funded only through fiscal year 2002, we did not think it was necessary to include this limitation in our regulations. When Congress re-authorizes TANF, it could well extend this provision in the statute. As the rules are written, we would not need to reissue regulations to keep them current. If the provision were not extended, the penalty would no longer be in effect, and we would consider making conforming changes to the rules.

Comment: A commenter asked if there is a penalty that applies when a State fails to screen applicants and recipients and thus fails to deny assistance to fleeing felons, or parole or probation violators.

Response: The statute, at section 408(a)(9), prohibits States from using their Federal TANF funds to provide assistance to fugitive felons and probation and parole violators. While there is no specific penalty covering this prohibition, the penalty for misuse (or intentional misuse) of funds will apply if States provide TANF assistance to such individuals.

Comment: In the NPRM, we based penalties on the amount of the SFAG minus any reductions due to the implementation of a Tribal TANF program, without consideration of any transfers of funds to the Discretionary Fund of the Child Care and Development Fund (CCDF) and/or the Social Services Block Grant (SSBG). While one commenter expressed appreciation for the fact that we assessed penalties against the adjusted SFAG, other commenters asked that, for the sake of consistency and fairness (since we subtracted transferred amounts before applying the administrative cost cap), we should consider transfers of funds to the CCDF and/or the SSBG in determining the adjusted SFAG.

Response: As we discuss elsewhere, we have revised the definition of the adjusted SFAG to remove any funds transferred to the Discretionary Fund of the CCDF and/or the SSBG. The adjusted SFAG will be the same as the SFAG for States without Tribal grantees and with no transfers of funds to the Discretionary Fund of the CCDF or the SSBG. You can find additional discussion of this issue in the preamble discussions for §§ 260.30 and 263.0.

Comment: We received some comments about our interpretation of the statutory language that requires penalties to be imposed ''for the immediately succeeding fiscal year'' or the ''immediately succeeding fiscal quarter.'' Commenters pointed out that we did not follow the statute precisely, but did not express opposition to our interpretation.

Response: We are applying penalties for the fiscal year (or quarter) immediately following our final decision in order to establish a practical method for implementing the statute. This method allows us to give States the opportunity to plead reasonable cause and to correct violations under corrective compliance plans before we actually take a penalty. Consequently, as one commenter noted, it is possible that a State might incur a violation in FY 1998, be determined to be subject to a penalty in FY 1999, and actually have its funding reduced in FY 2000.

Comment: A commenter pointed out that, rather than limiting penalty reductions to a State's grant to 25 percent during a fiscal year, the statute prohibits us from reducing any quarterly payment by more than 25 percent. Another commenter asked us to clarify this provision.

Response: The commenter is correct that the statute does not permit us to reduce any quarterly payment by more than 25 percent. While on an annual basis, capping each quarter's reduction at 25 percent would be the same as capping the annual reduction at 25 percent, there could be a difference when penalty reductions begin mid-year, as provided under § 262.1(c)(1). We have modified the language at § 262.1(d) slightly to clarify that we will not withhold more than 25 percent of a State's quarterly grant.

Comment: A commenter asked that we assess the penalties in four equal quarterly installments during the year.

Response: The statute requires us to take some penalties by reducing the SFAG payable for the quarter that immediately follows our final decision. In these cases, if the amount exceeds 25 percent of the SFAG payable for that quarter, we will take the remaining amount from the next quarter's SFAG.

The statute requires us to take the majority of penalties by reducing the SFAG payable for the fiscal year that immediately follows our decision. In these cases, if taking the penalty in a single quarter would have an adverse impact on the State's ability to administer the TANF program, the State may ask that we take the penalty in two, three, or four quarterly installments in the fiscal year. However, we must take the full amount during that fiscal year unless we are prevented from doing so by the 25-percent cap. Also, we would take a minimum of the pro-rata share of the penalty amount from each quarter's grant; in other words, we would not allow States to defer a disproportionate share of the penalty amount to the latter part of the fiscal year.

Comment: A couple of commenters noted that, in paragraphs 272.1(c)(1) and (c)(2), we incorrectly categorized when we would take two of the penalties.

Response: The commenters are correct. We made errors in listing when we would take the penalties for failure to repay a Federal loan or to enforce child support penalties. We have corrected paragraphs § 262.1(c)(1) and (c)(2) of the regulations to indicate that we will take penalties for failure to repay a Federal loan by reducing the SFAG payable for the quarter that immediately follows our final decision and penalties for failure to enforce child support penalties by reducing the SFAG payable for the fiscal year that immediately follows our final decision.

Comment: Another commenter argued that, if we take penalties in the quarter following our final decision, it will be difficult for States to fill in with their own funds.

Response: The statute requires us to take any penalties for misuse of funds and failure to repay a Federal loan by reducing the SFAG payable for the quarter that immediately follows our decision. Generally, however, States will have an early indication that these penalties are likely to occur and will be able to plan accordingly.

Section 262.2—When Do the TANF Penalty Provisions Apply? (§ 272.2 of the NPRM)

Congress recognized that, in certain circumstances, States should face the consequences for failing to meet the requirements of the penalty provisions from the first day the State operates the TANF program. It also recognized, however, that States needed some lead time in implementing other TANF requirements.

Section 116(a)(2) of PRWORA delayed the effective date of some of the penalty provisions in title IV–A. For those provisions where it did not delay the effective date, we believe that Congress intended that a State could be subject to a penalty from the first day it began to operate TANF.

During the interim period between publication of the NPRM and the effective date of final rules, we required States to implement the TANF provisions in accordance with their own reasonable interpretations of the statute. In the NPRM we stated that we would not impose a penalty if we were to find that a State's actions were inconsistent with the final regulations, but consistent with a reasonable interpretation of the statute. However, if we were to find that a State operated its TANF program in a manner that was not based on a reasonable interpretation of the statute, we would penalize the State.

We received a few comments in support of these provisions and a couple of other comments as discussed below. We made no changes to this section of the regulations.

Comment: In addition to the supportive comments, one commenter expressed the view that the penalties should not apply until the final regulations are adopted and the States have a reasonable period of time to adjust to the new provisions. Another commenter asked that we give States a hold-harmless period and not subject them to penalties while they implement the regulations.

Response: We have followed the statutory requirements for determining when penalties apply. We do not have the authority to delay the penalties. However, as we discussed in the preamble to § 260.40, prior to the effective date of these final regulations, we will not penalize States if they operated their TANF programs in a manner that is consistent with a reasonable interpretation of the statute. Also, we decided to delay the effective date of these rules so that States have a reasonable period of time to implement the new regulatory provisions. Please refer to § 260.40 for additional discussion of issues related to the effective date.

Section 262.3—How Will We Determine if a State Is Subject to a Penalty? (§ 272.3 of the NPRM)

We have concluded that no one method can be used for monitoring State performance. The following discussion explains the three methods—the single audit, data collection and reporting, and financial reporting—that we will use to determine State noncompliance with requirements that may lead to penalties.

Single Audit

Under the requirements of the Single Audit Act, as of July 1, 1996, States operating Federal grant programs meeting a monetary threshold of $300,000 must conduct an audit under the Act. Most States must audit annually; a few may audit biennially. Because of the substantial funding under TANF, all TANF States meet the audit threshold.

The single audit is an organization-wide audit that reviews State performance in many program areas. We will implement the Single Audit Act through use of Office of Management and Budget (OMB) Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.'' Because of amendments to the Act in 1996, OMB recently revised the Circular, merging former Circulars A–128 and A–133. It published the new Circular in the **Federal Register** on June 30, 1997, at 62 FR 35277.

In conducting their audits, auditors use a variety of tools, including the statute and regulations for each program and a compliance supplement issued by OMB. This supplement focuses on certain areas of primary concern to that program. We prepared, and OMB has issued, a TANF program compliance supplement for those penalties for which the single audit will be our primary or secondary compliance instrument. We will update the compliance supplement based on these final regulations.

The Single Audit Act does not preclude us or other Federal offices or agencies, such as the Office of the Inspector General (OIG), from conducting additional audits or reviews. In fact, there is specific statutory authority to conduct such additional audits or reviews. In particular, 31 U.S.C. 7503(b) states:

> Notwithstanding subsection (a), a Federal agency may conduct, or arrange for additional audits that are necessary to carry out its responsibilities under Federal law or regulation. The provisions of this chapter do not authorize any non-Federal entity (or sub-recipient thereof) to constrain, in any manner, such agency from carrying out or arranging for such additional audits, except that the Federal agency shall plan such audits to not be duplicative of audits of Federal awards.

Additionally, we will conduct quality control reviews of selected State audits to determine whether States conducted their audits in accordance with the Single Audit Act, OMB Circular A–133, and the compliance supplement. Pursuant to OMB Circular A–133, sections ____.400(a)(3) and (5), we will

take appropriate action when we find any audits to be deficient.

We will use the single audit, in conjunction with other reviews, audits, and data sources, as appropriate, to identify noncompliance for which the State may be liable. We will rely heavily on Single Audit Act activities for determining a State's liability for some penalties and will use the single audit to gather and verify information for other penalties. For example, we will use the single audit, supplemented by other reviews, audits, and activities under the Single Audit Act, to identify situations where a State used funds under section 403 in violation of the Act. (See § 263.10 on Misuse of Funds.) The misuse-of-funds penalty is the only penalty for which the statute identifies a specific method (i.e., the Single Audit Act) for determining penalty liability.

We will supplement information from the single audit with our own audits and reviews, and reviews and audits conducted by OIG and its contractors. We may identify a need to conduct such audits as the result of complaints from individuals and organizations, requests by the Congress to review particular areas of interest, information collected by our reporting systems, or other indications of problems in State compliance with TANF program requirements.

When we determine that a State is subject to a penalty for the misuse of funds, we may apply a second penalty if we determine that the State intentionally misused Federal TANF funds. (You will find the criteria for determining ''intentional misuse'' at § 263.12.) The single audit will be the primary vehicle for this penalty because of its link to the determination of misuse of funds.

The single audit will also help us identify noncompliance that could result in imposition of the following four penalties: (1) Failure to participate in the Income and Eligibility Verification System (see § 264.11); (2) Failure to comply with paternity establishment and child support enforcement requirements under title IV–D of the Act (see § 264.31); (3) failure to maintain assistance to an adult single custodial parent who cannot obtain child care for a child under age six (see § 261.57); and (4) failure to sanction recipients who refuse to work (see § 261.54). For these process-focused penalties, we determined that we can make appropriate use of the single audit, supplemented by other reviews and audits, to monitor State compliance.

The audit compliance supplement includes guidance to auditors on how to audit these areas. As in the case of the misuse-of-funds penalty, we may conduct other reviews and audits, if necessary. For example, we anticipate that we may receive complaints from individuals and organizations concerning the penalty for a State's failure to maintain assistance to an adult single custodial parent who cannot obtain child care. A number of substantiated complaints might indicate that we need to conduct an additional review.

The single audit might identify a lack of State compliance in other penalty areas, e.g., the five-year limit on Federal assistance. If it does, we will not ignore those findings. Therefore, we will also impose a penalty based on single audit findings in other penalty areas.

For most programs, other than TANF, the Single Audit Act procedures provide for disallowance in cases of substantiated monetary findings. However, in accordance with section 409(a), under TANF, we will be taking penalties, rather than disallowances. When the single audit determines a specific violation, the penalty amount that we will apply is the penalty amount associated with the specific penalty provision or provisions, for example, misuse of funds and failure to end Federal assistance after 60 months of receipt. Likewise, where we, or OIG, conduct an audit or review, the penalty amount that will apply is the penalty amount associated with the specific penalty or penalties specified under section 409 and these rules.

Data Collection and Reporting

We will monitor State compliance with the penalties for failure to satisfy minimum participation rates (see § 261.21) and failure to comply with the five-year limit on Federal assistance (see § 264.1) primarily through the information required to be reported by section 411(a) (i.e., State reporting of disaggregated case-record information). (See part 265 and the Appendices for data collection and reporting requirements.)

We believe that Congress intended that the data elements in section 411(a) be used to gather information for these two penalty areas. Thus, we concluded that the section 411(a) data collection tools would be our primary means for determining these penalties. We may also need to conduct reviews in the future to verify the data submitted by States, particularly in these two areas where a fiscal penalty is applicable. States should maintain records to adequately support any report in accordance with 45 CFR 92.42.

Accurate data are essential if we are to apply penalties fairly. If the State submits insufficient data to verify its compliance with the requirements, or if we determine that a State cannot adequately document the data that it has submitted to show that it has met its participation rates or the five-year time limit, we will enforce the participation rate penalty or five-year time-limit penalty.

In the consultations we held during the development of the NPRM, some participants recommended that we use the single audit as the means for determining all the penalties. However, since States must otherwise report the data that directly speak to their compliance in these two areas, and timely determination of State compliance is necessary, we did not accept that recommendation. Instead, we will rely on the quarterly reports required under part 265 of these regulations.

Financial Reporting

All States are subject to the basic MOE penalty for failure to maintain a certain level (i.e., 80 or 75 percent) of historic effort. Those States that choose to receive contingency funds under section 403(b) are subject to a separate maintenance-of-effort penalty for failure to maintain 100 percent of historic effort. Also, in a year that they receive WtW formula grants, States are subject to an additional penalty for failure to meet the basic MOE requirement.

We have developed a TANF Financial Report (see Appendix D of part 265). We designed this report to gather information required under sections 403(b)(4), 405(c)(1), 409(a)(1), 409(a)(7), 409(a)(10), 409(a)(12), 409(a)(13), 411(a)(2), 411(a)(3), 411(a)(5), including data on administrative costs and types of State expenditures. It will also gather financial information to enable us to award grant funds, close out accounts, and manage other financial aspects of the TANF program. In addition, we will use this report to monitor State compliance with the basic MOE and Contingency Fund requirements and to aid us in determining if Federal TANF funds have been used properly.

Consistent with section 5506(a) of Pub. L. 105–33, the TANF Financial Report is due 45 days after the end of each quarter. Upon receipt of the report for the fourth quarter, i.e., by November 14, we should have State-reported information indicating whether or not the State met its MOE requirements for the prior fiscal year.

On the TANF Financial Report, States will inform us of the amount of expenditures they have made for basic and Contingency Fund MOE purposes. For the basic MOE, States must inform

us of the amount of expenditures made in the State TANF program and in separate State programs. (See part 264, subpart B, for more information on the Contingency Fund MOE requirement.)

In addition, to collect the necessary information on all MOE programs—both those operated within the TANF program and separate State programs—we require supplemental information in an annual report. The annual report, which may be provided as a separate report or as an addendum to the fourth quarter TANF Data Report, requires that States submit for each program for which the State claims MOE expenditures, the total annual State expenditures and the total annual State expenditures claimed as MOE. (See § 265.9(c) for more information on the contents of the annual report.)

If we reduce a State's SFAG as the result of a penalty, the State must expend an equal amount of its own funds in the immediately succeeding fiscal year. If the State fails to replace the funds as required, the State is subject to the penalty at § 262.1(a)(12). The penalty amount is up to two percent of the adjusted SFAG plus the amount not expended to replace the reduction to the SFAG due to the penalty.

We will use the TANF Financial Report (or Territorial Financial Report) to determine if a State has complied with these replacement provisions. Instructions to the TANF Financial Report (see Appendix D) require States to include amounts that they are required to contribute as a result of any penalties taken against the State. (We will include a similar requirement in the Territorial Financial Report.)

As in the case of the penalties for failure to meet the participation rates or comply with the five-year limit on assistance, our program management responsibilities may require us to verify the data submitted by States on the TANF Financial Report and annual report, particularly data on MOE expenditures and ''replacement funds.'' States should maintain records in accordance with 45 CFR 92.42. We will also use the annual report to help us to determine whether a State met its MOE requirements.

If the State submits insufficient MOE data to verify its compliance or if we determine that the State cannot adequately document data that it has submitted showing that it has met its MOE requirements, we will apply the penalties for failure to meet the basic MOE requirements (including the penalty related to WtW funding) and the Contingency Fund MOE requirements. For the basic MOE, we may have to estimate the actual level of qualifying MOE expenditures. We would then base the amount of the penalty on the degree to which the State has not adequately demonstrated that it has met the applicable MOE requirement.

We will penalize States for failing to repay a loan provided under section 406 (see § 264.40). A specific vehicle for determining a State's compliance with these requirements is unnecessary. In our loan agreements with States, we will specify due dates for the repayment of the loans, and we will know if States are not making the required payments.

We will penalize States for failing to submit a report required under section 411(a) by the established due dates (see §§ 265.4 and 265.7). As noted before, we are requiring that the reports must not only be timely, but they must also be complete and accurate. Thus, we may take actions to review the accuracy of data reporting if appropriate. If we determine that the data required under section 411(a) are incomplete or inaccurate, we may apply the penalty for failing to submit a report. As discussed above, if the data that are inaccurate or incomplete pertain to other penalties (i.e., the participation rate, the five-year time limit on assistance, the basic MOE, the WtW MOE penalty, or the Contingency Fund MOE requirements) and their unavailability impedes our ability to determine a State's penalty liability, we will apply the penalties associated with these requirements in lieu of a reporting penalty.

Regardless of how we determine that a State is subject to a penalty, the determination of whether a State has access to a possible reasonable cause exception or corrective compliance depends on the specific penalty provision. States cannot avoid all penalties through the reasonable cause exception or a corrective compliance plan (see § 262.4).

We received a few comments on this section and made some changes to the regulations in response. A discussion of the comments and responses follows.

Also, in preparing the final rules, we noticed that we did not discuss how we will determine that a State is subject to a Welfare-to-Work formula grant penalty. We have added this discussion to the final rule.

Comment: Commenters suggested that we should permit the use of the single audit for uncovering noncompliance with additional requirements beyond those we identified in the NPRM.

Response: Although we discussed the direct and indirect uses of the single audit in determining compliance with a number of requirements, we wrote the regulation itself more narrowly. We agree with these comments and have revised the regulation at § 262.3(a) to indicate that, in addition to using the single audit as the primary method to determine if a State is subject to certain penalties, we will use the single audit, as appropriate, as a secondary method of determining if a State is subject to other penalties.

Comment: A commenter noted that, in paragraph (c), our reference to § 275.6 of the NPRM was incorrect.

Response: We agree and have corrected § 262.3(c) to refer to verification of data in accordance with the provisions of § 265.7 of this chapter.

Comment: Commenters suggested that our standards for determining penalties are vague. Other commenters asked what we mean when we say that information in the data or financial reports is ''insufficient.''

Response: In some cases, our standards are specific, such as for determining work participation rates and compliance with time limits. However, we find that, given that this is a new program, it is impossible to draw sharp lines that fully define all situations, and it is appropriate to leave room for discretion in a block grant environment. Moreover, since States can dispute our determinations and have appeal rights, they have protection from arbitrary decisions.

Obviously, we want strong, clear standards for ''complete and accurate'' because the information reported by States in their data and financial reports is critical in determining States' compliance with TANF requirements and their potential penalty liability. However, our standards have to be fair at the same time.

In the preamble to part 265, you will find a broader discussion of the importance of accurate, complete and timely reporting of information.

Section 262.4—What Happens if We Determine That a State Is Subject to a Penalty? (§ 272.4 of the NPRM)

If we determine that a State is subject to a penalty, we will send the State agency a notice that it has failed to meet a requirement under section 409(a). This notice will: (1) Specify the penalty provision at issue, including the applicable penalty amount; (2) specify our 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 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 if, how, and

when the State may submit a reasonable cause justification under 409(b) and/or corrective compliance plan under 409(c). States must postmark their responses to our notice within 60 days of their receipt of our notice.

For penalties where the reasonable cause and the corrective compliance plan provisions both apply, we encourage States to submit to us both their justification for reasonable cause and a corrective compliance plan within 60 days of receipt of our notice of failure to comply with a requirement. Our objective is to expedite the resolution of a State's failure to meet a requirement.

A State may choose to submit a reasonable cause justification without a corrective compliance plan. In this case, we will notify the State if we do not accept the State's justification of reasonable cause. Our notice will also inform the State that it has an opportunity to submit a corrective compliance plan. The State will then have 60 days from the date it receives this notice to submit a corrective compliance plan. (Under this scenario, we will send the State two notices—the first will inform the State that it may be subject to a penalty, and the second will inform the State that we determined that it did not have reasonable cause.) We have added a provision to the regulations to clarify this process. A State may also choose to submit only a corrective compliance plan if it believes that the reasonable cause factors do not apply in a particular case.

The reasonable cause and corrective compliance provisions in the statute do not apply to five penalties: (1) failure to repay a Federal loan on a timely basis; (2) failure to maintain the applicable percentage of historic State expenditures for the basic MOE requirement; (3) failure to maintain 100 percent of historic State expenditures for States receiving contingency funds; (4) failure to expend additional State funds to replace grant reductions due to the imposition of one or more penalties listed in § 262.1; and (5) failure to maintain 80, or 75, percent, as appropriate, of historic State expenditures during a year in which the State receives a Welfare-to-Work grant.

If, upon review of the State's submittal, we request additional information in order to determine reasonable cause, the State must provide this information within 30 days of the date of our request. We have established this deadline to make sure the process is not delayed. However, under unusual circumstances we may give the State an extension of the time to respond to our request for additional information.

We received some comments on this section. One expressed the view that our notification provisions were reasonable; others raised issues about the proposed rule. Below, we address the comments and resulting changes we made to the regulations. In addition to these changes, we reversed the order of sub-paragraphs (e) and (f) so that they follow the logical sequence of actions in the penalty process.

Comment: A commenter recommended that we send our notice that a State is subject to a penalty to the State agency director.

Response: In the NPRM we said we would notify the State. By State, we meant the State agency. We assume the commenter thought we would notify the Governor. We have modified the regulation to say that we will notify the State agency and added a definition of State agency to § 260.30.

Comment: One commenter suggested that we list in the regulation the four components of the initial penalty notice to the State that we included in the preamble to the NPRM.

Response: We agree with this suggestion and have amended the regulation at § 262.4(a) accordingly.

Comment: Another commenter asked that we include, in our penalty notice to a State, a description of the data and method we used to determine that the State is subject to a penalty.

Response: We thought that we covered this in the NPRM when we said we would specify which penalty we would impose and the reasons for the penalty. However, in the final rule at § 262.4(a), we have revised the language to list the source of information as one of the four specific components that we will include in our notice to the State.

Comment: A commenter asserted that States should be able to raise any relevant issue in response to a penalty notice and not be limited to responding on the three grounds of incorrect penalty determination, reasonable cause, or corrective compliance.

Response: Unfortunately, the commenter did not include any examples of issues that would not fit in these three categories. We think that a State will be able to include all relevant considerations under one of these three categories.

Comment: A few commenters noted that the regulation proposed at § 272.4(d) conflicted with § 271.55(c), which said that reasonable cause and corrective compliance were not available when a State was being penalized for failing to impose penalties on individuals.

Response: The proposed regulation at § 272.4(d) was correct. Reasonable cause and corrective compliance are available when a State is being penalized for failing to impose penalties on individuals. The final rules at §§ 262.4(d) and 261.55 reflect this policy.

Comment: A commenter asked that we make reasonable cause and corrective compliance available to States that are being penalized for failing to expend additional State funds to replace penalty amounts.

Response: We do not have the authority to make this change, since the statute specifies that the reasonable cause exception and corrective compliance plan do not apply to this penalty.

Comment: Several commenters asked that we establish a time frame for when we will respond to a State's reply to our penalty notice.

Response: We have added a provision to the regulations at § 262.4(f) to say that, generally, we will respond within 60 days to the State's reasonable cause submittal, and that we will either accept or reject the State's corrective compliance plan within 60 days of our receipt of the plan.

Comment: A commenter asked whether a State may request reconsideration or submit additional information based on our decision, or whether its only recourse at that point is to file a formal appeal.

Response: Although there are no further formal steps available to the State short of a formal appeal, it is our hope that State and Federal staff will engage in an ongoing dialogue in an effort to address any penalty-related issue. This dialogue may begin as soon as the State is working to develop new policies or begins to have trouble meeting a requirement, and well before we notify the State that we intend to penalize it. It may continue until the issue is resolved, but will not extend the time frames States have for responding to our notices. Therefore, we advise States to make their complete and best arguments during the time allotted.

Comment: A number of commenters asserted that two weeks is not long enough for States to respond to our request for further information.

Response: We agree that under some circumstances two weeks may not be long enough, so we are increasing the time States have to respond to 30 days. Also, under unusual circumstances, we may give States an extension of the time that they have to respond to our request for information. We have amended the regulation at § 262.4(e) accordingly.

Comment: Commenters suggested that notices and requests be sent by certified mail so that there is evidence of receipt.

Response: A State may choose to send its responses by certified mail, but we are not convinced that we need to include this as a regulatory requirement.

Comment: A commenter asked that we specify in the regulations that we would not assess any penalties pending the resolution of a State's claim of reasonable cause.

Response: If a State claims reasonable cause and we find against the State, the State may then submit a corrective compliance plan or file an appeal to the HHS Departmental Appeals Board (DAB), as discussed in § 262.7. If the State does not take either action, we will assess the penalty in the quarter or fiscal year that immediately follows our final decision, as appropriate. However, if the State submits a corrective compliance plan, we will not assess a penalty until the corrective compliance process is completed. If the State appeals to the DAB, we will not assess the penalty until the appeals process is completed. If the DAB upholds our decision, we will take the penalty and charge interest back to the date of our final response that formally notifies the Governor of the State of an adverse action.

Section 262.5—Under What General Circumstances Will We Determine That a State Has Reasonable Cause? (§ 272.5 of the NPRM)

Under the provisions of section 409, we will not impose certain of the penalties if a State demonstrates that it had reasonable cause. Also, we will reduce or excuse certain penalties if a State corrects or discontinues the violations under an accepted corrective compliance plan.

After reviewing these statutory provisions, we decided that we should not consider the reasonable cause exception of the statute in isolation. Rather, we would view it in conjunction with the provision for developing corrective compliance plans. In this context, we acknowledge the new Federal and State roles under TANF and commit to working with States to minimize adversarial Federal-State issues. Our primary task is to help each State operate the most effective program it can to meet the needs of its caseload and the goals and provisions of the law. Through these rules, we hope to focus States on positive steps that they should take to correct situations that resulted in a determination that they are subject to a penalty, rather than to let them simply avoid the penalty. As such, we consider it appropriate to emphasize the use of the corrective compliance plan process over the reasonable cause exception. Consequently, we have decided to limit the list of reasonable cause criteria.

In the discussion that follows, we describe: (1) the factors that we will consider in deciding whether or not to excuse a penalty based on a State's claim of reasonable cause; (2) the contents of an acceptable corrective compliance plan; and (3) the process for applying these provisions. Our goal is to treat the reasonable cause and corrective compliance plan provisions as part of an integrated process.

We have included factors that would be applicable to all penalties for which the reasonable cause provision applies. We will find that a State has reasonable cause under the following situations: (1) Natural disasters and other calamities (e.g., hurricanes, tornadoes, earthquakes, fires, floods, etc.) whose disruptive impact was so significant as to cause the State's failure to meet a requirement; (2) formally issued Federal guidance that provided incorrect information resulting in the State's failure; and (3) isolated problems of minimal impact that are not indicative of a systemic problem (e.g., although a State's policies and procedures require that Federal TANF assistance be time-limited to five years and include computer safeguards to protect against violations, ten families somehow slip through and receive assistance for longer than five years).

We also have included two separate factors that would apply in cases when the State fails to satisfy the minimum participation rates, and one specific factor that would apply to cases when the State fails to meet the five-year limit. We discuss these specific factors in our preamble discussion of domestic violence and §§ 261.52 and 264.3.

As discussed elsewhere in this preamble, we have also added a factor that will apply if States fail to meet either of the first two deadlines for FY 2000 for submitting complete and accurate reports under the new reporting requirements. We added this factor in response to comments and out of our own concern about the possible concurrent demands of Y2K and TANF reporting requirements. States must be in a position to commit the systems resources necessary to become Y2K compliant in order to ensure that there is no disruption in the benefits to their neediest citizens.

We did not have the latitude under the law merely to extend the reporting deadlines (because they are set in statute). Also, we were unwilling to extend the ''emergency reporting'' into FY 2000 and provide a later effective date for the new reporting provisions because important TANF provisions (e.g., the work participation rates) depend upon consistent data and policies throughout the entire fiscal year. Thus, we have addressed the concern as a reasonable cause issue.

Under the new provision, States that miss the deadlines for submitting complete and accurate data for the first two quarters of FY 2000 will receive reasonable cause if: (1) they can clearly demonstrate that their failure was attributable to Y2K compliance activities; and (2) they submit the required data by July 1, 2000.

In determining reasonable cause under all of these regulatory criteria, we will consider the efforts the State made to meet the requirement. We will also take into consideration the duration and severity of the circumstances that led to the State's failure to achieve the requirement. The burden of proof rests with the State to explain fully the circumstances, events, or occurrences that constitute reasonable cause for its failure to meet a particular requirement. The State must provide us with sufficient relevant information and documentation to substantiate its claim of reasonable cause. We have added a provision to the regulations to clarify the factors that we will consider and the State's burden of proof. If we find that the State has reasonable cause, we will not impose the penalty.

We received quite a number of comments on this section. We discuss the comments and the changes we made to the regulations below.

Comment: Virtually all commenters with comments on this section argued that our proposed list of reasonable cause factors was too narrow and that we needed to give ourselves more discretion. Commenters gave a number of examples of factors that we should consider, including good faith effort, circumstances beyond the State's control, inadequate Federal guidance, increases in a State's caseload, characteristics of the caseload, high unemployment rates or other labor market characteristics, changing economic conditions, and other adverse economic factors.

Response: As we noted in the NPRM, PRWORA did not specify any definition of reasonable cause or indicate what factors we should use in deciding whether to grant a reasonable cause exception for a penalty. In our deliberations on reasonable cause factors, we considered the diverse opinions expressed during our consultation process and our NPRM comment period, as well as the need to support the commitment of Congress, the Administration, and States to the work and other objectives of the TANF program. In keeping with these objectives, we are providing reasonable

cause factors for a limited number of circumstances that are beyond a State's control and placing a greater emphasis on corrective solutions for those circumstances a State can control. We strongly believe that States must correct problems that detract from moving families from welfare to self-sufficiency.

At the same time, we agree with the commenters that it would be difficult to foresee all possible circumstances under which we would want to grant reasonable cause. Accordingly, while we have included the same general factors that we included in the NPRM, we no longer limit ourselves to considering only these factors. While we do not anticipate routinely determining that a State had reasonable cause based on other factors, we do not want to preclude a State from presenting other circumstances. Also, we decided that we were more restrictive than we intended when we limited the third reasonable cause factor to isolated, nonrecurring problems. We have amended the regulations to say that we may grant a State reasonable cause when it has encountered isolated problems of minimal impact that are not indicative of a systemic problem.

Comment: A number of commenters were opposed to our provisions precluding reasonable cause if a State diverted families to a separate State program that achieved the effect of avoiding the work participation rates or diverted the Federal share of child support collections.

Response: As we previously discussed in the section of the preamble entitled ''Separate State Programs,'' we have eliminated the proposed connection between a State's decisions on separate State programs and its eligibility for reasonable cause. Therefore, we have deleted the provisions that were at paragraphs § 272.5(c) and (d) of the proposed rule.

Comment: A commenter suggested that the regulations should provide that, as part of the process of determining when we would impose penalties and penalty amounts, we should give consideration to factors such as whether the State has administered its TANF program fairly, whether it has provided services and supports to families to enable them to comply with program requirements, and whether State-imposed requirements on families are reasonable.

Response: The TANF legislation assumed that States are in the best position to determine which families will be served and what assistance they will receive. As we previously discussed, our authority to regulate and judge State policies and actions are limited, and we have decided not to stretch our regulatory authority by incorporating such factors into all our penalty determinations. There are other provisions in the statute (such as the bonus and ranking provisions, the annual reports to Congress, and annual reports on State child poverty rates) that provide an opportunity to look at whether at-risk families are being helped or hurt by State TANF programs. At the same time, there are a couple of penalty provisions (e.g., those dealing with the imposition of sanctions) where the issues of fairness and adequate recipient protections are more germane and we specifically address some of these issues. You should look to the preamble discussion entitled ''Worker and Recipient Protections'' and the preamble for part 261 for other ways we are addressing this concern.

Section 262.6—What Happens if a State Does Not Demonstrate Reasonable Cause? (§ 272.6 of the NPRM)

Section 409(c), as amended by section 5506 of Pub. L. 105–33, provides that, prior to imposing a penalty against a State, we will notify the State of the violation and allow the State the opportunity to enter into a corrective compliance plan. If a State does not claim reasonable cause or if it claims reasonable cause simultaneously with submitting a corrective compliance plan, it will have 60 days from the date it receives our notice of a violation to submit its corrective compliance plan. If, in response to our notice of a violation, the State initially submits only a claim of reasonable cause, and if we deny this claim, the State has 60 days from the date it receives our second notice (i.e., denying its reasonable cause claim) to submit its corrective compliance plan. If a State does not submit an acceptable corrective compliance plan on time, we will immediately send the State a formal notice of adverse action and assess the penalty. Outside of the notice(s), we will not remind the State that the corrective compliance plan is due.

The corrective compliance plan must provide a complete analysis of the situation and factors that prevented the State from meeting the requirement. It also must identify the time period in which the State will correct or discontinue the violation, and the milestones, including interim process and outcome goals, the State will achieve to assure that it will fully correct or discontinue the violation within the specified time period. In order to highlight the importance of corrective compliance, the plan must include a certification by the Governor that the State is committed to correcting or discontinuing the violation in accordance with the plan.

We recognize that each plan must be specific to the violation (or penalty) since each State operates its TANF program in a unique manner. Thus, we will review each plan on a case-by-case basis. In determining whether or not to accept a plan, we will consider the extent to which the State's plan indicates that it will completely correct or discontinue, as appropriate, the situation leading to the penalty.

The steps that a State takes to correct or discontinue a violation may vary. For example, where we penalize a State for misusing Federal TANF funds, we would expect it to remove this expenditure from its TANF accounting records (charging it to State funds, as allowable) and provide steps to assure that such a problem does not recur. Where a State has reduced or denied assistance improperly to a single custodial parent who could not find child care for a child under six, correcting the violation might require that the State reimburse parents retroactively for the assistance that it improperly denied them. The State's corrective compliance plan also would have to describe the steps to be taken to prevent such problems in the future.

Section 409(c)(3) requires that a violation be corrected or discontinued, as appropriate, ''in a timely manner.'' A State's timely correction of a problem is critical to assuring that the State is not subject to a subsequent penalty. At the same time, we recognize that the causes of violations will vary, and we cannot expect States to rectify all violations in the same time frame. Thus, we do not want to unduly restrict the duration of corrective compliance plans. At the same time, we do not want to allow States to prolong the corrective compliance process indefinitely and leave problems unresolved into future fiscal years. Accordingly, in our NPRM, we proposed that the period covered by a corrective compliance plan end no later than six months after the date we accept a State's corrective compliance plan. We have amended this provision, as discussed below.

We will consult the State on any modifications to the corrective compliance plan that we believe are necessary and seek mutual agreement on a final plan. Such consultation will occur only during the 60-day period for acceptance specified in the law. Any modifications to the State's corrective compliance plan resulting from such consultations will constitute the State's final corrective compliance plan and will obligate the State to take the actions

and meet the time frames specified in the plan.

We will either accept or reject the State's corrective compliance plan, in writing, within the 60-day period that begins on the date that we receive the plan. If a State does not agree to modify its plan as we recommend, we may reject the plan. If we reject the plan, we will immediately send a formal notice to the State of the adverse action. The State may appeal our decision to impose the penalty in accordance with the provisions of section 410 of the Act and the regulations at § 262.7.

If we have not rejected a plan in writing by the end of the 60-day period, the plan is deemed to be accepted, as required by the statute at section 409(c)(1)(D).

If a State corrects or discontinues the violation in accordance with its corrective compliance plan, we will not impose the penalty.

The statute permits us to collect some or all of the penalty if the State has failed to correct or discontinue the violation. Therefore, we may reduce the amount of the penalty if a State has not fully rectified the violation in one or more of the following limited situations: (1) The State made significant progress in correcting or discontinuing the violation; or (2) a natural disaster or regional recession prevented the State from coming into full compliance.

We received a number of comments on these provisions that led us to make some changes to the regulations. Also, we made some minor edits to ensure consistency within the parts of this regulation. We discuss the comments and changes below.

Comment: In the NPRM, we asked for comments from States and other interested parties on our proposal to restrict the time period for a corrective compliance plan. Commenters supported the general concept of a corrective compliance plan, and one commenter thought the six-month period was reasonable for most cases. However, most commenters replied that the period we had proposed was unreasonably short, especially since the statute does not require a short time frame. Many suggested that we extend the time period to 9, 12, or 24 months. Others suggested that the State should determine the time frame, or that it be part of the negotiation of the plan by the State and ACF and be determined on a case-by-case basis. Another commenter suggested that the period extend until 90 days after the close of the State's next legislative session. Commenters argued the need for more time based on the possible need to adjust contracts, re-design programs, change policies and procedures, notify recipients, make data system changes, train staff, and get the State legislature to take necessary action.

Response: In responding to these comments, we want to reinforce the importance of achieving compliance with the statute quickly, but we also recognize that we need to consider a State's ability to make the changes necessary to achieve compliance within a fixed time frame. We are not interested in setting a time frame that States cannot meet, but we also do not want to give States more time than they absolutely need. In addition, in the case of the work participation rate and time-limit penalties, where we measure performance over the course of a fiscal year, we thought it was important that corrective compliance also be measured over the course of a fiscal year. Based on this thinking, we have revised the regulations. In general, the final rules provide more flexibility in establishing time frames for corrective compliance plans. For the work participation rate and time-limit penalties, they incorporate a modified six-month corrective compliance period. More specifically, they provide that the State achieve compliance for the first fiscal year that ends at least six months after our receipt of the corrective compliance plan. For example, if a State failed its work participation rate in a prior fiscal year and we received its corrective compliance plan on February 1, the State would have to achieve the participation rates in effect for the current fiscal year. If we received the plan after April 1, the State would have to achieve the participation rates in effect for the following fiscal year.

We made this adjustment to the rules in large part because we calculate liability for work participation and time-limit penalties based on fiscal year data. We also realized that there could be significant delays in the submittal of corrective compliance plans (because participation rate and time-limit information is not available immediately, and we need time both to resolve disputes about the penalty findings and to decide State claims for reasonable cause). Thus, we could not necessarily expect a State to achieve compliance during the first year following a failure.

Nevertheless, we would hope that a State could achieve compliance during that time frame. We would not want to see a State's failure extend into a third fiscal year. If it did, there could be negative consequences for the State. States especially need to work towards increasing their work participation rates as quickly as possible because: (1) the rates increase over time; (2) the base penalty amount increases when a State incurs consecutive penalties; and (3) a State is eligible for a smaller reduction based on degree of noncompliance if it fails to meet the rates in successive fiscal years.

For both the work participation and time-limit penalties, a State will normally have indication that a problem exists during the year for which it is penalty-liable, and it should begin to address the problems well before it submits its corrective compliance plan. For example, by July of a fiscal year, a State should have a good idea of whether it is on track to meet its work participation requirements. If it is not, and does not begin to make changes soon, not only will it fail to meet the requirements for the current fiscal year, but it is unlikely that it will be able to increase its performance enough to meet the required rates for the next fiscal year. Our notice to a State that it is subject to a penalty should serve as confirmation of information the State already has. A corrective compliance plan period does not necessarily have to be lengthy in order to provide the State sufficient time for correcting or discontinuing a violation.

For the remaining penalties that are eligible for corrective compliance, we would permit a State to propose a time frame in its corrective compliance plan. We would expect the State to achieve compliance expeditiously, often in less than six months. States should correct some failures, for example, for failing to comply with IEVS requirements or submitting a data report late, within a month or two.

We expect each State to justify its time frame for each penalty. We will assess the time frame proposed by the State based on the nature of the violation, any unusual circumstances, and other factors that affect the speed with which the State can respond, such as whether it would need to make systems changes or take legislative action.

Comment: A commenter asked that we notify States of our acceptance of a corrective compliance plan and asked us to clarify when the corrective compliance period begins.

Response: We did not address these factors in the NPRM, but have revised the regulations to specify that we will accept or reject the plan in writing and that the time period for the corrective compliance plan begins on the date that the State receives our written acceptance of the plan. If we fail to respond, the time period for the corrective compliance plan begins on

the date that is 60 days after the date we received the State's plan.

Comment: Several commenters stated that 60 days is insufficient for a State to prepare a corrective compliance plan and recommended that we give States 90 days.

Response: We are prevented from making this change by the statute, which specifies that a State has 60 days from the date that it receives our notification to submit a corrective compliance plan.

Comment: A couple of commenters noted that the proposed rules at § 272.6 contained an incorrect citation.

Response: While the commenters were correct that the citation in the NPRM was erroneous, we have made changes to the paragraphs in that section that corrected that problem.

Comment: Some commenters expressed the view that the contents we specified for the corrective compliance plan are reasonable. Other commenters objected to our requiring certification of the plan by the Governor, and one commenter suggested that the certification be made by the director of the State agency.

Response: The Governor is responsible for submitting the State TANF plan and for committing State funds to the program. On this basis, we believe it is also important for the Governor to demonstrate awareness of and support for the corrective compliance plan.

Comment: A commenter asked that we consider a State's good faith effort in determining the amount of a penalty when a State fails to completely correct or discontinue the violation pursuant to its corrective compliance plan. Other commenters asked that we broaden the circumstances under which a penalty is reduced, with some recommending that we consider other factors such as natural disasters, economic circumstances, or other unanticipated or extreme events.

Response: We have said that we will reduce the penalty if the State can demonstrate that it made significant progress toward correcting or discontinuing the violation or that its failure was due to a natural disaster or regional recession. We believe this gives us sufficient latitude to consider mitigating circumstances and the good-faith effort a State has made. For a discussion of the specific standards we will use in deciding to reduce work participation rate penalties, please see the preamble for § 261.51.

Comment: A number of commenters opposed our provisions denying a penalty reduction if a State diverted families to a separate State program that achieved the effect of avoiding the work participation rates or diverted the Federal share of child support collections.

Response: As we previously discussed, we have eliminated the connection between a State's decisions regarding its separate State programs and penalty reductions and have removed the provisions that appeared in § 272.6(i)(2) of the NPRM.

Section 262.7—How Can a State Appeal our Decision To Take a Penalty? (§ 272.7 of the NPRM)

Once we make a final decision to impose a full or partial penalty, we will formally notify the State that we will reduce the State's SFAG payable for the quarter or the fiscal year and inform the State of its right to appeal to the Departmental Appeals Board (the Board).

Section 410, which covers any adverse actions with respect to the State TANF plan or the imposition of a penalty under section 409, provides that the Secretary will notify the Governor of the State of the adverse action within five days. To facilitate the appeal, we will also send a copy of the notice to the State agency.

Within 60 days after the date a State receives this notice, the State may file an appeal of the action, in whole or in part, with the Board. We indicated in the NPRM that the statute allowed only 60 days for the Board to reach a decision after the appeal is filed. A number of commenters believed that the 60 days in the statute indicated a minimum time before a decision could be issued, not a maximum time. The NPRM interpretation was based on the conference report which indicated a Board decision was required ''within 60 days'' (H.R. Rep. No. 725, 104th Cong., 2d sess., p. 302). However, in light of the comments, we have re-examined the language of the statute itself, which states that a decision will be made in ''not less than 60 days'' after the appeal is filed. ''Not less than'' is usually interpreted as a minimum requirement, as the commenters indicated. Therefore, we have revised the regulation to allow a minimum time of 60 days before a decision is made. Nevertheless, we believe that penalties procedures should be handled as expeditiously as possible. We also believe that this is possible in the TANF penalty situation because the opportunity for reasonable cause and corrective compliance before most TANF penalties should have clarified the issues before the penalty decision.

We are requiring that the State submit its brief and the supporting documentation for its case when it files its appeal. To further facilitate this process, we have added a provision to the regulation at § 262.7(a)(1) that ACF's notice must include sufficient factual and legal information on the basis for imposition of the penalty to allow the State to respond in an appeal. In addition, we have allowed the State the opportunity to respond to ACF's reply brief and to submit any additional documentation it considers necessary. A State should send a copy of any appeal documents to the Office of the General Counsel, Children, Families and Aging Division, Room 411–D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

In the final rule, we have slightly increased the time for us to submit our reply brief and supporting documentation— to 45 days after our receipt of the State's submission. This 45 days, plus the 21 days allowed for the State's reply brief, will ensure that the DAB makes no determination prior to 60 days after a State has filed its appeal. Further, briefing and argument will be at the discretion of the Board, but could include an evidentiary hearing. A State's appeal to the Board will also be subject to the following regulations at part 16 of title 45: §§ 16.2, 16.9, 16.10, and 16.13–16.22, to the extent they are consistent with this section.

Section 410(b)(2) provides that the Board will consider an appeal on the basis of the documentation the State submits, along with any additional information required by the Board to support a final decision. In deciding whether to uphold an adverse action or any portion of such action, the Board will conduct a thorough review of the issues.

Finally, a State may obtain judicial review of a final decision by the Board by filing an action within 90 days after the date of the final decision. States may file either 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. The district courts will review the final decision of the Board on the record established in the administrative proceeding, to determine if it is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law, or unsupported by substantial evidence. The court's review will be on the basis of the documents and supporting data submitted to the Board.

We discuss below the comments on this section and our responses.

Comment: A number of commenters believed the time period for the appeal process was too constrained to allow

adequate consideration of the issues. These commenters noted that the statute could be interpreted to require a minimum of 60 days before a determination could be made, rather than the maximum the NPRM proposed.

Response: For the reasons previously discussed, we agree with the commenters and have revised the regulation accordingly.

Comment: One State indicated that the notice should include details on the reasons for the penalty.

Response: We agree with the commenter that the notice should contain sufficient detail on the factual and legal basis for the penalty to allow the State to respond and have revised the regulation. However, we believe the agency should have the opportunity to raise new issues in response to the State's brief and therefore have not specified that reasons not raised in the notice are waived. Since the State now has an opportunity to respond to the ACF brief and to submit additional documentation, we do not believe this policy will disadvantage the State.

Comment: One State noted that the practice of notifying the Governor differed from past practice of notifying the agency and suggested that we also notify the TANF agency.

Response: Although the statute requires notice to the Governor, we agree with the commenter that it would facilitate the process if we also give the TANF agency a copy of the notice and have amended the regulation accordingly.

Comment: A number of commenters suggested the State should be able to submit a reply brief as a matter of right. They also suggested the Board's authority to develop the record be clarified.

Response: The NPRM limited the State's right to submit a reply brief as a matter of right because of the limited time availability under the proposed 60-day maximum. Since we have eliminated this 60-day time issue in the final regulation, we agree with the commenters that the State should be able to submit an appeal as a matter of right and have amended the regulation.

We have also clarified that the Board's discretion to develop the record included the discretion to hold an evidentiary hearing. We would note that §§ 16.9 and 16.10 of this title, which are made applicable by § 262.7(e), contain additional detail on the Board's discretion to develop the record.

Comment: One State expressed concerns about using the Departmental Appeal Board as the forum for hearing appeals.

Response: The statute specifies the Departmental Appeals Board as the entity to hear appeals.

Comment: One commenter believed that we should include all sections of 45 C.F.R. part 16 as part of the appeal process. This commenter also believed that we should not treat failure to file a copy of an appeal with the Office of the General Counsel as a jurisdictional defect.

Response: We selected the provisions of part 16 that fill in the gaps in the TANF statutory framework. We have not added additional sections because we do not think they are necessary.

The failure to file the appeal with the Office of the General Counsel is not a jurisdictional defect. However, we would toll the time period for filing of our reply brief until OGC receives the brief.

Comment: One State noted that the specific provision on when the State's appeal is considered filed, at § 272.7(f)(1) of the NPRM, varied from the time contained in 45 C.F.R. 16.20, which we adopted in the NPRM.

Response: As part of the changes in the timing of an appeal in the final rule, we have deleted this NPRM provision and thus eliminated the conflict. However, we have also added a provision to § 262.7(e) to clarify that the named provisions of part 16 are adopted only to the extent that they are consistent with the specific provisions of this section.

VIII. Part 263—Expenditures of State and Federal TANF Funds (Part 273 of the NPRM)

Section 263.0—What Definitions Apply to This Part? (§ 273.0 of the NPRM)

Administrative Costs

(a) Background

Under the TANF statute, States may not spend more than 15 percent of either their Federal TANF funds or their State MOE dollars on administrative costs. At section 404(b), the statute excludes expenditures for ''information technology and computerization needed for tracking or monitoring'' from the administrative cost cap that applies to Federal TANF funds (i.e., the Federal cap).

The proposed rule addressed the subject of administrative costs in five separate places: (1) the definition of qualified expenditures at § 270.30 provided that, for MOE purposes, administrative costs were subject to a 15-percent cap (i.e., the MOE cap); (2) § 273.0 provided a definition of administrative costs; (3) § 273.2(a)(5) discussed the 15-percent limit on the amount of MOE expenditures that could be spent on administrative costs and reflected our decision to exclude the same information technology and computerization costs from the MOE cap as the Federal cap; (4) the preamble for § 273.11 explained that we would consider expenditures of more than 15 percent of a State's Federal TANF funds on administrative funds to be a misuse of Federal TANF funds; and (5) the preamble and regulation at § 273.13 provided that, in determining the Federal cap, we would use the definition of administrative costs at § 273.0(b) and not count information technology and computerization for tracking and monitoring as administrative costs. The preamble for § 273.13 also explained that we would look to see whether a State's cumulative expenditures on administrative costs from its grant for any fiscal year exceeded 15 percent of the grant amount and that we would consider expenditures above the limit to be a misuse of funds.

The proposed definition at § 273.0(b) provided that: ''Administrative costs means costs necessary for the proper administration of the TANF program or separate State programs. It includes the costs for general administration and coordination of these programs, including indirect (or overhead) costs.'' It also provided examples of eleven types of activities that would be classified as ''administrative costs,'' such as salaries and benefits not associated with providing program services, plan and budget preparation, procurement, accounting, and payroll.

In the preamble, we stated our belief that the proposed definition would not create a significant new administrative burden on States. We hoped that it was flexible enough to facilitate effective case management, accommodate evolving TANF program designs, and support innovation and diversity among State TANF programs. We also said that it had the significant advantage of being closely related to the definition in effect under the Job Training Partnership Act (JTPA). Thus, it should facilitate the coordination of Welfare-to-Work and TANF activities and support the transition of hard-to-employ TANF recipients into the work force.

More importantly to commenters, the preamble also indicated that we would consider eligibility determinations to be administrative costs, but allow case management to be treated as a program cost. It also required that portions of a worker's time be allocated based on this distinction. Specifically, the NPRM preamble said:

You will note that the definition we have proposed does not directly address case management or eligibility determination. We understand that, in many instances, the same individuals may be performing both activities. In such cases, to the extent that a worker's activities are essentially administrative in nature (e.g., traditional eligibility determinations or verifications), the portion of the worker's time spent on such activities will be treated as administrative costs, along with any associated indirect (or overhead) costs. However, to the extent that a worker's time is essentially spent on case-management functions or delivering services to clients, that portion of the worker's time can be charged as program costs, along with associated indirect (or overhead) costs.

In the preamble, we also indicated that we expected administrative costs incurred by subgrantees, contractors, community service providers, and third parties to be part of the administrative cost cap and that we would determine such costs in the same way as agency costs. Specifically, we said:

We have not included specific language in the proposed rule about treatment of costs incurred by subgrantees, contractors, community service providers, and other third parties. Neither the statute nor the proposed regulations make any provision for special treatment of such costs. Thus, the expectation is that administrative costs incurred by these entities would be part of the total administrative cost cap. In other words, it is irrelevant whether costs are incurred by the TANF agency directly or by other parties.

We realize this policy may create additional administrative burdens for the TANF agency and do not want to unnecessarily divert resources to administrative activities. At the same time, we do not want to distort agency incentives to contract for administrative or program services. In seeking possible solutions for this problem, we looked at the JTPA approach (which allows expenditures on services that are available ''off-the-shelf'' to be treated entirely as program costs), but did not think that it provided an adequate solution. We thought that too few of the service contracts under TANF would qualify for simplified treatment on that basis.

We welcomed comments on how to deal with this latter dilemma, as well as comments on our overall approach. We had discussed this issue thoroughly during our pre-NPRM consultations, but thought this was a policy area where no single, clear solution existed.

(b) Overview of Comments

About one-third of all respondents to the NPRM submitted comments on our administrative cost provisions. A substantial majority of these comments came from representatives of State or local governments, but we also received comments from unions, community organizations, advocacy groups, national associations, business groups, and Congress. We received comments from a significant majority of the States.

Commenters generally opposed both the breadth of the proposed ''administrative cost'' definition and the scope of its application. To some extent, unions, community organizations, legal aid and advocacy groups were an exception to this general rule. Comments from these groups tended to be more supportive of the proposed rule. However, they expressed concern about the impact of these policies on the amount of resources that would be available for direct benefits to needy families and the potential impacts of the proposed rules on a State's decisions about program administration, staffing, and contracting. One argued for more specific exclusions from the definition (including costs associated with the delivery of program services and overhead) out of concern about the effect of a tight cap on case manager pay.

To deal with the number and complexity of responses on this issue, we have decided to cluster the comments into the following five general categories: (1) the actual definition (including issues about the appropriateness of a Federal definition, adopting definitions from other programs, the treatment of eligibility determination and case management costs, and the treatment of automated data processing costs); (2) the treatment of costs incurred on contracted services; (3) general questions about the calculation of the two caps; (4) specific issues related to how we determine whether a State has exceeded the MOE cap on expenditures of State MOE funds; and (5) specific issues related to how we determine whether a State has exceeded the Federal cap (including whether the appropriate base for computing the Federal cap is the pre-transfer or post-transfer grant amount).

As you will notice from the discussion that follows, regardless of where they appear in the rule, the administrative cost issues are closely connected to each other. For example, if we have a prescriptive definition of administrative cost, this policy would exacerbate concerns about the negative effects of requirements for subcontractors to track such costs in the same way as TANF agencies.

Although few commenters directly addressed the combined effects of the proposed policies, we considered the combined effect of all these provisions in drafting our responses.

The subject area that received the most attention from commenters was the proposed definition. Commenters disagreed about whether there should be a Federal definition, suggested alternative definitions that we could adopt, argued for exclusion of case management and eligibility determination costs, raised some issues about the treatment of automated data processing costs, and posed a few miscellaneous questions.

(c) Federal Definition

Comment: A relatively small number of commenters spoke directly to the question of whether there should be a Federal definition of administrative costs. The commenters' views were mixed, although more argued against a Federal definition than for one.

Among the arguments put forth in support of a definition were: the value of having comparable approaches among TANF jurisdictions; the importance of protecting benefits for needy families especially in light of the elimination of constraints that had existed under the former AFDC program; and the importance of having a meaningful and real Federal limitation on administrative costs.

Those opposed to a Federal definition argued that: (1) it should be the State's prerogative to define administrative costs; (2) we had no authority to define ''administrative costs''; or (3) we could defer to State definitions and choose to regulate at some subsequent date if we found that States were not adhering to the statutory limits.

Response: While we do believe in granting States broad flexibility to design their programs and have left key definitions up to the discretion of the States, we also believe that there is a need for Federal guidance on the definition of ''administrative costs.'' The approach in this rule is a compromise between a Federal and State definition. It sets a Federal framework that specifies some items that must be considered ''administrative costs,'' but does not attempt to fully define the term.

We believe this framework is important. First, as the comments we received demonstrate, there is no common view of the meaning of this term. If we left this matter entirely to State discretion, we could expect a diversity of approaches, and States might be subject to widely different penalty standards. Also, the fear of a penalty might lead some States to define the term so narrowly as to substantially undermine the intent of the administrative cost cap provisions.

We disagree with the comment that we lack the authority to define ''administrative costs.'' We have

responsibility for four penalty provisions—two on use of Federal funds and two on MOE requirements—where the level of State expenditures on administrative costs is a key issue. On many occasions, we have heard statements about the importance of having clear Federal standards for any penalty decisions that we make. In that context, we have both the authority and the responsibility to provide standards in this area.

As we indicated in the preamble to the proposed rule, we considered not proposing a Federal definition. While that option had some appeal, we were not disposed to deferring totally to State definitions. The philosophy underlying the administrative cost caps is very important; in order to protect needy families and children, it is critical that the substantial majority of Federal TANF funds and State MOE funds go towards helping needy families.

We also indicated that we thought that, by providing a general framework to States, we could avoid numerous disputes with individual States about whether their definitions represented a ''reasonable interpretation of the statute.''

(d) Applying Other Federal Definitions

Comment: A substantial number of commenters suggested that the TANF program adopt the definition proposed for the Child Care and Development Fund. A much smaller number suggested that we adopt the definition in effect under the Job Training and Partnership Act (JTPA) program. Commenters argued that adoption of these other definitions would improve program consistency and simplify program operations at the local level. They also endorsed CCDF's exclusion of ''eligibility determination'' as an administrative cost. One argued that the different definition could put local agencies in the untenable position of not being able to hire staff.

Response: In terms of program coordination, we do not believe that there is a strong advantage to selecting the CCDF definition over JTPA's. Where TANF programs work extensively with local providers of employment and training services, compatibility with JTPA may be more important; where TANF and child care programs are administered by a single agency or use a common set of service providers, compatibility with child care providers may be more important.

In the NPRM, we noted that our proposed definition was closely related to the JTPA definition and thus should facilitate the coordination of WtW and TANF activities and support the transition of hard-to-employ TANF recipients into the workforce. As caseloads decline and the proportion of hard-to-serve clients rises, coordination between these two programs may become even more critical.

While adopting the CCDF definition might facilitate TANF and CCDF coordination, we do not believe that this coordination depends upon a uniform definition. Also, given the differences in the caps of the two programs (15 percent versus 5 percent) and the different legislative histories, there is little reason to believe that Congress intended a uniform definition.

(e) Treatment of Eligibility Determinations

Comment: Many of those commenting on this issue objected to our proposed inclusion of eligibility determination within the administrative costs definition. Some argued that eligibility determination was not an administrative activity and was not easily or logically separable from case management. Still others commented on the burden associated with our proposal, the general need for State flexibility in this area, and the potential negative effects on a State's ability to fund critical staff who work directly with clients.

One State agency indicated that the distinction in our proposal was not burdensome and would require only a slight change in its Random Moment Study.

Many commenters took strong exception to our characterization of any portion of the eligibility determination process as administrative. Among other things, they were concerned that: (1) it was inconsistent with existing State practice; (2) the nature of work with families is undergoing significant change, and application of the traditional AFDC approach is no longer appropriate; (3) because eligibility determination is part of the case management function, it should be categorized as a program or service function than administration; (4) the administrative responsibilities of staff performing functions such as screening and assessment are integral to providing services; (5) front-line eligibility determination is arguably a direct service, under the first statutory goal of the TANF program; and (6) as workers assume new roles, differentiating between eligibility and service delivery is becoming increasingly difficult and less useful.

A couple of commenters indicated that our regulations needed to draw a clearer line between administrative and program costs. One commenter provided several specific examples of situations where the line between administrative and program costs that we drew in the proposed rule was unclear, such as in diversion and sanction activities and in determining hardship exceptions and compliance with behavioral requirements.

A significant number of commenters spoke to the burden of the proposed requirement on TANF agencies. They argued that State and local systems are not geared towards allocating expenses this way. They do not want to divert resources to this activity.

Commenters also made a general plea for flexibility, saying that States need flexibility in order ''for the role of front line staff to continue to evolve to best meet the goals of welfare reform'' and to enable States to build partnerships with local service providers.

Finally, several commenters noted that we presented this policy only in the preamble, not in the regulation itself.

Response: While we do not want our rules to distort State choices about how to deliver services or to divert State resources to cost accounting activities unnecessarily, we have a responsibility to uphold the intent of the statutory administrative cost cap provisions by ensuring that States are not spending large amounts of money on eligibility determinations rather than program benefits or services.

Also, we do not agree that States must incur a significant administrative burden in order to identify the costs associated with eligibility determination activities. We recognize that the nature of staff responsibilities is changing and the line between case management and eligibility determination is blurring. Thus, it may be more difficult to develop rules for allocating the time of workers between administrative and program activities. However, once a State develops its allocation rules, the process of allocating staff time is straightforward and no more difficult than the current cost allocation process.

We also recognize that the TANF program offers the possibility for States to administer programs in new ways. We understand that States are moving towards blended functions, and we support such efforts. These final rules do not in any sense require States to have separate administrative and program staff. They merely require that States provide a reasonable method for determining and allocating administrative and program costs.

Welfare agencies have a long history of identifying the costs of eligibility determinations and allocating these costs as administrative activities. A variety of other significant, related programs—such as Medicaid, the Child

Health Insurance Program (CHIP), and Food Stamps—continue to follow this practice. Thus, this kind of cost allocation has been standard operating procedure in a number of programs and has been accepted as a normal part of doing business.

We also believe that a clear policy on eligibility determinations might produce more consistent penalty determinations and reduce audit disputes, appeals, and litigation regarding application of the misuse of funds and MOE penalties.

Based on these considerations, we have decided to add eligibility determinations to the list of administrative activities at § 263.0(b)(2). More specifically, this rule reflects the basic definition that was in the proposed regulation at § 273.0(b) (with the same basic examples of administrative cost activities), but adds the NPRM preamble policy that required eligibility determination to be treated as an administrative cost. We recognize that this is a significant policy decision that merits inclusion directly in the regulatory text; we agree with commenters that it should not be relegated to the preamble.

Under the final rule, States may develop their own definitions of administrative costs and cost allocation plans, consistent with this regulatory framework.

Also, as we discuss later, we provide States some flexibility in the methods they use to determine the administrative costs associated with contracts. However, we want to reiterate a point we made in the preamble for § 273.13 of the proposed rule: States must properly allocate costs. They must attribute administrative, program, and systems costs to benefiting programs and appropriate cost categories, in accordance with an approved cost allocation plan and the cost principles in part 92.

(f) Other Miscellaneous Suggestions for Inclusions and Exclusions

Comment: A couple of commenters suggested that our definition make a distinction between general overhead or indirect costs (which would be considered administrative costs) and overhead and indirect costs related to the provision of program services (which would be excluded). A couple of commenters made the broader suggestion that our definition should indicate that administrative costs do not include items such as diversion activities, assessments, development of employability plans, work activities, post-employment services and supports, and case management.

Response: The comments identified an area where the language in the proposed rule was unclear. To address this problem, we have revised the regulatory text. The revised language at § 263.0(b)(1) excludes costs of providing services and the associated *direct* administrative costs from the definition of administrative costs. The revised language at § 263.0(b)(2) clearly treats indirect (or overhead) costs as administrative costs. We included these costs as administrative costs in the final rule because we believe this approach is most consistent with the intent of the administrative cost caps and is the simplest and most straightforward approach for States to implement.

Comment: One commenter suggested that we specify that diversion assessments are program costs and not administrative costs.

Response: We believe the changes that we have made to § 263.0(b), and just discussed, adequately address this concern. The rule at § 263.0(b) now indicates that diversion and assessment activities are both program service costs and not considered administrative costs. (Note: Here, we would make a distinction between assessment activities designed to identify needs and develop appropriate service strategies versus assessing income, resources, and documentation for eligibility determination purposes; the latter are administrative costs.)

Comment: One commenter said we should specifically define case management.

Response: We do not believe there is a need for a Federal definition of this term.

Comment: One commenter asked that we clarify that ''public relations'' activities would not include State expenditures on providing information to clients.

Response: While we believe that the common meaning of ''public relations'' would not include providing client information, at the new § 263.0(b)(1), we have added ''providing program information to clients'' as one example of providing program service. Thus, this activity would not be classified as an administrative cost under our rules.

Comment: One commenter asked that we clarify that domestic violence and substance abuse services are not considered administrative costs.

Response: We believe the new language at § 263.0(b)(1) adequately addresses this concern. It more directly states that costs of providing services are outside the definition of administrative costs, and it explicitly provides that screening and assessments are examples of program services.

(g) Computer-Related Costs

Comment: Several commenters had concerns that the definition of the exclusion for computer-related costs was not sufficiently clear in the NPRM. Their reasons were mixed. A couple of commenters wanted to make sure that States did not have ''unfettered discretion'' in this area; they saw this provision as a major loophole and did not want to see money diverted from meeting the needs of poor families. Other commenters felt that the regulations did not adequately address the information technology exclusion.

Response: We received a variety of comments on the exclusions of information technology and computerization costs from the 15-percent caps. Based on these comments, we have made some clarifying changes to the regulatory language (which appear in §§ 263.2(a)(5) and 263.13) and are providing some guidance in the preamble. However, we do not believe it is necessary or appropriate to develop detailed Federal regulations on this issue. While the new regulatory language makes the regulation more consistent with the statutory language and makes the language for the Federal and MOE caps more consistent, it also reflects our willingness to defer to State policies, as long as those policies reflect a reasonable interpretation of the statutory language.

We believe that the revised regulatory language represents the best reading of the statutory language at section 404(b). The statute provides for exclusion of certain systems costs in determining whether a State has exceeded the Federal cap on administrative expenditures. It does not exclude such systems costs from the definition of administrative costs. Thus, in this rule, you will note that the systems exclusion is not part of the definition of administrative costs at § 263.0(b). Rather, it appears in the sections where we explain how we determine if a State has excess expenditures on administrative costs.

Comment: We received several comments asking us to clarify that personnel costs necessary to comply with reporting requirements and for tracking and monitoring computer systems are covered by the exclusion. Likewise, we received a few comments asking us to clarify that the following items would be excluded: (1) data collection and reporting activities (such as hardware, personnel and supply costs they incur in meeting the TANF disaggregated data reporting requirements); (2) activities such as rental and purchase of computer

equipment and systems procurement; and (3) preparation of reports required under the Act.

Response: Under the final rules, we exclude from the 15-percent cap all costs associated with the portions of information technology and computer systems that are used for tracking or monitoring required by or under part IV-A of the Act. The excludable costs are the full range of costs directly associated with the development, maintenance, and support of the relevant systems or the relevant portions of larger systems. Nonsystems costs related to monitoring and tracking (e.g., for the salaries and benefits of data entry clerks, evaluation staffs, statisticians, and report writers) are not covered by this exclusion.

Based on the comments, we have made some modest changes to the definition of administrative cost at § 263.0(b) and the descriptions of the administrative cost caps at §§ 263.2(a)(5) and 263.13. Under the language in the proposed rule, we had not generally recognized that some activities that would otherwise be ''administrative'' in nature could be part of the systems exclusion. The one exception we mentioned was ''management information systems,'' proposed at § 273.0(b)(10).

To provide the clarification commenters requested, we have revised the language at §§ 263.2(a)(5) and 263.13 to specify that the systems exclusion covers items that ''would fall within the definition of administrative costs at § 263.0(b).'' In other words, items that would normally be administrative costs, but are systems-related and needed for monitoring or tracking purposes under TANF, fall under the systems exclusion. Thus, we would not consider them in determining whether a State has exceeded either of the 15-percent caps.

We also added language at §§ 263.2(a)(5) and 263.13 to specify that the systems exclusion covers the salaries and benefits costs of personnel who develop, maintain, support, or operate information technology or computer systems used for tracking and monitoring. Under the revised language, it is clearer that States may exclude personnel and other costs associated with the automation activities needed for TANF monitoring and tracking purposes. For example, they may exclude expenditures related to computerization of both the fiscal and program data collection and reporting requirements in part 265 and computer charges related to generating required data and reports. However, they do not exclude nonsystems costs related to monitoring and tracking (such as personnel costs for data entry clerks, statisticians, and report writers).

Also, we made a minor change to the last example in our list of examples of administrative costs. The revised language refers generically to ''preparing reports and other documents'' rather than ''reports and documents related to program requirements.'' We revised the language to avoid confusion; the NPRM language was too similar to the statutory exclusion at section 404(b).

Comment: One commenter said the regulation should address the permissibility, within the exclusion, of electronic benefit transfer (EBT), Fingerprint Imaging Projects, or other automated fraud prevention activities.

Response: While all these activities might be commendable, the statutory exclusion is only for expenditures ''needed for tracking or monitoring required by or under this part.'' EBT would not fit within the exclusion because it is neither a tracking nor a monitoring activity; as the statute at section 404(g) indicates, EBT systems are ''for providing assistance.''

Fingerprint imaging and other anti-fraud activities might fall under the systems exclusion. For example, expenditures to develop a computerized fingerprint imaging system to identify fugitive felons or individuals who have fraudulently misrepresented their residence would clearly qualify as monitoring under the exclusion.

Since we are not regulating the definition of this exclusion, we are not attempting to draw fine lines between what systems costs should be included versus excluded. We expect States to implement policies that are consistent with a reasonable interpretation of the statute and these regulations.

(h) Costs Incurred by Contractors

Comment: Another area receiving a significant number of comments was our proposal to apply the definition of administrative costs to contractors and other agencies. The vast majority of commenters opposed this proposal.

One State indirectly argued that the policy was unnecessary, pointing to the State's own cost consciousness and cognizance of the need to limit administrative expenditures in contracts.

A few commenters noted that we had included this policy proposal only in the preamble, but not in the proposed regulatory text. At least one asked that we add the preamble language to the regulation.

One TANF agency requested that we provide more guidance on how States should segregate the administrative costs associated with subcontracted services.

We organized most of the comments on this issue into four broad categories: (1) suggestions that the 15-percent administrative cost cap apply solely to costs incurred by the TANF agency; (2) the potential effects of applying the administrative cost cap limitation to contractor agencies; (3) the possible negation of existing performance-based contracts; and (4) functionality considerations.

A few commenters recommended that the administrative cost cap apply solely to the expenditures of the TANF agency or that we should treat State and local agencies alike, but not contractors.

A much larger number of commenters expressed general concerns about requiring the tracking of administrative costs to contractors. They objected to: (1) the increased administrative burden on the TANF agency and difficulties associated with tracking administrative costs of contractors; (2) diversion of resources away from needy families to tracking; and (3) inconsistencies between our policy and the policies of other programs (e.g., JOBS and JTPA). Commenters also claimed that our proposed policy would increase the administrative costs of the program, hamper State and local efforts to improve program administration and services, discourage collaborations with community-based organizations and other service providers, violate Congressional intent in limiting our regulatory authority, and impede State procurement activities. For example, contractors might choose not to compete because they would be reluctant to provide detailed itemizations of their expenses, and States might refrain from contracting for fear that unknown contractor costs might cause them to exceed the cap on administrative expenditures. Several commenters expressed concerns that our proposed policy would discourage the development of performance-based contracts and similar funding arrangements.

A subset of commenters said we should base the treatment of subcontractor costs on functionality considerations, looking at the function performed by the contractor or subcontractor, not whether contractors incur administrative costs. A few argued that direct program services provided by contractors were not administrative in nature. Commenters did not want the treatment of contract costs to be based on ''an extremely difficult differentiation between administrative and programmatic costs.''

Response: We have decided that States should be able to determine the administrative costs associated with contracts and subcontracts based on the function or nature of the contract. For example, if a State contracts for case management or job placement services, which meet our definition of program services, the cost of the contracts would be treated as program costs, not as administrative costs. Further, as we discuss later, the entire costs of a contract for payroll services would be treated as an administrative cost subject to the 15-percent cap. If the State had a contract that included a mix of administrative and programmatic activities, it would need to develop a method for attributing an appropriate share of the contract costs to administrative costs. We have revised the regulatory language to reflect that decision.

The approach in the proposed rule reflected some genuine concerns about weakening the administrative cost caps and distorting State decisions about whether to contract. Some commenters expressed similar concerns. However, after reflecting on the totality of comments received, we are convinced that the costs of our proposed approach would have outweighed the benefits. The approach also might have significantly undermined one of our regulatory objectives, i.e., to give States the flexibility they need to serve low-income families.

In administering and operating its TANF Program, each State should make a determination of the most cost-effective and efficient method of performing each of the necessary administrative and programmatic functions. It may use in-house staff and resources, engage other State or local government agencies, or solicit services from outside contractors. Presumably, with each State's procurement procedures requiring free and open competition, and oversight by auditors and State legislative and regulatory bodies, the result of any solicitation will be a high-quality service delivered at a reasonable and acceptable cost.

We believe that, once a particular function is determined to be either administrative or programmatic, that characterization does not vary based on the nature or identity of the service provider. Therefore, if a contract is for a singular administrative or programmatic service, the final rules would treat the entire contract price as an administrative or programmatic cost, respectively. A State would not need to further itemize the contract costs or consider the individual cost components used to support the contract price.

For example, payroll services is a traditional administrative function. If a State opts to contract out the payroll responsibilities for its TANF program, a State would treat the entire cost of that contract as an administrative cost within the 15-percent cap. It would be unnecessary to further define the contractor's own administrative costs.

On the other hand, if the State contracted with a third party to perform a variety of functions that included a mix of administrative and programmatic activities, the State would need to develop a method for attributing an appropriate share of the contract costs for administrative activities as administrative costs. Likewise, if another agency (State, local, or private) were administering a piece of the TANF program, the State would need to have a method for attributing an appropriate share of the other agency's costs to administrative activities.

Presumably, in developing its individual cost proposals, each contractor includes an allocated portion of their own administrative costs or overhead. However, the matter of interest here is the extent to which Federal and State expenditures are going to administrative activities, not the individual cost components of contracted services.

Our approach is consistent with the regulations at 45 CFR part 92 and should maintain the integrity of the 15-percent administrative cap provisions.

We do not believe this policy will necessarily bias State decisions about how to deliver TANF services, e.g., towards contracting out, or privatization, of program operations. First, the initial expenditure reports we have received from States suggest that their administrative costs are running well within the 15-percent caps; thus, they do not appear to have a strong incentive to change any of their administrative practices. Second, many other very important considerations go into State contracting decisions—including the State agency's internal capacity and expertise and larger political and budgetary considerations. Third, we would expect the State agency, State legislature, and other interested parties to consider the impact on public employees as part of their deliberations. Lastly, because there is a limited difference in the treatment of administrative costs incurred by TANF agencies and third parties, the potential incentive effects of this policy (towards privatization) are limited.

(i) Consolidated Caps

Comment: A couple of commenters suggested that we should have a single administrative cost cap that covers both Federal and MOE expenditures.

Response: The statute clearly requires a separate cap for each. Also, it would not be feasible to apply the 15-percent limitation across the total Federal TANF and State MOE dollars. The MOE cap applies to the total amount of qualified State expenditures for the fiscal year, i.e., per fiscal year. The Federal cap applies to the adjusted SFAG. If a State reserves amounts from its fiscal year grant, then the Federal cap could reflect expenditures over a number of fiscal years.

(j) Compliance Periods

Comment: One commenter questioned the requirement for quarterly compliance with both the Federal and MOE caps. The commenter suggested annual evaluation as an alternative.

Response: We assume this comment reflects a reaction both to the information required on the quarterly TANF Financial Report and some unclear regulatory language in the proposed rule. First, while we do require quarterly reporting of Federal and State administrative and systems costs, we never intended to make quarterly determinations whether the expenditure of State funds violated the MOE cap. The statute at section 409(a)(7) clearly provides that this would be an annual determination. Also, in reflecting on this comment we realized that our regulatory text did not clearly state that compliance with the MOE cap would be determined on an annual basis. Therefore, we have added the phrase ''for the fiscal year'' to § 263.2(a)(5)(i) to clarify that this is an annual determination.

The Federal administrative cost cap works somewhat differently. For the purpose of the Federal cap, we would look at the total cumulative amount spent on administrative activities from each annual Federal TANF grant. Unless and until the total amount expended as administrative expenditures (exclusive of appropriate systems costs) exceeded 15 percent of the Federal TANF grants (except WtW grants) for any fiscal year, we would not identify a violation of the Federal administrative cost cap. The Department of Labor administers the WtW administrative cost limit. This policy is consistent with the discussion in the preamble to the proposed rule for § 273.13.

(k) Base for Computing the Cap

Comment: A significant number of commenters (particularly those

representing States or State interests) argued that we should calculate the 15-percent administrative cost cap based on the SFAG amount before any State transfers to title XX or CCDBG (i.e., the adjusted SFAG).

Several of these commenters maintained that, in defining the Federal cap, section 404(b)(1) refers specifically to 15 percent of the ''grant.'' They interpret this language to mean that total SFAG amount would be the appropriate number to use in determining the maximum amount for administrative costs. A few made the additional comment that we did not have the authority to reduce the amount of 15-percent administrative funds available to the State under the statute by applying the 15-percent limitation to a smaller base amount than the adjusted SFAG.

Commenters also expressed concerns that our proposed policy would result in disincentives to the States to transfer funds to CCDBG or title XX.

Finally, a few commenters noted that our proposed rules used a different base amount for computing the administrative cost cap and for computing penalties. More specifically, we proposed to determine penalties based on the adjusted SFAG (i.e., the SFAG amount minus Tribal adjustments, but prior to any transfer), but we computed the administrative cap for TANF based on the adjusted SFAG minus transfers. This inconsistency seemed unjustified.

Response: As we noted briefly in the discussion for § 260.30, we made a change to the definition of ''adjusted SFAG'' that addresses the consistency concerns of commenters. The revised definition, which is used for determining both the Federal administrative cost cap and penalty amounts, excludes monies transferred to either the SSBG or CCDBG programs. Like the proposed definition, it also excludes funds removed from the State's grant because Tribes in the State elected to operate their own TANF programs.

Although the language of the administrative cost limit refers to ''the grant,'' we do not believe what is ''the grant'' is clear in this context. We did not base the Federal administrative cap on the pre-transfer amount because we believe that proposal would produce a peculiar and undesirable policy result. In effect, it would allow States to double-dip on their administrative expenditures. The transferred funds would be part of the base that we would use to determine how much Federal TANF money was available for administrative costs within the TANF program. It would also be part of the base for determining how much money was available in CCDBG or SSBG for capped administrative expenditures within these programs, since the statute provides that transferred funds are subject to the requirements of these programs.

We understand the concern that our policy in this area might create modest disincentives for States to transfer Federal TANF funds to CCDF and SSBG. However, we would point out a few factors that should mitigate those concerns: (1) the initial TANF expenditure reports suggest that administrative costs are generally running substantially below the 15-percent caps; thus, States that transfer funds should be able to live within the post-transfer cap amount; (2) this policy affects the Federal cap only, not the MOE cap; (3) States that elect to transfer funds might enjoy some reductions in their administrative costs because they can operate more streamlined child care and social services programs; (4) some of the costs associated with the new TANF data rules are excludable from the cost caps under the information technology and computerization exclusion; and (5) in several places, these final rules reduce the data reporting and administrative burdens to which States would have been subject under the proposed rules.

You will find the discussion of the issues related specifically to the MOE cap in the preamble for § 263.2 and the discussion of issues related specifically to the Federal cap in the preamble for § 263.13.

Subpart A—What Rules Apply to a State's Maintenance of Effort?

Section 263.1—How Much State Money Must a State Expend Annually to Meet the Basic MOE Requirement? (§ 273.1 of the NPRM)

Overview

To ensure that States would continue to contribute their own money towards meeting the needs of low-income families, section 409(a)(7) requires States to maintain a certain level of spending on programs on behalf of eligible families. If a State does not meet the ''basic MOE'' requirements in any fiscal year, then it faces a penalty for the following fiscal year. The penalty consists of a dollar-for-dollar reduction in a State's adjusted SFAG.

In the NPRM and in the discussion that follows, we address each of the terms used in the basic MOE requirement.

(a) Historic State Expenditures

Each State's basic MOE requirement reflects its historic spending on welfare programs. We calculated the historic State expenditures based on the State's FY 1994 share of expenditures for the AFDC, EA, AFDC-related child care, transitional child care, At-Risk Child Care and JOBS programs (including expenditures for administration and systems operations).

(b) Adjusting a State's Basic MOE Level

The statute authorizes an adjustment to a State's basic MOE level when a Tribe or a consortium of Tribes residing in the State submits a plan to operate its own TANF program, and we approve this plan. We will reduce the State's basic MOE requirement beginning with the effective date of the approved Tribal plan.

Section 409(a)(7)(B)(iii) excludes from the basic MOE calculation any IV–A expenditures made by the State for FY 1994 on behalf of individuals covered by an approved Tribal TANF plan. Because TANF funding for Tribes may also reflect a State's IV–F (JOBS) expenditures, we also concluded that it was appropriate to reduce a State's basic MOE levels for IV–A and IV–F expenditures. In summary, we proposed to determine the percentage reduction in the SFAG due to Tribal programs and apply the same percentage reduction to the State's basic MOE requirement. The State's revised basic MOE level would apply for each fiscal year covered by the approved Tribal TANF plan(s).

For example, if the amount of the Tribal Family Assistance Grant represents ten percent of the State's SFAG, then we would reduce the State's basic MOE requirement by ten percent. This approach provides a consistent method for determining both the reduction in the State's SFAG and its required basic MOE level.

(c) Applicable Percentage

Under section 409(a)(7)(B)(ii), if any State fails to meet the minimum work program participation rate requirements in the fiscal year, then it must spend at least 80 percent of its FY 1994 spending level. If a State meets the minimum work participation rate requirements, then the ''applicable percentage'' is 75 percent of its FY 1994 spending level for the year. We refer to the dollar amount representing 75 percent or 80 percent of the FY 1994 State expenditures as the basic MOE level.

We calculated each State's total FY 1994 expenditures and basic MOE levels by using data on the State share of expenditures for AFDC benefits and

administration, EA, FAMIS, AFDC/JOBS Child Care, and Transitional and At-Risk Child Care programs reported by States on form ACF–231 as of April 28, 1995, as well as the State share of JOBS expenditures reported by each State on form ACF–331 as of April 28, 1995.

We transmitted tables showing FY 1994 spending amounts and basic MOE levels to the States via Program Instruction Number TANF–ACF–PI–96–2, dated December 6, 1996. On October 31, 1997, we issued TANF Program Instruction Number TANF–ACF–PI–97–9 informing States of revised basic MOE levels. The revised basic MOE levels reflected a correction in the calculation of the State share of FY 1994 At-Risk Child Care (ARCC) expenditures. Although the data sources remained the same for all States, some of the reported ARCC expenditure amounts used were revised after the original calculation. As a result, the basic MOE levels for some States increased. As TANF–ACF–PI–97–9 was issued so close to the NPRM publication date, we were not able to include information on it in the NPRM.

We also determined FY 1994 spending and basic MOE levels for each of the Territories. For IV–A expenditures for Puerto Rico, we used the Financial Report Form ACF–231 as of April 28, 1995. For Guam and the Virgin Islands, we used the share of expenditures that corresponded to the amount on the Federal grant awards for FY 1994, i.e., the Territories' share of AFDC benefit payments (25 percent), EA (50 percent), administration (50 percent), and Child Care (25 percent). For JOBS, the Territories' basic MOE levels reflect expenditures reported on the ACF–331 as of April 28, 1995.

In addition, for both IV–A (AFDC, EA, and child care) and JOBS, Guam and the Virgin Islands (but not Puerto Rico) benefit from Pub. L. 96–205, as amended (48 U.S.C. 1469a). This law permits waiver of the first $200,000 of the Territories' share of expenditures. Therefore, for Guam and the Virgin Islands, we reduced the share that they were required to contribute, and thus their basic MOE amount, by $200,000.

(d) FY 1997 Basic MOE Level

Under the proposed rules, we indicated that the State could prorate its basic MOE level for FY 1997 by taking the total FY 1994 State expenditures provided to the State in Program Instruction Number TANF–ACF–PI–96–2, multiplying that number by the number of days during FY 1997 that the State operated a TANF program and dividing by 365. The State's TANF implementation date is the date given in the Department's completion letter to the State. The State had to meet 80 (or 75) percent of the resulting amount.

Comments and Responses

We received a few comments on this section. Two commenters commended our proposal to reduce a State's basic MOE proportionately when the State's TANF grant is reduced once a Tribe or a consortium of Tribes residing in a State has received approval to operate its own TANF program. Most of the other comments focused on the applicable basic MOE level relative to a State's work participation rates. We have made no substantive changes to the provisions in this section as a result of the comments we received. However, as the result of some of the comments we received, we have clarified the regulation. A discussion of the comments follows.

(a) Applicable Percentage

Comment: A few commenters requested that we amend the regulations to provide that a State's failure to meet the two-parent minimum work participation rate for a year does not automatically require the State to meet 80 percent of its historic State expenditures. Instead, the commenters recommended that, where the State fails only the two-parent rate, the State must increase its spending level between 75 percent and 80 percent based on the ratio of the State's two-parent caseload to the State's entire caseload. Associations representing States pointed out that such an adjustment would be consistent with the proposed regulation under § 271.51 to reduce the maximum penalty amount for failure to meet the work participation rate if the State fails only the two-parent rate.

Response: We recognize that the size of a State's two-parent caseload may be small in comparison to the State's total caseload. However, we do not have any discretion under the statute to adjust a State's basic MOE in this way. Section 409(a)(7)(B)(ii) explicitly provides that a State must meet 80 percent of its FY 1994 spending level unless it meets the ''requirements'' of section 407(a) of the Act for the fiscal year. Section 407(a) includes the minimum participation rate requirements for both all families and two-parent families.

In contrast, section 409(a)(3) requiring a penalty for failing to satisfy minimum participation rates expressly provides for a reduction in the penalty with respect to a fiscal year based on the degree of noncompliance.

Comment: Two commenters thought we should modify the final rule to provide that the 75-percent spending level applies for every fiscal year in which a State meets only the all-family participation rate. They contended that the two-parent participation rate should not affect the required spending level, particularly for a State that has a very low two-parent caseload relative to its total caseload. One of the commenters also believed that the 75-percent spending level should apply immediately unless it can be shown after the fact that a State has not met the work participation rate requirements.

Response: We found no statutory basis for excluding the two-parent rate from a State's applicable spending requirement. The 75-percent spending standard, in the parenthetical at section 409(a)(7)(B)(ii), requires that States meet both rates.

We also disagree with the commenter's assertion that the 75-percent spending level should apply immediately. To the contrary, the statute requires that all States maintain an 80-percent spending level for each fiscal year. The reduction is a parenthetical addition if the State meets both participation rates for the fiscal year. Thus, a State would need to demonstrate that it actually meets both rates for the fiscal year for the 75-percent spending level to apply. This language suggests that, to avoid the chance of penalty, it would be most prudent for a State to plan to spend at the 80-percent level every year.

Comment: One commenter indicated that we must be clear in the regulations that a State qualifies for the 75-percent MOE standard if it meets the Federal requirement for the year following application of the caseload reduction credit.

Response: We have revised the final rule to clarify that a State's basic MOE will be reduced to 75 percent of FY 1994 expenditures if it meets both the all-family and the two-parent participation rate that applies following application of the caseload reduction credit.

Comment: Two commenters suggested that we clarify the basic MOE requirement for FY 1997. The commenters noted that the work participation rate requirements apply no earlier than the fourth quarter of FY 1997 for any State. As a result, the basic MOE requirement for FY 1997 should only be based on whether a State met the work participation rate requirements for the fourth quarter of FY 1997. If a State achieves the required work participation rate for the July–September 1997 quarter, the State's basic MOE requirement should be 75 percent of its historic expenditures.

Response: We agree that the earliest period States must report information

necessary to calculate participation rates under section 407 is the fourth quarter of FY 1997. The penalty for failure to submit a required quarterly report in a timely manner is one of several penalties that has a delayed effective date. Section 116(a)(2) of PRWORA provides that certain penalty provisions do not take effect until July 1, 1997, or six months after we receive the State's complete TANF plan. We consider the State's TANF implementation date to be the date that we received its complete plan. Most States had to submit a report for all or part of the fourth quarter of FY 1997.

However, there is no delay in the penalty for failure to meet the basic MOE requirement. This is one of several penalty provisions that apply immediately, i.e., from the date a State implements its TANF program. Thus, each State must maintain 80 percent of its historic expenditures for FY 1997 unless it meets the work participation rate requirements both for all families and two-parent families. (The penalty for failure to satisfy the minimum participation rates requirement also has a delayed effective date; however, that penalty is separate from the basic MOE requirement.)

The participation rates for a fiscal year are an average monthly rate. For the States that had to submit a report for all or part of the last quarter of FY 1997, we will calculate the average monthly rate for all families and for two-parent families based on the number of months that must be covered in the required quarterly report.

The remaining States must meet 80 percent of their historic spending levels unless they choose to submit data demonstrating that they actually met both participation rates either for the period during which they were operating their TANF program or for the last quarter of FY 1997, whichever they choose. We decided to give these remaining States this option because we did not think it would be fair to judge their performance over a longer period of time than States that implemented TANF at an earlier date. Also, we have more flexibility with respect to these States since the statute does not specify a precise time frame for measuring their performance.

Comment: One commenter wrote that a State should not have to meet the 80-percent level of effort if we waive the State's penalty for failing to achieve either of the required work participation rates due to reasonable cause. Another commenter requested clarification in this area.

Response: Under section 409(a)(7)(B)(ii) of the Act, the 75-percent standard only applies if a State meets the minimum work participation rates, not when a State has reasonable cause for failing to satisfy the rates. Granting reasonable cause does not mean that the State met the rates. States that fail to satisfy the minimum work participation rates, but receive partial or full penalty relief, must still meet the 80-percent MOE requirement.

(b) FY 1997 Basic MOE Level

Comment: One commenter asked that the final rule clarify how we will calculate the FY 1997 basic MOE level.

Response: We calculated the prorated basic MOE levels by first determining the number of days in FY 1997 that a State operated the TANF program. We then multiplied the resulting number of days by the State's basic MOE level for the year, then divided by 365 (the number of days in FY 1997).

We originally published the States' basic MOE levels in Program Instruction Number TANF–ACF–PI–96–2, dated December 6, 1996. We also sent letters dated January 7, 1997, to TANF program directors explaining that we would prorate basic MOE levels for FY 1997 only. As explained earlier, we have since recalculated basic MOE levels for States to correct for the revised State ARCC expenditure figures for FY 1994. As a result, the basic MOE levels for some States increased. We transmitted the revised basic MOE levels for States via TANF Program Instruction Number TANF–ACF–PI–97–9 dated October 31, 1997. This instruction also included each State's prorated FY 1997 basic MOE levels.

However, for States whose revised basic MOE level increased, we did not apply the revised rate retroactively. Rather, we are determining State compliance with the FY 1997 basic MOE level requirements based on the original numbers published in TANF–ACF–PI–96–2, prorated as applicable. All revised State basic MOE levels published in TANF–ACF–PI–97–9 apply beginning FY 1998.

Section 263.2—What Kinds of State Expenditures Count Toward Meeting a State's Basic MOE Expenditure Requirement? (§ 273.2 of the NPRM)

Overview

(a) Qualified State Expenditures

Section 409(a)(7)(B)(i) establishes the criteria for the expenditure of State funds to count toward a State's basic MOE level. Congress wanted States to be active partners in the welfare reform process. Thus, States must spend a substantial amount of their own money on aid to needy families. While Congress gave States significant flexibility in this area, it did establish a number of important statutory restrictions on which State expenditures qualify towards the basic MOE requirements.

Section 409(a)(7)(B)(i) defines ''qualified State expenditures'' to include certain expenditures by the State under all State programs. We interpret ''all State programs'' to mean the State's family assistance (TANF) program plus any other separate State program that assists ''eligible families'' and provides appropriate services or benefits. Thus, States could expend State funds for MOE purposes in three ways.

In addition to expending State funds in separate State programs, States may expend funds within the TANF program in two different ways. They may commingle their State funds with Federal grant funds, or they may use State funds that have been segregated from their Federal grant funds.

We remind States that there are specific statutory requirements that affect the use of State funds under a State's TANF program. States need to be mindful of the TANF requirements to help avert penalties under section 409 of the Act. The specific TANF requirements that apply depend upon which of various programmatic terms is used in the language describing the requirement.

States may also expend State funds in a State program separate from TANF to provide the benefits and services listed under section 409(a)(7)(B)(i)(I) of the Act, e.g., cash assistance, child care assistance, and education activities. None of the TANF program requirements directly apply to eligible families served in separate State programs.

Requirements in the statute that use the terms ''under the program,'' ''under the program funded under this part,'' and ''under the State program funded under this part'' apply to the State's TANF program, regardless of the funding source. That is, they apply to segregated Federal programs, commingled State/Federal programs, and segregated State programs. Thus, all families receiving TANF assistance (whether funded with State or Federal TANF funds) must meet work participation and child support requirements.

Conversely, some Federal requirements derive from the provisions in the statute that use the term ''grant,'' or ''amounts attributable to funds provided by the Federal government.'' These terms refer to the Federal TANF funds provided to the State under

section 403. Therefore, they only affect the use of Federal TANF funds, unless the State commingles its money with Federal TANF funds. If a State commingles its funds, the Federal and State funds become subject to the same rules. Thus, commingling of State and Federal TANF funds can reduce the total amount of flexibility available to the State in its use of Federal and State funds.

Requirements pertaining solely to the use of Federal TANF funds do not apply to families assisted under TANF with State-only funds. Consequently, if a State segregates its TANF State funds from its Federal TANF funds, State expenditures on assistance must comply only with all of the rules that generally pertain to the TANF program, e.g., work and child support requirements. They are not subject to requirements that pertain only to the use of Federal TANF funds.

A State might choose to operate a ''segregated'' TANF program because certain limitations, e.g., time limitations and certain alien restrictions, apply to the program funded with Federal TANF funds that would not apply to a TANF program funded wholly with State funds.

Whether the expenditure of State funds is within the TANF program or separate from the TANF program, to count toward meeting the State's basic MOE, all expenditures must: (1) be made to or on behalf of an eligible family; (2) provide ''assistance'' to eligible families in one or more of the forms listed in the statute under section 409(a)(7)(B)(i)(I); and (3) comply with all other requirements and limitations set forth in this part of the regulations, including those set forth in §§ 263.5 and 263.6.

(b) Eligible Families

Section 409(a)(7)(B)(i)(I) provides that State funds under all State programs must be spent with respect to eligible families to count toward the State's basic MOE. Section 409(a)(7)(B)(i)(IV) further clarifies that an eligible family means a family eligible for assistance ''under the State program funded under this part.'' The ''State program funded under this part'' is the State's TANF program.

Thus, we proposed that, in order to be considered an ''eligible family'' for MOE purposes, a family must have a child living with a custodial parent or other adult caretaker relative (or consist of a pregnant individual) and be financially needy under the TANF income and resource standards established by the State under its TANF plan. This definition includes two categories of families. It includes all families funded with MOE funds under TANF, including certain alien families or time-limited families who cannot be served with Federal TANF funds, but who are being served in a segregated State TANF program. (We discuss this alien limitation in detail further on in this section.) It also includes a family that meets these criteria, but is not receiving TANF, and instead is receiving benefits and services from a separate State program. The expenditures to provide these benefits and services under all State programs may count toward the MOE requirement, provided the expenditures also meet all other requirements and limitations set forth in part 263.

A State is free to define who is a member of the family for Federal TANF purposes and may use this same definition for MOE purposes. For example, it could choose to assist other family members, such as noncustodial parents, who might significantly enhance the family's ability to achieve economic self-support and self-sufficiency. By including such individuals within its definition of family, a State could provide them with services through TANF or a separate State program. Noncustodial parents could then engage in State-funded activities such as work or educational activities, counseling, or parenting and money management classes.

The NPRM stated that we expect States to define ''child'' consistent either with the ''minor child'' definition given in section 419 or some other definition applicable under State law. The State must be able to articulate a rational basis for the age they choose.

The definition of ''eligible family'' expressly includes families that ''would be eligible for such assistance but for the application of section 408(a)(7) of this Act.''

Under section 408(a)(7), States may not use Federal TANF funds to provide TANF assistance to a family that includes an adult who has received federally funded assistance for a total of 60 months. Therefore, if a family becomes ineligible for Federal assistance under the TANF program due to this time limit, but still meets the definition of eligible family, then this family may be considered an eligible family for MOE purposes. (Note: In the NPRM, in § 273.2(c), we did not accurately cite the applicable criteria. The final rule at § 263.2(c) corrects this error; in referencing paragraph (b) of this section, it captures all three criteria for ''eligible families.'')

Section 5506(d) of Pub. L. 105–33 (the Balanced Budget Act of 1997) clarified that the definition of an eligible family also includes lawfully present aliens who would be eligible for TANF assistance, but for the application of title IV of PRWORA.

Thus, the definition of eligible family allows States to claim MOE expenditures with respect to three types of family members: (1) those who are eligible for TANF assistance; (2) those who would be eligible for TANF assistance, but for the time-limit on the receipt of federally funded assistance; and (3) those lawfully present who would be eligible, but for the application of title IV of PRWORA. An alien family who meets any one of these three criteria may be considered an eligible family provided they also meet the family composition requirement (i.e., have a child living with a custodial parent or other caretaker relative or be a pregnant individual) and financial eligibility criteria established by the State. These last two requirements are based on the statutory language stating that eligible families ''means families eligible for assistance under the State program funded under this part (TANF) * * * and that would be eligible for such assistance.''

While this three-part definition of eligible families may appear to allow States to claim qualified expenditures with respect to all lawfully present alien eligible family members, i.e., both qualified and nonqualified aliens, as discussed further below, this is not necessarily the case. Nor is it the case that the amendment to the definition under the Balanced Budget Act precludes States from claiming MOE for illegal aliens under certain circumstances.

While we mentioned the 1997 amendment in the NPRM, at that time, we had not fully analyzed the significance of the statutory language defining ''eligible families'' for MOE claiming purposes, relative to the extant eligibility provisions in title IV of PRWORA. Title IV of PRWORA sets forth the aliens who are eligible for Federal public benefits and for State and local public benefits; whereas, the definition of eligible families limits the expenditures that may be claimed for MOE. While there is obvious overlap between these two concepts, they are distinct and must be analyzed separately.

To understand eligibility for Federal TANF benefits, readers must be familiar with the definition of qualified alien, Federal public benefit, and Federal means-tested public benefits. Section 401 in title IV of PRWORA provides that, in general, only qualified aliens, as defined in section 431 of PRWORA, are

eligible for Federal public benefits. (At the end of this discussion, we explain two very limited circumstances under which it may be possible for a State to provide certain benefits to all aliens.) The definition of ''qualified aliens'' at § 260.30 refers to section 431 of PRWORA, as amended (e.g., by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Pub. L. 104–208) and the Balanced Budget Act of 1997 (Pub. L. 105–33)). The revised definition of ''qualified aliens'' includes: legal permanent residents; asylees; refugees; aliens paroled into the U.S. for at least one year; aliens whose deportations are being withheld; aliens granted conditional entry; battered alien spouses, battered alien children, the alien parents of battered children, and alien children of battered parents who fit certain criteria; and Cuban/Haitian entrants.

The Department has interpreted the term ''Federal public benefit'' (see TANF–ACF–IM–98–5, dated August 24, 1998, transmitting the notice with comment period interpreting ''Federal public benefit,'' published in the **Federal Register** dated August 4, 1998, vol. 63, No. 14, and available on line at http://www.acf.dhhs.gov/programs/ofa/im98–5.htm). It has determined that the TANF program (when using Federal TANF funds) generally provides a Federal public benefit. The Department also issued an interpretation of the term ''Federal means-tested public benefit'' and designated the TANF program as a Federal means-tested public benefit. (See the **Federal Register** for August 26, 1997, 62 FR 45256.)

Even qualified aliens may be ineligible for means-tested Federal public benefits. Section 403 of PRWORA prohibits qualified aliens, with exceptions, who arrive on or after August 22, 1996, i.e., newly arrived aliens, from receiving Federal means-tested public benefits for five years.

Exceptions to the five-year bar include qualified aliens who are refugees, asylees, or aliens whose deportation is being withheld, Amerasians, and Cuban/Haitian entrants, as well as veterans, members of the military on active duty, and their spouses and unmarried dependent children.

However, as discussed below, States may elect to help any newly arrived aliens who are eligible family members by providing either State or local public benefits or benefits that are not a State or local benefit. If the State uses segregated State funds in TANF or funds in separate State programs to provide such benefits, the expenditures may qualify as MOE.

Further, in regard to whether qualified aliens may be eligible for Federal TANF benefits, section 402 of PRWORA provides that States have the authority in TANF to decide whether to help qualified aliens who arrived in this country prior to August 22, 1996, and qualified aliens who arrived on or after August 22, 1996, but for whom the five-year bar had expired. In other words, States are authorized to decide whether qualified aliens are eligible for the State's TANF program. However, a State may not deny certain qualified aliens eligibility even if it decides that as a general matter qualified aliens are not eligible to receive Federal TANF benefits. States may not deny eligibility to refugees and asylees, aliens whose deportation has been withheld, Amerasians, and Cuban/Haitian entrants. These groups are eligible for Federal TANF benefits for five years after the date of their entry into the country or the date asylum or withholding of deportation was granted. Also, States may never deny eligibility to legal permanent residents who have worked forty qualifying quarters or to aliens who are veterans, members of the military on active duty, and their spouses and unmarried dependent children.

As with other parts of the TANF program, the way the State structures the delivery of TANF and MOE benefits determines which eligibility requirements apply. If a State commingles Federal TANF funds with State funds, then the benefits provided must follow the rules at section 401(c) for Federal public benefits. A State providing Federal public benefits to aliens and using commingled TANF funds to help aliens may claim, for MOE purposes, only the expenditures that it makes with respect to eligible qualified alien family members. Eligible qualified aliens include those who are eligible for TANF assistance; would be eligible for TANF assistance, but for the time limit on receiving federally funded TANF assistance; or are lawfully present in this country and would be eligible for TANF assistance, but for the application of title IV of PRWORA. If the State decides to restrict the eligibility of noncitizens to receive TANF benefits and commingles its MOE funds, then it will only be able to claim toward MOE the expenditures that it must make on behalf of the excepted qualified aliens mentioned above.

If a State does not commingle Federal and State funds, but instead uses segregated State funds in its TANF program or separate State program funds to provide benefits that meet the definition of a State or local public benefit, then it must follow the rules of section 411 of PRWORA. State or local public benefits have the meaning prescribed under section 411(c) of PRWORA. It is generally up to the State to determine if the benefits it offers are State or local public benefits within the meaning of the Act. However, because we interpreted that the TANF program, using Federal TANF or State commingled funds, generally provides a Federal public benefit, we also would interpret that the TANF program, using State TANF funds that have been segregated from Federal TANF funds, generally provides a State or local public benefit (subject to the limited circumstances explained at the end of this discussion). We make this interpretation because the statutory language in section 401(c) is identical to the language in 411(c). Within the meaning prescribed under section 411(c), States would also determine whether various separate State or local programs or activities are State or local public benefits.

Section 411(a) of PRWORA provides that only qualified aliens and certain nonqualified aliens are eligible for State or local public benefits. The nonqualified aliens consist of nonimmigrants under the Immigration and Nationality Act or aliens paroled into this country under section 212(d)(5) of such Act for less than one year. There are a handful of legal nonqualified aliens, e.g., temporary residents under the Immigration Reform and Control Act (IRCA), aliens with protected status, and aliens in deferred action status who are prohibited from receiving State or local public benefits under this provision. (At the end of this discussion, we explain two very limited circumstances under which it may be possible to provide certain benefits to all aliens.)

Section 411(d) of PRWORA permits States to expand alien eligibility by providing State or local public benefits to illegal aliens. But this may occur only if the State enacts a law after August 22, 1996, that affirmatively provides that illegal aliens are eligible to receive (all or particular) State or local public benefits.

Section 412 of PRWORA also allows States, at their option, to further limit alien eligibility for State public benefits. There are time-limited exceptions for refugees, asylees, or aliens whose deportation has been withheld. Like Federal TANF benefits, these groups are eligible to receive State public benefits under TANF during their first five years following entry, the grant of asylum, or the withholding of deportation. The

other excepted qualified aliens consist of veterans, members of the military on active duty, and their spouses and unmarried dependent children, as well as permanent residents who have earned forty qualifying quarters. Like Federal TANF benefits, these groups are eligible to receive State public benefits under TANF without the time limit described above.

In light of sections 411 and 412 of PRWORA, we have concluded that, if a State uses segregated State TANF funds or separate State program funds to provide State or local public benefits, it may only claim for MOE purposes the qualified expenditures made with respect to eligible family members who are qualified aliens, nonimmigrants under the Immigration and Nationality Act, aliens paroled into this country under section 212(d)(5) of such Act for less than one year, and illegal aliens if the State enacted a law after August 22, 1996, that affirmatively provides for eligibility to receive specifically authorized State or local public benefits.

A State may claim the expenditures for illegal aliens for MOE purposes only if the law in question is broad enough to encompass TANF eligibility. The only avenue for claiming expenditures for illegal aliens in the definition of eligible families in section 409(a)(7)(B)(i)(IV) is under the criteria of families eligible for assistance under TANF. Once a State affirms that illegal aliens are eligible for TANF assistance, then the State may provide a State or local public benefit as part of TANF or a separate State program. For example, if the State's law only authorizes for child care to be provided to illegal aliens through a non-TANF program (e.g., CCDF), it could not claim any such expenditures as MOE. However, if its law authorizes child care provided through TANF for illegal immigrants, it may claim such expenditures as MOE. Or, if it provides such a service to illegal aliens through a separate State program and not the TANF program, but the illegal aliens are eligible for both, it may claim those expenditures as MOE.

A State may claim qualified expenditures for the individuals described in the prior two paragraphs for MOE purposes because these are the aliens who are either eligible for TANF benefits or lawfully present in this country and eligible for TANF assistance, but for the application of title IV of PRWORA. If a State decides to restrict alien eligibility for State public benefits, then it may only claim MOE for qualified segregated TANF expenditures or qualified separate State program expenditures made with respect to the excepted qualified aliens mentioned in section 412.

Two limited circumstances exist in which it may be possible for a State to help all aliens. These circumstances apply regardless of funding source, i.e., whether a State uses Federal TANF, State TANF, or separate State program funds. These circumstances derive from section 401(b) and (c) and section 411(b) and (c) of PRWORA, which describe alien eligibility for Federal public benefits and State or local public benefits, respectively.

First, both sections 401(b) and 411(b) of PRWORA affirm that States may provide certain noncash Federal or State and local public benefits to any alien. Such benefits are those necessary for the protection of life or safety and include those specified by the Attorney General in a notice dated August 23, 1996 (AG Order No. 2049–96, 61 FR 45985 available on line at http://www.acf.dhhs.gov/news/welfare/wr/830fdreg.htm). In the notice, the Attorney General specified the kinds of noncash government-funded community programs, services, or assistance that are necessary for protection of life or safety and for which all aliens continue to be eligible. However, for all aliens to be eligible, sections 401(b)(1)(D) and 411(b)(4) both state that neither the government-funded programs, services, or assistance provided, nor the cost of such assistance, may be conditioned on the individual recipient's income or resources. While such service may meet one of the purposes of TANF and may be provided as part of TANF or a separate State program, a State may claim toward MOE only qualified expenditures with respect to eligible (needy) families. Therefore, to claim any expenditures that meet the Attorney General's specifications for life and safety, a State must have a sound methodology that enables it to identify and claim only the portion of total qualified expenditures for benefits that it has provided to eligible families.

Second, section 401(c) defines a Federal public benefit and section 411(c) defines a State or local public benefit. Both sections use the same definition. The August 4, 1998, **Federal Register** notice that identified TANF as a Federal public benefit expressly states that not ''all benefits or services provided by these programs are 'Federal public benefits' and require verification.'' Because sections 401(c) and 411(c) use the same wording to define a public benefit, we believe this statement may also apply to benefits provided with segregated State TANF funds and separate State program funds. When a benefit is not a Federal or State or local public benefit, a State is not statutorily bound to restrict eligibility to certain aliens and can provide that benefit to all aliens.

The August 4, 1998 **Federal Register** ''Notice with Comment Period'' includes some general discussion about discerning whether a benefit should or should not be considered a Federal public benefit. We suggest this same discussion may be valuable to States in interpreting, per section 411(c), the specific services that a State would or would not consider a State or local public benefit under TANF or through a separate State or local program. If a particular benefit or service under the State's TANF program or separate State or local program is not a public benefit, then the State may claim qualified expenditures with respect to any alien family member who is ''eligible for TANF assistance.''

In addition we proposed that States may be able to count as MOE expenditures, funds transferred to Tribal grantees to assist families eligible under an approved Tribal TANF plan. However, if the eligibility criteria under the Tribal TANF program are broader than under the State's TANF plan, then all expenditures of State funds within the Tribal TANF program might not count as MOE. Only expenditures used to assist an ''eligible family'' under the State program count. States must ensure that State funds are expended on behalf of families eligible under the State's income and resource standards.

(c) Types of Activities

Section 409(a)(7)(B)(i)(I)(aa)–(ee) specifies that State expenditures on eligible families for the following types of assistance are ''qualified expenditures'' for basic MOE purposes:

- Cash assistance (see subsequent discussion on this);
- Child care assistance (see the discussion at § 263.3);
- Education activities designed to increase self-sufficiency, job training, and work (note the specific exception at § 263.4);
- Any other use of funds allowable under section 404(a)(1) (see subsequent discussion on this); and
- Associated administrative costs (subject to a 15-percent cap, as discussed in § 263.0 and subsequently).

It is important to remember that the activities mentioned above count toward a State's basic MOE requirement if they are reasonably calculated to accomplish a purpose of the program. This restriction follows from the language at section 409(a)(7)(B)(I)(ee) of the Act authorizing as MOE, ''any other

use of funds allowable under section 404(a)(1).'' Section 404(a)(1) of the Act refers to activities that are reasonably calculated to meet a purpose of the TANF program. The use of the word ''other'' infers that the activities listed above (ee), i.e., (aa)–(dd) must also be reasonably calculated to accomplish a purpose of the program. Hence, not only must expenditures of funds pursuant to (ee) be reasonably calculated to accomplish a TANF purpose, so must State expenditures pursuant to (aa)–(dd): cash assistance, child care assistance, educational activities, and administrative costs (discussed in detail further on).

We mentioned in the NPRM that expenditures for ''assistance'' for MOE purposes may take the form of cash, certificates, vouchers, or other forms of disbursement, as determined by the State. MOE expenditures may also be for ongoing, short-term, or nonrecurrent benefits. The definition of assistance at § 260.31 (§ 270.30 of the NPRM) does not limit the nature of State-funded aid provided to eligible families under TANF or separate State programs that can count as MOE. The authorization as MOE of ''any other use of funds allowable under section 404(a)(1)'' indicates that Congress intended all types of benefits provided to families under TANF under section 404(a)(1) of the Act should count as MOE. These can include ''nonassistance'' benefits such as nonrecurrent, short-term benefits.

Thus, State expenditures with respect to eligible families for activities such as pre-pregnancy family planning services, teen parenting programs, youth and family counseling or support services, job training or employment services, or forms of crisis assistance that meet the purposes of the program under section 404(a)(1) may also count toward meeting a State's MOE requirement. However, such expenditures are subject to other limitations and restrictions under §§ 263.5 and 263.6 (§§ 273.5 and 273.6 of the NPRM).

In the NPRM, we also addressed additional limitations and restrictions. We included some specific case situations that came to our attention and invited comment on these and other examples of aid for eligible families that States believed could qualify.

(1) Cash Assistance

This category includes cash payments, including electronic benefit transfers, to meet basic needs; assistance with work-related transportation costs; clothing allowances; and any child support collected on behalf of an eligible child that the State passes through to the eligible family.

The preamble in the proposed rule pointed out that section 5506(b) of Pub. L. 105–33 amended section 409(a)(7)(B)(i)(I)(aa) of the Act to specifically allow assigned child support collected by the State and distributed to the family to count toward a State's basic MOE so long as the amount is disregarded in determining the family's eligibility for and amount of TANF assistance. However, we neglected to point out that section 5506(b) also provided that the assigned child support distributed to the family must come from the State's share of the amount collected. The law specifically refers to the amount collected and distributed to the family under section 457(a)(1)(B). Section 457(a)(1)(B) provides that the State may retain or distribute to the family its share of the support amount so collected. Thus, more accurately, section 409(a)(7)(B)(i)(I)(aa) expressly allows the State's share of assigned child support amount collected on behalf of the family and distributed to the family to count toward a State's basic MOE, provided that the State disregards the amount sent to the family in determining the family's eligibility and amount of TANF assistance. We have clarified this point in the final rule.

Cash assistance also includes State expenditures on behalf of eligible families as part of a State's refundable Earned Income Tax Credit (EITC) program. Under a State EITC program, we determined that only expenditures, i.e., the refundable portion of EITC payments actually paid to eligible families, may count as MOE. Also, if the State had an EITC program in FY 1995, it may count the total amount of the refundable portion of the EITC actually paid to eligible families only to the extent that this amount exceeds the total amount of the refundable portion of the EITC actually paid in FY 1995 (see § 263.5).

(2) Any Other Use of Funds Allowable Under Section 404(a)(1)

Section 404(a)(1) provides that TANF funds may be used ''in any manner that is reasonably calculated to accomplish the purpose of the TANF program, including to provide low income households with assistance in meeting home heating and cooling costs.'' In § 260.20 (§ 270.20 of the NPRM), we list the statutory purposes of the TANF program.

(3) Medical and Substance Abuse Services

The statute does not prohibit the expenditure of State MOE funds on medical expenditures. Therefore, States may count expenditures of their own funds to provide treatment services to individuals seeking to overcome drug and/or alcohol abuse when these services assist in accomplishing the purposes of the program. This policy would also comport with both the Administration's support for drug rehabilitation services and the congressional call for State flexibility in the operation of welfare programs.

We reminded States that such expenditures must be consistent with the purposes of the program and made to, or on behalf of, eligible families. We also reminded States that section 408(a)(6) bars the use of Federal TANF funds for medical services. Therefore, States using MOE funds to provide medical treatment services may not commingle State and Federal TANF funds. In addition, any State expenditures on medical services that are used to obtain Federal matching funds under the Medicaid program would not count as MOE. (Refer to the discussion under § 263.6.) Finally, State expenditures on medical and substance abuse services may only count as MOE subject to the ''new spending'' limitations set forth in § 263.5.

(4) Juvenile Justice

State funds used to pay the costs of benefits or services provided to children in the juvenile justice system and previously matched under the EA program do not count toward MOE. More specifically, as juvenile justice services do not meet any of the purposes of the TANF program, they are not an allowable use of funds under section 404(a)(1).

While some States may expend their Federal TANF funds for this purpose, under section 404(a)(2), the definition of ''qualified State expenditures,'' for MOE purposes, does not include the reference to section 404(a)(2). Therefore, we have concluded that Congress did not intend to automatically qualify all previously authorized IV–A expenditures as MOE. States that expend Federal TANF funds for this purpose, under section 404(a)(2), must not commingle State funds with Federal TANF funds if they wish the State funds to count as MOE.

(5) State ''Rainy Day'' Funds

Some States inquired whether State funds allocated or set aside during a fiscal year as a ''rainy day'' fund, to act as a hedge against any economic downturn, could count as MOE. While we understand State intent, these allocations or set-asides are not expenditures. States must actually expend funds on behalf of eligible

families during the fiscal year for the money to count toward the State's MOE for that fiscal year. (However, under section 404(e), States may reserve Federal TANF funds from any fiscal year for use in any other fiscal year.)

(6) Administrative Costs

Administrative expenditures may count toward a State's MOE, but only to the extent that they do not exceed 15 percent of the total amount of qualified State expenditures for the fiscal year. This limitation is the same as the limit for Federal TANF administrative expenditures. Therefore, we proposed that the State apply the same definition of administrative costs for MOE purposes as for Federal TANF funds.

Section 404(b)(2) states that expenditures of Federal TANF funds with respect to information technology and computerization needed for tracking or monitoring activities are not subject to the 15-percent TANF limit. We are providing the same flexibility with respect to the administrative cost cap on MOE expenditures. Thus, the rules do not include information technology and computerization expenditures under the administrative cost cap; they allow such expenditures to count toward meeting a State's MOE requirement, without being limited by the 15-percent cap on administrative expenditures.

Comments and Responses

Summary

We received numerous comments on § 273.2 of the proposed rule. Many of the comments focused on the definition of eligible family. One commenter praised our broad interpretation of the term ''eligible family.'' Others indicated that it may not be broad enough. Numerous commenters requested clarification of the definition.

We also received comments regarding some of the examples of qualified expenditures mentioned in the proposed rule as well as a few comments on other examples of aid for eligible families that commenters believe could qualify. Although we received only a few specific comments regarding the 15-percent cap on administrative MOE expenditures, we received a substantial number of comments on various aspects of the proposed definition of administrative costs. Since this definition applies to the State as well as the Federal cap on administrative expenditures, we refer you to the beginning of this subpart, at § 263.0, for a fuller discussion of the various issues raised and conclusions reached regarding the final definition of administrative costs.

Finally, a couple of the comments concerned the cash management principles governing the draw-down of Federal TANF funds because the draw-down of Federal TANF funds is tied to MOE expenditures.

After carefully considering the comments, we made some clarifications and a few changes to the final rule. We will address the comments following the order of the NPRM preamble.

(a) Qualified State Expenditures

Comment: One commenter noted that States have raised a number of questions regarding application of the Cash Management Improvement Act (CMIA) to the TANF program and MOE funds. The commenter recommended incorporating the guidance currently being developed jointly by the Financial Management Service (FMS) of the U.S. Department of Treasury and ACF in the final rule, as appropriate.

Another commenter recommended clarifying the final rule to specify that States may draw down Federal TANF funds without being required to show that they met their MOE requirement by the end of the year. The commenter wrote that our rules impose a de facto match requirement that is burdensome on States and could cause cash flow problems.

Response: The guidance the commenter is referring to has not yet been completed. We intend to release it as a separate issuance once it is completed. In the meantime, CMIA Policy Statement Number 19, dated June 1, 1997, and issued by FMS provides general cash management guidelines for States in drawing down their Federal TANF funds.

Federal TANF funds are subject to the Cash Management Improvement Act and the grant regulations at 45 CFR 92.20(b)(7). These rules restrict the draw-down of Federal funds. The CMIA Policy Statement Number 19 requires that States must expend a proportionate share of MOE funds for any period the State draws down Federal TANF funds. Thus, we have not made the recommended clarification.

The MOE requirement is not a de facto match requirement. However, it is similar to a matching requirement in one respect. It is a cost-sharing requirement, as Congress recognized that State financial participation is essential for the success of welfare reform.

To allow a State to expend Federal TANF funds first, then later spend State funds to fulfill the basic MOE requirement, would convey to the State a benefit (interest income) that was not authorized by the legislation establishing TANF. PRWORA did not provide for the TANF block grant allocations plus interest. The recommended action would also be in violation of 31 U.S.C. 6503(c)(1), which governs intergovernmental financing and the U.S. Treasury-State (cash management) Agreements signed by each State and Territory.

Although States must meet their basic MOE level for a fiscal year by the end of that fiscal year, the guidance in CMIA Policy Statement Number 19 does not restrict a State's ability to draw down its full TANF grant. Once a State meets its basic MOE requirement, the State may draw down its remaining TANF funds without contributing additional MOE funds. However, the draw-down of Federal TANF funds must be for immediate cash needs. Under no circumstances may a State draw down funds that are not needed for a specific program expenditure.

(b) Eligible Families

In addition to comments as discussed below, we corrected an incomplete citation in § 273.2(c) of the NPRM. This paragraph addressed the circumstances under which expenditures on families that had exceeded the Federal time limit would count as MOE. It should have cited paragraphs (b)(1), (b)(2), and (b)(3)—thus indicating that the families receiving assistance had eligible alien status, included a child living with an adult relative, and were needy under the financial criteria in the TANF plan. However, it failed to include the reference for this third provision. In the final rule, we corrected this language.

Comment: A few commenters argued that we should leave the definition of ''eligible family'' to each State. One commenter said that the proposed definition attempts to usurp the State's authority to define eligible family; another indicated that Congress was silent on this topic.

Response: We do not agree that Congress was silent on the topic of ''eligible families.'' In fact, this issue is addressed in the Conference Report (H.R. Rep. No. 725. 104th Cong., 2d sess., at 56, p. 296). In pertinent part, the conferees agreed that ''qualified expenditures that count toward the * * * spending requirement are all State-funded expenditures under all State programs that provide any of the following assistance to families eligible for family assistance benefits (TANF). * * *'' More importantly, section 409(a)(7)(B)(i)(I) of Act provides that qualified expenditures count if made with respect to eligible families. Section

409(a)(7)(B)(iv) defines eligible families in pertinent part as ''families eligible for assistance under the State program funded under this part,'' i.e., under TANF.

Because we must enforce a penalty if a State fails to meet the basic MOE requirement, we must specify the standards for that penalty. The term ''eligible families'' is a critical part of those standards. In this way, States may know which expenditures may count and avert a penalty.

Comment: Several commenters expressed concern that the proposed rule does not allow expenditures to be counted toward the basic MOE requirement if made for lawfully residing aliens who are not included in the definition of ''qualified alien,'' such as certain persons residing under color of law (PRUCOL). The commenters pointed out that section 5506(d) of the Balanced Budget Act of 1997 (Pub. L. 105–33) amended the welfare reform law to allow States to count towards MOE funds spent on ''families of aliens lawfully present in the United States that would be eligible for such assistance but for the application of title IV.''

Response: We agree that the Balanced Budget Act made this change and mentioned it in the preamble to the NPRM. Also, the proposed regulation recognized that MOE expenditures could be used to help certain eligible nonqualified alien family members (nonimmigrants under the Immigration and Nationality Act and aliens paroled into the U.S. for less than one year). However, as previously mentioned, we did not accurately analyze the significance of this statutory language (defining ''eligible families'' for MOE claiming purposes relative to the extant provisions of title IV of PRWORA). Refer to the earlier extensive discussion regarding the noncitizens for whom the State may claim MOE expenditures.

Comment: Several commenters questioned the proposed rule at § 273.2(b)(2), which required that a child live with a custodial parent or other adult caretaker relative. One commenter noted that the Balanced Budget Act of 1997 eliminated the relationship requirement under 408(a)(1) of the Act. The commenters believed the statutory definition of eligible families under section 409(a)(7)(B)(i)(IV) and even the proposed rule permitted them to assist children who do not live with a custodial parent or other adult caretaker relative (e.g., children in foster care and juvenile justice situations). For example, expenditures associated with helping a child who lives in an alternative living arrangement had been permissible under the former Emergency Assistance program and therefore should count toward the basic MOE requirement. Another commenter believed the proposed rules were too narrow and recommended modifying the rules to permit qualified State expenditures for such children to count toward the basic MOE requirement.

Response: We do not agree that the Balanced Budget Act did away with the relationship requirement. We do not believe that Congress intended to eliminate the relationship requirement for either State MOE dollars or Federal TANF funds. Section 5505(a) of the Balanced Budget Act of 1997 expressly indicates that section 408(a)(1) was amended to eliminate redundant language. Previously, both sections 408(a)(10) (the home residence requirement) and 408(a)(1) (the minor child requirement) explicitly stated that Federal TANF funds could only be expended on a family that includes a child residing with a parent or other caretaker relative. The Balanced Budget Act removed the redundant phrase from 408(a)(1) and added a cross-reference to 408(a)(10), where the phrase remains intact.

Section 409(a)(7)(B)(i)(IV) defines eligible families, in pertinent part, as ''families eligible for assistance under the State program funded under this part.'' The State program funded under this part is the TANF program, whether funded with the Federal grant and/or State funds. The criteria with respect to TANF assistance include the provisions under section 408, and specifically the provision just discussed under 408(a)(1). Under section 408(a)(1), no family is eligible for TANF assistance unless the family includes a minor child who resides with the parent or other caretaker relative. Therefore, we believe there is a direct correlation between sections 408(a)(1) and 409(a)(7)(B)(i)(IV).

We conclude that the intent of section 409(a)(7)(B)(i)(IV) is that the family include a child residing with a parent or other caretaker relative. A State may still choose to aid the ''child-only'' cases that exclude the adult(s) from the case. Nevertheless, that child must be residing with a parent or other caretaker relative. Qualified State expenditures under all programs (TANF or separate State programs) may count toward basic MOE if made with respect to eligible families who meet the above criteria and are for one of the categories of activities listed under 409(a)(7)(B)(i)(I). As we indicated in the proposed rule, not all expenditures for services that had been previously authorized under the former AFDC, EA, or JOBS programs qualify for MOE purposes. In particular, there are services (e.g., juvenile justice situations) that do not meet any of the purposes of the TANF program. Rather, such former EA services generally fall under section 404(a)(2), not 404(a)(1). Therefore, the expenditures do not qualify.

Comment: A few commenters requested that we revise the language at § 273.2(b)(2) of the proposed rule to permit the provision of assistance to minors who are temporarily absent from the home, similar to the time periods given in section 408(a)(10)(A).

Response: As we explained above, an ''eligible family'' is defined, in part, as one in which there is a child residing with a parent or other caretaker relative. Thus, the child's home is that of the parent or other caretaker relative. However, as with TANF, under section 408(a)(10), we expected that States would establish policies that define a reasonable period of temporary absence of the minor from the home for MOE purposes. Otherwise, qualified expenditures to provide services or assistance to the child once he or she left the home would no longer count toward basic MOE.

During the temporary period, the child is considered to be residing with the parent or other caretaker relative. Therefore, State may continue to help the eligible family through expenditures that are reasonably calculated to accomplish a purpose of the program, including some expenditures for the temporarily absent child (except as noted later in this discussion). As we previously mentioned, all qualified expenditures must be reasonably calculated to accomplish a purpose of the program.

For example, family preservation services, such as parenting training or counseling, and some forms of transitional assistance, could help ensure that parents may care for their children in their own home (purpose 1). In contrast, it is unlikely that expenditures on child care services would be reasonably calculated to accomplish that purpose (or any of the other TANF purposes) if the only child in the eligible family is temporarily absent from the home.

Sometimes the child is temporarily absent from the home because he or she has been placed in the care of a correctional facility, juvenile residential facility, group home, protective care, foster care, other facility or other nonrelative care arrangement. Since the child is deemed to be residing with his or her parent or other caretaker relative during the temporary period, expenditures reasonably designed to

accomplish the purpose of the program, including continuation of cash assistance, would count toward MOE. However, expenditures for residential care as well as assessment or rehabilitative services, including services provided to children in the juvenile justice system, do not meet any of the purposes of the TANF program and would not count toward basic MOE. The principal purpose for placement is to protect the child or to protect society because of the child's behavior, not to care for the child in his or her own home (purpose 1). Since the focus is to address the child's needs, expenditures to care for the child in these living situations does not end the dependence of needy parents on government benefits by promoting job preparation, work and marriage (purpose 2). The remaining two purposes do not even remotely relate to this situation.

It is important to note that this interpretation does not preclude a State from providing foster care or other protective care assistance for the child. However, these expenditures do not count toward the State's basic MOE requirement because they are not reasonably calculated to accomplish a purpose of the program.

It would be reasonable for States to use the time frames given under section 408(a)(10) to define ''temporary'' and to develop a corresponding MOE policy. (Section 408(a)(10) automatically applies when a State uses commingled State funds to provide TANF assistance.) The child must return to the home by the end of the temporary period established by the State. Otherwise, the child no longer resides with the parent or other caretaker relative. If the child is the only eligible minor in the eligible family, then services or assistance for the eligible family would no longer count toward the basic MOE requirement, if the child does not return after the temporary absence.

We do not believe it is reasonable to determine that a child is temporarily absent from the home if the child has been adjudicated or otherwise determined to require placement out of the home for longer than the State's established temporary period. In these situations, the absence is for a significant period, and expenditures for the child do not count as qualified once the child has left the home. Further, the child is not deemed to be residing with his or her parent or other caretaker relative. If the child is the only child in the family, then qualified expenditures to provide services or assistance to the family would no longer count toward basic MOE once the child left the home.

Comment: The NPRM indicated that a State is free to define who is a member of a family for TANF and MOE purposes and can choose to assist other family members such as noncustodial parents. Several commenters requested clarification regarding the effect of including the noncustodial parent or others as a member of the eligible family (e.g., applicability of sanctions). The commenters asked whether ''assistance'' provided to a noncustodial parent counts against the family for purposes of the time limit; whether a State can provide assistance or services to a noncustodial parent without providing assistance to the rest of the family; and whether a State must include the noncustodial parent as a family member. One advocacy group also asked whether a State could provide assistance to other relatives not living in the home; define a family to include more distant relatives not in the home; or even include nonrelatives not living in the home. A community organization felt that the potential addition of noncustodial parents or others not historically included within the family should not be totally discretionary with the State. The commenter recommended regulatory restrictions such as not providing assistance to a noncustodial parent when the custodial parent is not assisted. Another community organization requested that we spell out the full ramifications of States providing assistance outside the traditional ''AFDC household'' so that States will be aware of the consequences of their decisions.

Response: A number of commenters appeared to have interpreted our statement that States could include the noncustodial parent as part of the family to mean that any persons outside of the home may be a member of the eligible family. However, we did not intend for other relatives or nonrelatives not living in the home to be included as members of the eligible family. Only if a child is eligible in the home in which such other individuals live may the State choose to include them as part of that eligible family.

At minimum, an eligible family must consist of a minor child who resides with a parent or other caretaker relative (or consist of a pregnant individual). Beyond this minimum configuration, States may add other household members to comprise the eligible family. Thus, we expected that a State would configure a family from the individuals living in the home.

The only exception to this rule is the noncustodial parent. As the child's parent, a State may choose to include the noncustodial parent as a member of the child's eligible family. It also may choose not to. Further, a State may choose the circumstances under which a noncustodial parent would be a member of the child's eligible family. We leave this to State discretion and have included a minimal definition of noncustodial parent at § 260.30.

However, it is important to remember that an adult may receive TANF assistance only as part of a TANF family. This means that an adult, including a noncustodial parent, cannot apply for or receive TANF assistance independent of the child and custodial parent or caretaker relative, if applicable. Once the State determines the family is eligible, it is up to the State to determine the most appropriate assistance and nonassistance benefits to provide to family members.

Similarly, expenditures for adults only count for basic MOE purposes if the adult is part of a TANF or TANF-eligible family (i.e., a family that would be eligible for TANF assistance, but whose family members are not necessarily receiving it). And, as with TANF, the State determines the appropriate benefits to provide the eligible family.

As a member of the child's eligible family, a State could provide a noncustodial parent with benefits or services that could further the family's ability to attain economic self-support and self-sufficiency. Congress clearly supported this notion. For example, in section 101 of PRWORA, Congress stated that promotion of responsible fatherhood and motherhood is integral to the well-being of children. In section 407(h) of the Act, Congress expressed support for requiring noncustodial, nonsupporting parents under the age of 18 to fulfill community work obligations and attend appropriate parenting or money management classes after school. A provision in section 466(a) of the Act permits a State to issue an order, or to request that a court issue an order, requiring an individual owing past-due child support to participate in work activities, as defined in section 407(d) of the Act.

In our NPRM discussion of individual regulatory provisions, we also suggested that States examine the various sections of this rule where the term family is used. We understood that States needed to realize the other effects, in terms of the TANF requirements, of adding other persons to the eligible family. Applicability of any or all the TANF requirements depends on whether a family member is receiving TANF ''assistance'' as defined in § 260.31.

Applicability of a TANF requirement also depends on the person(s)

mentioned in a particular requirement. The TANF requirements use various terms, such as ''adult or minor child head-of-household,'' ''adult,'' ''teen parent,'' ''family member,'' ''individual,'' ''parent or other caretaker relative,'' or ''single custodial parent'' when referring to family members. The effect of a requirement may vary depending on the status of the person(s) receiving assistance. Each requirement must be examined to determine the effect of the status of family members on its applicability or on the amount of assistance paid (e.g., in sanction cases).

For example, the calculation of the work participation rates under section 407(b) of the Act consists of the number of families receiving assistance under the State program funded under this part that include an adult or a minor child head-of-household who engaged in work for the month (the numerator), divided by the number of families receiving TANF assistance during the month that include an adult or a minor head-of-household minus the number of families that are subject to a penalty for refusing to work in that month—except if a family has been sanctioned for more three of the last 12 months (the denominator). For this requirement, once a TANF eligible family includes an adult who receives some form of TANF ''assistance,'' the family is included in the calculation of the work participation rate, and the adult may be required to participate in work activities. An ''adult'' eligible family member receiving TANF assistance could be the custodial parent or other adult caretaker relative, a noncustodial parent, or any other adult household member as determined by the State.

Furthermore, section 407(e) of the Act requires the State to reduce or terminate the family's TANF assistance if an individual in the family refuses to engage in required work. ''Individual'' eligible family members could include the noncustodial parent or other members of the eligible family. Yet, the child care exception applies only if the individual refusing is a single custodial parent caring for a child under age six.

Applicability of a requirement can also depend on the context of the funding. The term ''under the State program funded under this part'' used in the above provisions, as well as the terms ''under the program'' and ''under the program funded under this part,'' all mean the State's TANF program, whether funded with Federal or State funds. Applicability of a TANF provision also depends on whether the State funds under the TANF program to provide assistance to the family member are commingled with, or segregated from, Federal grant funds. We mentioned earlier in this discussion that a State could expend State funds for MOE purposes in different ways. In terms of the TANF program, State expenditures may be commingled with, or segregated from, Federal grant funds. Provisions in the statute that use any of the above-mentioned terms apply to Federal or State-funded (whether commingled or segregated) assistance received under the TANF program, as depicted in the above examples.

In addition, under section 408(a)(3) and title IV–D of the Act, a family may not receive TANF assistance unless an assignment of support rights has been executed on the child's behalf. The assignment would also include the right to spousal support in the case of a custodial parent who receives TANF assistance. However, as discussed in the preamble to § 260.31, if the noncustodial parent also receives TANF assistance as a family member, the assistance provided to the noncustodial parent will not be considered ''assistance'' for purposes of the collection and distribution of assigned child support under title IV–D of the Act.

Provisions that only use the term ''grant'' or ''amounts attributable to funds provided by the Federal government'' (e.g., the five-year time limit, and expenditures for medical services) refer only to assistance provided using Federal TANF funds. They do not apply to State-funded TANF assistance unless the assistance comes from commingled funds. If a family member receives assistance from commingled State funds, then rules that would otherwise only pertain to the use of Federal grant funds apply.

However, as discussed at § 264.1, after further analysis, we have interpreted the five-year limit to only apply when the adult family member is the head-of-household or the spouse of the head-of-household and receiving assistance. Thus, if the noncustodial parent (i.e., the parent living in another household) receives TANF assistance as an eligible family member, that receipt impacts the family's lifetime limit only if he or she is the spouse of the head-of-household. We believe this situation will occur rarely, if ever. The months that any other adult eligible family member who is not the head-of-household or the spouse of the head-of-household receives TANF assistance would not count toward the family's lifetime limit.

A State may also aid eligible family members by providing various services under the TANF program that do not constitute ''assistance.'' If so, the TANF requirements explained above do not apply. Services that are not assistance (e.g., counseling, job readiness, employment placement or post-employment services) may be provided to any eligible family member, e.g., the noncustodial parent.

For basic MOE purposes, expenditures must be with respect to an individual who is a member of an eligible family. An eligible family member may also receive ''nonassistance'' or ''assistance'' through a separate State program. The requirements applicable to ''assistance'' received under the TANF program do not apply to separate State programs or to ''nonassistance'' provided to members of an eligible family.

Comment: The definition of eligible families prohibits States from counting for MOE purposes expenditures made for pregnancy prevention services to childless individuals.

Response: Such expenditures would count toward meeting the basic MOE requirement only if the childless individual is a member of an eligible family, e.g., an eligible teen family member. Section 409(a)(7)(B)(i)(I) expressly provides that only qualified expenditures made with respect to members of eligible families count. Thus, we have not changed the final rule. However, Federal TANF funds may be used for this purpose to provide ''nonassistance'' per section 401(a)(3) of the Act.

Comment: Numerous commenters requested clarification of § 273.2(b)(3) of the NPRM which required that an eligible family must be financially eligible according to the TANF income and resource standards established by the State under its TANF plan. The commenters indicated that a uniform or single income/resource standard is inappropriate as it would restrict States' ability to provide families with services such as transitional assistance, e.g., child care, transportation, ongoing case management, education and training, or diversion services for families who need one-time or short-term help to prevent the need for traditional TANF cash assistance. A few commenters noted that a State's child care program may have its own income and resource limits. Another commenter indicated that the lack of flexibility may prevent certain transfers to tribal TANF programs from counting toward basic MOE. Therefore, commenters asked us to clarify the rules to allow for different standards of need for different types of services. They wanted a definition broad enough to cover families such as those who are transitioning off TANF, those who are at risk of receiving TANF, and those served through separate State

programs. Finally, another commenter asked us to de-link MOE and TANF eligibility.

Response: The proposed rule at § 273.2(b)(3) provided that an eligible family must be financially eligible according to the TANF income and resource standards established by the State under its TANF plan. It appears that commenters interpreted our use of the plural term, ''standards,'' to mean that the elements used to determine financial eligibility (income and resources) constituted a single set of criteria for all the services that a State would provide. This was not our intention. We used the term ''standards'' in the event a State wanted to have multiple financial requirements based on the different services that it wished to provide or the scope of families it wished to aid.

States have the flexibility to decide the particular income and resource requirements that they will use to determine whether a family is financially eligible to receive a service, a package of services, or all of the services provided with State basic MOE funds. Thus, both income and resource requirements may vary, as determined by the State. For example, a State could establish different financial criteria for families no longer receiving TANF cash assistance in order that family members may receive transitional services. Or, a State may want to establish standards for providing short-term or nonrecurrent assistance to families in order to prevent the need for ongoing TANF assistance.

Section 409(a)(7)(B)(IV) of the Act indicates that an eligible family is a family who is or would be eligible (as provided in this section) for assistance under the State program funded under this part. The State's TANF program is the State program funded under this part. Thus, there is a statutory link between MOE and the State's TANF program. However, that link merely requires that an eligible family is or would be eligible for TANF assistance. It does not require that eligible family members must necessarily receive TANF cash assistance or any other benefit or services through the TANF program. Section 407(a)(7)(B)(i)(I) of the Act permits the State to help eligible family members through activities in ''all programs,'' i.e., TANF and separate State programs.

Comment: Some commenters mentioned that States should be able to use basic MOE funds to create programs with definitions of need that may not assess income and assets at all. They argued that section 409(a)(7) allows a State to claim basic MOE spending with respect to eligible families for any use of funds that are reasonably calculated to accomplish the purpose of the TANF program. Providing assistance to needy families is mentioned in only two of the four purposes of the program under section 401(a) of the Act. Thus, the term ''eligible families'' should include a broader population of families, not just those who are needy families. Two commenters, including one national organization, also noted that the TANF purposes do not require that spending has to be made to, or on behalf of, an eligible family. For example, preventing and reducing the incidence of out-of-wedlock pregnancies and encouraging the formation and maintenance of two-parent families could involve the development of materials, pamphlets, videotapes, and counseling activities directed at teen pregnancy prevention and other pregnancy prevention initiatives. Such expenditures benefit all TANF eligible families but do not necessarily benefit any one family in particular.

Response: As we explained in the above response, the statute defines MOE expenditures as those made ''with respect to eligible families.'' Thus, it clearly links MOE expenditures to eligible families. An eligible family is a family who is or would be eligible for assistance under the State's TANF program. A family may not receive ''assistance'' under the State's TANF program unless the family is needy. We interpreted the term ''needy'' for TANF and MOE purposes to mean financial deprivation, i.e., lacking adequate income and resources. We continue to believe this is the most appropriate interpretation and decline to expand the scope of the definition of needy. Hence, for basic MOE purposes, eligible families are those who are financially eligible according to the State's applicable income and resource criteria.

States may establish different income and resource criteria to cover the scope of needy eligible families they wish to serve or the various services or activities they want to provide. States are free to design programs involving MOE activities, including those mentioned by the commenter, to reach as broad a population as they choose. However, only that part of the total expenditures made on behalf of eligible families who meet the State's applicable financial eligibility criteria counts toward a State's basic MOE.

We would like to point out that Federal TANF funds may also be used to pay for ''nonassistance'' activities (such as those described above) that meet the purposes of the program as given in section 401(a)(1)–(4) of the Act and § 260.20. Federal TANF funds may also be used for activities that benefit non-needy families in some cases, e.g., activities that meet the purpose of either section 401(a)(3) or (a)(4) of the Act. In this respect, there may be more flexibility in the expenditures that are allowable uses of Federal funds than those that are allowable for MOE purposes. This is because federally funded services or benefits do not necessitate a determination of financial eligibility (need) if they do not meet the definition of assistance. Thus, States may use Federal TANF funds (in accordance with section 404 of the Act) to provide ''nonassistance'' services or benefits to eligible individuals who meet the State's other, nonfinancial, objective criteria for the delivery of such benefits.

Comment: Some commenters asked whether a State must make use of resource standards, noting that there is no statutory requirement to do so. Other commenters noted that the definition of ''needy'' may or may not include an asset test. For various benefits, a State may just establish income criteria to determine the families who are eligible for the benefit. One national organization also indicated that some States are considering eliminating resource standards.

Response: Title IV–A of the Act setting forth the TANF program does not address income or resource requirements (except under section 408(f) with respect to deeming an alien's sponsor's income and resources). Rather, it uses the term ''needy.'' Although we interpreted ''needy'' to mean financial deprivation, i.e., lacking adequate income and resources, we also recognize that some State programs may just involve an income test. Therefore, we are not requiring States to have resource requirements. We have clarified this point in the final rule under § 263.2(b)(3) by stating that a family must be financially eligible according to the appropriate TANF income and resource (when applicable) requirements established by the State and contained in its TANF plan. (We discuss eligibility criteria in the TANF plan further in response to other comments in this section.) In this way, States not only decide the scope of families they want to serve, but also the families most in need of particular programs or services.

Comment: One commenter noted that, with respect to resources, a State's standard may address cash assets only. Two commenters indicated concern that an asset limit that does not allow a family to own a serviceable and reliable vehicle to get to work or services is

extremely counterproductive to moving people to work.

Response: It is the State's responsibility to specify income and/or resource limits. States define resources and determine which resources are considered, e.g., whether both liquid and nonliquid resources must be considered and the dollar limit(s) for each type of resource. For example, many States have already eased restrictions that prevented AFDC recipients from owning cars. Some States are increasing the excluded value or discounting entirely the value of a motor vehicle in determining TANF eligibility. We agree that such actions can promote job preparation and work.

Comment: A few commenters, including two advocacy groups, recommended that we establish a ceiling on the income standards used by a State to ensure that basic MOE expenditures are appropriately targeted to help families most in need.

Response: The proposed rules were silent on this issue. However, we do not think it is appropriate for us to establish a ceiling in the final rule. TANF leaves this responsibility to the States. We hope that States will establish reasonable income standards to ensure that expenditures are targeted to families most in need.

While Congress did not explicitly provide for an income cap under TANF, we believe that Congress was very interested in the ways States are targeting their resources to help families most in need find work and move toward self-sufficiency. For example, section 404(d)(3)(B) of the Act requires that TANF funds transferred to title XX programs must be used only for programs and services to children or their families whose income is less than 200 percent of the income official poverty line (as defined by the Office of Management and Budget) applicable to a family of the size involved. Thus, we re-emphasize our hope that States will target their resources in ways that help needy families and support the goals of the program.

In § 265.9(c), we discuss the required information on MOE programs that States must submit annually. For example, States must report the eligibility criteria for the families served under each MOE program/activity. This information will help us to know the scope of families served in the various MOE programs. At some future date, depending on how MOE programs evolve, we may want to look at addressing MOE-related issues through legislative or regulatory proposals.

Comment: Two commenters asked what the applicable standard is for purposes of basic MOE calculations if a State applies different income standards to different forms of assistance.

Response: For purposes of counting MOE expenditures, qualified expenditures under all State or local programs consist of expenditures claimed with respect to eligible families (or eligible family members) who met the financial criteria (income and resource requirements, when applicable) corresponding to the particular activity (i.e., service or assistance provided) as described in the State plan.

It is also important to note that the TANF compliance supplement issued by OMB for auditors will include the basic MOE requirement. In addition, States may be subject to other audits or reviews from time to time. Therefore, States must be able to support their MOE expenditures with adequate documentation.

Comment: One commenter recommended that we replace the term ''eligible families'' with ''TANF-related families'' to give States flexibility to help families become self-sufficient. Another commenter recommended that we define ''eligible families'' to include persons eligible for any benefit that could be made to a family with TANF funds in the State program, i.e., any expenditure that could be made under section 404(a)(1) or (2) of the Act with respect to a family. Thus, a State could use its own funds to pay for benefits that it would otherwise have paid with Federal TANF grant funds.

Response: ''Eligible families'' is the term used in the statute. Therefore, we believe this is the appropriate term to use in the rules. As we explained earlier, States are free to establish different income and resource (when applicable) criteria to match the scope of families it wishes to serve and type of services it wants to provide. In the TANF program and in separate State programs, States have the flexibility to offer a range of services that they think will help eligible families attain and maintain self-sufficiency. However, for basic MOE purposes, States cannot necessarily use their own funds in the same ways as Federal TANF funds. To count toward basic MOE, expenditures of State funds must be made with respect to eligible families. The expenditures, whether under or separate from the TANF program, must provide the family or family members with services that ''qualify,'' i.e., fit any of the activities listed under section 409(a)(7)(B)(i)(I) of the Act. This provision would not include expenditures under section 404(a)(2) of the Act. (We address expenditures under section 404(a)(2) later in this discussion.)

Comment: A few commenters asked whether States needed to include the income and resource requirements in the State's TANF plan. One of the commenters recommended that State plans clearly define and delineate all their programs so that there is a clear understanding of who is eligible, what services and benefits are available, and the TANF requirements and other provisions that apply to recipients of assistance. In addition, States should notify recipients in TANF programs (funded with either Federal or State funds) regarding their options and responsibilities, and the consequences of their choices. They also believed we should require States to develop MOE plans in advance of making expenditures and that States should file such plans with HHS and publish them in the State.

Response: We agree with the comments that it is appropriate for States to specify in their TANF plans the financial eligibility criteria (income and resources, when applicable) associated with all State or local programs for which MOE expenditures are claimed (including State funds that are commingled, segregated or separated from Federal TANF funds). Section 402(a)(1(A)(i) of the Act requires that the TANF plan outline how the State intends to provide assistance to needy families with (or expecting) children, and provide parents with job preparation, work, and support services to enable them to leave the program and become self-sufficient. Section 402(a)(1)(B)(iii) requires that the TANF plan indicate the objective criteria for delivery of benefits, the determination of eligibility, fair and equitable treatment, and opportunity for appeal of adverse actions. Neither section makes any distinction between Federal or State-funded assistance, service, or benefits. Since States can use either Federal or State funds to provide assistance, services, or benefits, we believe that the State's TANF plan is the appropriate place to indicate this information for both TANF and MOE expenditures.

If there is more than one activity within a program and the financial eligibility criteria differ per activity, the State must also indicate each different set of criteria in the TANF plan. For example, a State uses State funds in its transitional services program that consists of transportation and child care benefits. If the financial eligibility criteria are different for the two benefits, the State must indicate the financial eligibility criteria for each benefit.

In addition, although we do not require it, we believe that the plan is the most appropriate place for States to provide a brief description of each MOE program benefit provided to eligible families or eligible family members, as well as any other particular eligibility criteria tied to receiving the specific benefit (e.g., must be participating in the State's work experience component to receive a particular benefit). In § 265.9(c), we discuss the required information that States must submit annually. One of the required items includes naming each of the State's MOE programs and describing the major activities provided to eligible families under each such MOE program. To the extent this information is in the State's TANF plan, the annual reporting requirement may be met by referencing the plan.

In summary, the following information must be in the State's plan in order for us to deem the plan submission complete: (1) The financial eligibility criteria with respect to eligible families that are associated with the State's TANF program and all State or local MOE programs; and (2) a brief description of the corresponding program benefit provided to eligible families or eligible family members, if the State has used MOE funds (either commingled or segregated) to provide the benefit. It would also be helpful for States to include a brief description of the corresponding program benefit provided through separate State MOE funds. However, the information is not required in order to deem the State's plan submission complete.

We maintain a copy of each State's TANF plan, as well as any updates to the plan. As the Balanced Budget Act clarified, States need to update their plans, as appropriate, to reflect new or revised financial or programmatic requirements as a result of changes in State law or State policies. The plan is an important vehicle for ensuring public awareness of the various ways States are helping eligible families attain and maintain self-sufficiency.

Comment: A few commenters believed we should hold States accountable for complying with their plans for services and benefits under TANF (funded with either Federal or State funds) and penalize them if they fail to do so.

Response: The basic MOE penalty applies if a State fails to meet the basic MOE annual spending requirement with respect to eligible families as provided in this subpart. However, neither that penalty nor any other penalty provides authority for us to penalize a State for failure to carry out any part of its TANF plan.

We believe that States are committed to expending their funds in ways that best assist eligible families attain work and self-sufficiency. States have a very real stake in the success of welfare reform. States also recognize that they are ultimately accountable for their expenditure claims. States are audited annually or biennially and compliance with the basic MOE provisions is part of the audit.

Following publication of the rules, we will update the compliance supplement to give auditors detailed information about how to assess State reports on their MOE expenditures.

As part of their review, we will refer them to the information supplied in the TANF Financial Report and the supplemental information on MOE programs and MOE expenditures provided annually under § 265.9(c). This supplemental material provides information about the scope of eligible families served with MOE funds and the ways in which States expend their MOE funds to help eligible families.

In the compliance supplement, we will suggest auditing procedures that include reviews of all the MOE reports and an examination of issues such as the following: (1) Were all MOE expenditures reported for the fiscal year actually made during that fiscal year; (2) has the State adequately documented that reported MOE expenditures went to eligible families; (3) were the methodologies the State used to estimate the portion of program expenditures going to eligible families sound; (4) were all the reported expenditures consistent with the purposes of TANF; (5) were any expenditures made in violation of the prohibitions in § 263.6; (6) where applicable, did all expenditures meet the ''new spending test'' (e.g., for every such program, did the State properly identify whether the program existed in 1995 and only count expenditures above the total State expenditures in 1995); (7) were administrative costs within the 15-percent cap; and (8) were the expenditures consistent with the cost principles set forth in OMB Circular A–87.

We will use the results of the audits, together with our own analysis of the TANF Financial Report and the annual report, to identify situations where a State might be liable for an MOE penalty. For example, the fourth quarter TANF Financial Report would identify any State that reported MOE expenditures below the minimum 80-percent (or 75-percent) standard for the year. Either the TANF Financial Report or the annual report might identify types of expenditures that could be inconsistent with one or more of the requirements for ''qualified State expenditures.'' We might also undertake additional State reviews based on complaints that arise or requests from Congress.

Comment: A few commenters expressed concern regarding the eligibility determination process for different types of services or assistance. The commenters contend that the method of determining eligibility could vary depending on the service. For example, the method for determining a family's eligibility for diversion services may be more abbreviated than the process used to determine eligibility for ongoing TANF cash assistance. One commenter recommended that the regulations require an application for all State-funded benefits and verification that the family is actually eligible before any basic MOE expenditures may count.

Response: States decide the method(s) for determining whether the family consists of at least one child living with a parent or other caretaker relative and is financially eligible according to the appropriate income and resource (when applicable) criteria established by the State. As we mentioned in the above response, section 402(a)(1)(B)(ii) requires States to indicate in their plan the objective criteria for the delivery of benefits and the determination of eligibility. Nothing in this provision precludes a State from having different methods of determining eligibility for different types of services. However, we would note that 45 CFR 92.42 requires States to keep records to document claims and that States should, therefore, have and keep adequate records on eligibility.

Nevertheless, we remind States to pay attention to the TANF provisions that apply with respect to State-funded TANF assistance (i.e., to the use of commingled or segregated funds). States risk potential penalties if they violate certain TANF provisions. For example, section 408(a)(4) imposes a penalty on a State if the State's TANF program fails to participate in the Income and Eligibility Verification System (IEVS). The IEVS provision helps to improve the accuracy of eligibility determinations for applicants and recipients of TANF assistance.

States have an inherent interest in ensuring the integrity of their expenditures. Should a State learn of any material deficiency in its method for determining eligibility, we anticipate that the State would rectify it immediately, so that funds for services

are properly benefitting members of eligible families.

(c) Types of Activities

Comment: Several commenters recommended rewording § 273.2(d) of the proposed rule to avoid confusion regarding the applicability of ''assistance'' as defined under § 260.31 for basic MOE purposes. Commenters noted that States have the flexibility to count expenditures with respect to eligible families whether or not the expenditures meet the definition of assistance.

Response: As we explained earlier in this discussion, we believe that States may help eligible family members through an array of services that fall within the broad categories of activities listed in section 409(a)(7(B)(i)(I), including services that would not fall within the definition of assistance at § 260.31, such as nonrecurrent, short-term assistance. To clarify this point, we have reworded § 263.2(d) of the final rule and included similar language at § 260.31(c)(1).

(1) Cash Assistance

Comment: A few commenters requested clarification of the amount of State Earned Income Tax Credit (EITC) that can count toward the basic MOE requirement. One commenter noted that a State's EITC expenditures should count toward the basic MOE requirement even if none of the credit was ''actually sent'' to an eligible family member. For example, some States have ''nonrefundable'' EITC programs. Under a ''nonrefundable program,'' the EITC serves to reduce the family's State income tax bill. However, the State does not pay the family any EITC remaining if the credit amount is larger than a family's State income tax bill. Another commenter asked whether we intended the entire cash payment actually received by the eligible family to count toward basic MOE, even if a portion of the payment consists of a State income tax refund.

Response: We have addressed this issue extensively in the preamble for the new § 260.33. An EITC program can help to relieve the State income tax liability for working poor families by decreasing the family's State income tax liability. The family's tax liability is the amount of taxes owed prior to any adjustment for credits or payments. EITC can also supplement a family's income—if the credit amount exceeds the family's State income tax liability and the State pays the family the remainder (i.e., it refunds the credit amount remaining). Such a refund is equivalent to cash assistance and may count as a qualified expenditure because it is reasonably calculated to meet a purpose of the TANF program.

State income taxes represent revenue to the State. Credits that offset a family's State income tax obligation provide tax relief to the family while reducing the State's revenue. A reduction in taxes, or revenue foregone, is not an expenditure. Therefore, only the EITC amount that exceeds a family's State income tax liability prior to application of the EITC is an expenditure. It may count for basic MOE purposes if the excess amount is actually paid out (refunded) to the eligible individual. Section 409(a)(7) of the Act stipulates that only ''expenditures'' with respect to eligible families that provide a benefit or service that is reasonably calculated to meet a purpose of the TANF program count toward a State's basic MOE. Thus, if a State does not disburse or pay out any excess EITC remaining, there is no expenditure.

States must determine the amount of any excess EITC paid to a family in a fiscal year by reconciling the family's State income tax obligation for the year against the total EITC amount for which the family qualifies. Any excess EITC amount actually paid to the family may count toward the State's basic MOE. In this regard, any EITC that a worker receives in advance through his or her paycheck may only serve to offset the family's tax liability. Advance EITC would have to be reconciled at the end of the year, in the same manner as the lump-sum EITC credit, to determine the portion, if any, that exceeded the tax liability.

For example, a wage earner qualifies for a $200 earned income tax credit. His or her family has a $75 State income tax liability for the tax year. When reconciling at the end of the year, the first $75 of the credit is used to reduce the eligible family's State income tax liability to zero. This part of the calculation represents revenue foregone to the State and does not constitute an expenditure. If the State also elects to refund (pay out) the remaining $125 in EITC, then the $125 actually sent to the eligible family is a qualified expenditure and counts toward the State's basic MOE.

The same principles apply in the case of a worker who is otherwise due a State income tax refund. For example, suppose the wage earner qualifies for an earned income tax credit of $200. Assume further that the family has a $75 State income tax liability. Yet, through withholding, the wage earner paid a total of $150 in State income taxes throughout the year. After reconciliation at the end of the income tax year, the State owes the worker $150 from withheld State income taxes and $125 in excess EITC. If the State pays out the EITC owed and sends it to the family as part of a refund check in the amount of $275, only the EITC portion, or $125, counts toward the State's basic MOE.

Comment: One commenter asked to what extent other tax credits such as a dependent care credit, credit to purchase a car seat or health insurance, tax forgiveness credit, sales tax credit, and property tax credit count toward a State's basic MOE requirement. The commenter also asked to what extent, if any, other tax relief provisions such as personal or dependent exemptions or the standard or other forms of deductions count toward a State's basic MOE requirement.

Response: Tax provisions that only serve to provide a family with relief from State taxes, such as income taxes, property taxes, or sales taxes, represent a loss of revenue to the State, not expenditures to provide a benefit or service to eligible families. For example, exemptions and deductions are generally subtracted from total taxable income, serving only to reduce the amount of income subject to income tax. Therefore, such exemptions and deductions would not constitute an expenditure for the purposes of section 409(a)(7) of the Act. Similarly, tax credits that rebate, refund, or return to a family a portion of the State's tax revenue (e.g., property, sales, or income taxes paid by families to the State) would not count toward the State's basic MOE requirement. Such credits serve only to offset a particular tax (e.g., a State property tax credit that refunds a portion of property taxes paid). A reduction in tax burden is not an expenditure. There has been no direct outlay of State funds to provide a service or benefit to eligible families.

However, credits that go beyond tax relief and are paid to the eligible family would count toward a State's basic MOE requirement if the expenditure is reasonably calculated to meet a purpose of the TANF program. For example, like the earned income credit, a child care or dependent care credit is subtracted from the family's income tax obligation. The portion of the credit that exceeds the income tax liability and is paid to the family may count toward the State's basic MOE requirement. Should the family qualify for more than one refundable credit (e.g., an earned income credit and a dependent care credit), then the amount by which the total combined value of the allowable credits exceeds the family's State income tax liability may count for basic MOE purposes.

It is important to note that while States may describe elements of their tax provisions, such as exemptions or deductions, as ''expenditures,'' the provision may not actually be an expenditure. Similarly, States may differ in their methods of providing certain credits. For example, a sales tax or property tax credit may be claimed through the State's income tax system or through a separate process. Neither of these factors is material to determining whether some or all of the value of a credit, exemption, or deduction can count for basic MOE purposes. Accordingly, we urge States to carefully examine any tax initiative to determine whether it only serves to provide tax relief. If so, the money does not count for MOE purposes, even if a portion of the tax revenue is refunded or rebated to the eligible family as ''cash assistance.'' However, actual expenditures such as some refundable tax credits may count for MOE purposes if the portion of the credit that exceeds the family's income tax liability is sent to the eligible family and the refund is reasonably calculated to accomplish a purpose of the program. Should a State wish to consult with us on these matters, we are available for technical assistance.

Comment: Several commenters noted that lack of transportation to training, job interviews, jobs, child care, or other services that accomplish the purpose of the program represents one of the most significant barriers to individuals attaining and maintaining employment. There are frequently no public or private transportation services in rural areas, so the traditional approach of tokens or vouchers is inadequate. Transportation is also problematic in urban areas due to the mismatch of job and transit destination sites and traditional commuter services times and routes.

Commenters generally recommended that we give States sufficient flexibility to respond to individual travel needs by allowing a broad range of activities as MOE. Examples of suggested allowable transportation activities included brokerage and coordination pilot programs, initiation of services that increase access for TANF recipients to new development or redevelopment employment sites, subsidization of new transit services either directly or in combination with other Federal or State sources, sharing in the cost of extending existing public transportation services, and developing necessary transportation infrastructure. One commenter added that we should tie transportation development costs for basic MOE to coordination mechanisms among human services agencies, State departments of transportation, and private transportation providers.

One national organization commented that, if public transit providers must use the cost allocation method, our rules would be unduly restrictive and could impede the ability of States to provide cost-effective services. The commenter suggested classifying such services as contracted services for TANF clients to be paid for by TANF agencies, with any non-TANF riders considered incidental. Another commenter recommended adding a section under this subpart to address when transportation-related expenditures count for basic MOE purposes.

Two commenters referred to the WtW program by suggesting that qualified transportation expenditures for basic MOE purposes should include transportation services provided through the State's WtW program and by clarifying that States could use TANF funds to support transportation services consistent with the WtW block grant program.

Response: We agree that transportation is a critical element in helping eligible individuals find and keep jobs. President Clinton recognized the importance of this issue in his 1998 State of the Union address. To help individuals on welfare get to work, he proposed an Access to Jobs initiative in the transportation reauthorization bill. Congress approved this proposal as the Job Access and Reverse Commute grant program in the Transportation Equity Act for the 21st Century (TEA–21), enacted in June 1998.

On May 4, 1998, we issued written guidance jointly with the Departments of Transportation and Labor on some of the ways in which States could use TANF and WtW funds to break down the transportation barriers for eligible individuals (Temporary Assistance for Needy Families Program Policy Announcement TANF–ACF–PA–98–2). Most of the examples could also serve as examples for the use of basic MOE funds. We updated this guidance to incorporate the provisions of TEA–21 in TANF–ACF–PA–98–5, dated December 23, 1998. We anticipate issuing additional guidance on the use of funds shortly after publication.

We do not think that it is necessary to add specific regulations to address transportation expenditures.

Transportation expenditures with respect to eligible families count as basic MOE if they meet all the requirements under section 409(a)(7) of the Act and this subpart. For example, under section 409(a)(7)(B)(i)(I)(aa) of the Act, transportation expenditures count if they are a form of cash assistance that is reasonably calculated to accomplish a purpose of the program (e.g., reimbursement for mileage, gas, public transit fare, auto repairs/insurance, or a basic cash allowance for transportation needs to go to or from work or training). Also, under section 409(a)(7)(B)(i)(I)(ee) of the Act, other types of transportation expenditures count if they reasonably accomplish a purpose of the TANF program, such as promoting job preparation and work. A broad range of transportation activities are possible within this category. We included some examples of such activities in the joint guidance cited above. However, we remind States that applicable TANF rules apply to State-funded transportation assistance (as defined in § 260.31) provided under the TANF program. (We discussed the implications of State-funded assistance in an earlier response.)

We also remind States that only qualified transportation expenditures with respect to eligible families count toward the basic MOE requirement. Congress clearly did not intend to include expenditures for the public at large. Thus, it is improper to claim as basic MOE general expenditures required to carry out other responsibilities of a State or local government and benefitting the public at large. However, a State could contract with a public or private transit agency for transportation services for eligible family members. Under such a contracting arrangement, a transit company could serve noneligible individuals so long as the State does not claim as State MOE the funds used to pay for, or subsidize, use by these noneligible individuals.

A State could also claim as MOE those start-up, program, and administrative costs that are attributable to eligible family members under a State or local transportation initiative (e.g., to broker transportation services) that is consistent with TANF goals, but targeted to a larger low-income population or more broadly to a low-income area.

States must allocate costs when State or local programs or agencies share costs, e.g., the TANF agency shares the use of vans or buses with a senior citizen program or shares in the purchase of transportation services.

We know that many States and locales have already made tremendous strides toward breaking down the transportation barriers faced by eligible family members. However, we also know that Federal TANF and State MOE funds are insufficient to overcome all transportation deficiencies. The recently

passed Job Access and Reverse Commute grant programs will give States additional flexibility in developing and providing transportation services.

The Job Access program provides competitive grants to assist States and localities in developing flexible transportation services to connect welfare recipients and other low-income persons to jobs and other employment-related services. The Reverse Commute grant program is for projects that will provide transportation services to suburban employment centers from urban, rural, and other suburban locations for all populations. The Mass Transit Account of the Highway Trust Fund and the General Fund finance both programs. However, the amount of the Federal grant under either program may not exceed 50 percent of the total project's cost. The balance must be met locally. Thus, a 50/50 Federal/local match is required under both programs.

In this regard, we remind States of the prohibition under section 409(a)(7)(B)(iv)(IV) of the Act and § 263.6(c) of this subpart stipulating that any State funds expended as a condition of receiving Federal funds under other programs do not count toward the State's basic MOE. Thus, any State funds used to meet the cost-sharing requirements of the Job Access and Reverse Commute grants program do not count for basic MOE purposes. However, in this case, Federal TANF funds may be used to satisfy non-Federal match requirements of another program (within specified monetary limits).

In addition, section 409(a)(7)(B)(iv)(III) of the Act and the regulatory text at § 263.6(e) of this subpart expressly provide that State funds expended to meet the WtW matching requirements do not count toward a State's basic MOE. Thus, States may not double-count expenditures to provide transportation services for individuals participating in an allowable WtW employment activity.

The statute is equally clear regarding expenditures for supportive services, such as transportation, to help eligible family members who are WtW participants. Section 403(a)(5)(C)(i)(VI) of the Act provides that a State may use WtW funds to provide supportive services to eligible participants only ''if such services are not otherwise available.'' A State could use basic MOE funds to provide transportation services consistent with the WtW block grant program because the WtW and TANF programs share the same purposes. But, as explained above, the expenditures do not count for basic MOE purposes if the State also used these expenditures toward the required WtW match under section 403(a)(5) of the Act.

(2) Any Other Use of Funds Allowable Under Section 404(a)(1)

Comment: One commenter recommends that we allow States to claim expenditures toward basic MOE that were formerly allowable under a State's AFDC–EA program. Another commenter specifically asked whether services paid under a housing assistance program qualify for basic MOE purposes. The housing assistance component provides payment for rent, security deposit, and utilities to prevent and/or end homelessness or near homelessness. A third commenter asked whether expenditures for micro-entrepreneurship development services qualify for basic MOE purposes. The commenter believes this approach fosters employment opportunities in rural areas through self-employment options.

Response: Section 409(a)(7)(B)(i)(I)(ee) of the Act permits any activity with respect to eligible families that is reasonably calculated to accomplish the purpose of the TANF program to count for basic MOE purposes. For example, one purpose of the program is to provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives. Thus, some (but not all) emergency assistance and services with respect to eligible families, which had been previously provided by a State under its AFDC–EA program, would meet this purpose and could count for basic MOE purposes. We believe that emergency housing assistance services could meet this purpose as well. However, only the expenditures made with respect to eligible families count for basic MOE purposes. (Refer to § 263.5 for discussion of the ''new spending'' limitation on certain MOE program expenditures.)

Another purpose of the program is to end the dependence of needy parents on government by promoting job preparation, work, and marriage. Micro-entrepreneurship services promote job preparation and work. In this regard, a State may also deposit State funds into the eligible family member's Individual Development Account (IDA) to help with business capitalization. The funds count once toward the basic MOE requirement—in the fiscal year in which the State deposits the money into the eligible family member's IDA. The State could not use the IDA balance carried forward to the next fiscal year to meet the basic MOE requirement for the next fiscal year.

(3) Medical and Substance Abuse Services

Comment: A number of commenters supported our clarification in the preamble to allow States to use State funds to provide drug and alcohol treatment services to eligible family members when these services assist in accomplishing a purpose of the program. Nearly all the commenters requested that we add the clarification to the final regulation.

One commenter found the need to separate medical from nonmedical substance abuse treatment services problematic and unrealistic as both types of services are lacking in rural areas. The commenter also noted that child care and transportation costs related to these services should also count toward a State's basic MOE. Another commenter suggested that we provide guidance in the preamble to differentiate medical from nonmedical alcohol and drug treatment services.

Two other commenters felt that medical services in connection with gaining and retaining unsubsidized employment (e.g., pre-employment services that include physical examinations) should count toward the basic MOE.

Response: We agree that allowing expenditures with respect to an eligible family member for nonmedical substance abuse treatment is an important clarification and have added it to the final regulation.

We did not intend to imply that substance abuse treatment must be exclusively nonmedical in nature for the nonmedical services to count for basic MOE purposes. We recognize that drug and alcohol abuse treatment services may include medical as well as nonmedical activities. However, if States wish to use commingled State TANF funds for substance abuse treatment services, they have the responsibility to develop policies that distinguish between expenditures for the provision of medical services and nonmedical services. The policies must reflect a reasonable interpretation of the statutory language.

Section 408(a)(6) of the Act expressly excludes the use of Federal TANF funds to provide medical services except for pre-pregnancy family planning activities. The same prohibition applies to any commingled State funds expended to treat an eligible family member for drug and alcohol abuse. Commingled State funds used to provide nonmedical services, such as substance abuse services, to an eligible family member would count toward basic MOE if the service is reasonably

calculated to accomplish a purpose of the program, e.g., help the individual prepare for work, find, or keep a job.

The prohibition on medical expenditures does not apply to segregated State TANF funds or separated State funds. Therefore, States may count medical expenditures with respect to eligible family members toward the basic MOE provided these expenditures are consistent with the purposes of the program and are not matched by the Medicaid program or otherwise prohibited under section 409(a)(7)(B)(iv) of the Act or § 263.6(b) and (c) of this subpart.

We again remind States that the drug and alcohol abuse treatment services with respect to eligible families must be consistent with the purposes of the program to count toward the State's basic MOE requirement. If so, then by extension, expenditures for other supportive services such as transportation and child care that facilitate the eligible family member's ability to access and complete substance abuse treatment may also count for basic MOE purposes, if the MOE requirements are met. (Refer to § 263.3 for discussion of the limitation on certain child care expenditures.)

We agree that pre-employment services is an example of a qualified activity because it accomplishes a purpose of the program. Therefore, by extension, the associated medical expenditures would count toward basic MOE if the State uses segregated or separated funds to pay for the services.

(4) Juvenile Justice

Comment: We received several comments regarding our discussion of juvenile justice expenditures. Most of the commenters opposed our conclusion that juvenile justice expenditures do not count for basic MOE purposes because the expenditures do not meet any of the purposes of the TANF program. However, the commenters did not specifically explain how the purposes are met.

Response: As we explained in detail earlier in our discussion, juvenile justice expenditures do not count for basic MOE purposes. The principal purpose of a child's placement in the juvenile justice system is to protect society because of the child's behavior, not to care for the child in his or her own home (purpose 1). Since the focus is to address the child's needs, expenditures to care for the child in these living situations does not serve to end the dependence of needy parents on government benefits by promoting job preparation, work and marriage (purpose 2). The remaining two purposes do not even remotely relate to this situation. Thus, it is not an allowable use of funds under section 404(a)(1) of the Act.

In some States, Federal TANF funds may support juvenile justice programs pursuant to section 404(a)(2) of the Act. However, the basic MOE requirement under section 409(a)(7) of the Act expressly does not count expenditures for services or activities that only fall under section 404(a)(2). Thus, it does not cover benefits and services for a child removed from his or her home and receiving care in a correctional facility or juvenile residential facility. States that were previously authorized to cover the costs of children in the juvenile justice system under their formerly approved AFDC-Emergency Assistance plans would need to use Federal TANF funds for this purpose.

Clearly, expenditures on eligible families for services that are reasonably calculated to accomplish the purpose of the program do qualify for basic MOE purposes. For example, a State may wish to provide family preservation services so that an eligible child family member may be cared for in his or her own home (purpose 1). Such assistance could include family or individual counseling services or parenting training to improve family functioning, referrals to outside service providers who could help an ''at risk'' child or family function better, and associated assessment and case management activities.

(5) State ''Rainy Day'' Funds

Comment: One commenter noted that States have a long history of creating rainy day funds or special reserves to cover contingency needs. States recognize the need to be fiscally prudent in the anticipation of caseload increases, natural disasters, economic declines, and increasing participation rates. But the commenter believed the language in the proposed rule limits State flexibility to use State funds for this purpose.

Response: Section 409(a)(7)(A) and (B) of the Act stipulate that only qualified expenditures made with respect to eligible families count toward a State's basic MOE. Placing funds in a reserve or rainy day fund does not represent an expenditure. While we agree that it may be fiscally prudent to create a rainy day fund or a reserve, the money in the fund does not count for basic MOE purposes until the fiscal year in which the State actually expends funds on behalf of eligible families in ways that meet the requirements of section 409(a)(7) of the Act and this subpart.

(6) Administrative Costs

Comment: Several commenters raised questions about how the administrative cost cap was applied to MOE and separate State programs. A few did not want a cap on the administrative costs of separate State programs, believing that the PRWORA does not authorize us to cap those administrative costs. Three commenters took exception to the application of the 15-percent administrative cost cap to separate State programs. The three commenters believe that such ''separate State programs'' should be excluded from coverage of the definition.

Response: We believe these comments are a result of confusion about the proposed regulatory language. The MOE administrative cost cap is not a limit on the administrative costs of separate State programs. Rather, it is a limit on the amount of administrative costs that can count as MOE. Section 409(a)(7)(B)(i)(I)(dd) clearly limits the amount of administrative costs that can count as basic MOE. We have revised the regulatory language at § 263.2(a)(5) to clarify the distinction.

We also noted an error in the proposed TANF reporting form and the accompanying instructions that may have added to the confusion. The instructions provided separate columns for reporting of expenditures from MOE funds, one for State TANF expenditures and one for separate State programs. It then indicated how administrative costs would be determined ''for each of these columns.'' This language suggested that there were two separate caps, when that is not the case. We have corrected the instructions for the form.

Comment: Two commenters indicated that administrative spending for the TANF program would probably never involve a specific payment to, or on behalf of, a specific eligible family. Yet this is a qualified expenditure. Therefore, the commenter thought all types of spending should qualify toward the basic MOE.

Response: The different treatment of administrative costs is based on statutory distinctions. According to section 409(a)(7)(B)(i)(I)(dd) of the Act, administrative expenses under all programs means ''[A]dministrative costs in connection with the matters described in items (aa), (bb), (cc), and (ee).'' Therefore, the statute includes as MOE, administrative expenses if the expenditure relates to carrying out another qualified activity that helps eligible families.

Comment: One commenter observed that the definition of administrative costs under § 273.0(b) of the proposed

regulation applies to State MOE expenditures since the use of State MOE funds have the same administrative cost cap as Federal TANF funds.

Response: The commenter correctly noted that the definition of administrative costs applies whether State funds or Federal TANF funds are used to pay these costs.

Comment: Two commenters supported our proposal to exempt State expenditures used toward information technology and computerization needed for tracking or monitoring as required by title IV–A. One commenter noted that while section 409(a)(7)(B)(i)(I)(dd) of the Act does not clearly state that this exemption applies, nevertheless, States are facing massive systems needs as a result of welfare reform. In addition, the exception for technology and computerization should include costs for contracts to develop new programs; staff needed to install and maintain additional systems; staff collating, in-putting and analyzing required tracking and monitoring data; training costs for new hardware and software; and preparing the reports and other documents related to the tracking and monitoring mandates.

Response: We have retained our proposal that the same exception given under section 404(b)(2) with respect to costs related to information technology and computerization needed for tracking and monitoring apply to State-funded administrative costs in connection with qualified expenditures.

We addressed the treatment of computer-related costs in the discussion of the definition of administrative costs at § 263.0. Refer to that section for a full discussion of issues raised regarding information technology and computerization needed for tracking or monitoring. Basically, this discussion affirms that certain systems costs may be excluded in determining whether a State is within or exceeded the 15-percent limitation placed on administrative expenditures. It also provides guidance about the scope of that exclusion.

Comment: One commenter said that the cap on administrative costs does not apply to additional State dollars that a State must expend if assessed a penalty.

Response: The commenter is correct. Section 409(a)(12) of the Act requires a State to expend additional State funds under its TANF program to replace any loss of Federal grant funds due to a penalty. The 15-percent limit under section 404(b) applies only to Federal TANF funds, and, thus, does not apply to the State replacement funds under section 409(a)(12). Further, as the statute precludes the use of replacement funds to meet the MOE requirement, they are not subject to the MOE rules, including the MOE cap on administrative expenditures. However, they must otherwise be allowable expenditures under the State's TANF program.

Section 263.3—When Do Child Care Expenditures Count? (§ 273.3 of the NPRM)

Overview

In the NPRM preamble we explained that there were certain restrictions on the child care expenditures that could count for basic MOE purposes. First, only child care expenditures used to assist eligible families under the State's TANF criteria count toward the State's basic MOE. Under § 263.2 (formerly § 273.2), we indicated that eligible families mean families that have a child living with a parent or other adult caretaker relative (or consisting of a pregnant woman) and are financially needy per the appropriate TANF income and resource standards (when applicable) established by the State under its TANF plan. Thus, not all State expenditures to provide child care services would necessarily qualify for basic MOE purposes, particularly if the eligibility criteria for the child care services are broader than the State's TANF criteria, e.g., under the Child Care Development Fund (CCDF).

Second, section 409(a)(7)(B)(iv) of the Act establishes four general restrictions on State expenditures. (These restrictions are listed in § 263.6.) Two of the restrictions, at subsections 409(a)(7)(B)(iv)(IV) and 409(a)(7)(B)(iv)(I), apply to child care expenditures.

Subsection 409(a)(7)(B)(iv)(IV) generally excludes any State funds expended as a condition of receiving Federal funds under other Federal programs from counting toward a State's basic MOE. Thus, Congress prohibited ''double-counting.'' However, this subsection also provides an exception to this restriction for child care expenditures (i.e., the State's CCDF MOE and the State's share of matching funds). State child care expenditures used to meet the child care MOE requirement or to receive Federal matching funds under the CCDF may also count toward meeting the State's basic MOE requirement if the expenditures are made on behalf of members of an eligible family.

The amount of State child care expenditures that may count for basic MOE purposes is limited to the State's share of expenditures in FY 1994 or FY 1995, whichever is greater, for the former title IV–A child care programs, i.e., the AFDC/JOBS child care, transitional child care, and At-Risk Child Care programs. This capped amount is the same amount as the State's child care MOE amount, for purposes of qualifying for child care matching funds.

If a State has additional State child care expenditures, i.e., expenditures that have not been used toward meeting the child care MOE requirement or to receive Federal matching funds under CCDF, these expenditures may count toward the State's basic MOE, provided the expenditures meet all other requirements and limitations set forth in subpart A of this part. Subsection IV does not limit the amount of such additional child care expenditures that may count for basic MOE purposes.

Subsection 409(a)(7)(B)(iv)(I) excludes any expenditures that come from amounts made available by the Federal government. Therefore, Federal TANF funds transferred from the TANF program to the Child Care and Development Block Grant (also known as the Discretionary Fund of the CCDF) would not count toward MOE. Neither would Federal TANF funds directly received under CCDF (or any other program that allows for child care).

Comments and Responses

We received a number of comments on this section. Some commenters found the information regarding expenditures that could count helpful, especially since States are making significant investments in child care. Others thought that the preamble was confusing because it did not clearly distinguish between child care expenditures that are subject to a dollar limit (and therefore would not count in the entirety toward the basic MOE) and those that can count without limit. A few commenters recommended that the final regulations at § 263.3(a) (formerly § 273.3(a)) clearly explain which child care expenditures count rather than merely cross-referencing the statutory provision.

Several commenters expressed concern that the definition of ''eligible family'' deters States from counting child care expenditures under the State's child care program for transitional and at-risk families. We address this and other comments in the discussion below.

Comment: Some commenters noted that the wording in this section does not clearly explain which expenditures do and do not count toward the State's basic MOE requirement. The commenters thought that we should add a clarification to the final regulations.

Response: States may receive an allocated amount of Federal matching funds under the matching fund component of the CCDF. To receive its share of these matching funds, the State must meet a maintenance-of-effort (MOE) requirement. The child care MOE requirement is a specific dollar amount that we calculated for each State based on their FY 1994 or FY 1995 State child care expenditures under the title IV–A child programs. Thus, under the CCDF matching fund, States must expend State-only dollars that equal their child care MOE level and may claim Federal matching funds (up to the allocated amount) for State funds expended beyond the child care MOE level to provide CCDF-funded child care services. A State may also count these State-funded child care expenditures toward the State's basic (TANF) MOE as long as the expenditures also meet the requirements under section 409(a)(7) of the Act and this subpart. However, the amount that may be counted for basic MOE purposes is limited to State's child care MOE amount. States should note that while the basic MOE limit for double-counting child care expenditures is the same amount as the child care MOE amount, this does not mean that the State may use only child care MOE expenditures. For example, if a State's annual child care MOE requirement is $5 million, then the State may only count up to $5 million of its CCDF matching fund expenditures toward its annual basic MOE requirement. The State could claim the $5 million in child care expenditures from either expenditures used to meet the State's child care MOE requirement or expenditures used to receive CCDF Federal matching funds.

It is not unusual for a State to expend in excess of the funds needed to draw down CCDF funds to provide child care services. There is no dollar limit on counting toward basic MOE State expenditures to provide child care assistance that have not been used to meet the CCDF matching fund requirements. We have clarified this policy in the regulatory text. At the same time, we remind States of the ''new spending'' provision at § 263.5 that limits the amount of basic MOE expenditures that may count in certain pre-existing basic MOE programs, including certain child care programs.

For pre-existing child care programs (current State or local programs also operating in FY 1995) that were not AFDC-related programs, States may only claim ''new spending'' toward the basic MOE requirement—namely, qualified State expenditures in the current year with respect to eligible families that exceed what the State spent on that program in FY 1995. The AFDC-related child care programs included the AFDC, At-Risk, and transitional child care programs. The ''new spending'' provision does not apply to expenditures for child care services that would have been an allowable expenditure under these former title IV–A child care programs.

Hence, in terms of a child care program subject to the ''new spending'' provision, three requirements apply for the expenditure to count as basic MOE. First, only the ''new'' expenditures, those in excess of the FY 1995 program expenditures, potentially count. Second, if the expenditures have been used to meet the child care MOE requirement or to receive CCDF matching funds, the maximum amount of excess expenditures that can be double-counted is limited to the State's child care MOE amount. For those expenditures that have not been used to meet the child care MOE requirement or to receive CCDF matching funds, the excess may count as basic MOE, up to the actual amount of expenditures made outside of the CCDF matching fund requirement. Finally, if none of the expenditures in the child care program have been used to meet the child care MOE requirement or to receive CCDF matching funds, the total amount of the excess can be counted toward basic MOE.

Comment: Several commenters expressed concern that State expenditures to provide child care services to families transitioning off TANF assistance or at risk of becoming dependent on TANF assistance do not count for basic MOE purposes because of the restricted definition of eligible families. One commenter suggested that we amend the regulation to recognize State programs geared to enabling low-income families to maintain their jobs through the provision of child care. The commenters contend that we should consider any family who is financially needy according to the State's child care eligibility criteria an eligible family for basic MOE purposes. Therefore, any State spending on its child care program would count toward a State's basic MOE requirement.

Several other commenters concurred, writing that all of the State's child care expenditures under the now repealed title IV–A child care programs, which included expenditures for working families to transition off the TANF assistance program or at risk of needing TANF assistance, should count toward the basic MOE requirement, up to each State's child care MOE amount. They noted that there is no statutory requirement that an eligible family must actually receive TANF cash assistance for child care expenditures to count for basic MOE purposes.

Response: We refer you to the extensive discussion regarding the definition of eligible family under § 263.2 of this subpart. There, we reaffirm that an eligible family must consist of child living with his or her parent or other caretaker relative (or consist of a pregnant woman). The family must also be financially needy according to the appropriate income and resource (when applicable) criteria established by the State and contained in its TANF plan. However, we also mention that we never intended that States be locked into a single income and resource standard, such as the one a State uses to determine whether a family is financially eligible to receive TANF cash assistance. States are free to establish different income and resource (when applicable) criteria based on the range of families that it wishes to serve or type of services it wants to provide. We also recognize that eligible family members do not necessarily have to receive TANF cash assistance or any other benefit or services through the TANF program.

Thus, the rules would not preclude States from providing child care benefits to help families who are transitioning off of TANF assistance or at risk of needing TANF assistance or other low-income families. Nor would they prevent a State from using the financial eligibility limits for child care services and activities applicable to the use of CCDF funds or the financial eligibility criteria applicable to a State's own separately funded child care program.

Comment: One commenter noted that the NPRM gives the impression that we consider child care important for children up to the age of six, but not for children age six or older. The commenter recommends rulemaking on this issue.

Response: We believe the commenter was referring to the proposed rule at § 271.15, which provided that a State could not reduce or terminate assistance to a single custodial parent caring for a child under age six for refusing to engage in required work, if the parent demonstrates an inability to obtain needed child care. This provision, found in § 261.15 of the final rule, reflects the statutory provision at 407(e)(2), which expressly limits the sanction exception to a single custodial parent caring for a child under age six.

This provision does not represent our perspective regarding the importance of child care for children age six and over. We recognize that child care is a critical

supportive service for families moving from welfare to work. However, our authority to regulate in this area is limited to the State penalty provision associated with this child care exception at § 261.51 of the final rule.

Comment: One commenter indicated that the State agency may not know if it needs to utilize any child care MOE expenditures to satisfy the basic MOE requirement until the final quarter of the fiscal year.

Response: The commenter may be reacting to the requirement to report expenditures quarterly. Although the report is quarterly, the expenditures reported are cumulative. The basic MOE spending requirement is an annual requirement. Thus, the reported expenditures could have occurred in the quarter represented by the report or any prior quarter in the fiscal year.

A State may choose to apply the child care expenditures that it made to meet the CCDF matching fund requirement toward satisfying its basic MOE requirement (up to the dollar limit). It is not a requirement. The State may apply such expenditures toward its basic MOE requirement anytime during the fiscal year.

The commenter may also be pointing out a potential issue for States that depend upon expenditures in other State and local programs for meeting the basic MOE requirement. To the extent such other programs are not under the control of the TANF agency, the TANF agency will need to maintain strong communications with the other agencies operating these programs in order to track and report expenditures, as well as to ensure that the State will be in compliance with the basic MOE requirement at the end of the year.

Section 263.4—When Do Educational Expenditures Count? (§ 273.4 of the NPRM)

Overview

Only expenditures on educational services or activities that a State targets to eligible families to increase self-sufficiency, job training, and work may count toward a State's MOE. The statute excludes educational services or activities that are generally available, including through the public education system. As the conferees explained in H.R. Rep. No. 725, 104th Cong., 2d sess., p. 277, States may not count as MOE ''any expenditure for public education in the State other than expenditures for services or assistance to a member of an eligible family that is not generally available to other persons.''

Expenditures on special services that are targeted to ''eligible families'' and are not generally available to other residents of the State may count. These could include contracted educational services or activities that provide special classes or expand the capacity of existing programs, for example, to provide: targeted services for teen parents in high schools or other settings; training in English as a second language for eligible immigrants; remedial education to achieve basic literacy; courses for high school equivalency (GED) certificates; or pre-employment or job-readiness activities.

We also note that expenditures on supportive services, such as transportation, to assist a member of an eligible family in accessing educational activities may also count toward a State's MOE, either as cash assistance or another type of benefit or service consistent with the purposes of the Act. (See §§ 263.5 and 263.6 for other general restrictions on these expenditures.)

Comments and Responses

We did not receive many comments on this section. The comments that we did receive focused on two areas: the requirement that the education activities must not be generally available to other residents of the State, and the use of the term ''targeted.'' We address these concerns and others below.

Comment: Two commenters thought the term ''targeted'' was misleading and needed clarification. As written, qualified educational expenditures could be ''targeted'' to eligible families, yet the recipients of the services may be persons who are not members of eligible families.

Response: We agree. The statute clearly stipulates that only services with respect to eligible families count toward the State's basic MOE requirement. We have therefore reworded the regulation to say that the services must be ''provided to'' eligible families.

Comment: A number of commenters voiced concerns regarding the meaning and operation of the exclusion of expenditures for educational services that are generally available to other residents of the State. One commenter noted there is no specific definition of services that are generally available to the public. Some of the commenters believed that States could be discouraged from using State MOE funds for education. Providing educational services that are generally not available to the public could result in operating segregated classes for eligible families in order to have the expenditures count for basic MOE purposes. In fact, the commenters noted that the examples of educational activities for eligible families given in the NPRM are no different than those provided by the public education system. Thus, the provision essentially eliminates a State's ability to count educational activities or services toward the basic MOE requirement whenever the services are made available to other residents of the State. As one commenter put it, ''[W]ho pays for the assistance is irrelevant, as is whether anyone from the general public also has access. The proposed rule limits States' ability to maximize its resources.''

One commenter also raised concerns regarding the potential impact that expenditures for educational services for eligible families will have on current public education programs funded by the State. The educational activities for basic MOE purposes may come at the expense of similar education services and activities provided by the traditional public education system.

Another commenter asked whether the restriction applies to post-secondary public institutions.

Response: We modified the regulatory text to provide a little more guidance. The modified language incorporates language from a similar provision under title XX at section 2005(a)(6) of the Act. More specifically, the title XX provision excludes expenditures for the provision of any educational service that the State makes generally available to its residents without cost and without regard to their income. We thought this additional language was helpful and have added it to the regulatory text. Under TANF and title XX, we believe Congress intended to prohibit States from substituting program funds for existing expenditures from general funds on the traditional, free public education system. Thus, general fund expenditures for traditional, free public education do not count toward the State's basic MOE requirement.

Accordingly, we do not think that the exclusion would cover post-secondary educational or vocational programs in the State unless all residents of the State may attend the post-secondary institution without cost and without regard to their income.

We do not think it is appropriate for us to define activities that are not generally available to persons who are not members of an eligible family. We defer to the States to decide appropriate educational activities for MOE purposes, i.e., to increase job training, self-sufficiency, and work.

Basically, a State may use MOE funds to expand existing educational services by contracting for additional services for eligible family members or by funding brand new activities. States do not need to segregate the activities, services, or

classes. They may even use the physical facilities of the public education system. Other residents of the State may participate in the funded activities so long as the State does not count, as MOE, funds used to subsidize or pay for persons who are not members of an eligible family. States may also count, as MOE, funds used to provide a service for eligible families in a part of the State or locale where the service does not exist.

Similarly, States may count as MOE funds used to contract for, or share in, the costs of providing educational activities on job sites (e.g., ESL classes). In this particular situation, other employees at the site who are not members of eligible families could attend the classes. However, as previously mentioned, a State may not count, as MOE, any funds used to subsidize or pay for persons who are not members of an eligible family.

In summary, a State may count, as MOE, funds used to pay costs (e.g., fees or tuition) to enable an eligible family member to attend a class or participate in an educational activity. Nonexcluded educational expenditures with respect to eligible families count for basic MOE purposes if the activities are designed to increase self-sufficiency, job training, and work.

We remind States to allocate costs that are associated with more than one State or local program or agency properly.

Comment: One commenter recommended that the State substantiate its basic MOE expenditures by providing overall budget information on its education services and programs, not just those provided to eligible families. The State should also provide a comprehensive budget picture of support for education activities and services for the entire education agency responsible for TANF-related education services—thus, reflecting any shifts in funds between the traditional, free education programs in public schools and the TANF-related education services.

Response: We do not believe it is necessary for the State to regularly submit such information. However, States are subject to audits annually or biennially pursuant to the Single Audit Act. The audit includes a review of a State's compliance with MOE requirements. Under 45 CFR 92.42, States are responsible to have a process designed to achieve reliability of financial reporting and compliance with applicable laws and regulations, including retention of background documentation that validates such reports. The audit findings include any questioned costs. We are informed of all audit findings.

Other studies, or reviews by OIG or GAO, may be conducted. Such reviews could cover processes, such as a State's budgetary process, that are generally beyond the scope of an audit. Further, if appropriate, for example, audits may also be conducted as a result of requests by Congress or in response to complaints from individuals or organizations.

Finally, we have made changes to the reporting on MOE programs at § 265.9(c) that should provide a clearer picture of educational activities being funded by MOE.

Comment: One commenter indicated that using State funds to enhance access to education for low-income families is an important way of helping families out of poverty. At the same time, States are concerned with the risk for penalties if they use separate State funding to provide financial aid for low-income families. The commenter was concerned that while the State may view education as an effective means of advancing work rather than avoiding the work participation requirement, we might view it as an inappropriate diversion.

Another commenter questioned whether State-funded expenditures to permit a member of an eligible family to obtain no more than the first baccalaureate degree or one vocational education program certificate as part of ''job skills training directly related to employment'' counts for basic MOE purposes. These educational activities are only available to students who meet other strict criteria established under State law (which include a recent work history; enrollment in an accredited or approved State university, community college, or other vocational school or training program; and maintaining a cumulative grade point average of at least a ''C'').

Response: The inherent effect of any separate State program is that the TANF requirements do not apply. In the NPRM, we expressed concern that States might use separate programs to avoid the work requirements or to avoid returning a share of their child support collections to the Federal government. As a result, we proposed several measures to counteract this possibility, including denying certain penalty relief to States. In the final rule, we decided to eliminate the proposed link between a State's decision to operate separate State programs and its eligibility for penalty relief. However, we still intend to gather information that will enable us to monitor the nature and scope of such programs. Refer to the preamble, section entitled ''Separate State Programs'' for a full discussion of this issue.

We have been persuaded that States are using both separate State programs and the TANF program to serve a variety of policy purposes that do not seem to be designed to avoid TANF requirements. For example, States are working to increase the economic viability of families by providing financial aid for post-secondary education and supporting other education and training activities on a selective basis. Unless excluded, educational expenditures with respect to eligible families count for basic MOE purposes if the activities are designed to increase self-sufficiency, job training, and work. These activities may be under the TANF program or apart from the TANF program. In either case, we hope that State and local officials are working with educators, post-secondary institutions, and the business community to design appropriate opportunities for families consistent with the goals of TANF.

As a point of clarification, the list of work activities in section 407 of the Act (and § 261.30 of these rules) determine what is countable for the purpose of the State's work participation rates. However, they do not limit the nature or type of educational or training services the State may provide with Federal TANF or State MOE funds.

Section 263.5—When Do Expenditures in State-Funded Programs Count? (§ 273.5 of the NPRM)

Overview

We explained in the NPRM that section 409(a)(7)(B)(i)(II) establishes limits on the amount of expenditures that may count when the MOE expenditures are for activities under separate State or local programs. The heading for the provisions under this section indicates that ''transfers from other State and local programs'' cannot count toward a State's MOE. In the months following enactment, we received numerous questions about this language.

We do not believe that the language intended to convey a literal or physical transfer of funds. Instead, we believe that Congress wanted to prevent States from substituting existing expenditures in any pre-existing outside programs for cash welfare and related assistance to needy families and to prevent States from claiming such existing expenditures as expenditures for MOE purposes.

Therefore, section 409(a)(7)(B)(i)(II)(aa) provides that the money spent under State or local

programs may count as MOE only to the extent that the expenditures exceed the amount expended under such programs in the fiscal year most recently ending before the date of enactment (August 22, 1996). Thus, States may count only additional or ''new'' expenditures, i.e., expenditures above FY 1995 levels. Like some commenters, we call this the ''new spending'' provision.

Section 409(a)(7)(B)(i)(II)(bb) provides an alternative limitation. We believe that this provision was intended as an exception to the ''new spending'' provision under (aa). Under provision (bb), State expenditures under any State or local program during a fiscal year may count toward a State's MOE to the extent that the State is entitled to a payment under former section 403 as in effect before the date of enactment with respect to the expenditures. We interpret this to mean that State funds expended under State or local programs that had been previously authorized and allowable under the former AFDC, EA, and JOBS programs in effect as of August 21, 1996, may have all such expenditures count toward the State's MOE. In other words, the limit under (aa) does not apply to what would have formerly been expenditures under the title IV–A program; there is no requirement that these expenditures be additional or new expenditures, above FY 1995 levels.

Comments and Responses

We did not receive many comments on this section. But some of the comments that we did receive raised some important issues regarding the concept of ''separate'' State or local programs, as well as the meaning of the exception to the ''new spending'' provision. One commenter also questioned the calculation process for determining any ''new spending'' for programs in which the ''new spending'' provision applies. A couple of commenters also felt the proposed rule needed to be clarified. As a result of some of these comments, we have made some clarifications in the final rule, including revisions to reflect the statutory language more directly regarding the treatment of current fiscal year expenditures in any State or local program that also existed in FY 1995.

Comment: One commenter observed that this section indicates that expenditures made under separate State programs that had not previously been authorized under the former AFDC/EA/JOBS programs cannot now count toward maintenance of effort. The commenter objected to this provision. For example, the AFDC–UP program has been repealed. Therefore, families who previously received general assistance because a parent could not meet the criteria under the AFDC–UP program, now become ''part of the service equation.'' Therefore, the commenter suggested that all funds now spent to support these families should count for basic MOE purposes without limitation.

Response: The example given clearly falls under the statutory exception at section 409(a)(7)(B)(i)(II)(aa) of the Act. For programs that were operating in 1995 and were not former AFDC-related programs, States may only claim qualified expenditures with respect to eligible families if their expenditures are in excess of what they spent on that program in 1995. General assistance programs are not AFDC-related programs. AFDC-related programs include the AFDC, EA, and JOBS programs, as well as the IV–A child care programs (AFDC, At-Risk, and transitional child care programs). Qualified expenditures during a fiscal year to provide AFDC-related services (e.g., At-Risk Child Care services) to eligible families may count without limitation.

Comment: One commenter noted that for pre-existing programs (State or local programs operating in FY 1995) that were not AFDC-related programs, the State may only claim qualified State expenditures in the current fiscal year that exceed what the State spent on that program in FY 1995. Thus, State spending for State or local programs that are not AFDC-related must be ''new spending.'' However, in many cases, States will use both State MOE resources and Federal TANF funds to fund a number of different programs. The ''new spending'' provision could apply for these situations as well.

Response: We agree with this observation. Section 409(a)(7)(B)(II) of the Act excludes expenditures under ''any State or local program during a fiscal year'' that do not exceed the amount expended under the State or local program in FY 1995. Thus, the statute does not specify that the ''new spending'' provision on qualified State expenditures only applies to State programs that are currently separate from TANF. Instead, the provision applies to ''any'' State or local program existing in FY 1995 that did not have allowable expenditures under the former AFDC, EA, JOBS, and IV–A child care programs (AFDC, At-Risk and transitional child care programs). For example, a State or local program that is now included under the TANF program or receiving TANF and MOE resources could have existed separately from the State's former AFDC-related programs in FY 1995. Therefore, we have decided to amend the annual report to require that States report the information proposed under § 273.7(b) for all their State-funded MOE programs. We refer you to § 265.9 for a full discussion of all the comments regarding the proposed annual addendum and the changes we have made in the final rule.

Comment: One commenter noted that State spending in a State At-Risk Child Care program is an example of spending that was previously authorized and allowable under former section 403. Therefore, the ''new spending'' provision does not apply. Another commenter wondered whether expenditures for which a State could not have received Federal matching payments due to the At-Risk cap would also be exempt from the ''new spending'' provision. For example, take the case of a State that has run an At-Risk Child Care program for the working poor since FY 1995. The State did not receive matching funds for all of its expenditures for child care services under this program. Are the potentially qualified expenditures above the former cap subject to the ''new spending'' provision or exempt from this provision?

Response: If the State's child care program for the working poor was authorized and allowable under former section 402(i) under the Act, then we believe the ''new spending'' provision would not apply to qualified expenditures with respect to eligible families during a fiscal year, for the reasons given below.

Former section 402(i)(5) of the Act specified that amounts expended by the State to provide child care to any at-risk low income family would be matched. However, section 403(n) limited the amount of the matching payments a State could receive. The issue is whether a State can count all of its qualified expenditures with respect to eligible families during a fiscal year, without limitation, because the expenditures in FY 1995 were allowable, notwithstanding the cap.

Section 409(a)(7(B)(II)(bb) of the Act uses the phrase ''is entitled to a payment'' under former section 403 to indicate when the ''new spending'' provision does not apply. After considerable deliberation on this issue, we concluded that Congress intended States to be able to claim the State's portion of title IV–A welfare spending toward basic MOE, based on the idea that MOE is a substitute for the former matching arrangement. To carry out this intent, Congress needed to define the former title IV–A welfare spending. They did this by referring to

expenditures for which the State would be entitled to payment under former 403 of the Act. This section authorized Federal matching payments for allowable welfare expenditures. Thus, we believe that Congress was looking for allowable welfare expenditures, not actual payments to the States. This concept would include allowable expenditures that were more than the State could receive in the form of a matched payment. Therefore, we conclude that the new spending provision does not apply to child care expenditures made by a State to augment the Federal and State matching funds available in its At-Risk Child Care program.

However, we remind States of the dollar limitation discussed under § 263.3 of this subpart. Qualified child care expenditures used to meet the requirements of the CCDF matching fund (i.e., as matching and MOE amounts) may also count as basic MOE expenditures only up to the State's child care MOE amount.

Comment: One commenter raised questions about the appropriate calculation for determining the amount of new spending for programs subject to this provision. The commenter noted that it is not clear from the statute if the intent of this provision is for States to only count toward the MOE requirement additional spending that represents an increase over FY 1995 spending levels on eligible families. If this is the statutory intent, then the commenter recommends that we require a State to document whether its spending above FY 1995 levels has served eligible families and to report spending on eligible families in FY 1995. In cases where the State does not know the precise level of FY 1995 spending on eligible families, the regulations should permit States to use a reasonable estimating methodology. If the State is unable to determine or to estimate the amount of spending on eligible families in FY 1995, then it would need to otherwise demonstrate that it has targeted all of the increase in spending (relative to FY 1995 funding levels) toward eligible families.

In addition, the commenter recommends that we require total FY 1995 State expenditures for all State or local programs subject to the new spending provision, not just separate State programs as we proposed. Thus, the commenter believed that we should require this information for State or local programs funded with both TANF, as well as MOE resources. We should also require total State spending in the same State or local program for the current fiscal year. Otherwise, we will be unable to determine whether claimed MOE expenditures meet the new spending provision.

Response: Although the commenter was responding to our proposal under § 273.7(b) to collect supplementary information on separate State programs, we believe that this is the best place to address the commenter's points because they speak to the calculation of additional or new spending claimed for MOE purposes. However, we also refer you to § 265.9 for a fuller discussion of all the comments regarding the proposed annual addendum and the changes we have made in the final rule to the information States must report annually.

We do not agree that it is either necessary or required in the statute for a State to document or to report to us what it spent during FY 1995 on eligible families in programs that are now subject to the ''new spending'' provision. The ''new spending'' provision under section 409(a)(7)(B)(II)(aa) of the Act references current fiscal year expenditures under any State or local program to the extent that ''the expenditures exceed the amount expended under the State or local program'' in FY 1995.

This provision does not refer to eligible families in defining ''the amount expended'' in FY 1995; rather it refers generally to expenditures. However, it does refer to eligible families in defining qualified expenditures for the current fiscal year. As a result, we conclude that States must calculate ''new'' or additional spending under each State or local program subject to the ''new spending'' provision by comparing total qualified State expenditures with respect to eligible families for the current fiscal year with total State expenditures for the program in FY 1995. If total qualified State expenditures with respect to eligible families for the current fiscal year exceed total State expenditures in FY 1995 under the program, the State may claim the excess for basic MOE purposes because the State spent all those funds on eligible families. If total qualified State expenditures with respect to eligible families for the current fiscal year do not exceed total State expenditures in FY 1995 under the program, the State may not claim any current fiscal year qualified expenditures toward its basic MOE requirement.

We agree with the commenter's suggestion that a State should report total FY 1995 expenditures for each State or local MOE programs subject to the ''new spending'' provision. We are also requiring total current fiscal year expenditures for all State or local MOE programs. This includes State or local MOE programs that are currently separate from the State's TANF program, as well as MOE programs funded under TANF. We are requiring this information because it will help provide context for the reported expenditures on eligible families and give some indication of their plausibility.

Section 263.6—What Kinds of Expenditures Do Not Count? (§ 273.6 of the NPRM)

Overview

As we previously discussed, expenditures under State programs (TANF and separate State programs) do not count as MOE if they are not made on behalf of eligible families.

The statute also provides several general restrictions on MOE expenditures. Pursuant to section 409(a)(7)(B)(iv), the following types of expenditures do not count: (1) expenditures of funds that originated with the Federal government; (2) State funds expended for the Medicaid program under title XIX of the Act; (3) any State funds used to match Federal WtW funds provided under section 403(a)(5) of the Act, as amended by sections 5001(a) (1) and (2) of Pub. L. 105–33; and (4) expenditures that States make as a condition of receiving Federal funds under other programs. See discussion of § 263.3 for additional information.

Section 5506(c) of Pub. L. 105–33 amended section 409(a)(7)(B)(i) by adding another restriction under section 409(a)(7)(B)(i)(III). Pursuant to section 409(a)(12), States must expend State funds equal to the total reduction in the State's SFAG due to any penalties incurred. Section 409(a)(7)(B)(i)(III) provides that such expenditures may not count toward a State's basic MOE. (See § 264.50.)

TANF funds transferred to the Social Service Block Grant Program, under title XX of the Act, or transferred to the Child Care and Development Block Grant program (also known as the Discretionary Fund within the Child Care and Development Fund), do not count toward meeting a State's MOE requirement because of the first restriction under 409(a)(7)(b)(iv), which prohibits funds that originated from the Federal government from being used for MOE purposes.

Finally, it is important to note that only State expenditures made in the fiscal year for which TANF funds are awarded count toward meeting the MOE requirement for that year. For example,

expenditures made in prior fiscal years or, in the case of FY 1997, expenditures made prior to the date the State started its TANF program do not count as basic MOE.

Comments and Responses

We received few comments on this section, including a comment concurring that this section accurately tracks statutory requirements. Although no changes need to be made to the final rule as a result of these comments, we are clarifying § 263.6(b) of the final rule so that the regulatory language aligns more closely with the statutory prohibitions at section 409(a)(7), as amended.

Specifically, the proposed rule at § 273.6(b) provided that State funds used to match Federal funds (or expenditures of State funds that support claims for Federal matching funds), including State expenditures under the Medicaid program, do not count toward a State's basic MOE requirement. We have kept the part of this provision that prohibits State funds expended for the Medicaid program under title XIX from counting toward a State's basic MOE requirement. The rest of this provision is included in § 263.6(c).

If it had remained part of paragraph (b), then it would have been misleading and would have contradicted the exception under § 263.6(c). That exception permits State funds expended to meet the requirements of the CCDF Matching fund to count (up to the State's child care MOE level) toward the State's basic MOE requirement, provided the State has met all other requirements of this subpart. The requirements of the CCDF Matching Fund include an MOE requirement plus additional State expenditures that would be matched with Federal funds, up to the State's allocation. Based on the proposed wording under paragraph (b) of this section, the additional child care expenditures made by the State for purposes of receiving matching funds would not have counted toward the State's basic MOE. Yet, we stated clearly under paragraph (c) of this section and in the proposed § 273.3(a) that such child care expenditures could count (up to the amount of the State's child care MOE level).

We believe that the prohibition under revised § 263.6(c) takes in all requirements that a State must meet to receive Federal TANF funds, whether it is an MOE requirement, expenditures to receive Federal matching funds, or both. In addition, the Balanced Budget Amendments (Pub. L. 105–33) amended section 409(a)(7)(B)(iv) by replacing the prohibition under (III) ''any State funds which are used to match Federal funds'' with the prohibition related to the receipt of WtW funds—namely, ''any State funds which are used to match federal funds provided under section 403(a)(5).'' We had not reflected this change in the language at § 273.6(b).

We conclude that the language at section 409(a)(7)(B)(iv)(IV) of the Act also prohibits the counting for basic MOE purposes of any State funds expended to match Federal funds under other programs (or expenditures of State funds that support claims for Federal matching funds). Therefore, this language did not need to appear in § 263.6(b) because the regulatory provision at § 263.6(c) incorporates this prohibition. When we deleted the language from § 263.6(b), we also removed the apparent contradiction between § 263.6 (b) and (c) regarding State child care expenditures used to meet the CCDF matching fund requirements.

Comment: One commenter recommended allowing encumbrances as of September 30th of a fiscal year, but paid in a subsequent period, to count toward the State's basic MOE requirement.

Response: We disagree with this recommendation. By statute, only expenditures count toward a State's basic MOE requirement. An obligation, or encumbrance, is not an expenditure until actually paid. An expenditure counts toward the State's annual basic MOE requirement for the fiscal year in which it is actually paid.

Comment: One commenter believes that any expenditures made to replace reductions in the SFAG as a result of penalties should count toward the State's basic MOE requirement.

Response: The statute at 409(a)(7)(B)(i)(III) expressly excludes these additional State expenditures from counting toward the State's basic MOE requirement.

Comment: One commenter was concerned that States may infer that the prohibition on counting any State funds used as a condition of receiving Federal funds under another Federal program means that States may not purchase bus passes for program participants or otherwise help pay for their public transportation because, then, TANF resources are going to public transit providers who use the money as a match for their own Federal grants.

Response: Section 409(a)(7)(B)(iv)(IV) of the Act and § 263.6(c) of the regulatory text prohibit counting for basic MOE purposes any State funds that are expended as a condition of receiving Federal funds from other programs (unless specifically authorized, e.g., the State child care expenditures under the CCDF matching fund). For example, this prohibition would apply to State funds expended to meet the cost-sharing requirement of the recently passed Jobs Access transportation grants program.

However, the purchase of bus passes, in the context described by the commenter, does not constitute an example of State funds spent in order to receive other Federal funds. Rather, it represents an alternative form of providing a transportation benefit for a TANF-eligible family. As previously discussed, State funds used to purchase bus passes that help an eligible family member go to or from work or training would be an appropriate use of State MOE funds because this activity promotes job preparation and work, a purpose of the TANF program.

Section 273.7 of the NPRM

Note: We moved the provisions that appeared in § 273.7 of the NPRM and have not issued a new § 263.7. The information proposed in § 273.7(a) and the comments on this section appear under § 265.3. The information proposed in § 273.7(b) and the comments on this section appear under § 265.9.

Section 263.8—What Happens If a State Fails To Meet the Basic MOE Requirement? (§ 273.8 of the NPRM)

Overview

Under section 409(a)(7)(A), if a State does not meet the basic MOE requirement, we will reduce the amount of the SFAG payable for the following fiscal year on a dollar-for-dollar basis.

Section 5001(g) of Pub. L. 105–33 added another penalty to section 409(a) for a State that receives a WtW formula grant pursuant to section 403(a)(5)(A) of the Act, but fails to meet the basic MOE requirement for the fiscal year. Under section 409(a)(13) of the Act, we must reduce the amount of the State's SFAG for the following fiscal year by the amount of the WtW formula grant paid to the State if the State fails to meet the basic MOE requirement.

Comments and Responses

We received three comments on this section. One commenter observed that this section tracks the statutory requirement. Two others commented on the severity of the penalty amounts. We have made no changes to this section.

Comment: Two commenters felt that the penalties are too severe. One commenter recommended deleting the provision that requires reducing the State's SFAG by the amount of a State's WtW grant if the State fails to meet its

basic MOE requirement for the fiscal year.

Response: Although we agree that the penalties are very significant, as we mentioned in the above discussion, the statute expressly requires both reductions.

Section 263.9—May a State Avoid a Penalty for Failing To Meet the Basic MOE Requirement Through Reasonable Cause or Corrective Compliance? (§ 273.9 of the NPRM)

Overview

Under section 409(b)(2), a State may not avoid a penalty for failure to meet its basic MOE requirement based on reasonable cause. In addition, section 5506(m) of Pub. L. 105–33 amended section 409(c)(4) to provide that a State may not avoid the penalty through a corrective compliance plan.

Congress' decision not to provide for a reasonable cause exception or corrective compliance in basic MOE penalty cases indicates that Congress considered the MOE requirement crucial to meeting the work and other objectives of the Act.

Comments and Responses

We received three comments on this section. One commenter agreed that this section tracked the statute. The other commenters basically questioned the lack of reasonable cause and corrective compliance. We have made no changes to this section.

Comment: Two commenters thought that reasonable cause and the corrective compliance process should be available to a State that failed to meet its basic MOE requirement. One of the commenters expressed concern that the regulations are silent with respect to an appeal process.

Response: As we mentioned in the above discussion, the statute under sections 409(b)(2) and 409(c)(4) of the Act expressly provides that reasonable cause and corrective compliance do not apply to the basic MOE penalty provision. The State may appeal our decision to impose a reduction on the SFAG payable to the Departmental Appeals Board, in accordance with section 410 of the Act. Hence, the appeal process described in § 262.7 applies even if reasonable cause and corrective compliance do not apply.

Subpart B—What Rules Apply to the Use of Federal TANF Funds?

Section 263.10—What Actions Would We Take Against a State if It Uses Federal TANF Funds in Violation of the Act? (§ 273.10 of the NPRM)

Overview

Section 409(a)(1) contains two penalties related to use of Federal TANF funds (i.e., all Federal TANF funds under section 403) in violation of TANF program requirements. The first is a penalty in the amount of funds that a State uses improperly, as found under the Single Audit Act. We would reduce the SFAG payable to the State for the immediately succeeding fiscal year quarter by the amount misused.

In addition, we would take a second penalty, equal to five percent of the adjusted SFAG, if we find that a State has intentionally misused funds. You can find criteria for ''intentional misuse'' at § 263.12.

For both of these penalties, States may request that we grant reasonable cause and submit a corrective compliance plan for correcting the violation.

We received no comments on this section. However, we did revise the regulatory text because we noticed that it did not closely track the statutory language. The final rule language is clearer that the five-percent penalty for intentional misuse of funds is in addition to the misuse-of-funds penalty. Also, like the statute (at section 409(a)(1)(B)), the final rule puts the burden of proof regarding intent on the State.

Section 263.11—What Uses of Federal TANF Funds Are Improper? (§ 273.11 of the NPRM)

Overview

The statute contains many prohibitions and restrictions on the use of Federal TANF funds. In determining if funds have been used ''in violation of this part,'' States should particularly note the prohibitions in section 408 of the Act and section 115 of PRWORA. In summary, these sections provide that States must not use Federal TANF funds to provide assistance to:

- A family with an adult who is a head-of-household or a spouse of a head-of-household or with a minor head-of-household who has received assistance funded with Federal TANF funds for more than 60 months (except for a family included in the 20-percent hardship exemption);
- A family without a minor child living with a parent or adult caretaker relative (or a pregnant individual);
- A family not assigning support rights;
- An unmarried parent under 18, without a high school diploma, who does not attend high school or equivalent training;
- An unmarried parent under 18 not living in an adult-supervised setting (unless covered by a statutory exception);
- A fugitive felon and probation and parole violator;
- A minor child absent from the home 45 days (or at State option, 30–180 days);
- For ten years, a person found to have fraudulently misrepresented residence to obtain assistance; and
- An individual convicted of certain drug-related offenses unless the State has enacted a law to exempt such individuals from the prohibition (refer to section 115 of PRWORA).

Also, States must not use Federal TANF funds for medical services, except for pre-pregnancy family planning services. (This prohibition raised a number of concerns among States and advocates that are discussed below.)

Section 404 also limits the use of Federal TANF funds. More specifically, section 404(a)(1) provides that TANF funds may only be used ''* * * in any manner that is reasonably calculated to accomplish the purpose of this part, including to provide low income households with assistance in meeting home heating and cooling costs. * * *'' Thus, TANF funds cannot be used in a manner not reasonably calculated to serve the purposes of the program.

In determining if an activity may be funded with TANF funds under this provision, you should refer to the purposes described in section 401 of the Act and reiterated at § 260.20. Also, you should be aware that the specific prohibitions or restrictions in the statute (e.g., the prohibitions in section 408) apply even if an activity seems otherwise consistent with the purposes in section 404(a)(1).

In addition, section 404(a)(2), as amended by section 5503 of Pub. L. 105–33, permits Federal TANF funds to be used ''in any manner that the State was authorized to use amounts received under part A or F, as such parts were in effect on September 30, 1995 or (at the option of the State) August 21, 1996.'' We interpret this provision to cover activities that are not permissible under section 404(a)(1), but were included in a State's approved State AFDC plan, JOBS plan, or Supportive Services Plan as of September 30, 1995, or, at State option, August 21, 1996. Examples of such activities are juvenile

justice and foster care activities that were included in many State plans. Under this provision, only those States whose approved AFDC State plans included juvenile justice activities as of September 30, 1995, or, at State option, August 21, 1996, may use Federal TANF funds for those activities.

Because of the detailed and specific legislative history associated with the language at section 404(a)(2), indicating Congress's clear intent to grandfather in juvenile justice costs as an allowable use of Federal TANF funds, we would allow such use, notwithstanding the specific prohibitions in section 408 of the Act (e.g., prohibiting the expenditure of Federal TANF funds on assistance if a child is not living with an adult relative).

States should also note that if they exceed the 15-percent limit on administrative costs under section 404(b), we will consider any amount of funds exceeding that limit to be a misuse of funds. In the final rule, we have modified the language in §§ 263.11 and 263.13 to clarify this position.

Likewise, we would consider unauthorized or inappropriate transfers of TANF funds to be a misuse of funds. We would consider any of the following transfers to be inappropriate or unauthorized: transfers to any program except the Child Care and Development Block Grant (also known as the Discretionary Fund within the Child Care and Development Fund) or the Social Services and Block Grant Program under title XX of the Social Security Act; transfers to those two programs in excess of the 30-percent cap; and transfers to SSBG in excess of the 10-percent cap (or, beginning in FY 2001, in excess of the 4.25-percent cap). TANF expenditures used to match Job Access funds are not considered transfers.

OMB Circulars A–102 and A–87 also include restrictions and prohibitions that limit the use of Federal TANF funds.

The Department previously promulgated A–102 (the common rule) in its regulations at part 92 of title 45, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.'' All provisions in part 92 are applicable to the TANF program. TANF is not one of the Block Grant programs exempt from the requirements of part 92, as OMB has not taken action to exempt it. Rather, OMB has determined that TANF should be subject to part 92. Section 417 was not meant to invalidate other general requirements that Congress and Federal agencies, primarily OMB, have put in place to assure that Federal grant funds are properly administered or to inhibit Federal agencies from fulfilling their financial management responsibilities in managing their programs. We believe that Congress understood that TANF, like other Federal grant programs, was subject to existing appropriations, statutory, and regulatory requirements regarding the general administration of grants, notwithstanding section 417.

By reference, part 92 also includes A–87, the ''Cost Principles for State, Local and Indian Tribal Governments,'' the basic guidelines for Federal awards. These guidelines provide, in part, that an allowable cost must be necessary and reasonable for the proper and efficient administration of a Federal grant program, and authorized or not prohibited under State or local laws or regulations.

A–87 also includes some specific prohibitions on the use of Federal funds generally that apply to Federal TANF funds. For example, A–87 prohibits the use of Federal funds for alcoholic beverages, bad debts, and the salaries and expenses of the Office of the Governor.

(a) Clarifications of Use of Federal TANF Funds—Substance Abuse Services

In our pre-NPRM consultations, we received several inquiries regarding the use of Federal TANF funds for substance abuse treatment, i.e., treatment for alcohol and drug abuse. In light of the prohibition on the use of Federal TANF funds for ''medical services, except for pre-pregnancy family planning activities,'' we held discussions with other Federal agencies and learned that in many, but not all instances, the treatment of alcohol and drug abuse involves not just ''medical services,'' but other kinds of social and support services as well.

Allowing States to use Federal TANF funds for substance abuse treatment is programmatically sound and reasonably calculated to achieve TANF goals since it may help clients make successful transitions to work and provide for a stable home environment for TANF children. Accordingly, our rules permit States to use Federal TANF funds for drug and alcohol abuse treatment services to the extent that such services are not medical. States will have to look at the range of services offered and differentiate between those that are medical and those that are not. In short, States may not use Federal TANF funds for services that the State identifies as medical; they may only use Federal TANF funds for services that are nonmedical.

(b) Clarification of the Use of Federal TANF Funds for Construction and Purchase of Facilities

The Comptroller General of the United States has prohibited the use of Federal funds for the construction or purchase of facilities or buildings unless there is explicit statutory authority permitting Federal grant funds to be used for this purpose. Since the statute is silent on this matter, States must not use Federal TANF funds for construction or the purchase of facilities or buildings.

(c) Clarification of the Use of Federal TANF Funds as State Match for Other Federal Grant Programs

States may use Federal TANF funds under section 403(a) to match other Federal grant programs only if authorized under the statute of the grant program. Further, any funds so authorized are still subject to the TANF program requirements and must be used in accordance with the purposes of the TANF program and with these regulations.

(d) Clarification of the Use of Federal TANF Funds To Add to Program Income

We have received a number of inquiries about whether or not TANF funds may be used to generate program income. An example of program income is the income that a State earns if it sells another State a training curricula that it has developed, in whole or mostly, with Federal TANF funds.

States may generate program income to defray costs of the program. Under 45 CFR 92.25, there are several options for how to treat this program income. To give States flexibility in their use of TANF funds, States may add, to their TANF grant, program income that has been earned by the State. States must use such program income for the purposes of the TANF program and for allowable TANF activities. We will not require States to report on the amount of program income earned, but they must keep on file financial records on any program income earned and the purposes for which it is used, in the event of an audit or review.

(e) Clarification of the Use of Federal TANF Funds—Amounts Reserved for Subsequent Years

Section 404(e) of the Act, entitled ''Authority to Reserve Certain Amounts for Assistance,'' allows States to reserve Federal TANF funds that they receive ''for any fiscal year for the purpose of providing, without fiscal year limitation, assistance under the State program funded under this part.'' In the

NPRM preamble, we did not include a specific discussion of this provision. However, we have added a preamble discussion in the final rule because: (1) we have subsequently received questions about its interpretation; (2) the penalty on misuse of Federal funds encompasses this provision; and (3) the definition of assistance at § 260.31 has implications that States need to understand.

After a careful reading of section 404(e), we have determined that the statute limits a State's ability to spend reserved money in a couple of very important ways. First, a State may expend reserved money only on benefits that meet the definition of assistance at § 260.31 or on the administrative costs directly associated with providing such assistance. It may not expend reserved funds on benefits specifically excluded from the definition of assistance or on activities generally directed at serving the goals of the program, but outside the scope of the definition of assistance. Secondly, a State may spend its reserved funds only on assistance provided within its TANF program (i.e., ''the State program funded under this part''). This latter limitation precludes the State from transferring reserved funds to either the SSBG or the Discretionary Fund of the CCDF. We believe the effect of these limitations will not be too serious because States are still spending such large portions of their funds on benefits that meet the definition of assistance. However, to ensure themselves the maximum flexibility in the use of their funds, States could spend down their reserved funds on any expenditures on assistance and leave current-year funds available to cover transfers and other activities.

Comments and Responses

We received several comments on this section. A couple of commenters expressed concerns about a State's ability to correct information in their Financial Report, avoid penalties for minor reporting errors, and present a case that they should not be penalized; you can find a discussion of the issues in the preamble for § 265.8. A detailed discussion of the other comments on this section and our responses follows. These comments resulted in a couple of minor changes to the proposed policy.

Comment: Most comments received on this section addressed the prohibitions and restrictions on the use of Federal TANF funds. We received some general support for our proposals and clarifications (e.g., allowing for program income and clarifying that States could expend Federal TANF fund on nonmedical substance abuse services). We also received a number of individual comments seeking additional clarification or more detail in the regulation about the allowability of certain expenditures. Areas of concern to individual commenters were medical costs, substance abuse, transportation, and juvenile justice services.

Response: We think it is very important that we lay out for States our view of what would constitute a misuse of funds so that they will be in the best possible position to avoid this penalty. Basically, section 404(a)(1) provides that Federal TANF funds may be used ''* * * in any manner reasonably calculated to accomplish the purpose of this part. * * *'' However, section 408 of the Act and section 115 of PRWORA provide that States must not use Federal TANF funds in specified circumstances. In addition, section 404 limits the use of Federal TANF funds. The prohibitions in sections 408 of the Act and 115(a)(1) of PRWORA and the limitations in section 404 of the Act apply, even if an activity seems otherwise consistent with the purpose of this section.

Section 404(a)(2), as amended by section 5503 of Pub. L. 105–33, permits Federal TANF funds to be used ''in any manner that the State was authorized to use amounts received under part A or F, as such parts were in effect on September 30, 1995 or (at the option of the State) August 21, 1996.''

Activities authorized under this subsection must have been in an approved plan under part A or F to be an allowable expenditure of Federal TANF funds.

In response to commenters' concerns, we have added references to sections 404 and 408 of the Act to the regulatory text. These are the two most significant statutory references for TANF requirements that were not specified in the proposed regulatory text.

In general, we believe it is sufficient for our rules to provide broad references to the statutory, regulatory, and policy provisions that will apply under this penalty. In certain policy areas—including administrative costs, the applicability of general grant administration standards, and the allowability of previously authorized expenditures—we believe that some clarification was needed, and our preamble and regulations reflect that judgment. However, other statutory provisions (e.g., much of section 408 of the Act and section 115(a)(1) of PRWORA) are relatively straightforward, and we are not aware of significant issues of interpretation that necessitate further regulation of these provisions.

In response to some of the specific concerns raised by commenters, we point out the following:

(1) The allowability of juvenile justice services depends upon what was previously authorized under a State's plan. A Federal definition would not be appropriate.

(2) Because of the statutory prohibition on use of Federal TANF funds for medical expenditures (except for pre-pregnancy planning), we could not authorize employment-related medical expenditures or medical services for substance abuse treatment under regulation.

However, we have decided not to provide a definition of medical services (and other key terms) in order to give States the maximum flexibility to provide services needed by recipients—within the constraints of the statute.

(3) To the extent that we have not addressed a provision in this final regulation, States may expend their Federal TANF funds under their own reasonable interpretations of the statutory language, and that is the standard that will apply in determining penalty liability.

(4) In several respects, States have more flexibility in the use of Federal TANF funds than State MOE funds. Two of these are: (1) on benefits that were previously authorized; and (2) in certain circumstances, on benefits that serve the goals of the program, but are not attributable to individual needy (or eligible) families. For example, if the expenditures are reasonably related to the purposes of TANF (at § 260.20) and do not constitute expenditures for ''assistance'' (and are otherwise allowable), a State could use Federal TANF funds for transportation investments that reduce the dependence and support the employment of needy parents, even if it cannot associate all such expenditures with individual needy families. Likewise, States may use Federal TANF funds for expenditures associated with the third and fourth TANF goals (i.e., related to the formation and maintenance of two-parent families and the prevention of out-of-wedlock pregnancies) without associating such expenditures to individual needy families. Thus, the statute and rules both provide States with some of the spending flexibility that commenters were seeking, with respect to transportation expenses, in particular, and other types of activities.

Comment: We received a few comments concerning our reference to activities carried out under AFDC or JOBS. Commenters objected to our conception that section 404(a)(2) covered only those prior program

expenditures that were included in a State's AFDC or JOBS plans. Also, a couple of commenters wanted broad authority to spend funds on emergency services for children, such as juvenile justice, even when their State plans did not include specific references to such services.

Response: Section 404(a)(2) provides that a State may use its Federal TANF funds ''in any manner that the State was authorized to use amounts received under part A or F * * *'' Although more than one interpretation of this phrase is possible, we believe our interpretation is the best for a number of legal and policy reasons. First, the reference to ''the State'' in the statutory language is consistent with looking at each State individually based on what was specifically authorized for that State. Also, under prior law, costs were authorized based on approved State plans. Second, our interpretation is consistent with the view that section 404(a)(2) was designed to ''grandfather in'' States whose prior programs allowed such expenditures. Third, there were some questionable funding practices by States under prior law, and we believe the best policy is to limit the extent to which they are perpetuated.

Thus, in order for a State to expend Federal TANF funds under the authority of section 404(a)(2), the expenditures at issue must have been specifically authorized under that State's AFDC or JOBS plan. Section 404(a)(2) does not broadly authorize continued expenditures on vaguely defined, or undefined, programs; it merely authorizes the use of the TANF ''in a manner'' in which the State previously had the authority to expend AFDC and JOBS funds. States only had authority to expend AFDC and JOBS funds consistent with approved plans.

Comment: We received several comments challenging the applicability of 45 CFR part 92 and OMB Circulars A–87 and A–102 to the TANF program and a few comments challenging the reference to section 115 of PRWORA. Commenters cited section 417 of the Act and the reference in section 409(a)(1) to violations ''of this part'' as the basis for not applying these provisions to the TANF program.

Response: We disagree with these comments. With respect to the OMB requirements, we believe that TANF, like other Federal grant programs, is subject to Departmental grants administration regulations and OMB circulars. The only time Federal grant programs would not be subject to grant administration regulations or OMB circulars is when OMB exempts them. OMB has not exempted the TANF program from these requirements; thus, they apply to the TANF program.

Section 417 does not prevent us from applying the part 92 regulations to TANF because the referenced requirements are not developed to enforce substantive provisions under this part. Thus, our approach to this issue is consistent with the approach taken in § 260.35 and discussed in the preamble section entitled ''Recipient and Workplace Protections''; i.e., section 417 of the Act does not limit the applicability of other Federal laws and rules.

With respect to violations of section 115 of PRWORA, first, we are clarifying that our intent is to cover only violations of section 115(a)(1) under the misuse penalty. Thus, we would focus on whether States were expending Federal TANF funds on individuals who are ineligible for such assistance under Federal law. We would not monitor compliance with other provisions under section 115. To make this point clear, we have changed the regulatory reference from ''section 115'' to ''section 115(a)(1).'' Secondly, we would point out that section 417 does not limit our ability to hold States accountable for complying with section 115 of PRWORA. While we could, in theory, set up a different enforcement mechanism, such as a disallowance system, to cover violations of this provision, that would seem to be an unnecessary administrative complication; the misuse penalty would have a comparable financial effect and provides States with ample opportunity to appeal.

Comment: One commenter suggested a change in language to conform more closely to what the statute reads. The change would substitute the language of this section from ''reasonably related to the purposes of TANF'' with ''reasonably calculated to accomplish the purposes of TANF.''

Response: We agree with the comment and have made the change.

Section 263.12—How Will We Determine if a State Intentionally Misused Federal TANF Funds? (§ 273.12 of the NPRM)

Overview

As we discussed in the proposed rule, in determining if a State has intentionally misused funds, we will apply a ''reasonable person'' test; i.e., a State must demonstrate to our satisfaction that it spent its TANF funds for purposes that a reasonable person would consider to be within the purposes of the TANF program. We will also consider funds to be intentionally misused if there is documentation, such as Federal guidance or policy instructions, that precludes the use of funds for such purposes, or if the State misuses the funds after receiving notification from us that such use is not allowable.

Comments and Responses

We received a few comments on this section. These comments resulted in a minor change to the proposed rule as discussed below. We also made some minor editorial changes to the regulatory text.

Comment: We received a number of comments about the procedures that applied to this penalty. Some commenters wanted the regulation to mention explicitly that the corrective compliance and appeal processes applied to the intentional misuse penalty. A few of these commenters also stated that we should give States an opportunity to submit a corrected financial report. One commenter further mentioned that States need a reasonable period of time to act upon a notification of misuse.

Response: Under the provisions of §§ 262.4, 262.5, 262.6, and 262.7 of the final rules, States have the opportunity to appeal a penalty based on the misuse or intentional misuse of funds. States have 60 days to submit a written response to our notification that we have determined it is subject to a penalty. We believe that 60 days is a reasonable period for a State to respond to a notification of misuse, as it is the amount of time the statute gives for submitting a corrective compliance plan and, under the audit process, a State should receive advance warning that the notification is coming. During this 60-day period, the State has the opportunity to demonstrate that our determination was incorrect or based on insufficient information. For example, a State could argue that the action at issue occurred prior to the effective date of final rules and was based on a reasonable interpretation of the statute. A State could also submit a corrected TANF Financial Report that helps demonstrate that all of its TANF expenditures were appropriate and allowable. In addition, as § 263.10 indicates, a State could demonstrate that it had reasonable cause for the misuse or intentional misuse of funds or provide us with a corrective compliance plan.

Comment: One commenter said that the misuse penalty should not apply while the State is pursuing legal remedies.

Response: We will not take an adverse action (i.e., reduce the adjusted SFAG)

prior to completion of any administrative review by the Departmental Grant Appeals Board (GAB). However, if the GAB sustains our penalty decision, the State will owe interest from the date of our final notification of an adverse action.

Comment: One commenter objected to the presumption in the NPRM that a State has misused funds until the State proves otherwise. The commenter argued that the proposed rule shifts the burden of proof to the States in proving a negative.

Response: We disagree with the comment. A State will normally receive notification that it has misused funds based on documented findings of audits performed under the Single Audit Act. As States know from prior experience, these audits utilize a variety of tools to evaluate expenditures, including the statute and regulations and a compliance supplement issued by OMB that focuses on certain areas of concern. In addition, the audit findings reflect reliable information taken from various sources, such as samples of case records and operational assessments. We believe that these audits will give us an objective appraisal of whether a misuse of funds has occurred.

Thus, we believe that the initial ''burden'' of establishing misuse of funds rests with the auditors rather than the State. Then, States will have the opportunity both to review, analyze, and rebut the findings via the standard audit resolution procedures and to seek penalty relief through the reasonable cause and corrective compliance processes.

Comment: A few commenters raised issues pertaining to misuse due to a failure to follow Federal guidance. One commenter mentioned that Federal guidance must be in accordance with the TANF statute before such guidance can be used to substantiate a claim of misuse. A second commenter recognized that legitimate issues may arise over a difference in interpretation of the statute. A third commenter argued that posting Federal guidance to a web page does not constitute notice and that States should be given adequate time to implement any changes necessitated by the guidance.

Response: We agree that Federal guidance must adhere to the statute. Currently, all guidance that we issue is based on a careful review of the statutory language and legislative history. We will continue to follow this practice when preparing future guidance.

We further recognize that a difference in the interpretation of a statutory provision is possible. We do not intend to penalize States pending resolution of such a difference. Under § 262.4, a State has the opportunity to demonstrate that our determination that the State is subject to a penalty was incorrect. In short, a State may present alternative interpretations of a statutory provision during the penalty resolution process. Because we could withdraw a determination of misuse based upon such a State presentation, we have changed § 263.12(b) and (c) to say that we ''may'' (rather than ''will'') consider funds to be misused if: (1) there is Federal guidance or policy indicating that TANF funds could not be used for a particular purpose; or (2) if the State continues to use the funds in the same or similarly improper manner after receiving notification of improper use.

Regarding the comment about notice of Federal guidance, we intend to rely on different methods for transmitting guidance to the States and other interested parties. We presently post Federal guidance to our web page and also mail it to all State TANF agencies and other appropriate parties. We plan to continue this dual issuance process so long as some State TANF agencies have limited Internet capabilities. However, in the interest of reducing costs associated with the printing and mailing of guidance materials, we intend to increase our reliance on electronic modes of communication as State capabilities increase. Also, we are sensitive to operational issues and, where possible, will include implementation time frames in our guidance.

Comment: A couple of commenters urged us to hold States accountable for complying with their plans for services and benefits under TANF and penalize States when they fail to do so.

Response: We do not believe that we have the authority under the statute to penalize States in these circumstances. The misuse of funds penalty refers to violations ''of this part.'' It does not reference expenditures made in violation of State plan provisions. Section 417 of the Act limits our ability to enforce TANF. Therefore, we have not included this recommendation in the final rule.

Section 263.13—Is There a Limit on the Amount of Federal TANF Funds a State May Spend on Administrative Costs? (§ 273.13 of the NPRM)

Overview

In the preamble for § 263.0, we discuss most of the comments we received on the administrative cost provisions in the rule. We decided to consolidate the discussion in one place since most of the comments related to both the Federal and the MOE cap. Therefore, we refer you to that section for a discussion of a host of issues related to the Federal cap.

This section of the rule speaks specifically to how the Federal administrative cost cap is determined. However, in reviewing the comments, we realized that the proposed rule had not directly presented the cap provision. To address this deficiency, we changed the title for this section and added a new paragraph (a) to explain the Federal cap provision. Paragraph (b) contains language from the NPRM on the exclusion for systems costs, modified as discussed below.

In paragraph (a), we also have added regulatory language advising States that we would consider a violation of the Federal cap to be a misuse of funds.

In reviewing the comments on the systems exclusion, we noted that proposed regulatory language in this section was not completely consistent with the statutory language (i.e., the proposed regulation said that the specified systems costs ''are not administrative costs for this purpose''). In the final rule, we have revised the language to conform more closely to the statute. Under the revised language, we track the statutory language and provide that the Federal administrative cost cap does not apply to ''Federal TANF expenditures on information technology and computerization needed for tracking or monitoring required by or under title IV–A of the Act.''

The revised regulatory language also provides clarification of one issue that was not directly addressed in the written comments, but which has come up in the context of the WtW regulation and the proposed rule on the bonus for reduction of out-of-wedlock births. By statute, the Federal administrative cap applies to any grant made to the State under section 403. It thus applies to WtW funds, out-of-wedlock bonuses, high performance bonuses, supplemental grants, high performance bonuses, and contingency funds.

The WtW regulations address the cap as it pertains to any WtW funds received by the State under section 403(a)(5). This final rule addresses any other funds provided under section 403.

The new language provides for a consolidated cap for all TANF funds (i.e., funds provided under section 403 other than WtW funds under section 403(a)(5)). Thus, it would limit the total amount of expenditures that a State could spend on administrative costs from all these separate funding provisions. We would not require that

the State meet a 15-percent cap for each of these multiple sources of funds.

While the statutory language would allow an alternative interpretation of separate funding caps, there is no evidence that Congress intended to create all these separate administrative cost caps. Also, we do not think creation of a consolidated cap would undermine the purpose of the provision, of limiting administrative costs, and we do not believe the potential benefit of separate caps would justify the additional administrative burden that States would incur.

Subpart C—What Rules Apply to Individual Development Accounts?

Section 263.20—What Definitions Apply to Individual Development Accounts (IDAs)? (§ 273.20 of the NPRM)

Overview

Individual Development Accounts (IDAs) are similar to savings accounts and enable recipients to save for ''big ticket'' items, such as a home, or a college education or start a business. Money in an IDA account would not affect a recipient's eligibility for TANF assistance.

States may use IDAs as an incentive for recipients to find jobs and to use their earned income to save for the future.

Recipients can use IDAs as long-term investments, without losing eligibility for TANF assistance in the early stages of becoming self-sufficient.

The NPRM defined an IDA as an account established by, or for, an individual who is eligible for TANF assistance to allow the individual to accumulate funds for specific purposes. It also defined a number of other terms used applicable to IDAs.

Comments and Responses

We received a few comments on the provisions in this section and made some minor changes to the proposed regulations, as discussed below.

Comment: Several commenters said that we should clarify whether individuals eligible for TANF assistance through segregated State funds could be beneficiaries of the IDA program.

Response: Under the definition in the NPRM, individuals who were eligible for TANF assistance could participate in IDAs.

The statute at section 404(h)(2)(A) provides that under a State program, an IDA may be established by or for an ''individual eligible for assistance under the State program operated under this part.'' This latter phrase means that IDAs can cover individuals who are eligible under the TANF program, regardless of the funding source. We have revised the regulatory language at § 263.20 so that it refers to eligibility for the TANF program. Under the definitions at § 260.30, the TANF program includes all activities under the State program, regardless of funding source.

Comment: One commenter stated that Federal regulations ought to expressly state that, under PRWORA, funds in an IDA are to be disregarded for purposes of determining eligibility for, or amount of, assistance under Federal means-tested programs (other than under the Internal Revenue Code).

Response: We agree that the regulations should clarify that States must disregard IDA funds in determining eligibility and amount of assistance for such Federal means-tested programs. Section 404(h)(4) explicitly states that there should be no reduction in benefits. We have revised the regulatory language at § 263.20 to clarify this point.

Comment: One commenter explained how one State defined its IDA programs under its welfare reform waiver more broadly than the NPRM and suggested that we revise the regulation to allow for a broader range of IDA strategies.

Response: The statute is very specific in terms of how IDA funds may be used. Accordingly, we have not changed the position taken in the proposed rule. However, under section 415 of the Act, until a State's welfare reform waivers expire, the State has latitude to continue its waiver policies and operate its program more broadly than the statute permits.

Section 263.21—May a State Use the TANF Grant To Fund IDAs? (§ 273.21 of the NPRM)

Overview

PRWORA gives States the option to fund an Individual Development Account Program. Thus, States have the option to fund IDAs with TANF funds for individuals who are eligible for TANF assistance.

We received one comment on the provisions in this section and made some minor changes to the proposed regulation, as discussed below.

Comment and Response

Comment: One commenter said that the NPRM does not clearly express that IDA is an optional program that the States may choose to implement within limits permitted by Federal law.

Response: We agree that the IDA provision is an optional program, which is subject to State rules within the limits permitted by Federal regulations and statute. We have revised the regulatory language at § 263.2 to clarify this point. Also, consistent with the statutory language at section 403(a)(5)(C)(v), we have specified that WtW funds may also be used to fund these IDAs.

Section 263.22—Are There Any Restrictions on IDA Funds? (§ 273.22 of the NPRM)

Overview

IDAs are similar to savings accounts and enable recipients to save earned income for certain specified, significant items. IDAs contain special restrictions on who can match recipient contributions.

The NPRM required that: (1) a recipient deposit only earned income into an IDA; (2) recipient's contributions to an IDA may be matched by a qualified entity; and (3) recipients may spend IDA funds only to purchase a home, pay for a college education, or start a business.

Comments and Responses

We received a few comments on the provisions in this section and made some minor changes to the proposed regulation, as discussed below.

Comment: Several commenters expressed that the NPRM was more restrictive than the statutory language on the source of matching funds and thereby unduly limited possible matching funds to an IDA account.

Response: The language in the proposed rule was inadvertently narrower than the statutory provision. We have changed the regulation at § 263.22 so it now comports with the statutory language. Under the final rule, ''matching funds may be provided by or through a qualified entity.''

Comment: One commenter stated that we should allow TANF recipients to withdraw money from IDAs for training expenses, as well as for post-secondary purposes.

Response: The statute is very specific in terms of how IDA funds may be used. Only post-secondary education expenses at an eligible institution are permissible. While expenses for certain vocational education or training activities would be allowable, expenses for job training that is not at the post-secondary level or at an eligible institution would not be. Accordingly, we have not changed the proposed rule.

Section 263.23—How Does a State Prevent a Recipient From Using the IDA Account for Unqualified Purposes? (§ 273.23 of the NPRM)

Overview

Money in an IDA account does not affect a recipient's eligibility for TANF assistance. Withdrawals from the IDA must be paid directly to a college or university, a bank, savings and loan institution, an individual selling a home, or a special account (if the recipient is starting a business).

Section 404(h)(2)(D) authorizes the Secretary to establish regulations to ensure that individuals do not withdraw funds held in an IDA except for one or more of the above qualified purposes.

In our research, we found that several States had established IDAs under their welfare reform demonstration projects and subsequently transferred those provisions to their TANF programs. Each State had designed its own procedures for preventing withdrawals or penalizing recipients who withdrew funds from their IDAs for unauthorized purposes. For example, several States count a withdrawal for a nonqualified purpose as earned income in the month of withdrawal unless the funds were already counted as earned income. Other States count such withdrawals against a family's resource limit. Still another State calculates a period of ineligibility using a complex formula.

With this in mind, we did not feel that it was necessary to be overly prescriptive in mandating how States would ensure that individuals do not make unauthorized withdrawals from IDA accounts. Thus, we give States broad flexibility to establish procedures that ensure that only qualified withdrawals are made.

In addition, section 404(h)(5)(D) gives the Secretary the authority to determine whether or not a business contravenes law or public policy. We have decided that we should base our determination on the business's compliance with State law or policies. Thus, our rules give States maximum flexibility in setting up these programs, while assuring that a business established by a needy family meets State requirements.

Comments and Responses

We received a few comments in support of the provisions in this section, as discussed below. These comments did not result in any change to the proposed policy or rule.

Comment: A few commenters supported the entire section on IDAs, noting that the Secretary exercised her discretion to give States maximum flexibility in designing and administering these programs.

Response: We appreciate the commenters' support for our approach. The intent of the proposed rule was to allow States the latitude that they needed to administer an effective IDA program and develop innovative approaches for moving recipients from dependency to self-sufficiency.

IX. Part 264—Other Accountability Provisions (Part 274 of the NPRM)

Note: We have moved the content of § 274.20 of the NPRM, entitled ''What happens if a State sanctions a single parent of a child under six who cannot get needed child care?'' to part 261. You can find a discussion of the comments related to this provision at §§ 261.15, 261.56 and 261.57.

Section 264.0—What Definitions Apply to This Part? (§ 274.0 of the NPRM)

This section cross-references the general TANF regulatory definitions established under part 260.

We received no comments on this section. However, we decided to add definitions for ''countable State expenditures,'' ''Food Stamp trigger'' and ''unemployment trigger,'' which relate to the discussion of the Contingency Fund in subpart B, in order to make subpart B easier to understand. We also added a definition of ''FAG,'' which is used in the discussion of the spending levels of the Territories in subpart C. Finally, we moved this section out of subpart A, as it was in the NPRM, so that it is clear that the definitions apply to this entire part.

Subpart A—What Specific Rules Apply for Other Program Penalties?

Section 264.1—What Restrictions Apply to the Length of Time Federal TANF Assistance May Be Provided? (§ 274.1 of the NPRM)

Under the former AFDC program, families could receive assistance as long as necessary, if they continued to meet program eligibility rules. Under the TANF program, Congress established a maximum length of time for which a family may receive assistance funded by Federal TANF funds.

Section 408(a)(7) stipulates that States may not use Federal TANF funds to provide assistance to a family that includes an adult who has received assistance for more than five years. We will calculate the five-year limit on Federal funding as a cumulative total of 60 months.

The legislative history for PRWORA clarifies the meaning of adult in section 408(a)(7)(A). States are to count only months for which an adult received assistance as the head-of-household or as the spouse of the head-of-household. (H.R. Rep. No. 725, 104th Cong., 2d sess., p. 288.) Generally, when a parent or other adult caretaker relative of a minor child applies for and receives federally funded assistance under the State's TANF program on behalf of himself or herself and his or her family, Federal funding of that assistance may not last longer than five years. States must disregard any months when an adult receives assistance when he or she is not the head-of-household or is not the spouse of the head-of-household.

Any month when a pregnant minor or minor parent received assistance as the head-of-household or married to the head-of-household counts toward the five-year limit. However, section 408(a)(7)(B) clarifies that the State must disregard any month for which assistance has been provided to an individual who is a minor child who is not the head of a household or married to the head of a household.

The five-year limitation on Federal funding also disregards any months that an adult receives assistance while living in Indian country (as defined by section 1151 of title 18, United States Code) or in an Alaska Native Village where at least 50 percent of the adults are not employed (see § 264.1(b)(1)(ii)).

Subsection 408(a)(7)(G) provides for special treatment of assistance provided to a family with Welfare-to-Work grant funds (formula or competitive) under the time-limit provision. First, months for which a family receives cash assistance funded with Welfare-to-Work grant funds (under section 403(a)(5) of the Act) do count towards the five-year limit; however, months for which a family receives only WtW noncash assistance do not count towards the five-year limit.

Second, families may receive assistance (cash or noncash) funded with WtW grant funds even though they are precluded from receiving other TANF assistance because of the five-year limit.

Some families may receive assistance from Federal TANF funds for more than five years based on hardship or if the family includes an individual who has been battered or subjected to extreme cruelty as defined in section 408(a)(7)(C)(iii).

Under section 408(a)(7)(C), the average monthly number of such families may not exceed 20 percent of the State's average monthly caseload during either that fiscal year or the immediately preceding fiscal year, whichever the State elects. We will not make a determination of whether a State has exceeded the cap until any families in the TANF program have received at

least 60 cumulative months of federally funded assistance.

Since the purpose of the provision is to provide an extension to the 60-month limit, it applies after that limit is reached. We believe that this approach is the most straightforward and comports with Congressional intent that TANF assistance be provided on a temporary basis while a family becomes self-sufficient. Thus, Federal support would cease once a head-of-household or spouse of the head-of-household in the family has been assisted for 60 total months with Federal TANF funds unless the State chooses at that time to include the family in its 20-percent exception. However, the State may elect to use State funds to continue paying eligible families.

The five-year time limit applies to Federal funding; it does not set an upper bound on the amount of time a State could provide assistance to an individual family with State funds. Further, States are free to impose shorter time limits on the receipt of assistance under their programs. They are also free to allow receipt for longer periods if the assistance is paid from State funds or if the family meets the criteria the State has chosen for extension and fits with the 20-percent limit.

In the NPRM preamble to this section, we clarified the relationship between domestic violence waivers of the time limit permitted under the Family Violence Option at section 402(a)(7) and the limit on the exceptions to the Federal time limit at section 408(a)(7)(C)(ii). The key issue was whether the 20-percent limit on hardship exceptions included families of domestic violence victims.

Section 402(a)(7)(B) expressly refers to section 408(a)(7)(C)(iii) in applying the meaning of the term ''domestic violence'' to the Family Violence Option at section 402(a)(7)(A). Section 408(a)(7)(C)(iii) defines ''battered'' or ''subjected to extreme cruelty'' for purposes of describing families who may qualify for a hardship exemption at section 408(a)(7)(C)(i), and section 408(a)(7)(C)(ii) specifies a 20-percent limit on the exceptions to the time limit due to hardship. Based on the statutory language, we concluded that the number of families waived from the five-year time limit per section 402(a)(7) fell within the 20-percent ceiling established under section 408(a)(7)(C)(ii). However, we allowed a State to claim ''reasonable cause'' when its failure to meet the five-year limit could be attributed to its provision of federally recognized good cause domestic violence waivers. In the final rule, we have moved the provisions on domestic violence to a new subpart B of part 260. You can find our preamble discussion of these provisions and the comments on our proposed rules in the earlier discussion entitled ''Treatment of Domestic Violence Victims.''

As previously discussed, section 408(a)(7)(D) provides an exemption to the time limit on receipt of federally funded TANF assistance for families living in Indian country or in an Alaskan Native village. The months that a family, which includes an adult, lives in Indian country or in an Alaskan Native village, where at least 50 percent of the adults are not employed, do not count when determining whether the adult has received federally funded assistance for 60 cumulative months. In accordance with section 408(a)(7)(D), the percentage of adults who are not employed in a month will be determined by the State using the most reliable data available for the month, or for a period including the month.

In the earlier preamble discussion entitled ''Waivers,'' we discuss the impact of waivers granted under section 1115 of the Act on the five-year time limit. You will find the regulatory provisions in a new subpart C of part 260.

We received a number of comments on this section. We made some revisions to the regulations as noted in our responses to the comments below. We also amended the regulations to reflect the position that only months for which an adult received assistance as the head-of-household or as the spouse of the head-of-household count toward the five-year time limit.

Comment: A couple of commenters expressed their opposition to all time limits, and one commenter stated that the time limits will cause families to suffer.

Response: The time limit is an important aspect of welfare reform. It is meant to ensure that States and recipients place a clear priority on work, responsibility, and self-sufficiency. However, in a time-limited program, States must make sure that they offer adequate services so that families can successfully move from welfare to work.

Comment: A commenter asked whether the State should count towards the time limit any months when the adult is ineligible, but the rest of the family receives assistance.

Response: The only months that count toward the time limit are months when a family member who is the head-of-household or the spouse of the head-of-household receives assistance. Thus, for example, if the family is comprised of a mother and her infant, and the mother is not receiving TANF assistance because she is receiving SSI or because she is an ineligible alien, the months when only her child receives TANF assistance do not count toward the time limit.

Comment: Some commenters asked how the time limit applies when children receive assistance, but the caretaker relative does not.

Response: Assuming that, in this situation, the head-of-household and the spouse of the head-of-household are not receiving TANF assistance, the months when the children receive assistance do not count toward the time limit.

Comment: A few commenters asked whether months count toward the time limit when a family is subject to a full-family sanction.

Response: Any months when the State imposes a full-family sanction, and no one in the family is receiving TANF assistance, do not count towards the Federal time limit. Only months for which an adult or minor head-of-household or spouse of the head-of-household receive assistance count. However, if it wishes to, a State may count such months towards its State time limit.

Comment: Another commenter asked whether months count toward the time limit when one member of a family is sanctioned.

Response: If an adult is sanctioned, and no one who is the head-of-household or the spouse of the head-of-household is receiving TANF assistance, the Federal time limit does not apply. However, if the head-of-household or the spouse of the head-of-household continues to receive assistance while another individual is being sanctioned or the effect of the sanction is to reduce benefits to the family as a whole without denying assistance to any individual member of the family, the Federal time limit does apply.

If the State wishes to count the months when a sanction applies to a family, it may count such months toward its State time limit even if it cannot count them towards the Federal time limit.

Comment: A commenter asked how the time limit applies when a family begins to receive assistance mid-month or if the State provides assistance semi-monthly.

Response: Whenever a family receives any TANF assistance for a month, whether it covers a whole month's worth of assistance or is a partial payment, that month counts toward the Federal time limit unless the exceptions in § 264.1(b) apply.

Comment: Another commenter stated that we should inform a State if its

policies are improper or will lead to a penalty.

Response: When a State submits its TANF State plan, we review it to determine whether the plan is complete. We also identify potential problem areas and share our comments with the State. Thus, the more detail a State submits in its plan, the more feedback the State will receive on its policies and procedures. At the same time, we advise the State that our finding that the TANF plan is complete does not constitute our endorsement of State policies.

Comment: A commenter asked whether receipt of TANF assistance by a noncustodial parent would affect the custodial parent and the children.

Response: In order for an individual to receive TANF assistance as a noncustodial parent, a State must consider that parent to be a member of the family. Only the months for which a parent receives TANF assistance as the head-of-household or the spouse of the head-of-household count toward the time limit. As defined at § 260.30, a noncustodial parent cannot be the head-of-household, since he or she does not live in the same household as the child. Therefore, the months a noncustodial parent receives assistance would not count unless he or she is the spouse of the head of the household.

We note that an individual can have more than one status and the above answer applies only to an individual receiving assistance as a noncustodial parent. An individual who is the noncustodial parent of one TANF child, could also be the custodial parent of another TANF child or the head-of-household for another TANF case; if he or she receives assistance as part of such a second family, it would count towards that second family's time limit.

Comment: A commenter asked us to clarify when receipt of TANF assistance by a pregnant teen or a teen parent would count toward the five-year time limit.

Response: The months count when a pregnant teen or teen parent receives TANF assistance while he or she is the head-of-household or the spouse of the head-of-household.

Comment: Another commenter argued that the statute does not provide the authority for us to impose time limits on a minor head-of-household or minor spouse of a head-of-household who is not pregnant and is not a parent.

Response: The commenter is correct. The months for which a minor head-of-household or minor spouse of a head-of-household who is not pregnant and is not a parent receives TANF assistance do not count toward the time limit.

Comment: Commenters asked us to clarify when assistance provided under the Welfare-to-Work program counts toward the Federal time limit. One commenter expressed the opinion that WtW should not count. Another commenter asked us to define WtW cash and noncash assistance.

Response: Under the statute, noncash assistance provided under WtW never counts toward the Federal 60-month time limit. Months for which WtW cash assistance is received do count if the assistance is received by a member of the TANF family who is the head-of-household or the spouse of the head-of-household. However, individuals who have received 60 months of assistance may continue to receive WtW assistance and other benefits.

Because of the interest in this issue, we have included a definition of WtW cash assistance at a new § 260.31. See the preamble for that section for additional discussion of that definition.

As previously discussed, the policies on counting WtW and TANF assistance apply to noncustodial parents. Receipt of WtW cash assistance or TANF assistance by a noncustodial parent, in his or her status as a noncustodial parent, does not count against the time limit unless he or she is the spouse of the head-of-household. If the noncustodial parent is the spouse of the head-of-household and is included by the State in its definition of a TANF family, such parent's receipt of WtW cash assistance or TANF assistance does count against the time limit. However, if the noncustodial parent is not included in the State's definition of a TANF family (e.g., he is receiving assistance as part of another family), his receipt of WtW cash assistance does not count towards the Federal TANF time limit for the family composed of the custodial parent and their children in common.

Comment: A commenter asked whether months when assistance is received under a Tribal TANF program count toward the Federal five-year time limit.

Response: Months for which a family received assistance under an approved Tribal Family Assistance Plan count toward the five-year time limit under both State and Tribal TANF programs. Under the provisions of section 408(a)(7), the five-year limit applies to TANF assistance provided with Federal TANF funds under part A of title IV of the Act. This includes assistance provided by Tribal TANF programs. However, there is an exception under § 264.1(b)(1)(ii) for months when an adult lived in Indian country or Native Alaskan Village with high unemployment.

Comment: A commenter asked whether the clock stops while an individual is in drug treatment so that she will be job ready.

Response: The clock does not stop. The clock stops only because of the factors listed in § 264.1(b).

Comment: Another commenter asked whether a State can exempt from the time limit a family with old or disabled parents or caretakers.

Response: A family cannot be exempted from the time limit on this basis. Months when a family receives assistance can be disregarded only according to the factors listed in § 264.1(b). However, once the family has received assistance for 60 months, the State can continue to provide assistance on the basis of hardship. The State can also choose to provide assistance with State-only funds.

Comment: A number of commenters were opposed to our provisions that attempted to restrict a State from excluding families from the time limit by including child-only cases in its definition of family and diverting families to separate State programs. The commenters also opposed our proposal to require States to report on the number of families excluded.

Response: We agree that we should not limit a State's ability to determine which families they will serve under TANF and that we should not assume that a State is attempting to circumvent the statute. Accordingly, we have removed these provisions from the final rules. We also removed the requirement for separate reporting of child-only cases. You can find additional discussion on this issue in the earlier preamble discussion entitled ''Child-Only Cases.''

Comment: While one commenter agreed with our position in the NPRM, a number of commenters argued that States should be able to stop the clock for hardship or domestic violence, or because individuals in the family are unable to participate in work activities before the family has received assistance for 60 months.

Response: We do not believe that the statute envisions stopping the clock for hardship or for any reasons other than those listed in § 264.1(b). Section 408(a)(7)(C) of the Act exempts families from being terminated from TANF assistance once they reach the 60-month limit; it does not exempt them from accruing months toward the limit. The statute permits States to continue to provide assistance to families beyond the 60-month limit based on hardship or because a family member has been

subjected to battery or extreme cruelty. However, as we discussed in the preamble section entitled ''Treatment of Domestic Violence Victims,'' we have revised the final rules to recognize a broader array of good cause domestic violence waivers to extend the time limit in determining whether a State that exceeds the 20-percent limitation will receive penalty relief. Accordingly, States may be able to extend the time limits for additional families, including victims of domestic violence.

Comment: A commenter asked how the 20-percent hardship extension applies when a State has a shorter time limit than 60 months.

Response: A State with a shorter time limit can establish its own policies for extending assistance under its State time limit. The State can extend assistance beyond its (shorter) time limit based on hardship or for other reasons. However, if a State extends its time limit and continues to provide assistance to a family, the additional months count toward the Federal time limit as they ordinarily would.

Comment: Some commenters expressed the view that our provisions for how States' section 1115 waivers affect the time limit are confusing and improper.

Response: We have made some minor adjustments to these provisions. Please refer to subpart C of part 260 and the earlier preamble discussion entitled ''Waivers.''

Section 264.2—What Happens if a State Does Not Comply with the Five-Year Limit? (§ 274.2 of the NPRM)

Congress created the penalty under section 409(a)(9) to ensure that States comply with the five-year restriction on the receipt of federally funded TANF assistance. If we determine that a State has not complied with the five-year time limit during a fiscal year, then we will reduce the SFAG payable for the immediately succeeding fiscal year by five percent of the adjusted SFAG.

Five years is the maximum period of time permitted under the statute for families to receive federally funded TANF assistance. Therefore, the penalty under this section does not apply if the State exceeds any shorter time limits on the receipt of federally funded assistance that it may choose to impose. It also does not apply to any time limits on receipt of State-funded assistance or the receipt of noncash WtW assistance.

In defining the requirement, section 409(a)(9) refers to section 408(a)(7). This latter section identifies the circumstances under which assistance may be provided for longer than five years. It provides exceptions to the time-limit requirement for minors, hardship, or families living in Indian country or in an Alaskan Native village with adult unemployment above 50 percent. Therefore, we will take into account the exceptions described under paragraphs (B), (C), or (D) of section 408(a)(7) when deciding whether the State complied with the five-year time limitation. We will use the information required to be reported in part 265 to learn whether a State is complying with the five-year time restriction on the receipt of federally funded assistance.

We do not intend to hold States immediately accountable for knowing about and verifying all months of assistance received in other States, since we are aware that, in general, States' data processing systems are not currently capable of accomplishing interstate tracking of the number of months an individual has received TANF assistance.

We received a few comments on this section, as discussed below. We made only one minor editorial change to the regulations. This change clarifies that, if a State failed to comply with the time-limit requirements, in order to avoid a penalty, it must demonstrate to our satisfaction that it had reasonable cause, or it must correct or discontinue the violation under the provisions of an approved corrective compliance plan.

Comment: A couple of commenters asked for guidance on how States should count months when a family received assistance in another State. Other commenters asked us to regulate that States will not be held accountable for knowing about a family's receipt of TANF assistance in another State.

Response: Each State must keep track of the number of months it provides TANF assistance that count towards the Federal time limit. As part of its application process, a State should ask a family whether it has lived in any other States. If the family has, the new State should contact the other State(s) to find out whether the family received assistance that counts toward the Federal time limit. We expect a State to do its best to gather this information, but will not hold the State accountable if its information about what happened in another State is not accurate, as long as the State has made a good faith effort to gather complete and accurate information. We have decided not to include this specific guidance in the regulations because our expectations for State accountability will change over time as technology improves and the State's ability to do interstate tracking of families increases.

Comment: A commenter asked whether a State with a State time limit that is shorter than the Federal time limit would be penalized if it fails to meet the requirements of its State time limit.

Response: The penalty at § 262.1(a)(9) only applies if the State fails to meet the Federal five-year time limit.

Section 264.3—How Can a State Avoid a Penalty for Failure to Comply With the Five-Year Limit? (§ 274.3 of the NPRM)

In § 262.5, we include general circumstances under which we may find reasonable cause to waive potential penalties. We also will consider an additional factor in determining whether there is reasonable cause for failure to meet the five-year limit. The additional factor relates to a State's implementation of the Family Violence Option and its provision of temporary waivers of time limits, when necessary, for victims of domestic violence.

We will grant a State reasonable cause for failing to meet the 60-month time limit, if it adequately demonstrates that it has exceeded the 20-percent limitation on exceptions because it granted individuals federally recognized good cause domestic violence waivers pursuant to subpart B of part 260. To qualify for reasonable cause based on this factor, a State would have to show that, if families with such waivers were disregarded, the number of families that received assistance did not exceed 20 percent. A State must substantiate its case for all claims of reasonable cause.

You can find additional discussion of our domestic violence policies in the preamble section entitled ''Treatment of Domestic Violence Victims.''

We received a number of comments on this section and made changes to the regulations, as discussed below.

Comment: Several commenters asked us to permit States to claim reasonable cause based on additional factors, such as the State's good faith effort to comply with the time limit, a hard-to-serve population, high unemployment or other adverse economic conditions, and other factors that are beyond the control of the State.

Response: As we discussed in the preamble to § 262.5, we believe it is sounder policy to encourage a State to correct problems and find solutions than to excuse a State's inability to meet the statutory requirements. Accordingly, we are not adding reasonable cause factors that we will consider if a State fails to meet the time-limit requirement of the statute. (However, we have revised the language at § 262.5 to allow more discretion to grant reasonable cause when a State faces special, unforeseen circumstances.)

Comment: A number of commenters also argued that we should not link the reasonable cause factor for federally recognized good cause domestic violence waivers to the victim's ability to work and that other changes should be made to the provision.

Response: We have addressed these comments in subpart B of part 260 and the preamble discussion entitled ''Treatment of Domestic Violence Victims.''

Section 264.10—Must States Do Computer Matching of Data Records Under IEVS To Verify Recipient Information? (§ 274.10 of the NPRM)

Congress originally established the Income and Eligibility Verification System (IEVS) in 1984 under section 1137 of the Act. PRWORA created a penalty at section 409(a)(4), requiring the reduction of a State's SFAG for the immediately succeeding fiscal year by up to two percent if a State is not participating in IEVS.

The IEVS provision was intended to improve the accuracy of eligibility determinations and grant computations for the public assistance programs (AFDC, Medicaid, Food Stamp and SSI). It achieves this goal by expanding access to, and exchanges of, available computer files to verify client-reported earned and unearned income. Specifically, it makes the following files available to the State public assistance agencies: (1) IRS unearned income; (2) State Wage Information Collection Agencies (SWICA) employer quarterly reports of income and unemployment insurance benefit payments; (3) IRS earned income maintained by the Social Security Administration (SSA); and (4) with the passage of the Immigration Control and Reform Act of 1986, immigration status information maintained by the Immigration and Naturalization Service (INS).

Currently, regulations at §§ 205.51 through 205.62 and the statute at section 1137(d) describe what is meant by ''participating * * * in the income and eligibility verification system required by section 1137.'' The regulation at § 205.60(a) requires each State to maintain statistics on its use of IEVS. In general, ''participation'' means that a State agency submits electronic requests to IRS, SWICA, SSA and INS for information listed in the preceding paragraph, for all TANF applicants and recipients. IRS, SWICA, SSA and INS provide the State agencies with an electronic response regarding the information requested. The frequency of the request and the timeliness of the response is a function of the data processing systems design of the responding agency. The State agency worker compares the information in the response to determine the accuracy of client reporting of case circumstances.

We received comments from two parties, which did not result in any changes to the regulation. However, we did make a change based on our internal review. INS has stated its view that Federal departments are no longer authorized to grant waivers to States to exempt certain programs from verifying alien eligibility through the SAVE system. (See 63 FR 41662, August 4, 1998.) Therefore, we removed the parenthetical in the proposed rule at paragraph (a)(4) referencing such waivers.

One of the commenters expressed the view that the proposed rule is consistent with the TANF statutory provisions. We discuss the other comments and our responses below.

Comment: A commenter argued that requiring data matches for all TANF applicants and recipients is not cost effective and should not be performed.

Response: The statute at section 1137 and the implementing regulations at §§ 205.51 through 205.62 provide that the State must request data matches for the entire TANF caseload.

Comment: The commenter asked whether we would permit targeting procedures for data matches based on cost effectiveness.

Response: States may use targeting procedures that govern the use of data matches. Paragraph 1137(a)(4)(C) of the Act states, ''The use of such information shall be targeted to those uses that are most likely to be productive in identifying and preventing ineligibility and incorrect payments, and no State shall be required to use such information to verify the eligibility for all recipients.'' The implementing regulation at § 205.56(a)(1) continues to permit States to exclude categories of information from a follow-up review. States perform reviews after the data matches and compare information obtained from the match with the case record to determine if it affects an applicant's or recipient's eligibility or the amount of payment.

Comment: The commenter also expressed disagreement with the definition of participation for ''all TANF applicants and recipients'' (e.g., naturalized citizens do not require a match with INS).

Response: We recognize that States are not required to perform a data match with the Immigration and Naturalization Service (INS) for naturalized citizens. The data match with INS is only required for alien applicants and recipients.

Section 264.11—How Much Is the Penalty for Not Participating in IEVS? (§ 274.11 of the NPRM)

Since IEVS has been in existence for more than 12 years, we believe that States have had sufficient time to become full participants in IEVS. Therefore, we will impose the maximum two-percent penalty upon all findings that a State is not participating in IEVS.

We will use an audit pursuant to the Single Audit Act as the primary means of monitoring a State's IEVS participation. We will also use statistics maintained by the State, as required by § 205.60(a), as another source of information and may conduct additional Federal reviews or audits as needed.

We received few comments on this section. We discuss the comments and our responses below. We made no changes to the regulations.

Comment: A few commenters expressed concern that we were not clear in the proposed rule about how we will determine a State's nonparticipation in IEVS and the amount of the penalty. Another commenter argued that the amount of the penalty in proposed regulation needs to be amended to comport with the provisions of the Act.

Response: We will determine a State's nonparticipation in IEVS by an audit pursuant to the Single Audit Act. Specific auditing procedures for evaluating participation in IEVS are included in the Compliance Supplement to OMB Circular A–133. Anyone interested in the auditing procedures should review the Compliance Supplement for further information.

Since the statute allows us to regulate a penalty of ''not more than 2 percent,'' we could establish a penalty of less than two percent. However, we feel that a penalty of two percent is appropriate given that IEVS has been in effect for over 12 years and States have had ample time to come into compliance.

Comment: Some commenters suggested that we should impose a reduced penalty of less than two percent if the failure to operate IEVS was inadvertent, isolated, or of a technical nature. A few commenters indicated that the proposed rule is consistent with the TANF statutory requirements.

Response: If a State fails to meet the IEVS requirements, it may claim reasonable cause and/or submit a corrective compliance plan under part 262. Under these provisions, a State might be able to demonstrate that we should forgive or reduce its penalty under the types of situations mentioned by the commenters.

Section 264.30—What Procedures Exist to Ensure Cooperation With Child Support Enforcement Requirements? (§ 274.30 of the NPRM)

One of TANF's purposes is to provide assistance to needy families so that children may be cared for in their own homes or the homes of relatives. Another is to end the dependence of needy parents on government benefits by promoting job preparation, work, marriage, and parental responsibility. A third is to prevent and reduce the incidence of out-of-wedlock pregnancies and to encourage the formation and maintenance of two-parent families. Child support enforcement provides an important means of achieving all of these goals.

The law has long recognized that paternity establishment is an important first step toward self-sufficiency in cases where a child is born out of wedlock. The earlier paternity is established, the sooner the child may have a relationship with the father and access to child support, the father's medical benefits, information on his medical history, and other benefits resulting from paternity establishment. Establishment of paternity may also help establish entitlement to other financial benefits, including Social Security benefits, pension benefits, veterans' benefits, and rights of inheritance. Accordingly, establishing paternity and obtaining child support from the noncustodial parent are critical components of achieving independence.

To ensure that a legal relationship protecting the interests of the children is established quickly and in accordance with State law, the TANF (IV–A) agency must refer all appropriate individuals in the family to the Child Support Enforcement (IV–D) agency for paternity establishment and/or services needed to establish, modify, and enforce a child support order. Referred individuals must cooperate in establishing paternity and in establishing, modifying or enforcing a support order for a child.

The IV–D agency determines whether the individual is cooperating with the State as required. If the IV–D agency determines that an individual has not cooperated, and the individual does not qualify for any good cause or other exception established by the State, the IV–D agency will notify the IV–A agency promptly. The IV–A agency must then take appropriate action.

In cases of noncooperation, the IV–A agency must either deduct from the assistance an amount no less than 25 percent of the amount of the assistance that otherwise would be provided or deny the family assistance under the TANF program.

We received a few comments on the provisions in this section and made some modest changes to the regulations, as discussed below.

Comment: Several commenters suggested that we clarify agency responsibilities for making the good cause determination. They stated that the proposed preamble and regulation did not make it clear that the statute provides States with a choice about whether the TANF (IV–A) or IV–D agency determines good cause. One State recommended that the final regulations allow for IV–D agencies to negotiate with IV–A TANF agencies to determine good cause for noncompliance.

Response: We agree that States have discretion in this area. As provided in section 454(29)(A) of the Act, the title IV–A, IV–D or XIX (Medicaid) agency may determine whether the individual has good cause for not cooperating in establishing paternity or fulfilling any other cooperation requirement. The selection of the responsible agency is at the option of the State IV–D agency. We have revised the regulatory language at § 264.30(b) to clarify this point. We have also revised the language in § 264.30(b) to explicitly recognize that victims of domestic violence could receive waivers of child support cooperation requirements if a State has adopted the Family Violence Option.

Comment: Many commenters expressed concern that the use of the term ''appropriate individual,'' used to indicate who must cooperate, suggests that Federal law requires cooperation by nonparents. They suggested that we modify the provision to clarify that Federal law mandates cooperation only with respect to parents who apply for TANF assistance for their own children.

Response: We agree with the commenters that Federal law does not require cooperation by other individuals. However, the language in the proposed rule recognized that it might be appropriate to require cooperation by other caretakers who have access to information that could be used to establish paternity or obtain child support on behalf of the child. Since we believe States should have some discretion to require cooperation in these cases, we have chosen to leave the term ''appropriate individuals'' in the regulation. At the same time, we would point out that other individuals would not ordinarily have the same level of information about the absent parent as a parent would. Thus, we would expect States to develop procedures that recognize this difference and apply a different standard in determining cooperation by nonparents.

Comment: One commenter suggested that it was unnecessary to include the language ''for whom paternity has not been established'' in either the preamble or the regulation since even if paternity was previously established, the IV–D agency must carry out child support enforcement activities, such as enforcing and modifying child support orders for children whose paternity has already been established.

Response: We disagree. Section 409(a)(5) specifically mentions cooperation in establishing paternity. We would note that the language in § 264.30(a) covers the other situations mentioned by the commenter, especially where it says ''* * * or for whom a child support order needs to be established, modified or enforced. * * *''

Comment: Several commenters recommended that we mandate a set of notice and procedural requirements for cooperation that States would need to include in their systems. One commenter suggested that we should not allow a State to impose sanctions unless there is verification that the agency has met its duty of notifying recipients. Others felt that: (1) The notices should inform TANF applicants and recipients about the cooperation requirement and the good cause and other exceptions; (2) there should be a mechanism by which an individual who has been referred to the IV–D agency for child support services can make a claim for an exemption from the cooperation requirement if it appears that one is needed; (3) there should be an interface between the IV–A and IV–D agencies when the State has set up a system in which the IV–A agency makes the ''good cause'' determinations and the IV–D agency makes cooperation decisions; and (4) an individual should be informed about a noncooperation decision and how to appeal such a decision.

Response: The statute does not give us the authority to require specific notice and procedural criteria from States. However, as the cooperation requirement is not new, States already have administrative processes in place that support fair and equitable treatment of individuals, including notices of certain requirements under this section. States are required to submit State plans that describe individual State program operations and requirements. Child Support is one of the plans required.

Section 264.31—What Happens if a State Does Not Comply With the IV–D Sanction Requirement? (§ 274.31 of the NPRM)

In accordance with section 409(a)(5), we will impose a penalty of up to five percent of the adjusted SFAG if the IV–A agency fails to enforce penalties requested by the IV–D agency against individuals who fail to cooperate without good cause. We will monitor State adherence to this requirement primarily through the single audit process.

Although States had been required to establish paternity and enforce other child support provisions for several years, and States already had systems and procedures in place for dealing with these requirements, the division of responsibility between the IV–A and IV–D agencies changed slightly under PRWORA.

We decided to increase the amount of the penalty gradually in order to give States the opportunity to make procedural adjustments before they are subject to the impact of the maximum penalty. We will impose a penalty of one percent for the first violation and two percent for the second. However, since this is not an entirely new requirement, we will apply the maximum penalty of five percent for the State's third, and any subsequent, violation of this provision.

We received two comments specifically addressing the provisions in this section. As a result, we made some minor changes to the regulations, as discussed below.

Comment: One commenter suggested that individuals who receive waivers from the child support cooperation requirements pursuant to the Family Violence Option (FVO) should also be exempt from sanction and should not be considered in determining the need for a penalty under this subsection.

Response: Although a separate section of the Act authorizes waivers under the FVO for victims of domestic violence, the purpose of these waivers and the regular good cause exceptions from child support cooperation are similar, i.e., to protect families that face special risks from inappropriate requirements and sanctions. We encourage States to establish an administratively efficient process to coordinate these two determinations. Coordinating them should help States minimize duplication of effort, avoid confusion and jurisdictional problems, and treat families in similar circumstances consistently. (See § 260.57 for additional discussion of FVO waivers and sanction policies.)

Comment: One commenter suggested we add a further criterion to specify that we will not penalize a State if the violations were de minimus.

Response: We believe that the reasonable cause criterion at § 262.5(a)(3) adequately covers such situations.

Section 264.40—What Happens if a State Does Not Repay a Federal Loan? (§ 274.40 of the NPRM)

Section 406 permits States to borrow funds to operate their TANF programs. In general, States must use these loan funds for the same purposes as other Federal TANF funds. However, the statute also specifically provides that States may use such loans for welfare anti-fraud activities and for the provision of assistance to Indian families that have moved from the service area of an Indian Tribe operating a Tribal TANF program.

States have three years to repay loans and must pay interest on any loans received. Our Office of Administration has issued an Action Transmittal, OFA–TANF–98–2, dated February 3, 1998, notifying States of the application process and the information needed for the application.

Section 409(a)(6) establishes a penalty for States that do not repay loans provided under section 406. If the State fails to repay its loan in accordance with its agreement with ACF, we will reduce the adjusted SFAG for the immediately succeeding fiscal year by the outstanding loan amount, plus any interest owed.

Sections 409(b)(2) and 409(c)(3) provide that States cannot avoid this penalty either through reasonable cause or corrective compliance.

We received no comments on the provisions in this section. Therefore, the final rule incorporates the proposed policy.

Section 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? (§ 274.50 of the NPRM)

Section 409(a)(12) requires States to expend, under the TANF program, an amount equal to the reduction made to its adjusted SFAG as a result of one or more of the TANF penalties. Thus, States must maintain a level of TANF spending that is equivalent to the funding provided through the SFAG, even if we reduced their Federal funding as a result of penalties. If a State fails to expend its own funds to pay for State TANF expenditures in an amount equal to the reduction made to its adjusted SFAG for a penalty under § 262.1, we will reduce the State's SFAG for the next fiscal year by an amount equal to not more than two percent of its adjusted SFAG, plus the amount that the State should have expended (reduced for any portion of the required amount actually expended by the State in the fiscal year).

As discussed in § 262.3, we will monitor closely a State's efforts to replace the reduced SFAG with its own expenditures. A State must not diminish its investment in its TANF program as a result of actions violative of the TANF requirements. Therefore, if a State fails to make any expenditures in the TANF program to compensate for penalty reductions, we will penalize the State in the maximum amount, i.e., two percent of the adjusted SFAG plus the amount it was required to expend. We will reduce the penalty based on the percentage of any expenditures that the State does make.

For example, a State was required to replace an SFAG reduction of $1,000,000, but its increase in expenditures equalled only $400,000. Since it failed to repay $600,000, its penalty would be equal to two percent of the adjusted SFAG times 60 percent (because $600,000 is 60 percent of $1,000,000), plus the $600,000 that it failed to expend as required.

States should note that if they do not expend State-only funds as required, the effect will be that the amounts to be deducted from the SFAG will compound yearly, as the penalty for failure to replace SFAG funds with State expenditures also applies to the penalty at § 262.1(a)(12). We believe that this is appropriate because full resources must be available to ensure that the goals of the TANF program are met.

Pursuant to section 409(a)(12), State expenditures that are used to replace reductions to the SFAG as the result of TANF penalties must be expenditures made under the State TANF program, not under ''separate State programs.'' Further, as noted in § 263.6, regarding the limits on MOE expenditures, State expenditures made to replace reductions to the SFAG as a result of penalties do not count as basic MOE expenditures.

In addition, the statute provides that the reasonable cause and corrective compliance plan provisions do not apply to the penalty for failure to replace SFAG reductions.

We received a few comments on this section. These comments resulted in changes, as discussed below.

Comment: A commenter asked if a State's replacement of funds must occur in the quarter following the imposition

of the penalty or in the next fiscal year. The commenter preferred replacement during the next fiscal year because of differences in State appropriation cycles. Another commenter suggested that the proposed rule did not comport with the language of the statute.

Response: We agree with the comments. We have revised the regulatory language at § 264.50 to reflect the sequence of penalty actions as contained in the statute at section 409(a)(12). When we withhold Federal TANF funds during a fiscal year, the State must replace them with State funds during the subsequent fiscal year. If the State fails to replace the funds during the subsequent year, then we can withhold an additional penalty during the year that follows the subsequent year. The starting point for this sequence of actions is the fiscal year in which we impose a penalty by reducing the adjusted SFAG.

Comment: A commenter recommended that we allow reasonable cause and corrective compliance when a State fails to expend its own funds to replace a reduction in the adjusted SFAG caused by other penalties.

Response: The statute prohibits reasonable cause or corrective compliance when a State fails to replace the reduction to its SFAG due to the imposition of other penalties.

Comment: One commenter suggested that we should allow States to expend the replacement funds on State-only programs that serve the TANF population.

Response: Section 409(a)(12) explicitly refers to ''the State programs funded under this part,'' which means the TANF program established under title IV–A of the Act. Separate State programs, funded exclusively with State funds, are not part of the State TANF program funded under title IV–A of the Act.

Subpart B—What Are the Requirements for the Contingency Fund?

In addition to the TANF funding they receive under section 403(a) of the Act, States may receive funding from the Contingency Fund under section 403(b). This fund was created in response to concerns related to the use of block grant funding for TANF and the end of entitlement and open-ended Federal funding of welfare assistance that existed under the AFDC program. The purpose of the Contingency Fund is to make additional Federal TANF funds available to States, at their request, for periods when unfavorable economic conditions threaten their ability to operate their TANF programs. The Fund was established to create a pool of Federal TANF funds that could be provided to needy States with economic problems.

We received several comments on the Contingency Fund sections of the NPRM. Most of the commenters asked us to make the preamble and regulations more consistent and less confusing, and to provide further clarification of the provisions. As a result, we have revised all of subpart B, restructured the sections, and amended our discussion of the provisions. Also, we have changed many of the section headings to make them clearer and to eliminate duplication. Whenever possible, we reference the sections that we used in the NPRM to make it easier for the reader. We hope that we have succeeded in making improvements and that the Contingency Fund provisions are now easier to understand. However, we have not made substantive changes to the underlying policies or procedures of this subpart because the proposed regulatory provisions closely followed the statute.

In addition to the changes we made in response to comments, we eliminated a discussion on ''Meeting FY 1997 MOE Requirements'' that was included at the end of the preamble to subpart B of part 274 of the NPRM. We believe that it is no longer necessary to include this specific discussion about the handling of the Contingency Fund in FY 1997.

This final rule also differs from the NPRM in that we added information about the overall adjustment of the Contingency Fund, and the additional remittances of contingency funds that will be due from States, that are required by the Adoption and Safe Families Act of 1997, which was enacted just as the NPRM was about to be published.

Section 264.70—What Makes a State Eligible To Receive a Provisional Payment of Contingency Funds? (New Section)

As noted in the definitions at § 260.30, the term ''Contingency Fund'' refers to the Federal TANF funds that a State may receive under section 403(b). It does not refer to any required State expenditures.

To receive a provisional payment of contingency funds, a State must qualify as a needy State for one or more months in a fiscal year. A needy State may request contingency funds in accord with the process delineated in program instruction TANF–ACF–PI–97–8, dated October 27, 1997. This program instruction provides guidance to States on the requirements for receiving contingency funds and instructions for applying for these funds.

A State is a ''needy State'' if it meets either the ''unemployment trigger'' or the ''Food Stamp trigger'' for an ''eligible month.''

To be eligible for contingency funds under the unemployment trigger, the State's average unemployment rate for the most recent three-month period must be at least 6.5 percent and at least equal to 110 percent of the State's unemployment rate for the corresponding three-month period in either of the two preceding calendar years.

To be eligible for contingency funds under the Food Stamp trigger, a State's monthly average of individuals participating in the Food Stamp program (as of the last day of each month) for the most recent three-month period must exceed its monthly average of individuals in the corresponding three-month period in the Food Stamp caseload for FY 1994 or FY 1995 by at least ten percent, assuming that the immigrant provisions under title IV and the Food Stamp provisions under title VIII of PRWORA had been in effect in those years.

The statute defines an eligible month as a month in a two-month period that begins with any month for which the State is determined to be a needy State. Once a State becomes a needy State for any given month (by meeting either the unemployment or Food Stamp triggers) and elects to receive contingency funds, it will receive a provisional payment for a two-month period. Based on the statutory definition of an eligible month, 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, at the State's option.

Territories and Tribal TANF grantees are not eligible to participate in the Contingency Fund. Section 403(a)(7) provides that only the 50 States and the District of Columbia are eligible.

Section 264.71—What Determines the Amount of the Provisional Payment of Contingency Funds That Will Be Made to a State? (New Section)

The amount of contingency funds paid to a State is considered to be provisional because the actual amount that the State is eligible to receive is not determined when the payment is made, but, rather, after the fiscal year ends. As we discuss in § 264.73, a State that received contingency funds must complete an annual reconciliation to determine whether it must remit some or all of the contingency funds it received.

For each month of the fiscal year that it meets the eligibility criteria in § 264.70, a State may receive up to 1/12th of 20 percent of its annual SFAG allocation. The actual amount of funds that a State may realize from the Contingency Fund will vary, depending on the level of State expenditures, the number of months that it is eligible, and the total number of States receiving contingency funds. States eligible in one month may automatically receive a payment for the following month.

We will provide contingency funds to each State that requests them, in the order in which we receive the requests, until the available appropriated funds are exhausted.

Section 264.72—What Requirements Are Imposed on a State if It Receives Contingency Funds? (New Section)

In order to be eligible for contingency funds, a State must make expenditures in its TANF program, from State funds, at the required Contingency Fund MOE level. The required Contingency Fund MOE level is 100 percent of the State's historic State expenditures for FY 1994.

To keep any of the contingency funds it received, a State must exceed the Contingency Fund MOE level requirement. A State may keep only the amount of contingency funds that match, at the applicable Federal Medical Assistance Percentage (FMAP) rate, countable State expenditures, as defined in § 264.0, that are in excess of the required Contingency Fund MOE level, reduced by the proportionate remittance required by the Adoption and Safe Families Act of 1997. Because of the reconciliation formula, it is possible that a State may not be able to keep any of the contingency funds it received. Please refer to the discussion of § 264.73 on the annual reconciliation for more information.

You should note that the Contingency Fund MOE requirement is different from the basic MOE requirement. An obvious difference is that the basic MOE requirement is 80 percent (or 75 percent if a State meets its participation rates) of historic State expenditures, while the Contingency Fund MOE requirement is 100 percent of historic State expenditures. Another difference is that, in determining the Contingency Fund MOE level, expenditures for child care must be excluded. Finally, expenditures in separate State programs also must be excluded in determining countable expenditures.

This means that States cannot meet the Contingency Fund MOE requirement merely by increasing State expenditures by 20 (or 25) percent. The calculations for determining compliance with the basic MOE requirements and for determining eligibility for the Contingency Fund are different. For example, Contingency Fund MOE expenditures must be expenditures within TANF. Expenditures made under separate State programs do not count for this purpose. However, most MOE expenditures that a State makes within its TANF program for eligible families may count as both Contingency Fund MOE expenditures and as basic MOE expenditures.

As we discuss in § 264.73, each State that receives contingency funds is required to complete an annual reconciliation to determine what portion of the contingency funds it may retain and what portion it must remit.

The statute provides that a State need not remit contingency funds until one year after it has failed to meet either the Food Stamp trigger or the unemployment trigger for three consecutive months. Thus, a State may retain these funds for at least 14 months after it receives them. (However, the period of time between the annual reconciliation and the remittance date may be shorter.)

For example, if a State fails to meet either trigger for the months of July, August, and September, 1997, it has until September 30, 1998, to remit the funds. The State must include its annual reconciliation for contingency funds received in FY 1997 in its fourth quarter Financial Report for FY 1997, due November 14, 1997.

In general, contingency funds may be used for the same purposes as other Federal TANF funds. However, contingency funds are available only for qualifying expenditures made in the fiscal year in which the State receives the funds. States may not use funds received in a given fiscal year for expenditures made in either the subsequent fiscal year or a prior fiscal year. Unlike TANF funds under section 403(a), contingency funds are not available until expended.

Since contingency funds are Federal TANF funds, they are generally subject to the same requirements as other Federal TANF funds. For example, a State cannot use contingency funds to pay a family if the family has already received Federal assistance for 60 months, unless the family has received an exception under § 264.1. (See the discussion in § 263.21 on ''Misuse of Federal TANF Funds'' for additional information.)

However, unlike the TANF funds that they receive under section 403(a), States cannot transfer contingency funds (provided under section 403(b)) to the Child Care and Development Block Grant Program (also known as the Discretionary Fund of the Child Care and Development Fund) and/or the Social Services Block Grant Program under title XX of the Act. Section 404(d) of the Act permits the transfer of funds received pursuant to section 403(a) only.

Section 264.73—What Is an Annual Reconciliation? (New Section)

The purpose of the annual reconciliation is to determine the amount of contingency funds that a State is permitted to retain for a fiscal year. The annual reconciliation involves computing the amount by which the State's countable State expenditures exceeds the State's required Contingency Fund MOE level, as contingency funds match only these excess expenditures. If the countable expenditures exceed the required Contingency Fund MOE level, then the State may be entitled to all or a portion of the contingency funds paid to it. However, even if its countable expenditures exceed its required Contingency Fund MOE level, it is possible that the provisions of the Adoption and Safe Families Act of 1997, amending section 403(b)(6), will have a major impact on the amount of contingency funds that a State is permitted to retain. In fact, it may prevent a State from retaining any contingency funds.

Each State that received contingency funds is required to perform certain calculations to accomplish the annual reconciliation. First, it must determine whether it met its required Contingency Fund MOE level. If it did not, it must remit all of the contingency funds it received.

If it met its Contingency Fund MOE requirement, the State must also perform the following steps to determine how much of the contingency funds it is permitted to retain:

(1) Calculate the sum of the amount of the qualifying State expenditures plus the amount of contingency funds that the State expended, minus its required Contingency Fund MOE level.

(2) Multiply the amount arrived at in step (1) by the State's FMAP rate applicable for the fiscal year in which contingency funds were awarded.

(3) Multiply the amount arrived at in step (2) by 1/12 times the number of months during the fiscal year for which the State received contingency funds.

(4) Compare the amount arrived at in step (3) with the amount of contingency funds paid to the State during the fiscal year, and determine the lesser amount.

(5) From the amount arrived at in step (4), subtract the State's proportionate

remittance for the overall adjustment of the Contingency Fund, as required by the Adoption and Safe Families Act of 1997.

The Adoption and Safe Families Act of 1997 reduced the Contingency Fund appropriation over the four-year period from FY 1998 through FY 2001. All States receiving contingency funds in these years must remit additional funds in order to share in the adjustment proportionately. The remittance amounts of all States drawing from the Contingency Fund will be increased by proportional shares totaling $2 million in FY 1998, $9 million in FY 1999, $16 million in FY 2000, and $13 million in FY 2001. Thus, the fewer the number of States receiving contingency funds, the higher each proportionate share of the adjustment will be, and the more each State will have to remit. ACF will determine the amount of each State's proportionate remittance and will provide this information to the State for it to use in its annual reconciliation calculations.

A State should also note that if it was eligible for, and received, contingency funds for fewer than 12 months during the fiscal year, the effective Federal matching rate for contingency funds will be less than its FMAP rate for the fiscal year. The effective rate is lower because the statute creates a reconciliation step that reduces the total Federal matching by 1/12 times the number of eligible months in the year.

Below we provide an example for FY 1998 that requires the remittance of funds. Assume the following information:

A State received a provisional payment of $2.5 million in contingency funds for six months of eligibility in the fiscal year. Its qualifying State expenditures were $102.5 million, its expenditure of contingency funds was $2.5 million, and its child care expenditures were $2 million. The required expenditure of State funds to meet the 100-percent MOE level is $95 million ($100 million minus $5 million for historic child care expenditures). The State's FMAP is 50 percent. This is the only State that received contingency funds in fiscal year 1998.

Based on the information provided, we see that the State met its required Contingency Fund MOE level.

To continue with the annual reconciliation, we use the steps outlined above.

(1) $102.5 million, plus $2.5 million, minus $2 million, minus $95 million, equals $8 million. (The State's qualifying State expenditures, plus its expenditure of contingency funds, minus its child care expenditures, minus its required Contingency Fund MOE level.)

(2) $8 million, times 50 percent, equals $4 million. (The result of step (1) multiplied by the State's FMAP rate.)

(3) $4 million, times 1/12, times 6, equals $2 million. (The result of step (2) multiplied by 1/12 times the number of months the State received funding for the Contingency Fund.)

(4) The lesser amount of $2 million, compared to $2.5 million, is $2 million. (The lesser of the result of step (3) compared to the amount of contingency funds the State received.)

Were it not for the requirements of the Adoption and Safe Families Act of 1997, the State would have been eligible to retain $2 million in contingency funds and would have been required to remit $500,000. However, we are required to increase the amount the State must remit, which we accomplish in step (5).

(5) $2 million, minus $2 million, equals zero. (The overall adjustment required from all States that received contingency funds for FY 1998 is $2 million. Since only one State received contingency funds, its proportionate offset is 100 percent of $2 million. Thus, the State's remittance is increased by $2 million, and the State can retain no contingency funds. Under the assumptions we presented, the State is required to remit its entire $2.5 million provisional payment of contingency funds.)

The example above illustrates a case where the State had to remit the entire amount of the $2.5 million provisional payment of contingency funds it received even though it made expenditures above the required Contingency Fund MOE level. If additional States had drawn contingency funds for the fiscal year, this State's proportional remittance would have been smaller, and the State would have been able to retain some of the contingency funds it received.

We will not consider a State's use of contingency funds, which later must be returned under the reconciliation formula, to be an improper use of funds, and, if the State meets its Contingency Fund MOE requirement, we will not assess that penalty.

Section 264.74—How Will We Determine the Contingency Fund MOE Level for the Annual Reconciliation? (§ 274.71 of the NPRM)

For the Contingency Fund, historic State expenditures for FY 1994, the base MOE level, include the State's share of AFDC benefit payments, administration, FAMIS, EA, and JOBS expenditures. They do not include the State's share of AFDC/JOBS, Transitional and At-Risk child care expenditures. States must meet 100 percent of this MOE level.

We said we would use the same data sources and date, i.e., April 28, 1995, to determine each State's historic State exependitures as we used to determine the basic MOE requirement. However, we would exclude the State share of child care expenditures for FY 1994.

We will reduce the required MOE level for the Contingency Fund if a Tribe within the State receives a Tribal Family Assistance Grant under section 412. The last paragraph of section 409(a)(7)(B)(iii) provides for this reduction. For the basic MOE requirement, we will reduce the State's basic MOE level by the same percentage as we reduce a State's annual SFAG allocation for Tribal Family Assistance Grants in the State for a fiscal year. For example, if a State's SFAG amount is $1,000 and Tribes receive $100 of that amount, we would reduce the State's basic MOE requirement by ten percent. If the same State also receives contingency funds in that fiscal year, we would also reduce the Contingency Fund MOE level by ten percent.

Section 264.75—For the Annual Reconciliation, What Are Qualifying State Expenditures? (§ 274.72 of the NPRM)

Section 403(b)(6)(B)(ii)(I) provides that State expenditures counted toward the Contingency Fund MOE may only include expenditures made under the State program funded under this part. Thus, the State expenditures that the State makes to meet the required Contingency Fund MOE level include the expenditure of State funds within TANF only; they do not include expenditures made under separate State programs. In addition, under this section of the statute a State may not use expenditures for child care to meet the Contingency Fund MOE requirement or to qualify the State to retain any of the contingency funds it received. Thus, we have noted the exception for child care in item 3 below. (This exception appears in paragraph (b) of the regulatory text.)

In the NPRM, we referred to sections of part 273 to define qualifying State expenditures for the Contingency Fund. In these final regulations, we have eliminated references to the basic MOE sections; we believe they were confusing because there were a number of differences in the expenditures that are permitted to be included in calculating the basic MOE and the Contingency Fund MOE.

Nevertheless, we retain some of the proposed policies. More specifically, qualifying State expenditures, for

Contingency Fund MOE purposes, are expenditures, with respect to eligible families, of State funds made in the State TANF program 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 (except child care); and

(4) Administrative costs in connection with the provision of the benefits and services listed in paragraphs (a)(1) through (a)(3), but only to the extent consistent with the administrative cost cap for MOE expenditures at § 263.2(a)(5).

Further, in § 260.31(c)(1), we have added a reference to this subpart. This revised language clarifies that, like basic MOE, Contingency Fund MOE may be expended on benefits and services that do not meet the definition of assistance.

In item 4 above, regarding the limits on administrative costs, we have modified the preamble and regulatory language to avoid the creation of a third administrative cost cap. Under the statute and the rules, we already provide for a 15-percent cap on the portion of Federal grant funds and State basic MOE expenditures that go to administrative costs. If we said that Contingency Fund MOE expenditures were subject to a similar administrative cost cap, States and we would then have three administrative cost caps to track.

In general, we believe the basic MOE requirements should apply to Contingency Fund MOE expenditures. However, in our minds, this view did not justify the creation of a third administrative cost cap, especially because of the substantial overlap between the Contingency Fund MOE expenditures and basic MOE expenditures. Rather, under these rules, we require that State expenditures on administrative costs, for Contingency Fund MOE purposes, must be consistent with the basic MOE administrative cost cap. In other words, in making MOE expenditures for Contingency Fund purposes, States must take care not to spend excess amounts on administrative costs. Their expenditures on administrative costs must be at a level that enables their compliance with the existing 15-percent cap in the basic MOE provisions.

Section 264.76—What Action Will We Take if a State Fails To Remit Funds After Failing To Meet Its Required Contingency Fund MOE Level? (§ 274.75 of the NPRM)

PRWORA established a penalty at section 409(a)(10) that provides that, if a State does not meet the Contingency Fund MOE requirement and remit funds as required, we must reduce the State's SFAG payable for the next fiscal year by the amount of funds that the State has not remitted. The statute prohibits us from waiving or reducing this penalty based on reasonable cause or corrective compliance. However, the State may appeal our decision to reduce the State's SFAG pursuant to the regulations at § 262.7.

Section 264.77—How Will We Determine if a State Has Met Its Contingency Fund Expenditure Requirements? (§ 274.76 of the NPRM)

ACF has created a TANF Financial Report, the ACF–196. States will use the ACF–196 to report their use of Federal TANF funds, including contingency funds. We will use this report to verify the State's annual reconciliation after the end of the fiscal year. We will review it to ensure that expenditures reported are consistent with the statute and these rules. Please see the discussion of part 265 for additional information.

Subpart C—What Rules Pertain Specifically to the Spending Levels of the Territories?

In the preamble to the NPRM, we noted that section 103(b) of PRWORA amended section 1108. Section 1108 establishes a funding ceiling for Guam, the Virgin Islands, American Samoa and Puerto Rico. Prior to PRWORA, the following programs authorized in the Act were subject to this ceiling: AFDC and EA under title IV–A; Transitional and At-Risk Child Care programs under title IV–A; the adult assistance programs under titles I, X, XIV, and XVI; and the Foster Care, Adoption Assistance, and Independent Living programs under title IV–E. The ceiling excluded funding for the JOBS program, which also covered AFDC/JOBS child care.

Under the amendments in PRWORA, the funding ceiling at section 1108 applies to the TANF program under title IV–A, the adult programs, and title IV–E programs. Section 1108(b) provides a separate appropriation for a Matching Grant, which is also subject to a ceiling. The Matching Grant is not a new program; rather it is a new funding mechanism that Territories can use for expenditures under the TANF and title IV–E programs.

Prior to PRWORA we had not regulated the provisions of section 1108. However, in light of this new MOE requirement within section 1108, we thought that we needed to regulate to clarify the requirements and the consequences if a Territory failed to meet the new section 1108 requirements. We have authority to issue rules on this provision under section 1102, which permits us to regulate where necessary for the proper and efficient administration of the program, but not inconsistent with the Act. (The limit at section 417 does not apply to this section of the Act.) In addition, we prepared a program instruction for the Territories to provide additional guidance on receiving funds under section 1108.

In February 1997, we provided to the Territories: (1) Their FAG annual allocations; (2) their basic MOE levels under section 409(a)(7); (3) their Matching Grant MOE levels; (4) their section 1108(e) MOE levels (which were created by PRWORA and were subsequently eliminated by Pub. L. 105–33); and (5) a detailed explanation of the methodology and expenditures we used to determine each of these amounts.

Section 264.80—If a Territory Receives a Matching Grant, What Funds Must It Expend? (§ 274.80 of the NPRM)

Section 1108(b) provides that Matching Grant funds are available: (1) To cover 75 percent of a Territory's expenditures for the TANF program and the Foster Care, Adoption Assistance and Independent Living programs under title IV–E of the Act; and (2) for transfer to the Social Services Block Grant program under title XX of the Act or the Child Care and Development Grant (CCDBG) program (also known as the Discretionary Fund of the Child Care and Development Fund) pursuant to section 404(d) of the Act, as amended by PRWORA and Pub. L. 105–33. However, Matching Grant funds used for these purposes must exceed the sum of: (1) The amount of the FAG without regard to the penalties at section 409; and (2) the total amount expended by the Territories during FY 1995 pursuant to parts A and F of title IV (as so in effect), other than for child care.

Under the first requirement, the Territory must spend an amount up to its Family Assistance Grant annual allocation using Federal TANF or Federal title IV–E funds or funds of its own for TANF or title IV–E programs.

The second requirement establishes an MOE requirement at 100 percent of historic expenditures, based on the Territory's FY 1995 expenditures. This second requirement is separate from the basic MOE requirement and is applicable only if a Territory requests and receives a Matching Grant. Historic expenditures include 100 percent of State expenditures made for the AFDC program (including administrative costs and FAMIS), EA, and the JOBS program. Territorial expenditures made to meet this requirement include Territorial, not Federal, expenditures made under the TANF program or title IV–E programs.

Territorial expenditures can only be counted once to meet the FAG amount requirement, the MOE requirement, or the matching requirement. In other words, any given expenditure cannot be counted more than once to meet these three different expenditure requirements. We believe this policy is appropriate because our interpretation of the statute is that Congress intended that the provisions on spending up to the FAG amount, meeting the MOE requirement, and meeting the matching requirement be separate requirements.

Comment: One commenter pointed out that this section of the rule would more closely correspond to section 1108(b)(1)(B)(i) of the Act if we added the phrase ''without regard to any penalties applied in accordance with section 409'' to the regulation. Another commenter suggested that we needed to clarify what the historic expenditures were for the Territories.

Response: As suggested, we have added the phrase about disregarding penalties to the regulations. We also have added an explanation to the preamble that the historic expenditures for the Territories are the amounts spent above their Federal funding for the AFDC and EA programs up to, but not exceeding, the 25-percent Territorial match, plus the amount of matching funds spent for the JOBS program.

Section 264.81—What Expenditures Qualify for Territories To Meet the Matching Grant MOE Requirement? (§ 274.81 of the NPRM)

As stated in the NPRM, for the basic MOE, section 409(a)(7) includes specific provisions on what States and Territories may count as ''qualified State expenditures'' (i.e., expenditures that may count towards the basic MOE requirement).

However, the statute provides little guidance on what expenditures a Territory may count toward its Matching Grant MOE for IV–A expenditures. Because the Matching Grant is intended to be used for the TANF program, we decided to apply many of the basic MOE requirements in part 263, subpart A, to the Matching Grant MOE. These sections are: § 263.2 (What kinds of State expenditures count toward meeting a State's annual spending requirement?); § 263.3 (When do child care expenditures count?); § 263.4 (When do educational expenditures count?); and § 263.6 (What kinds of expenditures do not count?). Section 263.5 (When do expenditures in separate State programs count?) does not apply because section 1108(b)(1)(B)(ii) requires that the matching Grant MOE expenditures must be expenditures under the TANF program. Thus, expenditures to meet the Matching Grant MOE requirement may not be expenditures made under separate State programs. (Because Territories do not receive Matching Child Care funds, the limit on child care expenditures in § 263.3 does not apply.)

Also, Territorial expenditures made in accordance with Federal IV–E program requirements may count toward this MOE requirement. These include the State share of IV–E expenditures and expenditures funded with the State's own funds that meet Federal title IV–E program requirements.

The Territories may count 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.

Territories may also count toward their Matching Grant MOE requirement expenditures made under the TANF program that meet the basic MOE requirement.

We received no comments on this section and made no changes to the regulation.

Section 264.82—What Expenditures Qualify for Meeting the Matching Grant FAG Amount Requirement? (§ 274.82 of the NPRM)

The statute intends that expenditures made to meet this requirement must be TANF or title IV–E expenditures. For TANF expenditures, the Territories may count allowable expenditures of Federal TANF funds to meet this requirement. They may count amounts that they have transferred from TANF to title XX and the Discretionary Fund in accordance with section 404(d). (See § 263.11, which describes the proper uses of Federal TANF funds.) Also, a Territory may count its own expenditures under the TANF program, for this purpose. Because IV–A expenditures made with the Territories' own funds must be for the TANF program, it is reasonable that we apply the MOE requirements applicable for the Matching Grant to this FAG amount requirement.

For IV–E expenditures, as with the Matching Grant MOE, expenditures made in accordance with Federal IV–E program requirements may count toward this MOE requirement. These include the Federal share and the Territories' share of IV–E expenditures and expenditures funded with the Territories' own funds that meet Federal IV–E program requirements.

We received no comments on this section and made no changes to the regulation.

Section 264.83—How Will We Know if a Territory Failed To Meet the Matching Grant Funding Requirements at § 264.80? (§ 274.83 of the NPRM)

We are developing a separate Territorial Financial Report for the Territories. We will require this report to be filed quarterly and to cover all programs subject to the section 1108 caps. This report will cover basic MOE and Matching Grant MOE requirements. For the Matching Grant, Territories must report expenditures claimed under title IV–E and IV–A and the total expenditures (including Federal) they make to meet the requirement that they spend up to their Family Assistance Grant annual allocations.

We would not require Territories to file the TANF Financial Report; however, they must report comparable information on the Territorial Financial Report. Furthermore, if one of the Territories fails to file the Territorial Financial Report or to include certain information in that report, we would treat it like a State that fails to file its TANF Financial Report and make it subject to the penalty for failure to report at § 262.1(a)(3).

We received no comments on this section and made no changes to the regulation.

Section 264.84—What Will We Do if a Territory Fails To Meet the Matching Grant Funding Requirements at § 264.80? (§ 274.84 of the NPRM)

The statute does not address the consequences for a Territory if it fails to meet the Matching Grant MOE and the FAG amount requirements. The proposed and final rules provide that we would disallow the entire amount of a fiscal year's Matching Grant if the Territory fails to meet either requirement. This is because the statute provides that the Matching Grant funds are only allowable if a Territory meets both requirements. Thus, if a Territory does not meet either one or both of the requirements, it must return the funds

to us. We will get the funds back by taking a disallowance action.

A disallowance represents a debt to the Federal government. Therefore, we will apply our existing regulations at 45 CFR part 30. Once we issue a disallowance notice, we can require a Territory to pay interest on the unpaid amount.

We received no comments on this section and made no changes to the regulation.

Section 264.85—What Rights of Appeal Are Available to the Territories? (§ 274.85 of the NPRM)

The Territory may appeal a disallowance decision in accordance with 45 CFR part 16. As these are not penalties, the reasonable cause and corrective compliance provisions of section 409 do not apply. Section 410, covering the appeals process in TANF, also does not apply.

We received no comments on this section and made no changes to the regulation.

X. Part 265—Data Collection and Reporting Requirements (Part 275 of the NPRM)

A. Background

The TANF block grant legislation reflects a new emphasis on program information, measurement, and performance. This final rule specifies the data collection and reporting requirements that serve as the major mechanism to measure State accomplishment and performance.

We received many comments in response to the NPRM concerning the nature and scope of the data collection and reporting requirements.

In the preamble to the NPRM, we addressed two major purposes of data collection: to determine the success of the TANF program in meeting the purposes of the Act and to assure accountability under the Act. We also emphasized that it was critical to collect data that were comparable across States and over time and that would enable us to calculate participation rates.

We based the proposed reporting requirements primarily on section 411 of the Act (Data Collection and Reporting). We proposed quarterly reporting of both disaggregated and aggregated data on TANF recipients and some others in the household. We proposed similar reports of data on closed cases and on participants in separate State programs. We also proposed a quarterly financial report (with an annual addendum) and an annual program and performance report. Also included in this section of the NPRM were proposed provisions on reporting penalties, due dates, sampling, and electronic filing.

To enable the public to comment with full understanding of the reporting requirements, the NPRM included eleven appendices that contained the specific data elements, instructions for filing the information, sampling specifications, and the statutory reference for each data element. In the preamble, we also called readers' attention to the proposed data elements that were not specified in the statute, including break-outs of statutory requirements.

B. Overall Summary of Comments

While most commenters agreed on the need for data collection and reporting, States (including Governors, State legislators, State executive branch agencies, and national agencies representing State interests) expressed strong views that the proposed TANF data collection requirements were excessive. Other commenters did not generally share this view.

There was broader agreement among all commenters, however, that the proposed reporting requirements on separate State programs were excessive.

Several national, legal, and local advocacy organizations; private individuals; and Federal agencies strongly supported the data collection proposals as appropriate for tracking the effects of welfare reform and made recommendations for additional elements that they believed should be added. Likewise, other national organizations, States, and local public and private entities offered alternative recommendations. These recommendations included additional MOE expenditure data; expanded and more specific case closure data; information on applications approved, denied, and voluntarily withdrawn; and data to track longer term outcomes of recipients.

Many commenters provided detailed analysis and review of the NPRM, including the regulatory text, the preamble language, and the specific content of the Appendices.

The overwhelming majority of States objected to the increase in the number of data elements (in comparison to the number of elements in the Emergency TANF Data Report); claimed that we had underestimated the administrative burden and cost of collecting and reporting these data; and asserted that we lacked statutory authority for these expanded reporting requirements. They particularly objected to reporting on participants in separate State programs, the information on closed cases, and the annual program and performance report. (As discussed later, we believe that the objections to the case closure data were due largely to a misunderstanding of our expectations. In the final rule, we clarify that we are only requiring data for the month of closure, not longer tracking of former recipients.)

Almost all comments on the reporting requirements for the separate State programs found them to be excessively burdensome, contrary to the intent of the legislation, and inappropriate for some types of MOE programs. Commenters believed that such reporting requirements would limit the involvement of community-based organizations in the delivery of program services and have a chilling effect on State flexibility and the development of future innovative programs.

States were also concerned about sample sizes, sampling requirements, and the standards for ''complete and accurate'' reports that we proposed to apply in relation to the reporting penalty. A very few States reported an inability to report many of the specific data elements proposed in the NPRM based on long-standing problems in developing their information systems (although all States are reporting the data required in the Emergency TANF Data Report). Also, some States reported continuing problems in submitting standardized reports due to the autonomy of local jurisdictions.

C. Summary of Departmental Response

We continue to be committed to gathering information that is critically important in measuring the success of the TANF program and meeting the statutory requirements for program accountability.

We have seriously considered all comments and concerns of commenters in making changes to this rule. We appreciate the partnership approach many commenters demonstrated in developing their comments and the careful analysis evident in the extensive and detailed comments we received. These comments led to numerous refinements in the requirements that should help reduce burden, while maintaining the integrity and value of critical data.

In preparing this final rule, we have worked to ensure that our rules support the creativity and commitment that States and communities have shown in supporting families and moving them to work. As a result, we have accepted many of the recommendations to eliminate or reduce the burden of reporting, and we have made several substantive changes in this part. We

have also modified or expanded a very limited number of data elements.

We address the specific changes in detail in the section-by-section discussion below. Briefly, however, we have:

(1) Provided a phase-in period for the implementation of the data collection and other requirements; in the interim, the Emergency TANF Data Report (ETDR) will remain in effect (§ 260.40);

(2) Reduced the total number of data elements in the TANF Data Report from 178 to 124 and in the SSP–MOE Data Report from 160 to 108.

(3) Retained the definition of ''family'' for reporting on the TANF and the separate State programs, but made reporting of some data elements optional for certain members of the family (§§ 265.2 and 265.3(e));

(4) In section one of the TANF Data Report, reduced the number of and modified some data elements (disaggregated data on TANF recipients, Appendix A) (§ 265.3(b));

(5) In section two of the TANF Data Report, reduced the number of data elements; to address a misreading of the NPRM, clarified that we do not expect States to track closed cases, but only to report data on the last month of assistance; and modified the data element on reasons for case closure to include additional break-out items (disaggregated data on closed cases, Appendix B) (§ 265.3(b));

(6) In section three of the TANF Data Report, reduced the number of data elements (aggregate data, Appendix C) (§ 265.3(b));

(7) Changed the name of the TANF–MOE Data Report to the SSP–MOE Data Report to reflect the specific focus of the data collection in this report and reduced the number of data elements to be reported (Appendices E through G). Also, as the result of the revised definition of assistance, reduced the types of separate State programs covered by the SSP–MOE Data Report (265.3(d));

(8) In the TANF Financial Report, significantly revised the ACF–196 (the financial reporting form) by adding several categories of expenditures to reflect our new definition of assistance and modified the instructions to clarify reporting on expenditure data.

(9) Dropped the provision that required disaggregated and aggregated reporting on separate State programs as a condition for penalty reduction (§ 265.3(d));

(10) Clarified that States have considerable flexibility in designing their sampling plans (§ 265.5);

(11) Consolidated the annual reporting requirements on program definitions and State MOE program(s), as proposed in the Addendum to the fourth quarter TANF Financial Report, in a new Annual Report and added a number of new reporting requirements on State activities under the Family Violence Option, State diversion programs, and other program characteristics (§ 265.9);

(12) Eliminated, as separate reports, the annual program and performance report, intended to gather additional information for the Secretary's report to Congress and the fourth quarter Addendum to the TANF Financial Report; and

(13) Clarified our policies on issues such as reporting on noncustodial parents and penalty relief for less than perfect (''complete and accurate'') reporting (§§ 265.3(f), 265.7, and 265.8).

D. Section-by-Section Summary of and Response to Comments

Cross-Cutting Issues

Before we discuss the comments associated with specific sections of the regulatory text or the Appendices, we want to respond to three cross-cutting issues.

(a) Phase-in/Transition Period

Comment: More than 36 States and other commenters recommended a phase-in period to meet the reporting requirements. Commenters cited the administrative burden and the time needed to carry out the complex processes involved, e.g., making changes to State information systems, training staff, and synthesizing and reporting data with acceptable levels of confidence. States also saw this task made more difficult in the context of the need to make their systems Year 2000 (Y2K) compliant.

Response: We agree with the need for a phase-in period and have made the effective date of these and other requirements October 1, 1999. We believe this date gives States an adequate time period for implementation, in view of the reduced reporting burden and reduced number of data elements in the final rule, our positive experience with States in resolving initial data layout and transmission problems, and the fact that the States have 90 days after the end of the quarter to submit the data without risk of a penalty.

Regarding the Y2K compliance issues, we have taken a number of actions to raise awareness of the problem and respond to questions from human service providers. For example, we have established an Internet e-mail address and phone line and a Y2K web page. We have also distributed information packages to more than 7,000 human service providers and representative organizations, and we have added a reasonable cause criterion related to Y2K compliance. This new criterion provides penalty relief to a State if it can clearly demonstrate that addressing Y2K issues prevented it from meeting the reporting requirements for the first two quarters and it reports the first two quarters of data by June 30, 2000.

In addition, we encourage States to consider the use of sampling as a viable option while resolving such issues. There are advantages and disadvantages to sampling, as detailed in our response to comments later in this discussion.

In the interim, the Emergency TANF Data Report (ETDR) will remain in effect. The last ETDR will be due November 14, 1999. States will begin reporting data under this final rule beginning with the first quarter of FY 2000. The first TANF Data and Financial Reports under these new requirements are due February 14, 2000. See further discussion regarding the effective date of these rules in the preamble section relating to § 260.40.

(b) Extent of Reporting Requirements

As we developed the reporting requirements for the NPRM, we were conscious of the importance of data for program management purposes as well as for meeting statutory requirements. At the same time, we also were conscious of our direct authority to regulate on data collection and of those sections of the Act that provided the legal basis for the NPRM.

Section 417 provides that the Federal government may not ''regulate the conduct of the States under this part, or enforce any provision of this part, except to the extent expressly provided in this part.'' We believed at that time, and still believe, that this language provides authority to regulate what States must report in light of section 411(a)(7) of the Act. This section provides that,

> the Secretary shall prescribe such regulations as may be necessary to define the data elements with respect to which reports are required by this subsection * * *

We believed at that time, and continue to believe, that section 411(a)(7) clearly gives the Department authority to create and define data elements to administer the law.

We were conscious of other responsibilities as well. Not only must we collect the information specified in section 411 of the Act, but the information must be comparable and reliable in order to make decisions implementing other provisions of the

law, e.g., calculating the work participation rates, implementing penalties, ranking States, and reporting to Congress. We cannot perform these functions without adequate information. Unless the reported data meet certain standards, we cannot adequately meet our responsibilities under the law. Since States are the primary repository and only realistic source of this information, we must rely on them to supply the information we need.

Comment: Despite the inclusion in the NPRM of the Statutory Reference Tables, which provided the specific statutory citation or basis for each data element, and our explicit preamble discussion of, and rationale for, the few data elements not in the statute, there were a number of comments alleging that we lacked statutory authority to impose data collection requirements, even for the TANF recipient population. As evidence of their position, commenters pointed to the number of data elements in the ETDR (68) compared to the number of elements in Appendices A-C of the NPRM (178). They variously asserted that:

(1) We had statutory authority to collect only the 16 to 18 data elements in section 411(a)(1)(A);

(2) We had authority to collect only the data elements in the ETDR;

(3) We had no authority to add, define, or further specify or break-out the data elements in section 411(a)(1)(A); and

(4) It was not within our authority to collect data based on sections 409 (penalties), 413 (annual rankings of States), or 411(b) (reports to Congress).

Many commenters urged us to limit our data collection to the elements in the ETDR.

Some commenters did not identify the specific data elements of concern or the basis for their objection. Also, some did not distinguish between those data to which the reporting penalty applied and other data.

Some commenters rejected collection of any data that would be used for research and evaluation purposes and argued that the increased reporting requirements were due to the collection of information the Department thought it would be ''interesting to know.'' As an alternative, a few commenters recommended that we develop all reporting requirements using a collaborative approach that would identify outcome measures and performance indicators from which the data elements would then be derived.

Regarding the proposed annual program and performance report, many commenters stated that we had merely shifted to States the responsibility for preparing reports to Congress. They suggested that we obtain data needed for these reports by means of a national sample or other mechanism.

A number of commenters presented objections to the proposed data collection based on specific administrative and/or programmatic concerns. The data collection that raised the most concerns was the proposed reporting of data on closed cases and on participants in separate State MOE programs. Commenters said that the proposals on MOE reporting illustrated the distrust that States found throughout the NPRM and viewed it as an attempt to control State programs.

Response: We generally disagree with the comments indicating we lack authority to impose the proposed data collection requirements. The statute authorizes the Secretary to define the data elements and to specify the data elements needed to determine work participation rates. It also specifies that these definitions and data elements be established under regulations. Therefore, we were not able to include them in the ETDR. The additional data elements that go beyond the ETDR reflect our explicit rulemaking authority under section 411(a)(7) of the Act and the authority implicit in sections 409, 411(b), and 413 of the Act. We continue to believe that States are the primary source of the data needed for the report to Congress.

The ETDR collects only that information that was clearly specified in the statute. By necessity, it contains a streamlines list of data elements that we can use in the interim period until final regulations are in effect. It is not sufficient as a long-term data collection instrument. For example, it does not provide clear uniform definitions of data elements and does not include some critical elements, e.g., the social security number.

In developing the final rule, we have re-doubled our efforts to reduce unnecessary reporting burdens on the States and have carefully reviewed the justification for, and value of, each data element that we had proposed. Based on that review, and in response to the comments we received, we have eliminated or streamlined many data elements in the Appendices published with this final rule. See the chart below and a further description of the changes we have made in the section-by-section discussion of § 265.3. We believe this reduced set of data represents a reasonable balance between the requirements for data, our statutory authority, and the burden placed on States in providing this information.

TOTAL NUMBER OF DATA ELEMENTS—DATA REPORTS

Type of report	ETDR	NPRM	Final rule
TANF Data Report: Disaggregated data on TANF recipients	55	106	76
TANF Data Report: Disaggregated data on closed cases	6	53	30
TANF Data Report: Aggregated data	7	19	18
Subtotal	68	178	124
SSP–MOE Data Report: Disaggregated data on recipients	.....	96	69
SSP–MOE Data Report: Disaggregated data on closed cases	.....	49	27
SSP–MOE Data Report: Aggregated data	.....	15	12
Subtotal	.....	160	108
Total	68	338	232

Note: States must report on these data elements for all persons receiving assistance. Some data elements are optional for other persons in the family.

(c) Publishing the Appendices As a Part of the Rule

Comment: We received two types of comments on this issue. A few commenters urged us to publish the specific data elements as a part of the final rule and to codify them as a part of the Code of Federal Regulations (CFR). This approach, they believed, would help ensure that States would not only have early access to the requirements but, once they were codified, the requirements would be less subject to change, given the time it takes to revise Federal rules.

Other commenters urged us to publish the data elements in the **Federal Register** at the same time we published the final rule for the purpose of advance notice to the States of the specific data requirements, but they did not recommend that they be a part of the final rule in the CFR.

Response: We agree with the importance of giving States early access to the specific data elements and have published seven appendices, including all data elements and instructions, in today's **Federal Register** along with the final rule.

It was never our intention, however, that these data collection requirements become a part of the rule itself or be codified in the CFR. We believe data collection needs may change over time, in part because the program is a dynamic one and because Congress may modify the reporting requirements. Therefore, we would want to be able to respond to those changes as quickly as possible. Since changes in reporting requirements require Paperwork Reduction Act (PRA) approval, the public is guaranteed an opportunity to comment on any future changes to the TANF Data and Financial Reports as a part of the PRA review process.

Section-by-Section Discussion

Section 265.1—What Does This Part Cover? (§ 275.1 of the NPRM)

This section of the NPRM provided a summary of the contents of this part. We received no substantive comments on this section apart from the general objection to the scope and content of the data collection requirements as a whole.

However, we have made two changes in this section. First, we have deleted paragraph (b)(4) of this section to reflect the elimination of the annual program and performance report. Second, to prevent a misunderstanding that a major purpose of these data collection requirements is research, we have deleted the word ''research'' in paragraph (a) from the term ''section 413 (research and rankings).'' We had included it in the NPRM to fully describe the content of section 413 of the Act. However, we believe it is misleading to reference ''research'' in this context because our research agenda relies, for the most part, on other sources of information.

Section 265.2—What Definitions Apply to This Part? (§ 275.2 of the NPRM)

This section of the NPRM proposed a definition of ''TANF family'' for reporting purposes only and made the definition applicable to both TANF and MOE programs. Our rationale for proposing a definition for reporting purposes was the critical importance of developing comparable data across States, given the fact that, under the TANF statute, a State may develop and use its own definition of ''eligible family'' for program purposes.

In the NPRM, we proposed that information be collected and reported on all persons receiving TANF assistance plus, for any minor child receiving assistance, information on any parent(s) or caretaker relative(s) and minor siblings in the household. We also proposed that information be reported on any person whose income and resources would be counted in determining eligibility for, or the amount of, assistance.

In the preamble to the NPRM, we explained the importance of information on these persons in understanding the effects of TANF on families, the variability among State caseloads, the circumstances that exist in no-parent families, and the paths by which families avoid dependence.

Comments: Two national advocacy organizations supported this proposal. One commented that ''HHS has appropriately defined ''family'' for purposes of data collection requirements to ensure that differences in States' definitions of the assistance unit do not make cross-state comparisons difficult.'' Although commenting on the overall TANF reporting requirements, another national organization found them reasonable and within our authority; it urged that they not be ''watered down.''

On the other hand, many commenters objected to this definition. Commenters expressed particular objection to our proposal to collect information on persons outside the assistance unit or persons not affected by work participation or time-limit requirements. Some commenters asserted that the definition exceeded our statutory authority; others found it intrusive and in conflict with a State's prerogative to define the TANF family. Some States questioned their own legal authority to collect data on nonrecipients and were concerned about possible ethical considerations. Others objected on the grounds of administrative burden, i.e., that such data were not now being collected on these persons, and it would be both costly and burdensome to set up ''a duplicate reporting system'' or require a ''massive modification'' to their present reporting system. One State commented that it appeared this proposal was for evaluation purposes only and claimed that States should not be required to use scarce resources for this purpose.

Some commenters made specific recommendations that conflicted with those of other commenters, as follows:

(1) Allow States to report data based on each State's definition of TANF family;

(2) Limit reporting to persons for whom assistance is provided;

(3) Limit reporting to persons receiving assistance, parents, caretaker relatives and minor siblings, but do not collect data on persons whose income or resources are considered in determining eligibility;

(4) Collect information on persons receiving assistance and persons whose income or resources are counted in determining eligibility, but do not collect information on parents, caretaker relatives, or minor siblings; or

(5) Collect only very limited information on persons not receiving assistance, e.g., information on their relation to the TANF recipient, but no personal data.

Response: We considered these comments carefully in attempting to see how to reduce the reporting burden on States while ensuring that we obtain the necessary and comparable data to meet the requirements of the Act. We have taken the following actions in response to commenter objections:

First, we retain the definition of ''family'' as proposed in the NPRM. For editorial purposes, we have dropped the word ''TANF'' from the proposed term ''TANF family'' in this definition as the term ''family'' is applicable to both the TANF and the separate State programs. However, we are continuing to use the terms ''TANF family'' and ''State MOE family'' in the respective Data Reports, for clarity.

We responded earlier in this section of the preamble to comments that we exceeded our statutory authority in proposing these data collection requirements, including the definition of ''family'' used for reporting purposes. We do not agree that, in creating this definition, we have interfered with a State's prerogative to define ''family'' for program purposes. As we explained in

the preamble to the NPRM, the statute uses various terms to define persons receiving benefits and services under the TANF program, e.g., eligible families, families receiving assistance, and recipients. Unlike the AFDC program, there are no persons who must be served under TANF. Therefore, each State will establish its own definition of ''eligible family.'' These definitions will not be comparable across States, however, and comparable data are necessary to carry out the accountability provisions and other objectives of the Act, e.g., calculating work participation rates.

Second, within the definition of family, we retain all the categories of persons for which we proposed to collect information in the NPRM. However, in response to the various recommendations for elimination or reduction in data collection for these categories of individuals, we have reduced the overall number of data elements and made the reporting of some data elements for certain categories of persons optional. (The State must report all data elements on all persons receiving assistance.) In addition, with the change in the definition of assistance, the burden associated with this reporting may be reduced because it will not generally apply to programs that have traditionally fallen outside the welfare reporting system.

Again, as we explained in the preamble to the NPRM, we believe that information on these additional categories of persons is critical to understanding the effects of TANF on families. For example, we need information on the parents and caretaker relatives (i.e., any adult relatives living in the household and caring for minor children, but not themselves receiving assistance) to understand the circumstances that exist in child-only cases. We need information on minor siblings to understand the impact of ''family cap'' provisions. We also need information on other persons whose income or resources are considered in order to understand the paths by which families avoid dependency. We believe that we have addressed commenters' recommendations for reduced reporting by making many of the data elements optional for these categories of families.

We have added paragraph (e) to § 265.3 to reflect this decision on reporting for other individuals. The Instructions to each Data Report indicate which data elements are optional for which category of person(s).

Comment: In the NPRM, we had proposed that information on the noncustodial parent (NCP) be reported as a part of a family receiving TANF assistance since, under the statute, States may serve NCPs only on that basis. We received a number of comments objecting to, or requesting clarification of, these reporting requirements.

Some States agreed that data should be collected on NCPs; others argued that we lacked statutory authority for this proposal. Some commenters objected to considering NCPs as a part of an assistance unit on the grounds that it complicates both data collection and the State's definition of ''eligible family.''

They asked for clarification of whether reporting information on the NCP meant that the NCP was a member of the TANF-eligible family and if the reporting requirements meant that the family then became a two-parent family. They also asked for clarification of how reporting on NCPs would affect the family for the purpose of meeting work participation or time-limit requirements.

Some States recommended that information on the NCP be reported separately (not as a part of a TANF family); others recommended that we require only an annual aggregated report, e.g., a report containing the number of NCPs who received assistance and the amount of funds expended annually on their assistance.

Response: We believe some clarification of this proposal is needed.

First, regarding the matter of our legal authority, our interpretation of the statute is that TANF ''assistance'' may be provided only to ''eligible families.'' Therefore, States may provide assistance to NCPs only when they are a member of an eligible family. In other words, in order to receive assistance or MOE funded services, the NCP must be associated with an eligible family. We also have the authority to define ''family'' for reporting purposes pursuant to section 411(a)(7) of the Act.

Second, we have added a definition of a NCP in § 260.30. This definition clarifies that the NCP is a parent of a minor child receiving assistance who lives in the State and who does not live in the same household as the child. We adopted this definition based on section 411(a)(4) of the Act, which requires reporting on NCPs ''living in the State'' and to distinguish the NCP from a parent who is living in the household.

If an NCP is related to children in more than one TANF family, the State may decide for which ''eligible family'' the NCP data will be reported. A State should not report information on the NCP in relation to more than one family.

Third, we have provided further clarification regarding NCPs by adding a new paragraph (f) in § 265.3 to specify the three circumstances when a State must report information on a NCP:

- If the NCP is receiving assistance as defined in § 260.31;
- If the NCP is participating in work activities as defined in section 407(d) of the Act; or
- If the NCP has been designated by the State as a member of a family receiving TANF assistance.

See § 265.3 for further discussion of this provision.

Finally, we discuss the questions regarding how the NCP is counted for work participation rate and time-limit requirements in §§ 261.24 (work participation) and 264.1 (time limits).

Section 265.3—What Reports Must the State File on a Quarterly Basis? (§ 275.3 of the NPRM)

In the NPRM, we proposed the specific data collection and reporting requirements for the TANF program and, under certain circumstances, the TANF–MOE (separate State MOE) programs. We proposed a quarterly TANF Data Report, a quarterly TANF–MOE Data Report, and a quarterly TANF Financial Report, or, as applicable, a Territorial Financial Report. We also proposed an annual addendum to the fourth quarter TANF Financial Report that would collect information on the TANF program, such as the State's definition of work activities, and descriptive information on the State's MOE program(s) (by cross-reference to § 273.7).

The NPRM included 11 data-related Appendices. Six of the Appendices contained all of the proposed disaggregated and aggregated data elements and the instructions for filing these data. The proposed reporting requirements applied to families receiving State-funded assistance and families no longer receiving such assistance in both TANF and separate State programs. The other Appendices contained the TANF Financial Report and instructions, sampling specifications, and three statutory reference tables.

As noted in the earlier discussion of comments on the extent of the reporting requirements, we received a mixed reaction to the proposed data collection requirements. A number of commenters supported our general approach and recommended the addition of new data elements, including, for example, requiring States to match participant data with Unemployment Insurance (UI) data in order to obtain better information on persons no longer receiving assistance. Many States and commenters representing State interests,

however, objected to a large number of the proposed requirements.

Commenters frequently provided extensive and detailed comments, including charts and tables as attachments to their letters commenting, in a parallel manner, on each of the data elements in the Appendices. We found these comments, particularly those raising programmatic or administrative concerns, very helpful.

Summary of Changes Made in This Section of the Final Rule

We have made several substantive changes in this section of rule and in the data elements in the appropriate Appendices. In making our decisions, we followed the general principles noted earlier, i.e., to collect the information required by statute; to carry out our responsibilities under the statute to assure accountability and measure success; and to obtain data that are comparable across States and over time.

First, we carefully considered each data element in each data collection instrument. Where possible, we have eliminated, reduced the number of, or simplified the data elements or the break-outs within the data elements. In a few instances, we have modified the data collection instrument to expand a data element. (See the revised TANF Data Report and the SSP–MOE Data Report in Appendices A through C and E through G.) We discuss some of the specific changes and deletions below.

Second, we eliminated the requirement for an Addendum to the fourth quarter TANF Financial Report, but moved the content of the proposed Addendum, in paragraph (c)(2) and (c)(3), to § 265.9—the annual reporting requirements.

Third, we accepted commenters' recommendations to revise our approach to and reduce the burden of the TANF–MOE (now the SSP–MOE) Data Report. We have:

- Reduced the types of separate State programs covered by that report (This was an indirect effect of the changes to the definition of assistance, at § 260.31);
- Retained the requirement for reporting both disaggregated and aggregate data on recipients of assistance under separate State programs under certain circumstances, but have reduced the number of data elements that must be reported;
- Deleted the provision that would have denied a State consideration for a reduction in the penalty for failing to meet the work participation requirements unless data on separate State programs was submitted; and
- Reduced the SSP–MOE data a State must file if it wishes to receive a high performance bonus (by eliminating the requirement to submit section two of the SSP–MOE Data Report, on closed cases). See § 265.3(d)(1).

Fourth, based on the general principles above, we have determined that a State has the option to NOT report some data elements for some individuals in the family. We specify these optional data elements in the instructions to the TANF Data Report and the SSP–MOE Data Report. We have added a new paragraph (e) to § 265.3 to reflect this provision.

Fifth, we added new paragraph (f) to specify the three circumstances when a State must report on a NCP. The three circumstances are:

- When the NCP receives assistance as defined in § 260.31;
- When the NCP participates in work activities, as defined in section 407(d) of the Act, that are funded with Federal TANF funds or State MOE funds; this would include work activities that fall under the definition of ''assistance'' and those that do not; or
- When the State has designated the NCP as a member of a family receiving assistance.

This latter circumstance addresses those States that wish to consider the NCP a member of a family receiving assistance in order to assist the NCP by providing services or other activities that do not meet the definition of assistance in § 260.31 or the definition of work activities in § 261.30. We have included a requirement for reporting on these NCPs in order to obtain data for policy, oversight, and other purposes.

Where a State counts the NCP in calculating the work participation rate, it should reflect its treatment of the family in its coding of three data elements: ''Type of Family for Work Participation Rate Purposes, Work Participation Status, and Work Activities.'' We have added an element in the data instrument to capture such information about NCPs.

Specific Changes Made in the Data Reports

The following changes are subject to review and approval under the Paperwork Reduction Act.

(a) TANF Data Report—Section One—Disaggregated Data on Families Receiving Assistance (Appendix A)

(1) We reduced the number of data elements that must be reported from 106 in the NPRM to 76 in the final rule. Some of the deleted data elements include:

- Four data elements related to child care—Amount of Child Care Disregard, Type of Child Care, Total Monthly Cost of Child Care, and Total Monthly Hours of Child Care Provided During the Reporting Month; and
- Five types of Assistance Provided—Education, Employment Services, Work Subsidies, Other Supportive Services, and Contributions to an Individual Development Account.

Regarding the deleted data elements on child care, in the NPRM, we proposed to collect information required by the Child Care and Development Block Grant Program (CCDBG). Upon further analysis of that statute, we find that the data that must be collected and reported are aggregate data on the number of child care disregards funded by type of child care service provider. Thus, we have made the revised collection of this information a part of the annual report in § 265.9(b)(4).

(2) We further reduced the reporting burden by revising several data elements. For example, in the data element on Sanctions, we deleted the proposed requirement for expenditure data and, in the final rule, ask for a yes/no response. We also collapsed data elements such as the Number of Months Countable Toward Federal Time Limits.

(3) We clarified the definition of ''new applicant'' and clarified reporting on waivers and noncustodial parents.

(4) We provided flexibility in permitting States to report some data elements based either on the reporting month or on the budget month. However, we require the State to be consistent in reporting these data.

In developing the NPRM, we proposed that all data elements be reported based on the ''reporting month.''

However, based on a considerable number of comments and a review of the variation in State practice and State data collection and processing systems, we concluded that, in some cases, information on the budget month would be a good proxy for information on the reporting month. Therefore, the final rule provides that States may report information on five data elements based on either the reporting month or the budget month.

We made this change for data elements that are relatively stable, e.g., amount of Food Stamp assistance and that otherwise might not be reflected in the State data systems. We believe that, as long as States report these data consistently over time, this flexibility in reporting will not compromise the usefulness of the information. We are continuing to require that seven data elements (e.g., amount of assistance) be reported based on the reporting month

because States will have these data elements on that basis.

(5) We simplified or modified certain data elements, e.g., Received Subsidized Housing, Received Food Stamps, Received Subsidized Child Care, Reasons for and Amount of Assistance, Highest Level of Education Attained and Highest Degree, and Citizenship/Alienage.

(6) We revised the data element on Race to comport with the OMB standard for coding multiple race and ethnic information.

(7) We added a new data element to identify families converted to ''child-only'' cases and a new data element to identify a family in which the State provides for the needs of a pregnant woman.

(8) We made technical and editorial changes, e.g., adding coding for some data elements to allow for unknown Social Security Numbers, birth dates, citizenship status, or educational levels; and revised other data elements such as changing the data element on ''Teen Parent'' to ''Parent'' in order to more accurately calculate the two-parent work participation rate.

(9) As noted in our discussion of § 265.2, the instructions also give States the option to not report certain data elements for one or more groups of individuals.

(b) TANF Data Report—Section Two—Disaggregated Data on Closed Cases (Appendix B)

(1) We reduced the number of data elements from 53 in the NPRM to 30 in the final rule, in part by combining several data elements.

(2) We made the same clarifications, modifications, and simplifications in the data elements in this Appendix as we made for the corresponding data elements in Appendix A.

(3) We clarified that States are not expected to track closed cases in order to collect information on families after the family is no longer receiving assistance. States should report the case-record information as of the last month of assistance.

(4) We re-configured the data element on Reasons for Case Closure to add a few break-out categories, partly in response to strong recommendations from commenters. We believe the refinement of these codes will provide better data and significantly increase our understanding of the circumstances of recipients who leave assistance, without increasing the data collection burden.

We understand that many States already collect detailed reasons for case closure, although the information varies across States. Some States are also participating in studies of persons leaving TANF (i.e., ''leavers' '' studies) which will provide information on the circumstances of families after they leave TANF.

In addition, we want to respond more specifically to some commenters' objections to reporting data based on section 411(b) of the Act. (We explained in the NPRM that most of the data elements in Appendix B were based on section 411(b) (annual report to Congress).)

Section 411(b) is specific in requiring information on ''* * * the demographic and financial characteristics of families applying for assistance, families receiving assistance, and families that become ineligible to receive assistance * * *.''

As we said earlier in the preamble discussion to this section, we believe that we have authority to collect data based on section 411(b), and have designed a data collection procedure for closed cases that places minimal burden on States by drawing on the information they have as of the last month the family received assistance. We believe that we have also responded to commenters' concerns by reviewing each data element and reducing by almost one-half the number of data elements in this section of the TANF Data Report.

(c) TANF Data Report—Section Three—Aggregated Data (Appendix C)

We eliminated one data element in this section of the TANF Data Report: Total Number of Minor Child Head-of-Households.

(d) SSP–MOE Data Report—Sections One, Two, and Three—Disaggregated and Aggregated Data (Appendices E, F, and G)

(1) We reduced the total number of data elements in this report from 160 in the NPRM to 108 in the final rule.

(2) Because the data elements in the SSP–MOE Data Report are similar to the data elements in the TANF Data Report, we incorporated into this Report the same clarifications, simplifications, and modifications that we made in the TANF Data Report.

(3) We deleted the proposed requirement that a State must report SSP data if it wants to be considered for a reduction in the penalty for failure to meet work participation requirements.

(4) The final rule narrows the types of separate State MOE programs on which States must report disaggregated and aggregated data. If the State opts to report data on separate State programs, it must report:

- Only on separate State programs for which MOE expenditures are claimed;
- Only on those persons served by separate State programs whose expenditures are claimed as MOE expenditures; and
- Only on separate State programs that provide assistance. (The narrowed definition of assistance at § 260.31 reduces the types of programs subject to reporting.)

(5) We reduced the reporting burden in § 265.3(d)(1)(i) by specifying that, if a State wishes to receive a high performance bonus, it must file only sections one and three of the SSP–MOE Data Report.

Changes Made in the TANF Financial Report (Appendix D)

In the NPRM, we proposed to collect TANF expenditure data in the ACF–196 TANF Financial Report. This reporting form and instructions were in Appendix D. We also proposed an annual addendum to the fourth quarter TANF Financial Report.

As a result of comments received and to clarify some of our policies, we have made several changes in § 265.3(c) and to the ACF–196. One substantive change that we made in response to comments was to delete the requirement that States submit program information as an annual addendum to the TANF Financial Report. These requirements now appear in the annual report described at § 265.9.

We outline the other changes to the ACF–196 TANF Financial Report below:

(1) We have modified the instructions to reflect our clarification about allowable expenditures of carry-over funds and to note the change in SSBG transfer authority (reducing the maximum transfer of 10 percent to 4.25 percent, beginning in FY 2001). This latter change was made by the Transportation Equity Act for the 21st Century, Pub. L. 105–178.

(2) We have added several categories of expenditures on which States must separately report—including transportation (Job Access and other), refundable earned income tax credits, other refundable State and local credits, activities related to purposes three and four of TANF, IDA's, and assistance authorized only on the basis of section 404(a)(2) of the Act. For Other Expenditures (Lines 5d, 6e, and 7), we have asked States to submit footnotes describing what activities are funded under this category.

Also, we have shifted work subsidies from the assistance section of the report to the nonassistance section to reflect our decision to revise the definition of assistance. We include child care and

other supportive services in both sections, and we provide for separate aggregate reporting on transitional services. We have also revised the instructions substantially so that they more clearly identify how States would report particular types of expenditures and they provide some additional guidance on allowable Federal and MOE expenditures.

In general, the additional reporting is designed to give us better information on where States are focusing their resources. We will use this information as part of our strategy to monitor whether expenditures of Federal and States funds are consistent with the purposes of the program and to help identify any policy areas or States that might need further attention. We will also use the data to tell us more about the nature and scope of both TANF programs and separate State programs. State plans and the annual reporting will provide some characteristics information, but the expenditure data are critical for determining where States are focusing their resources. Thus, the data on State spending patterns provide valuable supplemental information about what is happening under welfare reform, and we intend to include summary information from these reports as part of our discussion of State program characteristics in the annual report to Congress.

(3) For State expenditures reported as Administrative Costs in columns (B) and (C), we have changed the language to clarify that the 15-percent administrative cap applies to the cumulative total of (B) and (C) rather than separately to MOE and Separate State Programs.

(4) We have added a statement that States must determine the administrative costs of contract and subcontracts based on the nature or function of the contract.

(5) We have added language to provide that the systems exclusion for tracking and monitoring purposes applies to MOE expenditures as well as the TANF grant. (See prior discussion regarding MOE in the preamble discussion relating to § 263.2.)

The Territorial Financial Report is under development. We are sharing a preliminary version of this Report with the Territories and will be considering their comments before issuing it in final.

Section 265.4—When Are Quarterly Reports Due? (§ 275.4 of the NPRM)

In the NPRM, the language in paragraph (a) of this section reflected the statutory requirement that quarterly data reports are due 45 days after the end of each quarter.

In paragraph (b) of the NPRM, we proposed to give States two options in the timing of the submittal of their TANF–MOE (now SSP–MOE) Data Report.

Paragraph (c) of the NPRM proposed the due dates for the State's initial TANF reports. (Because these are no longer applicable, we have deleted the content of this paragraph from the final rule.)

Comment: Two commenters found it confusing to have ''two due dates for reporting'' in the NPRM. The second due date they referred to was in § 275.8(d). There, we had proposed that we would not impose a penalty for late reporting if a State filed its complete and accurate quarterly report by the end of the quarter immediately following the quarter for which the data were due. (This is a statutory provision found in section 409(a)(2)(B) of the Act.)

Response: For clarity, we have revised the language in paragraphs (a) and (b). With the new language, it is clearer that the statutory due date for the penalty is 45 days after the end of the reporting quarter, but States will not actually incur any penalty liability as long as they submit their reports by the end of the quarter following the reporting quarter.

Although States will incur penalties only if they fail to file their data by the end of the succeeding quarter, we strongly encourage States to submit their reports on the due date. This will provide an opportunity to identify and correct any potential problems or omissions that could otherwise result in a State penalty.

We have made two other changes in this section. First, as noted above, we deleted paragraph (c), as the due dates for the State's initial TANF reports are no longer applicable. Second, we made minor editorial changes in paragraph (b) of the NPRM (regarding timing options for States to submit the SSP–MOE Report) and re-designated it as a new paragraph (c).

Section 265.5—May States Use Sampling? (§ 275.5 of the NPRM)

Most of the comments on this section of the NPRM raised questions about the sampling specifications found in Appendix H of the NPRM.

The statute, in section 411(a)(1)(B)(i), gives States the option of using scientifically acceptable sampling methods to comply with the data collection and reporting requirements of section 411(a). Under section 411(a)(1)(B)(ii), the Secretary must provide the States with case-record sampling specifications and data collection procedures necessary to produce statistically valid estimates of the performance of State TANF programs.

The NPRM at § 275.5(a) specified the option that States have to report data based on sampling or to report data on the entire population (universe) of recipients. In paragraph (a), we also stated that States could use samples to report only disaggregated, not aggregated data. In paragraph (b), we proposed a definition of ''scientifically acceptable sampling method.''

The majority of comments (from more than 25 States and national State-based organizations) urged us to consider greater flexibility in the sampling specifications. In general, they recommended that we:

(1) Eliminate the monthly sample size requirements because they would restrict the State's flexibility provided under the statute;

(2) Allow smaller sample sizes, particularly for smaller States;

(3) Permit States to file some information using sampling and other information using universe reporting; and

(4) Allow States to use alternative sampling methodologies when they can demonstrate that other methods produce equally valid samples.

We disagree with the recommendations to eliminate the monthly sample size requirement but, as discussed below, we have clarified the flexibility States have in designing their sampling plans. We discuss these and other recommendations in the response to comments below.

Comment: Two commenters asked us to confirm that a State can submit universe data if a State does not have enough cases to meet the sample size requirements, e.g., the State does not have 600 two-parent families in its caseload (This was explicitly stated in the instructions to the ETDR, but was not included in the NPRM.)

Response: In the NPRM, we proposed an annual sample size of 600 two-parent families, i.e., an average monthly sample size of 50 two-parent families. We confirm that, if a State has less than 50 two-parent families for a month, the State must report data on all such families.

Comment: In recommending changes to sample sizes, several commenters (i.e., about 10 States) stated that the sample sizes proposed in the NPRM (3,000 annual cases for active cases and 800 annual cases for closed cases for both the TANF and separate State programs) were far in excess of the sample size of 1200 cases that we allowed many States to use under the AFDC-Quality Control (QC) system. The

proposed sample sizes, they believed, would result in a dramatic increase in State data collection workload. For some States, the sample size would equal or exceed the entire caseload.

Commenters also questioned the significance of using the same sample size for large States as for smaller States. Some commenters also objected to the two-parent sample size (600 cases) because two-parent families were a very small percentage of their caseload.

Commenters recommended an overall reduction in sample sizes and/or the use of a finite correction factor that would take into account the size of the caseload in smaller States.

Response: First, in response to the question of the smaller sample size permitted for the AFDC–QC data collection, we believe the differences in these two programs dictate larger sample sizes. The nature of the programs are different and the purpose for which the data are collected is also different.

Under the AFDC program, States had much less flexibility; the major purpose of data collection was focused on determining payment accuracy and charting national trends. Under the TANF program, States have greatly increased flexibility, and data collection is critically important for monitoring and measuring program accountability and program performance.

Second, we agree that a finite population correction factor may be useful, particularly to States with small TANF populations. Thus, we will incorporate this provision in the TANF Sampling Manual.

Third, the recommendations to reduce sample sizes raised more difficult and serious issues. We considered all comments very carefully in evaluating the possible effects of various sample size options. On balance, we are retaining the sample sizes proposed in the NPRM for the reasons discussed below.

In the NPRM (Appendix H, Sampling Specifications), we proposed the following annual minimum required sample sizes:

(1) For families receiving TANF assistance, 3000 families, of which 600 (approximately 25 percent) must be newly approved applicants.

(2) Of the 2400 families that have been receiving TANF assistance, 600 (approximately 25 percent) must be two-parent families.

(3) For families no longer receiving TANF assistance (closed cases), the minimum required sample size is 800 families.

(4) The same sample sizes apply to families receiving assistance and families no longer receiving assistance under separate State programs.

Clearly, reduced sample sizes would increase State flexibility and reduce reporting burden; on the other hand, reduced sample sizes will also reduce the precision of and provide less reliable data for computing State work participation rates.

As we stated in the NPRM, these sample sizes will provide reasonably precise estimates for the overall (i.e., the all-family) and the two-parent work participation rates. The overall rate has a precision of about plus or minus two percentage points at a 95-percent confidence level. The two-parent rate has a precision of about 2.3 percentage points at a 95-percent confidence level. (We could have improved the precision of the two-parent rate to plus or minus two percentage points with an annual sample size of 800 families.) We believe this precision is important to States as the basis for the computation of reliable work participation rates.

In addition, we believe the larger sample sizes are needed to monitor State TANF programs and to enable us to answer key questions of concern to both the Administration and Congress. As we discussed in an earlier section of the preamble, the Secretary is responsible for discerning what is happening at the State level to sub-groups for which we have monitoring responsibility or a major interest, such as child-only cases, sanctioned cases, and immigrants. For example, under a reduced sample size, we would not be able to detect an increase in the percentage of child-only cases until the increase is quite substantial. States could attribute smaller increases to sampling variation.

Furthermore, a smaller sample size hampers our ability to explore the underlying causes of any detected trends. For example, in addition to tracking child-only cases, we might wish to investigate changes in the number of such cases with sanctioned adults in the household. Under the sample sizes proposed in the NPRM, we might be able to study about 150 such families. Using smaller sample sizes, we would be less confident in drawing conclusions based on correspondingly smaller numbers.

We believe that the specific burden and cost of reporting will be different for each State depending on multiple factors. Initial decisions a State must make concern whether to enter the TANF and the SSP–MOE data elements into the State's automated management information system, whether to report these data on a sampling basis, or whether to use a combination of both mechanisms.

For some States, it may be more efficient to automate all data reporting, particularly those States that choose to report universe data. (Currently, 30 States report universe data in their ETDR.) Clearly, as States move to an automated data collection system, the cost and burden of data collection will decline.

For other States, sampling will be the most practicable, efficient, and feasible method. For example, under the sampling specifications in the sampling manual to be issued, the State would select one/twelfth of the minimum annual required sample each month, i.e., approximately 250 cases. (One-twelfth of 3000 is 250.)

Comment: Several commenters also expressed concern that the scope of the proposed data collection was particularly burdensome in light of the changes needed to make State information systems Y2K compliant. They contended that, since States had limited system personnel resources, they could not effectively manage Y2K efforts and major modifications of their systems as a result of final TANF data collection rules at the same time.

Response: Where Y2K problems exist, we suggest that States consider the sampling option in reporting TANF data. (The TANF statute at section 411 provides States with the option of furnishing the disaggregated TANF data via sample. The NPRM provided sampling specifications, and we will be issuing a sampling manual providing States with detailed options.)

With respect to Y2K issues, in general, sampling offers both advantages and disadvantages. On the one hand, the use of samples provides better data (i.e., data that are more readily verified) and uses fewer State and Federal resources. On the other hand, sampled data does not allow States or the Department to track individuals over time. It also does not provide the same precise information on population subgroups within a State, such as child-only cases, or allow matching of TANF recipient data with WtW recipient data. If States use a sample, along with the pc-based software we provide for the creation of their transmission files, they will not need to make major system changes while they work on Y2K problems. In this instance, the use of samples has a number of advantages for a State:

(1) It can devote different personnel resources to conducting samples than to working on the Y2K effort.

(2) It can limit its data collection efforts to the cases or individuals in the sample; it would not have to collect new

information from the entire caseload that it may not find useful or relevant.

(3) Sample information may be more current.

(4) Using a sample, it could extract required information that is already in its computer files and manually collect additional information.

(5) After solving its Y2K problems, a State could reassess whether reporting on a sample basis is still in its best interest.

Even though sampling might make it easier for States to implement the new reporting requirements, we recognize that: (1) the effective date of new reporting requirements comes at a particularly inopportune time for States that have not fully resolved their Y2K issues; and (2) the first responsibility of States is to ensure that their automated systems are capable of maintaining benefits to their neediest citizens. Thus, we have added an additional criterion for reasonable cause at § 262.5(b)(1) related to this issue. Under this new provision, States that miss the deadlines for submitting complete and accurate data for the first two quarters of FY 2000 will receive reasonable cause if: (1) they can clearly demonstrate that their failure was attributable to Y2K compliance activities; and (2) they submit the required data by July 1, 2000.

Comment: Several commenters recommended that States be permitted to report some data based on sampling and other data based on universe data. One State described its TANF program as made up of sub-programs; it wanted the option of reporting sample data on some sub-programs and universe data on others.

However, two States said that we should not allow States to ''mix sample and universe reporting.'' They believed that, in order for data to be meaningful for evaluating policy or performance, States had to use a single method of reporting.

Response: We have decided not to allow a State to submit some disaggregated data based on universe reporting and other data based on sampled information because we do not believe it would be feasible. Not only would it be difficult to analyze such data at the Federal level, it would also be impossible to set up a systematic procedure for estimating totals, proportions, averages, etc., across States. Depending on how fractured the State's reporting is, such mixed reporting might even make within-State estimates impossible. Each data element could have its own weight rather than a weight being associated at the case level.

In addition, States were not in agreement as to what data would be reported on a sample basis and what data would be reported on a 100-percent basis.

Comment: Two States asked us to clarify whether a State could propose the use of an alternate sampling plan as long as it met precision requirements. One State asked for directions on how we will approve the State's sampling methodology.

A few commenters recommended that we allow alternative sampling methodologies when a State could demonstrate that other methods produce equally valid samples. One State, for example, described and recommended approval of a longitudinal sampling design and a rolling-panel design currently in use in its State.

Response: In Appendix H of the NPRM, ''Sampling Specifications,'' we proposed to give States a substantial amount of flexibility in designing sampling plans. In general, we proposed that monthly cross-sectional probability samples be used. Within this broad class of sampling designs, States would have considerable flexibility to formulate their plans. We also suggested that simple random sampling or systematic random sampling design would be easier to implement. However, we did not propose to require that States use one of these designs. We will issue a sampling manual that will incorporate Appendix H, reflect the other decisions in the final rule, and describe, in more detail, the sampling specifications and requirements for States that opt to report based on samples of TANF families and families in separate State programs. Under this TANF Sampling Manual, States will be free to propose other designs for our consideration, as long as their designs reflect cross-sectional monthly probability sampling. We need such samples to calculate monthly work participation rates. We will publish the Sampling Manual in the **Federal Register** and submit it for approval under the Paperwork Reduction Act.

We have added a new paragraph (c) to this section to advise States that they will find the sampling specifications and procedures that they must use in the TANF Sampling Manual.

We reject the specific proposal that we allow longitudinal or rolling-panel designs, primarily because these designs are inappropriate for measuring the work participation rate. These types of study designs predict or reveal the composition of future samples. Thus, a State would know its sample cases for future months and could concentrate on boosting the participation rates of sample cases. In this instance, the sample would no longer be representative of the caseload as a whole and a bias in the resulting estimates would occur. As noted earlier in this discussion, States will be free to propose other sample designs as long as the designs meet cross-sectional monthly probability sampling criteria.

Comment: One commenter recommended that we count sample cases as long as States have sufficient data to satisfy core elements for work participation calculations and make other responses optional.

Response: If a State opts to collect and report data for a sample of families receiving TANF assistance, it must report all section 411(a) data on all families selected into the sample. When samples are used to make estimates about the universe from which the sample was selected, each sample unit has valuable information to contribute to the estimate.

Comment: Two commenters objected to item #4 in the sampling specifications, which proposed that States must submit a monthly list of selected sample cases within 10 days of selection. They stated that this requirement was not in the statute, and it was burdensome on States. They recommended that each State keep a record of the cases pulled and provide a reason for dropping cases, if this occurs.

Response: We need the list of selected cases to ensure that we receive data for all selected cases for each reporting month (i.e., that there are no missing cases). Furthermore, States need such a list for control of their sample. This reporting is not a new requirement; States previously provided such a listing under the AFDC–QC system.

Comment: Two commenters questioned a provision in § 272.3(b)(2) of the NPRM, dealing with ''How will we determine if a State is subject to a penalty?'' This paragraph proposed to prohibit a State from revising its sampling frames or program designations for cases retroactively.

Response: In constructing the sample frame for the reporting month, States must include all families that received assistance for the reporting month through the end of the month. Once the State constructs its frame and selects its sample cases, it would be improper to allow it to redesignate a TANF case as a SSP–MOE case, for example. However, if a family in a sample did not receive assistance for the reporting month, the State would use code (2)—''Listed in error'' under the *Disposition* data element.

Comment: One State commented on sampling and stratification concerns

and recommended that States be allowed different sampling schemes based on local conditions, e.g., different sample sizes for the different monthly strata. It claimed that the proposed sampling specifications effectively created a de facto stratification by month. However, it believed that States gained no advantage by the stratification. Its recommendation, it believed, would be especially helpful for States using monthly samples and would help with work flow and data processing issues.

Response: States have considerable flexibility in designing their sampling plans, including designing strata to accommodate local conditions. Within that flexibility, however, the sampling specifications require that a State select about one-twelfth of the minimum annual sample size each month in the fiscal year. (One-twelfth of 3000 is about 250 families.) This minimum size is important in order to ensure an adequate number of families for calculating a monthly work participation rate, as required by statute.

Comment: One commenter stated that there is no reason, in theory or logic, to assume that systemic random sampling is as good or better than simple random sampling. (The sampling specifications in the NPRM suggested that the former was the preferred approach.)

Response: We had suggested systematic random sampling in the NPRM because most States had used that method in selecting samples for the AFDC–QC program. However, we agree that simple random sampling is an acceptable method for selecting the State's TANF and MOE samples. There are a wide variety of methods that could be used to select monthly samples. These methods include both simple random sampling and stratified random sampling.

Comment: One State suggested that we work with States to develop a more workable approach to sampling. For example, they suggested that it might be useful to permit States to oversample in the first two months of the quarter and undersample in the third month, given the strict requirements for the submission of timely data.

Response: Annual participation rates are based on monthly work participation rate samples. To assure a reliable annual work participation rate, we believe that the samples for each month need to be sufficiently large to calculate a reasonably precise monthly estimate. Therefore, we believe it is reasonable to require States to select 1/12th of its sample each month. Months in which a sample is relatively small (i.e., less than 1/12th the annual required sample size), adversely impact the calculation of the annual work participation rate.

Comment: Two commenters appeared to believe (although we had not specified this in the NPRM) that it was permissible to report aggregate data by sampling, and one commenter recommended that we permit this.

Response: The statute at section 411(a)(1)(B) refers to sampling for disaggregated case-record information. It does not provide specific authority to sample aggregate data. Based on the comments, however, we have determined that it would be appropriate to allow sampling for some aggregate nonexpenditure data elements. (Expenditure data is never reported based on sampling.) We have amended paragraph (a) of this section to reflect this option. We also indicate in the instructions to section three of the TANF Data Report (Appendix C) and section three of the SSP–MOE Data Report (Appendix G) those data elements that may be reported based on sampling.

Section 265.6—Must States File Reports Electronically? (§ 275.6 of the NPRM)

The NPRM proposed to require that States file all quarterly reports electronically, based on format specifications that we would provide.

Comment: We received comments from States and national organizations on this provision.

Several commenters expressed general support for the proposed requirement (e.g., saying ''the law does not expressly require electronic reporting, but it will greatly facilitate the analysis of data.''), and most States that commented believed that they had the capacity to report electronically.

However, some expressed concern that circumstances might occur that would prevent a State from reporting electronically in a timely manner or would prevent electronic reporting of some, but not all, data. They recommended that the final rule allow alternative reporting methods and give States the flexibility to report data in whatever format is feasible for them, given the varying levels of automation. In addition, a few States commented that they had problems with the current electronic reporting process and software.

Response: As we said in the NPRM, State representatives supported electronic submission of both recipient and financial data in our pre-NPRM external consultation meetings, and we believe all States have electronic reporting capability (as evidenced by their use of electronic reporting under previous programs). We continue to believe that electronic submission of reports will reduce paperwork and administrative costs, be less expensive and time consuming, and be more efficient for both the States and the Federal government.

We would take into account any catastrophic events or one-time-only circumstances that prevented a State from filing its reports electronically, on a timely basis, but we see no reason to change the final rule or give States general authority to submit reports in a variety of formats.

If a State has initial problems in using the reporting processes and software that we will make available, we are committed to working with the State to resolve these problems.

Comment: A few States pointed out that there was no basis in the statute for the electronic reporting requirement. One State recommended that we delete the provision from the rule and issue instructional material separate from the regulations.

Response: We agree that this requirement does not appear in the statute. However, for the reasons stated above, we believe that it will not be an onerous administrative requirement, is programmatically justified, and is within our authority to regulate. Therefore, we have made no change in § 265.6.

Comment: One commenter asked what efforts are underway to ensure compatibility of the proposed software with the many different systems States are using.

Response: As a part of the ETDR, we provided States with a data reporting system, including file layout and transmission specifications. States with a variety of systems and file structures were able to provide the specified data in the format required. We plan to modify this system to capture the data required in the final rule. States will be able to enter data and create transmission files using our pc-based software. It incorporates a free-form capability to help prevent any future system incompatibility problems.

Section 265.7—How Will We Determine If the State Is Meeting the Quarterly Reporting Requirements? (§ 275.7 of the NPRM)

and

Section 265.8—Under What Circumstances Will We Take Action To Impose a Reporting Penalty for Failure To Submit Quarterly and Annual Reports? (§ 275.8 of the NPRM)

We are discussing these two sections together because, as the commenters

pointed out, the proposed penalty provisions in § 275.8 were tied, in part, to the definition of a ''complete and accurate report'' in § 275.7 of the NPRM.

Section 409(a)(2)(A) of the Act provides that the grant of any State that fails to report data under section 411(a) of the Act within 45 days following the end of the fiscal quarter shall be reduced by four percent. However, in accordance with section 409(a)(2)(B), we would not apply this penalty if the State submits the report by the end of the quarter following the quarter for which the data were due. The statute does not specifically address ''complete and accurate.'' We have used these terms to clarify for States what is required in order for a State to be considered to have filed the report required by section 411(a) of the Act.

How Will We Determine if the State Is Meeting a Reporting Requirement? (§ 275.7 of the NPRM)

In this section of the NPRM, we proposed definitions of what would constitute a ''complete and accurate report'' for disaggregated data reports, aggregated data reports, and financial reports, i.e., the TANF Data Report, the TANF–MOE Data Report (now known as the SSP–MOE Data Report), and the TANF Financial Report (and, as applicable, the Territorial Financial Report). We also proposed to review State data to determine if the data met these standards and to use audits and reviews to verify the accuracy of the data filed. We reminded States of the need to maintain records to support all reports filed.

The proposed definition of ''complete and accurate'' was a stringent one. In simple terms, it meant that States must report all elements for all families (or all sample families) with no arithmetical errors or inconsistencies. We proposed to use this definition as a standard against which we would determine if the State was subject to a reporting penalty. For example, we proposed that the data reported to us must accurately reflect the information available to the State; be free from computational errors and internally consistent; be reported for all elements (e.g., no missing data); be provided for all families (universe data) or for all families selected as a part of the sample; and, where estimates are necessary, reflect reasonable methods used by the State to develop its estimates.

We based these proposals on the critical importance of the data and the multiple purposes that the data would serve—the most important of which is meeting the accountability requirements of the statute. We also referred to problems in obtaining complete and accurate data under previous programs and specifically requested additional comments and suggestions on ways to help assure better data, without creating an undue burden on States.

Most of the comments on this issue came from States and national advocacy organizations. Many said that the definition of ''complete and accurate'' was too restrictive; it would be difficult for States to meet both the ''timely'' and the ''complete and accurate'' requirements; 100 percent error-free reporting was unfair (in view of the severe penalty provision) and unrealistic (based on past experience); and the final rule should allow States both a reasonable margin of error and an opportunity to correct or revise their data in appropriate circumstances.

Under What Conditions Will a State Be Subject to a Reporting Penalty for Failure To Submit Quarterly Reports? (§ 275.8 of the NPRM)

In this section of the NPRM, we described the circumstances and conditions under which we would impose a reporting penalty.

We proposed that we would impose the penalty if a State did not file the reports on a timely basis (a statutory requirement) and if the data in the TANF Data Reports and the TANF Financial Reports were not complete and accurate. We specified, however, that the penalty would not apply in several situations:

(1) It would not apply to the TANF–MOE (now the SSP–MOE) Data Report or to the annual program and performance report; and

(2) It would not apply to all data elements.

For example, for disaggregated data on TANF recipients, it would apply only to the data elements in section 411(a) (other than section 411(a)(1)(A)(xii)) and to the nine data elements necessary to carry out a data collection system. For aggregated data, it would apply only to the data elements in section 411(a), the data elements necessary to carry out a data collection system, and those elements necessary to verify and validate the disaggregated data.

We did not specify each step of the penalty process but referred readers to §§ 272.4 through 272.6 of this chapter (now §§ 262.4 through 262.6 of this chapter).

Many commenters appeared to believe that all data elements in all data and financial reports were subject to a penalty and that one missing data element in any one of these reports would trigger an automatic penalty. Others questioned the Secretary's authority to ''penalize States for data not required in the statute.'' Still others appeared to be unaware of the penalty process, e.g., consideration of reasonable cause, submittal of a State's corrective compliance plan, and reduction or recision of the penalty under certain circumstances.

We agree that the language of the NPRM did not provide for flexibility or exceptions. Our intent in proposing these two sections was to define a performance standard for all reports. In addition to the statutory requirement for a timely report, the definition of ''complete and accurate'' would constitute the standard against which we would review the reports submitted; work with States to resolve problems; and, if necessary, move through the steps of the penalty process.

We envision several steps in an implementation process that would lead to full compliance with the data collection and reporting requirements.

(a) Step one: Initial implementation.

In the final rule, we have reduced the overall reporting requirements, including the number of data elements, and we have delayed the effective date of the rule to give States additional time to adjust to these reporting requirements. Once States begin to transmit the data specified in the final rule, we anticipate a temporary transition period to work out any problems, but we would hold States to the complete and accurate standard. For example, if States report their data within 45 days of the end of the quarter, as the statute requires, we could have the opportunity to resolve any data problems before the end of the quarter. Thus, submittal by the 45-day deadline could reduce the risk of penalty action against the State.

We would continue the same partnership approach with States that is currently in place to resolve problems that have occurred in the transmission of the ETDR data. We are referring here to nonrecurring and nonsystemic problems such as inadvertent errors, missing data elements, occasional technical glitches, and isolated or unintentional errors.

In addition, we would not prohibit a State from re-transmitting corrected elements in their Data or Financial reports, both during or after a reporting period, as long as retransmission does not become a habitual practice.

(b) Step two: On-going operation.

In this step, all States are able to transmit successfully, and most are able to transmit the data generally without errors. We would continue to hold to the complete and accurate standard and

work with States if any problem arises. However, if a State has not filed a complete and accurate TANF Data Report or Financial Report by the end of the quarter, we would give the State an opportunity to dispute our determination that it had failed to file a complete and accurate report and to provide a ''reasonable cause'' explanation. We would also take into consideration the extent of the incompleteness or unreliability of the data. See § 262.5, ''Under what general circumstances will we determine that a State has reasonable cause?''.

(c) Step three: Penalty liability.

We would provide notice to the chief executive officer of the State if the State has not met the complete, accurate, and timely reporting requirements without reasonable cause. We would take this action, for example, following a pattern of serious omissions, chronic delays, failure to respond, or disregard of requirements. See § 262.6, ''What if a State does not demonstrate reasonable cause?''. The State may accept the penalty or enter into a corrective compliance plan.

We do acknowledge, however, that it is inevitable that there will be occasional missing data elements and nonsystemic reporting errors in any stage of a data reporting system, regardless of how long the system has been in operation, whether the State reports universe or sampled data, or how sophisticated or well-operated the system is. We want to emphasize that it is not our intent to penalize a State for these kinds of occasional errors.

Changes Made in the Final Rule

We have made two changes in § 265.7 of the final rule. First, in paragraph (b)(4)(ii), we have deleted the words ''* * * selected in a sample that meets the minimum sample size requirements * * *'' and inserted the words ''* * * meets the specifications and procedures in the TANF Sampling Manual * * *.'' This language clarifies that a State must meet the sampling requirements as specified in the TANF Sampling Manual as a part of the definition of a ''complete and accurate'' data report, not just the minimum sample size requirements.

Second, we have deleted the word ''its'' from the sentences ''The reported data accurately reflects information available to the State in its case-records, financial records, and automated data systems'' in paragraphs (b)(1), (c)(1), and (d)(1). In deleting this word, we intend to emphasize and clarify that we hold the State accountable for the correctness of the data reported to us, not just the data that may be available at the State-level. Some commenters seemed to believe that States should not be held accountable for data that originated from local jurisdictions or from other agencies. Our purpose in making this change is to convey that, regardless of the source, the State is responsible for reporting complete and accurate data.

We have made several changes in § 265.8 of the final rule. First, we have revised the title to better comport with the content of this section. The new title of § 265.8 is ''Under what conditions will we take action to impose a reporting penalty for failing to submit quarterly and annual reports?''

Second, in response to commenters' concerns, we have specified in paragraph (a) of this section the data that are subject to the penalty.

Third, in paragraph (a)(1), in response to requests for greater clarity and specificity, we have deleted the words ''on a timely basis'' and inserted the words of the statute ''within 45 days of the end of the quarter.'' This responds to commenters who were confused by what they described as ''two due dates'' for these reports.

Finally, we have made editorial changes in paragraph (a)(3) for clarity; in paragraph (a)(5) to delete references to the annual program and performance report (which we have eliminated from part 265) and to reflect the changes made in the annual report under § 265.9; in paragraph (d) to clarify that we will not impose the reporting penalty if the State files the quarterly reports or the annual report by the end of the quarter that immediately succeeds the fiscal quarter for which the reports were required; and in paragraph (f) to add a conditional phrase in relation to the application of the penalty.

We did not agree with commenters who recommended that we:

(1) Delete the definition of ''complete and accurate'' in its entirety;

(2) Delete the proposed definition of ''complete and accurate'' and enter into discussions with States to develop standards for complete and accurate reports;

(3) Apply penalties only for the data elements pertaining to the work participation rates;

(4) Accept the State's best effort to meet reporting requirements on a temporary basis and apply no penalty;

(5) Automatically assume all reporting errors are in good faith and forgive them; and

(6) Waive the penalties when a State is in ''substantial compliance'' even though not all data elements are reported. (It was not clear what the commenter meant by ''substantial compliance.'' However, if the missing data elements met the limited conditions for reasonable cause, as specified in § 262.5, the State may provide a ''reasonable cause'' explanation.)

It is important to reiterate that, as we discussed in the preamble for §§ 260.40, 262.5, and 265.5, we have added a reasonable cause criterion at § 262.5(b)(1) that will provide some penalty relief to States that cannot report their first two quarters of TANF data on time due to Y2K compliance activities.

Comment: Several commenters asked for clarification of the penalty provision. They stated it was unclear in the NPRM whether the penalty was four percent per year or four percent per quarter.

Response: Our interpretation of section 409(a)(2) is that the Secretary is to reduce the grant payable to a State by four percent for each quarter that the State does not submit quarterly reports within 45 days of the end of the quarter. The Secretary is to rescind the penalty if a State submits the data by the end of the quarter.

However, there are other provisions of law that also are applicable and that must be applied. Under section 409(c) of the Act, the Secretary may not impose a penalty until after the State has had an opportunity to correct its noncompliance. If a State submits a corrective compliance plan, carries it out, and achieves compliance, the State is not subject to the penalty. If it submits a corrective compliance plan and fails to carry it out or fails to achieve compliance, the Secretary shall assess some or all of the penalty. Therefore, the State has the opportunity to correct its reporting problems, and the Secretary has the flexibility to reduce the potential impact of a penalty, based on progress achieved.

If, for example, a State failed to correct its quarterly reporting noncompliance for a particular quarter, the Secretary could take into account the State's reporting compliance in other quarters and make an appropriate reduction of the penalty. On the other hand, if the State did not make good faith efforts to comply, the Secretary could impose the full four percent penalty. We have revised paragraph (f) to reflect this process.

Secton 265.9—What Information Must the State File Annually? (§ 275.9 of the NPRM)

This section of the NPRM proposed two annual reports: one annual report as an addendum to the fourth quarter TANF Financial Report (or Territorial Financial Report) and one annual program and performance report.

Paragraphs (a) and (b) of the NPRM proposed the information that States must submit in the annual addendum. Paragraph (a) proposed four items of information on the TANF program. Paragraph (b) proposed eight items of information on separate State programs by cross-reference to § 273.7. Appendix D of the NPRM also contained the proposed content of the annual addendum.

Paragraph (c) proposed that States submit an annual program and performance report containing information on the characteristics and achievements of each State's TANF program, including unique features and innovations, for the Secretary's report to Congress.

Summary of Comments on This Section

A number of States and national organizations provided a variety of both general and specific comments and recommendations on the proposed annual addendum and the annual program and performance report. Generally, commenters objected to reporting these data, because, as some believed, we could find most of the TANF program information in the State TANF plan, and this constituted a duplicate reporting burden. Others believed there was no statutory basis for requiring these data, particularly the data on separate State programs. One national organization representing State interests supported reporting the information on separate State programs in paragraph (b) as a substitute for reporting the disaggregated and aggregated data on separate State programs in the SSP–MOE Data Report. In addition, one State suggested that we should gather information on separate State programs not from States but from other sources, as there ''is a wealth of information on separate State programs from private and academic studies.''

We have made several changes in this section of the final rule, primarily in response to comments. We have eliminated the proposed annual program and performance report in paragraph (c) of the NPRM. (See the detailed discussion of this provision following our discussion of the annual reporting requirements as they appear in the final rule.) We summarize the major changes related to the Annual Report and discuss these and other recommendations in greater detail below.

(1) We no longer require the annual report to be submitted as an addendum to the TANF Financial Report, and we dropped the term ''addendum'' to refer to the annual report.

(2) For clarity, we consolidated the annual reporting requirements in this section. This section now includes all but one of the items of information on the TANF program proposed in paragraph (a) of the NPRM and the items of information on the State's MOE program(s) proposed in paragraph (b) of the NPRM by cross-reference to § 273.7.

(3) We deleted one TANF reporting requirement related to child-only cases in paragraph (a)(1) of the NPRM.

(4) We moved the proposed requirement for information on TANF child care disregards from the quarterly TANF Data Report to the Annual Report. (See comments and responses below for further discussion.)

(5) As discussed elsewhere in the preamble, we added new requirements in paragraphs (b)(5) and (b)(6) for reporting on State strategies and procedures for serving victims of domestic violence and on the nature of nonrecurrent, short term benefits provided under the State's TANF program.

(6) We added an annual reporting requirement for information on State displacement procedures in paragraph (b)(7); on State programs and activities directed at the third and fourth purposes of the TANF program in paragraph (b)(8); and, if available, ''the number of individuals who participated in subsidized employment under § 261.30(b) or (c)'' in paragraph (b) (9).

(7) We revised paragraph (c) to clarify that the annual MOE reporting requirements apply to all State programs for which MOE expenditures are claimed, i.e., both those in TANF and in separate State programs.

(8) We added one data element in paragraph (c)(4) to obtain information on State expenditures claimed as MOE under these programs. (See comments and responses below for further discussion.)

(9) We added a new paragraph (d) to specify the two circumstances when we would not require the re-submission of data in the annual report.

(10) We added a new paragraph (e) to provide that, if a State makes a substantive change in certain data elements in paragraphs (b) and (c), it must file a copy of the changed information 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.

(11) We made editorial changes for clarity.

Comment: Several commenters urged that we not require States to submit the annual addendum as a part of the fourth quarter Financial Report. They stated that this provision made the State Comptroller accountable for program data that were outside his or her financial expertise. They were also concerned that a program addendum might interfere with a timely filing of the Financial Report, and thus subject the State to a penalty.

As an alternative, almost all commenters on this section recommended that the information in the annual report be included in the TANF State Plan (if it was not already there) or be submitted as a free-standing report. They based this recommendation on the programmatic nature of the information, its similarity to other State Plan information, and the fact that most of the information was relatively stable over time. They also recommended that, because it was relatively stable, we should require that States submit this information on a one-time only basis and allow States to amend it only if the information changed, rather than requiring its re-submittal every year.

Response: We agree with these recommendations. First, we defer to State concerns about the role and responsibility of the State's Comptroller or Chief Financial Officer and have specified in paragraph (a) that a State may submit the annual report either as a free-standing report or as an addendum to the fourth quarter TANF Data Report.

Second, we have specified in paragraph (d) that if the State has submitted the information required in paragraphs (b) and (c) in the State Plan, it may meet the annual reporting requirements by reference in lieu of re-submission.

Third, in paragraph (d), we further provide that if the information has not changed since the previous annual report, the State may reference this information in lieu of re-submission.

We would point out, however, that not all information in the annual report is relatively stable. At a minimum, for example, States will need to develop annual information on child care disregards required under paragraph (b)(4), on the annual total number of families served for which MOE expenditures are claimed in paragraph (c)(5), and on State and MOE expenditures in each TANF–MOE and SSP–MOE program in paragraph (c)(4). The annual report is due at the same time as the fourth quarter TANF Data Report, i.e., November 15 of each year.

Comment: Several commenters urged that we assure that the information in the annual report is current. They were concerned that changes could occur in State definitions of services or program eligibility—information that was important to them for monitoring

purposes—that would not be known until the following annual report, perhaps as much as eleven months later.

Response: We agree and have added new paragraph (e) to this section to require that, if a State makes a substantive change in certain information required as a part of its annual report, 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 only to the information in paragraphs (b)(1), (b)(2), (b)(3), (c)(1), (c)(2), (c)(3), (c)(6), (c)(7), and (c)(8).

Comment: As we discussed in the earlier preamble section entitled, ''Child-only Cases,'' a number of commenters objected to reporting the information on certain families excluded from the State's definition of families receiving assistance as proposed in § 275.9(a)(1), i.e., the number of cases excluded from the calculations of the overall participation rate, the two-parent work participation rate, and the time-limit calculations. They believed we had created a time-consuming, costly reporting burden ''to prevent something that HHS has no indication that is actually occurring.'' They also cited a number of legitimate reasons for child-only cases.

Response: We have deleted this provision. However, we will be collecting case-record information on families receiving assistance that will help inform us about the number and nature of child-only cases, as well as new conversions to child-only cases.

Comment: Commenters strongly objected to four items of disaggregated data in the NPRM on child care services.

Response: Our explanation in the NPRM was that this was a requirement of the Child Care and Development Block Grant (CCDBG) statute and that TANF reporting provided the most cost-effective way to collect these data.

However, we reviewed the CCDBG statute and determined that this was not a disaggregated data collection requirement, but an annual aggregate reporting requirement. Therefore, we have removed these data elements from the TANF Data Report and have added this reporting requirement in paragraph (b)(4), to more closely follow the specific provisions of the CCDBG statute. The information in paragraph (b)(4) that States will report parallels the annual information that the State Child Care agency will report in ACF–800, State-level Data Standards, CCIS Technical Bulletin #1, revised January 23, 1998.

Comment: We received many comments on § 273.7 of the NPRM, ''How will we determine State expenditures?'' Because we have moved the annual reporting requirements on State MOE program(s), proposed in § 273.7 to § 265.9(c) of the final rule, we are addressing these comments here.

Some commenters generally supported the collection of these data. Other commenters strongly urged that we require additional data, particularly on expenditures. Others objected to the proposed data collection on the grounds that MOE expenditures are a financial commitment on the part of a State, not a program commitment. They alleged that the program information we proposed to collect went beyond the requirements in the statute. Alternatively, they recommended that only financial information on MOE programs be collected. Still other commenters objected to the reporting burden of specific provisions in § 273.7.

Response: In § 273.7 of the NPRM, we proposed that the State must submit eight items of information on its separate State MOE program(s). This information included descriptive program information, a definition of work activities under separate State programs, eligibility criteria, certain expenditure information, and a certification that families served under separate State programs met the State's criteria for ''eligible families.''

The preamble to the NPRM explained that these data, in addition to the data in the TANF Financial Report, were necessary to our ability to monitor whether State expenditures met the definition of ''qualified expenditures.'' In addition, Congress recognized that State contributions would play an important role in making welfare reform a success. The NPRM and this final rule reflect widespread public interest in learning about the ways in which States help move families toward economic self-support and self-sufficiency. Given this interest, we intend to publish information on our web site regarding State MOE programs.

We disagree that the MOE requirements represent only a financial commitment. We continue to believe that minimal program and expenditure information on State MOE programs is necessary for assessment and monitoring purposes.

Comment: Several commenters requested that we clarify whether the annual reporting requirements on MOE programs apply to only those under the TANF program, to separate State programs, or to both.

Response: We have revised the language in paragraph (c) to clarify that the annual reporting requirements in paragraph (c) apply to any MOE program for which the State claims MOE expenditures.

We also want to clarify that the State must report the information in paragraph (c) only to the extent that the information is applicable to expenditures claimed as MOE. For example, the State need not report on the total number of persons served under an MOE program; only on the number of persons served for whom MOE expenditures are claimed. We believe we have made this clear throughout paragraph (c).

Comment: Two commenters provided detailed analysis and recommendations for additional MOE expenditure data. They believed that, unless the Department obtained these data, we would not be able to determine whether States met MOE requirements, including whether State expenditures claimed for MOE purposes met the ''new spending'' requirement in section 409(a)(7)(B)(II) of the Act. (These provisions limit countable expenditures for certain State or local programs to spending above FY 1995 levels.)

They recommended that States be required to report:

(1) Expenditure data on MOE programs under both the TANF program and separate State programs;

(2) Total State expenditures and total expenditures claimed as MOE under each program for the current year;

(3) Total 1995 expenditures for all programs in which State spending is claimed toward the MOE requirement;

(4) 1995 State spending on eligible families; and

(5) 1995 State expenditures used to draw down Federal AFDC-related matching funds.

Response: We reviewed these recommendations, and we have accepted two of the recommendations as follows:

(1) As noted above, we have revised paragraph (c) to clarify that the annual report requirements apply to both MOE programs under TANF and separate State programs.

(2) We have added a new paragraph (c)(4) to require, for each MOE program, both the total annual State expenditures and total annual State expenditures claimed as MOE.

We agree, in part, with the third recommendation. The NPRM proposed to collect FY 1995 expenditures for each program/activity not authorized and allowable (under title IV–A) as of August 21, 1996. We have retained this provision in paragraph (c)(8). We intend that this provision collect expenditure data on all MOE programs not

previously authorized and allowable under section 403 of prior law and have added that language to paragraph (c)(8).

We disagree, however, with the recommendation to collect FY 1995 expenditure data on all FY 1995 programs. FY 1995 data on programs funded under section 403 are only needed to the extent that the expenditures in the program are claimed for MOE and the ''new spending'' requirements apply.

We also did not accept recommendations four and five. For a full discussion of the issues raised by these recommendations, please refer to the preamble discussion related to § 263.5.

While not accepting all of these recommendations, we have significantly strengthened the reporting on MOE programs under this final rule. The MOE requirements in TANF are central to the success of welfare reform. Under the final rule, we believe that we will be in a good position to ensure that States maintain the investments in needy families that Congress intended.

Comment: One commenter recommended that we allow States to report either the average monthly number or the total number of persons served under State MOE program(s), given the variation in how States collect such information.

Response: We agree and have amended paragraph (c)(5) to reflect this option. The commenter was also concerned that the numbers reported would not be an unduplicated count of persons served. We believe that a requirement for an unduplicated count of persons served for purposes of this report would be unduly burdensome on States and have chosen not to require it.

Comment: Several commenters questioned the need for the certification proposed in § 273.7(b)(8) on the grounds that it was either unnecessary or inappropriate. The NPRM required a certification that the families served under MOE programs met the State's criteria for eligible families.

Response: We disagree that a certification is unnecessary. Under many Federal programs, it is standard procedure to require such a certification, particularly for critical program information needed for accountability and for expenditure data.

We agree, however, that the certification as proposed in paragraph (b)(8) was not intended to apply to all families served under MOE programs but only to those families for which the State is claiming MOE expenditures. We have made this change in paragraph (c)(9) of this section.

We have also accepted the following suggestions for editorial clarity recommended by commenters:

- The description of work activities in paragraph (c)(3) must be reported only if applicable to a State's MOE programs. (Some commenters appeared to believe that this reporting requirement meant that the State must offer work activities as a part of their MOE programs.)

Please note that paragraph (c)(3) is the only requirement in § 265.9(c) that applies only to separate State MOE programs. That is because we ask for a description of the work activities under the MOE program(s) in TANF in paragraph (b)(1).

- We deleted paragraph (a) as it appeared in § 273.7 of the NPRM. Paragraph (a) duplicated the requirement that States submit a quarterly TANF Financial Report in § 265.3(c).

Specific Comments on the Proposed Annual Program and Performance Report

Under section 411(b) of the Act, the Secretary is required to submit an annual report to Congress six months after the end of fiscal year 1997 and every year thereafter. The report is to describe whether the States are meeting the work participation rates; the objectives of increasing employment and earnings of needy families as increasing child support collections and decreasing out-of-wedlock pregnancies and child poverty; the demographic and financial characteristics of families applying for assistance, families receiving assistance, and families that became ineligible to receive assistance; the characteristics of each State program funded under this part; and the trends in employment and earnings of needy families with minor children living at home.

In the NPRM, we proposed that States supplement the information that we would obtain through the TANF Data Reports and TANF Financial Reports by providing information in an annual program and performance report. We would include that information in the Department's annual report to Congress on the TANF program.

We proposed that States would describe the characteristics and achievements of each State program; the design and operation of the program; the services, benefits, and assistance provided; and the extent to which the State has met its goals and objectives for the program. We also proposed that States could include additional materials on unique features of their programs, accomplishments and innovations they wished to highlight, or other information appropriate to the report to Congress.

Comment: Without exception, all who commented on this section strongly objected to this requirement. They alleged that we lacked statutory authority for the proposed report and inappropriately shifted the burden of the Secretary's report to States. States also believed that they were also providing much of this information in State plans or that we could obtain it by more efficient and less costly means, e.g., we could conduct national sampling studies in cooperation with the States.

Response: In preparing the NPRM, we were cognizant of the data that we would obtain from the TANF Data and Financial Reports, as well as other sources. We found that State plans varied in the amount of information they contained, and we did not believe we could rely on them as a source of information for the annual report to Congress. We believed that other State and national research and evaluation studies might provide some, but not all, of the information specified in the statute.

We have accepted the recommendation to delete this provision. We will also continue to consider and evaluate multiple sources of data in preparing the report to Congress; for example, we expect to compile information on program characteristics from State plans. If we identify substantive weaknesses in the data we have available through this approach, we will assess our options. We appreciate the offer from States to work together to collect this information in the most efficient way possible.

Additional Reporting Requirements

The discussion above relates to the information now included in the annual report based on the provisions of the NPRM. Following our review of comments and consideration of policy issues that arose in the development of the final rule, we have added five new reporting requirements in § 265.9. While we dropped our proposal for a separate annual program and performance report, we still need information on key aspects of State programs in order to prepare the annual report to Congress. To the maximum extent possible, we will draw upon data available through the State plans and other reports submitted by States.

(1) Family Violence Option

If a 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, the State must provide: (1) A description of the strategies and procedures in place to ensure that victims of domestic violence receive appropriate alternative services, and (2) an aggregate figure for the total number of good cause waivers granted.

This new reporting requirement in paragraph (b)(5) of this section will tell us and other interested parties about the activities States are carrying out to ensure that individuals granted waivers receive appropriate attention from TANF staff, access to services, and appropriate consideration of their safety issues. In addition, at §§ 260.54, 260.58, and 260.59, we have specified that a State may receive special penalty consideration under these regulatory provisions if it submits this information.

(2) Nature of Nonrecurrent, Short-Term Benefits

In paragraph (b)(6) of this section, we are asking States to provide a description of the nonrecurrent, short-term benefits they are providing, including:

- The eligibility criteria for these benefits (together with any restrictions on the amount, duration, or frequency of payments);
- Any policies they have instituted that limit such payments to families eligible for assistance or that have the effect of delaying or suspending eligibility for assistance; and
- Any procedures or activities developed under the TANF program to ensure that individuals diverted from TANF assistance receive appropriate information about, referrals to, and access to Medicaid, food stamps, and other programs that provide benefits that could help them successfully transition to work.

To the extent that a State provides the required information, either in the State plan or in the annual report, it would not have to duplicate this information.

As discussed earlier in the preamble, we strongly believe that effective procedures to ensure that diverted individuals access Medicaid, food stamps, or other programs are critical to the success of TANF programs in achieving lasting employment for the families they serve. In addition, such procedures might help States avoid compliance and legal problems in other programs. Given the importance of this issue, the additional information on State practices that we are requiring in the annual report will be extremely helpful in assuring the role TANF agencies are playing with individuals receiving diversion benefits.

For more detailed information, see our discussion on ''Nonrecurrent, short-term benefits'' at § 260.31.

(3) Displacement Procedures

We have added a new reporting requirement in paragraph (b)(7) of this section. Under this provision, each State must include a description of the grievance procedures that are in place in the State to resolve complaints that it receives about displacement.

Each State must create displacement procedures under section 407(f) of the Act. This provision and the related provision at section 403(a)(5)(J) of the Act (which applies to the WtW program) reflects longstanding concern among unions, labor groups, and others about the possibility that welfare recipients being placed at work sites could displace other workers from their jobs. States are also concerned about displacement because of its potential negative effect on their labor force and the long-term success of their TANF programs. Given these multiple concerns, we believe it is important that we monitor State activity in this area. For further discussion, see the preamble discussion on ''Recipient and Workplace Protections.''

(4) Activities Directed at Other Purposes of the Act

It is clear from the statement of findings in section 101 of PRWORA, the stated TANF goals at § 260.20, the preamble discussions on allowable uses of Federal and MOE funds, and activities underway outside the scope of these rules that the TANF legislation recognizes out-of-wedlock pregnancy prevention and family formation as critical components of welfare reform; and, subject to some general restrictions, State may spend Federal TANF and State MOE dollars on such efforts.

Because of the significance of this issue, in paragraph (b)(8), we are asking States to include a description of the activities that they provide under their TANF program to address both these purposes. (We are also asking States annually to provide a break-out of their expenditures on these activities in the TANF Financial Report.)

(5) Number of Individuals in Subsidized Employment

Given our more narrow definition of assistance, we will not be collecting disaggregated information from States on the number of individuals who have participated in subsidized employment under § 261.30(b) or (c). In paragraph (b)(9), we are asking States to estimate this information as an annual aggregate number. We believe this information is highly relevant to understanding the efforts State are making to move individuals, particularly hard-to-place individuals, into employment and accomplishing the second goal of the TANF program.

Section 265.10—When Are Annual Reports Due? (§ 275.10 of the NPRM)

This section of the NPRM proposed due dates for the annual addendum and the annual program and performance report. We received no substantive comments on this section.

In light of the decision to delete the annual program and performance report in § 265,9, we have deleted paragraph (b) of this section as it appeared in the NPRM. We have revised the language of this section to specify that the annual report is due at the same time as the fourth quarter TANF Data Report, i e., November 15 of each year.

XI. Regulatory Impact Analyses

A. Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This rulemaking implements statutory authority based on broad consultation and coordination. It reflects our response to comments received both on the burden estimates for the proposed data collection and on the NPRM that we issued on November 20, 1997.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. As described elsewhere in the preamble, ACF consulted with State and local officials and their representative organizations as well as a broad range of advocacy groups, researchers and others to obtain their views prior to the publication of the NPRM.

We also considered comments received in response to the NPRM and had a small number of meetings with major national organizations that asked for the opportunity to present their comments in person. We respond to the comments that we received in the **SUPPLEMENTARY INFORMATION** section of the preamble and in the discussions of individual regulatory provisions.

To a considerable degree, these rules reflect the comments that we received in response to the NPRM. They also reflect the intent of PRWORA to achieve a balance between granting States the flexibility they need to develop and operate effective and responsive

programs and ensuring that they meet the objectives of the statute. Under the new law, State flexibility is achieved by converting the welfare program into a block grant and limiting Federal rules; ensuring that program goals are accomplished is achieved through a number of penalty and bonus provisions and detailed data collection. The limited scope of this regulation is also consistent with Administration policy, as articulated in Executive Order 12866 and its Regulatory Reinvention initiatives. At the same time, we have created a sufficient regulatory structure to enable enforcement of key statutory requirements.

We support State flexibility in numerous ways—such as by exercising regulatory restraint; giving States the ability to define key program terms; and clarifying that States have the ability to continue their welfare reform demonstrations, serve victims of domestic violence and noncustodial parents, use State funds to provide assistance to certain nonqualified immigrants, provide supports to working families, and operate separate State programs that are not subject to all the TANF requirements.

We support the achievement of program goals by ensuring that we capture key information on what is happening under the State TANF programs and maintaining the integrity of the work and other penalty provisions. We take care, in provisions such as the MOE penalty provisions, sanction penalty provisions, and caseload reduction factor approval process, to protect against negative impacts on needy families.

One of our key goals in developing the penalty rules was to ensure State performance in all key areas provided under statute, including work participation, time limits, State maintenance-of-effort, proper use of Federal TANF funds, and data reporting. The law specified that we should enforce State actions in these areas and also specified the penalty for each failure. Through the ''reasonable cause'' and ''corrective compliance'' provisions in the rules we give some consideration to special circumstances within a State to help ensure that neither the State nor needy families within the State will be unfairly penalized for circumstances beyond their control.

In the work and penalty areas, this rulemaking provides information to the States that will help them understand our specific expectations and take the steps necessary to avoid penalties. These rules may ultimately affect the number and size of penalties that are imposed on States, but the basic expectations on States are statutory.

The financial impacts of these rules should be minimal because of the fixed level of funding provided through the block grant. A State's Federal grant could be affected by the penalty decisions made under the law and these rules, and State expenditures on needy families could be affected indirectly by the rules on caseload reduction. (That is, as the result of caseload reduction, a State might meet the required participation rates and expend State funds at the 75-percent MOE level rather than the 80-percent level.) Otherwise, we do not believe that the rulemaking will affect the overall level of funding or expenditures. However, it could have minor impacts on the nature and distribution of such expenditures.

In the area of data collection, the statutory requirements are specific—especially with respect to case-record or disaggregated data. These rules also include data reporting with respect to program expenditures and characteristics and, under certain circumstances, disaggregated and aggregated case-record information on SSP cases. These data collection requirements help ensure that States continue to contribute meaningful amounts of State dollars to programs that assist needy families, monies go for the intended purposes, and the financial integrity of the program is maintained.

We have retained SSP–MOE data collection in order to assess the overall impact of the program and enable us to determine whether the creation of separate State programs could undermine the objectives of the Act. However, consistent with some of the programmatic changes we have made, we have reduced the amount of case-record data we include in this SSP–MOE data collection and (in changing the definition of assistance) have narrowed the types of separate State programs for which States must provide case-record reporting.

The impacts of these rules on needy individuals and families will depend on the choices that a State makes in implementing the new law. Our data collection should enable tracking of these effects over time and across States. Overall, our assessment of these rules indicates that they represent the least burdensome approach consistent with the regulatory objectives.

Based on the comments that we received both on the data collection burden and the NPRM, we reassessed some of our proposed policies. We have identified an approach to certain issues that is less burdensome than we initially proposed, but that is still consistent with our regulatory objectives.

This is a significant regulatory action under section (3)(f)(1) of Executive Order 12866 and, therefore, these final rules have been reviewed by the Office of Management and Budget in accordance with that Order. This rule also has been determined to be a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996.

We have estimated the annualized Paperwork Reduction Act costs to be approximately $30 million, as indicated in section D below, and the penalty costs to be approximately $50 million, beginning in FY 2001, as reflected in the Administration's budget.

These final rules implement the new welfare reform block grant program, the Temporary Assistance for Needy Families program. The legislation and these rules reflect new Federal, State, and Tribal relationships in the administration of welfare programs; a new focus on moving recipients into work; and a new emphasis on program information, measurement, and performance. These rules also strengthen State efforts to develop creative and diverse responses to help recipients become self-sufficient; provide recipients with child care, transportation, and other supportive services they need as they move from welfare to work; and address the many factors that contribute to poverty and dependency.

We believe these objectives are reflected in these final rules and that the benefits to families and children, as well as to States, far outweigh the costs, as reflected in the preamble sections that address the substantive provisions of this rule.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, the Secretary has determined that the benefits of these regulations justify the costs. The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in the Act to include small businesses, small nonprofit organizations, and small governmental entities. This rule will affect primarily the 50 States, the District of Columbia,

and certain Territories. Therefore, the Secretary certifies that this rule will not have a significant impact on small entities.

C. Assessment of the Impact on Family Well-Being

We certify that we have made an assessment of this rule's impact on the well-being of families, as required under section 654 of The Treasury and General Government Appropriations Act of 1999. The purpose of the TANF program is to strengthen the economic and social stability of families, in part by supporting the formation and maintenance of two-parent families and reducing out-of-wedlock child-bearing. As required by statute, this rule gives flexibility to States to design programs that can best serve this purpose.

D. Paperwork Reduction Act

This rule contains information collection requirements that have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA). Under this Act, no persons are required to respond to a collection of information unless it displays a valid OMB control number. If you have any comments on these information collection requirements, please submit them to OMB within 30 days. The address is: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street N.W., Washington, D.C. 20503, Attn: ACF/DHHS Desk Officer. The public will have an opportunity to provide comments before OMB makes a final decision.

This final rule incorporates our response to comments regarding the reporting burden that we received in response to the NPRM and the Paperwork Notice we published November 27, 1997. It requires States to submit three quarterly reports and one annual report. In addition, States must provide documentation in support of or related to caseload reduction credit, the reasonable cause/corrective compliance process, the Governor's certification on State waiver programs, and the domestic violence good cause waiver redetermination process.

We are publishing in this issue of the **Federal Register** the quarterly data reports and instructions (including the specific data elements); the quarterly financial report and instructions; and two reporting forms: the Annual Report on State Maintenance-of-Effort Programs and instructions (a part of the annual report information specified in § 265.9(c)) and the Caseload Reduction Report and instructions. We discussed the burden of the content of the latter two reporting forms in the NPRM, but we are publishing the report forms themselves to facilitate compliance.

Quarterly Data and Financial Reports

The three quarterly reports required are the TANF Data Report (Appendices A through C), the SSP–MOE Data Report (Appendices E through G), and the TANF Financial Report (Appendix D) (or, as applicable, the Territorial Financial Report). The TANF Data Report and SSP–MOE Data Report consist of three sections each. Two of the three sections of each Data Report contain disaggregated data elements, and one section of each Data Report contains aggregated data elements.

We need this information collection to meet the requirements of section 411(a) and to implement other sections of the Act, including sections 407 (work participation requirements), 409 (penalties), and 413 (annual rankings).

In the final rule, we have significantly reduced the burden on States of collecting case-record information on current recipients and closed cases. As discussed in the preamble section regarding part 265, we accepted many of the commenters' recommendations to reduce or eliminate burden. For example, we reduced the number of data elements in each Data Report; clarified that States are not required to track closed cases but report only data from the month of closure; and reduced the type of SSP–MOE programs subject to case-record reporting under the revised definition of assistance. At the same time, we also modified, revised, or expanded a very few data elements for clarity or specificity, e.g., adding break-out items on case closure. In deciding which changes to make, we focused on the statutory requirements and the importance of the data in informing us about what was happening to needy families under TANF.

States are required to report MOE expenditure data on the TANF Financial Report; case-record reporting in the SSP–MOE Data Report is optional. However, if a State claims MOE expenditures under a separate State program and wishes to receive a high performance bonus or qualify for caseload reduction credit, it must file disaggregated and aggregated information on a separate State program(s) that is similar to the data reported for the TANF program.

In response to comments and as a consequence of our more narrow definition of ''assistance,'' we have reduced the number of data elements in the SSP–MOE Data Report and the number of TANF and separate State programs that are covered by the SSP–MOE Data Report. (See Appendices E through G for the data elements.)

The TANF Financial Report consists of one form. (See Appendix D.) We need this report to meet the requirements of sections 405(c)(2), 411(a)(2), 411(a)(3), and 411(a)(5) and to carry out our other financial management and oversight responsibilities. These responsibilities include providing information that could be used in determining whether States are subject to penalties under section 409(a)(1), 409(a)(3), 409(a)(7), 409(a)(9), or 409(a)(14); tracking expenditures under our definition of ''assistance''; learning the extent to which recipients of benefits and services are covered by program requirements, and helping to validate the disaggregated data we receive on TANF and SSP cases.

Annual Report

Based on comments, we eliminated the proposed Annual Program and Performance Report (§ 275.9(c) of the NPRM) and the Addendum to the Fourth Quarter Financial Report (§ 275.9(a) and (b) of the NPRM). However, the content of the proposed Addendum is now contained in and required to be reported as a part of the Annual Report in § 265.9. In addition, § 265.9 requires States to report more detailed information on the State's MOE program(s), strategies to implement the Family Violence Option, State diversion programs, and other program characteristics. (We have developed a form for reporting the information on State MOE programs; see Appendix I.)

Other Information Collection Requirements

There are four other circumstances in this rulemaking that will create a reporting burden. The first circumstance concerns instances in which a State wants to qualify for caseload reduction credit. The second addresses a situation in which a State is subject to a penalty under section 409 and wishes to avoid the penalty or receive a reduced penalty. The third is the Governor's certification with respect to waivers, and the fourth is the domestic violence good cause waiver redetermination process.

- If a State elects to request a pro-rata reduction in the minimum participation rates, based on caseload reduction, § 261.41 requires that it must file certain data. We have developed a form for States to report these data at Appendix H.
- If a State wishes to dispute a penalty determination or wants to be considered for a waiver of a penalty based on ''reasonable cause'' or

corrective compliance, § 262.4 requires that the State provide us with certain information. A State must use a similar process if it is seeking a reduced penalty for failure to meet the work participation rates, as discussed at § 261.51.

- If a State is claiming a waiver inconsistency for work requirements or time limits, the Governor must provide a certification (and documentation) to the Secretary on the nature and scope of the waiver and the inconsistency. See § 260.75.
- If a State wants recognition of good cause domestic violence waivers it issues under the Family Violence Option (subpart B of § 260), it must conduct a redetermination of the need for any waivers extending beyond six months. (We estimate that 45 States will conduct between 500 and 600 redeterminations annually. Only a portion of cases receiving waivers will need redeterminations. We estimate that each determination and redetermination will take approximately one hour.)

Changes in the Estimate of Burden

In the NPRM, the respondents for the TANF Financial Report were listed as the 50 States of the United States and the District of Columbia. (We proposed that the Territories would report expenditure data on the Territorial Financial Report.) The respondents for the remaining reporting requirements, i.e., the TANF Data Report, the SSP–MOE Data Report, the annual program and performance report, the Caseload Reduction Credit documentation process, and the Reasonable Cause/Corrective Compliance documentation process, were listed as the 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the United States Virgin Islands. (American Samoa is eligible for the TANF program and could use funds that it receives under section 1108 to operate the TANF program. However, it did not elect to operate a TANF program, and we did not include this jurisdiction in our calculation of State burden.)

In the final rule, we have generally assumed the same number of respondents for most of the quarterly Data Reports, the quarterly Financial Report, and the new Annual Report. However, because we reduced the scope of the SSP–MOE reporting, we also reduced the number of respondents to the SSP–MOE Data Report from 54 to 17. This is the current number of States that we believe will have programs that meet the definition of ''assistance.''

In addition, we have estimated 32 States as possible respondents to the Governor's certification on waivers because there are 32 States that currently operate programs under approved waivers.

We have estimated that 45 States will be respondents under the domestic violence good cause waiver redetermination process because the majority of States have implemented the Family Violence Option, and many others are taking the legislative or administrative steps necessary to implement this provision.

While the statute requires Tribal organizations with TANF programs to submit some of the same data as States, we have not calculated the burden for the Tribal organizations in this rule. The reporting burden of Tribal organizations is addressed in the Tribal Work and TANF NPRM published July 22, 1998 (63 FR 39366).

Burden Estimates

In estimating the reporting burden in the NPRM, we pointed out that some of the reporting burden that used to exist in the AFDC program had disappeared. We also pointed out that most of the data elements required under the TANF Data Report were similar to previous data elements required in the AFDC or JOBS program and built upon the data elements in the Emergency TANF Data Report. However, States alleged that our assumptions in this area were not totally valid.

In addition, we assumed that most States would collect the data by means of a review sample. In the NPRM, we used as a starting point the OMB-inventoried QC burden hours as a standard for estimating the TANF burden. We also assumed that when a State provided us the information for their entire caseload, there would be a one-time burden and cost of developing or modifying its automated system.

These assumptions were based on a belief that the proposed information was currently being collected and could be extracted from State automated data systems. State commenters challenged both of these assumptions and the burden estimates we derived from them. They asserted that a significant amount of the proposed information was not available and would require manual collection from TANF recipients. (We note that 30 States are currently reporting data on their entire caseload in the quarterly Emergency TANF Data Report.)

We considered these comments and recalculated what the burden estimate would have been assuming that we had the same number of data elements and respondents as originally proposed in the NPRM. Based on these assumptions, the overall burden estimate would have increased from 241,128 hours (the total burden estimate in the NPRM) to 1,153,944 hours. However, this increase has been offset significantly by the changes we have made in the final rule, e.g., the decrease in the total number of data elements and the substantial reduction in the number of SSP–MOE respondents. These reductions were in large part the result of our response to comments on the NPRM. The estimated total annual burden hours have been reduced to 583,912.

The annual burden estimates include any time involved pulling records from files, abstracting information, returning records to files, assembling any other material necessary to provide the requested information, and transmitting the information.

Table A contains our burden estimates for the final rule and revised estimates for the NPRM. The columns entitled ''Final'' incorporate the estimates of the burden associated with the requirements in the final rule. These estimates reflect both the revised assumptions and the overall reductions in burden. The columns entitled ''NPRM As Revised'' provide revised estimates of the burden associated with the requirements in the NPRM, i.e., assuming we retained all the data elements proposed in the NPRM. All numbers have been rounded where indicated.

A. Recalculated Burden Estimates for the Final Rule

Instrument or requirement	Number of respondents		Yearly submittals	Average burden hours per response		Total burden hours	
	NPRM as revised [1]	Final		NPRM as revised [1]	Final	NPRM as revised [1]	Final
TANF Data Report—§ 265.3(b)	[2] 54	[2] 54	4	3,185	2,183	687,960	471,528
SSP—MOE Data Report—§ 265.3(d)	[3] 54	[3] 17	4	2,041	664	440,856	45,152
TANF Financial Report—§ 265.3(c)	[4] 51	[4] 51	4	12	30	2,448	6,120

Instrument or requirement	Number of respondents		Yearly sub-mittals	Average burden hours per response		Total burden hours	
	NPRM as revised [1]	Final		NPRM as revised [1]	Final	NPRM as revised [1]	Final
Annual Report—§ 265.9(b)–(c)6	[5] NA	[2] 54	1	[5] NA	128	[5] NA	6,912
Caseload Reduction Documentation Process—§ 261.41 & § 261.44	[2] 54	[2] 54	1	100	160	5,400	8,640
Reasonable Cause/Corrective Compliance Documentation Process—§§ 262.4, 262.6, & 262.7; § 261.51	[1] 54	[1] 54	2	160	160	17,280	17,280
Governor's Waiver Certification Process—§ 260.75	[5] NA	32	1	[5] NA	40	[5] NA	1,280
Domestic Violence Good Cause Waiver Redetermination Process—§ 260.55	[5] NA	45	600	[5] NA	1	[5] NA	27,000
Estimated Total Annual Burden Hours: [7]						1,153,944	583,912

[1] This column reflects what the burden estimate would have been assuming we retained all data elements proposed in the NPRM.
[2] The 50 States, the District of Columbia, Guam, Puerto Rico, and the United States Virgin Islands will be respondents.
[3] We estimate that 17 States will be respondents based on the number of States that currently have SSP–MOE programs.
[4] The 50 States and the District of Columbia will be respondents.
[5] Not applicable. These reporting requirements did not appear in the NPRM.
[6] In the NPRM, the annual report referred to the Annual Program and Performance Report, now eliminated.
[7] The total burden estimate for the NPRM (using the original assumptions) was 241,128.

Therefore, while the burden estimate would have increased by approximately 140 percent (based on the provisions in the NPRM), the actual burden decreased by approximately 50 percent.

We did not consider the burden for the Territorial Financial Report because it has fewer than ten respondents and, therefore, is not covered by the PRA. Also, we no longer require an annual addendum to the fourth quarter TANF Financial Report (the burden for the addendum was estimated in the NPRM as a part of the financial report). We now include the content and burden of the Addendum as a part of the Annual Report requirement.

Finally, in the NPRM, we proposed a caseload reduction process requiring 40 annual burden hours per respondent. In response to comments on the caseload reduction process and the revisions we have made, we increased the estimated annual burden to 160 hours per respondent and developed a form for reporting this information. (See Appendix H.)

Cost Estimates

Many commenters expressed the opinion that we had greatly underestimated the costs associated with significant systems overhaul and redesign that would require substantial investment in staff and resources, as well as the costly ongoing operations and reporting efforts.

We have reconsidered the costs in light of these comments and have revised our estimates accordingly. Specifically, we have increased the estimate of the annualized cost of the hour burden from $3,520,469 to $17,050,230. This figure is based on an estimated average hourly wage of $29.20 (including fringe benefits, overhead, and general and administrative costs) for the State staff performing the work multiplied by 583,912 burden hours. (If we had not reduced the actual burden by approximately 50 percent, the estimated cost of the hour burden would have been $33,695,164 ($29.20 times 1,153,944 burden hours).)

We had originally estimated average annualized capital/start-up and operational and maintenance costs (CSO&M) to be $2,700,000 across all States, or $50,000 per respondent. Many States expressed the opinion that the data collection will require costly systems overhaul and redesign and that the overall burden should be anywhere from 5 to 20 times our original estimate.

As indicated above, we have made a substantial upward adjustment in the annualized cost of the hour burden. In addition, we have calculated a substantial increase of 500 percent in the annualized CSO&M based on the assertions of the States. Therefore, we have estimated annualized CSO&M cost to be $13,500,000. When added to the $17,050,230 estimate of the annualized cost of the hour burden, it yields a total estimated annualized cost of $30,550,230, or an average of $565,745 per respondent. Without the actual reduction in burden, the cost would have been $47,195,164, or an average of $873,985 per respondent.

We considered comments by the public on these collections of information in:

- Evaluating whether the collections are necessary for the proper performance of our functions, including whether the information will have practical utility;
- Evaluating the accuracy of our estimate of the burden of the collections of information, including the validity of the methodology and assumptions used, and the frequency of collection;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., the electronic submission of responses.

E. Unfunded Mandates Reform Act of 1995

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

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the rule.

We have determined that the rules will not result in the expenditure by State, local, and Tribal governments, in

the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

List of Subjects in 45 CFR Parts 260 Through 265

Administrative practice and procedure, Day care, Employment, Grant programs—social programs, Loan programs—social programs, Manpower training programs, Penalties, Public assistance programs, Reporting and recordkeeping requirements, Vocational education.

(Catalogue of Federal Domestic Assistance Programs: 93.558 TANF programs—State Family Assistance Grants, Assistance grants to Territories, Matching grants to Territories, Supplemental Grants for Population Increases and Contingency Fund; 93.559—Loan Fund; 93.595—Welfare Reform Research, Evaluations and National Studies)

Dated: March 26, 1999.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Approved: March 29, 1999.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, we are amending 45 CFR chapter II by adding parts 260 through 265 to read as follows:

PART 260—GENERAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) PROVISIONS

Subpart A—What Provisions Generally Apply to the TANF Program?

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Subpart C—What Special Provisions Apply to States That Were Operating Programs Under Approved Waivers?

260.70 What is the purpose of this subpart?
260.71 What definitions apply to this subpart?
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?
260.73 How do existing welfare reform waivers affect the participation rates and work rules?
260.74 How do existing welfare reform waivers affect the application of the Federal time-limit provisions?
260.75 If a State is claiming a waiver inconsistency for work requirements or time limits, what must the Governor certify?
260.76 What special rules apply to States that are continuing evaluations of their waiver demonstrations?

Authority: 42 U.S.C. 601, 601 note, 603, 604, 606, 607, 608, 609, 610, 611, 619, and 1308.

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 receiving assistance who:

(1) Lives in the State; and

(2) Does not live in the same household as the 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.

§ 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.

§ 260.35 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.

Section 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.

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.

§ 261.1 What does this part cover?

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

§ 261.2 What definitions apply to this part?

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

Subpart A—What Are the Provisions Addressing Individual Responsibility?

§ 261.10 What work requirements must an individual meet?

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

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

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

§ 261.11 Which recipients must have an assessment under TANF?

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

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

§ 261.12 What is an individual responsibility plan?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subpart B—What Are the Provisions Addressing State Accountability?

§ 261.20 How will we hold a State accountable for achieving the work objectives of TANF?

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

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

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

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

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

§ 261.21 What overall work rate must a State meet?

Each State must achieve the following minimum overall participation rate:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The number of two-parent families receiving TANF assistance that include an adult or minor child head-of-household and other parent who meet the requirements set forth in § 261.32 for the month (i.e., the numerator), divided by,

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

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

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

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

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

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

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

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

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

§ 261.30 What are the work activities?

The work activities are:

(a) Unsubsidized employment;

(b) Subsidized private-sector employment;

(c) Subsidized public-sector employment;

(d) Work experience if sufficient private-sector employment is not available;

(e) On-the-job training (OJT);

(f) Job search and job readiness assistance;

(g) Community service programs;

(h) Vocational educational training;

(i) Job skills training directly related to employment;

(j) Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;

(k) Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, if a recipient has not completed secondary school or received such a certificate; and

(l) Providing child care services to an individual who is participating in a community service program.

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

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

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

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

and

(2) At least 20 of the above hours per week come from participation in the activities listed in paragraph (b) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Participating in vocational educational training; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(a)(1) If the average monthly number of cases receiving assistance, including assistance under a separate State program (as provided at § 261.42(b)), in a State in the preceding fiscal year was lower than the average monthly number of cases that received assistance in FY 1995, the minimum overall participation rate the State must meet for the fiscal year (as provided at § 261.21) decreases by the number of percentage points the prior-year caseload fell in comparison to the FY 1995 caseload.

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

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

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

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

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

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

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

(3) To qualify for a caseload reduction, a State must have reported monthly caseload information, including cases in separate State programs, for the preceding fiscal year for cases receiving assistance as defined at § 261.43.

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

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

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

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

§ 261.41 How will we determine the caseload reduction credit?

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

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

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

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

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

(2) A numerical estimate of the positive or negative impact on the applicable caseload of each eligibility change (based, as appropriate, on application denials, case closures or other analyses);

(3) An overall estimate of the total net positive or negative impact on the

applicable caseload as a result of all such eligibility changes;

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

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

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

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

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

(9) A summary of all public comments.

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

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

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

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

(2) If we request additional information to develop or validate estimates, the State may negotiate an appropriate deadline or provide the information within 30 days of the date of our request.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) If the State fails the overall participation rate specified at § 261.21, reduced by any applicable caseload

reduction credit, or both rates, its maximum penalty will be the penalty specified at § 261.50.

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

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

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

§ 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 Welfare Reform Waivers Affect State Penalties?

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

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

Subpart G—What Nondisplacement Rules Apply in TANF?

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

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

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

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

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

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

PART 262—ACCOUNTABILITY PROVISIONS—GENERAL

Sec.

262.0 What definitions apply to this part?
262.1 What penalties apply to States?
262.2 When do the TANF penalty provisions apply?
262.3 How will we determine if a State is subject to a penalty?
262.4 What happens if we determine that a State is subject to a penalty?
262.5 Under what general circumstances will we determine that a State has reasonable cause?
262.6 What happens if a State does not demonstrate reasonable cause?
262.7 How can a State appeal our decision to take a penalty?

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

§ 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; and

(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.

(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), and (a)(14) 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).

§ 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.

§ 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 child under six (§ 261.57 of this chapter), and failing to reduce assistance to a recipient who refuses without good cause to work (§ 261.54 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.

§ 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 June 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.

§ 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) or (a)(9), 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.

(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.

§ 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, S.W., Washington, D.C. 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 the basic MOE requirement through reasonable cause or through corrective compliance?

Subpart B—What Rules Apply to the Use of Federal TANF Funds?

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Authority: 42 U.S.C. 604, 607, 609, and 862a.

§ 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 Applies 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 (such as 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

(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 development, maintenance, support, or operation of those portions of information technology or computer systems used for tracking or monitoring.

(b) 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) Would be eligible for TANF 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.

(e)(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.

§ 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, except as provided under § 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.

§ 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?

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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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264.71 What determines the amount of the provisional payment of contingency funds that will be made to a State?
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264.74 How will we determine the Contingency Fund MOE level for the annual reconciliation?
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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.

§ 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 of federally recognized good cause domestic violence waivers provided to victims of domestic violence in accordance with the provisions of subpart B of part 260.

§ 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 205.62 of this chapter also apply to the TANF IEVS requirement.

§ 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?
265.3 What reports must the State file on a quarterly basis?
265.4 When are quarterly reports due?
265.5 May States use sampling?
265.6 Must States file reports electronically?
265.7 How will we determine if the State is meeting the quarterly reporting requirements?
265.8 Under what circumstances will we take action to impose a reporting penalty for failure to submit quarterly and annual reports?
265.9 What information must the State file annually?
265.10 When is the annual report due?

Authority: 42 U.S.C. 603, 605, 607, 609, 611, and 613.

§ 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 specifies the circumstances under which the State must collect and report case-record information on individuals and families served by the separate State program(s).

(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.

§ 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 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 § 265.3(f)); 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.

§ 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) Under the circumstances described in paragraph (d)(1) of this section, the State must collect and file the data specified in the SSP–MOE (Separate State Program-Maintenance-of-Effort) Data Report.

(b) *TANF Data Report.* The TANF Data Report consists of three sections. Two sections contain disaggregated data elements and one section contains aggregated data elements.

(1) *Disaggregated Data on Families Receiving TANF Assistance—Section one.* Each State must file disaggregated information on families receiving TANF assistance.[2] This section specifies 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. The data apply to 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.[3] This section specifies the reasons for case closure and data similar to the data 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.[4] This section of the Report requires aggregate figures in such areas as: The number of applications 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.

(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.[5]

(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.* (1) Subject to paragraph (d)(2) of this section, if a State claims MOE expenditures under a separate State program(s), it must collect and file disaggregated and aggregated information on families receiving assistance and families no longer receiving assistance under the separate State program(s) as follows:

(i) If a State wishes to receive a high performance bonus, it must file the information in sections one and three of the SSP–MOE Data Report; and

(ii) If a State wishes to qualify for caseload reduction credit under subpart D of part 261 of this chapter, it must file the information in sections one, two, and three of the SSP–MOE Data Report.

(2) The State must file the SSP–MOE Data Report only on separate State programs that provide benefits that meet

[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.

[2] See Appendix A for the specific data elements and instructions.

[3] See Appendix B for the specific data elements and instructions.

[4] See Appendix C for the specific data elements and instructions.

[5] See Appendix D for the TANF Financial Report and filing instructions.

the definition of assistance at § 260.31 of this chapter.

(3) The SSP–MOE Data Report consists of three sections. Section one contains disaggregated information on families receiving assistance under separate State programs; section two contains disaggregated information on families no longer receiving assistance under separate State programs; and section three contains aggregated data on families receiving and families no longer receiving assistance under separate State programs.[6]

(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) *Noncustodial parents.* A State must report information on a noncustodial parent (as defined in § 260.30 of this chapter) if the noncustodial 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.

§ 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) 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.

(c) Each State may file its quarterly SSP–MOE Data Report:

(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 or a caseload reduction credit as long as it submits the required data for the full period for which these determinations will be made.

§ 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 or the quarterly TANF Financial Report (or, as applicable, the Territorial Financial Report) within 45 days of the end of the quarter;

(2) The disaggregated data in the TANF Data Report is not accurate or 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 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;

[6] See Appendices E, F, and G for the specific data elements and instructions.

(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 definition of work activities and the description of transitional services provided by a State to families no longer receiving assistance due to employment.

(b) We will not apply the reporting penalty to the SSP–MOE Data Report.

(c) 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.

(d) 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.

(e) 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.

(f) Subject to paragraphs (a) through (d) 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).

§ 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 re-submission. If the information in the

[7] See Appendix I for the reporting form for the Annual Report on State Maintenance-of-Effort Programs.

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.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices

Appendix A—TANF Data Report—Section One (Disaggregated Data Collection for Families Receiving Assistance under the TANF Program)
Appendix B—TANF Data Report—Section Two (Disaggregated Data Collection for Families No Longer Receiving Assistance under the TANF Program)
Appendix C—TANF Data Report—Section Three (Aggregated Data Collection for Families Applying for, Receiving, and No Longer Receiving Assistance under the TANF Program)
Appendix D—TANF Financial Report
Appendix E—SSP–MOE Data Report—Section One (Disaggregated Data Collection for Families Receiving Assistance under the Separate State Programs)
Appendix F—SSP–MOE Data Report—Section Two (Disaggregated Data Collection for Families No Longer Receiving Assistance under the Separate State Programs)
Appendix G—SSP–MOE Data Report—Section Three (Aggregated Data Collection for Families Receiving Assistance under the Separate State Programs)
Appendix H—Caseload Reduction Report
Appendix I—Annual Report on State Maintenance-of-Effort Programs

Appendix A—TANF Data Report—Section One Disaggregated Data Collection for Families Receiving Assistance under the TANF Program

Instructions and Definitions

General Instruction: The State agency or Tribal grantee should collect and report data for each data element. The data must be complete (unless explicitly instructed to leave the field blank) and accurate (i.e, correct).

An ''Unknown'' code may appear only on four sets of data elements ([#32 and #67] Date of Birth, [#33 and #68] Social Security Number, [#41 and #74] Educational Level, and [#42 and #75] Citizenship/Alienage). For these data elements, unknown is not an acceptable code for individuals who are members of the eligible family (i.e., family affiliation code ''1'').

There are five data elements for which States have the option to report based on either the budget month or the reporting month. These are: #16 Amount of Food Stamps Assistance; #19 Amount of Child Support; #20 Amount of Families Cash Resources; #64 Amount of Earned Income; and [#35 and #76] Amount of Unearned Income. Whichever choice the State selects must be used for all families reported each month and must be used for all months in the fiscal year.

1. *State FIPS Code:* Enter your two-digit State code from the following listing. These codes are the standard codes used by the National Institute of Standards and Technology. Tribal grantees should leave this field blank.

State	Code
Alabama	01
Alaska	02
American Samoa	60
Arizona	04
Arkansas	05
California	06
Colorado	08
Connecticut	09
Delaware	10
District of Columbia	11
Florida	12
Georgia	13
Guam	66
Hawaii	15
Idaho	16
Illinois	17
Indiana	18
Iowa	19
Kansas	20
Kentucky	21
Louisiana	22
Maine	23
Maryland	24
Massachusetts	25
Michigan	26
Minnesota	27
Mississippi	28
Missouri	29
Montana	30
Nebraska	31
Nevada	32
New Hampshire	33
New Jersey	34
New Mexico	35
New York	36
North Carolina	37
North Dakota	38
Ohio	39
Oklahoma	40
Oregon	41
Pennsylvania	42
Puerto Rico	72
Rhode Island	44
South Carolina	45
South Dakota	46
Tennessee	47
Texas	48
Utah	49
Vermont	50
Virgin Islands	78
Virginia	51
Washington	53
West Virginia	54
Wisconsin	55
Wyoming	56

2. *County FIPS Code:* Enter the three-digit code established by the National Institute of Standards and Technology for classification of counties and county equivalents. Codes were devised by listing counties alphabetically and assigning sequentially odd integers; e.g., 01, 03, 05. A complete list of codes is available in Appendix F of the TANF Sampling and Statistical Methods Manual. Tribal grantees should leave this field blank.

3. *Tribal Code:* For Tribal grantees, enter the three-digit Tribal code that represents your Tribe (See Appendix E of the TANF Sampling and Statistical Methods Manual for a complete listing of Tribal Codes.) State agencies should leave this field blank.

4. *Reporting Month:* Enter the four-digit year and two-digit month codes that identify the year and month for which the data are being reported.

5. Stratum:

Guidance: All TANF families selected in the sample from the same stratum must be assigned the same stratum code. Valid stratum codes may range from ''00'' to ''99.'' States and Tribes with stratified samples should provide the ACF Regional Office with a listing of the numeric codes utilized to identify any stratification. If a State or Tribe opts to provide data for its entire caseload, enter the same stratum code (any two-digit number) for each TANF family.

Instruction: Enter the two-digit stratum code.

Family-Level Data

Definition: For reporting purposes, the TANF family means (a) all individuals receiving assistance as part of a family under the State's TANF Program; and (b) the following additional persons living in the household, if not included under (a) above:

(1) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(2) Minor siblings of any child receiving assistance; and

(3) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

6. *Case Number—TANF:*

Guidance: If the case number is less than the allowable eleven characters, a State should use lead zeros to fill in the number.

Instruction: Enter the number assigned by the State agency or Tribal grantee to uniquely identify the case.

7. *ZIP Code:* Enter the five-digit ZIP code for the TANF family's place of residence for the reporting month.

8. *Funding Stream:*

Guidance: The TANF Data Report collects information on families receiving assistance as defined in § 260.31. We do not collect information on families receiving benefits and services that do not meet the definition of assistance. A family that receives TANF

assistance funded, entirely or in part, with Federal funds is subject to the Federal time limits. A family that receives assistance under a segregated State TANF program funded solely with State funds is not subject to the Federal time limits.We will collect information on families who receive assistance under a separate State program in the SSP–MOE Data Report.

Instructions: For States that bifurcate their caseloads, enter the appropriate code for the funding stream used to provide assistance to this TANF family. If the State (Tribe) does not bifurcate its caseload, enter code ''1.''

1=Funded, in whole or in part, with Federal TANF block grant funds.

2=Funded entirely from State-only funds. (segregated State TANF program) which are subject to most, but not all, TANF rules.

9. *Disposition:*

Guidance: A family that did not receive any assistance for the reporting month but was listed on the monthly sample frame for the reporting month is ''listed in error.'' States must collect and report complete data for all sampled cases that are not listed in error.

Instruction: Enter one of the following codes for each TANF sampled case.

1=Data collection completed.

2=Not subject to data collection/listed in error.

10. *New Applicant:*

Guidance: A newly-approved applicant means the current reporting month is the first month in which the TANF family receives TANF assistance (and thus has had a chance to be selected into the TANF sample). This may be either the first month that the TANF family has ever received assistance or the first month of a new spell on assistance. A TANF family that is reinstated from a suspension is not a newly, approved applicant.

Instruction: Enter the one-digit code that indicates whether or not the TANF family is a newly-approved applicant.

1=Yes, a newly-approved application

2=No.

11. *Number of Family Members:* Enter two digits that represent the number of members in the family receiving assistance under the State's (Tribe's) TANF Program during the reporting month. Include in the number of family members, the noncustodial parent who the State (Tribe) has opted to include as part of the eligible family, who is receiving assistance as defined in § 260.31, or who is participating in work activities as defined in section 407(d) of the Act.

12. *Type of Family for Work Participation:*

Guidance: This data element identifies whether the family will be used to calculate both the overall and two-parent work participation rates, will be used to calculate only the overall work participation rate, or will not be used to calculate either work participation rate.

A family with an adult or minor child head-of-household is included in the overall work participation rate unless explicitly disregarded. See data element #48 ''Work Participation Status'' for reasons for disregarding a family.

For the purpose of calculating the two-parent work participation rate, the two-parent families include any family with two or more natural or adoptive parents (of the same minor child) receiving assistance and living in the home, unless both are minors and neither is a head-of-household. All two-parent families must be included in the two-parent work participation rate unless the family is explicitly disregarded. See the ''Work Participation Status'' data element for reasons for disregarding a family. A two-parent family that includes a disabled parent will not be included in the two-parent work participation rate.

A family with a minor child head-of-household should be coded as either a single-parent family or two-parent family, whichever is appropriate.

A noncustodial parent is defined in § 260.30 as a parent who lives in the State and does not live with his/her child(ren). The State must report information on the noncustodial parent if the noncustodial parent: (1) is receiving assistance as defined in § 260.31; (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.

However, the State may choose whether a two-parent family with a noncustodial parent as one of the two parents is a two-parent family for the purposes of calculating the two-parent work participation rate. If a State chooses to exclude a two-parent family with a noncustodial parent as one of the parents from the two-parent work participation rate, the State must code the data element ''Type of Family for Work Participation'' with a ''1'' and code the data element ''Work Participation Status'' for the noncustodial parent with a ''99''.

Instruction: Enter the one-digit code that represents the type of family for purposes of calculating the work participation rates.

1=Family included only in overall work participation rate.

2=Two-Parent Family included in both the overall and two-parent work participation rates.

3=Family excluded from both the overall and two-parent work participation rates.

13. *Receives Subsidized Housing:*

Guidance: Subsidized housing refers to housing for which money was paid by the Federal, State, or local government or through a private social service agency to the family or to the owner of the housing to assist the family in paying rent. Two families sharing living expenses does not constitute subsidized housing.

Instruction: Enter the one-digit code that indicates whether or not the TANF family received subsidized housing for the reporting month.

1=Public housing.

2=Rent subsidy.

3=No housing subsidy.

14. *Receives Medical Assistance:* Enter ''1'' if, for the reporting month, any TANF family member is enrolled in Medicaid and thus eligible to receive medical assistance under the State plan approved under Title XIX or ''2'' if no TANF family member is enrolled in Medicaid.

1=Yes, enrolled in Medicaid.

2=No.

15. *Receives Food Stamps:* Enter the one-digit code that indicates whether or not the TANF family is receiving food stamp assistance.

1=Yes, receives food stamp assistance.

2=No.

16. *Amount of Food Stamp Assistance:*

Guidance: For situations in which the food stamp household differs from the TANF family, code this element in a manner that most accurately reflects the resources available to the TANF family. One acceptable method for calculating the amount of food stamp assistance available to the TANF family is to prorate the amount of food stamps equally among each food stamp recipient then add together the amounts belonging to the TANF recipients to get the total amount for the TANF family.

Instruction: Enter the TANF family's authorized dollar amount of food stamp assistance for the reporting month or for the month used to budget for the reporting month.

17. *Receives Subsidized Child Care:*

Instruction: If the TANF family receives subsidized child care for the reporting month, enter code ''1'' or ''2,'' whichever is appropriate. Otherwise, enter code ''3.''

1=Yes, receives child care funded entirely or in part with Federal funds (e.g., receives TANF, CCDF, SSBG, or other federally funded child care).

2=Yes, receives child care funded entirely under a State, Tribal, and/or local program (i.e., no Federal funds used).

3=No subsidized child care received.

18. *Amount of Subsidized Child Care:*

Guidance: Subsidized child care means a grant by the Federal, State or local government to or on behalf of a parent (or caretaker relative) to support, in part or whole, the cost of child care services provided by an eligible provider to an eligible child. The grant may be paid directly to the parent (or caretaker relative) or to a child care provider on behalf of the parent (or caretaker relative).

Instruction: Enter the total dollar amount of subsidized child care from all sources (e.g., CCDF, TANF, SSBG, State, local, etc.) that the TANF family has received for services in the reporting month. If the TANF family did not receive any subsidized child care for services in the reporting month, enter ''0.''

19. *Amount of Child Support*: Enter the total dollar value of child support received on behalf of the TANF family in the reporting month or for the month used to budget for the reporting month. This includes current payments, arrearages, recoupment, and pass-through amounts whether paid to the State or the family.

20. *Amount of the Family's Cash Resources*: Enter the total dollar amount of the TANF family's cash resources as the State defines them for determining eligibility and/or computing benefits for the reporting month or for the month used to budget for the reporting month.

Amount of Assistance Received and the Number of Months That the Family has Received Each Type of Assistance Under the State (Tribal) TANF Program

Guidance: 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). It includes such benefits even when they are provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients and conditioned on their participation in work experience, community service, or other work activities (i.e., under the CFR § 261.30).

Except where excluded as indicated in the following paragraph, it also includes supportive services such as transportation and child care provided to families who are not employed.

The term ''assistance'' excludes:

(1) Nonrecurrent, short-term benefits (such as payments for rent deposits or appliance repairs) 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 an Access to Jobs or Reverse Commute project, pursuant to section 404(k) of the Act, to an individual who is not otherwise receiving assistance.

The exclusion of nonrecurrent, short-term benefits under (1) of this paragraph also covers supportive services for recently employed families, for temporary periods of unemployment, in order to enable continuity in their service arrangements.

Instruction: For each type of assistance provided under the State's (Tribal) TANF Program, enter the dollar amount of assistance that the TANF family received or that was paid on behalf of the TANF family for the reporting month and the number of months that the TANF family has received assistance under the State's (Tribe's) TANF program. For TANF Child Care also enter the number of children covered by the dollar amount of child care. If, for a ''type of assistance,'' no dollar amount of assistance was provided during the reporting month, enter ''0'' as the amount. If, for a ''type of assistance,'' no assistance has been received (since the State began its TANF Program) by the TANF eligible family, enter ''0'' as the number of months of assistance.

21. *Cash and Cash Equivalents:*

A. *Amount*

B. *Number of Months*

22. *TANF Child Care:*

Guidance: For TANF Child Care, enter the dollar amount, the number of children covered by the dollar amount of child care, and the total number of months that the family has received TANF child care assistance for families not employed. For example, a TANF family may receive a total of $500.00 in TANF child care assistance for two children for the reporting month. Furthermore, the family may have received TANF child care for one or more child(ren) for a total of six months under the State (Tribal) TANF Program. In this example, the State (Tribe) would code 500, 2, and 6 for the amount, number of children and number of months respectively. Include only the child care funded directly by the State (Tribal) TANF Program. Do not include child care funded under the Child Care and Development Fund, even though some of the funds were transferred to the CCDF from the TANF program.

Number of:

A. *Amount*

B. *Children Covered*

C. *Number of Months*

23. *Transportation:*

A. *Amount*

B. *Number of Months*

24. *Transitional Services:*

A. *Amount*

B. *Number of Months*

25. *Other:*

A. *Amount*

B. *Number of Months*

26. *Reason for and Amount of Reductions in Assistance:*

Instruction: The amount of assistance received by a TANF family may have been reduced for one or more of the following reasons. For each reason listed below, indicate whether the TANF family received a reduction in assistance. Enter the total dollar value of the reduction(s) for each group of reasons for the reporting month. If for any reason there was no reduction in assistance, enter ''0.''

a. *Sanctions:*

i. *Total Dollar Amount of Reductions due to Sanctions:* Enter the total dollar value of reduction in assistance due to sanctions.

ii. *Work Requirements Sanction:*

1=Yes.

2=No.

iii. *Family Sanction for an Adult with No High School Diploma or Equivalent:*

1=Yes.

2=No.

iv. *Sanction for Teen Parent not Attending School:*

1=Yes.

2=No.

v. *Non-Cooperation with Child Support:*

1=Yes.

2=No.

vi. *Failure to Comply with an Individual Responsibility Plan:*

1=Yes.

2=No.

vii. *Other Sanction:*

1=Yes.

2=No.

b. *Recoupment of Prior Overpayment:*

Enter the total dollar value of reduction in assistance due to recoupment of a prior overpayment.

c. *Other:*

i. *Total Dollar Amount of Reductions due to Other Reasons (exclude amounts for sanctions and recoupment):* Enter the total dollar value of reduction in assistance due to reasons other than sanctions and recoupment.

ii. *Family Cap:*

1=Yes.

2=No.

iii. *Reduction Based on Family Moving into State From Another State:*

1=Yes.

2=No.

iv. *Reduction Based on Length of Receipt of Assistance:*

1=Yes.

2=No.

v. *Other, Non-sanction:*

1=Yes.

2=No.

27. *Waiver Evaluation Experimental and Control Groups:*

Guidance: If this data element is not applicable to your State (Tribe), either code this element ''9'' or leave this data element blank. In connection with waivers that are approved to allow States to implement Welfare Reform Demonstrations, a State assigned a portion of its cases to control groups (subject to the provisions of the regular, statutory AFDC program as defined by prior law) and experimental groups (subject to the provisions of the regular, statutory AFDC program as defined by prior law as modified by waivers). A State may choose, for the purpose of completing impact analyses, to maintain applicable control snd experimental group treatment policies as they were implemented under their welfare reform demonstration (including prior law policies not modified by waivers), even if such policies are inconsistent with TANF. However, cases not assigned to an experimental or control group, but subject to waiver policies in accordance with terms and conditions of the waiver approval, may not apply prior law policies inconsistent with TANF unless such policies are specifically linked to approved waivers. When a State continues waivers, but does not maintain experimental and control groups for impact evaluation purposes, all cases in the demonstration site will be treated as cases subject to waiver policies in accordance with the terms and conditions regardless of their original assignment as control group cases (i.e., prior law policies may only apply to the extent they are specially linked to approved waivers and former control group cases will now be subject to waiver policies.)

Instruction: Enter the one-digit code that indicates the family's waiver evaluation case status.

1=Control group case (for impact analysis purposes).

2=Experimental group case.

3=Other cases subject to waiver policies.

9=Not applicable (no waivers apply to this case).

28. *Is the TANF Family Exempt from the Federal Time-Limit Provisions:*

Guidance: Under TANF rules, an eligible family that does not include a recipient who is an adult head-of-household, a spouse of the head-of-household, or a minor child head-of-household who has received federally-funded assistance for 60 countable months may continue to receive assistance. A

countable month is a month of assistance for which the adult head-of-household, the spouse of the head-of-household, or the minor child head-of-household is not exempt from the Federal time-limit provisions. TANF rules provide for two categories of exceptions. Certain families are exempt from the accrual of months of assistance (i.e., the clock is not ticking). Certain families with an adult head-of-household, a spouse of a head-of-house, or minor child head-of-household who has received 60 countable months of assistance may be exempt from termination of assistance. Exemptions from termination of assistance include a hardship exemption that allows up to 20% of the families to receive assistance beyond the 60-month time limit. In lieu of the 20% hardship exemptions, States with prior-approved welfare reform waivers may choose to employ extension policies prescribed under their waivers.

Instruction: If the TANF family has no exemption from the Federal five-year time limit, enter code ''01.'' If the TANF family does not include an adult head-of-household, a spouse of the head-of-household, or a minor child head-of-household who has received federally-funded assistance for 60 countable months or is otherwise exempt from accrual of months of assistance or termination of assistance under the Federal five-year time limit for the reporting month, enter ''02.'' If the TANF family includes an adult head-of-household, a spouse of the head-of-household, or minor child head-of-household who has not received federally-funded assistance for 60 countable months and the family is exempt from the accrual of months of assistance, enter ''03,'' ''04,'' or ''05,'' whichever is appropriate. If the TANF family includes an adult head-of-household, a spouse of the head-of-household, or minor child head-of-household who has received assistance for 60 countable months and the family is exempt from termination of assistance, enter code ''06'' ''07,'' ''08,'' ''09,'' ''10,'' or ''11,'' whichever is appropriate.

01=Family is not exempt from Federal time limit.

Family does not include an adult head-of-household, a spouse of the head-of-household, or minor child head-of-household who has received federally-funded assistance for 60 countable months:

02=Yes, family is exempt from accrual of months and termination of assistance under the Federal five-year time limit for the reporting month because no adult head-of-household, a spouse of the head-of-household, or minor child head-of-household in the eligible family is receiving assistance.

Family includes an adult head-of-household, a spouse of the head-of-household, or minor child head-of-household, but has accrued less than 60 months of assistance:

03=Yes, family is exempt from accrual of months under the Federal five-year time limit for the reporting month because assistance to family is funded entirely from State-only funds.

04=Yes, family is exempt from accrual of months under the Federal five-year time limit for the reporting month because the family is living in Indian country or an Alaskan native village, where at least 50 percent of the adults living in the Indian country or Alaskan native village are not employed.

05=Yes, family is exempt from accrual of months under the Federal five-year time limit for the reporting month based on an approved welfare reform waiver policy.

Family includes an adult head-of-household, a spouse of the head-of-household, or minor child head-of-household who has received federally-funded assistance for 60 countable months:

06=Yes, family is exempt from termination of assistance under the Federal five-year time limit for the reporting month because assistance to the family is funded entirely from State-only funds.

07=Yes, family is exempt from termination of assistance under the Federal five-year time limit for the reporting month due to a hardship exemption, battery, or extreme cruelty.

08=Yes, family is exempt from termination of assistance under State policy for the reporting month based on a federally recognized good cause domestic violence waiver of time limits.

09=Yes, family is exempt from termination of assistance under the Federal five-year time limit for the reporting month because the adult head-of-household, the spouse of the head-of-household, or minor child head-of-household is living in Indian country or an Alaskan native village, where at least 50 percent of whose adults are not employed.

10=Yes, family (including adults) is exempt from termination of assistance under the Federal five-year time limit for the reporting month in accordance with extension policies prescribed under approved welfare reform waivers.

11=Yes, the children in the family are receiving assistance beyond the 60 countable months and the family is exempt from termination of assistance under the Federal five-year time limit for the reporting month in accordance with extension policies prescribed under approved welfare reform waivers (i.e., under an adult-only time limit).

29. *Is the TANF Family A New Child-Only Family?:*

Guidance: A child-only family is a TANF family that does not include an adult or a minor child head-of-household who is receiving TANF assistance. For purposes of this data element, a new child-only family is a TANF family that: (a) has received TANF assistance for at least two months (i.e., the reporting month and the month prior to the reporting month); (b) received benefits in the prior month, but not as a child-only case; and (c) is a child-only family for the reporting month. All other families—including those that are not a child-only case during the reporting month—get coded as ''not a new-child-only family,'' i.e., as code 2.

Instructions: If the TANF family is a new child-only family, enter code ''1.'' Otherwise, enter code ''2.''

1=Yes, a new child-only family.

2=No, not a new child-only family.

Person-Level Data

Person-level data has two sections: (1) The adult and minor child head-of-household characteristic section and (2) the child characteristics section. Section 419 of the Act defines adult and minor child. An adult is an individual that is not a minor child. A minor child is an individual who (a) has not attained 18 years of age or (b) 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).

Detailed data elements must be reported on all individuals unless, for a specific data element, the instructions explicitly give States (Tribes) an option to not report for a specific group of individuals.

Adult and Minor Child Head-of-Household Characteristics

This section allows for coding up to six adults (or a minor child who is either a head-of-household or married to the head-of-household and up to five adults) in the TANF family. A minor child who is either a head-of-household or married to the head-of-household should be coded as an adult and will hereafter be referred to as a ''minor child head-of-household.'' For each adult (or minor child head-of-household) in the TANF family, complete the adult characteristics section. A noncustodial parent is defined in section 260.30 as a parent who lives in the State and does not live with his/her child(ren). The State must report information on the noncustodial parent if the noncustodial parent: (1) Is receiving assistance as defined in § 260.31; (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.

The State has the option to count a family with a noncustodial parent receiving assistance as a two-parent family for work participation rate purposes. As indicated below, reporting for certain specified data elements in this section is optional for certain individuals (whose family affiliation code is a 2, 3, or 5).

If there are more than six adults (or a minor child head-of-household and five adults) in the TANF family, use the following order to identify the persons to be coded: (1) The head-of-household; (2) parents in the eligible family receiving assistance; (3) other adults in the eligible family receiving assistance; (4) parents not in the eligible family receiving assistance; (5) caretaker relatives not in the eligible family receiving assistance; and (6) other persons whose income or resources count in determining eligibility for or amount of assistance of the eligible family receiving assistance, in descending order from the person with the most income to the person with least income.

30. *Family Affiliation:*

Guidance: This data element is used both for (1) The adult and minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the one-digit code that shows the adult's (or minor child head-of-household's) relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance.

Not in eligible family receiving assistance, but in the household:

2=Parent of minor child in the eligible family receiving assistance.

3=Caretaker relative of minor child in the eligible family receiving assistance.

4=Minor sibling of child in the eligible family receiving assistance.

5=Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance.

31. *Noncustodial Parent Indicator:*

Guidance: A noncustodial parent is defined in section 260.30 as a parent who lives in the State and does not live with his/her child(ren). The State must report information on the noncustodial parent if the noncustodial parent: (1) Is receiving assistance as defined in § 260.31; (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.

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) noncustodial parent status.

1=Yes, a noncustodial parent.

2=No.

32. *Date of Birth:* Enter the eight-digit code for date of birth for the adult (or minor child head-of-household) under the State (Tribal) TANF Program in the format YYYYMMDD. If the adult's (or minor child head-of-household's) date of birth is unknown and the family affiliation code is not ''1,'' enter the code ''99999999''.

33. *Social Security Number:* Enter the nine-digit Social Security Number for the adult (or minor child head-of-household) in the format nnnnnnnnn. If the social security number is unknown and the family affiliation code is not ''1,'' enter ''999999999''.

34. *Race/Ethnicity:*

Instruction: To allow for the multiplicity of race/ethnicity, please enter the one-digit code for each category of race and ethnicity of the TANF adult (or minor child head-of-household). Reporting of this data element is optional for individuals whose family affiliation code is 5.

Ethnicity:

a. Hispanic or Latino:

1=Yes, Hispanic or Latino.

2=No.

Race:

b. American Indian or Alaska Native:

1=Yes, American Indian or Alaska Native.

2=No.

c. Asian:

1=Yes, Asian.

2=No.

d. Black or African American:

1=Yes, Black or African American.

2=No.

e. Native Hawaiian or Other Pacific Islander:

1=Yes, Native Hawaiian or Pacific Islander.

2=No.

f. White:

1=Yes, White.

2=No.

35. *Gender:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) gender:

1=Male.

2=Female.

36. *Receives Disability Benefits:* The Act specifies five types of disability benefits. For each type of disability benefits, enter the one-digit code that indicates whether or not the adult (or minor child head-of-household) received the benefit.

a. *Receives Federal Disability Insurance Benefits Under the Social Security OASDI Program (Title II of the Social Security Act):*

1=Yes, received Federal disability insurance.

2=No.

b. *Receives Benefits Based on Federal Disability Status Under Non-Social Security Act Programs:* These programs include Veteran's disability benefits, Worker's disability compensation, and Black Lung Disease disability benefits.

1=Yes, received benefits based on Federal disability status.

2=No.

c. *Receives Aid to the Permanently and Totally Disabled Under Title XIV–APDT of the Social Security Act:*

1=Yes, received aid under Title XIV–APDT.

2=No.

d. *Receives Aid to the Aged, Blind, and Disabled Under Title XVI–AABD of the Social Security Act:*

1=Yes, received aid under Title XVI–AABD.

2=No.

e. *Receives Supplemental Security Income Under Title XVI–SSI of the Social Security Act:*

1=Yes, received aid under Title XVI–SSI.

2=No.

37. *Marital Status:* Enter the one-digit code for the adult's (or minor child head-of-household's) marital status for the reporting month. Reporting of this data element is optional for individuals whose family affiliation code is 5.

1=Single, never married.

2=Married, living together.

3=Married, but separated.

4=Widowed.

5=Divorced.

38. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the two-digit code that shows the adult's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or as determined by the State (Tribe) (i.e., the relationship to the principal person of each person living in the household). If minor child head-of-household, enter code ''01.''

01=Head-of-household.

02=Spouse.

03=Parent.

04=Daughter or son.

05=Stepdaughter or stepson.

06=Grandchild or great grandchild.

07=Other related person (brother, niece, cousin).

08=Foster child.

09=Unrelated child.

10=Unrelated adult.

39. *Parent With Minor Child in the Family:*

Guidance: A parent with a minor child in the family may be a natural parent, adoptive parent, or step-parent of a minor child in the family. Reporting of this data element is optional for individuals whose family affiliation code is 3 or 5.

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) parental status.

1=Yes, a parent with a minor child in the family and used in two-parent participation rate.

2=Yes, a parent with a minor child in the family, but not used in two-parent participation rate.

3=No.

40. *Needs of a Pregnant Woman:* Some States (Tribes) consider the needs of a pregnant woman in determining the amount of assistance that the TANF family receives. If the adult (or minor child head-of-household) is pregnant and the needs associated with this pregnancy are considered in determining the amount of assistance for the reporting month, enter a ''1'' for this data element. Otherwise enter a ''2'' for this data element. This data element is applicable only for individuals whose family affiliation code is 1.

1=Yes, additional needs associated with pregnancy are considered in determining the amount of assistance.

2=No.

41. *Educational Level:* Enter the two-digit code to indicate the highest level of education attained by the adult (or minor child head-of-household). Unknown is not an acceptable code for individuals whose family affiliation code is ''1''. Reporting of this data element is optional for individuals whose family affiliation code is 5.

01–11=Grade level completed in primary/secondary school including secondary level vocational school or adult high school.

12=High school diploma, GED, or National External Diploma Program.

13=Awarded Associate's Degree.

14=Awarded Bachelor's Degree.

15=Awarded graduate degree (Master's or higher).

16=Other credentials (degree, certificate, diploma, etc.).

98=No formal education.

99=Unknown.

42. *Citizenship/Alienage:*

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) citizenship/alienage. Unknown is not an acceptable code for individuals whose family affiliation code is ''1''. Reporting of this data element is optional for individuals whose family affiliation code is 5.

1=U.S. citizen, including naturalized citizens.

2=Qualified alien.

9=Unknown.

43. *Cooperation with Child Support:* Enter the one-digit code that indicates if the adult (or minor child head-of-household) has cooperated with child support. Reporting of this data element is optional for individuals whose family affiliation code is 5.

1=Yes, adult (or minor child head-of-household) has cooperated with child support.

2=No.

9=Not applicable.

44. *Number of Months Countable toward Federal Time Limit:* Enter the number of months countable toward the adult's (or minor child head-of-household's) Federal five-year time limit based on the cumulative amount of time the individual has received Federal TANF assistance received from both the State (Tribe) and other States or Tribes. Reporting of this data element is optional for individuals whose family affiliation code is 2, 3, or 5.

45. *Number of Countable Months Remaining Under State's (Tribe's) Time Limit:* Enter the number of months that remain countable toward the adult's (or minor child head-of-household's) State (Tribal) time limit. Reporting of this data element is optional for individuals whose family affiliation code is 2, 3, or 5.

46. *Is Current Month Exempt from the State's (Tribe's) Time Limit:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) current exempt status from State's (Tribe's) time limit. Reporting of this data element is optional for individuals whose family affiliation code is 2, 3, or 5.

1=Yes, adult (or minor child head-of-household) is exempt from the State's (Tribe's) time limit for the reporting month.

2=No.

47. *Employment Status:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) employment status. Reporting of this data element is optional for individuals whose family affiliation code is 5.

1=Employed.

2=Unemployed, looking for work.

3=Not in labor force (i.e, unemployed, not looking for work, includes discouraged workers).

48. *Work Participation Status:*

Guidance: This item is used in calculating the work participation rates. The following two definitions are used in reporting this item and in determining which families are included in and excluded from the calculations.

''Disregarded'' from the participation rate means the TANF family is not included in the calculation of the work participation rate.

''Exempt'' means that the individual will not be penalized for failure to engage in work (i.e., good cause exception); however, the TANF family is included in the calculation of the work participation rate.

A State is not required to disregard all families that could be disregarded. For example, a family with a single custodial parent with child under 12 months (and the parent has not been disregarded for 12 months) may be disregarded. However, if the single custodial parent is meeting the work requirements, the State may want to include the family in its work participation rate. In this situation, the State should use work participation status code ''19'' rather than code ''01''.

Instruction: Enter the two-digit code that indicates the adult's (or minor child head-of-household's) work participation status. If the State chooses to include the noncustodial parent in the two-parent work participation rate, the State must code the data element ''Type of Family for Work Participation Rate'' with a ''2'' and enter the applicable code for this data element. If a State chooses to exclude the noncustodial parent from the two-parent work participation rate, the State must code the data element ''Type of Family for Work Participation'' with a ''1'' and code the data element ''Work Participation Status'' for the noncustodial parent with a ''99''. This data element is not applicable for individuals whose family affiliation code is 2, 3, 4, or 5 (i.e., use code ''99'' or leave blank).

01=Disregarded from participation rate, single custodial parent with child under 12 months.

02=Disregarded from participation rate because all of the following apply: required to participate, but not participating; and sanctioned for the reporting month, but not sanctioned for more than 3 months within the preceding 12-month period (Note, this code should be used only in a month for which the family is disregarded from the participation rate. While one or more adults may be sanctioned in more than 3 months within the preceding 12-month period, the family may not be disregarded from the participation rate for more than 3 months within the preceding 12-month period).

03=Disregarded, family is part of an ongoing research evaluation (as a member of a control group or experimental group) approved under Section 1115 of the Social Security Act.

04=Disregarded from the work participation rate based on an inconsistency under an approved welfare reform waiver that exempts the family from participation.

05=Disregarded from participation rate, based on participation in a Tribal Work Program, and State has opted to exclude all Tribal Work Program participants from its work participation rate.

06=Exempt, single custodial parent with child under age 6 and child care unavailable.

07=Exempt, disabled (not using an extended definition under a State waiver).

08=Exempt, caring for a severely disabled child (not using an extended definition under a State waiver).

09=Exempt, under a federally recognized good cause domestic violence waiver.

10=Exempt, State waiver.

11=Exempt, other.

12=Required to participate, but not participating; sanctioned for the reporting month; and sanctioned for more than 3 months within the preceding 12-month period.

13=Required to participate, but not participating; and sanctioned for the reporting month, but not sanctioned for more than 3 months within the preceding 12-month period.

14=Required to participate, but not participating; and not sanctioned for the reporting month.

15=Deemed engaged in work—single teen head-of-household or married teen who maintains satisfactory school attendance.

16=Deemed engaged in work—single teen head-of-household or married teen who participates in education directly related to employment for an average of at least 20 hours per week during the reporting month.

17=Deemed engaged in work—parent or relative (who is the only parent or caretaker relative in the family) with child under age 6 and parent engaged in work activities for at least 20 hours per week.

18=Required to participate and participating, but not meeting minimum participation requirements.

19=Required to participate and meeting minimum participation requirements.

99=Not applicable (e.g., person living in household and whose income or resources are counted in determining eligibility for or amount of assistance of the family receiving assistance, but not in eligible family receiving assistance or noncustodial parent that the State opted to exclude in determining participation rate).

Adult Work Participation Activities

Guidance: To calculate the average number of hours per week of participation in a work activity, add the number of hours of participation across all weeks in the month and divide by the number of weeks in the month. Round to the nearest whole number.

Some weeks have days in more than one month. Include such a week in the calculation for the month that contains the most days of the week (e.g., the week of July 27–August 2, 1997 would be included in the July calculation). Acceptable alternatives to this approach must account for all weeks in the fiscal year. One acceptable alternative is to include the week in the calculation for whichever month the Friday falls (i.e., the JOBS approach.) A second acceptable alternative is to count each month as having 4.33 weeks.

During the first or last month of any spell of assistance, a family may happen to receive assistance for only part of the month. If a family receives assistance for only part of a month, the State (Tribe) may count it as a month of participation if an adult (or minor child head-of-household) in the family (both adults, if they are both required to work) is engaged in work for the minimum average number of hours for any full week(s) that the family receives assistance in that month.

Special Rules: Each adult (or minor child head-of-household) has a life-time limit for vocational educational training. Vocational educational training may only count as a work activity for a total of 12 months. For any adult (or minor child head-of-household) that has exceeded this limit, enter ''0'' as the average number of hours per week of participation in vocational education training, even if (s)he is engaged in vocational education training. The additional participation in vocational education training may be coded under ''Other.''

The exception to the above 12-month rule may be a State that received a waiver that is inconsistent with the provision limiting vocational education training. In this case the State would adhere to the terms and conditions of the waiver.

Limitations: The four limitations concerning job search and job readiness are: (1) Job search and job readiness assistance only count for 6 weeks in any fiscal year; (2) An individual's participation in job search and job readiness assistance counts for no more than 4 consecutive weeks; (3) If the

State's (Tribe's) total unemployment rate for a fiscal year is at least 50 percent greater than the United States' total unemployment rate for that fiscal year or the State is a needy State (within the meaning of section 403 (b)(6)), then an individual's participation in job search or job readiness assistance counts for up to 12 weeks in that fiscal year; and (4) A State may count 3 or 4 days of job search and job readiness assistance during a week as a full week of participation, but only once for any individual.

For each week in which an adult (or minor child head-of-household) exceeds any of these limitations, use ''0'' as the number of hours in calculating the average number of hours per week of job search and job readiness, even if (s)he may be engaged in job search or job readiness activities.

If a State is operating its TANF Program under a waiver that permits broader rules for participation in job search and job readiness training, the TANF rules apply. Any additional participation in job search and job readiness training permitted under the waiver rules should be coded under data element #61 ''Additional Work Activities Permitted Under Waiver Demonstration.''

Instruction: For each work activity in which the adult (or minor child head-of-household) participated during the reporting month, enter the average number of hours per week of participation, except as noted above. For each work activity in which the adult (or minor child head-of-household) did not participate, enter zero as the average number of hours per week of participation. These work activity data elements are applicable only for individuals whose family affiliation code is 1.

49. *Unsubsidized Employment.*

50. *Subsidized Private-Sector Employment.*

51. *Subsidized Public-Sector Employment.*

52. *Work Experience.*

53. *On-the-job Training.*

54. *Job Search and Job Readiness Assistance.*

Instruction: As noted above, the statute limits participation in job search and job readiness training in four ways. Enter, in this data element, the average number of hours per week of participation in job search and job readiness training that are within the statutory limitations.

Some State waivers permit participation in job search and job readiness training beyond the statutory limits. Do not count hours of participation in job search and job readiness training beyond the TANF limit where allowed by waivers in this item. Instead, count the hours of participation beyond the TANF limit in the item ''Additional Work Activities Permitted Under Waiver Demonstration.'' Otherwise, count the additional hours of work participation under the work activity ''Other Work Activities.''

55. *Community Service Programs.*

56. *Vocational Educational Training:*

Instruction: As noted above, the statute contains special rules limiting an adult's (or minor child head-of-household's) participation in vocational educational training to twelve months. Enter, in this data element, the average number of hours per week of participation in vocational educational training that are within the statutory limits.

Some State waivers permit participation in vocational educational training beyond the statutory limits. Do not count hours of participation in vocational educational training beyond the TANF 12 month life-time limit where allowed by waivers in this item. Instead, count the hours of participation beyond the TANF limit in the item ''Additional Work Activities Permitted Under Waiver Demonstration.'' Otherwise, count the additional hours of work participation under the work activity ''Other Work Activities.''

57. *Job Skills Training Directly Related to Employment.*

58. *Education Directly Related to Employment for Individuals with no High School Diploma or Certificate of High School Equivalency.*

59. *Satisfactory School Attendance for Individuals with No High School Diploma or Certificate of High School Equivalency.*

60. *Providing Child Care Services to an Individual Who Is Participating in a Community Service Program.*

61. *Additional Work Activities Permitted Under Waiver Demonstration:*

Instruction: Some States' waivers permit participation in work activities that are not permitted under the statute. Enter the adult's (or minor child head-of-household's) average number of hours per week of participation in such work activities in this data element. For example, some State waivers permit participation in vocational educational training and job search beyond the TANF statutory limits. Count hours of participation in these activities beyond the TANF limits where allowed by the State waivers in this item. Otherwise, count the additional hours of work participation in the activity ''Other Work Activities.''

62. *Other Work Activities:*

Guidance: This data element collects information on work activities provided that are not permitted under a State waiver and are beyond the requirements of the statute. Reporting on this data element is optional. States may want to demonstrate their additional efforts at helping individuals become self-sufficient even though these activities are not considered in the calculation of the work participation rates.

63. *Required Hours of Work Under Waiver Demonstration:*

Guidance: In approving waivers, ACF specified hours of participation in several instances. One type of hour change in the welfare reform demonstrations was the recognition, as part of a change in work activities and/or exemptions, that the hours individuals worked should be consistent with their abilities and in compliance with an employability or personal responsibility plan or other criteria in accordance with the waiver terms and conditions. If the hour requirement in this case was part of a specific work component waiver, the State could show inconsistency and could use the waiver hours instead of the hours in section 407.

Instruction: If applicable, enter the two-digit number that represents the average number of hours per week of work participation required of the individual under a work component waiver. Otherwise, leave blank or enter ''0.'' This data element is not applicable for individuals whose family affiliation code is 2, 3, 4, or 5.

64. *Amount of Earned Income:* Enter the dollar amount of the adult's (or minor child head-of-household's) earned income for the reporting month or for the month used to budget for the reporting month. Include wages, salaries, and other earned income in this item.

65. *Amount of Unearned Income:* Unearned income has five categories. For each category of unearned income, enter the dollar amount of the adult's (or minor child head-of-household's) unearned income for the reporting month or for the month used to budget for the reporting month.

a. *Earned Income Tax Credit (EITC):*

Guidance: Earned Income Tax Credit is a refundable Federal, State, or local tax credit for families and dependent children. EITC payments are received monthly (as advance payment through the employer), annually (as a refund from IRS), or both.

Instruction: Enter the total dollar amount of the Earned Income Tax Credit actually received, whether received as an advance payment or a single payment (e.g., tax refund), by the adult (or minor child head-of-household) during the reporting month or the month used to budget for the reporting month. If the State counts the EITC as a resource, report it here as unearned income in the month received (i.e., reporting month or budget month, whichever the State is using). If the State assumes an advance payment is applied for and obtained, only report what is actually received for this item.

b. *Social Security:* Enter the dollar amount of Social Security benefits that the adult in the State (Tribal) TANF family has received for the reporting month or for the month used to budget for the reporting month.

c. *SSI:* Enter the dollar amount of SSI that the adult in the State (Tribal) TANF family has received for the reporting month or for the month used to budget for the reporting month.

d. *Worker's Compensation:* Enter the dollar amount of Worker's Compensation that the adult in the State (Tribal) TANF family has received for the reporting month or for the month used to budget for the reporting month.

e. *Other Unearned Income:*

Guidance: Other unearned income includes (but is not limited to) RSDI benefits, Veterans benefits, Unemployment Compensation, other government benefits, a housing subsidy, a contribution or income-in-kind, deemed income, Public Assistance or General Assistance, educational grants/scholarships/loans, and other. Do not include EITC, Social Security, SSI, Worker's Compensation, value of food stamp assistance, the amount of a Child Care subsidy, or the amount of Child Support.

Instruction: Enter the dollar amount of other unearned income that the adult in the State TANF family has received for the reporting month or for the month used to budget for the reporting month.

Child Characteristics

This section allows for coding the child characteristics for up to ten children in the TANF family. A minor child head-of-

household should be coded as an adult, not as a child. The youngest child should be coded as the first child in the family, the second youngest child as the second child, and so on.

If there are more than ten children in the TANF family, use the following order to identify the persons to be coded: (1) children in the eligible family receiving assistance in order from youngest to oldest; (2) minor siblings of child in the eligible family receiving assistance from youngest to oldest; and (3) any other children.

66. *Family Affiliation:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the one-digit code that shows the child's relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance.

Not in eligible family receiving assistance, but in the household

2=Parent of minor child in the eligible family receiving assistance.

3=Caretaker relative of minor child in the eligible family receiving assistance.

4=Minor sibling of child in the eligible family receiving assistance.

5=Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance.

67. *Date of Birth:* Enter the eight-digit code for date of birth for this child under the State (Tribal) TANF Program in the format YYYYMMDD. If the child's date of birth is unknown and the family affiliation code is not ''1,'' enter the code ''99999999''.

68. *Social Security Number:* Enter the nine-digit Social Security Number for the child in the format nnnnnnnnn. Reporting of this data element is optional for individuals whose family affiliation code is 4. If the Social Security number is unknown and the family affiliation code is not ''1,'' enter ''999999999''.

69. *Race/Ethnicity*

Instruction: To allow for the multiplicity of race/ethnicity, please enter the one-digit code for each category of race and ethnicity of the TANF child. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

Ethnicity:

a. Hispanic or Latino:

1=Yes, Hispanic or Latino.

2=No.

Race:

b. American Indian or Alaska Native:

1=Yes, American Indian or Alaska Native.

2=No.

c. Asian:

1=Yes, Asian.

2=No.

d. Black or African American:

1=Yes, Black or African American.

2=No.

e. Native Hawaiian or Other Pacific Islander:

1=Yes, Native Hawaiian or Pacific Islander.

2=No.

f. White:

1=Yes, White.

2=No.

70. *Gender:* Enter the one-digit code that indicates the child's gender.

1=Male.

2=Female.

71. *Receives Disability Benefits:* The Act specifies five types of disability benefits. Two of these types of disability benefits are applicable to children. For each type of disability benefits, enter the one-digit code that indicates whether or not the child received the benefit.

a. *Receives Benefits Based on Federal Disability Status Under Non-Social Security Act Programs:* These programs include Veteran's disability benefits, Worker's disability compensation, and Black Lung Disease disability benefits.

1=Yes, received benefits based on Federal disability status.

2=No.

b. *Receives Supplemental Security Income Under Title XVI–SSI of the Social Security Act:*

1=Yes, received aid under Title XVI–SSI.

2=No.

72. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the two-digit code that shows the child's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or as determined by the State (Tribe), (i.e., the relationship to the principal person of each person living in the household.)

01=Head-of-household.

02=Spouse.

03=Parent.

04=Daughter or son.

05=Stepdaughter or stepson.

06=Grandchild or great grandchild.

07=Other related person (brother, niece, cousin).

08=Foster child.

09=Unrelated child.

10=Unrelated adult.

73. *Parent With Minor Child In the Family:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Code ''1'' is not applicable for children. A parent with a minor child in the family may be a natural parent, adoptive parent, or step-parent of a minor child in the family. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

Instruction: Enter the one-digit code that indicates the child's parental status.

1=Yes, a parent with a minor child in the family and used in two-parent participation rate.

2=Yes, a parent with a minor child in the family, but not used in two-parent participation rate.

3=No.

74. *Educational Level:* Enter the two-digit code to indicate the highest level of education attained by the child. Unknown is not an acceptable code for individuals whose family affiliation code is ''1''. Reporting of this data element is optional for individuals whose family affiliation code is 4.

01–11=Grade level completed in primary/secondary school including secondary level vocational school or adult high school.

12=High school diploma, GED, or National External Diploma Program.

13=Awarded Associate's Degree.

14=Awarded Bachelor's Degree.

15=Awarded graduate degree (Master's or higher).

16=Other credentials (degree, certificate, diploma, etc.).

98=No formal education.

99=Unknown.

75. *Citizenship/Alienage:*

Instruction: Enter the one-digit code that indicates the child's citizenship/alienage. Unknown is not an acceptable code for an individual whose family affiliation code is ''1''. Reporting of this data element is optional for individuals whose family affiliation code is 4.

1=U.S. citizen, including naturalized citizens.

2=Qualified alien.

9=Unknown.

76. *Amount of Unearned Income:* Unearned income has two categories. For each category of unearned income, enter the dollar amount of the child's unearned income.

a. *SSI:* Enter the dollar amount of SSI that the child in the State (Tribal) TANF family has received for the reporting month or for the month used to budget for the reporting month.

b. *Other Unearned Income:* Enter the dollar amount of other unearned income that the child in the State (Tribal) TANF family has received for the reporting month or for the month used to budget for the reporting month.

Appendix B—TANF Data Report—Section Two Disaggregated Data Collection for Families No Longer Receiving Assistance under the TANF Program

Instructions and Definitions

General Instruction: The State agency or Tribal grantee should collect and report data for each data element. The data must be complete (unless explicitly instructed to leave the field blank) and accurate (i.e., correct).

An ''Unknown'' code may appear only on four data elements (#15 Date of Birth, #16 Social Security Number, #24 Educational Level, and #25 Citizenship/Alienage). For these data elements, unknown is not an acceptable code for individuals who are members of the eligible family (i.e., family affiliation code ''1''). States are not expected to track closed cases in order to collect information on families for months after the family has left the rolls. Rather, States are to report based on the last month of assistance.

1. *State FIPS Code:* Enter your two-digit State code from the following listing. These codes are the standard codes used by the National Institute of Standards and Technology. Tribal grantees should leave this field blank.

State	Code
Alabama	01
Alaska	02
American Samoa	60
Arizona	04
Arkansas	05
California	06
Colorado	08
Connecticut	09
Delaware	10
Dist. of Columbia	11
Florida	12
Georgia	13
Guam	66
Hawaii	15
Idaho	16
Illinois	17
Indiana	18
Iowa	19
Kansas	20
Kentucky	21
Louisiana	22
Maine	23
Maryland	24
Massachusetts	25
Michigan	26
Minnesota	27
Mississippi	28
Missouri	29
Montana	30
Nebraska	31
Nevada	32
New Hampshire	33
New Jersey	34
New Mexico	35
New York	36
North Carolina	37
North Dakota	38
Ohio	39
Oklahoma	40
Oregon	41
Pennsylvania	42
Puerto Rico	72
Rhode Island	44
South Carolina	45
South Dakota	46
Tennessee	47
Texas	48
Utah	49
Vermont	50
Virgin Islands	78
Virginia	51
Washington	53
West Virginia	54
Wisconsin	55
Wyoming	56

2. *County FIPS Code:* Enter the three-digit code established by the National Institute of Standards and Technology for classification of counties and county equivalents. Codes were devised by listing counties alphabetically and assigning sequentially odd integers; e.g., 001, 003, 005. A complete list of codes is available in Appendix F of the TANF Sampling and Statistical Methods Manual. Tribal grantees should leave this field blank.

3. *Tribal Code:* For Tribal grantees, enter the three-digit Tribal code that represents your Tribe (See Appendix E of the TANF Sampling and Statistical Methods Manual for a complete listing of Tribal Codes). State agencies should leave this field blank.

4. *Reporting Month:* Enter the four-digit year and two-digit month code that identifies the year and month for which the data are being reported.

5. Stratum:

Guidance: All families selected in the sample from the same stratum must be assigned the same stratum code. Valid stratum codes may range from ''00'' to ''99.'' States and Tribes with stratified samples should provide the ACF Regional Office with a listing of the numeric codes utilized to identify any stratification. If a State or Tribe uses a non-stratified sample design or opts to provide data for its entire caseload, enter the same stratum code any two-digit number) for each family.

Instruction: Enter the two-digit stratum code.

Family-Level Data

Definition: For reporting purposes, the TANF family means (a) all individuals receiving assistance as part of a family under the State's TANF Program; and (b) the following additional persons living in the household, if not included under (a) above:

(1) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(2) Minor siblings (including unborn children) of any child receiving assistance; and

(3) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

6. *Case Number—TANF:*

Guidance: If the case number is less than the allowable eleven characters, a State may use lead zeros to fill in the number.

Instruction: Enter the number that was assigned by the State agency or Tribal grantee to uniquely identify the TANF family.

7. *ZIP Code:* Enter the five-digit ZIP code for the family's place of residence for the reporting month.

8. *Disposition:* Enter one of the following codes for each TANF family.

1=Data collection completed.

2=Not subject to data collection/listed in error.

9. *Reason for Closure:*

Guidance: A closed case is a family whose assistance was terminated for the reporting month, but received assistance under the State's TANF Program in the prior month. A temporarily suspended case is not a closed case. If there is more than one applicable reason for closure, determine the principal (i.e., most relevant) reason. If two or more reasons are equally relevant, use the reason with the lowest numeric code. For example, when an adult marries, the income and resources of the new spouse are considered in determining eligibility. If, at the time of the marriage, the family becomes ineligible because of the addition of the spouse's income and/or resources, the case closure should be coded using code ''2''. If the family did not became ineligible based on the income and resources at the time of the marriage, but rather due to an increase in earnings subsequent to the marriage, then the case closure should be coded using code ''1''.

Instruction: Enter the two-digit code that indicates the reason for the TANF family no longer receiving assistance.

01=Employment and/or excess earnings.

02=Marriage.

03=Federal five-year time limit.

Sanctions:

04=Work-related sanction.

05=Child support sanction.

06=Teen parent failing to meet school attendance requirement.

07=Teen parent failing to live in an adult setting.

08=Failure to finalize an individual responsibility plan (e.g., did not sign plan).

09=Failure to meet individual responsibility plan provision or other behavioral requirements (e.g., immunize a minor child, attend parenting classes).

State (Tribal) Policies:

10=State (Tribal) time limit, if different than Federal.

11=Child support collected.

12=Excess unearned income (exclusive of child support collected).

13=Excess resources.

14=Youngest child too old to qualify for assistance.

15=Minor child absent from the home for a significant time period.

16=Failure to appear at eligibility/redetermination appointment, submit required verification materials, and/or cooperate with eligibility requirements.

17=Transfer to separate State MOE program.

Other.

18=Family voluntarily closes the case.

99=Other.

10. *Received Subsidized Housing:*

Guidance: Subsidized housing refers to housing for which money was paid by the Federal, State, or local government or through a private social service agency to the family or to the owner of the housing to assist the family in paying rent. Two families sharing living expenses does not constitute subsidized housing.

Instruction: Enter the one-digit code that indicates whether or not the TANF family received subsidized housing for the reporting month (or for the last month of TANF assistance).

1=Public housing.

2=Rent subsidy.

3=No housing subsidy.

11. *Received Medical Assistance:* Enter ''1'' if, for the reporting month (or for the last month of TANF assistance), any TANF family member was enrolled in Medicaid and, thus eligible to receive medical assistance under the State plan approved under Title XIX or ''2'' if no TANF family member was enrolled in Medicaid.

1=Yes, enrolled in Medicaid.

2=No.

12. *Received Food Stamps:* Enter the one-digit code that indicates whether or not the TANF family received food stamp assistance for the reporting month (or for the last month of TANF assistance).

1=Yes, received food stamp assistance.

2=No.

13. *Received Subsidized Child Care:*

Instruction: If the TANF family received subsidized child care for services in the reporting month (or for the last month of TANF assistance), enter code ''1'' or ''2,'' whichever is appropriate. Otherwise, enter code ''3.''

1=Yes, received federally funded (entirely or in part) child care (e.g., receives either TANF, CCDF, SSBG, or other federally funded child care).

2=Yes, received child care funded entirely under a State, Tribal, and/or local program (i.e., no Federal funds used).

3=No.

Person-Level Data

This section allows for coding up to sixteen persons in the TANF family. If there are more than sixteen persons in the TANF family, use the following order to identify the persons to be coded: (1) the head-of-household; (2) parents in the eligible family receiving assistance; (3) children in the eligible family receiving assistance; (4) other adults in the eligible family receiving assistance; (5) parents not in the eligible family receiving assistance; (6) caretaker relatives not in the eligible family receiving assistance; (7) minor siblings of a child in the eligible family; and (8) other persons, whose income or resources count in determining eligibility for or amount of assistance of the eligible family receiving assistance, in descending order from the person with the most income to the person with the least income. As indicated below, reporting for certain specified data elements in this section is optional for certain individuals (whose family affiliation code is a 2, 3, 4, or 5).

14. *Family Affiliation:*

Instruction: Enter the one-digit code that shows the individual's relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance.

Not in eligible family receiving assistance, but in the household:

2=Parent of minor child in the eligible family receiving assistance.

3=Caretaker relative of minor child in the eligible family receiving assistance.

4=Minor sibling of child in the eligible family receiving assistance.

5=Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance.

15. *Date of Birth:* Enter the eight-digit code for date of birth for this individual under TANF in the format YYYYMMDD. If the individual's date of birth is unknown and the individual's family affiliation code is not ''1,'' enter the code ''99999999''.

16. *Social Security Number:* Enter the nine-digit Social Security Number for the individual in the format nnnnnnnnn. If the social security number is unknown and the individual's family affiliation code is not ''1,'' enter ''999999999''.

17. *Race/Ethnicity:* Instructions: To allow for the multiplicity of race/ethnicity, please enter the one-digit code for each category of race and ethnicity of the TANF individual. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

Ethnicity:

a. Hispanic or Latino:

1=Yes, Hispanic or Latino.

2=No.

b. Race:

c. American Indian or Alaska Native:

1=Yes, American Indian or Alaska Native.

2=No.

d. Asian:

1=Yes, Asian.

2=No.

e. Black or African American:

1=Yes, Black or African American.

2=No.

f. Native Hawaiian or Other Pacific Islander:

1=Yes, Native Hawaiian or Pacific Islander.

2=No.

g. White:

1=Yes, White.

2=No.

18. *Gender:* Enter the one-digit code that indicates the individual's gender.

1=Male.

2=Female.

19. *Received Disability Benefits:*

Instructions: The Act specifies five types of disability benefits. For each type of disability benefits, enter the one-digit code that indicates whether or not the individual received the benefit.

a. *Received Federal Disability Insurance Benefits Under the Social Security OASDI Program (Title II of the Social Security Act):* Enter the one-digit code that indicates the adult received Federal disability insurance benefits for the reporting month (or the last month of TANF assistance). This item is not required to be coded for a child.

1=Yes, received Federal disability insurance.

2=No.

b. *Receives Benefits Based on Federal Disability Status Under Non-Social Security Act Programs:* These programs include Veteran's disability benefits, Worker's disability compensation, and Black Lung Disease disability benefits. Enter the one-digit code that indicates the individual received benefits based on Federal disability status for the reporting month (or the last month of TANF assistance). This data element should be coded for each adult and child with family affiliation code ''1''.

1=Yes, received benefits based on Federal disability status.

2=No.

c. *Received Aid to the Permanently and Totally Disabled Under Title XIV–APDT of the Social Security Act:* Enter the one-digit code that indicates the adult received aid under a State plan approved under Title XIV for the reporting month (or the last month of TANF assistance). This item is not required to be coded for a child.

1=Yes, received aid under Title XIV–APDT.

2=No.

d. Received Aid to the Aged, Blind, and Disabled Under Title XVI–AABD of the Social Security Act: Enter the one-digit code that indicates the adult received aid under a State plan approved under Title XVI–AABD for the reporting month (or the last month of TANF assistance). This item is not required to be coded for a child.

1=Yes, received aid under Title XVI–AABD.

2=No.

e. *Received Supplemental Security Income Under Title XVI–SSI of the Social Security Act:* Enter the one-digit code that indicates the individual received aid under a State plan approved under Title XVI–SSI for the reporting month (or the last month of TANF assistance). This data element should be coded for each adult and child with family affiliation code ''1''.

1=Yes, received aid under Title XVI–SSI.

2=No.

20. *Marital Status:* Enter the one-digit code for the marital status of the adult recipient. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

1=Single, never married.

2=Married, living together.

3=Married, but separated.

4=Widowed.

5=Divorced.

21. *Relationship to Head-of-Household:*

Instruction: Enter the two-digit code that shows the individual's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or as determined by the State (Tribe), (i.e., the relationship to the principal person of each person living in the household.) If a minor child head-of-household, enter code ''01.''

01=Head-of-household.

02=Spouse.

03=Parent.

04=Daughter or son.

05=Stepdaughter or stepson.

06=Grandchild or great grandchild.

07=Other related person (brother, niece, cousin).

08=Foster child.

09=Unrelated child.

10=Unrelated adult.

22. *Parent With Minor Child In the Family:*

Guidance: A parent with a minor child in the family may be a natural parent, adoptive parent, or step-parent of a minor child in the family. Reporting of this data element is optional for individuals whose family affiliation code is 3, 4, or 5.

Instruction: Enter the one-digit code that indicates the individual's parental status.

1=Yes, a parent with a minor child in the family.

2=No.

23. *Needs of a Pregnant Woman:* Some States (Tribes) consider the needs of a pregnant woman in determining the amount of assistance that the TANF family receives. If the individual was pregnant and the needs associated with this pregnancy were considered in determining the amount of assistance for the last month of TANF assistance, enter a ''1'' for this data element. Otherwise enter a ''2'' for this data element. This data element is applicable only for individuals whose family affiliation code is 1.

1=Yes, additional needs associated with pregnancy were considered in determining the amount of assistance.

2=No.

24. *Educational Level:* Enter the two-digit code to indicate the highest level of education attained by the individual. Unknown is not an acceptable code for individuals whose family affiliation code is ''1''. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

01–11=Grade level completed in primary/secondary school including secondary level vocational school or adult high school.

12=High school diploma, GED, or National External Diploma Program.

13=Awarded Associate's Degree.

14=Awarded Bachelor's Degree.

15=Awarded graduate degree (Master's or higher).

16=Other credentials (degree, certificate, diploma, etc.).

98=No formal education.

99=Unknown.

25. *Citizenship/Alienage:*

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) citizenship/alienage. Unknown is not an acceptable code for an individual whose family affiliation code is ''1''. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

1=U.S. citizen, including naturalized citizens.

2=Qualified alien.

9=Unknown.

26. *Number of Months Countable toward Federal Time Limit:* Enter the number of months countable toward the adult's (or minor child head-of-household's) Federal five-year time limit based on assistance received from (1) the State (Tribe) and (2) other States or Tribes. Reporting of this data element is optional for individuals whose family affiliation code is 2, 3, 4, or 5.

27. *Number of Countable Months Remaining Under State's (Tribe's) Time Limit:* Enter the number of months that remain countable toward the adult's (or minor child head-of-household's) State (Tribal) time limit. Reporting of this data element is optional for individuals whose family affiliation code is 2, 3, 4, or 5.

28. *Employment Status:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) employment status. Leave this field blank for other minor children. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

1=Employed.

2=Unemployed, looking for work.

3=Not in labor force (i.e, unemployed, not looking for work, includes discouraged workers).

29. *Amount of Earned Income:* Enter the amount of the adult's (or minor child head-of-household's) earned income for the last month on assistance or for the month used to budget for the last month on assistance.

30. *Amount of Unearned Income:* Enter the dollar amount of the individual's unearned income for the last month on assistance or for the month used to budget for the last month on assistance.

Appendix C—TANF Data Report—Section Three—Aggregated Data Collection for Families Applying for, Receiving, and No Longer Receiving Assistance Under the TANF Program

Instructions and Definitions

General Instruction: The State agency or Tribal grantee are to collect and report data for each data element, unless explicitly instructed to leave the field blank. Monthly caseload counts (e.g., number of families, number of two-parent families, and number of closed cases) and number of recipients must be unduplicated monthly totals. States and Tribal grantees may use samples to estimate the monthly totals only for data elements #4, #5, #6, #15, #16, and #17.

1. *State FIPS Code:* Enter your two-digit State code. Tribal grantees should leave this field blank.

2. *Tribal Code:* For Tribal grantees only, enter the three-digit Tribal code that represents your Tribe (See Appendix E of the TANF Sampling and Statistical Methods Manual for a complete listing of Tribal Codes). State agencies should leave this field blank.

3. *Calendar Quarter:* The four calendar quarters are as follows:

First quarter—January–March.

Second quarter—April–June.

Third quarter—July–September.

Fourth quarter—October–December.

Enter the four-digit year and one-digit quarter code (in the format YYYYQ) that identifies the calendar year and quarter for which the data are being reported (e.g., first quarter of 1997 is entered as ''19971'').

Applications

Guidance: The term ''application'' means the action by which an individual indicates in writing to the agency administering the State (or Tribal) TANF Program his/her desire to receive assistance.

Instruction: All counts of applications should be unduplicated monthly totals.

4. *Total Number of Applications:* Enter the total number of approved and denied applications received for each month of the quarter. For each month in the quarter, the total in this item should equal the sum of the number of approved applications (in item #5) and the number of denied applications (in item #6). The monthly totals for this element may be estimated from samples.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

5. *Total Number of Approved Applications:* Enter the number of applications approved during each month of the quarter. The monthly totals for this element may be estimated from samples.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

6. *Total Number of Denied Applications:* Enter the number of applications denied (or otherwise disposed of) during each month of the quarter. The monthly totals for this element may be estimated from samples.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

Active Cases

For purposes of completing this report, include all TANF eligible cases receiving assistance (i.e., cases funded under the TANF block grant and State MOE funded TANF cases) as cases receiving assistance under the State (Tribal) TANF Program. All counts of families and recipients should be unduplicated monthly totals.

7. *Total Amount of Assistance:* Enter the dollar value of all assistance (cash and non-cash) provided to TANF families under the State (Tribal) TANF Program for each month of the quarter. Round the amount of assistance to the nearest dollar.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

8. *Total Number of Families:* Enter the number of families receiving assistance under the State (Tribal) TANF Program for each month of the quarter. The total in this item should equal the sum of the number of two-parent families (in item #9), the number of one-parent families (in item #10) and the number of no-parent families (in item #11).

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

9. *Total Number of Two-parent Families:* Enter the total number of 2-parent families receiving assistance under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

10. *Total Number of One-Parent Families:* Enter the total number of one-parent families receiving assistance under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

11. *Total Number of No-Parent Families:* Enter the total number of no-parent families receiving assistance under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

12. *Total Number of Recipients:* Enter the total number of recipients receiving assistance under the State (Tribal) TANF Program for each month of the quarter. The total in this item should equal the sum of the number of adult recipients (in item #13) and the number of child recipients (in item #14).

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

13. *Total Number of Adult Recipients:* Enter the total number of adult recipients receiving assistance under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

14. *Total Number of Child Recipients:* Enter the total number of child recipients receiving assistance under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

15. *Total Number of Non-Custodial Parents Participating in Work Activities:* Enter the total number of noncustodial parents participating in work activities (even if not receiving assistance) under the State (Tribal) TANF Program for each month of the quarter. The monthly totals for this element may be estimated from samples.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

16. *Total Number of Births:* Enter the total number of births in families receiving

assistance under the State (Tribal) TANF Program for each month of the quarter. The monthly totals for this element may be estimated from samples.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

17. *Total Number of Out-of-Wedlock Births:* Enter the total number of out-of-wedlock births in families receiving assistance under the State (Tribal) TANF Program for each month of the quarter. The monthly totals for this element may be estimated from samples.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

Closed Cases

18. *Total Number of Closed Cases:* Enter the total number of closed cases for each month of the quarter.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

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APPENDIX D

Department of Health and Human Services
Administration for Children and Families

Temporary Assistance for Needy Families (TANF) ACF - 196 Financial Report

STATE	FISCAL YEAR	CURRENT QTR. ENDED	NEXT QTR. ENDING	ANNUAL RECONCILIATION [ ] YES [ ] NO
	FEDERAL FUNDS (A) FEDERAL AWARDS & TRANSFERS	STATE FUNDS (B)	STATE FUNDS (C)	CONTINGENCY FUND FEDERAL SHARE AT FMAP RATE OF _____% (D) FEDERAL AWARDS
1. AWARDED	$			$
2. TRANSFERRED TO CCDF DISCRETIONARY	$			
3. TRANSFERRED TO SSBG	$			
4. ADJUSTED SFAG	$			
EXPENDITURE CATEGORIES	FEDERAL TANF EXPENDITURES	STATE MOE EXPENDITURES IN TANF	MOE EXPENDITURES IN SEPARATE STATE PROGRAMS	FEDERAL EXPENDITURES
5. EXPENDITURES ON ASSISTANCE	$	$	$	$
a. BASIC ASSISTANCE	$	$	$	$
b. CHILD CARE	$	$	$	$
c. OTHER SUPPORTIVE SERVICES	$	$	$	$
d. ASSISTANCE AUTHORIZED SOLELY UNDER PRIOR LAW	$	$	$	$
6. EXPENDITURES ON NON-ASSISTANCE	$	$	$	$
a. WORK RELATED ACTIVITIES/EXPENSES	$	$	$	$
1. WORK SUBSIDIES	$	$	$	$
2. EDUCATION	$	$	$	$
3. OTHER WORK ACTIVITIES/EXPENSES	$	$	$	$
b. CHILD CARE	$	$	$	$
c. TRANSPORTATION	$	$	$	$
1. JOB ACCESS	$	$	$	$
2. OTHER	$	$	$	$
d. INDIVIDUAL DEVELOPMENT ACCOUNTS	$	$	$	$
e. REFUNDABLE EARNED INCOME TAX CREDITS	$	$	$	$
f. OTHER REFUNDABLE TAX CREDITS	$	$	$	$
g. DIVERSION PAYMENTS	$	$	$	$
h. PREVENTION OF OUT-OF-WEDLOCK PREGNANCIES	$	$	$	$
i. 2-PARENT FAMILY FORMATION AND MAINTENANCE	$	$	$	$
j. ADMINISTRATION	$	$	$	$
k. SYSTEMS	$	$	$	$
l. OTHER	$	$	$	$
7. TOTAL EXPENDITURES	$	$	$	$
8. TRANSITIONAL SERVICES FOR EMPLOYED	$	$	$	$
9. FEDERAL UNLIQUIDATED OBLIGATIONS	$			$
10. UNOBLIGATED BALANCE	$			$
11. STATE REPLACEMENT FUNDS		$		
QUARTERLY ESTIMATE	TANF FEDERAL FUNDS			
12. ESTIMATE FOR NEXT QTR. ENDED	$			

THIS IS TO CERTIFY THAT THE INFORMATION REPORTED ON ALL PARTS OF THIS FORM IS ACCURATE AND TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

SIGNATURE: AUTHORIZED STATE OFFICIAL	TYPED NAME, TITLE, AGENCY NAME
DATE SUBMITTED: SUBMITTAL: [ ] NEW [ ] REVISED	
PAGE 1 OF 1 APPROVED OMB NO. xxxx-xxxx FORM ACF-196 (xx/xx)	

BILLDING CODE 4184–01–C

Appendix D—Section 2—Instruction For Completion of Form ACF–196—Financial Reporting Form for the Temporary Assistance for Needy Families (TANF) Program

All States must complete and submit this report in accordance with these instructions on behalf of the State agency administering the TANF Program.

Due Dates: This form must be submitted quarterly by February 14, May 15, August 14 and November 14.

States must submit separate quarterly reports regarding the use of each fiscal year's funds. For example, States must submit a report regarding the expenditure of FY 98 funds in FY 99 separately from the report on the use of FY 99 funds in FY 99. Until the State reports that all of the Federal funds awarded for a given fiscal year have been transferred or expended, States must continue to submit quarterly reports on the use of funds from that fiscal year.

Distribution: The original copy (with an original signature) should be submitted to: Administration for Children and Families, Office of Financial Services, Division of Formula, Entitlement and Block Grants, Aerospace Building, 6th Floor, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447. An additional copy should be submitted to the ACF Regional Administrator.

General Instructions:

—Round all entries to the nearest dollar. Omit cents.
—Include costs of contracts and subcontracts in the appropriate reporting category based on their nature or function.
—Enter State Name.
—Enter the Fiscal Year for which this report is being submitted. Funding for each fiscal year is available until expended. Therefore, for each fiscal year, a State may be submitting reports simultaneously to cover two or more fiscal years. It is important to indicate the year for which information is being reported.

The State must note that prior fiscal year unobligated balances may only be expended on assistance or on the related administrative costs of providing assistance. Expenditure of prior year unobligated balances must be reported on the Expenditures on Assistance categories (lines 5(a) through 5(d)) and any related administrative costs reported on line 6(j).

—Transfers of TANF funds to the CCDF or SSBG must be made in the current fiscal year with current fiscal year TANF funds. Transfers of unobligated balances are not allowed after the end of the Federal fiscal year in which the funds were awarded.
—Enter the ending dates for the current quarter (the quarter just ended for which this constitutes the report of actual expenditures and obligations) and the ending date of the next quarter (the upcoming quarter which estimates are being requested on line 12).

Example: the State is reporting for the 1st quarter of the Federal fiscal year (10/1 through 12/31), the report is due February 14, the current quarter ending date is 12/31, the next quarter ending date for which estimates are requested is 6/30. The estimate submitted by the State will be for the quarter of 4/1 through 6/30. Estimates are not required on quarterly reports submitted for prior fiscal years.

—Enter whether this report is being used for annual reconciliation of the Contingency Fund.
—Enter the Federal Medical Assistance Percentage Rate used by the State for the fiscal year for which contingency funds were received.
—Indicate whether this is a new report or a revision of a report previously submitted for the same period.
—Entries are not required or are not applicable to blocks that are shaded.

Columns: All amounts reported in columns (A) through (D) must be actual expenditures or obligations made in accordance with all applicable statutes and regulations. Amounts reported in the estimates section are estimates of Federal expenditures to be made during the quarter indicated based on the best information available to the State.

Explanation of Columns:

Column (A) lines 1 through 4 refer to the Federal State Family Assistance Grant (SFAG) awards plus any Supplemental Grant or Bonus Funds, amounts transferred to the Child Care and Development Fund (CCDF) (Discretionary Fund) and the Social Services Block Grant (SSBG) program, and the amount Available for TANF.

Column: (A) lines 5 through 9 refer to the Federal TANF funds that the State expended and obligated under its TANF program.

Column: (A) line 10 refers to the unobligated balance, which is calculated by subtracting the amounts on lines 7 and 9 from the amount on line 4.

Column: (A) line 12 is the SFAG grant award amount or the percentage of the SFAG that the State estimates it will need for the next quarter ending on the date indicated at the top of the form. (See page 6 of Line Item Instructions)

Column: (B) lines 5 through 7 refer to State TANF expenditures that the State is making to meet its basic Maintenance-of-Effort (MOE) requirement. Include State funds that are commingled with Federal funds and segregated State funds expended under the State TANF program.

Note: States receiving contingency funds under section 403(b) for the fiscal year must also use this column to report State TANF expenditures made to meet the Contingency Fund (CF) MOE requirement and matching expenditures made above the 100-percent MOE level. Expenditures made to meet the CF MOE requirement and expenditures made above the MOE level (for matching purposes) must be expenditures made under the State TANF program only; they cannot include expenditures made under ''separate State programs.'' In addition, child care expenditures cannot be included as CF MOE expenditures or expenditures that are matched with contingency funds.

Column(B) line 11 refers to State replacement funds that the State must expend in the TANF program due to the assessment of a penalty and a reduction in its TANF grant awards.

Column (C) lines 5 through 7 refer to State expenditures that the State is making in Separate State Programs, outside the State TANF program, to meet its basic MOE requirement.

Note: For the basic MOE requirement, the cumulative total expenditures (i.e., the sum of 7(B) + 7(C)) reported at the end of the Federal fiscal year must add up to 80% of fiscal year 1994 historic State expenditures if the State did not meet the TANF work participation requirements, or 75% of fiscal year 1994 historic State expenditures if the State met the TANF work participation requirements. Basic MOE requirements and tables were published in Program Instruction No. TANF–ACF–PI–97–9, dated October 31, 1997.

For States that received contingency funds, line 7(B) minus line 5(B)(b)(assistance—child care) minus line 6(B)(b)(non—assistance child care) must exceed 100 percent of the CF MOE requirement.

Column (D) line 1 refers to the Federal Contingency Fund grant awards.

Column (D) lines 5 through 7 refer to the Federal share of expenditures for which Federal funding is available at the FMAP rate for the fiscal year for which contingency funds were received. Contingency funds are available for match for State expenditures in excess of 100% of CF MOE requirements as explained in the ''Note'' above.

Example: The State received contingency funds of $100,000 for 6 months of the fiscal year; the FMAP rate is 60% Federal and 40% State; the CF 100% MOE requirement is $1,000,000; the State reported expenditures under Columns (B) and (D) of $1,200,000. To determine how much of the contingency funds the State can keep, the expenditures of $1,000,000 (CF MOE requirement) must be subtracted from the total State expenditures of $1,200,000. That difference ($200,000) is to be multiplied by 60 percent, i.e., $200,000 × 60% = $120,000. The $120,000 must then be multiplied by 1/12 times the number of months a State received contingency funds, i.e., $120,000 × 1/12 × 6 = $60,000. The State may keep no more than $60,000 of the $100,000 ACF awarded it for the Contingency Fund. (This $60,000 may be further reduced as the result of the amendments to section 403(b)(6) under the Adoption and Safe Families Act.)

Determining how much, if any, a State may keep of the contingency funds awarded to it for a fiscal year, is possible only after annual reconciliation of the Contingency Fund account is completed. This form will serve as the annual reconciliation report when submitted for the fourth quarter of the fiscal year. Based on the example above, the amount claimed in line 7 of Column D (Total Expenditures − Contingency Fund) may be no more than $60,000.

It is possible that a State will have received contingency funds after the end of the fiscal year that apply to expenditures made in the prior fiscal year. For a State receiving contingency funds for a fiscal year after it has ended, the State will be required to submit a revised fourth quarter report within 45 days of receipt of the additional contingency funds. There is no carryover of such funds from one fiscal year to the next.

Unobligated Balances Reported on a State Fourth Quarter Financial Report for the Immediately Preceding Fiscal Year

Pursuant to section 404(e) of PRWORA of 1996, a State may reserve amounts awarded to the State under section 403 (excluding contingency funds), without fiscal year limitation, to provide assistance under the State TANF program. Federal Unobligated Balances carried forward from previous fiscal years may only be expended on assistance and related administrative costs associated with providing such assistance. The related Administrative Costs to provide the assistance will be reported against the 15 percent administrative cost cap for the fiscal year for which the Federal funds were originally awarded.

Current Fiscal Year Federal Expenditures on Non-Assistance

The State must obligate by September 30 of the current fiscal year any funds for Expenditures on Non-Assistance. Non-Assistance expenditures are reported on Line 6 categories of this report. The State must liquidate these obligations by September 30 of the immediately succeeding Federal fiscal year for which the funds were awarded. If the final liquidation amounts are lower than the original amount obligated, these funds must be included in the Unobligated Balance Line Item for the year in which they were awarded. As mentioned in the previous paragraph, unobligated balances from previous fiscal years may only be expended on assistance and the administrative costs related to providing the assistance.

Transfers

The State may transfer Federal funds to the CCDF Discretionary Fund and/or the SSBG programs only during the current fiscal year for which the funds were awarded. The State cannot transfer unobligated balances from a previous fiscal year to the CCDF and/or the SSBG programs. Limitations on transfers to these programs are explained in the Line Item instructions.

State Replacement of Grant Reductions Resulting From Penalties

If a State's State Family Assistance Grant is reduced because of the imposition of a penalty under section 409, section 409(a)(12) provides that the State must replace the funds lost due to the penalty with State funds in an amount that is no less than the amount withheld. The State replacement funds must be included in Line 11 Column (B). These funds must be in addition to funds reported under line 7(B).

Line Item Instructions—Cumulative Fiscal Year Expenditures and Obligations

Line 1. Awarded. Enter in column (A) the cumulative total of Federal TANF funds awarded to the State (after any Tribal adjustments) from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Enter in column (D) the cumulative total of contingency funds awarded to the State from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Note: The State must include all Federal TANF funds awarded for the current fiscal year on Line 1(A), except contingency funds. This includes SFAG funds, Supplemental Funds or any Bonus Funds. It does not include Welfare-to-Work funds awarded under section 403(a)(5).

Line 2. Transferred to Child Care and Development Fund (CCDF). Enter in column (A) the cumulative total of funds that the State transferred to the Discretionary Fund of the Child Care and Development Fund from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Section 404(d)(1) of the Act governs the transfer of TANF funds to the Discretionary Fund. In compliance with section 404(d)(1), a State may not transfer more than 30% of its total annual TANF funds. A State may transfer this entire amount to the Discretionary Fund of the CCDF program. All funds transferred to the Discretionary Fund of the CCDF program take on the rules and regulations of that recipient Fund in place for the current fiscal year at the time when the transfer occurs. A State can transfer current-year Federal TANF funds only. The State may not transfer prior year unobligated balances to the CCDF.

Line 3. Transferred to SSBG. Enter in column (A) the cumulative total of funds the State transferred to the Social Services Block Grant (SSBG) program from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Section 404(d)(2) of the Act governs the transfer of TANF funds to the SSBG program; it limits the amount that a State may transfer to no more than 10% of its total annual TANF grant to SSBG. (Also, the combined amount transferred to SSBG and the Discretionary Fund may not exceed 30% of the annual TANF grant. In other words, for all financial reports applicable to grant funds for one fiscal year, the sum of the total cumulative amount reported on line 3 and the total cumulative amount reported on line 2 cannot exceed 30% of the annual TANF grant.) All funds transferred to the SSBG program are subject to the statute and regulations of the recipient SSBG program in place for the current fiscal year at the time when the transfer occurs. A State may transfer current-year Federal TANF funds only. The State may not transfer prior-year unobligated balances to SSBG.

Note: Beginning in FY 2001 the maximum amount of SFAG funds a State may transfer to the SSBG program is 4.25% of its annual TANF grant.

Also, the total amount transferred to SSBG and CCDBG affects the amount available for Job Access activities that may be used as the non-Federal match under that program, See instructions for line 6c1.

Line 4. Adjusted SFAG. Enter in column (A) the cumulative total of funds available for TANF after subtracting the amounts transferred to the CCDF program (Discretionary Fund) (line 2(A)) and/or the SSBG program (line 3(A)) from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 5. Expenditures on Assistance. Blocks are shaded. Expenditures in this category must be included in Lines 5a through 5d from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 5a. Basic Assistance. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures for basic assistance from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Include benefits not reported on line 5d provided in the form of cash, payments, vouchers, or other forms designed to meet on going, basic needs. Include such benefits, even when provided in the form of payments by a TANF agency, or other agency on its behalf, to individuals and conditioned on their participation in work experience or community service (or any other work activity under section 261.30).

Line 5b. Child Care. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures for child care that meet the definition of assistance from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. The amounts reported in this category do not include funds transferred to the CCDF (Discretionary Fund—reported on the ACF–696) or SSBG programs. Include child care expenditures for families that are not employed, but need child care to participate in other work activities such as job search, community service, education, or training, or for respite purposes. Do not include child care provided as a nonrecurrent, short-term benefit (for example, during applicant job search or to recently employed families who need child care extended during a temporary period of unemployment in order to maintain continuity of care). Do not include expenditures on pre-K activities or other programs designed to provide early childhood development or educational services (e.g., following the Head Start model); such activities should be reported as ''other'' and identified as such in a footnote to that category in the 4th Quarter Financial Report.

LIne 5c. Other Supportive Services. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures for transportation and other supportive services that meet the definition of assistance from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Include expenditures for families that are not employed but need supportive services to participate in other work activities such as job search, community service, education, or training, or for respite purposes. Do not include transportation or other supports provided as a nonrecurrent, short-term benefit (for example, during applicant job search).

Line 5d. Assistance Authorized Solely Under Prior Law. Enter in columns (A) and (D) any expenditures of Federal funds on assistance that are authorized solely under section 404(a)(2) of the Act from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

These are expenditures that are not otherwise consistent with the purposes of

TANF and/or with the prohibitions in section 408. States including expenditures on this line must include a footnote explaining the nature of these benefits (e.g., previously authorized juvenile justice or State foster care payments) and reference the State plan provision under which they were authorized.

Note: States may not report MOE expenditures in this category; all State MOE expenditures must be consistent with the purposes of TANF.

Line 6. Expenditures on Non-Assistance. Blocks are shaded. Expenditures in this category must be included in Lines 6a through 6l.

Line 6a. Work-Related Activities and Expenses. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures (sum of 6(a)1 + 6(a)2 + 6(a)3 for each column) for work-related activities and expenses, as described in the instructions for those 3 lines, from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 6a1. Work Subsidies. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures for work subsidies from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Work subsidies include payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, or training. Do not include expenditures related to payments to participants in community service and work experience activities that are within the definition of assistance.

Line 6a2. Education. Enter in columns (A), (B), (C), and (D) costs related to educational activities from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. These are expenditures on educational activities that are consistent with the recognized work activities at § 261.30 or as a supplement to such activities. Thus, include secondary education (including alternative programs); adult education, GED, and ESL classes; education directly related to employment; education provided as vocational educational training; and post-secondary education. Do not include costs of early childhood education or after-school or summer enrichment programs for children in elementary or junior high school; such activities should be reported as ''other'' and identified as such in a footnote to that category in the 4th Quarter Financial Report.

Line 6a3. Other Work Activities/Expenses. Enter in columns (A), (B), (C), and (D) expenditures on other work activities from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. These are expenditures on: (a) work activities that have not been reported as education or work subsidies (including staff costs related to providing work experience and community service activities, on-the-job training, job search and job readiness, job skills training, and training provided as vocational educational training); (b) related services (such as employment counseling, coaching, job development, information and referral, and outreach to business and non profit community groups); and (c) other work-related expenses (such as costs for work clothes and equipment). Include such costs when provided as part of a diversion program or as transitional services to individuals who ceased to receive assistance due to employment.

Line 6b. Child Care. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures for child care that does not meet the definition of assistance from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Include child care provided to employed families (related either to their work or related job retention and advancement activities) and child care provided as a nonrecurrent, short-term benefit (e.g., during applicant job search or to a recently employed family during a temporary period of unemployment). Do not include amounts of funds transferred to the CCDF (Discretionary Fund—reported on the ACF–696) or SSBG programs. Also, do not include expenditures on pre-K activities or other programs designed to provide early childhood development or educational services (e.g., following the Head Start model); such activities should be reported as ''other'' and identified as such in a footnote to that category in the 4th Quarter Financial Report).

Line 6c. Transportation. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures (sum of 6(d)1 + 6(d)2 for each column) for transportation activities that do not meet the definition of assistance from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Include the value of transportation benefits (such as allowances, bus tokens, car payments, auto insurance reimbursement, and van services) provided to employed families (related either to their work or related job retention and advancement activities) and provided as a nonrecurrent, short-term benefit (e.g., during applicant job search).

Line 6c1. Job Access. Enter in Columns (A), (B), (C), and (D) the cumulative total expenditures for the Department of Transportation Job Access program from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Note: The amount of TANF funds expended on Job Access programs that may be used as non-Federal matching under the Job Access program is limited to the difference between 30 percent of TANF funds (amount reported on line 1(A)) and the total amount transferred to SSBG and the Discretionary Fund of CCDF (sum of amounts reported on lines 2(B) and 2(C)).

Line 6c2. Other Transportation. Enter in Columns (A), (B), (C), and (D) the cumulative total expenditures for other types of transportation activities that do not meet the definition of assistance from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 6d. Individual Development Accounts. Enter in columns (A), (B), (C), and (D) expenditures on contributions to Individual Development Accounts and any other expenditures related to the operation of an IDA program that fall outside the definition of administrative costs from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 6e. Refundable Earned Income Tax Credits. Enter in columns (A), (B), (C), and (D) expenditures on refundable earned income tax credits paid to families and otherwise consistent with the requirements of parts 260 and 263 of the TANF regulations from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Include State and local tax credits that represent a specific portion of the Federal Earned Income Credit and expenditures on similar State programs designed to defray the costs of employment for low-income families.

Line 6f. Other Refundable Tax Credits. Enter in columns (A), (B), (C), and (D) expenditures on any other refundable tax credits provided under State or local law that are consistent with the purposes of TANF and the requirements of parts 260 and 263 of the TANF regulations from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 6g. Diversion Payments. Enter in columns (A), (B), (C), and (D) any expenditures on nonrecurrent, short-term benefits to families in the form of cash payments, vouchers, or similar form of payment to deal with a specific crisis situation or episode of need and excluded from the definition of assistance on that basis. Do not include expenditures on support services such as child care or transportation (including car repairs) or work activities and expenses (such as applicant job search) provided under a diversion program; these items should have been reported in prior reporting categories.

Line 6h. Prevention of Out-of-Wedlock Pregnancies. Enter in columns (A), (B), (C), and (D) the cumulative total program expenditures for prevention of out-of-wedlock pregnancies activities that have not otherwise been reported from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 6i. Two-Parent Family Formation and Maintenance. Enter in columns (A), (B), (C), and (D) the cumulative total program expenditures for two-parent family formation and maintenance activities that have not otherwise been reported from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 6j. Administration. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures for administrative costs (as defined at § 263.0) from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

For Federal TANF funds, the 15% administrative cost cap applies to the amount Available for TANF reported on line 4(A) of this form. For State expenditures reported in columns (B) and (C), the 15% administrative cost cap applies to the cumulative amount of Total Expenditures (i.e., the sum of line 7(B) + 7(C)) reported for these columns.

Based on the nature or function of the contract, States must include appropriate administrative costs associated with contracts and subcontracts that count towards the 15% administrative cost caps.

Line 6k. Systems. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures for systems costs related to monitoring and tracking under the program from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Note: Section 404(b)(1) of the Act limits States to which a grant is made under section 403 to expend no more than 15% of the grant for administrative costs. In addition, section 404(b)(2) of the Act states that the 15% administrative cost cap shall not apply to the use of a grant for information technology and computerization needed for tracking or monitoring required by or under part IV–A of the Act. The systems exclusion applies to items that might normally be administrative costs, but are systems-related and needed for monitoring or tracking purposes under TANF. Under our final rules the same information technology exclusion applies to MOE expenditures. The TANF rules at §§ 263.2 and 263.13 provide guidance about what is excluded under this provision.

Line 6l. Other. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures for other expenditures considered ''expenditures on non-assistance'' that were not included on Lines 6a through 6j from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. For example, include as ''other'' costs on general family preservation activities and parenting training. Include costs on activities such as substance abuse treatment, domestic violence services, and case management to the extent that such costs are not directed at the second goal of TANF and included as work-related costs above.

Note: In the 4th quarter annual report the State must describe in a footnote the activities for which ''other expenditures'' under this line item applies.

Line 7. Total Expenditures. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures (i.e., the sum of Line 5a through Line 6l) from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 8. Transitional Services for Employed. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures to provide transitional services to families that cease to receive assistance under the TANF program because of employment from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Expenditures reported on this line must also be included in the expenditure categories reported on lines 5 through 7.

Note: The expenditures reported on this line will duplicate expenditures reported elsewhere in this report. Section 411(a)(5) requires separate quarterly reporting of expenditures on transitional services for families that have ceased to receive assistance because of employment.

Line 9. Federal Unliquidated Obligations. Enter in columns (A) and (D) the cumulative total Federal unliquidated obligations from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Obligations reported on this line must meet the definition of obligations contained in 45 CFR 92.3. For the Contingency Fund, this line should indicate $0 for the report submitted for the fourth quarter.

Line 10. Unobligated Balance. Enter in columns (A) and (D) the cumulative total Federal unobligated balances from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. After the end of the Federal fiscal year any amount reported in column (D), as an unobligated balance, will be de-obligated by ACF.

Note: The State must report any Federal funds reserved for ''rainy day'' purposes as an unobligated balance on this line. Unobligated balances expended in any future Federal fiscal year must be expended only on assistance (reported on Line 5 categories of this report) or administrative costs related to providing assistance (reported on line 6(j)).

Line 11. State Replacement Funds. Enter in column (B) the cumulative total State Replacement Funds expended as a result of the imposition of a TANF penalty from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 12. Estimate for Next Quarter Ended. Enter in column (A) the estimate of SFAG grant award funds requested for the next quarter ending, whose ending date was entered at the top of this report.

Note: Section 405(c)(1) of the Act states that ACF shall estimate the amount to be paid to each eligible State for each quarter, such estimate is to be based on a report filed by the State of the total sum to be expended by the State in the quarter under the State program funded under section 403.

Appendix E—SSP MOE Data Report—Section One—Disaggregated Data Collection for Families Receiving Assistance Under the Separate State Program(s)

Instructions and Definitions

General Instruction: If a State claims MOE expenditures for separate State programs (SSPs) and for persons served by those programs, it must collect and report this information on the SSP–MOE Data Report on SSP–MOE families receiving assistance only as follows: (1) If the State wishes to receive a high performance bonus, it must file the information in sections one and three of the SSP–MOE Data Report; and (2) if the State wishes to quality for caseload reduction credit, it must file the information in all three sections of the SSP–MOE Data Report.

The State agency should collect and report data for each data element. The data must be complete (unless explicitly instructed to leave the field blank) and accurate (i.e, correct).

An ''Unknown'' code may appear only on four sets of data elements ([#28 and #60] Date of Birth, [#29 and #61] Social Security Number, [#37 and #67] Educational Level, and (#38 and #68] Citizenship/Alienage). For these data elements, unknown is not an acceptable code for individuals who are members of the eligible family (i.e., family affiliation code ''1'').

There are six data elements for which States have the option to report based on either the budget month or the reporting month. These are: #14 Amount of Food Stamps Assistance; #17 Amount of Child Support; #18 Amount of Families Cash Resources; #57 Amount of Earned Income; and [#58 and #69] Amount of Unearned Income. Whichever choice the State selects must be used for all families reported each month and must be used for all months in the fiscal year.

The data elements in the SSP–MOE Data Report are similar to those in the TANF Data Report for the TANF Program. This will give us comparable information on the SSP programs. It will allow us, for example, to calculate a SSP–MOE work participation rate. Because a State's definitions and eligibility requirements for its SSPs may be different from those in its TANF Program, the data required in its SSP–MOE Data Report may not precisely correspond to the information collected by the State in its SSP–MOE Data Report. We encourage States to provide the best possible information.

1. *State FIPS Code:* Enter your two-digit State code from the following listing. These codes are the standard codes used by the National Institute of Standards and Technology.

State	Code
Alabama	01
Alaska	02
American Samoa	60
Arizona	04
Arkansas	05
California	06
Colorado	08
Connecticut	09
Delaware	10
Dist. of Columbia	11
Florida	12
Georgia	13
Guam	66
Hawaii	15
Idaho	16
Illinois	17
Indiana	18
Iowa	19
Kansas	20
Kentucky	21
Louisiana	22
Maine	23
Maryland	24
Massachusetts	25
Michigan	26
Minnesota	27
Mississippi	28
Missouri	29
Montana	30
Nebraska	31
Nevada	32
New Hampshire	33
New Jersey	34
New Mexico	35
New York	36
North Carolina	37
North Dakota	38

State	Code
Ohio	39
Oklahoma	40
Oregon	41
Pennsylvania	42
Puerto Rico	72
Rhode Island	44
South Carolina	45
South Dakota	46
Tennessee	47
Texas	48
Utah	49
Vermont	50
Virgin Islands	78
Virginia	51
Washington	53
West Virginia	54
Wisconsin	55
Wyoming	56

2. *County FIPS Code:* Enter the three-digit code established by the National Institute of Standards and Technology for classification of counties and county equivalents. Codes were devised by listing counties alphabetically and assigning sequentially odd integers; e.g., 001, 003, 005. A complete list of codes is available in Appendix F of the TANF Sampling and Statistical Methods Manual.

3. *Reporting Month:* Enter the four-digit year and two-digit month codes that identify the year and month for which the data are being reported.

4. *Stratum:*

Guidance: All families that receive assistance under separate State Programs (i.e, SSP–MOE families) and are selected in the sample from the same stratum must be assigned the same stratum code. Valid stratum codes may range from ''00'' to ''99.'' States with stratified samples should provide the ACF Regional Office with a listing of the numeric codes utilized to identify any stratification. If a State opts to provide data for its entire caseload, enter the same stratum code (any two-digit number) for each SSP–MOE family.

Instruction: Enter the two-digit stratum code.

Family-Level Data

Definition: For reporting purposes, the SSP–MOE family means (a) all individuals receiving assistance as part of a family under the separate State program(s); and (b) the following additional persons living in the household, if not included under (a) above:

(1) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(2) Minor siblings of any child receiving assistance; and

(3) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

5. *Case Number—Separate State MOE:*

Guidance: If the case number is less than the allowable eleven characters, a State may use lead zeros to fill in the number.

Instruction: Enter the number assigned by the State agency to uniquely identify the case.

6. *ZIP Code:* Enter the five-digit ZIP code for the SSP–MOE family's place of residence for the reporting month.

7. *Disposition:*

Guidance: A family that did not receive any assistance for the reporting month but was listed on the monthly sample frame for the reporting month is ''listed in error.'' States are to complete data collection for all sampled cases that are not listed in error.

Instruction: Enter one of the following codes for each SSP–MOE sampled case.

1=Data collection completed.

2=Not subject to data collection/listed in error.

8. *Number of Family Members:* Enter two digits that represent the number of members in the family receiving assistance under the separate State program(s). Include in the number of family members, the noncustodial parent whom the State has opted to include as part of the eligible family, who is receiving assistance as defined in § 260.31, or who is participating in work activities as defined in section 407(d) of the Act.

9. *Type of Family for Work Participation:*

Guidance: This data element identifies whether the family would be used in the calculations for both the overall and two-parent work participation rates, would be used in only the overall work participation rate, or would not be used in either work participation rate.

A family with an adult or minor child head-of-household will be included in the overall work participation rate unless explicitly disregarded. See data element #41 ''Work Participation Status'' for reasons for disregarding a family.

For the purpose of calculating the two-parent work participation rate, the two-parent families include any family with two or more natural or adoptive parents (of the same minor child) receiving assistance and living in the home, unless both are minor and neither is a head-of-household. All two-parent families are included in the two-parent work participation rate unless the family is explicitly disregarded. See data element #41 ''Work Participation Status'' for reasons for disregarding a family. A two-parent family that includes a disabled parent is not included in the two-parent work participation rate.

A family with a minor child head-of-household should be coded as either a single-parent family or two-parent family, whichever is appropriate.

A noncustodial parent is defined in § 260.30 as a parent who lives in the State and does not live with his/her child(ren). The State must report information on the noncustodial parent if the noncustodial parent: (1) Is receiving assistance as defined in § 260.31; (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.

Instruction: Enter the one-digit code that represents the type of family for purposes of calculating the work participation rates.

1=Family included only in overall work participation rate.

2=Two-Parent Family included in both the overall and two-parent work participation rates.

3=Family excluded from both the overall and two-parent work participation rates.

10. *Has the Family Received Assistance Under a State (Tribal) TANF Program Within the Past Six Months:* If the SSP–MOE family has received assistance under a State (Tribal) TANF Program within the past six months, enter code ''1.'' Otherwise, enter ''2.''

1=Yes, family has received assistance under a State (Tribal) TANF program within the past six months.

2=No.

11. *Receives Subsidized Housing:*

Guidance: Subsidized housing refers to housing for which money was paid by the Federal, State, or local government or through a private social service agency to the family or to the owner of the housing to assist the family in paying rent. Two families sharing living expenses does not constitute subsidized housing.

Instruction: Enter the one-digit code that indicates whether or not the SSP–MOE family received subsidized housing for the reporting month.

1=Public housing.

2=Rent subsidy.

3=No housing subsidy.

12. *Receives Medical Assistance:* Enter ''1'' if, for the reporting month, any SSP–MOE family member is enrolled in Medicaid and thus eligible to receive medical assistance under the State plan approved under Title XIX or ''2'' if no SSP–MOE family member is enrolled in Medicaid.

1=Yes, enrolled in Medicaid.

2=No.

13. *Receives Food Stamps:* Enter the one-digit code that indicates whether or not the SSP–MOE family is receiving food stamp assistance.

1=Yes, receives food stamp assistance.

2=No.

14. *Amount of Food Stamp Assistance:*

Guidance: For situations in which the food stamp household differs from the SSP–MOE family, code this element in a manner that most accurately reflects the resources available to the SSP–MOE family. One acceptable method for calculating the amount of food stamp assistance available to the SSP–MOE family is to prorate the amount of food stamps equally between each food stamp recipient then add together the amounts belonging to the SSP–MOE recipients.

Instruction: Enter the SSP–MOE eligible family's authorized dollar amount of food stamp assistance for the reporting month or for the month used to budget for the reporting month. If the SSP–MOE family did not receive any food stamps for the reporting month, enter ''0.''

15. *Receives Subsidized Child Care:*

Instruction: If the SSP–MOE family receives subsidized child care for the reporting month, enter code ''1'' or ''2,'' whichever is appropriate. Otherwise, enter code ''3.''

1=Yes, receives child care funded entirely or in part with Federal funds (e.g., receives either TANF, CCDF, SSBG, or other federally funded child care).

2=Yes, receives child care funded entirely under a State, Tribal, and/or local program.

3=No subsidized child care received.

16. *Amount of Subsidized Child Care:*

Guidance: Subsidized child care means a grant by the Federal, State or local government to or on behalf of a parent (or

caretaker relative) to support, in part or whole, the cost of child care services provided by an eligible provider to an eligible child. The grant may be paid directly to the parent (or caretaker relative) or to a child care provider on behalf of the parent (or caretaker relative).

Instruction: Enter the dollar amount of subsidized child care that the SSP–MOE family has received from all sources (e.g., CCDF, TANF, SSBG, State, local, etc.) for services in the reporting month. If SSP–MOE family did not receive any subsidized child care for services in the reporting month, enter ''0'' as the amount.

17. *Amount of Child Support:* Enter the total dollar value of child support received on behalf of the SSP–MOE family in the reporting month or for the month used to budget for the reporting month. This includes current payments, arrearages, recoupment, and pass-through amounts whether paid to the State or the family.

18. *Amount of the Family's Cash Resources* Enter the total dollar amount of the SSP–MOE family's cash resources as the State defines them for determining eligibility and/or computing benefits for the reporting month or for the month used to budget for the reporting month.

Amount of Assistance Received and the Number of Months That the Family Has Received Each Type of Assistance Under the Separate State Program

Guidance: 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). It includes such benefits even when they are provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients and conditioned on their participation in work experience, community service, or other work activities (i.e., under the CFR § 261.30).

Except where excluded as indicated in the following paragraph, it also includes supportive services such as transportation and child care provided to families who are not employed.

The term ''assistance'' excludes:

(1) Nonrecurrent, short-term benefits (such as payments for rent deposits or appliance repairs) 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 an Access to Jobs or Reverse Commute project, pursuant to section 404(k) of the Act, to an individual who is not otherwise receiving assistance.

The exclusion of nonrecurrent, short-term benefits under (1) of this paragraph also covers supportive services for recently employed families, for temporary periods of unemployment, in order to enable continuity in their service arrangements.

Instruction: For each type of assistance provided under the separate State program, enter the dollar amount of assistance that the SSP–MOE family received or that was paid on behalf of the SSP–MOE family for the reporting month and the number of months that the SSP–MOE family has received assistance under the State's Separate MOE programs. Also, for SSP–MOE Child Care, enter the number of children covered by the child care. If, for a ''type of assistance,'' no dollar amount of assistance was provided during the reporting month, enter ''0'' as the amount. If, for a ''type of assistance,'' no assistance has ever been received by the eligible family, enter ''0'' as the number of months of assistance.

19. *Cash and Cash Equivalents:*

A. *Amount*

B. *Number of Months*

20. *Child Care:*

Guidance: Include only the child care funded directly by these Separate State programs. Do not include child care funded under the TANF Program or the Child Care and Development Fund.

Number of:

A. Amount

B. Children Covered

C. Number of Months

21. Transportation:

A. Amount

B. Number of Months

22. Transitional Services:

A. Amount

B. Number of Months

23. Other:

A. Amount

B. Number of Months

24. *Reason for and Amount of Reduction in Assistance:*

Instruction: The amount of assistance received by a SSP–MOE family may be reduced for one or more reasons. For each reason listed below, indicate whether the SSP–MOE family received a reduction in assistance. Enter the total dollar value of the reduction(s) for each group of reasons for reductions in assistance for the reporting month. If for any reason there was no reduction in assistance, enter ''0.''

a. *Sanctions:*

i. *Total Dollar Amount of Reductions due to Sanctions:* Enter the total dollar value of reduction in assistance due to sanctions.

ii. *Work Requirements Sanction:*

1=Yes.

2=No.

iii. *Family Sanction for an Adult with No High School Diploma or Equivalent:*

1=Yes.

2=No.

iv. *Sanction for Teen Parent not Attending School:*

1=Yes.

2=No.

v. *Non-Cooperation with Child Support:*

1=Yes.

2=No.

vi. *Failure to Comply with an Individual Responsibility Plan:*

1=Yes.

2=No.

vii. *Other Sanctions:*

1=Yes.

2=No.

b. *Recoupment of Prior Overpayment:* Enter the total dollar value of reduction in assistance due to recoupment of a prior overpayment.

c. *Other:*

i. *Total Dollar Amount of Reductions due to Other Reasons (exclude the amounts for sanction and recoupment):* Enter the total dollar value of reduction in assistance due to reasons other than sanctions and recoupment.

ii. *Family Cap:*

1=Yes.

2=No.

iii. *Reduction Based on Family Moving into State From Another State:*

1=Yes.

2=No.

iv. *Reduction Based on Length of Receipt of Assistance:*

1=Yes.

2=No.

v. *Other, Non-sanction:*

1=Yes.

2=No.

25. *Waiver Evaluation Experimental and Control Groups:*

Guidance: If this data element is not applicable to your State (Tribe), either code this element ''9'' or leave this data element blank. In connection with waivers that are approved to allow States to implement Welfare Reform Demonstrations, a State assigned a portion of its cases to control groups (subject to the provisions of the regular, statutory AFDC program as defined by prior law) and experimental groups (subject to the provisions of the regular, statutory AFDC program as defined by prior law as modified by waivers). A State may choose, for the purpose of completing impact analyses, to maintain applicable control and experimental group treatment policies as they were implemented under their welfare reform demonstration (including prior law policies not modified by waivers), even if such policies are inconsistent with TANF. However, cases not assigned to an experimental or control group but subject to waiver policies in accordance with the terms and conditions of the waiver approval, may not apply prior law policies inconsistent with TANF unless such policies are specifically linked to approved waivers. When a State continues waivers, but does not maintain experimental and control groups for impact evaluation purposes, all cases in the demonstration site will be treated as cases subject to waiver policies in accordance with terms and conditions regardless of their original assignment as control group cases (i.e., prior law policies may only apply to the extent they are specially linked to approved waivers and former control group cases will now be subject to waiver policies.)

Instruction: Enter the one-digit code that indicates the family's waiver evaluation case status.

1=Control group case (for impact analysis purposes).

2=Experimental group case.

3=Other cases subject to waiver policies.

9=Not applicable (no waivers apply to this case).

Person-Level Data

Person-level data has two sections: (1) The adult and minor child head-of-household characteristic section and (2) the child characteristics section. An adult is an individual that is not a minor child. A minor child is an individual who (a) has not attained 18 years of age or (b) 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.)

Detailed data elements must be reported on all individuals unless, for a specific data element, the instructions explicitly give States an option to not report for a specific group of individuals.

Adult and Minor Child Head-of-Household Characteristics

This section allows for coding up to six adults (or a minor child who is either a head-of-household or married to the head-of-household and up to five adults) in the SSP–MOE family. A minor child who is either a head-of-household or married to the head-of-household should be coded as an adult and will hereafter be referred to as a ''minor child head-of-household.'' For each adult (or minor child head-of-household) in the SSP–MOE family, complete the adult characteristics section. As indicated below, reporting for certain specified data elements in this section is optional for certain individuals (whose family affiliation code is a 2, 3, or 5).

If there are more than six adults (or a minor child head-of-household and five adults) in the SSP–MOE family, use the following order to identify the persons to be coded: (1) The head-of-household; (2) parents in the eligible family receiving assistance; (3) other adults in the eligible family receiving assistance; (4) Parents not in the eligible family receiving assistance; (5) caretaker relatives not in the eligible family receiving assistance; and (6) other persons, whose income or resources count in determining eligibility for or amount of assistance of the eligible family receiving assistance, in descending order the person with the most income to the person with least income.

26. *Family Affiliation:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the one-digit code that shows the adult's (or minor child head-of-household's) relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance.

Not in eligible family receiving assistance, but in the household:

2=Parent of minor child in the eligible family receiving assistance.

3=Caretaker relative of minor child in the eligible family receiving assistance.

4=Minor sibling of child in the eligible family receiving assistance.

5=Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance.

27. *Noncustodial Parent Indicator:*

Guidance: A noncustodial parent is defined in § 260.30 as a parent who lives in the State and does not live with his/her child(ren). The State must report information on the noncustodial parent if the noncustodial parent: (1) Is receiving assistance as defined in § 260.31; (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.

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) noncustodial parent status.

1=Yes, a noncustodial parent.

2=No, not a noncustodial parent.

28. *Date of Birth:* Enter the eight-digit code for date of birth for the adult (or minor child head-of-household) under the separate State program in the format YYYYMMDD. If the adult's (or minor child head-of-household's) date of birth is unknown and the family affiliation code is not ''1,'' enter the code ''99999999''.

29. *Social Security Number:* Enter the nine-digit Social Security Number for the adult (or minor child head-of-household) in the format nnnnnnnnn. If the social security number is unknown and the family affiliation code is not ''1,'' enter ''999999999''.

30. *Race/Ethnicity:*

Instruction: To allow for the multiplicity of race/ethnicity, please enter the one-digit code for each category of race and ethnicity of the adult (or minor child head-of-household). Reporting of this data element is optional for individuals whose family affiliation code is 5.

Ethnicity:

a. Hispanic or Latino:

1=Yes, Hispanic or Latino.

2=No.

Race:

b. American Indian or Alaska Native:

1=Yes, American Indian or Alaska Native.

2=No.

c. Asian:

1=Yes, Asian.

2= No.

d. Black or African American:

1=Yes, Black or African American.

2=No.

e. Native Hawaiian or Other Pacific Islander:

1=Yes, Native Hawaiian or Pacific Islander.

2=No.

f. White:

1=Yes, White.

2=No.

31. *Gender:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) gender.

1=Male.

2=Female.

32. *Receives Disability Benefits:* The Act specifies five types of disability benefits. For each type of disability benefits, enter the one-digit code that indicates whether or not the adult (or minor child head-of-household) received the benefit.

a. *Receives Federal Disability Insurance Benefits Under the Social Security OASDI Program (Title II of the Social Security Act):*

1=Yes, received Federal disability insurance.

2=No.

b. *Receives Benefits Based on Federal Disability Status Under Non-Social Security Act Programs:* These programs include Veteran's disability benefits, Worker's disability compensation, and Black Lung Disease disability benefits.

1=Yes, received benefits based on Federal disability status.

2=No.

c. Receives Aid to the Permanently and Totally Disabled Under Title XIV–APDT of the Social Security Act:

1=Yes, received aid under Title XIV–APDT.

2=No.

d. *Receives Aid to the Aged, Blind, and Disabled Under Title XVI–AABD of the Social Security Act:*

1=Yes, received aid under Title XVI–AABD.

2=No.

e. *Receives Supplemental Security Income Under Title XVI–SSI of the Social Security Act:*

1=Yes, received aid under Title XVI–SSI.

2=No.

33. *Marital Status:* Enter the one-digit code for the adult's (or minor child head-of-household's) marital status for the reporting month. Reporting of this data element is optional for individuals whose family affiliation code is 5.

1=Single, never married.

2=Married, living together.

3=Married, but separated.

4=Widowed.

5=Divorced.

34. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the two-digit code that shows the adult's (or minor child head-of-household's) relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or as determined by the State, (i.e., the relationship to the principal person of each person living in the household.) If a minor child head-of-household, enter code ''01.''

01=Head-of-household.

02=Spouse.

03=Parent.

04=Daughter or son (Natural or adoptive).

05=Stepdaughter or stepson.

06=Grandchild or great grandchild

07=Other related person (brother, niece, cousin).

08=Foster child.

09=Unrelated child.

10=Unrelated adult.

35. *Parent With Minor Child In the Family:*

Guidance: A parent with a minor child in the family may be a natural parent, adoptive

parent, or step-parent of a minor child in the family. Reporting of this data element is optional for individuals whose family affiliation code is 3 or 5.

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) parental status.

1=Yes, a parent with a minor child in the family and used in two-parent participation rate.

2=Yes, a parent with a minor child in the family, but not used in two-parent participation rate.

3=No.

36. *Needs of a Pregnant Woman:* Some States (Tribes) consider the needs of a pregnant woman in determining the amount of assistance that the SSP–MOE family receives. If the adult (or minor child head-of-household) is pregnant and the needs associated with this pregnancy are considered in determining the amount of assistance for the reporting month, enter a ''1'' for this data element. Otherwise enter a ''2'' for this data element. This data element is applicable only for individuals whose family affiliation code is 1.

1=Yes, additional needs associated with pregnancy are considered in determining the amount of assistance.

2=No.

37. *Educational Level:* Enter the two-digit code to indicate the highest level of education attained by the adult (or minor child head-of-household). Unknown is not an acceptable code for an individual whose family affiliation code is ''1''. Reporting of this data element is optional for individuals whose family affiliation code is 5.

01–11=Grade level completed in primary/secondary school including secondary level vocational school or adult high school.

12=High school diploma, GED, or National External Diploma Program.

13=Awarded Associate's Degree.

14=Awarded Bachelor's Degree.

15=Awarded graduate degree (Master's or higher).

16=Other credentials (degree, certificate, diploma, etc.).

98=No formal education.

99=Unknown.

38. Citizenship/Alienage:

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) citizenship/alienage. Unknown is not an acceptable code for an individual whose family affiliation code is ''1''. Reporting of this data element is optional for individuals whose family affiliation code is 5.

1=U.S. citizen, including naturalized citizens.

2=Qualified alien.

3=Non qualified alien.

9=Unknown.

39. *Cooperation with Child Support:* Enter the one-digit code that indicates whether this adult (or minor child head-of-household) has cooperated with child support. Reporting of this data element is optional for individuals whose family affiliation code is 5.

1=Yes, adult (or minor child head-of-household) cooperated with child support.

2=No.

3=Not applicable.

40. *Employment Status:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) employment status. Reporting of this data element is optional for individuals whose family affiliation code is 5.

1=Employed.

2=Unemployed, looking for work.

3=Not in labor force (i.e, unemployed, not looking for work, includes discouraged workers)

41. *Work Participation Status:*

Guidance: This item could be used in calculating an SSP work participation rate and includes information comparable to TANF. The following two definitions are used in reporting this item and in determining which families might be included in and excluded from the calculations.

''Disregarded'' from the participation rate means the SSP–MOE family is not included in the calculation of the work participation rate.

''Exempt'' means that the individual will not be penalized for failure to engage in work (i.e., good cause exception); however, the SSP–MOE family is included in the calculation of the work participation rate.

A State is not required to disregard all families that could be disregarded. For example, a family with a single custodial parent with child under 12 months (and the parent has not been disregarded for 12 months) may be disregarded. However, if the single custodial parent is meeting the work requirements, the State may want to include the family in its work participation rate. In this situation, the State should used work participation status code ''19'' rather than code ''01''.

Instruction: Enter the two-digit code that indicates a work participation status for the adult or minor child head-of-household. This data element is not applicable for individuals whose family affiliation code is 2, 3, 4, or 5.

01=Disregarded from participation rate, single custodial parent with child under 12 months.

02=Disregarded from participation rate because all of the following apply: required to participate; but not participating; sanctioned for the reporting month; but not sanctioned for more than 3 months within the preceding 12-month period.

Note: this code should be used only in a month for which the family is disregarded from the participation rate. While one or more adults may be sanctioned in more than 3 months within the preceding 12-month period, the family may not be disregarded from the participation rate for more than 3 months within the preceding 12=month period.

03=Disregarded, family is part of an ongoing research evaluation (as a member of a control group or experimental group) approved under section 1115 of the Social Security Act.

04=Disregarded from the work participation rate based on an inconsistency under an approved welfare reform waiver that exempts the family from participation.

05=Disregarded from participation rate, based on participation in a Tribal Work Program, and State has opted to exclude all Tribal Work Program participants from its work participation rate.

06=Exempt, single custodial parent with child under age 6 and child care available.

07=Exempt, disabled (not using an extended definition under a State waiver).

08=Exempt, caring for a severely disabled child (not using an extended definition under a State waiver).

09=Exempt, under a federally recognized good cause domestic violence waiver.

10=Exempt, State waiver.

11=Exempt, other.

12=Required to participate, but not participating; sanctioned for the reporting month and sanctioned for more than 3 months within the preceding 12-month period.

13=Required to participate, but not participating; sanctioned for the reporting month, but not sanctioned for more than 3 months within the preceding 12-month period.

14=Required to participate, but not participating; and not sanctioned for the reporting month.

15=Deemed engaged in work—single teen head-of-household or married teen who maintains satisfactory school attendance.

16=Deemed engaged in work—single teen head-of-household or married teen who participates in education directly related to employment for an average of at least 20 hours per week during the reporting month.

17=Deemed engaged in work—parent or relative (who is the only parent or caretaker relative in the family) with child under age 6 and parent engaged in work activities for at least 20 hours per week.

18=Required to participate and participating, but not meeting minimum participation requirements.

19=Required to participate and meeting minimum participation requirements.

99=Not applicable (e.g., person living in household and whose income or resources are counted in determining eligibility for or amount of assistance of the family receiving assistance, but not in eligible family receiving assistance or noncustodial parent that the State opted to exclude in determining participation rate).

Adult Work Participation Activities

Guidance: To calculate the average number of hours per week of participation in a work activity, add the number of hours of participation across all weeks in the month and divide by the number of weeks in the month. Round to the nearest whole number.

Some weeks have days in more than one month. Include such a week in the calculation for the month that contains the most days of the week (e.g., the week of July 27—August 2, 1997 would be included in the July calculation). Acceptable alternatives to this approach must account for all weeks in the fiscal year. One acceptable alternative is to include the week in the calculation for the month in which the Friday falls (i.e., the JOBS approach). A second acceptable alternative is to count each month as having 4.33 weeks.

During the first or last month of any spell of assistance, a family may happen to receive assistance for only part of the month. If a family receives assistance for only part of a

month, the State (Tribe) may count it as a month of participation if an adult (or minor child head-of-household) in the family (both adults, if they are both required to work) is engaged in work for the minimum average number of hours for the full week(s) that the family receives assistance in that month.

Instruction: For each work activity in which the adult (or minor child head-of-household) participated during the reporting month, enter the average number of hours per week of participation. For each work activity in which the adult (or minor child head-of-household) did not participate, enter zero as the average number of hours per week of participation. These work activity data elements are applicable only for individuals whose family affiliation code is 1.

42. *Unsubsidized Employment.*

43. *Subsidized Private-Sector Employment.*

44. *Subsidized Public-Sector Employment*

45. *Work Experience*

46. *On-the-job Training*

47. *Job Search and Job Readiness Assistance*:

Instruction: Do not count hours of participation in job search and job readiness training beyond the TANF limit where allowed by waivers in this item. Instead, count the hours of participation beyond the TANF limit in data element #54 ''Additional Work Activities Permitted Under Waiver Demonstration.'' Otherwise, count the additional hours of work participation under data element #55 ''Other Work Activities.''

48. *Community Service Programs.*

49. *Vocational Educational Training:*

Instruction: Do not count hours of participation in vocational educational training beyond the TANF 12 month life-time limit where allowed by waivers in this item. Instead, count the hours of participation beyond the TANF limit in data element #54 ''Additional Work Activities Permitted Under Waiver Demonstration.'' Otherwise, count the additional hours of work participation under data element #55 ''Other Work Activities.''

50. *Job Skills Training Directly Related to Employment.*

51. *Education Directly Related to Employment for Individuals with no High School Diploma or Certificate of High School Equivalency.*

52. *Satisfactory School Attendance for Individuals with No High School Diploma or Certificate of High School Equivalency.*

53. *Providing Child Care Services to an Individual who is Participating in a Community Service Program.*

54. *Additional Work Activities Permitted Under Waiver Demonstration:*

Instruction: Some States' waivers permit participation in work activities that are not permitted under the statute. Enter the adult's (or minor child head-of-household's) average number of hours per week of participation in such work activities in this data element. For example, some State waivers permit participation in vocational educational training and job search beyond the TANF statutory limits. Count hours of participation in these activities beyond the TANF limits where allowed by the State waivers in this item. Otherwise, count the addditional hours of participation in the activity ''Other Work Activities.''

55. *Other Work Activities.* This data element collects information on work activities provided that are not permitted under a State waiver and are beyond the requirements of the statute.

56. *Required Hours of Work Under Waiver Demonstration:*

Guidance: In approving waivers, ACF specified hours of participation in several instances. One type of hour change in the welfare reform demonstrations was the recognition, as part of a change in work activities and/or exemptions, that the hours individuals worked should be consistent with their abilities and in compliance with an employability or personal responsibility plan or other criteria in accordance to waiver terms and conditions. If the hour requirement in this case was part of a specific work component waiver, the State could show inconsistency and could use the waiver hours instead of the hours in section 407.

Instruction: If applicable, enter the two-digit number that represents the average number of hours per week of work participation required of the individual under a work component waiver. Otherwise, leave blank or enter ''0.'' This data element is not applicable for individuals whose family affiliation code is 2, 3, 4, or 5.

57. *Amount of Earned Income:* Enter the dollar amount of the adult's (or minor child head-of-household's) earned income for the reporting month or for the month used to budget for the reporting month.

58. *Amount of Unearned Income:* Unearned income has five categories. For each category of unearned income, enter the dollar amount of the adult's (or minor child head-of-household's) unearned income.

a. *Earned Income Tax Credit (EITC):*

Guidance: Earned Income Tax Credit is a refundable tax credit for families and dependent children. EITC payments are received monthly (as advance payment through the employer), annually (as a refund from IRS), or both.

Instruction: Enter the total dollar amount of the Earned Income Tax Credit actually received, whether received as an advance payment or a single payment (e.g., tax refund), by the adult (or minor child head-of-household) during the reporting month or the month used to budget for the reporting month. If the State counts the EITC as a resource, report it here as unearned income in the month received (i.e., the reporting month or budget month). If the State assumes an advance payment is applied for and obtained, only report what is actually received for this item.

b. *Social Security:* Enter the dollar amount of Social Security benefits that the adult in the SSP–MOE family has received for the reporting month or for the month used to budget for the reporting month.

c. *SSI:* Enter the dollar amount of SSI benefits that the adult in the SSP–MOE family has received for the reporting month or for the month used to budget for the reporting month.

d. *Worker's Compensation:* Enter the dollar amount of Worker's Compensation that the adult in the SSP–MOE family has received for the reporting month or for the month used to budget for the reporting month.

e. *Other Unearned Income:*

Guidance: Other unearned income includes RSDI benefits, Veterans benefits, Unemployment Compensation, other government benefits, housing subsidy, contribution/income-in-kind, deemed income, Public Assistance or General Assistance, educational grants/scholarships/loans, other. Do not include EITC, Social Security, SSI, Worker's Compensation, value of food stamp assistance, the amount of the Child Care subsidy, and the amount of Child Support.

Instruction: Enter the dollar amount of other unearned income that the adult in the SSP–MOE family has received for the reporting month or for the month used to budget for the reporting month.

Child Characteristics

This section allows for coding the child characteristics for up to ten children in the SSP–MOE family. A minor child head-of-household should be coded as an adult, not as a child. The youngest child should be coded as the first child in the family, the second youngest child as the second child, and so on.

If there are more than ten children in the SSP–MOE family, use the following order to identify the persons to be coded: (1) Children in the eligible family receiving assistance in order from youngest to oldest; (2) minor siblings of child in the eligible family receiving assistance from youngest to oldest; and (3) any other children.

59. *Family Affiliation:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the one-digit code that shows the child's relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance.

Not in eligible family receiving assistance, but in the household:

2=Parent of minor child in the eligible family receiving assistance.

3=Caretaker relative of minor child in the eligible family receiving assistance.

4=Minor sibling of child in the eligible family receiving assistance.

5=Person whose income is considered in determining eligibility for and amount of assistance for the eligible family receiving assistance.

60. *Date of Birth:* Enter the eight-digit code for date of birth for this child under the separate State programs in the format YYYYMMDD. If the child's date of birth is unknown and the family affiliation code is not ''1,'' enter the code ''99999999''.

61. *Social Security Number:* Enter the nine-digit Social Security Number for the child in the format nnnnnnnnn. If the child's social security number is unknown and the family affiliation code is not ''1,'' enter the 9-digit code ''999999999''. Reporting of this data element is optional for individuals whose family affiliation code is 4.

62. *Race/Ethnicity:*

Instruction: To allow for the multiplicity of race/ethnicity, please enter the one-digit code

for each category of race and ethnicity of the child. Reporting of this data element is optional for individuals whose family affiliation code is 4.

Ethnicity:

a. Hispanic or Latino:

1=Yes, Hispanic or Latino.

2=No.

Race:

b. American Indian or Alaska Native:

1=Yes, American Indian or Alaska Native.

2=No.

c. Asian:

1=Yes, Asian.

2=No.

d. Black or African American:

1=Yes, Black or African American.

2=No.

e. Native Hawaiian or Other Pacific Islander:

1=Yes, Native Hawaiian or Pacific Islander.

2=No.

f. White:

1=Yes, White.

2=No.

63. *Gender:* Enter the one-digit code that indicates the child's gender.

1=Male.

2=Female.

64. *Receives Disability Benefits:* The Act specifies five types of disability benefits. Two of these types of disability benefits are applicable to children. For each type of disability benefits, enter the one-digit code that indicates whether or not the child received the benefit.

a. *Receives Benefits Based on Federal Disability Status Under Non-Social Security Act Programs:* These programs include Veteran's disability benefits, Worker's disability compensation, and Black Lung Disease disability benefits.

1=Yes, received benefits based on Federal disability status.

2=No.

b. *Receives Supplemental Security Income Under Title XVI–SSI of the Social Security Act:*

1=Yes, received aid under Title XVI–SSI.

2=No.

65. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the two-digit code that shows the child's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or, principal person of each person living in the household.

01=Head-of-household.

02=Spouse.

03=Parent.

04=Daughter or son (Natural or adoptive).

05=Stepdaughter or stepson.

06=Grandchild or great grandchild.

07=Other related person (brother, niece, cousin).

08=Foster child.

09=Unrelated child.

10=Unrelated adult.

66. *Parent With Minor Child In the Family:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Code ''1'' is not applicable for children. A parent with a minor child in the family may be a natural parent, adoptive parent, or step-parent of a minor child in the family. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

Instruction: Enter the one-digit code that indicates the child's parental status.

1=Yes, a parent with a minor child in the family and used in two-parent participation rate.

2=Yes, a parent with a minor child in the family, but not used in two-parent participation rate.

3=No.

67. *Educational Level:* Enter the two-digit code to indicate the highest level of education attained by the child. Unknown is not an acceptable code for an individual whose family affiliation code is ''1''. Reporting of this data element is optional for individuals whose family affiliation code is 4.

01–11=Grade level completed in primary/secondary school including secondary level vocational school or adult high school.

12=High school diploma, GED, or National External Diploma Program.

13=Awarded Associate's Degree.

14=Awarded Bachelor's Degree.

15=Awarded graduate degree (Master's or higher).

16=Other credentials (degree, certificate, diploma, etc.).

98=No formal education.

99=Unknown.

68. *Citizenship/Alienage:*

Instruction: Enter the one-digit code that indicates the child citizenship/alienage. Unknown is not an acceptable code for an individual whose family affiliation code is ''1''. Reporting of this data element is optional for individuals whose family affiliation code is 4.

1=U.S. citizen, including naturalized citizens.

2=Qualified alien.

3=Non qualified alien.

9=Unknown.

69. *Amount of Unearned Income:* Unearned income has two categories. For each category of unearned income, enter the dollar amount of the child's unearned income for the reporting month or for the month used to budget for the reporting month.

a. *SSI:* Enter the dollar amount of SSI that the child in the SSP–MOE family has received for the reporting month or for the month used to budget for the reporting month.

b. *Other Unearned Income:* Enter the dollar amount of other unearned income that the child in the SSP–MOE family has received for the reporting month or for the month used to budget for the reporting month.

Appendix F—SSP MOE Data Report—Section Two—Disaggregated Data Collection for Families No Longer Receiving Assistance Under the Separate State Program(s)

Instructions and Definitions

General Instruction: The State agency should collect and report data for each data element. The data must be complete (unless explicitly instructed to leave the field blank) and accurate (i.e, correct).

An ''Unknown'' code may appear only on four data elements (#14 Date of Birth, #15 Social Security Number, #23 Educational Level, and #24 Citizenship/Alienage). For these data elements, unknown is not an acceptable code for individuals who are members of the eligible family (i.e., family affiliation code ''1''). States are not expected to track closed cases in order to collect information on families for months after the family has left the rolls. Rather it is acceptable to report based on the last month of assistance.

1. *State FIPS Code:* Enter your two-digit State code from the following listing. These codes are the standard codes used by the National Institute of Standards and Technology.

State	Code
Alabama	01
Alaska	02
American Samoa	60
Arizona	04
Arkansas	05
California	06
Colorado	08
Connecticut	09
Delaware	10
Dist. of Columbia	11
Florida	12
Georgia	13
Guam	66
Hawaii	15
Idaho	16
Illinois	17
Indiana	18
Iowa	19
Kansas	20
Kentucky	21
Louisiana	22
Maine	23
Maryland	24
Massachusetts	25
Michigan	26
Minnesota	27
Mississippi	28
Missouri	29
Montana	30
Nebraska	31
Nevada	32
New Hampshire	33
New Jersey	34
New Mexico	35
New York	36
North Carolina	37
North Dakota	38
Ohio	39
Oklahoma	40
Oregon	41
Pennsylvania	42
Puerto Rico	72
Rhode Island	44
South Carolina	45

State	Code
South Dakota	46
Tennessee	47
Texas	48
Utah	49
Vermont	50
Virgin Islands	78
Virginia	51
Washington	53
West Virginia	54
Wisconsin	55
Wyoming	56

2. *County FIPS Code:* Enter the three-digit code established by the National Institute of Standards and Technology for classification of counties and county equivalents. Codes were devised by listing counties alphabetically and assigning sequentially odd integers; e.g., 001, 003, 005. A complete list of codes is available in Appendix F of the TANF Sampling and Statistical Methods Manual.

3. *Reporting Month:* Enter the four-digit year and two-digit month code that identifies the year and month for which the data are being reported.

4. *Stratum:*

Guidance: All families that receive assistance under separate State Programs (i.e, SSP–MOE families) and are selected in the sample from the same stratum must be assigned the same stratum code. Valid stratum codes may range from ''00'' to ''99.'' States with stratified samples should provide the ACF Regional Office with a listing of the numeric codes utilized to identify any stratification. If a State opts to provide data for its entire caseload, enter the same stratum code (any two-digit number) for each SSP–MOE family.

Instruction: Enter the two-digit stratum code.

Family-Level Data

Definition: For reporting purposes, the SSP–MOE family means (a) all individuals receiving assistance as part of a family under the separate State program; and (b) the following additional persons living in the household, if not included under (a) above:

(1) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(2) Minor siblings (including unborn children) of any child receiving assistance; and

(3) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

5. *Case Number:*

Guidance: If the case number is less than the allowable eleven characters, a State may use lead zeros to fill in the number.

Instruction: Enter the number that was assigned by the State agency to uniquely identify the SSP–MOE family.

6. *ZIP Code:* Enter the five-digit ZIP code for the family's place of residence for the reporting month.

7. *Disposition:* Enter one of the following codes for each SSP–MOE family.

1=Data collection completed.

2=Not subject to data collection/listed in error.

8. *Reason for Closure:*

Guidance: A closed case is a family whose assistance was terminated for the reporting month, but received assistance under the State's MOE Program in the prior month. A temporarily suspended case is not a closed case. If there is more than one applicable reason for closure, determine the principal (i.e., most relevant) reason. If two or more reasons are equally relevant, use the reason with the lowest numeric code. For example, when an adult marries, the income and resources of the new spouse are considered in determining eligibility. If, at the time of the marriage, the family becomes ineligible because of the addition of the spouse's income and/or resources, the case closure should be coded using code ''2''. If the family did not became ineligible based on the income and resources at the time of the marriage, but rather due to an increase in earnings subsequent to the marriage, then the case closure should be coded using code ''1''.

Instruction: Enter the two-digit code that indicates the reason for the SSP–MOE family no longer receiving assistance.

01=Employment and/or excess earnings.

02=Marriage.

03=Five-year time limit.

Sanctions:

04=Work related sanction.

05=Child support sanction.

06=Teen parent failing to meet school attendance requirement.

07=Teen parent failing to live in an adult setting.

08=Failure to meet individual responsibility plan provision or other behavioral requirements (e.g., immunize a minor child, attend parenting classes).

09=Failure to complete individual responsibility plan (e.g., did not sign plan).

State Policies:

10=State time limit, if different than five-year limit.

11=Child support collected.

12=Excess unearned income (exclusive of child support collected).

13=Excess resources.

14=Youngest child too old to qualify for assistance.

15=Minor child absent from the home for a significant time period.

16=Failure to appear at eligibility/redetermination appointment, submit required verification materials, and/or cooperate with eligibility requirements.

17=Transfer to State's TANF program.

Other:

18=Family voluntarily closes the case.

99=Other.

9. *Received Subsidized Housing:*

Guidance: Subsidized housing refers to housing for which money was paid by the Federal, State, or local government or through a private social service agency to the family or to the owner of the housing to assist the family in paying rent. Two families sharing living expenses does not constitute subsidized housing.

Instruction: Enter the one-digit code that indicates whether or not the SSP–MOE family received subsidized housing for the reporting month.

1=Public housing.

2=Rent subsidy.

3=No housing subsidy.

10. *Received Medical Assistance:* Enter ''1'' if, for the reporting month, any SSP–MOE family member was enrolled in Medicaid and, thus eligible to receive medical assistance under the State plan approved under Title XIX or ''2'' if no SSP–MOE family member was enrolled in Medicaid.

1=Yes, enrolled in Medicaid.

2=No.

11. *Received Food Stamps:* Enter the one-digit code that indicates whether or not the SSP–MOE family has received food stamp assistance.

1=Yes, received food stamp assistance.

2=No.

12. *Received Subsidized Child Care:*

Instruction: If the SSP–MOE family received subsidized child care for the reporting month (or for the last month of SSP–MOE assistance), enter code ''1'' or ''2,'' whichever is appropriate. Otherwise, enter code ''3.''

1=Yes, receives child care funded (entirely or in part) with Federal funds (e.g., receives either TANF, CCDF, SSBG, or other federally funded child care).

2=Yes, received child care funded entirely under a State, Tribal, and/or local program (i.e., no Federal funds used).

3=No.

Person-Level Data

This section allows for coding up to sixteen persons in the SSP–MOE family. If there are more than sixteen persons in the SSP–MOE family, use the following order to identify the persons to be coded: (1) The head-of-household; (2) parents in the eligible family receiving assistance; (3) children in the eligible family receiving assistance; (4) other adults in the eligible family receiving assistance; (5) Parents not in the eligible family receiving assistance; (6) caretaker relatives not in the eligible family receiving assistance; (7) minor siblings of a child in the eligible family; and (8) other persons, whose income or resources count in determining eligibility for or amount of assistance of the eligible family receiving assistance, in descending order the person with the most income to the person with least income. As indicated below, reporting for certain specified data elements in this section is optional for certain individuals (whose family affiliation code is a 2, 3, 4 or 5).

13. *Family Affiliation:*

Instruction: Enter the one-digit code that shows the individual's relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance.

Not in eligible family receiving assistance, but in the household:

2=Parent of minor child in the eligible family receiving assistance.

3=Caretaker relative of minor child in the eligible family receiving assistance.

4=Minor sibling of child in the eligible family receiving assistance.

5=Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance.

14. *Date of Birth:* Enter the eight-digit code for date of birth for this individual under separate State programs in the format

YYYYMMDD. If the individual's date of birth is unknown and the family affiliation code is not ''1,'' enter the code ''99999999''.

15. *Social Security Number:* Enter the nine-digit Social Security Number for the individual in the format nnnnnnnnn. If the social security number is unknown and the family affiliation code is not ''1,'' enter ''999999999''.

16. Race/Ethnicity:

Instructions: To allow for the multiplicity of race/ethnicity, please enter the one-digit code for each category of race and ethnicity of the SSP–MOE individual. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

Ethnicity:

a. Hispanic or Latino:

1=Yes, Hispanic or Latino.

2=No.

Race:

b. American Indian or Alaska Native:

1=Yes, American Indian or Alaska Native.

2=No.

c. Asian:

1=Yes, Asian.

2=No.

d. Black or African American:

1=Yes, Black or African American.

2=No.

e. Native Hawaiian or Other Pacific Islander:

1=Yes, Native Hawaiian or Pacific Islander.

2=No.

f. White:

1=Yes, White.

2=No.

17. *Gender:* Enter the one-digit code that indicates the individual's gender.

1=Male.

2=Female.

18. *Received Disability Benefits:* The Act specifies five types of disability benefits. For each type of disability benefits, enter the one-digit code that indicates whether or not the individual received the benefit.

a. *Received Federal Disability Insurance Benefits Under the Social Security OASDI Program (Title II of the Social Security Act):* Enter the one-digit code that indicates the adult (or minor child head-of-household) received Federal disability insurance benefits for the reporting month (or the last month of TANF assistance). This item is not required to be coded for a child.

1=Yes, received Federal disability insurance.

2=No.

b. *Received Benefits Based on Federal Disability Status Under Non-Social Security Act Programs:* These programs include Veteran's disability benefits, Worker's disability compensation, and Black Lung Disease disability benefits. Enter the one-digit code that indicates the individual received benefits based on Federal disability status for the reporting month (or the last month of SSP–MOE assistance). This data element should be coded for each adult and child with family affiliation code ''1''.

1=Yes, received benefits based on Federal disability status.

2=No.

c. *Received Aid to the Permanently and Totally Disabled Under Title XIV–APDT of the Social Security Act:* Enter the one-digit code that indicates the individual received aid under a State plan approved under Title XIV for the reporting month (or the last month of SSP–MOE assistance). This item is not required to be coded for a child.

1=Yes, received aid under Title XIV–APDT.

2=No.

d. *Received Aid to the Aged, Blind, and Disabled Under Title XVI–AABD of the Social Security Act:* Enter the one-digit code that indicates the individual received aid under a State plan approved under Title XVI–AABD for the reporting month (or the last month of SSP–MOE assistance). This item is not required to be coded for a child.

1=Yes, received aid under Title XVI–AABD.

2=No.

e. *Received Supplemental Security Income Under Title XVI–SSI of the Social Security Act:* Enter the one-digit code that indicates the individual received aid under a State plan approved under Title XVI–SSI for the reporting month (or the last month of SSP–MOE assistance). This data element should be coded for each adult and child with family affiliation code ''1''.

1=Yes, received aid under Title XVI–SSI.

2=No.

19. *Marital Status:* Enter the one-digit code for the marital status of the adult (or minor child head-of-household). Leave this field blank for other minor children. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

1=Single, never married.

2=Married, living together.

3=Married, but separated.

4=Widowed.

5=Divorced.

20. *Relationship to Head-of-Household:*

Instruction: Enter the two-digit code that shows the individual's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or, principal person of each person living in the household. If a minor child head-of-household, enter code ''01.''

01=Head-of-household.

02=Spouse.

03=Parent.

04=Daughter or son.

05=Stepdaughter or stepson.

06=Grandchild or great grandchild.

07=Other related person (brother, niece, cousin).

08=Foster child.

09=Unrelated child.

10=Unrelated adult.

21. *Parent With Minor Child In the Family:*

Guidance: A parent with a minor child in the family may be a natural parent, adoptive parent, or step-parent of a minor child in the family. Reporting of this data element is optional for individuals whose family affiliation code is 3, 4, or 5.

Instruction: Enter the one-digit code that indicates the individual's parental status.

1=Yes, a parent with a minor child in the family.

2=No.

22. *Needs of a Pregnant Woman:* Some States consider the needs of a pregnant woman in determining the amount of assistance that the SSP–MOE family receives. If the individual was pregnant and the needs associated with this pregnancy were considered in determining the amount of assistance for the last month of assistance, enter a ''1'' for this data element. Otherwise enter a ''2'' for this data element. This data element is applicable only for individuals whose family affiliation code is 1.

1=Yes, additional needs associated with pregnancy were considered in determining the amount of assistance.

2=No.

23. *Educational level:* Enter the two-digit code to indicate the educational level attained by the individual. Unknown is not an acceptable code for an individual whose family affiliation code is ''1''. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

01–11=Grade level completed in primary/secondary school including secondary level vocational school or adult high school.

12=High school diploma, GED, or National External Diploma Program.

13=Awarded Associate's Degree.

14=Awarded Bachelor's Degree.

15=Awarded graduate degree (Master's or higher).

16=Other credentials (degree, certificate, diploma, etc.).

98=No formal education.

99=Unknown.

24. *Citizenship/Alienage:*

Instruction: Enter the one-digit code that indicates the individual's citizenship/alienage. Unknown is not an acceptable code for an individual whose family affiliation code is ''1''. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

1=U.S. citizen, including naturalized citizens.

2=Qualified alien.

3=Non qualified alien.

9=Unknown.

25. *Employment Status:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) employment status. Leave this field blank for other minor children. Reporting of this data element is optional for individuals whose family affiliation code is 2, 3, 4, or 5.

1=Employed.

2=Unemployed, looking for work.

3=Not in labor force (i.e, unemployed, not looking for work, includes discouraged workers).

26. *Amount of Earned Income*: Enter the amount of the adult's (or minor child head-of-household's) earned income for the last month on SSP–MOE assistance or for the month used to budget for the last month on assistance. Leave these fields blank for other minor children (i.e., children whose family affiliation code is 4).

27. *Amount of Unearned Income:* Enter the amount of the individual's unearned income for the last month on SSP–MOE assistance or for the month used to budget for the last month on assistance. Leave these fields blank for other minor children (i.e., children whose family affiliation code is 4).

Appendix G—SSP–MOE Data Report—Section Three—Aggregated Data Collection for Families Receiving Assistance Under the Separate State Program(s)

Instructions and Definitions

General Instruction: The State agency must collect and report data for each data element, unless explicitly instructed to leave the field blank. Monthly caseload counts (e.g., number of families, number of two-parent families, and number of closed cases) and number of recipients must be unduplicated monthly totals. States may use samples to estimate the monthly totals if explicitly stated in the instruction for the data element.

1. *State FIPS Code:* Enter your two-digit State code.

2. *Calendar Quarter:* The four calendar quarters are as follows:

First quarter—January–March.
Second quarter—April–June.
Third quarter—July–September.
Fourth quarter—October–December.

Enter the four-digit year and one-digit quarter code (in the format YYYYQ) that identifies the calendar year and quarter for which the data are being reported (e.g., first quarter of 1997 is entered as ''19971'').

Active Cases

For purposes of completing this report, include all eligible families receiving assistance under the separate State programs, i.e., SSP–MOE families. All counts of families and recipients should be unduplicated monthly totals.

3. *Total Number of SSP–MOE Families:* Enter the number of families receiving assistance under the separate State programs for each month of the quarter. The total in this item should equal the sum of the number of two-parent families (in item #4), the number of one-parent families (in item #5) and the number of no-parent families (in item #6).

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

4. *Total Number of Two-parent Families:* Enter the total number of two-parent families receiving assistance under the separate State programs for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

5. *Total Number of One-Parent Families:* Enter the total number of one-parent families receiving assistance under the separate State programs for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

6. *Total Number of No-Parent Families:* Enter the total number of no-parent families receiving assistance under the separate State programs for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

7. *Total Number of Recipients:* Enter the total number of recipients receiving assistance under the separate State programs for each month of the quarter. The total in this item should equal the sum of the number of adult recipients (in item #8) and the number of child recipients (in item #9).

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

8. *Total Number of Adult Recipients:* Enter the total number of adult recipients receiving assistance under the separate State programs for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

9. *Total Number of Child Recipients:* Enter the total number of child recipients receiving assistance under the separate State programs for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

10. *Total Number of Non-Custodial Parents Participating in Work Activities:* Enter the total number of non-custodial parents participating in work activities under the separate State programs for each month of the quarter. The monthly totals for this element may be estimated from samples.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

11. *Total Amount of Assistance:* Enter the dollar value of all SSP–MOE assistance (cash and non-cash) provided to families under the separate State programs for each month of the quarter. Round the amount of assistance to the nearest dollar.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

Closed Cases

12. *Total Number of Closed Cases:* Enter the total number of closed cases for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

APPENDIX H.—CASELOAD REDUCTION REPORT

[State_____ Fiscal Year _____]

Part I—Implementation of All Eligibility Changes Made by the State Since FY 1995

#	Eligibility change	Implementation date	Estimated impact on caseload since change (positive or negative)
Changes Required by Federal Law			
State-Implemented Changes			
Changes Related to Income and Resources:			
Changes Related to Categorical or Demographic Eligibility Factors:			
Changes Related to Behavioral Requirements			

APPENDIX H.—CASELOAD REDUCTION REPORT—Continued

[State_____ Fiscal Year _____]

Part I—Implementation of All Eligibility Changes Made by the State Since FY 1995

#	Eligibility change	Implementation date	Estimated impact on caseload since change (positive or negative)
Changes Due to Full-Family Sanctions:			
Other Eligibility Changes:			
Estimated Total Net Impact on the Caseload of All Eligibility Changes			
Total Prior-Year Caseload			
Estimated Caseload Reduction Credit			

Part II—Application Denials and Case Closures, by Reason

	Fiscal year 1995		Fiscal year ____	
	Number	Percentage	Number	Percentage
Reason for Application Denials:				
Total Application Denials				
Reason for Case Closures:				
Total Case Closures				

APPENDIX H.—CASELOAD REDUCTION REPORT

State _____ Fiscal Year_____

Part III—description of the methodology used to calculate the caseload reduction estimates (attach any supporting data to this form)

Appendix H—Caseload Reduction Report

State _____ Fiscal Year _____

Part IV—Certification

I certify that we have provided the public an appropriate opportunity to comment on the estimates and methodology used to complete this report and considered those comments in completing it. Further, I certify that this report incorporates all reductions in the caseload resulting from State eligibility changes and changes in Federal requirements since Fiscal Year 1995.

_____
(signature)

_____
(name)

_____
(title)

Instructions for Completing Form ACF–202, Caseload Reduction Report

All States wishing to receive a caseload reduction credit must complete and submit this report on behalf of the State agency administering the TANF program in accordance with these instructions.

Due Date

This report must be submitted by December 31 of each year.

Submission

Submit the original to the ACF Regional Administrator. Submit a copy to: Administration for Children and Families, Office of Family Assistance, 5th Floor East, 370 L'Enfant Promenade, SW, Washington, DC 20447.

General Instructions

Form ACF–202 consists of a series of tables, a narrative description, and a certification page. If you are completing this report electronically, you may need to add rows to some of the tables to accommodate all the information you need to enter. If a section of a table is not applicable, specify ''none'' or ''not applicable,'' as appropriate in the first line.

Appendix H—Caseload Reduction Report

We have designed Form ACF–202 so that you can complete it electronically or manually, but we do not currently have the capacity to accept electronic submissions of the report.

Each State must submit a summary of all public comments on the State's estimates and methodology as part of its Caseload Reduction Report. Please be advised that there is nothing on form ACF–202 for the State to complete for this requirement, but the instructions for ''Attachments'' direct the State to include the summary of comments.

Please remember that the caseload reduction credit is based on changes both in the State's TANF caseload and in any separate State program caseloads; therefore you should be sure that the figures in this report reflect separate State program information as well as TANF information.

If you have opted to use separate reduction credits for your State's overall and two-parent participation rates, you must submit separate reports for the overall and two-parent caseloads. Please indicate at the top of each page and each attachment to which caseload the report pertains.

- Enter the name of the State and the current fiscal year in the space provided at the top of each page. If you are completing the report electronically, you will only need to enter this information once for each table and the once for the certification page.

Instructions for Completing Part I

- Enter each eligibility change the State has made since FY 1995 in the appropriate category (e.g., ''Changes related to Income and Resources''), numbering each change for easy reference. For convenience, we have separated Federal changes from State-implemented ones and listed some common State eligibility changes; however, you should be sure to include *each* change, whether Federal or State in origin, on a separate line. If you are completing this report electronically, you may need to add one or more rows to the table in order to list all of your State's eligibility changes in the various categories. If you are completing it manually, you may need to attach additional pages instead.

Please note that you need not list any changes the State has implemented since October 1 of the current fiscal year, since this report applies to caseload reductions in the prior fiscal year.

You should not consider the creation of a separate State program as an eligibility change, since separate State program caseloads must be included in calculating the caseload reduction credit, as we indicated above.

- For each eligibility change, enter the implementation date and your estimate of the impact the change has had on the caseload since its implementation. For example, if a particular eligibility change had the effect of reducing the caseload by 5,000 cases, you should enter, ''–5,000.'' It is important that your estimate account for the cumulative impact of each change on the caseload since 1995, not simply the impact in the year that the State implemented the change.

Please note that an eligibility change may have a positive or negative effect on the caseload. If the effect was negative, include a minus sign in front of the number. If the effect was positive, include a plus sign in front of the number.

- Enter the total estimated impact of all the eligibility changes you listed. In making this estimate, you should be sure that you have not counted case impacts more than once, even if they could be included under more than one eligibility change. Thus, the total impact may not equal the sum of all the individual impacts because of interaction among eligibility changes. In such cases, Part III of the report (the methodology section) should address any discrepancies.
- Enter the total caseload for the prior year, including separate State program cases. You may use the combined total number of families reported in the TANF Data Report and the SSP–MOE Data Report (in section three of each report) for the prior year. If the total prior-year caseload reflects adjustments you have made in accordance with § 261.40 to improve the comparability of FY 1995 and prior-year caseloads, please attach an explanation of your adjustments.
- Enter the State's estimated caseload reduction credit. In arriving at this number, you should subtract your estimated net reduction in caseload due to eligibility changes from the total caseload decline between FY 1995 and the prior year and divide the resulting number by the total prior-year caseload. For example, if the net result of the eligibility changes is that the State's caseload in the prior year decreased by 2,000 from the FY 1995 level, then you should subtract 2,000 from the total caseload decline between FY 1995 and the prior fiscal year. If there is a net increase in caseload due to eligibility changes, you should not subtract anything from the caseload decline between FY 1995 and the prior year.

Instructions for Completing Part II

- Enter the prior fiscal year in the heading of the column that follows ''Fiscal Year 1995.'' For example, if this is the State's FY 2000 report (due by December 31, 1999), then the column heading should read ''Fiscal Year 1999.''
- Enter each reason for application denial, the number of denials for each such reason for the applicable fiscal year, and the percentage that the number represents of total denials for the fiscal year.
- Enter the total number of application denials for the applicable fiscal year. The total percentages for each year should equal 100.
- Enter the same information for each case closure reason, i.e., the reason for case closures, the number of closures for that reason, and the percentage that the number represents of total case closures.
- Enter the total number of case closures for the applicable fiscal year. The total percentages for each year should equal 100.

Instructions for Completing Part III

- Describe in detail how you arrived at the estimated impacts on the caseload of the various eligibility changes and how you arrived at the estimated caseload reduction credit.
- If there were changes in the number or distribution of application denials or case closures since FY 1995 that do not appear to be consistent with the information listed in Part II of the report, include a discussion explaining the inconsistencies.
- Attach any information that documents the State's estimates.

Instructions for Completing Part IV

- Enter the name and title of the individual making the certification on behalf of the State.
- Sign the certification. Although you may complete the form electronically, you must submit this page with the original signature to the ACF Regional Administrator and a copy to the Office of Family Assistance, as indicated above.

Attachments

- Attach a summary of all public comments on the State's estimates and methodology.
- Be sure that all attachments include the name of the State and the current fiscal year and indicate that they are attachments to Form ACF–202.

Appendix I

Annual Report on State Maintenance-of-Effort Programs: ACF–204

State _____Fiscal Year ____Date Submitted _____

Complete this form for each program for which the State claims MOE expenditures.

1. Program Name:

2. Description of Major Program Activities:
3. Program Purpose(s):
4. Program Type. Program is: under the TANF program __ is a separate State/local program __
5. Description of Work Activities (Complete only if this is a separate State/local program):
6. Total State Expenditures for Program: _____
7. Total State MOE Expenditures: _____
8. Number of Families Served with MOE Funds: _____
This figure represents: the average monthly total ____ total for the year ____
9. Eligibility Criteria:
10. Prior Program Authorization:
Was this program authorized and allowable under prior law? Yes____ No ____
11. Total Program Expenditures in FY 1995. _____
This certifies that all families for which the State claims MOE expenditures for the fiscal year meet the State's criteria for ''eligible families.''

Signature: _____

Name: _____

Title: _____

Approved OMB No. xxxx-xxxx Form ACF–204

Instruction for Completion of Form ACF–204 Annual Report on State Maintenance-of-Effort Programs

All States must complete and submit this report in accordance with these instructions and the requirements at 45 CFR 265.9(c) on behalf of the State agency administering the TANF Program.

Due Dates: This form must be submitted by November 14.

States must submit this report for each fiscal year. Also, each State must complete a form for each program for which the State has claimed MOE expenditures for the fiscal year.

Distribution: The original copy (with original signatures) should be submitted to: Administration for Children and Families, Office of Family Assistance, Aerospace Building, 5th Floor, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447. An additional copy should be submitted to the ACF Regional Administrator.

General Instructions

—Round all dollar amounts to the nearest dollar. Omit cents.
—Enter State Name.
—Enter the Fiscal Year for which this report is being submitted. Enter the date that the report is being submitted.

Line Item Instructions

Line 1. Program name. Enter the name of the program.

Line 2. Description of major activities. Describe the major activities and major types of benefits and services provided under the program.

Line 3. Program purpose. Provide the purpose(s) of the program and relate this purpose to the statutory and regulatory TANF purposes (at 45 CFR 260.20).

Line 4. Program type. Put an ''X'' on the appropriate line (indicating whether the MOE expenditures are being made under the TANF program or under a separate State program.

Line 5. Work program description. If the program is a separate State program, describe the work activities (if any) provided for eligible families and the extent to which eligible families are subject to work requirements. If the work activities are the same as the TANF activities, or a subset of the TANF activities, you may include a list of the activities and a cross-reference to the definitions provide in the annual report rather than representing them. (It is not necessary to describe work activities provided under TANF because that information is provided elsewhere.) Also include information explaining whether individuals served by the program must participate in work activities and describing the extent to which such requirements apply (e.g., to which categories of recipients).

Line 6. Total amount of State expenditures. Enter the total dollar amount of State expenditures in the program during the Federal fiscal year.

Line 7. Total State MOE expenditures. Enter the total dollar amount of expenditures reported in item ι6 that are reported as State MOE expenditures.

Line 8. Number of families served with MOE funds. Enter the number of eligible families that are receiving assistance and other forms of services and supports under the program. Also, put an ''X'' on the appropriate line to indicate whether the number being provided is a report on the average monthly number of families being served or on the total number served over the course of the fiscal year.

Line 9. Eligibility criteria. Provide the eligibility criteria for families served under this program. If the eligibility criteria differ for different kinds of program benefits or activities, specify the eligibility criteria for all the major benefits and activities.

Line 10. Prior authorization. Put an ''X'' on the appropriate line to indicate whether the program was authorized and allowable under prior law. Programs that were previously authorized and allowable under prior law (i.e., under an approved State IV–A plan in effect either on Sept. 30, 1995, or August 21, 1996, at State option) are not subject to the ''new spending'' test.

Line 11. Total program expenditures in 1995. If the program was not previously authorized and allowable (i.e., if the answer on item #10 is ''No''), enter the total expenditures for the program in 1995. Only qualified State expenditures above this level may count towards the State MOE total.

Certification. The certification must be signed by an authorized official. Under the signature line, type the title of the authorized official, together with the agency name.

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