

THE WHITE HOUSE
WASHINGTON

OMB/DPC call

→ concern that proposal favors quantity
over quality

→ quality

- Count that states do not
transfer

- Co-pay on CDF

amt. for state gets in time TANF

more access - TANF (but need to report @ p.p.s.
level)

very duplicative

→ ① total spend - TANF ✓

② factor - state funding rate → OH → 90% +
1% extra

→ ② percentage of children in below quality level
quality measure -

compare a history - market rate

Co-pay & market rate - how likely to have
see to

Tamara Matthews
703-977-7002

PHOTOCOPY
PRESERVATION

Proposed Child Care Measure

Provide states with a bonus for improvement and absolute performance based on the percentage of CCDF-eligible kids (under 85% of state median income) receiving a subsidy.

Use data from HHS' Access to Child Care for Low-Income Working Families report. Do not allow states to supplement the data with information about other state-funded programs because the data is different and we want to encourage them to run their funding through the CCDF.

Since childcare is not an entitlement like food stamps and Medicaid, the measure has to be different and has somewhat different policy goals.

The funding from HHS is limited, so we have to protect against (perceived?) incentives to reduce the subsidy per child, and reduce (or fail to increase based on current market rate survey) payments to providers.

For this reason, we should find a way to be sure that states are still meeting the equal access to care requirements from the final reg. We could require states to meet the access to care standards as a qualifying condition: payment standard at the 75th percentile based on a market rate survey less than two years old and copayments at 10% of household income or less. If we decide not to add a qualifying condition, we can require HHS to review results and adjust bonuses in cases where states are not meeting equal access to care requirements.

The bonus should encourage states to create seamless systems through the CCDF. States can put state funds in addition to the match through the CCDF. If they do this, we will be able to collect more data in a consistent way across states, and the protections/program improvements of CCDF will apply to those state funds. States that put additional state dollars (including TANF direct spending up to the cap) through the CCDF will be able to show improvement.

*direct spend included
- general*

*these
Manner
This
Survey
Private
at the
these
more
Program*

State	CCDF Coverage 1/	% TANF \$ on child care 2/	% Licensed regulated 3/	% Center- based care 3/	% in child's home 3/	per capita State pre-K 4/	Max reimb per day 5/	Co-pay as % of income 5/
West Virginia	24%	9%	89	39.8	0.4	118.27	\$11.00	10.2%
Oklahoma	21	23%	100	80.9	0.3	208.36	\$13.00	13.4%
North Carolina	18	25%	94	80.8	0.8	n/a	\$16.45	9.0%
New York	18	0	59	40.6	10.1	133.05	\$43.00	16.2%
Michigan	17	39%	39	18.7	30.7	123.07	\$19.20	12.4%
Tennessee	16	28%	84	72.6	0.8	8.96	\$13.00	10.6%
Louisiana	16	30%	49	49	36	30.27	\$13.00	7.4%
Massachusetts	15	27%	80	56.2	17.2	283.06	\$38.00	16.5%
Rhode Island	15	14%	72	64.5	9.9	46.24	\$14.80	4.5%
Kentucky	15	26%	67	61	1.4	233.25	\$16.00	11.8%
Missouri	14	20%	54	40.2	0	n/a	\$17.50	5.4%
Pennsylvania	14	18%	71	58.9	21.1	10.68	\$29.00	10.0%
Vermont	14	18%	94	44.4	5.6	39.37	\$17.64	6.5%
Illinois	13	26%	41	30.9	31.6	201.18	\$17.26	12.1%
Washington	13	30%	64	41.2	24.7	94.58	\$25.23	20.2%
NATIONAL AVERAGE	10	14	72	55	11			

1/ Access to Child Care for Low-Income Working Families, DHHS, ACF, October 1999

2/ TANF Quarterly Expenditures (FY 99 4th Quarter Report), DHHS, ACF, June 2000.

Includes transfers to CCDF and direct TANF expenditures.

3/ Child Care and Development Fund FFY 1998, DHHS, ACF, March 2000

4/ Calculated from Seeds of Success, State Pre-K Initiatives, Children's Defense Fund, September 1999

5/ Calculated from Child Care and Development Block Grant, Report of State Plans for 10/97 to 9/99, NCCIC, March 1998



Margy Waller

07/07/2000 08:26:27 PM

.....

Record Type: Record

To: Matthew D. McKearn/OMB/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: child care performance bonus 

Matt: Please see my responses to your comments incorporated into the note you sent me, below.

Generally, I know we all agree that we don't want to create a measure and a bonus that does harm. I am not convinced that creating a small (@ \$10 million bonus) will motivate states to take action that will harm children or families. There is too much pressure and scrutiny on state action regarding child care access and quality for them to be able to 'get away' with much. Also, the measure I proposed contains two checks on access and quality: HHS would have the ability to review co-payments and payment standards (which must be based on a recent market survey and be at or above the 75th percentile). If HHS was concerned that state policy reduced access, the bonus could be reduced or shifted to the next best state.

CONCERNS

Base bonus on the percentage of CCDF kids receiving a subsidy.

Relying exclusively on coverage rates favors States that provide low reimbursement rates, **states that have are using a market rate survey that is less than two years old and are paying at or above the 75th percentile will not have 'low' reimbursement rates**

have policies that make more extensive use of low-cost informal or unlicensed care, **while some people use informal and unlicensed care as a proxy for poor quality care - I don't think we can deal with those issues in a TANF bonus. It's true that CCDF is not a good lever for quality improvement or a statement of federal policy about how states should improve quality. It was the clear intent of Congress in PRWORA to give flexibility to the states in child care delivery.**

and/or have minimal standards for licensed care. **The federal government has not taken a position on national license standards. Though some may want for us to do so - so far we haven't, and I don't see how we could define 'minimal' license standards in this rule.**

Because it is difficult to construct a standard FTE metric for a CCDF subsidy, States providing part-day or partial week slots will score better on this measure than States that provide odd-hour, weekend or wrap-around care.

If you mean odd hour, weekend and wraparound care is more expensive than traditional care - I think you are right. This will not be a perfect measure. We should be striving for a CCDF bonus in reauthorization that has the data necessary to do this.

This measure encourages greater access and availability to child care, but is at best neutral or potentially negative on child care quality. States would be discouraged from raising subsidy rates or increasing child care standards if it might cause their standing as a high-performing State to slip.

CCDF was never meant to be a lever on quality. We should certainly make a strong statement in the preamble about the need to move in the direction of ensuring more federal incentives for quality development in the future. This is a bonus in the TANF block grant and should relate to work support.

Do not allow States to supplement the data with information about other state-funded programs because the data are different and we want to encourage them to run their funding through CCDF.

I was persuaded by the HHS comments about other state data - that it would be duplicative and hard to compare. However, I think I recall an existing state option to allow states to pool their child care data when they combine funds and cannot identify CCDF cases separately. How many states are doing that now? What issues does it raise to allow states to report this way? And if we affirmatively encourage them to do so - we can review what percentage would be covered by CCDF and also allow states credit for other funding.

Having States run their funding through CCDF should improve the quality of information reported to the Federal government. However, it seems counter-productive to discount State initiatives that increase the supply and quality of affordable child care. **We would only be 'discounting' them by not making them part of the measure for this award. At the same time, we would be making sure that states cannot include programs that don't have the protections of CCDF. How would we use data about pre-k? Unless it is targeted to families under the CCDF threshold, we would need to develop a percentage for those kids in the program under the threshold.**

Many highly desirable State initiatives cannot be funded by channeling funds through CCDF -- including broadly available pre-school programs, and State tax subsidies for child care. **These are not likely to be targeted to the CCDF eligible population.**

Making a distinction between funds channeled through CCDF reinforces a divide between child care that supports work and child care that provides appropriate developmental opportunities for children. States should be encourage to tackle both concerns.

I agree, but again - this is the TANF performance bonus. It does make sense to link it to access. There are many other ways the Administration is supporting early education and making sure that care provides the most developmental and educational opportunity possible.

We should make a strong statement about this in the preamble.

A number of States that are generally recognized as having strong State child care programs and/or pre-school initiatives do not rate well on this measure. Which ones? By the same token, a number of the states we would expect to see on the list are here: N.C, Mass., R.I., Vermont, Illinois, Washington. And, I am certain that there are people who are surprised by some of the states that got work bonuses. These are not perfect measures. Finally, the chart you prepared does not account for the opportunity HHS would have to review whether or how well the state is meeting it's equal access to care requirements.

Make payment standards meet 75% of market rates based on recent surveys.

This measure is more easily attained by States that make more extensive use of unlicensed or less formal care arrangements with lower market rates.

Looking at the chart you prepared, that doesn't seem to be true. And if it begins to move in that direction - we can certainly review the bonus measure. (Are there standards for the survey? What 'market' does it cover? I agree that the key is for parents to have informed choices - including the choice of whether to use center/regulated care. That does mean ideally they should have a reasonable co-pay and a market rate survey that results in reimbursement rates that ensure choice.)

Require that co-payments be less than 10% of household income or less.

The provision would increase access to care, however only 3 of the top 10 States for CCDF coverage met this standard for the plan period ending FY 1999. If you are referring to your chart, a number of states come quite close to 10%. The rule could be drafted to allow HHS the flexibility to decide how to use co-pay info (reduce bonus, shift to another state, etc.) Also, the data is from 1998 and could have changed since HHS came out with the less than 10% recommendation/requirement.

RECOMMENDATION

Explore further with ACF a composite measure that rewards: 1)expanding resources available for child care (total TANF spending on child care, including transfers); Since only 2 states transferred the full amount in 1999 - I think we should continue to count only transfers to encourage more states to transfer, apply CCDF rules, and reporting. Letting states count TANF direct spending means there is likely to be a non-seamless system (bad for parents and kids) and that we don't have the benefit of applying equal access to care requirements. Doing so undercuts the only 'quality' and affordability checks we have at the moment.

2) State-funded initiatives (per capita pre-K spending) and

Pre-k should not be measured in this bonus because it is likely to be only half-day or school-day. This is a work support measure and while pre-k helps some, it does not have the same goals as

CCDF. (And is not limited to the CCDF population, as noted above.)

3) encourages increased child care quality (% of children in licensed facilities).

I don't think we know that licensing is the only measure of quality. And, I don't think that there was agreement about what kind of quality protections should be built into CCDF. There was certainly a decision not to have national standards. And state licensing varies - wouldn't we also need to decide what kind of licensing gets to count? I think this goes beyond what we can do in this bonus.

Again, we should make a strong statement about the need to have BOTH access and quality - but, we're really only measuring access with the best protection for quality that we can muster out of the regs.

RECOMMENDATION: Forward the proposed measure to HHS with questions, including whether it would be possible to improve the measure using pooled data, or any other way they might recommend.

I look forward to our conversation.

From: Matthew D. McKearn on 07/06/2000 03:18:49 PM

From: Matthew D. McKearn on 07/06/2000 03:18:49 PM

Record Type: Record

To: Margy Waller/OPD/EOP@EOP

cc: Zoe M. Neuberger/OMB/EOP@EOP, Jack A. Smalligan/OMB/EOP@EOP

Subject: child care performance bonus

Margy:

This e-mail outlines the concerns with the proposed child care measure that I noted in our phone conversation on Wednesday. In addition, attached below is an excel file with a variety of child care measures for 15 States with the highest rates of CCDF coverage, which might be a helpful tool for further discussions about trying trying to address any shortcomings in the proposed measure.



highperformance.x

CONCERNS

Base bonus on the percentage of CCDF kids receiving a subsidy.

- Relying exclusively on coverage rates favors States that provide low reimbursement rates, have policies that make more extensive use of low-cost informal or unlicensed care, and/or have minimal standards for licensed care.
- Because it is difficult to construct a standard FTE metric for a CCDF subsidy, States providing part-day or partial week slots will score better on this measure than States that provide odd-hour, weekend or wrap-around care.
- This measure encourages greater access and availability to child care, but is at best neutral or potentially negative on child care quality. States would be discouraged from raising subsidy rates or increasing child care standards if it might cause their standing as a high-performing State to slip.

Do not allow States to supplement the data with information about other state-funded programs because the data are different and we want to encourage them to run their funding through CCDF.

- Having States run their funding through CCDF should improve the quality of information reported to the Federal government. However, it seems counter-productive to discount State initiatives that increase the supply and quality of affordable child care.
- Many highly desirable State initiatives cannot be funded by channeling funds through CCDF -- including broadly available pre-school programs, and State tax subsidies for child care.
- Making a distinction between funds channeled through CCDF reinforces a divide between child care that supports work and child care that provides appropriate developmental opportunities for children. States should be encouraged to tackle both concerns.
- A number of States that are generally recognized as having strong State child care programs and/or pre-school initiatives do not rate well on this measure.

Make payment standards meet 75% of market rates based on recent surveys.

- This measure is more easily attained by States that make more extensive use of unlicensed or less formal care arrangements with lower market rates.

Require that co-payments be less than 10% of household income or less.

- The provision would increase access to care, however only 3 of the top 10 States for CCDF coverage met this standard for the plan period ending FY 1999.

RECOMMENDATION

Explore further with ACF a composite measure that rewards: 1) expanding resources available for child care (total TANF spending on child care, including transfers); 2) State-funded initiatives (per capita pre-K spending) and 3) encourages increased child care quality (% of children in licensed facilities).

Message Copied To:

Andrea Kane/OPD/EOP
Ann O'Leary/OPD/EOP@EOP
Heather H. Howard/OPD/EOP@EOP
Zoe M. Neuberger/OMB/EOP
Lauren Wittenberg/OMB/EOP



Margy Waller

07/05/2000 03:11:57 PM

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Record Type: Record

To: Ann O'Leary/OPD/EOP@EOP, Heather H. Howard/OPD/EOP@EOP, Eric J. Morse/OPD/EOP@EOP

cc:

Subject: Tentative schedule

FYI - as Heather and I discussed.

----- Forwarded by Margy Waller/OPD/EOP on 07/05/2000 03:11 PM -----

Lauren Wittenberg



07/05/2000 02:52:27 PM

Record Type: Record

To: mmocko@acf.dhhs.gov @ inet

cc: Andrea Kane/OPD/EOP@EOP, Margy Waller/OPD/EOP@EOP, Zoe M. Neuberger/OMB/EOP@EOP,
Matthew D. McKearn/OMB/EOP@EOP

Subject: Tentative schedule

Here's a copy of a tentative schedule for the clearance of the HPB TANF rule. These deadlines are subject to change; this schedule is the best guess at this point about the time necessary for the remaining issues.

Outstanding Issues

- Child care and family formation still need to be decided
- Job retention versus earnings gain weighting needs to be decided
- Percent change versus percentage point change needs to be decided
- OMB may have further questions on the Food Stamps measure
- Any remaining changes to the change pages sent need to be made (based on the comments sent this morning, and any other forthcoming comments)
- Decision about the distribution of funds must be made
- Final changes to the preamble based on the policy decisions must be completed.

Timeline

With at least one more conference call (at the end of this week or early next week) and passback on the child care and family formation measures, both measures can likely be settled by Friday the 14th.

All other outstanding issues (job retention, percent change, Food Stamps, all updated change pages) can be discussed throughout, meaning that by Friday July 14th we can have these issues settled.

Then, we'll need to make a decision on the distribution of funds based on the decisions about a child care and/or family formation measure. If both measures are left out, or both measures are placed in, it will likely take a day or two to complete this decision. (Note that parts of the decision will be made throughout, and the extra 2 days will be used to finalize the decision). Therefore, all policy decisions

should be completed by Tuesday, July 18. After these decisions are finalized, HHS should make the required changes to the preamble (based on the final policy decisions on child care, family formation, and funding distribution) by Friday July 21.

Based on this schedule, the rule should be finalized and cleared by Tuesday, July 24.



Margy Waller

07/06/2000 08:02:25 PM

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Record Type: Record

To: Matthew D. McKearn/OMB/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: child care performance bonus

Thanks. I'll respond to this before I leave on Friday - and as early in the day as possible.

From: Matthew D. McKearn on 07/06/2000 03:18:49 PM

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Record Type: Record

To: Margy Waller/OPD/EOP@EOP
cc: Zoe M. Neuberger/OMB/EOP@EOP, Jack A. Smalligan/OMB/EOP@EOP
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RECOMMENDATION

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Message Copied To: _____

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Andrea Kane/OPD/EOP



Margy Waller

07/10/2000 01:20:15 PM

.....

Record Type: Record

To: J. Eric Gould/OPD/EOP@EOP, Ann O'Leary/OPD/EOP@EOP

cc: Andrea Kane/OPD/EOP

Subject: Section 8 Homeownership Rule

This final rule implements the "homeownership option" from the Quality Housing and Work Responsibility Act of 1998.

The tenant based Section 8 voucher and certificate programs are converted into the Housing Choice Voucher program. Each Public Housing agency (PHA) that administers section 8 tenant based assistance has the *choice* to offer homeownership assistance. Eligible applicants would use a voucher for mortgage payments. Eligible applicants include first-time homeowners, and families in which one person is disabled and the homeownership option is needed as a reasonable accommodation.

The final rule adds a national minimum income requirement that is equal to 2000 hours of yearly full-time work under the Federal minimum wage. Minimum income does not include "welfare assistance", but would count EITC and food stamps (checking on those two). There is also a minimum employment requirement (does not apply to elderly or disabled families) of full time work for one year prior to application.

We expect this rule to be done in the next couple weeks. We should talk about whether this rule should be released as part of the upcoming disability event, or otherwise by HUD.

Child Care High Performance Bonus Measure

Background HHS' proposed final rule for the high performance bonus does not include a measure for child care, despite strong commentor support for the measure and HHS' acknowledgement that child care is of critical importance to working families and welfare reform. In general, HHS cited concerns about encouraging unintended State behaviors and the additional data requirements and burden associated with creating an acceptable measure in declining to include a measure at this time.

OMB and DPC have worked together to develop a measure that rewards high performance while attempting to limit any unintended consequences. The proposed measures also limits added administrative burden by relying primarily on previously vetted measures and existing data collections.

While DPC staff support a high performance bonus based on the first two proposed measures outlined below, they have strong reservations about including the third measure. OMB staff believe that the third measure, access to regulated care, is the best available proxy measure for quality, and strongly support the inclusion of all three measures. Both staffs agree on the need for a final HHS review to ensure equal access to care.

Proposed Measure The child care bonus measure would consist of two or three quantitative measures, weighted by their relative importance, and a final review factor that could be applied at the Secretary's discretion to ensure that the State provides equal access to affordable care and do not make programmatic changes that might reduce access to care in order to improve their chances of winning a bonus (such as, increasing co-payments to spread the coverage across more children or reducing payment standard.).

Quantitative measures:

1. CCDF coverage – the estimated proportion of eligible CCDF children served by a State with CCDF-funded subsidies and included in CCDF administrative data;
2. additional State investment in child care – CCDF transfers to TANF, additional (unmatched) State expenditures through CCDF, and State-reported direct TANF spending on child care; and
3. accessibility of regulated care – the number of slots in regulated care per eligible CCDF child.

Weights The two or three factors would be weighted to place greater emphasis on CCDF coverage (60-70%) and less emphasis on additional investments (20-30%) and accessibility (10%).

Final Review After states have been ranked according to the proposed measure, HHS may review the state's "equal access" state plan summary (required by 45 CFR 98.43) and practices; if the state has failed to take steps that ensure equal access to care (for example, by basing payment rates on a

market rate survey that was conducted earlier than two years prior to the date the most recent state plan was intended to be effective [October 1999 and October 2001] or establishing copayments that are not affordable), the Secretary may reduce or deny the HPB to that state.

State	ranking			ranking		ranking	
	CCDF	% TANF \$ on	% Licensed	.6 CCDF	one-third	.7 CCDF	Co-pay as
	Coverage	child care	regulated	.3 TANF	each	.2 TANF	% of income
	1/	2/	3/	.1 Reg	factor	.1 Reg	5/
West Virginia	24	0%	89	2	3	1	10.2%
Oklahoma	21	3%	100	3	2	2	13.4%
North Carolina	18	0%	94	4	5	4	9.0%
New York	18	0	59	6	9	5	16.2%
Michigan	17	27%	39	1	1	2	12.4%
Tennessee	16	2%	84	6	6	7	10.6%
Louisiana	16	0%	49	10	11	9	7.4%
Massachusetts	15	8%	80	4	4	5	16.6%
Rhode Island	15	0%	72	10	9	11	4.5%
Kentucky	15	6%	67	6	8	8	11.8%
Missouri	14	0%	54	14	15	13	5.4%
Pennsylvania	14	0%	71	13	12	12	10.0%
Vermont	14	2%	94	9	6	9	6.5%
Illinois	13	6%	41	12	12	13	12.1%
Washington	13	0%	64	15	12	15	20.2%
NATIONAL AVERAG	10	14	72				

1/ Access to Child Care for Low-Income Working Families, DHHS, ACF, October 1999

2/ TANF Quarterly Expenditures (FY 99 4th Quarter Report), DHHS, ACF, June 2000.

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4/ Calculated from Seeds of Success, State Pre-K Initiatives, Children's Defense Fund, September 1999

5/ Calculated from Child Care and Development Block Grant, Report of State Plans for 10/97 to 9/99, NCCIC, M

10% not
per year to more
from 6.2 to 15.8

→ 75th percentile
states and
as result
→ means not
same

absolute highest level
impact
greatest impact

2/99

→ ① major sampling problems

② state variations in TANF

401-1102

OMB/HHS/DPC

Maddy
Howard
Sean
Lamen
Zol

6.28.00

• Census data, names change OK

① qualifying measures →
highlight that the rule only awards positive changes
put it in the preamble.

② family formation open

③ child care → changes open

④ bonus \$ → where \$20 M goes

⑤ states → all \$ in work
a big group of

⑥ percentage / percentage point change
WV - 6th on job entry
to 13th

comments encouraged change

⑦ relationship bet work experience / job retention
& earnings gain

p. 108, Why is Medicaid/SCHIP limited to those with former welfare status while food stamps is not? **[MW – this was thoroughly discussed in NPRM but feel free to ask again]**

why is
Medicaid
only leavees
+

FS is
all working
families?

`(2) REQUIREMENT TO MAKE ELECTION UNDER SUBSECTION (g)- This subsection shall only apply to a State which has made an election under subsection (g)(1) with respect to the first \$75 of any monthly amount collected on behalf of a family as support by the State and elects to disregard under section 408(a)(12)(B) the total amount distributed for purposes of determining the amount of assistance for such families under the State program funded under part A.

`(3) FATHERHOOD SERVICE- A service is described in this paragraph if it is a service that encourages the appropriate involvement of both parents in the life of any child of the parents, with a priority for programs that specifically address the issue of responsible fatherhood for low income noncustodial fathers.

`(4) RELEASE OF OBLIGATION TO PAY FEDERAL SHARE- If a State provides services described in paragraph (3) using amounts described in paragraph (1), the State is released from--

 `(A) calculating the Federal share of the lesser of--

 `(i) the State expenditures for the fiscal year for such services; or

 `(ii) the amount collected on behalf of each family as support by the State for the fiscal year but only to the extent that such Federal share does not exceed an amount equal to the first \$50 of each monthly amount (determined, at the option of the State, in the aggregate or on a case-by-case basis); and

 `(B) paying such share to the Federal Government.'.

(b) EFFECTIVE DATE- The amendments made by this section take effect on October 1, 1999.

SEC. 204. TANF BONUS TO REWARD HIGH PERFORMANCE STATES.

Section 403(a)(4)(C) of the Social Security Act (42 U.S.C. 603(a)(4)(C)) is amended by adding at the end the following: 'The formula shall provide for the awarding of grants under this paragraph based on a State's effort to encourage the formation and maintenance of two-parent families.'.

END

Andrea Kane

Record Type: Record

To: Lauren Wittenberg/OMB/EOP@EOP

cc: zoe@aya.yale.edu @ inet, zoe m. neuberger/omb/eop@eop, gaylee l. morgan/omb/eop@eop, Margy Waller/OPD/EOP@EOP

Subject: Re: TANF HPB comments 

Lauren, even though we didn't have a chance to let you know DPC reaction to OMB comments before you needed to send to Maddie, see Margy and my reaction below. We're fine w/ IMB questions/comments with two exceptions:

1. comments on pp. 72, 165, 206: It's fine to ask the question, but it's premature to convey this as an EOP preference. The decision about how to allocate funds in NPRM involved a lot of negotiation. This is an issue we'll need to raise w/ Bruce and Barbara.

2. comments on pp. 142, 204: again, the issue of weighting measures involved a lot of negotiation in the NPRM. While it's fine to ask the question, it's problematic to signal that EOP would want to change this weighting in the final. If OMB were to want to revisit this issue, we'd definitely need to raise w/ Bruce and Barbara.

Since you labeled the comments to Maddie as 'preliminary', I think you can follow up w/ her to either revise the two points or at least give caveat that they do not represent official EOP position.

Andrea Kane

Record Type: Record

To: Gaylee L. Morgan/OMB/EOP@EOP
cc: Margy Waller/OPD/EOP@EOP, Devorah R. Adler/OPD/EOP@EOP
bcc:
Subject: Re: TANF HPB rule

I need to dig out my notes from NPRM to give a full explanation. There was a lot of back and forth on these, and different parts of EOP had somewhat different views. On balance, given the comments received, the fact that there are significant steps being taken by HCFA to address some of the concerns about state practices, and the fact that both HCFA and FNS are presumably comfortable with dropping them, my preliminary/unofficial inclination is that we can live without them. However, I haven't had a chance to hear from my health colleagues. You should also talk to Jeff Farkas. Jeanne Lambrew was also involved in her former DPC role.

GAYLEE L. MORGAN

GAYLEE L. MORGAN

06/22/2000 03:54:52 PM

Record Type: Record

To: Andrea Kane/OPD/EOP@EOP
cc:
Subject: TANF HPB rule

Andrea --

I'm starting to take a look at the final HPB rule and wanted to get a little context on the inclusion of the mandatory and optional qualifying standards for the Medicaid measure. Do you recall from the NPRM discussion who (WH, HHS, etc.) was pushing for including the qualifying standards and the primary rationale behind including them? I can see arguments both for and against including them, but wanted to get a sense of the discussions that have already occurred on this. Thanks.

Gaylee (5-4908)



Ann O'Leary
06/23/2000 05:15:45 PM

Record Type: Record

To: Andrea Kane/OPD/EOP@EOP
cc: margy waller/opd/eop@eop, eric j. morse/opd/eop@eop
bcc:
Subject: Re: Childcare Measure

Great. Thank you, Andrea.

I'll touch base with Eric Monday night and have him transfer me over if you are around. And, I would very much like to do either the OIRA placed call or the separate HHS meeting on Thursday, if possible.

Thanks again.

Andrea Kane

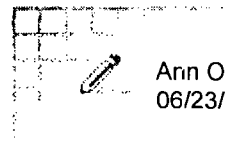
Andrea Kane

Record Type: Record

To: Ann O'Leary/OPD/EOP@EOP
cc: margy waller/opd/eop@eop, eric j. morse/opd/eop@eop
bcc:
Subject: Re: Childcare Measure

We'd be glad to send Eric an update after the Monday call. I think if we want to pursue this further within the context of the TANF HPB, then we'd want to ask OIRA to set up a call with HHS (so we follow the rule process), and we could plan to do that Thursday. If we want to explore options outside TANF, we could just contact HHS directly. We should have a better idea about which way to go after Monday.

Ann O'Leary



Ann O'Leary
06/23/2000 03:26:06 PM

Record Type: Record

To: Andrea Kane/OPD/EOP@EOP
cc: Margy Waller/OPD/EOP@EOP, Eric J. Morse/OPD/EOP@EOP
Subject: Childcare Measure

Andrea -

Thank you for bringing me up to date this week on the history of the HPB award and the child care measure. I continue to be concerned about it, but look forward to the follow-up information from HHS and the chance to read the comments on child care. Could you please send me an update email after the Monday call and cc: Eric Morse? He can fax it to me. Thank you.

Also -- I wondered a bit more on how we might follow-up with HHS on trying to develop ideas about either including the child care measure or developing a separate bonus for child care. I want to be sure to respect the official process. Is it appropriate to call a meeting with folks at HHS? I will be in the office next Thursday and want to see if there is anything I can do at that time.

In addition, I spoke with Melanne about this issue today. She was equally concerned about what type of message the exclusion of child care sends to States about our priorities. I will keep her in the loop on our progress, but she urges us to continue to work toward a way to include it or find other ways to provide incentives to states to provide child care.

Thank you.

-Ann



Ann O'Leary
06/23/2000 03:26:06 PM

Record Type: Record

To: Andrea Kane/OPD/EOP@EOP
cc: Margy Waller/OPD/EOP@EOP, Eric J. Morse/OPD/EOP@EOP
Subject: Childcare Measure

Andrea -

Thank you for bringing me up to date this week on the history of the HPB award and the child care measure. I continue to be concerned about it, but look forward to the follow-up information from HHS and the chance to read the comments on child care. Could you please send me an update email after the Monday call and cc: Eric Morse? He can fax it to me. Thank you.

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Thank you.

-Ann

\$3B TANF → CC

FS & Medicaid

after cash just the single biggest thing that E is going to
they're spending more on child care than on
for placement

**Preliminary IMB comments/questions on TANF draft Final Rule:
Bonus to Reward States for High Performance**

June 20, 2000

- p. 5 “As we stated in this earlier rulemaking . . .” is unclear since many earlier rulemakings are cited in the previous paragraph.
- p. 24 Second to last sentence: Saying that states “could not spend program funds to improve [food stamps] program participation” seems like an overstatement in light of the discussion on pp. 89-90. It needs either to be more specific (“could not spend program funds on activities that are reimbursable under the Food Stamp Act”) or to make it clear that this reflects states’ perceptions only (“they believed they could not spend program funds to improve program participation”).
- p. 26 Should we add a bullet arguing that greater accountability for outcomes (measured both within and beyond TANF) is a complement to greater state flexibility?
- p. 44 Fifth line should be revised: “Child Care and Development ~~Block Grant~~ Fund . . .”
- pp. 47-49 It is inappropriate to discuss budget or legislative proposals as justifications for not adding a child care measure. The section should be revised to reflect only existing activities.
- p. 52 The last bullet should appear earlier—perhaps second.
- p. 58 The last sentence of the first paragraph should be moved to the response section.
- p. 61 How seriously was the “self-sufficiency standard” considered in developing the NPRM? Are there disadvantages to incorporating aside from the data collection issues?
- p. 70 The first paragraph seems to need a concluding sentence along the lines of “Therefore we have decided not to add a performance or threshold measure based on racial/ethnic disparities.”
- pp. 72,165, 206 Why is the \$20 million that had been devoted to the Family Formation measure being reallocated to the work measures rather than the work support measures? We would prefer to see the Food Stamp and Medicaid/SCHIP measures increased to \$30 million each.

- p. 74 Basing the improvement measures on percentage point change rather than percentage change does have the advantage of giving states that made improvements early a better chance of winning bonuses. But at the same time it may make it harder for low-performing states to compete for bonus awards. Thus, it seems that the measure used should reflect whether the primary goal of the bonus awards is to encourage all states to improve their programs or to provide an incentive for low-performing states to improve. Since the absolute measures are primarily geared toward states that are already performing well, should the improvement measures be geared toward low-performing states? In past years, have high or low performing states tended to compete/win bonuses? Let's discuss these issues further.
- p. 84 Please provide the data that supports the statement on p. 84 that "Between 1995 and 1998, food stamp participation fell three times as fast as poverty..."
- p. 86 In general, to what extent has FNS been involved with the development and drafting of the final rule? Have they seen and contributed to this draft? Specifically, has FNS seen draft page 86, describing the July 1999 initiative and simplifications proposed in FNS' NCEP rule?
- p. 87 Paragraph at top of page: Please delete the last sentence, "To modify the rules of a larger, national program...."
- pp. 97, 133 Let's discuss the three state/seven state split on the Food Stamps and Medicaid/SCHIP improvement measures.
- p. 97 Can a state get an award for *both* absolute performance and for most improvement?
- p. 99 Who was the commenter that suggested that States should affirmatively demonstrate that their computer systems have been programmed so that when any TANF case closes, the food stamp case remains open until the worker makes an independent determination as to whether the household is still eligible for food stamps? Did HHS and FNS discuss the merits of such a proposal?
- pp. 100 -101 Food Stamp qualifying measures: If FNS is conducting program access reviews in each of the states, then why is determining whether states meet the qualifying measures an additional burden? FNS would only need to confirm for HHS that states meet the qualifying measures for those states applying for the bonus, correct?
- p. 103 Why wouldn't HHS release baseline information for the food stamp outcome measure for all states? (p. 104 says that HHS will have this information for all states.)

- pp. 104-105 Although the response to the comment about requiring food stamp data as a prerequisite for competing on the work measures makes clear that ACF and FNS have such data, it needs to make clear whether this data will be considered in evaluating performance on the work measures. Presumably, there is no intention to consider food stamp data in determining bonuses for the work measures. If so, that should be stated explicitly.
- pp. 115-116 Are the studies on lack of health insurance reliable enough to include?
- P. 128 Mention of legislative proposal on transitional Medicaid seems inappropriate. The response could simply reiterate the reduction of the time frame to four months.
- p. 129 The last sentence seems out of place. The next full paragraph addresses this issue more thoroughly, so the sentence should be moved or deleted.
- p. 141 The last full paragraph of the job retention response needs to address the suggestion that job changes only be ignored if the new job pays a higher wage, offers enhanced benefits, etc. It seems likely that tracking job characteristics other than wages would be overly burdensome.
- pp. 142, 204 Given that job retention is to some extent being evaluated because it is likely to be a means to the end of higher wages, why is it given more weight than earnings gains themselves? Why not weigh them equally?
- p. 145 Was an earnings gap measure considered either as a stand-alone measure or as a component of the success in the workforce measure? If so, why was it rejected?
- p. 153 Should the fourth line of the response say “unemployed” instead of “employed”? If not, please explain how this ration works.
- p. 177 The response seems inconsistent with the response on page 154.
- p. 206 By what date must a state notify ACF of its intent to compete?

Typos

- p. 14 Second sentence of full paragraph: “since our initial consultations” appears twice.
- p. 17 Second line from bottom: “address” should be “addresses”.
- p. 25 Sixth line from the bottom: “. . . chose ~~of~~ whether . . .”
- p. 26 Third line of first bullet: “‘State’ agency” should be “‘State agency’”.
- P. 27 Third line of first full paragraph: “~~with~~ the managers’ statement . . .”
- p. 50 Delete extra domestic violence paragraph.
- p. 85 Third line from bottom: “. . . working families’ access to food stamps.”
- p. 174 The reference to section 404(3) of the Act seems to be incorrect or missing a letter.

REGULATORY REVIEW WORKSHEET

0m15 - *Joan L Ann O'L*

OMB NUMBER: 0970-A254
 PIN NUMBER: 0970-AB66
 REGISTRY: 0970-A241 11/23/1999

RECEIVED : 05/15/2000
 E.O. DUE DATE: 08/13/2000
 EXTENDED : (Y/N)
 APPEALED : / /

AGENCY : Department of Health and Human Services
 SUBAGENCY : Administration for Children and Families

TITLE: Bonus to Reward States for High Performance Under the Temporary Assistance for Needy Families Block Grant

STAGE: Final Rule
 LEGAL DEADLINE: No

ECONOMICALLY SIGNIFICANT: No
 UNFUNDED MANDATE : No

DESK OFFICER: Lori Schack
 ANALYST : Richard Theroux

ACTION:

- ☐ (1) Consistent Without Change
- ☐ (2) Consistent With Change
- ☐ (3) Withdrawn by Agency
- ☐ (7) Returned - Sent Imp
- ☐ (9) Returned for Recons
- ☐ (11) Emergency
- ☐ (12) Statutory or Judicial

ECONOMICALLY SIGNIFICANT: ☐ Yes ☐ No

MAJOR : ☐ Yes ☐ No

FE : ☐ Yes ☐ No
 all that apply)
 al, tribal governments
 ctor

REGULATORY IMPACT:
☐ (D) Deregulatory
☐ (R) Regulatory
☐ (N) Nonregulatory

IFICATION: ☐ Yes ☐ No
 o Final Rules)

*Virginia
 Idaho
 Nm*

mailed

*states that
 declined
 to participate*

SIGNATURES AND DATES:

RMO Desk Office

RA

Date: _____ Date: _____ Date: _____ Date: _____

AGENCY NOTIFIED: ____/____/____

EXECUTIVE ORDER 12866 SUBMISSION

Important

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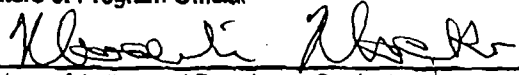
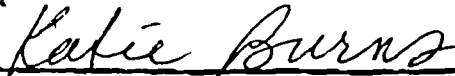
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1. Agency/Subagency originating request Department of Health and Human Services		2. Regulation Identifier Number (RIN) 0970-AB66 0970-A254	
3. Title Bonus to Reward States for High Performance			
4. Stage of Development ☐ Prerule ☐ Proposed Rule ☐ Interim Final Rule ☒ Final Rule ☐ Final Rule - No material change ☐ Notice ☐ Other Description of Other _____		5. Legal Deadline for this submission a) ☐ Yes ☒ No b) Date ____/____/____ DD MM YYY c) ☐ Statutory ☐ Judicial	
7. Agency Contact (person who can best answer questions regarding the content of this submission) Sean Hurley Phone (202) 401-9297		6. Designations a) Economically Significant (E.O. 12866) ☐ Yes ☒ No b) Unfunded Mandate (2 U.S.C. 1532) ☐ Yes ☒ No If either of the above is "Yes," submit four (4) complete packages to OIRA	

Certification for Executive Order 12866 Submissions	
The authorized regulatory contact and the program official certify that the agency has complied with the requirements of E. O. 12866 and any applicable policy directives.	
Signature of Program Official 	Date 4/21/00
Signature of Authorized Regulatory Contact Katie Burns OS/ES 	Date 5-12-00

OMB 83-R

Revision: 12/97 (Previous versions obsolete)

MAR-25-98 THU 4:09 PM

202 205 2135

P. 4

①, 'Married couple' because that is how census collects it.

② Bonus is preserved proportionally to the deal cut in the guidance.

③ Comments
NGA/APHGA

• CLASP/CBPP

④ FS negative comments came from states frustration about error rates.

⑤ Family formation problems - set threshold at 200% of FPL and in a ~~threshold~~ recession people will fall into it.

⑥ Child care

- ⑦
- a) percentage change → percentage point change
 - b) ~~to~~ count fully subsidized jobs
 - c) eliminate qualifying conditions

⑧ Food Stamps

no floor - can get an award even tho your rolls went down.

Start
Wellstone

Wellstone
5 members
Grossley
Chaffee
Faham
Rockefeller

Sander Berin

[Billing Code: 4184-01]

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Administration for Children and Families

45 CFR Part 265

45 CFR Part 270

RIN 0970-AB66

Bonus to Reward States for High Performance

AGENCY: Administration for Children and Families

ACTION: Final rule

SUMMARY: The Administration for Children and Families is issuing final regulations to implement section 403(a)(4) of the Social Security Act. This provision authorizes bonuses to high performing States in meeting the purposes of the Temporary Assistance for Needy Families Block Grant (the TANF program). We will base the bonus awards in FY 2002 and beyond on four work measures and four measures that support work and self-sufficiency related to participation by low-income working families in the Food Stamp Program and participation of former TANF recipients in

the Medicaid and State Children's Health Insurance Programs (SCHIP).

Bonus funds of up to \$200 million each year were authorized for awards in fiscal years 1999 through 2003. This rule specifies allocating these funds in FY 2002 and FY 2003. The highest high performing State may not exceed five percent of a State's family assistance grant.

Program guidance covering bonus awards in FY 2001. We published a Notice of Proposed Rulemaking for bonus awards beginning in FY 2002 on December 6,

In a related regulatory action, we are amending 45 CFR Part 265, the TANF Data Collection and Reporting Requirements, to reduce the burden of reporting data on Separate State Program-Maintenance of Effort (SSP-MOE) programs. This amendment will allow waivers of certain reporting requirements under limited circumstances.

EFFECTIVE DATES: These regulations are effective [insert 60 days from the date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION, CONTACT: Sean Hurley, Director, Division of Data Collection and Analysis, Office of Planning,

Research and Evaluation, ACF, at 202-401-9297. Mr. Hurley's e-mail address is: shurley@acf.dhhs.gov.

This rule is accessible electronically via the Internet from the ACF Welfare Reform Home Page at <http://www.acf.dhhs.gov/news/welfare>.

SUPPLEMENTARY INFORMATION:

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- III. Summary of the Notice of Proposed Rulemaking.
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 - A. Overview of Comments on the Work Measures.
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 - D. Recommendations for the Inclusion of New Measures.
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- V. Summary of the Final Rule.
- VI. Section-by-Section Discussion of the Rule and the Public Comments.
- VII. Amendment to 45 CFR Part 265.
- VIII. Regulatory Impact Analyses.
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 - B. Regulatory Flexibility Analysis.
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- F. Congressional Review.
- G. Executive Order 13132.

I. Legislative Background

A. The Temporary Assistance for Needy Families Program

Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, established the Temporary Assistance for Needy Families (TANF) program at title IV-A of the Social Security Act (the Act). TANF is a block grant program designed to make dramatic reforms in the nation's welfare system. Its focus is on moving recipients into work and turning welfare into a program of temporary assistance, preventing and reducing the incidence of out-of-wedlock births, and promoting stable two-parent families. Other key features of TANF include provisions that emphasize program accountability through financial penalties and rewards for high performance.

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

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. We published final regulations to implement the work, penalties, and data collection provisions of the TANF program in the Federal Register on April 12, 1999 (64 FR 17720). These rules became effective October 1, 1999. We also published a number of other related regulations, including rules covering annual reports of State child poverty rates in relation to the TANF program (Notice of Proposed Rulemaking published September 23, 1998 (63 FR 50837)) and bonuses to reward States for decreases in out-of-wedlock births (final rule published April 14, 1999 (64 FR 18484)).

As we stated in this earlier rulemaking, the 1996 welfare reform 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, health care, and other supports that 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 noncustodial 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 these problems.
- The Federal government should place more emphasis on program results.

Under section 401(a)(1) of the Act, States (and certain Indian tribes) have the authority to use Federal welfare funds "in any manner that is reasonably calculated to accomplish the purpose" of the new program. They have broad flexibility to set eligibility rules and decide what benefits are most appropriate. In short, they have the opportunity to try new, far-reaching changes that enable them to respond more effectively to the needs of families within their own unique environments.

B. Summary of the Statutory Provisions Related to the High Performance Bonus

Section 403(a)(4) of the Act requires the Secretary to award bonuses to "high performing States." (Indian tribes are not eligible for these bonuses.) The term "high performing State" is defined in section 403(a)(4) of the Act to mean a State that is most successful in achieving the purposes of the TANF program as specified in section 401(a) of the Act. These purposes are to --

- (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- (3) 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
- (4) encourage the formation and maintenance of two-parent families.

Section 403(a)(4)(B) of the Act specifies that the bonus award for a fiscal year will be based on a State's performance in the previous fiscal year and may not exceed five percent of the State's family assistance grant.

Section 403(a)(4)(C) of the Act requires the Department to develop a formula for measuring State performance in consultation with the National Governors' Association (NGA) and the American

Public Welfare Association, now known as the American Public Human Services Association (APHSA).

Section 403(a)(4)(D) of the Act requires the Secretary to use the formula developed to assign a score to each eligible State for the fiscal year preceding the bonus year and prescribe a performance threshold as the basis for awarding the bonus. Section 403(a)(4)(D) of the Act also specifies that \$1 billion (or an average total of \$200 million each year) will be awarded over five years, beginning in FY 1999.

II. High Performance Bonus Awards in FY 1999, FY 2000, and FY 2001

As we have done with all regulations related to the TANF program, we implemented a broad consultation strategy prior to our rulemaking. In addition, as required by section 403(a)(4)(C) of the Act, we consulted intensively with representatives of the NGA and the APHSA. We met with staff of these two national organizations as well as staff of the National Conference of State Legislatures (NCSL) and approximately 30 State representatives who participated by regularly scheduled conference calls over a period of approximately nine months.

We also consulted with a number of other audiences: researchers, data experts, and academics; other Federal and non-Federal agencies that had developed or were in the process of developing performance measures for their programs; and representatives of a broad range of non-profit, advocacy, and community-based programs.

We would have preferred to set the formula for all years through rulemaking. However, we were not able to conduct adequate consultations and complete a formal rulemaking process in order to advise States, in a timely way, how we would be assessing their performance (for both the performance year and the comparison year used to measure improvement) in FYs 1997-1998, FYs 1998-1999, and FYs 1999-2000, in order to make awards in FY 1999, FY 2000, and FY 2001. Therefore, we issued program guidance covering the first three award years without the benefit of a formal rulemaking process. (For the program guidance for the awards in FY 1999, see TANF-ACF-PI-98-1 and TANF-ACF-PI-98-5 (Form ACF 200, OMB #1970-0180); for the guidance for the FY 2000 awards, see TANF-ACF-PI-99-1; and for the guidance for the FY 2001 awards, see TANF-ACF-PI-99-5.)

The FY 1999 program guidance based the first-year bonus awards on four work measures, i.e., the job entry rate, the success in the work force rate (this is a combination of the job retention rate and the earnings gain rate), and improvement in each of these

measures. We have based the FY 2000 and FY 2001 bonus awards on similar work measures.

On December 6, 1999, the President announced three actions relating to the high performance bonus:

- The award of \$200 million for the first-year bonus awards to 27 States with the best records in moving parents on welfare into jobs and subsequent success in the work force;
- The program guidance for the FY 2001 awards; and
- The publication of a Notice of Proposed Rulemaking (NPRM) covering awards in FY 2002 and beyond.

According to the reports filed by the 46 States competing for the first-year bonus, nationwide more than 1.3 million adults on welfare went to work in the one-year period between October 1, 1997, and September 30, 1998. Retention rates were also promising: 80 percent of those who had gotten jobs were still working three months later. The States also reported an average earnings increase of 23 percent for welfare recipients (some of whom were now former recipients) from \$2,088 in the first quarter of employment to \$2,571 in the third quarter.

The States ranked the highest in each category were Indiana (job entry), Minnesota (success in the work force, i.e., job retention

and earnings), Washington (biggest improvement in job entry), and Florida (biggest improvement in success in the work force).

The other States that received bonuses were: Arizona, California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Louisiana, Massachusetts, Michigan, Nevada, New York, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, and Wyoming. Eleven States received bonuses in two categories, and one State, Minnesota, was successful in three.

In announcing these awards for FY 1999, we recognized that the award criteria did not necessarily identify all States that have implemented successful welfare reform strategies. For example, some States may have implemented exceptionally strong programs whose success was not captured by this award because of timing or the specific measures we used. In addition, although we awarded bonuses to the ten States with the highest scores in each measure, the performance scores for many other States were also high.

III. Summary of the Notice of Proposed Rulemaking

We faced a significant challenge in developing a performance measurement system for the new TANF program. Although there is

considerable activity underway in both the public and private sectors, performance measurement is a field that is still evolving. Our aim in developing the bonus award system was to reflect outcomes based on the purposes of the Act, propose a system as simple as possible to understand and administer, and incorporate the best information available.

To provide context, in the NPRM, we included a discussion of some of the difficult and inter-related questions and issues with which we, and the groups with which we had consulted, had struggled, e.g., general approach questions, short-term versus long-term strategies, formula and distribution issues, and issues relating to the design of measures and the availability of data sources.

We also included a discussion of more specific issues related to TANF performance measurement, including issues around absolute performance and performance improvement and concerns about achieving a level playing field among States, and we discussed measures that we had considered and rejected. We also spoke about the difficulty of identifying appropriate measures without incurring new data collection responsibilities while relying, to the extent possible, on uniform, objective, and reliable State data; rewarding positive performance; and producing no unintended consequences.

Finally, as an additional encouragement to focus public comment on specific alternative approaches, we raised a series of questions on major sections of the proposed rule.

The consultations with NGA, APHSA, and others were very useful in helping us identify key issues, evaluate policy options, and develop both the program guidance for FY 1999, FY 2000, and FY 2001 and the Notice of Proposed Rulemaking. As a part of our consultations, NGA and APHSA developed a set of principles they believed should apply to a high performance bonus system. We found that these principles offered a positive framework for developing such a system and avoiding some major pitfalls. We also found these principles helpful as we addressed specific issues in developing the NPRM. The NGA/APHSA principles stated that a high performance bonus system should:

- Be simple, credible, quantifiable, understandable to the public, and consistent with the goals of the law;
- Focus on outcomes rather than process;
- Take varying State economic circumstances and policies into account and not impede the flexibility provided to States under Pub.L. 104-193;
- Minimize double jeopardy or reward. (For example, the law already provides bonuses for reducing out-of-wedlock births, a caseload reduction credit, and

penalties and incentives related to child support enforcement and paternity establishment.);

- Avoid additional data collection requirements and costs and build on existing systems;
- Avoid unintended consequences;
- Focus on positive rather than negative measures; and
- Reflect the strong emphasis on employment and self-sufficiency in the Federal law and in the States' implementation of the law. This emphasis should influence the measures included in the system and the distribution of bonus funds.

We published a Notice of Proposed Rulemaking (NPRM) on December 6, 1999 (64 FR 68202). Since our initial consultations, we have held several additional formal and less formal discussions about TANF performance measures with States, State groups, and others since our initial consultations. For example, on July 21, 1999, we invited States, advocates, researchers, and others to a day-long consultation on issues related to outcome and performance measurement related to the preparation of a "Study and Report to Congress on Alternative Outcome Measures" (section 107 of the Personal Responsibility and Work Opportunities Reconciliation Act). In addition, the core provisions of the NPRM were very similar to the measures, issues, and principles discussed in earlier consultations. Finally, we knew that the NPRM would

provide an additional opportunity for public comment and believed it was important to move the regulations process forward.

In summary, the NPRM proposed to:

- Award bonuses beginning in FY 2002 based on four work measures (substantially the same work measures currently in use for FY 1999 and FY 2000 and specified for use in FY 2001);
- Award bonuses beginning in FY 2002 based on three work support measures: one measure on family formation and family stability (increase in the number of children below 200 percent of poverty who reside in married couple families) and two measures that support work and self-sufficiency, i.e., participation by low-income working families in the Food Stamp Program and participation of former TANF recipients in the Medicaid program and the State Children's Health Insurance Program (SCHIP);
- Use one of two possible alternative sets of data for the four work measures: the National Directory of New Hires;
- Use the Census Bureau demographic programs of the three work support me

family formation and stability and the measure on participation in the Food Stamp Program;

- Measure performance on Medicaid/SCHIP participation, through State matches of TANF data with data on Medicaid/SCHIP enrollment;
- Award bonuses to the ten States with the highest scores in each measure;
- Specify an allocation of funds for each measure in FYs 2002 and FY 2003 (and beyond, if high performance bonus awards are subsequently authorized), under which we would award \$140 million to the work measures and \$60 million to the work support measures:
- Reiterate the requirement in §265.3(d) of this chapter that, 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
- Create an annual review process, as needed, if future modifications and technical changes are necessary.

We took this approach for several reasons. First, we believed that, given the primary focus of the TANF program on work, we should continue to focus the rewards to States for their efforts in this area. The funds allocation we proposed reflected the importance we placed on State performance directed towards work, i.e., \$140 million for work and \$60 million for work support measures.

Second, potential new data sources appeared to be available with respect to both the proposed work measures and the work support measures: i.e., the National Directory of New Hires would serve as a research data source and provide more comparable and reliable national work data; and data from the Census Bureau's decennial and annual demographic programs (e.g., the Supplementary Census 2000 Survey and the American Community Survey) would provide data sources for two of the three proposed work support measures.

In developing both the program guidance and the NPRM, the Department has been interested in utilizing a broad set of measures (i.e., other than direct work measures) that more fully reflect other purposes of the TANF program. States, Congress, national organizations, and experts have also recommended the inclusion of other measures. During 1997 and 1998, we worked to develop other measures, but we were unable to identify measures for which we had reliable data sources.

Given the potential availability of the two new data sources, we proposed both work and work support measures. We strongly believe that Medicaid/SCHIP and Food Stamps are critical supports for many working families as they move towards self-sufficiency through employment. State performance to ensure that eligible families receive Food Stamps and Medicaid/SCHIP address two of the statutory purposes of the TANF program: providing assistance

to needy families so that children may be cared for in their own homes and ending the dependence of needy parents on government benefits by promoting job preparation and work. Receipt of Medicaid/SCHIP and Food Stamps supports purpose two by helping make it possible for families to move off of welfare into employment, sustain that employment, and progress on the job to eventual full economic independence.

In addition, the work support measures reflected our concern that the lives of children and families, particularly low-income children and families, should be a focus of attention within the TANF program. We also believe that families are one of the ^{key} strongest factors in developing and sustaining high levels of individual competence and functioning in our complex society. Thus, we concluded that States should be rewarded for their efforts in addressing family formation and these other purposes of the Act.

IV. Overview of the Public Comments

We received 130 comment letters, some with multiple signatures, from a wide range of national, State, and local entities and organizations, including: city and county governments; State human service agencies, and national organizations representing States, State legislatures, and State human service organizations; national and State children, family, and domestic

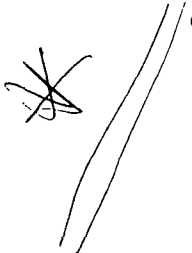
violence advocacy and service organizations; national and local faith-based organizations; national, State, and local employment, housing, and legal advocacy organizations; national labor unions and a State labor agency; food and nutrition service and advocacy organizations; Members of Congress; a national foundation; and others.

Some of the 130 individual comment letters were similar or identical to the more than 300 identical notecards we received as a result of a letter-writing campaign organized by a broad-based national coalition monitoring the effects of welfare reform.

The major themes of the comments included the following:

- Most commenters supported the work measures, but a number made recommendations for substantive and technical changes.
- There was a division of opinion on the inclusion of the Food Stamp and Medicaid/SCHIP measures. For a number of reasons, States objected to the inclusion of these measures. Advocacy, service, and faith-based organizations strongly supported these measures, as did all of the Members of Congress who commented on the NPRM.
- Almost all commenters objected to the family formation and stability measure, although a few suggested

modifications. No commenters supported the proposed measure.

- 
- A large number of commenters, primarily national advocacy organizations and three Members of Congress, recommended the addition of a new measure on child care.
 - To a lesser extent, a number of organizations also recommended other new measures, including domestic violence measures and worker protection measures.
 - Some commenters made recommendations for changes in the allocation of funds, although these comments did not present a consistent view. Many who supported the Medicaid/SCHIP and Food Stamp measures suggested substantial increases in the dollars for these measures and decreases in the dollars for the work measures, while national organizations representing States and State human service agencies recommended that all dollars go to the work measures.

A. Overview of Comments on the Work Measures

With a few exceptions, commenters considered the work measures of job entry, job retention, and earnings gain to be the appropriate measures for assessing State performance in moving TANF recipients from welfare to work and self-sufficiency. At the

same time, we received a number of substantive and technical suggestions on how we should modify these measures, e.g., establish a minimum level of earnings that would constitute employment; measure job retention and earnings gain over a longer time period; establish a separate measure of earnings gain (proposed as a combined job retention/earnings gain measure); measure performance improvement by percentage point change rather than percentage change; adjust performance scores by economic and demographic factors; and establish other threshold requirements, such as job placements above the poverty level. We address these comments in the section-by-section discussion below.

The States, their representative organizations, and other commenters expressed strong support for the proposed work measures (substantially the same work measures that are used for the high performance bonus awards for FYs 1999-2001). We considered a range of suggested changes, both substantive and technical, but, given the level of support for the proposed work measures, we made only a few technical changes in the final rule. We have changed the way we calculate performance improvement, i.e., we will use the percentage point change rather than the percentage change. We have also removed the distinction on what kinds of subsidized jobs count under the work measures. In addition, we have added clarifying definitions in §270.2 and incorporated other technical changes in §270.5. We will consider adding an earnings threshold in the future, after further

analysis and consultation with States and other interested individuals.

In the NPRM, we also proposed that States report one of two alternative sets of data -- either a minimal set of identifying information on adult TANF recipients, which we would match against data from the National Directory of New Hires (NDNH) at the Federal level, or a more extensive set of work performance data. We proposed the use of the NDNH in response to concerns that States raised about access to out-of-State and Federal employment data during our initial consultations and implementation of the FY 1999 bonus awards. States and other commenters were strongly supportive of the use of the NDNH.

We agree that the use of the NDNH, matched with State data, will result in reduced burden for States and greater accuracy in implementing bonus awards. Therefore, in the final rule, we require States to report identifying information on adult TANF recipients that we will match with the NDNH data. We address these changes later in the section-by-section discussion of the rule.

B. Overview of Comments on the Food Stamp and Medicaid/SCHIP Measures

The proposed rules contained two measures that focused on State efforts to provide critical supports needed by low-income working families. One measure looked at improvements in the percentage of families leaving TANF who were enrolled in Medicaid or SCHIP six months later. The second measure looked at improvement in the rate of food stamp participation for certain low-income working families. These two proposals generated extensive comments, which were highly diverse in nature.

Because many commenters addressed these proposals together, and the comments on the two provisions were somewhat similar, this overview will address both provisions. However, there were also a variety of comments that spoke more directly to the separate proposals. You will find the discussion of these detailed and distinct comments in the section-by-section analysis for §§ 270.4(d) and 270.4(e).

Comments: A significant majority of all commenters supported inclusion of the Medicaid/SCHIP and food stamp measures. Among the reasons cited were the importance of these benefits as work supports, particularly for families with entry-level employment; the negative consequences of the recent declines in these program caseloads; the ability of States to operate TANF in ways that facilitate food stamp and Medicaid participation by low-income families; and the value of encouraging States to take steps

necessary to improve access. At the same time, a number of these commenters had suggestions for modifications to the proposals.

These two proposals also drew a significant negative response, primarily from State agencies and organizations representing States. While generally agreeing that these programs provide important supports for low-income families, commenters raised a variety of philosophical, programmatic, administrative, and equity objections to including these measures as part of the high performance bonus. Philosophically, and particularly for the food stamp measures, some commenters indicated that the measures were inconsistent with TANF purposes, promoting dependency rather than self-sufficiency. In addition, State agencies objected to being held accountable, under a TANF provision, for serving families that were beyond the reach of the TANF program and for complying with requirements in other Federal programs. In the case of food stamp participation, in particular, they also objected to being held accountable when they lacked control over many program rules, and they could not spend TANF funds to improve program participation. They expressed concern about the adequacy of national data, the equity of looking at annual improvement only from FY 2000 forward, the equity of applying annual improvement measures when some States had made significant efforts to improve access prior to the measurement period, and a variety of other issues.

they are
in child
care!

Response: We have decided to retain measures of Medicaid/SCHIP and food stamp participation in the final rule because we are committed to a high performance bonus system that rewards States not just for employment successes, but also for their efforts to support low-income families during their transitions. We believe these measures are consistent with, and support the statutory purposes of, TANF. By participating in Food Stamps and Medicaid or SCHIP, needy families receive the assistance they need to care for children in their homes (purpose one) and improve their chances of ending dependence on government benefits through work (purpose two). In fact, the bipartisan comments we received from Members of Congress on these measures uniformly supported their inclusion.

In response to the technical and substantive concerns raised by the States and others, we very carefully considered all the suggestions for how to improve the measures and looked for ways to address the States' concerns. As you will find in the section-by-section analysis, we have made a number of changes that respond to the concerns. For example, we have made it more explicit that States may choose ~~of~~ whether to compete on the Food Stamp measure (consistent with our approach for all the measures), dropped the "qualifying conditions" for both the Food Stamp and Medicaid/SCHIP measures (i.e., the threshold conditions that States had to meet in order to compete on these measures), added awards for absolute performance (not just improvement), and

modified the improvement measure so that it is less biased towards States starting with a low level of performance in the comparison year.

Also, we recognize State concerns about being held accountable for activities that are outside of TANF. However:

- Unlike prior law, under TANF, all the key statutory provisions regarding goals and responsibilities refer to the "State" rather than the "State" agency; the concept of "single State agency" is gone; and all notifications go to the chief executive officer of the State, not the State agency. Thus, the statutory language suggests that it is more appropriate for the high performance bonus to look at State performance rather than TANF State agency performance. *more broadly*
- The legislative history suggests that Congress intended that Food Stamps and Medicaid remain as part of the safety net for needy families affected by the TANF changes and that Congress was referring to welfare benefits when it included statutory language about reducing dependency on government benefits. More specifically, Congress did not modify the entitlement nature of Food Stamps and Medicaid when it repealed the entitlement to cash assistance. Further, in enacting

sections 1925 and 1931 of the Act, Congress clearly intended that needy families would maintain eligibility for Medicaid benefits on the same basis as prior law (or a less restrictive basis). Indeed, the fact that Congress did not budget any savings for either the Medicaid or Food Stamp programs as the result of TANF indicates that it did not anticipate the declines in program participation that occurred in both programs, and it suggests that Congress did not intend for the declines to happen.

Congressional interest in maintaining Food Stamps and Medicaid as part of the safety net is also suggested by [^] with the managers' statement, which: (1) refers to changes in the Food Stamp program, but does not suggest any TANF-related effects; (2) refers to PRWORA as a "fundamental reform of welfare" that "promotes work over welfare" [emphasis added]; and (3) speaks to not abandoning "those Americans who truly need a helping hand" and guaranteeing that children "will continue to receive the support they need." This interpretation of Congressional intent also corresponds with the consistent bipartisan support we received in comments from Members of Congress on this issue.

- The statutory purposes of the TANF program reflect a broad view of the program that goes beyond families that are needy and receiving cash assistance.
- In most cases, the same State and local agencies are administering the TANF, Medicaid, and Food Stamp programs (or the TANF agency is making Medicaid eligibility determinations on behalf of the Medicaid agency), and a single caseworker is often responsible for determining eligibility and benefits in the three programs. Thus, in the course of administering the TANF program, TANF program managers often have the opportunity to work on eliminating barriers that may be deterring clients from seeking or retaining Medicaid or food stamp benefits.

For example, they can work on clearing up client misunderstandings about the applicability of TANF requirements to other program benefits (e.g., believing there are food stamp and Medicaid time limits); ensuring that families served by TANF diversion programs have the opportunity to apply immediately for other benefits to which they are entitled; and ensuring that applications and notices are clear about the expectations of each program, the reasons why particular benefits are

denied or terminated, and an individual's rights to pursue other benefits. They can also work to provide office hours, office locations, and cultural and language accommodations that are responsive to client needs and to minimize administrative requirements, such as reporting and face-to-face interviews, that might discourage participation by eligible families.

child care is only diff b/c it lost the entitlement to care while working - getting cash - transitional assistance.

C. Overview of Comments on the Family Formation Measure

The proposed rules contained one "non-work" measure directed at the second and fourth statutory purposes of TANF -- i.e., to end the dependency of needy parents by promoting marriage and encourage the formation and maintenance of two-parent families. More specifically, based on Census Bureau data, the NPRM proposed to allocate \$20 million of the annual high performance bonus award to the 10 States with the largest increase in the percent of children below 200 percent of poverty who reside in two-parent families. *married or not?*

Comments: This proposal generated a significant number of comments and an overwhelmingly negative reaction. While a few commenters commended our efforts to encourage State initiatives in this area, almost all who commented on this section expressed

serious methodological and substantive concerns. Commenters noted that:

1. States could earn awards based on bad outcomes, and thus the measure could have unintended negative effects.

✓ For example, one way for a State to score well on this measure would be to experience an increase in the number of low-income, married-couple families. If the number of low-income, single-parent families stayed the same, the State would appear to be a better performer than a State that experienced no change for either group. A State might also score well if its married-couple families had additional children (thus moving those families below the income threshold).

✓ While we would not anticipate that the possibility of winning a bonus would motivate States to pursue bad policies, it is conceivable that a State would consider how a particular policy action would affect its potential receipt of an award when it is considering new policy options. [For example, in deciding whether to give priority to single-parent or married-couple families in its work programs, a State might consider how this decision would affect its performance under

this measure. We do not know how the State's assessment would affect its willingness to support married-couple families.]

2. The measure ^{only focuses on money not on any law income families and} fails to reward increases in marriage rates among families with higher incomes.

As commenters note, the proposed measure only looks at families with income below 200 percent of poverty, ignoring marriage rates among families with higher incomes. Goals two and four send different signals as to whether needy families or all families would be the most appropriate target for State efforts under the statute. However, focusing on the population at large would markedly aggravate concerns among the States about being judged on factors that are outside their control.

3. Success in increasing marriage among single parents could inadvertently diminish a State's chances of receiving a bonus.

The commenter's concern was that the proposed measure would not give a State credit if two low-income single-parent families married and the blended family's income rose above the income threshold. We are not convinced

that marriages among single-parent, low-income families would hurt a State's chances; i.e., other things being equal, they would raise a State's score by reducing the State's denominator. Nevertheless, because of differences in State per capita income and other factors, States achieving the biggest increases in marriage rates among low-income families would not necessarily be the top performers under this measure.

4. This measure might also disadvantage States with State or local EITC programs.

Commenters noted that ten or more States offer State or local earned income tax credits (EITC). However, we do not see why providing EITC would have disadvantaged a State under this measure; taxes are not considered in determining whether family income exceeds the poverty level or related income thresholds.

Among the philosophical objections were:

- The measure's focus on marriage as the one acceptable form of "two-parent" families, noting that TANF purpose four refers to two-parent families, not marriage;
- Its failure to recognize noncustodial parents and a variety of less traditional family structures or to

recognize the value of strengthening families through means other than marriage;

- The appropriateness of promoting marriage, e.g., when there are contraindications such as domestic violence and substance abuse; and
- The appropriateness of engaging the government in decisions that are essentially personal and private.

In addition, some commenters questioned the appropriateness of the measure by referring to research findings that being raised in a single-parent family did not, in and of itself, negatively affect children.

Commenters also raised concerns about: (1) States being measured on something that seemed beyond their jurisdiction and control; (2) the ability of States to develop programs that encouraged marriage, but had no unintended negative consequences; (3) double jeopardy, e.g., primarily based on the proposed measure's similarity to the out-of-wedlock birth bonus; (4) the adequacy of Census data; (5) the lack of a State option on whether to compete or not; and (6) the definition of marriage that would apply.

We received few suggestions for alternative measures that would support family formation. Two organizations suggested we might establish a competition and award bonuses based on innovative policy initiatives and program demonstrations, and one State

suggested we evaluate individual State descriptions of their own initiatives. A few commenters suggested that, alternatively, we could encourage States to reduce teen pregnancies. A few commenters also suggested some other specific alternatives: (1) consider marriage rates for the entire State population and reward only "noncoercive public education campaigns"; (2) reward States for increasing the percentage of families receiving TANF cash assistance that are two-parent families; and (3) add domestic violence provisions (either as threshold qualifying conditions or adjustments).

Response: We have decided to drop the family formation measure from the high performance bonus system at this time. In drafting the NPRM, we wanted to demonstrate our commitment to the TANF family formation and stability goal, and we worked very hard to ensure that the high performance bonus system recognized this commitment. Since our earliest consultations with NGA, APHSA, NCSL, and the State representatives we have actively explored the possibility of incorporating a measure in this area. We also have had a number of conversations with Hill staff, advocates, academics, and other parties where we sought suggestions for alternative measures. The measure in the NPRM reflected our best attempt to synthesize what we had heard and develop a measure that was feasible in light of the data that were available to us. We had recognized some of the measure's flaws, but could not identify a better way to measure family formation and stability

among low-income families. We found no way to work around limitations with the data that prevented us from directly measuring changes in marriage rates among low-income families.

*May be good
in panel
is broader*

We had hoped the NPRM comments might either provide some useful suggestions for improving the proposed measure or present us some viable alternatives. Unfortunately, even after reviewing the comments, we still have not found a satisfactory way to address the underlying flaws in our proposed measure. Thus, in spite of our ~~strong~~ interest in allocating some of the bonus money to a family formation measure, the final rule does not do so.

We seriously considered the suggestion to establish a panel-based competitive process that would reward innovative initiatives or demonstrations. However, we did not include it in the final rule because the approach seemed inconsistent with the statutory language at section 403(a)(4)(C)-(E), which clearly expects us to employ quantitative measures, and seemed to move us away from outcomes. We also thought that, without specific quantitative standards, it would be extremely difficult to implement a system that was sufficiently objective and fair to serve as the basis for awarding millions of dollars a year.

We had previously devoted considerable thought to the question of whether we should include a teen pregnancy measure because this question came up in our earlier consultation with the States.

While the Centers for Disease Control and Prevention and the Alan Guttmacher Institute both publish State-level teen pregnancy data, some of those data are based on estimates, and we did not consider them sufficiently reliable for this purpose. We also explored whether we would be able to compute our own teen pregnancy figures using national teen birth data, and adjusting those figures based on separately reported teen abortion data. Unfortunately, teen abortion data are not available for all States and therefore are not adequate for this purpose.

Also, we did not believe any of the other suggestions offered us viable alternatives. They tended to move us away from outcome-based measures to process measures and away from quantitative standards to qualitative ones. In addition, they did not sufficiently address many of the substantive concerns of the commenters.

As one commenter suggested, we will be looking at developing information on promising practices in the areas of family formation and out-of-wedlock childbearing that we can share among States to encourage innovation and increased efforts. Under the provisions in the TANF final rules published on April 12, 1999 (64 FR 17720), we added some reporting requirements on State efforts that will help facilitate the development of promising practice information. The new fiscal reporting form (ACF-196) will capture expenditures on "Two-parent family formation and

maintenance activities" and help us determine which States are making the biggest investments in this area. In addition, the new annual report from States will include summaries of State programs and activities directed at the third and fourth TANF purposes (see 45 CFR 265.9(a)(8)).

In the areas of teen pregnancy prevention and out-of-wedlock childbearing, the Department has continued its efforts to improve State and national outcomes. The latest national data shows continued success in reducing the teen birth rate (which dropped 18 percent between 1991 and 1998). The rate of births to all unmarried women increased, but the rate for unmarried teens dropped in 1998. On April 14, 1999, we issued the final regulations on the bonus to reward States with the largest decreases in their out-of-wedlock childbearing. On September 13, 1999, Secretary Shalala announced the first five winners of that bonus: Alabama, California, the District of Columbia, Massachusetts, and Michigan. Each received \$20 million. The reductions in their out-of-wedlock birth ratios ranged from 1.5 to 5.7 percent.

Prior to these issuances, the Department had undertaken a number of initiatives directed at reducing out-of-wedlock and teen pregnancies.

- In 1995, the Department produced the Report to Congress on Out-of-Wedlock Childbearing, and Beginning Too Soon: Adolescent Sexual Behavior, Pregnancy and Parenthood -- both of which contained valuable information about the occurrence of out-of-wedlock and teen pregnancy as well as strategies for addressing these concerns.
- In 1997, the Department developed the National Strategy to Prevent Teen Pregnancy, as required in section 905 of PRWORA. The Department released two first annual reports to Congress since then. Among other things, the 1999 report noted that HHS has funded teen pregnancy prevention programs in 34 percent of communities across the country and listed more than 20 Departmental programs aimed at educating teens and preventing pregnancy (including Girl Neighborhood Power! and demonstration grants to 13 communities in 11 States funded through the Centers for Disease Control and Prevention Community Coalition Partnership Programs).
- The Department, in partnership with the National Campaign to Prevent Teen Pregnancy and Johnson and Johnson, has developed "Get Organized: A Guide to Preventing Teen Pregnancy." This publication stresses a localized approach, a long-term commitment, and careful evaluation. The Department will be disseminating additional information to communities

regarding programs that specifically target boys and young men.

- The Department has been administering the State Abstinence Education Program, as authorized by section 912 of the PRWORA. This program authorizes \$50 million per year beginning in FY 1998. Every State applied for this money to build on its efforts to prevent teen pregnancy in FY 1998 and FY 1999 (although New Hampshire declined its funding for FY 1998 and California did not draw down its 1998 or 1999 grant). For FY 2000, all States applied for an abstinence education grant except California. As mandated in the Balanced Budget Act of 1997, the Department is conducting an evaluation of a selected number of sites receiving funding under this provision.
- The Department is actively supporting expanding pregnancy prevention efforts to include a focus on boys and young men.
- The Department's Regional Offices have awarded \$2 million in small grants to Title X Family Planning Clinics to develop pilot programs designed to prevent premature fatherhood. These projects employ male high school students as interns to provide them with on-the-job training in clinic operations and allied health occupations and provide education about male

responsibility, family planning and reproductive health.

- In addition to these initiatives, the Department supports other research efforts, including the National Study of Adolescent Health, the National Survey of Family Growth, and the National Survey of Adolescent Males, which have all provided important insight into adolescent risk behaviors including sexual activity and response to pregnancy.

D. Recommendations for the Addition of New Measures

In the NPRM, we stated our aim that the high performance bonus system should "reflect the outcome goals of TANF, remain as simple as possible to understand and administer, and incorporate the best information available." As a framework for our deliberations on the NPRM (and on this final rule), we utilized the principles for a high performance bonus system developed by NGA and APHSA; sought to avoid additional data collection requirements and costs; and focused on positive, rather than negative, and outcome, rather than process, measures.

Other factors in our policy and evaluative framework were the voluntary nature of the bonus system and the fixed amount of the annual bonus. We have been concerned that the inclusion of too

many measures would spread the bonus funds too thinly and, thus, weaken their ability to provide incentives to States to achieve serious policy improvement while creating a high level of competition. In addition, we wanted to avoid measures that duplicated other measures or systems for monitoring and improving State performance. A final factor we considered was the availability and sufficiency of data sources. Throughout all of our deliberations, we have been particularly aware of the issue of diversity among States and how that diversity might impact the design and implementation of a fair bonus system.

In the NPRM, we proposed not only new measures, but we discussed other measures and data sources that we had considered but decided not to include in the bonus system at that time. We actively encouraged comments on all aspects of these measures.

Over one-half of the letters we received and all of the notecards offered suggestions for the inclusion of a range of new bonus measures, either as a substitute for the family formation measure or as an additional new measure. Commenters discussed some measures in detail; others were mentioned as suggestions for future development. Some of the recommendations for new measures, e.g., child care, domestic violence, and child poverty, were among the measures we had discussed in the preamble to the NPRM, but had not included in the proposed rule.

We appreciate the number of thoughtful, well-reasoned comments we received regarding new measures, as well as the detailed analysis and other information provided in support of the commenters' recommendations. We also appreciate commenters' commitment to the success of welfare reform, the focus on work and self-sufficiency, and the importance of the well-being of families and children.

We reviewed each recommendation in light of the additional information provided and in the context of the policy and evaluative framework described above. In many ways, we shared the commenters' views that the additional measures and issues they raised were central to the effective implementation of welfare reform, but we concluded that other strategies for highlighting these issues would be even more effective than including them in the high performance bonus system. Therefore, we have not accepted recommendations for new measures at this time. Among the most important considerations underlying our decision was our interest in limiting the number of measures so as to retain a significant amount of funds for the work and the work support measures. We believe this approach will offer the States a clear incentive to participate in the process, result in the development of effective policies, and generate healthy competition among the States.

We discuss the comments we received and our response in greater detail below.

Child Care

Comments: A child care measure was the new measure most frequently recommended, and it was the one for which commenters offered the most concrete suggestions for how we might construct such a measure. Supporters of a child care measure included a broad array of individual and organizational commenters. With one exception, States and their representative organizations were silent on this issue.

In support of their recommendations, commenters observed that currently there is no reward for good performance in providing child care. A child care bonus, they believed, would be an excellent incentive toward better State performance, given that only a small percentage of income-eligible children are now receiving subsidies, according to published estimates from this Department. Many commenters based their rationale simply on the fact that child care is a critical work support needed in order for poor families to work.

The suggestions for how we should construct a specific child care measure centered primarily on the number of children receiving

child care subsidies and/or the amount of expenditures on eligible children. Commenters suggested various target populations, including: 1) TANF recipients and former TANF recipients; 2) children eligible under the provisions of the Child Care and Development Block Grant (i.e., at or below 85% of State median income); 3) children at or below 200% of poverty; or 4) children served both under the Child Care and Development Fund (CCDF) and, at State option, other subsidy programs. Commenters also suggested child care as both an absolute and an improvement measure. Some commenters built into their proposed measures factors such as the appropriateness of payment rates, family co-payments, and the utilization of licensed care.

Several commenters also suggested child care as a qualifying condition or a threshold measure - either as a qualifying factor for a child care bonus or in order for a State to receive other bonus awards. For example: (1) before a State could receive a child care bonus, the State must pay a child care rate equal to at least the 75th percentile of the local market rate based on a survey that is not more than two years old; or (2) the State must spend a required percentage of child care funding for care that meets State certification standards. Other suggestions included granting high performance bonus awards only on the condition that a State based its child care payments on recent market surveys or served at least 70% of its income-eligible children.

Response: We agree that child care is of critical importance to working families, and we share the commenters' views that access to affordable, high quality care is a necessary part of a welfare reform program. In developing the NPRM, we gave considerable thought to the possibility of including a child care measure, not only because of its importance to working families but also because the CCDF program and the TANF program are closely related. However, there are a number of problems in the development of a child care measure. After considering all of the comments on the proposed rule, we have decided not to include a child care measure in the high performance bonus system at this time. A major factor in our decision was that new data collection requirements would be unavoidable if we were to construct a meaningful measure. We concluded that the additional data required could be so burdensome to States that the bonus award incentive would be unlikely to result in strong competition.

For example, we know that, in addition to CCDF funds, some States have made investments in child care activities by using TANF and other Federal and/or State funds. A performance measure based on expenditures would need to consider a number of funding sources. However, even between the CCDF and the TANF program, data are not comparable. Thus, they would not yield either comparable spending information or an unduplicated count of eligible children served.

A second concern was that the measures suggested by the commenters might produce unintended consequences. For example, a measure of the number of children served with TANF and CCDF funds might have the unintended effect of driving down subsidy payments and increasing family child care co-payments.

We also considered child care as a qualifying condition or a threshold measure. However, current TANF data would not provide information on subsidy payment levels or on placement of children in care that met State licensing or certification requirements. Therefore, suggested threshold measures related to payments or certification of providers across programs would not be feasible. Also, threshold measures based on the percentage of eligible children served might also produce the same unintended consequences as separate measures based on the number of children served.

In addition, the data available from the CCDF program alone are not sufficient to make the threshold determinations suggested by the commenters. For example, not all CCDF State plans include data on the 75th percentile payment rates, and there are no uniform standards in the CCDF program for how a State must conduct a market survey and establish percentiles. Therefore, comparing State payment rate data, even within the CCDF program, would pose problems.

Although we have not added a child care measure to the high performance bonus system, we are very interested in continuing to work to improve existing child care data and performance measurement, both through research and collaborative work with States. As a matter of policy, we view child care as a critical support, not only for welfare families, but more broadly, for many if not all low-income working families. While Medicaid and the Food Stamp Program have traditionally been viewed as transitional work supports, we view child care as an ongoing support for working families. ^{why?} Given this view, we would prefer to use other, more universal opportunities for measuring progress in child care. ^{why is child care different - why are the others transitional?}

^{what is this?} Two opportunities that we have recently used are implementing the child care performance measures under the Government Performance and Results Act (GPRA) and requiring performance goals and indicators in the Administration's proposed Early Learning Fund (ELF). ^{but it's small. → and only 0-5, and}

In the Department's 2001 GPRA plan, there are a number of measures that ACF developed collaboratively with States that address both the quality and the affordability of child care. The Administration's proposed ELF also includes an accountability mechanism that would require the Secretary, in consultation with the Secretary of Education, to develop performance goals and indicators for quality factors associated with improved

developmental outcomes for young children. States participating in the ELF would be held accountable for progress toward those goals and indicators.

We want to emphasize our continuing commitment to supporting efforts to assist working families. We recognize that more needs to be accomplished to give American families sufficient access to a supply of high quality, affordable child care. The Child Care and Development Fund (CCDF), the primary Federal child care subsidy program, made \$3.2 billion available in FY 1999 to States to assist low-income working families, including families receiving temporary public assistance and those making the transition off of public assistance, in obtaining child care so they could work or participate in education or training. While the FY 1999 CCDF funding represents an increase of approximately \$100 million over the FY 1998 amount, in FY 1998, the most recent year for which we have data, only ten percent of income-eligible children received a child care subsidy.

To increase the quality and affordability of child care, the Department is seeking \$817 million in additional dedicated child care subsidy funding for FY 2001. The Department is also seeking \$3 billion over five years for the new ELF that will make resources available to communities, through States, to promote school readiness by improving the quality of child care. We are

hopeful that Congress will appropriate sufficient funding for both of these initiatives.

We are also committed to creating effective working relationships between the public and private sectors to achieve this goal. ACF will continue to encourage all States -- as some have already done -- to create seamless child care systems that provide subsidies for children of all low-income workers, regardless of their connection to the welfare system. In addition, our technical assistance initiative will assist States in developing important partnerships with the private sector to improve and expand child care services.

Within ACF, the Child Care Bureau is dedicated to enhancing the quality, affordability, and supply of child care for all families. The Bureau not only administers the CCDF, which is the primary source of Federal funds dedicated to child care for States, Tribes, and Territories, but provides leadership in helping to enhance the quality of child care for all children. Among its other priority activities, the Bureau has established the National Child Care Information Center which disseminates information on child care resources to program officials and the general public and shares promising practices and trends from across the country.

The Bureau has also been active in providing technical assistance to help to assure that special needs children are included in settings that serve all children. In addition, the Bureau is responsible for overseeing a key Federal research initiative on child care and promoting the Department's Healthy Child Care America campaign for safer and healthier child care programs, better informed parents and providers, and improved linkages between child care and health services.

This Administration

In summary, through ACF's commitment to leadership in child care, we believe that our activities address the spirit of the commenters' request for a child care bonus.

*duplicate
clear*

~~Domestic Violence~~

~~Comments: A substantial number of the letters and notecards recommended adding a measure of how well States address domestic violence. In support of this recommendation, some commenters provided detailed background information about the prevalence of domestic violence among women on TANF and how domestic violence~~

Domestic Violence

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provided detailed background information about the prevalence of domestic violence among women on TANF and how domestic violence can hinder an individual's ability to maintain work in a way that leads to self-sufficiency.

Most commenters on this issue recommended that the measure be designed to "look at the proportion of women who disclose they are victims of domestic violence who receive services or waivers under the [TANF] family violence option." Alternatively, a few other commenters suggested that we add a threshold measure related to domestic violence, i.e., only States that adopted the TANF Family Violence Option and "meet the requirements of federally recognized good cause waivers" (45 CFR 260.55) could compete for other bonuses. One commenter suggested that the Department would have to adopt "a detailed statement on how to effectively implement a Family Violence Option"; another commenter suggested that competition for the bonus include interviewing domestic violence advocates in the State.

Response: We strongly agree that domestic violence services are important to the well-being of families and to support work and self-sufficiency. We are committed to efforts that both serve families who are victims of domestic violence and implement prevention programs. The Department has underway a coordinated, multi-agency initiative on Family and Intimate Partner Violence.

who @ DPC?

This initiative is comprised of a wide range of activities whose purpose is to:

- Strengthen the health care system's ability to screen, treat, and prevent family and intimate partner violence;
- Increase the ability of battered women, including those on welfare, to obtain and retain employment and obtain child support;
- Encourage greater linkages between child welfare, family and intimate partner violence, and criminal justice fields to better protect both children and parents in homes where violence occurs;
- Enhance community prevention and response systems by increasing collaboration between the Department's State and Tribal family violence grantees and the Department of Justice's State and community-based grantees and other community-based groups;
- Increase the knowledge base about family and intimate partner violence, through data collection and research; and
- Provide education, training and support for battered women and their families.

More specifically related to welfare reform, a number of other efforts are also under way:

- As the commenters recognized, the TANF final rule includes provisions pertaining to the Family Violence Option instituted under PRWORA. The TANF final rule also provides States penalty relief when they fail to meet the numerical standards for time limits and the work participation rates because they provide good cause domestic violence waivers to battered women. It also includes provisions for the reporting of the strategies and procedures the State has put into place to ensure that victims of domestic violence receive appropriate alternative services.
- ACF awarded grants to several States and localities to increase collaboration between domestic violence programs and welfare programs. These grants have been used for training, policy development, and joint intervention responses.
- ACF's Office of Child Support Enforcement (OCSE) has four ongoing grants examining child support cooperation/good cause and domestic violence, and a fifth cross-site evaluation of the projects. The grants will provide additional information about the incidence of domestic violence among child support recipients and ways the child support and domestic violence communities can work collaboratively to meet the needs of battered women.

- OCSE has also been working with States on implementation of the "Family Violence Indicator," an automated flagging mechanism within OCSE's national database, the Federal Parent Locator Service, that will prevent the release of data on battered women.
- ACF has formed an interstate domestic violence working group that is examining a number of issues surrounding domestic violence and child support.
- The Department's Office of the Assistant Secretary for Planning and Evaluation is conducting assessments of State policies and practices regarding domestic violence in the TANF program.

Through its Family Violence and Services Program, ACF also provides grants to all States, all State coalitions, and a number of Indian tribes to provide immediate shelter and related assistance to victims of family violence and their dependents. ACF also funds five national resource centers and the national Domestic Violence Hotline.

Although we are committed to addressing the problems and the often tragic consequences of domestic violence, our task with respect to the high performance bonus was to assess the appropriateness of such a measure in the context of our policy and evaluative framework. In the NPRM, we indicated that we considered a measure looking at the proportion of TANF recipients

who received domestic violence services, but we noted that we had identified no objective and reliable data sources for this measure. Similarly, there is no existing source or uniform standards for determining whether a State is meeting federally recognized good cause waiver requirements (especially if it is not penalty-labile), and no existing Federal standards for qualitative measures of service.

After carefully considering the comments and verifying that no data were available to support an outcome rather than a process measure, we decided we would not include a domestic violence measure in the bonus system at this time. Because competition for the bonus is voluntary, we were concerned that additional data collection would be burdensome and would not generate competition -- particularly since we had a fixed amount of bonus funds.

We also evaluated the recommendation for including domestic violence as a threshold measure, i.e., only States that adopted the Family Violence Option and met the federally recognized good cause provisions for domestic violence waivers would be allowed to compete for other bonuses. We have not accepted this suggestion. First, in this final rule, we have dropped the qualifying conditions and qualifying State options as threshold measures in the Food Stamp and Medicaid/SCHIP performance measures, and we decline to add a new threshold measure. Second,

the suggested threshold is already used in the TANF penalty reduction process, and, thus, is a substantial incentive for States to adopt these practices in addressing domestic violence under welfare reform.

Nevertheless, we are continuing our efforts to encourage all States to plan pro-actively to meet the needs of victims of domestic violence and their dependents. We will be making technical assistance materials and research results available to States to enhance their efforts to prevent domestic violence and provide services to those in need.

Worker Displacement/Worker Protections

In the preamble to the TANF final rule (April 12, 1999, 64 FR 17748), we indicated that we would invite comments on whether to include a worker displacement/worker protection bonus measure during our rulemaking on the high performance bonus. We carried out this commitment in the NPRM when we specifically asked for comments on whether we should "consider State enforcement of the TANF non-displacement requirements in awarding bonuses, and, if so, how."

Comments: We received four letters in support of new worker displacement and/or worker protection measures. Commenters recommended the following:

- Require States to provide evidence of anti-displacement measures, e.g., demonstrating the existence of a grievance procedure, either as a threshold measure in order to compete for any high performance bonus measure, or as a threshold measure in order to compete for the work measures.
- Add a new measure based on: (a) evidence of the integration of TANF, the Work force Investment Act (WIA), and the Welfare-to-Work (WtW) worker protection procedures (e.g., a Memorandum of Understanding with appropriate agencies, providing worker information, and monitoring); and (b) submission of payroll records by employers with significant numbers of TANF employees or review of unemployment insurance records (through which displacement might be detected).

These commenters believed in the importance of worker displacement protections in the TANF program and noted that they found that some States have been slow to put procedures into place. They provided one concrete suggestion for data sources.

However, adopting this recommendation would have required additional State reporting -- an approach that we said we wanted to avoid. One commenter specifically acknowledged that it is difficult to measure displacement accurately.

Additionally, as the commenters also observed, the statutory WIA and WtW requirements in the area of worker protection are more detailed than the statutory TANF requirements; these differences would appear to pose problems for establishing uniform standards. As we said in the preamble to the TANF final rule, it would not be consistent with the principle of State flexibility embodied in the TANF statute for us to regulate a State's administrative procedures and require States to adopt the more extensive WtW statutory provisions for the TANF program.

*Sounds like
proposed, not
displacement*

Response: Worker displacement is a matter of concern to us, however, and we will be monitoring it through review of information each State provides to us in its TANF annual report. Specifically, a State must include a description of procedures that it has established and is maintaining to resolve displacement complaints. (See 45 CFR 265.9(a)(7).)

At the same time there are no standards available for us to objectively assess the extent and quality of State displacement procedures. Thus, we do not believe that we have adequate criteria or data upon which to base either a threshold or additional performance measure.

Child Poverty Measure

In the preamble to the proposed rule, we discussed our consideration of whether to include a child poverty measure in the high performance bonus system. We cited the importance of this matter, our belief that States had the flexibility and resources to make an impact on child poverty, and the connection of a child poverty measure to two of the purposes of TANF: (1) promoting work and employment; and (2) strengthening child and family well-being by assisting needy children in their own homes or in the homes of relatives.

On the other hand, child poverty is an area for which there are other mechanisms in the statute for monitoring and promoting positive State action. Section 413(i) of the Act requires that States report their child poverty rate annually and take corrective action when an increase in the child poverty rate is due to the TANF program in the State. We invited public comment on this issue.

Comments: A number of commenters were concerned that a State could not be performing well if large numbers of already poor children and families were allowed to fall deeper into poverty. One commenter suggested that we add compliance with the child poverty requirements under section 413(i) of the Act as a threshold measure

General comment: so differential to states, since they are the implementers - but it's our job to use the leverage of the \$& to get results consistent w/ goals.

The commenters recommended the use of the official poverty measure (developed by the Census Bureau) and suggested possible measurement approaches for our future consideration. They also suggested that when there were economic conditions beyond the control of States, ACF could use rules for setting aside the measure.

Response: We continue to believe that poverty, and child poverty in particular, is an issue of great importance, but we are not convinced that the best way to address the issue is through the TANF high performance bonus award. We considered the recommendation that State compliance with section 413(i) of the Act be added as a threshold measure, but, because we have not retained any qualifying conditions/threshold measures in the final rule, we have decided not to add one in this instance.

Other Suggested New Measures

Comment: One national organization recommended the addition of a number of new measures directed at achieving economic independence and self-sufficiency, particularly for women and girls. As a part of their recommendations, they asked that we define the term "self-sufficiency" in the final rule, using the Wider Opportunities for Women's "Self-Sufficiency Standard." They believed that this comprehensive standard, which describes how much money is needed to meet a family's basic needs (i.e.,

for housing, food, child care, transportation, clothing, and related work expenses, calculated by family size on a per county basis) without public assistance, is an accurate and sensible indicator of true self-sufficiency. Without such a measure, they believed that it would be difficult, if not impossible, to accurately and consistently define self-sufficiency for a given family in the United States.

Response: We agree that helping families achieve economic independence and self-sufficiency is one of the most important goals of the TANF program, and we believe that the recommended "Self-Sufficiency Standard" is a useful tool in evaluating State and local efforts towards achieving that goal. However, since none of our measures incorporate this term, and any measure based on this concept would entail substantial new data collection, we have not accepted this recommendation.

Comments: A number of commenters mentioned other topics on which new measures might be based, but the commenters' suggestions were general and, for the most part, undeveloped in terms of both design and data sources. One or two letters suggested each of the following topics:

- Diversion from TANF;
- Recidivism, i.e., returns to TANF;
- Savings and asset-building;

- Housing (with the measure to be developed by ACF in collaboration with the Department of Housing and Urban Development, e.g., a measure of the use of TANF funds to provide housing assistance for families moving from welfare to work);
- Transportation, e.g., demonstrating cooperation between the TANF and State transportation agencies;
- Education or training, i.e., the number of teens on TANF attending or completing high school or an equivalency program, or, using performance data under the Carl D. Perkins Vocational and Technical Education Act to determine the skill attainment success rate of public assistance recipients who enroll in advanced education and training programs following job entry;
- Reduction in the incidence of teenage pregnancy through abstinence education and other programs that encourage children to postpone starting a family until married;
- Availability of and utilization of various transitional services, e.g. child care, Medicaid, and transportation;
- Programs to enhance family relationships and reduce family violence;
- Decreases in the number of children in foster care; and
- Child support (including medical child support), i.e., measurement of how many families in transition from welfare to work are receiving payments on child support

or payments on child support arrearages; measurement of the number of children in families that are in transition [from TANF] that have medical support orders as part of their child support order and who are receiving benefits from those orders.

Response: Many of these suggested areas are viable strategies for helping families move toward self-sufficiency. However, most of these suggestions do not lend themselves to the construction of a quantifiable outcome measure; lack an objective, uniform, and reliable data source; or have other problems when viewed in the context of our policy and evaluative framework. In the case of the suggestion regarding child support and associated medical orders, the proposed measure would duplicate the existing incentive and penalty system that is already part of the child support enforcement program.

Comment: Another suggestion, measuring the use of a State EITC, had support from a substantial number of commenters. However, none of the commenters was specific about how we might construct an outcome measure. One commenter noted that the existence of a State and local EITC program worked against the State's being able to compete successfully in the proposed family formation measure. Another commenter noted that enrollment in EITC is a difficult measure to document.

Response: We agree that an EITC program can be a major support to families working towards self-sufficiency. At the present time, however, approximately ten States administer EITC programs. We believe that, to be a meaningful incentive, the high performance bonus system should offer all States the opportunity to compete on all of the measures. Thus, we have not accepted this suggestion.

E. Other Recommendations and Suggestions

We received a few additional recommendations and suggestions to which we wish to respond.

Comment: A commenter recommended that DHHS adopt an overall high performance award that would be given to the top one to three States that exhibited overall outstanding success in meeting the TANF goals. They argued that such a bonus award was needed to overcome various shortcomings in the proposed system, e.g., rewarding States for one area of performance when they fell short overall, giving awards in areas of performance where all States were experiencing only mediocre success, and having the unintended effect of encouraging States to take a narrowly focused approach to welfare reform in order to achieve the specified rewards. Such a measure was needed, they believed, to measure performance with respect to all poor families in the

State, not just the segments of the population covered by the proposed bonuses.

The commenter recognized the lack of currently available data that could be used to support such a measure, but suggested that we could develop such data. They gave examples of factors that we could measure in an overall bonus, but did not go into detail regarding the data that would need to be developed. Rather they suggested an alternate approach of letting individual States choose multiple areas in which they wished to compete.

Response: We have not accepted this recommendation for a number of reasons. As the commenter pointed out, data are limited and would have to be developed in order for the measure to be workable. From a logistical standpoint alone, new information sources could not be developed in time to be implemented for the 2002 award year.

We believe the measures in the final rule permit an overall high performing State to compete successfully on several of the measures and to receive a commensurate monetary award. At the same time, a statutory cap on the total award a State can receive in a year provides a deterrent to any misplaced incentive to over-focus on certain aspects of welfare reform that might be generated by the proposed system of bonuses.

In addition, having States compete for an overall bonus that encompasses items of their own choosing would not only be exceedingly complex, but would be a challenge to objectivity. Also, based on our experience in awarding the FY 1999 bonuses, we did not identify a large number of States winning on certain measures that exhibited only mediocre success on other measures.

Comment: Two commenters suggested new bonuses based on innovative or extraordinary practices. One commenter encouraged bonus awards for "extraordinary practices that lead to quality achievement in advancing the goals of TANF." Similar to the previous comment, the commenter noted that this approach would recognize individual programs that show promising results but do not directly contribute to a State's performance in the specific bonus categories. The commenter also noted that this approach would serve to reward individual efforts in States "that, for various reasons, may not be able to compete well in the specific categories." One commenter also suggested a separate measure that "rewards states for implementing policies or programs that address a particular need in their state." The State would identify a specific category of client need and submit an explanation of how the State responded to the need.

Response: While we agree that innovative or extraordinary practices deserve to be recognized and promoted, a high performance bonus award for such practices would not meet the

statutory requirements for comparing and ranking States and awarding bonuses based on a formula. In addition, such a bonus would focus on process rather than outcomes.

ACF has in place a strong system of peer technical assistance that serves to recognize promising practices. The Welfare Peer Technical Assistance Network provides guidance and instruction to States on promising practices for moving welfare and low-income families to self-sufficiency. It provides information to States about TANF program resources and increases communication among the States about promising practices. Access to this Network is available at: <http://www.calib.com/peerta/>.

Comment: In response to a question we posed in the NPRM regarding whether we should consider thresholds (such as denying a bonus to a State that was subject to a work participation or other noncompliance penalty), one commenter suggested that a competing State not be in a penalty situation of any kind. The commenter stated that the purpose of the bonus is to reward high performing States and that penalties indicate a failure to perform in some way.

Response: Although we specifically solicited comments on whether we should consider such a threshold measure, we received only one recommendation that we do so. We gave this proposal serious consideration and concluded that potential for delay in the due

process provisions for TANF penalties would make the recommendation difficult to implement, i.e., to match the penalty year with the performance year for the bonus. We also foresaw other implementation issues, such as how to treat States under corrective compliance plans and whether to take into account the severity of a penalty.

Comment: A national organization recommended that the Department "collect and evaluate data broken down by race and ethnicity for all components of the high performance measure, and move towards the ultimate goal of assessing states' efforts to eliminate racial, ethnic, or other disparities in their welfare programs." To support this proposal, the commenter cited various studies that reported disparity in treatment of various population groups and in their success in leaving the welfare rolls. The commenter said that "states should not be rewarded if their programs treat certain groups of clients differently," but should be rewarded "for working proactively to address the different needs of different communities and to correct problems that may occur in their programs."

The commenter recommended that ACF could use the data sources proposed in the NPRM since they either contained race/ethnicity variables or could be matched with a data source, such as TANF data, that contained the variables. The commenter acknowledged, however, that there could be additional reporting burden and that