"states are the only entities in a position to perform the matching of data to determine whether certain groups are faring worse than others." The commenter urged DHHS to explore ways to incorporate the results of the various studies and analyses into the bonus system.

In addition, the commenter suggested that DHHS "use any statistically significant racial or ethnic disparity of outcomes as a factor in evaluating the state's performance the following year," i.e., to show improvement in the disparity as a threshold measure for competing in the measure in which the disparity occurred.

Response: We agree with the importance of equitable treatment of various welfare populations. The Department has demonstrated its strong commitment to fair and equitable treatment of individuals in the welfare population. For example, in August, 1999, we provided governors and State TANF administrators with comprehensive written technical assistance to help them understand the application of Federal civil rights laws in the implementation of welfare reform. We have also worked on developing technical assistance to clarify the responsibilities of health and social agencies that receive Federal funding in fulfilling their responsibilities to persons of limited English proficiency, pursuant to title VI of the Civil Rights Act of 1964.

We also believe that, if it were feasible to secure adequate data, there may be factors beyond a State's control when there are disparities in the outcomes among welfare sub-populations. Immigration and refugee resettlement patterns are examples of factors that are beyond State control. Thus, it would be difficult to construct a measure that would be fair to States. Moreover, the commenter did not assess the availability and interaction of racial/ethnic data for the various measures, but rather leaves ACF to complete the analysis of the data sources and decide how to use them. Without doing a full analysis, we were also concerned that the suggestion might require that States conduct additional data collection and analysis.

V. Summary of the Final Rule

We continue to be committed to a high performance bonus system that meets statutory requirements; reflects the principles developed by NGA and APHSA; is based on measurable outcomes using the most uniform, objective, and reliable data available; and offers States an opportunity to be recognized for their achievements in several areas.

In making changes to the final rule, we seriously considered all concerns and recommendations of the commenters. We appreciate the thoughtful and detailed letters we received, and we particularly appreciate the sense of common goals, expressed directly or indirectly in the letters, focusing on both effective implementation of the TANF program and the economic self-sufficiency and well-being of families and children.

We also paid particular attention to the concerns of States, given the diversity of views on certain issues between States and a number of other commenters. We believe that the final rule takes a balanced approach to the diversity of views. We believe we have been responsive to, and incorporated a number of, State recommendations regarding ways of making the measures less burdensome and more workable; at the same time, we maintained other provisions that were supported by a very broad range of commenters, e.g., the Food Stamp and the Medicaid/SCHIP measures. We have also accepted a number of other recommendations for changes and modifications. We discuss these changes and respond to specific comments in the detailed section-by-section discussion below. Briefly, however, the final rule:

1. Awards bonuses to the ten States with the highest scores in the four work measures proposed in the NPRM, with minor modifications;

2. Awards bonuses to the three States with the highest scores on a new absolute measure and the seven States with the highest scores on the improvement measure

(proposed in the NPRM) related to the participation by low-income working families in the Food Stamp Program;

3. Awards bonuses to the three States with the highest scores on a new absolute measure and to the seven States with the highest scores on the NPRM improvement measure related to the participation of former TANF recipients in the Medicaid and SCHIP programs;

4. Makes more explicit that States may choose any of the measures on which they wish to compete in order to conform the language of the Food Stamp measure to the overall policy that participation is voluntary;

5. Eliminates the qualifying conditions and qualifying options proposed in the NPRM for the Food Stamp and the Medicaid/SCHIP measures;

6. Drops the Family Formation and Stability measure;

7. Adds the $20 million proposed for the Family Formation measure to the total allocation for the work measures and divides these funds proportionately among the four work measures;

8. Continues to allot $20 million to each of the Food Stamp and Medicaid/SCHIP measures;

9. Reduces the reporting burden on States by allowing waivers of the reporting requirements for SSP-MOE data under certain limited circumstances;

10. Reduces the reporting burden on those States competing on the work measures by requiring only minimal identifying information on adult TANF recipients that we will use to match with NDNH data at the Federal level;

11. Bases competition on the Food Stamp measure initially on the Census Bureau's Supplementary Census 2000 Survey and later on data from the American Community Survey;

12. Bases competition on the Medicaid/SCHIP measure on State Medicaid/SCHIP data, matched with TANF data at the State level;

13. Specifies the dates by which States must report data and other information to us;

14. Clarifies the use of the bonus funds; and

15. Makes technical and clarifying changes in the work measures, e.g., changes the way we calculate the improvement measures from percentage change to percentage point change and drops the requirement that States identify those persons whose jobs are fully subsidized.

For the reasons discussed above, we have not added any new measures.

VI. Section-by-Section Discussion of the Final Rule and the Public Comments

Section 270.1 What does this part cover?

We received no comments on this section and have made no changes to it.

Section 270.2 What definitions apply to this part?

This section of the NPRM proposed a number of definitions used in this part.

We have made several changes in this section: (1) we have updated the acronym and name of the CHIP (Children's Health Insurance Program) to SCHIP (State Children's Health Insurance Program); (2) we have added the words "or the calendar year" in the definition of "performance year" to indicate that, for the Food Stamp measure, we will be comparing State performance based on a calendar year rather than a fiscal year; (3) we have moved the definition of "improvement rate" as proposed in §270.5(c) of the NPRM to this section; and (4) we have added a definition of "absolute rate." We have added these two definitions in this section for clarity and because these terms now apply to both the work measures and the work support measures.

We received other comments on this section:

Comment: One State asked that we add definitions for the terms "TANF eligible," "employed recipient," and "leaving TANF assistance," as these terms have different meanings across States.

Response: We have not added definitions of these terms for several reasons. First, the term "TANF eligible" was used in the NPRM to describe qualifying conditions for the Food Stamp measure. These conditions have been dropped in the final rule. Second, the term "leaving TANF assistance" is used in the description of the Medicaid/SCHIP measure, but it is clear in the language of §270.4(d) that this term refers to persons no longer receiving TANF assistance. Finally, the term "employed recipient" is used ~~in de~~scribing components of several of the work measures. We believe it is clear that employment connotes earnings or wages. Since we have not established a minimum earnings threshold, we believe it is not necessary to define this term.

<u>Comment:</u> In commenting specifically on the definition of the terms "comparison year," "fiscal year," and "performance year," one commenter was concerned that these definitions, combined with the proposed work measures, resulted in a bonus system that penalizes those States that may have focused on these activities well before the first comparison year. For example, these definitions and our other proposals would penalize States that have achieved significant increases in health care coverage between the beginning of their welfare program and the comparison year, while providing an advantage to States that have started more slowly. (This is an example of the "level playing field" issue on which we received a number of comments.)

This commenter recommended that we should base the health coverage measure on the States' overall efforts beginning with the effective date of the TANF program.

which states declined to compete in 1999?

Response: The "level playing field" issue is one that we and others have struggled with since the beginning of our consultations on establishing a high performance bonus system. We agree that the system in place for the awards in FYs 1999 through 2001 and specified in this final rule would not completely address the concerns of, and may disadvantage, some strong performers who initiated their welfare reform programs prior to FY 1997.

However, we have made no change in the definitions in response to this comment. The statute specifies the "bonus years" for purposes of these awards as FYs 1999 through 2003, and we based bonus awards in FY 1999 on a State's performance in FYs 1997 and 1998. We did not believe that measuring performance in earlier years was responsive to the requirement that awards reflect a State's performance under, and following the establishment of, the TANF program.

Nevertheless, we have made two changes in the final rule that may help address concerns regarding a "level playing field," i.e., we have added an absolute outcome measure in both the Food Stamp and the Medicaid/SCHIP measures and we have changed the way we calculate the improvement measure from percentage to percentage point change. (See §270.4(c) and (d).)

Section 270.3 What is the annual maximum amount we will award and the maximum amount that a State can receive each year?

In accordance with section 403(a)(4)(B)(ii) of the Act, we proposed that the amount payable to a State in a given bonus year will not exceed five percent of the State's family assistance grant (SFAG). We also published, as an Appendix to the NPRM, a list of the total amount of each State's SFAG and the amount equal to five percent of each State's SFAG.

Comment: One State asked that we clarify whether the SFAG is the "present grant amount" or the grant amount when the bonuses are awarded.

Response: The statute and the TANF regulations (45 CFR 260.30) define the State family assistance grant (SFAG) as the amount of the basic block grant allocated to each eligible State under the formula at section 403(a)(1) of the Act. Thus, other TANF funds that a State may receive under section 403, e.g., bonus funds, contingency funds, and supplemental funds, are not a part of the SFAG. Neither would we reduce a State's bonus award based on reductions to the "SFAG payable" due to a penalty against the State. The amount of the State's SFAG as published in the Appendix to the NPRM is accurate and remains in effect until the statute changes.

Section 270.4 On what measures will we base the bonus awards?

In the NPRM, we proposed in paragraph (a) of this section to award bonuses based on four work measures and three "non-work" measures. We proposed the work measures in paragraph (b) of this section. As we said in the overview of comments on the work measures above, there was strong support for these measures, although we received a number of suggestions for substantive modifications and technical changes. We address these suggestions in the discussion of §270.5 and §270.6 below.

Section 270.4(c) Measure of participation by low-income working households in the Food Stamp Program

Under the proposed food stamp outcome measure, we would measure the improvement in the number of low-income working families (i.e., families with children under the age of 18 who have an income of less than 130 percent of poverty and earnings equal to at least half-time, full-year employment at the minimum wage) receiving food stamps as a percentage of the number of low-income working families in the State, using the same definition. For any given year, we would compare a State's performance on the measure with its performance in the previous year, beginning with a comparison of calendar year (CY) 2000 to CY 2001. We would

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rank all States and would award bonuses to the 10 States with the greatest percentage improvement in this measure. We proposed to allocate $20 million annually for the food stamp measure.

We also proposed that, in order to compete on the food stamp outcome measure, a State must be in compliance with four qualifying conditions. The qualifying conditions proposed in the rule were the following:

(1) The State agency has issued policy instructions or regulations clearly specifying that, at first contact with the State agency which administers the Food Stamp Program, individuals must be informed of the opportunity to apply for food stamps in accordance with 7 CFR 273.2(c)(1).

(2) The State agency has issued policy instructions or regulations clearly specifying that food stamp application forms are to be readily accessible and available upon request, in accordance with 7 CFR 273.2(c)(3).

(3) As evidenced through policy instructions, regulations, and administrative reviews, the State agency is complying with application processing time frames and expedited service rules, as required by 7 CFR 273.2(g).

(4) As evidenced through policy instructions, regulations, and administrative reviews, the State agency has taken steps to prevent inappropriate denials and terminations of eligible food stamp participants who have lost TANF eligibility, in accordance with 7 CFR 273.12(f). Since food stamp eligibility is not based on TANF eligibility, States may not deny food stamp eligibility to a family or family member simply because the family is ineligible for TANF.

We proposed that the Food and Nutrition Service (FNS) of the U.S. Department of Agriculture would determine each State's compliance with the qualifying conditions, as a part of its ongoing oversight of the Food Stamp Program.

As noted earlier in this preamble, the majority of total comments received on the food stamp outcome measure supported the proposed measure. However, for a number of reasons, the vast majority of State commenters opposed the inclusion of the food stamp outcome measure. We have seriously considered all comments, particularly the concerns of States. We believe that we have addressed many, though not all, of their concerns in the final rule. We have also accepted recommendations made by other commenters.

Briefly, we have made the following changes in the final rule:

(1) Added an absolute performance measure;

(2) Changed the award structure to grant bonuses to the three States that rank the highest on the absolute performance measure and the seven States that rank the highest on the improvement measure;

(3) Changed the measured unit from "families" to "households with children";

(4) Revised the improvement component to measure the percentage point improvement, rather than the percentage improvement, in the participation of low-income working households with children;

(5) Dropped the qualifying conditions;

(6) Made more explicit that competition on the measure is optional for States, to conform to the overall bonus policy that participation is voluntary; and

(7) Clarified how we will deal with tie scores.

We address the specific comments below.

<u>Comments:</u> Some commenters claimed that awarding TANF high performance bonus funds based on a measure of food stamp performance exceeds the statutory authority of TANF. Others argued that the food stamp measure encourages continued dependence on government benefits and, thus, runs contrary to the second goal of the TANF program, which is to end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage.

Response: We disagree with the commenters who believe that awarding TANF bonus funds based on State performance in the Food Stamp Program exceeds the statutory authority of TANF. Section 403(a)(4) of the Act requires the Secretary of the Department of Health and Human Services to award bonuses to those States that are most successful in achieving the goals and purposes of the TANF program. As noted earlier in the preamble, we believe that State performance to ensure that eligible working families receive food stamps addresses two of the statutory goals 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.

We recognize that a number of commenters felt that, far from ending the dependence of needy parents on government benefits, the food stamp outcome measure encourages dependence by encouraging States to assist working families to participate in the Food Stamp Program. We strongly disagree with this viewpoint. Ending the dependence of needy parents on government assistance requires successfully transitioning parents from welfare to work. Key to that successful transition is the Food Stamp Program. Food stamps provide needed nutritional benefits during that period when families are working but are not earning at the level that will enable them to achieve full self-sufficiency. In some cases, working parents may only be able to keep their jobs and feed their families because food stamps help them make ends meet.

Comments: Some commenters opposed the food stamp outcome measure on the grounds that it does not take into account many factors that have contributed to the decline in food stamp participation, including policy changes that have affected the eligibility of single adults and non-citizens.

Response: We recognize that many factors combined to cause the significant decrease in program participation experienced since 1996, not the least of which were a strong economy and new food stamp requirements that barred many non-citizens from participating in the program and imposed work requirements on able-bodied, childless adults. However, other factors also appear to be at work. Between 1995 and 1998, food stamp participation fell three times as fast as poverty, suggesting that many poor families have left the program despite their continuing eligibility. Traditionally, the program has had lower participation rates among eligible low-income families who are not receiving cash assistance. This means that as more families move from cash assistance to work, we have begun to see a dramatic decline in the food stamp rolls even though many of these low-income families remain eligible for food stamps. The food stamp outcome measure is designed to provide States with an incentive to implement policies and procedures necessary to improve access to the program among working families.

Comments: Some commenters felt that the food stamp measure effectively holds States responsible for overcoming obstacles to program participation that are established in Federal law and regulation. The commenters noted that strict eligibility requirements in the Food Stamp Program and Federal policies in effect restrict the number of families who can receive food stamps. The commenters believe that if the Administration is committed to expanding food stamp participation, it should take the necessary steps to amend the law and relax Federal regulations. They recommended relaxing reporting and verification requirements for working families, improving conformity between food stamp and TANF rules, and simplifying rules related to self-employment.

Response: We recognize that complex Federal laws and regulations, as well as State policies and procedures, can prove to be a barrier to Food Stamp Program participation among working families. For their part, USDA and FNS have taken steps to simplify program rules and reduce administrative burdens on working families. In July 1999, the President announced a series of actions to help ensure working families access to food stamps. These actions included: (1) expanding categorical eligibility rules to make it easier for working families to own a car and still be eligible for food stamps; (2) so long as the household's eligibility is redetermined at least every six months, providing States the option to allow working households to report changes in their circumstances on a quarterly basis, report only changes in income of $100 or more a month, and report only when there is a change in a job, hours of work, or wage rate; and (3) raising the quality control threshold that establishes when a case is considered to be in error from $5 to $25.

In addition, in a recently published proposed rule, Noncitizen Eligibility and Certification Provisions of Pub. L. 104-193, as amended by Public Laws 104-208, 105-33, and 105-185, (65 FR 10855), FNS proposed a number of provisions for further simplifying program rules and expanding State flexibility. The rule proposed the following: (1) simplifying current verification requirements by removing overly prescriptive requirements for use of specific documents for verification; (2) allowing for the use of a simplified method of calculating self-employment expenses for certain specified types of businesses; and (3) establishing the ground rules for implementing the Simplified Food Stamp Program, under which States may determine food stamp benefit levels for households receiving TANF by using food stamp requirements, TANF rules, or a combination of the two.

In regard to achieving better conformity between TANF and food stamps, FNS has tried to provide States with as much flexibility as possible in conforming food stamp rules to TANF requirements without compromising the food security of the low-income population the program serves. Many State efforts to conform food stamp rules with TANF rules fail to recognize that the Food Stamp Program serves a large and diverse range of people, two-thirds of whom do not receive TANF. To modify the rules of a larger, national program to adhere to a series of smaller programs would not make good policy sense.

assistance?

Comments: Some commenters believed that food stamp participation is not the appropriate variable for measuring a State's performance, given the fact that TANF benefit amounts and income disregards vary by State. In States with liberal disregards, a family's earnings plus TANF benefits may cause ineligibility for food stamps or reduce the food stamp benefit level to such a low amount that the family may conclude that it is not worth the effort to comply with certification requirements. Other commenters felt that the measure would reward States that place clients in low paying jobs or otherwise keep families below 130 percent of the Federal poverty level so that they may continue to qualify for food stamps.

Response: We do not believe that the food stamp outcome measure disadvantages States with more liberal TANF programs. First, most State TANF programs do not have eligibility standards that are greater than 130 percent of poverty. Second, if a State has

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more liberal disregards, food stamp eligible working households with children are more likely to continue receiving TANF, and thus are more likely than other working households to be participating on the Food Stamp Program.

Also, States should be focused on improving food stamp participation among all low-income, working households with children, not just those receiving TANF. There are many more low-income working households with children who are eligible for food stamps than there are TANF participants. Those States that will do the best in the improvement measure are not those who improve food stamp participation the most among current or former TANF recipients. Rather, it will be those States that increase food stamp participation the most among all low-income working households with children. Similarly, the absolute measure will reward States that serve ~~the most~~ low-income working households with children overall, not the most current or former TANF recipients. the greatest percentage (?) of

Comments: Some commenters felt that the food stamp outcome measure failed to take into account the restrictive rules of the Food Stamp Program. They noted that the only measure being used is income below 130 percent of poverty, but income is not the only factor that must be measured in actually determining eligibility for the Food Stamp Program. The asset rules alone will make many low-income families ineligible.

Response: Limitations in the Census Bureau data that we will use to measure States' performances on the food stamp outcome measure make it difficult to screen households for food stamp eligibility factors other than income. However, we do not believe that using income below 130 percent of poverty as a proxy for food stamp eligibility disadvantages any State in the bonus competition. While it is true that, because of the food stamp asset test and non-financial eligibility tests, a State's ratio of working families participating on the Food Stamp Program to working families that are income eligible for the program will appear lower than it in fact is, this will be true for every State because the Food Stamp Program employs national eligibility criteria. Thus, no State should be disadvantaged in comparison to other States or to itself over time. can asset rules will differ

Comments: Several commenters noted that while the food stamp outcome measure gauges the TANF program's effectiveness in enrolling working poor families in the Food Stamp Program, States are prohibited by law from spending TANF and MOE money for food stamp outreach. These commenters felt that it is unreasonable to hold a TANF program accountable for increases or decreases in the food stamp caseload when States cannot use TANF funds for food stamp outreach.

Response: Section 16(k)(5) of the Food Stamp Act of 1977, as amended, prohibits States from using TANF or MOE funds to pay for

What's the diff b/t recruiting & informing

food stamp costs that are eligible for reimbursement under the Food Stamp Act. This includes the cost of activities to inform low-income households about the availability, eligibility requirements, application procedures and benefits of the Food Stamp Program. However, although States may not spend TANF, or MOE, money on these activities, they may use other State money to fund these activities and FNS will match the expenditures at the 50:50 rate. In addition, there are certain activities related to increasing food stamp participation that are not reimbursable under the Food Stamp Act and for which States can use TANF or MOE funds. These activities include recruiting individuals to participate in the Food Stamp Program, providing transportation to certification and issuance offices, and acting as an authorized representative.

Comments: Several commenters noted that while the food stamp measure refers to "families," food stamp receipt is by household, which may or may not match the conventional (TANF) definition of family.

Response: We recognize that looking at families in the food stamp measures makes the measures somewhat incongruous with the Food Stamp Program, in which receipt is based on "household." A family, defined as parent and child, may not match the food stamp household, which would include anyone that lives with the family and purchases and prepares meals with them.

In the proposed food stamp outcome measure, a family that is included in the count of working families in a State that are income eligible for food stamps may not, because of the presence of another person in the home who purchases and prepares meals with the family, be in fact eligible for food stamps. This incongruity could cause the ratio of working families participating in the Food Stamp Program to families that are income eligible for the program in a State to appear lower than it in fact is.

Because this would be true in all States, we do not believe that this incongruity creates a bias in favor of any State in the competition or affects over time comparisons within States. However, in the final rule, we have changed the measured unit in the food stamp measures from families to households in order to better align the measure with the Food Stamp Program. We are revising the proposed regulations at §270.4(c) to indicate that we will measure the number of low-income working households with children participating in the Food Stamp Program as a percentage of the number of low-income working households with children in the State.

<u>Comments:</u> One commenter objected that the food stamp outcome measure effectively restores repealed Food Stamp Program client service requirements. The commenter noted that to effectively compete for a high-performance bonus under the Food Stamp Program

measure, States must restore many client service requirements that were repealed by PRWORA. The commenter believed that HHS was using financial incentives as a trade-off for the flexibility and independence to operate local food stamp offices that was granted States under PRWORA.

<u>Response:</u> In replacing specific client service requirements with the broad requirement that States establish procedures that best serve households, PRWORA directed States to take into account households with special needs. Included in this special needs category are working families. Therefore, beyond any desire to compete for TANF bonus funds, States have a responsibility to make the Food Stamp Program accessible to working families by implementing practices such as holding evening office hours and increasing the availability of application sites. Awarding TANF bonus funds based on State performance in serving working families, while primarily a recognition of the importance of food stamps to the overall success of welfare reform, is a means of providing States with an additional incentive to implement practices that will improve enrollment among a needy, yet difficult-to-serve, population.

<u>Comments:</u> Some commenters believed that the food stamp measure was improperly designed and suggested alternative measures. A number of commenters felt that the proposed measure did not address the real issue -- that families leaving the TANF rolls

are not properly ~~referred~~ to food stamps, even though they may still be eligible. These commenters suggested that we re-design the measure to track food stamp receipt among former TANF recipients for the month following the end of TANF receipt to ensure continual access to the Food Stamp Program. Other commenters criticized the measure for not giving States credit for cases in which a family leaving TANF earns too much to qualify for food stamps.

Response: Our interest in improving participation in the Food Stamp Program extends to all low-income, working families, not just those served by the TANF program. The majority of low-income working families that are eligible for food stamps have never participated in TANF. Also, many States refer eligible TANF recipients into diversion programs that provide them needed services and keep them off of the TANF program. The ability of these households to support themselves is vital to the success of welfare reform. Without food stamps, many of these families are in danger of going hungry; this could impact their ability to hold a job and to remain off of government ~~financial~~ assistance. The food stamp outcome measure provides States with an incentive to ensure that eligible former TANF recipients are properly referred to the Food Stamp Program. At the same time, it provides States with an incentive to improve access to the program for low-income, working families who have never been served by the TANF program, but whose ability to achieve and sustain self-sufficiency is nevertheless critical to the success of welfare reform.

Comments: Several commenters suggested that we should expand the food stamp measure to evaluate the improvement in participation among all low-income families in a State, not just those who are working.

Response: While we recognize the importance of food stamps as a support for all low-income households, we believe that we should continue to focus the food stamp outcome measure on working poor families. Participation in the Food Stamp Program remains especially low among the working poor; in 1997, only 47 percent of individuals in households with employed adults who were eligible for food stamp benefits participated in the Food Stamp Program, compared to a participation rate of 63 percent overall. If welfare reform is to be a lasting success, States must increase the participation rate of low-income working families significantly. By restricting the food stamp outcome measure to working households with children, we can help States focus on improving access to food stamps for this hard-to-serve population. Thus, we have not made a change to the proposed regulation as a result of these comments.

Comments: One commenter felt that it was inappropriate to limit bonuses to the top 10 States. The commenter recommended that we expand the number of States who could benefit from the performance bonus.

Response: We have limited the high performance bonus funds allocated for the food stamp outcome measure to $20 million annually. Dividing that amount among more than 10 States would spread the money too thinly, weakening its ability to act as an incentive to States to improve food stamp participation among low-income, working families. For this reason, we have not made changes to the proposed rule.

Comments: A number of commenters noted that the proposed food stamp performance measure, because it is a measure of improvement only, disadvantages States that are already doing a good job of encouraging Food Stamp Program participation among low-income working families. Some commenters requested that we expand the measure to recognize the progress made by States prior to the first year of the bonus awards and the progress made in prior years as the bonus moves from year to year. Other commenters suggested that we include a measure of absolute performance as well as an improvement measure. These commenters further suggested that we rank States separately on both the absolute and improvement measures and award bonuses to the top five States in each category.

Response: We recognize the importance of rewarding States for both absolute performance and improvement in each high performance bonus category. Awarding bonuses for both absolute performance and improvement provides a way to ensure a more objective and fair competition, by allowing States that start from different baselines a reasonable chance to compete successfully for bonus money. Each of the four work measures has an absolute and improvement component. However, in the case of the food stamp outcome measure, because only $20 million is being allocated for the measure, we felt that dividing the bonus among 20 winners, 10 for the best performance and 10 for the most improved, would too greatly diminish the incentive the bonus would provide. We opted in the proposed rule, therefore, to the make the food stamp outcome measure only a measure of improvement. Given the low participation rate of poor working families on the Food Stamp Program, we felt that it was more important to reward States that improve program access to this group than to reward States who are already doing a good job of serving them.

Based on the comments we have received on the provision, however, we have decided to modify the food stamp outcome measure by adding a measure of absolute performance. This measure is designed to reward those States that, in a given year, demonstrate the very best performance in serving low-income working families. Under the outcome measure in the final rule, we will award $6 million in bonus funds to the three States that serve the highest percentage of low-income working households with children in the current year (the absolute measure) and award $14 million to the seven States that show the most improvement in performance from the previous year to the current year. We chose to reward more States for improving performance than for maintaining high overall performance because we wish to keep the emphasis of the bonus on improving service to low income working households with children. We believe that this provision offers an effective compromise between rewarding States that currently do the best job of serving low-income working families and providing an incentive for other States to improve their performance. We have revised the proposed regulations at §270.4(c) to reflect these changes.

<u>Comments:</u> Several commenters suggested that we revise the food stamp measure to measure the percentage point improvement, rather than the percentage improvement, in the participation of low-income working families. They noted that under the proposed measure, we would rank a State that increases food stamp participation from 5 percent to 10 percent (100 percent improvement) higher than a State that increases participation from 30 to 45 percent (50 percent improvement).

<u>Response:</u> We agree with the commenters that a fairer measure of improvement would be to measure the percentage point improvement

rather than the percentage improvement in the participation of low-income working families. Therefore, we are modifying the food stamp improvement measure at §270.4(c) to reflect this change. This change is consistent with the change we made in the work improvement measure in §270.6.

<u>Comments</u>: A commenter noted that the food stamp performance measure needs to have a method for dealing with tie scores similar to the method for the work measures.

<u>Response</u>: We agree with the commenters and are revising the food stamp outcome measures in paragraphs (c)(1) and (c)(2) of this section to include a method for dealing with tie scores. We will use the same method for resolving tie scores for the food stamp measures as we use for the work and the Medicaid/SCHIP measures. We will calculate the percentage rate for the absolute performance measure to two decimal points. If two or more States have the same percentage rate for this measure, we will calculate the rates for these States to as many decimal points as necessary to eliminate the tie. Likewise, we will calculate the percentage rate for the improvement measure to two decimal points. If two or more States have the same percentage rate for this measure, we will calculate the rates for these States to as many decimal points as necessary to eliminate the tie.

Comments: We received a number of comments related to the proposed qualifying conditions. Several commenters suggested that we strengthen the conditions. One commenter recommended that we require States to 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. Another commenter requested that States be required to notify the public that they are competing for a bonus related to food stamp participation and solicit comments on the extent to which agency practices are inconsistent with the qualifying conditions. The same commenter also recommended that HHS publish the preliminary determinations as to States' compliance and the basis for such conclusions, and seek comments from the public as to whether the determinations are accurate.

A number of other commenters, however, recommended that we eliminate the qualifying conditions. One commenter noted that FNS will not have the resources to undertake the new determinations and, as a result, will likely certify that States are in compliance based on incomplete information. If the agency did discover noncompliance with these policies at a later date, the earlier certification could interfere with administrative or legal actions the agency might wish to take.

Other commenters noted that the conditions proposed in the rule are already requirements in the Food Stamp Act of 1977, as amended, and therefore are among the many factors already monitored for compliance by both the States and FNS. These commenters recommended that FNS allow States to self-certify their compliance with the conditions. Otherwise, they argue, FNS would need to redirect its limited staff resources and focus on the qualifying conditions, to the exclusion of other important State assistance and monitoring activities.

Response: After carefully considering all of the comments received on the qualifying conditions, we have decided to remove these conditions from the food stamp outcome measure. While HHS and FNS both firmly believe that it would be inappropriate for a State to win bonus money related to improving food stamp participation among working poor families if they are not in compliance with the most basic rules and regulations that are designed to provide program access, FNS' ongoing compliance activities will not necessarily be compatible with the timing of the high performance bonus awards. FNS already monitors State compliance with the four qualifying conditions, and the Food Stamp Program already contains appropriate remedies for addressing compliance issues. In addition, the qualifying conditions are so basic to maintaining good program access for working families that States that fail to meet them will likely not perform well in the bonus competition.

Although we are removing the qualifying conditions from the food stamp outcome measure, State compliance with those requirements, and with other legal and regulatory provisions related to program access, remains a high priority with FNS. For example, FNS has released two program access guides, one for working families and another for elderly and disabled households, that are designed to assist State policy makers and others in understanding what the food stamp statute and regulations require of States in terms of food stamp eligibility application processing, recertification, notice and appeal rights, among other matters. In addition, FNS is conducting customer service access reviews in every State that are designed to identify barriers to program participation, including problems stemming from noncompliance with the program's legal and regulatory requirements. By the end of FY 2000, FNS will have completed between one to three access reviews in every State. Beyond FY 2000, FNS intends to make customer service access reviews a permanent part of its oversight of the Food Stamp Program.

Comments: We received a number of comments on our proposal to use Census Bureau decennial and annual demographic program data in ranking State performance on the food stamp measure. Many commenters expressed concern as to the reliability of Census data. They noted that, in the past, Census Bureau data has provided misleading information regarding food stamp participation when compared to actual State data. Also, they felt that, while using Census data simplifies setting the baseline, it could rapidly become outdated based on population growth in States, resulting in an inability to award State bonus funds accurately and appropriately. Many commenters wondered why we did not simply use State administrative data, which is more reliable and would match the method for tracking Medicaid and SCHIP enrollment.

Response: The food stamp outcome measure examines changes in the ratio of the number of working households with children in a State that participate on the Food Stamp Program to the number of working households with children in the State that are income eligible for the program. State administrative data can only provide us with the number of working families in a State that are participating in the Food Stamp Program. They cannot tell us the total number of families in the State who are income eligible for the program. The only data source that can provide us that information is Census Bureau data.

We recognize there are problems inherent in using existing Census data sources for awarding TANF bonus funds. However, we hope to avoid many of the pitfalls identified by commenters by using new Census surveys. Initially, we will use the Supplementary Census 2000 survey, which we expect will provide data for the FY 2001 and FY 2002 awards, and, later, the American Community Survey, which will provide data for the FY 2003 awards.

Comment: One commenter asked that we publicize baseline information from the Census data used to determine State performance on the food stamp measure on all States so States will know what current data show and how they stand in relation to other States.

Response: We intend to release the baseline Census data, as well as other data relevant to the performance and rankings of competing States.

Comments: Some commenters noted that Census data would identify noncitizens as part of the low-income population potentially eligible for food stamps. However, they may not in fact be eligible for the program. The commenters noted that this would disadvantage States with significant noncitizen populations and suggested that we factor such noncitizen groups out of the outcome measure calculation or add a provision to the measure to count State-funded food stamp recipients toward a State's overall percentage of low-income working families receiving food stamp benefits.

Response: Based on our most recent available data, almost 85 percent of households with a noncitizen also contain at least one citizen child. Thus, the majority of the noncitizen households identified as part of the low-income working population eligible for food stamps in a State would contain at least one member who is eligible for food stamps. We recognize that households containing eligible children, but ineligible parents, can be an extremely difficult population to serve. However, if we were to exclude these households from the food stamp outcome measure, we would be providing States no incentive for improving access to these needy children and families.

Also, we have not included State-funded food stamp recipients in the count of a State's number of low-income working families receiving food stamps. Many of the individuals served in the State-funded program who have citizen children will already be included in the count of food stamp participating households. The majority of the remaining participants in the State-funded programs will be individuals without children who will not be included in the count of the number of low-income working households eligible for food stamps in the State.

Comments: Several commenters felt that, regardless of whether they intend to compete in the non-work measures, States should be required to provide data on their progress in the food stamp outcome measures as a prerequisite to competing in the work measures.

Response: As noted above, the data source for the food stamp outcome measure will be Census data, not administrative data submitted by States. ACF and FNS, therefore, will have data on every State's performance on the food stamp outcome measure, regardless of whether or not a State chooses to compete on the measure.

Comments: One commenter felt that the food stamp measure should include both quantitative and qualitative components, especially worker-client relationship evaluations and customer satisfaction. The commenter believed that many of the barriers to participation in the food stamp and Medicaid programs are attributable to caseworker attitudes. More training and encouragement from the State agency could reverse this trend, thus increasing enrollment.

Response: Including qualitative components in the food stamp outcome measure, such as worker evaluations and reports on client satisfaction, would diminish our ability to rank States quickly and objectively. In addition, we are concerned that increasing administrative burdens on States by requiring them to collect and report such data would likely deter them from competing on the measures. We also believe the recommended new components would be process, not outcome, measures.

Finally, improving customer service is a vital component to increasing participation among low-income working families in the Food Stamp Program. States that wish to realistically compete for the food stamp related bonus will have to improve their customer service standards along the lines discussed in USDA's food stamp access guide, "The Nutrition Safety Net at Work for Families: A Primer for Enhancing the Nutrition Safety Net for Workers and Their Children," published in 1999. Therefore, we are making no changes to the proposed rule.

<u>Comments:</u> Two commenters noted that the Economic Research Service (ERS) of the USDA is conducting research into the reasons families may not participate in the Food Stamp Program. These commenters felt that participation by low-income families in the Food Stamp Program should not be part of the TANF high performance bonus system until ERS completed this research and specific barriers are identified and resolved at the national program level.

<u>Response:</u> ERS is funding a study on Food Stamp Program access and declining participation. The study will examine the impact of local food stamp office policies and practices on food stamp participation. However, data collection for the study will not begin until Fall 2000, and a final report is not due until Winter 2001. While we expect the report to provide us with greater insight into the practices and policies of local offices that may deter individuals from applying for food stamps, we see no reason to wait two years to provide States with a fiscal incentive to begin removing barriers to participation. There are steps that States can take today to improve program access. We included a

SCHIP

listing of best practices for serving working families in the proposed rule. They are also contained in USDA's publication "The Nutrition Safety Net at Work for Families: A Primer for Enhancing the Nutrition Safety Net for Workers and Their Children."

Section 270.4(d) Measure of participation by low-income families in the Medicaid/SCHIP programs

In the proposed rule, we included a non-work measure related to Medicaid/SCHIP that would reward State efforts to support work, self-sufficiency and the well-being of low-income families. This measure looked at improvement in the percentage of TANF families who were enrolled in Medicaid or SCHIP at the time they lost TANF and who are enrolled in Medicaid or SCHIP six months later. We chose this approach because nearly all of these families leaving TANF are likely to be eligible for a minimum of six months of transitional Medicaid under section 1925 of the Act or to qualify for Medicaid under other eligibility groups. In addition, there have been reports from consumer advocates and State and national studies indicating that many eligible families are losing Medicaid benefits when they leave TANF. While there may be a number of outside forces contributing to the decline in Medicaid enrollment, e.g., a strong economy, changes in public attitude toward welfare, we believe the challenges presented States by the delinking of cash assistance from Medicaid have also contributed to the decline. This proposed measure focused on how well States are providing Medicaid to eligible families who lose TANF. We believe that continued health insurance coverage is crucial to families making the transition from welfare to self-sufficiency, and we expect States to achieve a high rate of Medicaid and SCHIP participation among this population in order to be considered high performers.

We considered an outcome measure that would capture State performance in enrolling and retaining all eligible families and children in Medicaid and SCHIP, regardless of their former or current welfare status. However, we limited the outcome measure to individuals leaving TANF assistance because: (1) States have a clear responsibility for serving these families under PRWORA; and (2) welfare "leaver" studies and other studies on program participation indicated that these families frequently were not being served. While a broader population measure would be consistent with a goal of expanding health coverage and have the positive effect of encouraging States to enroll eligible individuals who are diverted from TANF assistance or who do not apply for TANF assistance, the proposed measure was more directly related to the goals and purposes of TANF, as well as title I of PRWORA. Also, with no national data source on health coverage for low-income families, we believed that the focus on TANF "leavers" would result in a smaller reporting burden and in the collection

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of more accurate and consistent information by States. It, thus, should produce fairer comparisons in assessing State performance.

In the NPRM, we also proposed certain qualifying conditions, based on requirements in Medicaid law and regulations, that States must meet before competing for an award in the Medicaid/SCHIP measure. Those qualifying conditions were:

(1) The State has issued policy instructions or regulations clearly specifying that, at first contact with the TANF agency (when the TANF agency is also the Medicaid agency), an individual must be given the opportunity to apply for Medicaid in accordance with 42 CFR 435.906;

(2) When eligibility under section 1931 of the Act is lost due to hours of, or earnings from employment or loss of time-limited earning disregards, the State issues to the affected family a written notice that meets the requirements of section 1925 (a)(2)(A) of the Act and a card or other evidence of the family's entitlement to assistance as required under section 1925(a)(2)(B) of the Act;

(3) The State has issued policy instructions or regulations clearly specifying that family members may not be terminated from Medicaid until it has been determined that they are not eligible under any other Medicaid group; and

(4) The State has fulfilled all data requirements under the law, including being up to date on all Medicaid and SCHIP data submissions, and having the MSIS on-line and operating properly.

We proposed these qualifying conditions because we did not believe that a State that is out of compliance with basic program requirements should be eligible for a bonus related to Medicaid and SCHIP participation.

In addition to complying with the qualifying conditions, we proposed that applicant States must meet at least two qualifying State options. We believe that States exercising these options are likely to increase enrollment of eligible families and, therefore, would perform better on the outcome measure. The proposed programmatic options were:

(1) The State accepts mail-in or phone-in applications for Medicaid for families and children, which can be completed without a face-to-face interview;

(2) State Medicaid workers have been outstationed at locations in addition to the locations required under 42 CFR 435.904(c)(1) and (c)(2);

(3) The State has expanded Medicaid eligibility for recipient and applicant families through the use of less restrictive methodologies, authorized by section 1931(b)(2)(B) and (C) of the Act;

(4) The State uses a definition of "unemployed parent" that includes parents who are employed more than 100 hours per month, as authorized under 45 CFR 233.101 and section 1931(b) of the Act.

(5) The State provides continuous Medicaid eligibility for children for a period of time without regard to changes in circumstances, as authorized by section 1902(e)(12) of the Act;

(6) The State provides a period of presumptive Medicaid eligibility for children as authorized by section 1920A of the Act; or

(7) The State has simplified the enrollment and re-enrollment processes for children and low-income families by implementing such improvements as shortened application forms.

We proposed that those States that met the qualifying conditions and options would be eligible to compete for the bonus award based on their performance under the outcome measure. Specifically, the outcome measure would assess Medicaid and SCHIP participation among persons whose TANF assistance cases were closed in the calendar year who also were enrolled in Medicaid or SCHIP at the time of case closure. The measure of State performance would be the percentage of such individuals who are enrolled in Medicaid or SCHIP six months after leaving TANF and who are not currently receiving TANF assistance in that month. We proposed to compare a State's performance to its performance in the previous year, beginning with a comparison of CY 2000 to CY 2001, and to award bonuses to the 10 States with the greatest percentage improvement in this measure. We proposed to allocate $20 million annually for this measure.

We received a significant number of comments from States objecting to the Medicaid measure. We received a larger number of comments from other individuals and organizations, including national advocacy organizations and Members of Congress, in support of the Medicaid measure. Some States objected based on philosophical grounds while others objected for programmatic, administrative and equity reasons. Those commenters supporting the inclusion of a Medicaid measure cited the importance of Medicaid to low-income working families and referred to several recent studies on the declines in Medicaid caseloads where individuals, particularly children, were eligible for Medicaid or

SCHIP benefits. (See "Overview of Comments in the Food Stamp and Medicaid/SCHIP Measures" in Part IV above.)

Briefly, in response to the comments, we have made the following changes in the final rule:

- Added an absolute performance measure;
- Changed the award structure to grant bonuses to the three States that rank the highest on the absolute performance measure and the seven States that rank the highest on the improvement measure;
- Revised the improvement measure to measure the percentage point improvement, rather than the percentage improvement, in participation;
- Changed the six-month time frame to a four-month time frame;
- Dropped the qualifying conditions and qualifying options;
- Required that States competing on these measures submit data on a fiscal year, rather than a calendar year, basis; and
- Clarified how we would deal with tie scores.

In addition, based on our own review and analysis, we have revised the regulatory text at §270.4(d) to clarify that the denominators of the Medicaid/SCHIP measures exclude individuals who are receiving TANF at the time of follow-up (i.e., the fourth month after leaving).

Below, we summarize the comments we received and our responses.

<u>Comment:</u> Most commenting States objected to the inclusion of Medicaid as a performance measure. They stated that including the Medicaid measure is at odds with the TANF goal to decrease dependence on Government benefits and is not specific to the TANF program. Specifically, they argued that:

- The measure is inappropriate because it unfairly rates the success of TANF on the State performance in other programs;
- The high performance bonus awards should not be used to enforce Medicaid law;
- Including Medicaid shifts the focus away from work and the TANF population; and
- It is not an outcome measure of the number of former TANF customers who are better off, but instead a process measure of the number of enrollees in another government program.

Commenters supporting inclusion of the Medicaid measure viewed Medicaid as a critical support to low-income working families; in view of the declines in the Medicaid rolls after passage of welfare reform, they noted that the measure looks to reward State improvements in increasing Medicaid and SCHIP participation.

Response: We believe that Medicaid is a vital support to low-income working families and the provisions in this regulation will measure overall State performance in achieving the TANF goal of promoting job preparation and work. In addressing this comment earlier in the section entitled "Overview of Comments on the Food Stamp and Medicaid/SCHIP Measures," we gave many reasons why we believe the inclusion of the Food Stamp and Medicaid/SCHIP measures is appropriate. In this response, we expand on those thoughts, particularly as they relate to the Medicaid measure.

The commenters are correct that one of the goals under section 401(a) of the Act is to end welfare dependence by promoting job preparation, work, and marriage. However, States can best promote self-sufficiency through job preparation and work by providing the support systems, such as health insurance coverage, that are essential to families during their transition from welfare to work.

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As noted by several commenters, there have been many studies that indicate the need for Medicaid coverage while families make this transition. A January 2000 Urban Institute study found that more than one-third of women and nearly one out of five children are uninsured within the first six months of leaving welfare. State studies of families that have left TANF are also finding that at least 20% of children and the majority of parents are no longer receiving Medicaid (see "Participation in Welfare and Medicaid Enrollment," Kaiser Family Foundation, 1998). A May 1999 Families USA study found that over two-thirds of a million low-income individuals lost Medicaid coverage and became uninsured as of 1997 due to welfare reform.

In enacting section 114 of PRWORA, Congress clearly intended to preserve Medicaid coverage for low-income families whose parents left welfare and went to work if they needed health care coverage and otherwise qualified for Medicaid. Congress preserved the health care safety net because it considers Medicaid a critical support for working families who might otherwise have no health insurance.

We do not believe that the fact that Medicaid may be administered by an agency other than the agency principally responsible for TANF is a reason for not including Medicaid enrollment as a measure in this high performance bonus regulation. As we stated earlier, it is more appropriate to view the high performance bonus as an award for State, not State agency, performance. TANF funds are used by many State and local agencies to accomplish the goals of the TANF legislation; indeed, the TANF block grant opens up new opportunities for additional agencies and nongovernmental organizations to get involved in the administration of the TANF program and the delivery of TANF benefits and services. It also provides new incentives for improved State and local interagency cooperation and cross-program efforts to encourage work and self-sufficiency.

TANF and Medicaid are closely related whether or not the programs are administered jointly by the State. Inclusion of a Medicaid outcome measure as part of the high performance bonus award is not an attempt to enforce Medicaid law, but rather to measure a State's overall success in serving low-income families leaving welfare. We believe that we should use the high performance bonus to encourage and recognize State efforts to effectively coordinate TANF and Medicaid program operations and reduce or eliminate barriers to ongoing Medicaid coverage for eligible families leaving TANF. Inclusion of a Medicaid performance measure provides focus on how well a State is achieving the goals of TANF and further meets congressional intent to provide support services while ending dependence on cash assistance.

Comment: Several commenters objected to including the qualifying conditions and the qualifying options in the NPRM. The commenters argued that these conditions appeared too controlling and that the high performance bonus does not provide an appropriate vehicle for HCFA to evaluate whether a State is in compliance with the qualifying conditions. Other commenters also questioned whether the high performance bonus was an appropriate vehicle for evaluating or verifying State compliance with HCFA requirements. One commenter recommended that we offer programmatic options to States as suggestions for improving their performance.

A number of other commenters supported inclusion of the qualifying conditions and options, but recommended modifications. The specific suggestions included one to strengthen the qualifying conditions by requiring States to "affirmatively demonstrate compliance" and others to strengthen the qualifying options by requiring that States adopt a higher number of the seven qualifying options.

Response: We proposed the qualifying conditions based on the philosophy that States out of compliance with related Federal requirements should not be eligible for a bonus. We also believed that States meeting the qualifying options would perform better on the outcome measure. However, we recognize that the inclusion of the qualifying conditions and options conflicts with the NGA/APHSA principle that a high performance bonus system should focus on outcomes rather than process.

In addition ~~More importantly~~, we have concluded that the bonus award system is not the appropriate vehicle by which to evaluate or certify State compliance with Federal Medicaid requirements. For example, at the time we are making the high performance awards, we might not have completed a recent assessment of all State programs or there might be a potential compliance issue pending with one State that cannot be resolved in a short enough timeframe. Thus, we agree that it would be more appropriate to address such issues through ongoing Federal oversight of State Medicaid programs and a vigorous agenda of technical assistance and guidance. Therefore, we are dropping the qualifying conditions and qualifying options from the final rule.

Among the significant activities in the Department's agenda to resolve Medicaid enrollment issues are the following:

- Reviews of all State Medicaid programs, primarily during the summer and fall of 1999, to assess compliance with Medicaid requirements and to advise States when corrective actions are necessary;
- Issuance of additional program guidance to State Medicaid Directors clarifying the expectations that apply (e.g., the April 7, 2000, letter that addressed expectations with respect to reinstatements, redeterminations, and computer systems modifications);
- Development and distribution of thousands of copies of a guide entitled *Supporting Families in Transition: A Guide to Expanding Health Coverage in the Post-Welfare*

Reform World, which explains the basic rules for Medicaid eligibility under the PRWORA amendments;

- Development and distribution of special guides for State and local partners in the child care and Head Start communities to promote their participation in enrollment efforts;
- Issuance of guidance encouraging States to use the $500 million made available to help them provide outreach and address administrative changes related to delinking development and distribution;
- Issuance of a TANF guidance (in the form of a guide entitled "Helping Families Achieve Self-Sufficiency: A Guide of Funding Services for Children and Families through the TANF Program") making clear that States may use TANF funds to "provide outreach activities that will improve access of needy families to medical benefits under the Medicaid and [S]CHIP programs";
- In cooperation with the Robert Wood Johnson Foundation, interdepartmental support for the "Supporting Families" initiative to assist 22 sites in assessing and resolving barriers to initial and continuous participation in Medicaid and SCHIP. (Six of these sites will look at food stamp issues as well);
- Related contract support for development of a literature review and "promising practices" report to

provide background information and technical assistance for all States; and

- Meetings with State agencies to discuss access issues of general concern.

Comment: Several States disagreed with the six-month time frame in the outcome measure, primarily because tracking families who leave TANF for six months would impose a significant burden on States. Also, data collection is problematic because SCHIP is a stand-alone agency in many States; States cannot always match the Medicaid records to TANF records (e.g., because the case composition may be different under the two programs); and some States do not have social security numbers for all SCHIP participants to match with TANF records. Commenters generally suggested limiting the time frame to the month following the month that families leave TANF. One other commenter suggested that States also demonstrate that families accessed health care services.

Response: We had proposed the six-month time frame because most families who leave TANF are eligible for six months of transitional Medicaid or for ongoing Medicaid under other eligibility categories. We also believed that States could easily identify these cases. However, a time frame shorter than six months may reduce the tracking burden on States because families will presumably have undergone fewer changes in this shorter time period, and case management information may be more useful. For example, there should be fewer families that have moved out of State or that have experienced significant changes in family composition. At the same time, we believe that the recommended one-month time frame is too short. Our concern is that some States may carry Medicaid coverage for one month after TANF benefits are terminated for systems reasons; thus, a one-month coverage period would not fairly assess whether policies and systems were in place to ensure ongoing Medicaid coverage for eligible families.

We are revising the final regulation at §270.4(d) to reduce the measurement period in both the absolute measure and the improvement measure from six months to four months. We believe that a four-month time frame better accommodates States' concerns about tracking and the availability of case management information while still providing a reasonable time frame for assessing Medicaid or SCHIP participation by individuals in families who leave TANF. Also, the four-month time frame accommodates families that receive Medicaid extensions based on increased child support collections since this form of transitional benefit only lasts four months. Finally, in the event that Congress does not lift or extend the sunset date on section 1925 of the Act, the four-month time frame would be more appropriate because, beginning in FY 2002, families losing aid as the result of increased hours of employment or increased earnings

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would receive a minimum of four months of transitional benefits under section 1902(e)(1) of the Act.

Most families who leave TANF are eligible for Medicaid through transitional Medicaid, under section 1931 of the Act, or under the medically needy or poverty level groups. Because families eligible under Medicaid must enroll in Medicaid rather than SCHIP, the instances under which children will be eligible for coverage under a separate SCHIP program are greatly limited. States can use methods such as case identifiers to match SCHIP and TANF cases in those instances.

We have also required that States competing on these measures submit their information on a fiscal year, rather than a calendar year basis as we proposed in the NPRM. We are changing to reporting semi-annually on a fiscal year basis for ease of processing the information and to parallel the requirements for reporting information for the work measures.

Comment: Several commenters responded to our invitation to comment on our decision to limit the outcome measure to individuals leaving TANF assistance, rather than all eligible families and children. Most of these commenters recommended using the larger population of Medicaid/SCHIP eligibles to assess overall State performance since these programs provide critical supports to all low-income families and children. They believed that the proposed measure merely rewards States for complying with section 1925 of the Act, by providing six months of transitional Medicaid to certain families who lose TANF assistance.

Response: In view of the decline in the Medicaid rolls nationwide since 1995, continued Medicaid for families losing TANF is of particular concern. In the NPRM, we proposed to concentrate the performance measure on States' efforts to provide continued Medicaid for eligible families leaving TANF since this is an area of program administration that has been identified by consumer advocate groups and local and national studies as needing improvement.

In response to widespread concerns that PRWORA's delinkage of Medicaid and cash assistance had negatively affected access of low-income families to medical benefits, HCFA conducted on-site reviews in all the States and Territories from September to December 1999 to examine State TANF and Medicaid application and enrollment policies and procedures to ensure that eligible families learn about, receive, and maintain Medicaid coverage. A particular focus of these reviews was on how the TANF application, denial, diversion, and termination processes affect application for and receipt of Medicaid. Based on these reviews, HCFA is in the process of identifying areas where States need to improve their Medicaid application, enrollment, and re-enrollment processes either solely in their Medicaid programs or in conjunction with the administration of their TANF programs. HCFA released policy guidance in some of these areas by way of an April 7, 2000, State Medicaid Directors Letter. This guidance directs States to identify individuals who have been improperly terminated from Medicaid and to reinstate their coverage; clarifies the proper procedures for eligibility redeterminations, and reviews the obligations imposed by Federal law with regard to operation of computerized eligibility systems. In view of the need for continued improvement in those areas and the purpose of the high performance bonus, we believe that the high performance bonus system should continue to focus on how well States are meeting the TANF goals of work preparation, work and self-sufficiency.

As stated earlier, we limited the outcome measure to individuals leaving TANF assistance because: (1) States have a clear responsibility for serving these families under PRWORA; (2) welfare "leaver" studies and other studies on program participation indicate that these families frequently are not being served; and (3) we believe a measure based on former TANF recipients is more directly related to the goals and purposes of TANF, as well as title I of PRWORA. Furthermore, we believe this type of measure will result in a significantly smaller reporting burden for States, as well more accurate and consistent reporting. how diff from FS?

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We do not agree with the comment that this measure merely rewards States for complying with the law. The transitional Medicaid provision under section 1925 of the Act covers only those families who were eligible and received Medicaid under section 1931 of the Act. (This is the PRWORA provision covering families who meet AFDC-related eligibility standards for three of the six months prior to losing Medicaid because of income or employment). Some families leaving TANF because of work are not eligible for transitional Medicaid because they were not receiving Medicaid under section 1931 for three of the six months before losing Medicaid due to earnings or income. In these cases, the dependent children generally continue to receive Medicaid under the State's poverty levels groups or may qualify for benefits under the SCHIP program, and we want to ensure that these children are receiving these benefits. A different provision in section 1931 of the Act provides transitional Medicaid for families losing benefits as the result of child support collections. Other families might be eligible under a State's medically needy group.

In addition, many of the factors affecting enrollment in Medicaid are not compliance matters. Two States that fully comply with all Federal requirements could have vastly different participation rates because of differences in how they operate their programs. While there are potential compliance issues with respect to matters such as ex parte redeterminations and proper notice, States have discretion in numerous areas of policy and administrative practice. For example, in the policy area, States have flexibility to expand eligibility coverage through the use of more liberal income and resource standards and methodologies. In the area of administrative practice, States have broad flexibility with regard to variables such as the location of eligibility offices, office hours, length of application, amount of verification required, outstationing, and use of mail-in and phone-in applications to eliminate barriers to and simplify the application process and reduce procedural requirements.

In view of the reasons stated above addressing the responsibilities of States to provide Medicaid to eligible families, particularly those leaving TANF, and the flexibility afforded States to meet these responsibilities, we are retaining in the final rule at §270.4(d)(1) the outcome measure limited to those families who leave TANF, but are enrolled in Medicaid after leaving TANF.

Comment: One commenter observed that the September 30, 2001, sunset date of section 1925 of the Act complicates the measurement since eligibility for transitional benefits will change after that date and one would expect a number of families would not be entitled to be on the rolls by month six.

Response: We are hopeful the Congress will both simplify the section 1925 provision by eliminating the reporting requirements and lift the sunset date. We included such recommendations as part of the Administration's FY 2001 budget and legislative proposals. Otherwise, beginning in FY 2002, families who lose Medicaid eligibility because of hours of, or income from, employment or because of loss of earned income disregards will be eligible for a minimum four-month period of extended Medicaid eligibility. Since we are reducing the measurement time frame from six months to four months in this final rule, we do not expect States will be adversely affected in competing for an award in the event that Congress does not lift or extend the sunset date.

Comment: A number of States commented that there are other factors -- such as moves out-of-State, death, changes in family formation, increased earnings, and enrollment in private health insurance -- that affect participation in Medicaid and SCHIP. Of particular concern was that the proposed measure did not allow any adjustment for families who obtain private health insurance.

Response: We agree that there are numerous factors that affect families' participation in the Medicaid and SCHIP programs. However, if we were to provide an adjustment for all circumstances that can affect States' caseloads, the outcome measure would conflict with the NGA/APHSA principles that the bonus system should: (1) be simple, credible and quantifiable; and (2) rely on existing data where available. Also, if all States could not identify or exclude cases based on deaths, moves out-of-State, or other circumstances, then allowing adjustments would disadvantage the States that could not do so, thus creating an uneven playing field. We also note that shortening the follow-up period from six months to four months should reduce the number of changed circumstances that are not reflected by the measure.

Similarly, we have decided not to make adjustments for families who obtain private health insurance after leaving TANF. While we applaud State efforts to get individuals into jobs that provide health coverage and related benefits, and we would like to be able to credit States somehow for success in this area, adequate data on private health insurance coverage do not exist. Further, the costs that would be associated with collecting comparable, adequate data for all States would be prohibitive. One underlying issue is that private insurance coverage varies substantially across employers and individual employee circumstances. This variability suggests that, in order to treat States fairly, we should somehow measure the quality and level of coverage under the private plans and include appropriate adjustments. Since it is unlikely that a private plan would offer benefits comparable to Medicaid, we would not necessarily want to give States the same credit for private coverage as

Medicaid. Furthermore, participation in employer-sponsored insurance does not affect an individual's entitlement to transitional medical assistance.

Finally, although we recognize that some States have given a high priority to job placements that provide health coverage and have achieved some success, the national statistics suggest that it would be quite rare for those entering low-wage jobs to obtain private health insurance that is affordable and comparable to the benefits provided by Medicaid. The types of employment situations these families generally access, especially in the short run, mitigate against adequate health coverage. The types of industries and the types of occupations, union status, the size of establishments, length of time on the job, and the use of part-time or temporary employment all increase the chances that a family would not have adequate coverage. For example, according to a study in the June 1995 Monthly Labor Review, while six of ten workers had employer-based coverage, only one-fourth of service workers in service-producing industries had such coverage. The study also noted that, in general, industries where coverage has traditionally been more prevalent have been in decline as a portion of the U.S. economy. It cited service jobs such as waitressing, cosmetology, and cleaning as occupations with less access to employer-based coverage. According to more recent data (1996-1997) from the Bureau of Labor Statistics (BLS), while 70 percent of those employed full-time in the private sector participate in employer-based plans, only 11 percent of part-time private-sector employees do.

In the event that private insurance is available, it is apt to be under a plan with a limited benefits package. Data from the 1996 and 1997 BLS Employee Benefits Surveys show that 78 percent of those participating in an employer-based plan had to contribute to the cost for family coverage ("Compensation and Working Conditions," Winter 1999). Earlier BLS data showed a 200 percent increase in the average family premium between 1983 and 1993. Accordingly, "premiums may be difficult for some workers to afford, causing them to decline coverage." Also, about three-fifths of all participants have coverage that is subject to a pre-existing condition clause, limiting the care they can receive. Thus, even where individuals have access to employee benefits, we are concerned that families receive the wrap-around services that Medicaid can provide and to which they are entitled.

Comment: A number of States commented that the performance measure disadvantages States that have achieved high levels of Medicaid/SCHIP participation since low-performing States can make greater improvements. A few of the commenters recommended that we use a percentage point improvement measurement rather than percentage improvement measurement to even the playing field.

Response: We agree that high performing States may be disadvantaged by the performance measure as proposed. Therefore, in the final regulations at §270.4(d), we have substituted a measure of percentage point improvement for the proposed percentage improvement measure. We believe the measure in the final regulation puts States on a more even playing field, regardless of their baseline level of performance. At the same time, States whose performance was relatively low in the base year are still in an excellent position to be rewarded for their efforts toward increasing enrollment.

Under the proposed measure, a State that increased Medicaid participation from 5 percent to 10 percent (a 100 percent improvement) would be ranked higher than a State that increases participation from 30 percent to 45 percent (a 50 percent improvement). In the final rule, a State that increases participation from five percent to ten percent would achieve a five percentage point improvement while a State increasing participation from 30 percent to 45 percent would achieve a 15 percentage point improvement and would be ranked higher than the first State.

Comment: Some commenters recommended an absolute measure rather than a performance improvement measure. Other commenters recommended expanding the measure to have both an improvement measure and an absolute measure so that States could be ranked

In the definition of "job retention rate," we proposed a job retention period of six months, i.e., States could count those individuals employed in one quarter who remain employed in the next two consecutive quarters.

who? what? evidence?

<u>Comment:</u> There were a number of comments in support of extending the retention measurement period; only one State commenter recommended a shorter retention period. Most of these commenters supported extending the retention measure to one year. In general, they believed that six months is too short a period of time to demonstrate that an individual has achieved job stability. Suggestions ranged from extending retention to one year or to the sixth tracking quarter, or measuring retention only in the same job unless the change is to a job that pays a higher wage, offers enhanced benefits, or promotes job stability or career growth. The latter suggestion did not include a specified period of time for measuring retention.

is this standard?

<u>Response:</u> After careful consideration of the comments, we did not adjust the retention period. We proposed in the NPRM that job retention be measured in the initial quarter and the two consecutive subsequent quarters, in part, because this is similar, though not identical, to measures of job retention in the WIA and WtW programs. We continue to believe that job retention over six months is a reasonable indication of stable employment. In addition, an extended retention period would

part-time and full-time work. We take account of how good the jobs are with the success in the work force measure. We have not established an earnings threshold in the final rule because there is currently insufficient baseline information for selecting a threshold. We believe a threshold should be high enough to foster placement in substantive jobs, but not so high as to disadvantage States with large numbers of recipients with significant employment barriers or substantially more difficult labor markets. We may consider adding an earnings threshold (e.g., a minimum amount of quarterly earnings based on the NDNH reporting), after further analysis and consultation with States and other interested parties.

We do not agree with the commenters' recommendations that we establish a threshold requiring a minimum percentage of expenditures to be spent on education and training or requiring the full use of Federal programs, e.g., the Workforce Investment Act (WIA) and Welfare-to-Work (WtW) programs, before we would consider a State for a bonus on a work measure. Such a threshold would hinder a State's flexibility in designing its TANF program and would not be a measure or indicator of outcomes.

B. A More Rigorous Job Retention Measure

Comment: Some commenters suggested that we tie work measures to a minimum threshold, e.g., that we count only those persons whose wages are at the poverty level or above the minimum wage. These commenters reasoned that the proposed measures reward States that place recipients in jobs without regard to how long they will last or whether they move the family towards self-sufficiency. One commenter suggested a specific threshold factor, i.e., that at least 50 percent of those who leave TANF be employed at wage levels above poverty one year after leaving TANF.

Two commenters recommended that we link job entry with success in the work place. They asserted that a State could receive bonus grants for moving TANF recipients into work and at the same time have a dismal record regarding recipients' remaining employed and/or earning a livable wage that would propel them out of poverty.

Several commenters recommended that we establish a threshold requiring a minimum percentage of expenditures to be spent on education and training or requiring the full use of Federal programs, e.g., the Work Investment Act (WIA) and Welfare-to-Work (WtW) programs, before we would consider a State for a bonus on a work measure.

Response: It is our intention, and many commenters agree, to reward the statutory work purpose of TANF across a wide range of measures. Briefly, we made the following changes in the final rule in response to comments:

(1) Revised the calculation of the improvement measures to measure percentage point improvement rather than percentage improvement in §270.5(a);

(2) Specified in §270.6 that States competing on the work measures must submit identifying information on adult TANF recipients that we will use to match against the National Directory of New Hires (NDNH) data to obtain work measures performance scores;

(3) Dropped the distinction on what kinds of subsidized jobs count under the work measures; and

(4) Streamlined the description of the ranking procedures in §270.5(b).

Following is a discussion of the comments we received, by issue.

A. Establishing a Performance Threshold

The NPRM did not specify a level of earnings or other threshold factor that a TANF recipient would need to achieve in order for the State to count the individual in the job entry, job retention, or earnings gain measures. Thus, as little as one dollar of earnings in a quarter would count in determining who entered employment, how long they remained employed, and how much their earnings increased.

Section 270.5 What factors will we use to determine a State's score on the work measures?

In §270.5 of the NPRM, we proposed definitions of the four work measures and a description of the factors that we would use to determine a State's score on the work measures. We also proposed that States could compete on one, any number of, or none of these work measures. We would score and rank competing States and award bonuses to the ten States with the highest scores in each measure.

The four work measures are: Job Entry; Success in the Work Force (Job Retention and Earnings Gain); and improvement from the prior fiscal year in each of these measures. We would use the proposed measures to measure State performance along three parameters of employment: the extent to which States are moving recipients into the work force; the degree to which recipients are able to remain in the work force; and the degree to which their earnings increase over time.

The comments were strongly supportive of our proposed work measures, although a number of commenters suggested substantive and technical modifications or recommended the addition of threshold measures. A few commenters opposed some of the

Family formation

<u>Comment:</u> A few commenters objected to not being given the option whether to compete on all measures.

<u>Response:</u> In the final rule, we have added new language to §§ 270.4 (c), (d), and (e) and 270.6(c) to make it clear that States have the option whether to compete on all measures. Under §270.11, States must notify us by February 28 about their decision.

So its really an opt-out provision

Former section 270.4(e) Measure of family formation and stability

In the overview section on this measure above (IV.C. Overview of Comments on the Family Formation Measure), we described our commitment to and activities directed towards developing information on promising practices in the areas of family formation and out-of-wedlock childbearing outside of the high performance bonus system. This section also described our continuing efforts to develop an outcome measure related to family formation. In addition, we discussed the public comments on, and the objections to, this proposed measure. Given the overwhelmingly negative reaction to the measure and, in the absence of useful suggestions for improving the proposal or the identification of viable alternatives, we have eliminated this measure in the final rule.

funds among the States is consistent with the Food Stamp allocation of bonus funds among States that compete on the Food Stamps measure.

Comment: One commenter noted that the Medicaid measure should have a method for dealing with tied scores.

Response: We agree with this comment. In the interest of consistency, we will use the same method that we used for the work and food stamp measures. We specify in paragraphs (d)(1) and (d)(2) that we will calculate the percentage rate for the two measures to two decimal points. If two of more States have the same percentage rates, we will calculate the rates for these States to as many decimal points as necessary to eliminate the tie.

Also, since participation in the high performance bonus award system is voluntary, we will rank only those States that choose to compete, notify us by February 28 of the bonus year of their intent (§270.11), and provide the requisite data.

New section 270.4(e) Option to compete

Under the NPRM, we proposed to rank only the competing States for the work measures, but to rank all States that met the qualifying conditions for both the Food Stamp and Medicaid/SCHIP measures.

separately on both measures. They also suggested that we divide the bonus funds among the top five States achieving high performance in both measures.

Response: We agree that adding an absolute measure provides for a fairer system of awards and have made this change in the final rule. Under the NPRM, States that engaged in early and successful efforts to increase enrollment could have found it extremely difficult to compete for these awards, and their efforts might never have been recognized. The final rule sets aside some of the bonus awards for those States that have the highest overall success in enrolling individuals in eligible families. For the absolute performance measure, we will rank the States in order of the highest percentage of Medicaid/SCHIP participation rates by individuals in families four months after leaving TANF and who are not receiving TANF in the fourth month.

In awarding bonuses to the top performing States under both performance measures, we will divide the $20 million in bonus funds, as specified in §270.8, among the three States that have the highest percentage of Medicaid/SCHIP participation rates by individuals in families four months after leaving TANF and who are not receiving TANF in the fourth month (absolute performance measure) and the seven States that show the most improvement performance from the previous year to the current year (improvement performance measure). This allocation of bonus delay when critical performance data would be available. Given the lag in data availability, the longer time frame would not allow us to make the bonus awards in the bonus year to which they apply. Further, if we did not issue the FY 2003 bonus funds by September 30, 2003, they would return to the Treasury, unless Congress reauthorizes the bonus and appropriates funds.

We also considered the suggestion that we measure retention in the same job, but decided against it because, moving to another job can, in fact, represent moving up to a better job.

How do you measure retention in >1 job? ⇒ whether employed, regardless if in same job or [illegible] [illegible] empl/attachment to workforce

C. Earnings Gain

In the NPRM, we proposed a "success in the work force measure" that combined the performance scores of two measures, i.e., job retention and earnings gain. We proposed a combined measure because of the linkage between these two outcomes, i.e., with earnings gain viewed as dependent on an individual's success at retaining employment. In ranking and combining the scores of these measures, we proposed a double weight for the job retention measure. We also proposed to measure the change in the earnings for those employed in one quarter who were also employed in the second subsequent quarter.

Comment: Several commenters thought that we had not given sufficient weight to earnings gain. Commenters also recommended that we:

- Treat earnings gain as a separate measure instead of incorporating it into the success in the work force measure;
- Give an equal or higher weight to earnings gain; measure;
- Measure earnings gain at both six and 12 months;
- Adjust the earnings gain for the cost of living in each State using the HUD fair market rent amount;
- Measure only full quarters' earnings; or
- Allow administrative data on a voluntary basis as a source of earnings.

Response: We have not made any change to the earnings gain measure. While a separate measure would provide a discrete focus and reward, we believe that performance in earnings gain is inextricably linked to job retention and that we should maintain the link in order to focus attention and resources on both. Also, creating a separate earnings gain measure would result in fewer bonus dollars for any one work measure. In addition, increasing the weighting of the earnings gain measure would not realistically reflect the dependence of earnings gain on job retention. We did not want to measure earnings gain at both six and twelve months for essentially the same reasons we did not want to extend the retention rate to twelve months, i.e., it would delay obtaining critical data for analysis and impede our ability to award ~~the bonus in the bonus year.~~

Also, we have not adjusted for the cost of living as this would add a level of complexity that would counter one of our basic principles, i.e., to maintain simplicity. First, it is not clear that differences in earnings directly track differences in fair market rent. More importantly, it is not clear that differences in the cost of living would make any difference in the comparison of earnings gains between States. Because we are measuring an increase in earnings in a single State from the reporting quarter to the second subsequent quarter, differences in the cost of living among different States would not be relevant. It is not the absolute difference between earnings in different States that is relevant, but the percentage point difference of the change in earnings amount from one year to the following year in the same State. Thus, a State would not be advantaged or disadvantaged by having a higher or lower cost of living than other States.

We also did not want to measure only full quarters' earnings because that would require a substantially increased data collection and reporting burden on the States. Because Unemployment Insurance (UI) and NDNH records do not indicate whether earnings reflect a full quarter of employment or not, we would have to establish a proxy measure, require States to collect and submit administrative data, or conduct new surveys. Nor would allowing States to submit administrative data on a voluntary basis be helpful because we need data that are uniformly available and comparable across States.

D. Sustained Employment Rate

Comment: Two organizations suggested a somewhat different approach to the proposed work measures. Their approach would create a "sustained employment rate," a separate earnings gain rate, and a new measure of the earnings gap for poor families in a State.

>20 hours wk/min wage

They recommended that we develop a single sustained employment rate in lieu of the job entry and job retention rates. The base (denominator) for the sustained employment rate would be all TANF adult recipients except those engaged in employment with earnings equal to or greater than an average of twenty hours per week for the quarter multiplied by the Federal minimum wage. A recipient would be counted as a "sustained employment recipient" if the recipient has at least two consecutive quarters with earnings at or above the threshold noted above during the next year. The earnings gain rate would be measured over a one-year period beginning after the initial quarter of employment where the earnings are at or above the earnings threshold in the measurement quarter, e.g., quarter two and quarter six.

Under the earnings gap measure, the difference between the amount of earnings for poor families with children in a State and the official poverty level would be determined. We would rank States on their success (improvement) in closing that difference. We would also make adjustments based on changes in unemployment rates and changes in the number of families in the measurement period.

Response: This proposal would result in a significant change in the work performance measures, add a high degree of complexity, and substantially increase the data collection burden. Further, because it does not differentiate between the unemployed and the underemployed, it would result in the loss of information on the number of adult recipients entering employment for the first time in a year. The suggested time frames for measurement would result in the issuance of the bonus awards well after the end of the bonus year. In addition, most commenters supported staying within the existing framework for the work measures. For these reasons, we are not adopting this proposal.

E. Subsidized Work

In the NPRM, we proposed to count only jobs that were not fully subsidized in order to focus on jobs that were likely to lead to self-sufficiency.

Comment: Several commenters suggested that we count fully subsidized jobs, or at least exclude them from the denominator as well as the numerator. They contended that, unlike community experience and work experience, wage-paying subsidized jobs resemble unsubsidized employment in every aspect, except for the subsidy paid to the employer. Another commenter recommended that we link work experience and subsidized work with the provision of ancillary services such as education and training. One commenter suggested that we clarify that, while subsidized work would not be counted, "supported" work would be, since ongoing funding is provided to the job coaches rather than to the individuals' wages.

wage paying

Response: We have decided to count fully subsidized jobs in the numerator and the denominator of the work measures in the final rule. We have made this change because we believe the numbers are small, and we recognize that the distinction between partially and fully subsidized employment is somewhat artificial and is governed by changes based on the wage rate of the individual TANF recipient. We also believe that simplifying this factor will reduce the burden on States to separate out and report different types of subsidized jobs.

F. Measuring Improvement

In the NPRM, we proposed to award bonuses to the States demonstrating the greatest improvement in job entry and success in the work force. We proposed to measure the percentage increase from the comparison year to the performance year.

<u>Comment:</u> There was strong support for the improvement measures, including one commenter who expressed the view that we should use only improvement measures, in order to give States more incentive for continuous progress, and to give all States an equal chance of earning a bonus, regardless of their starting point.

Another commenter, however, recommended that we should use only absolute measures or reduce the amount of the awards for the improvement measures because States that have been high performers in the past would have little room for improvement. They believed that the proposed method of calculating the performance improvement rate for job entry and the success in the work force measure (combination of job retention and earnings gain) did not take into consideration the past performance of States that had implemented welfare reform early. These commenters indicated that States were disadvantaged if they had achieved earlier success in moving recipients from welfare to work and self-sufficiency that would not be measured. In addition, such States' remaining caseloads have a higher proportion of recipients that have significant employment barriers. Commenters made the following recommendations:

- Adjust the proposed method of calculating the improvement rate, i.e., average the comparison and performance year rate scores and add the percent change between the two years to the average score.

- Set a minimum target for improvement, e.g., ten percent, and make awards to all States that met the target without limiting the number of States that could receive an award.

<u>Response:</u> The bonus awards are based on current performance. Even for the improvement measures, we assess the level of current performance in relation to the immediately preceding year. Because the statute specifies the performance year for each of the bonus years, it is not clear that the recommendations are consistent with either that statute or Congressional intent. Further, even if we agreed with the argument that we should consider past performance (prior to the FY 1997 comparison year), there is no objective way to provide for such an adjustment, because we do not have access to data for prior-year periods.

Finally, we have evaluated the proposed adjustment formula and find it would have the effect of narrowing the range of the improvement scores and have some limited impact (using FY 1998 performance data) on bonus winners. There was only a modest change in the ranking of "early reform" States. For these reasons, we have not adopted the suggestion to consider past performance earlier than the comparison year. ?

We also have not accepted the recommendation that we establish a minimum target for improvement largely because caseloads are changing. With the available baseline data it would be difficult to determine a reasonable goal, especially over more than one bonus year.

However, in §270.5(a) and (b)(3), we have changed the method of calculating the improvement rate. Specifically, we have decided to use the percentage point change instead of the percentage ~~change.~~ For example, under the NPRM, a State that went from a 50 percent to a 60 percent job entry rate would have an improvement rate of 20 percent ((60%-50%)/50%=20%), while a State that went from a lower base of 40 percent to a 50 percent job entry rate would have a bigger increase, i.e., 25 percent ((50%-40%)/40%=25%). Under the final rule, these same States would have identical improvement rates of ten percent (60%-50%=10% and 50%-40%=10%). We believe this new approach will reward substantial improvement rather than relative improvement and will raise expectations about the level of improvement required to receive a bonus, particularly among States whose baseline performance was low.

G. Leveling the Playing Field

We stated in the NPRM that we believed that competition for the high performance bonus should primarily reflect a State's welfare to work strategies and should be a competition among States that is objective and fair. We indicated that there are factors over which the State has little control, such as the health of the State's economy, the demographics of its TANF caseload and its resident population, and State population growth. We asked if we should attempt to develop adjustment factors in order to ensure an objective and fair competition.

Comment: There were two comments suggesting that we level the playing field to take into account such factors as economic, demographic, and cultural differences. We did not receive any specific proposals.

Response: We believe that by incorporating both absolute performance and performance improvement measures, we have helped produce a more level playing field for States competing for the high performance bonus. Further, by changing from a percentage increase to a percentage point increase to measure improvement, we have struck a balance between recognizing past performance and encouraging improvement from a low base.

The adjustment of performance scores by external factors would be a complex and difficult task involving the establishment of a correlation between external factors and the performance being measured and, if a strong correlation was detected, determining the scope of the adjustment. Also, such adjustment(s) could add a level of subjectivity and contentiousness to the performance system beyond the value of potentially leveling the playing field.

Nevertheless, in order to test whether we could detect a correlation between certain external factors and the work measures, we performed regression analysis using job entry rate performance and such factors as the unemployment rate, recipient characteristics, and TANF payment levels. (We chose job entry rate performance because we thought State performance under this work measure would more likely be influenced by external factors.) Our analysis showed that none of these factors was highly correlated with job entry rate. In fact, the highest correlation coefficient was -.28 for the unemployment rate. Thus, the implication is that these specific factors do not determine the job entry rate to any significant degree. In addition, adding adjustment factors makes it much more difficult to explain performance and for States to set meaningful targets.

Therefore, we have decided not to make any adjustments to the way we calculate job entry or any of the other work measures based on economic, demographic, or other factors.

H. Other Comments and Recommendations

Comment: One commenter recommended that we should measure all those served, not just those on TANF cash assistance.

Response: We have not limited the population we are measuring with the work measures to just those receiving cash assistance. We include all individuals receiving assistance as specified in §260.31 of the TANF final rule. There is no practical way that we could include all those served, regardless of whether they are receiving assistance, e.g., diverted individuals. Such a change would involve a major new data collection effort and impose a substantial burden on the States.

Comment: In response to a series of questions we posed, one commenter recommended that we should include core measures, while another suggested that States should have to compete on a universal set of measures.

Response: We have not required any core measures or a universal set of measures because we want to allow States maximum flexibility to elect the areas in which they will compete. We believe this is consistent with the flexibility provided States in the operation of their TANF programs and the voluntary nature of the high performance bonus.

Comment: Two commenters indicated that some States have expressed concern over the current method of calculating the job entry rate. They suggested instead that the measure should be the percent of the total recipients in the current quarter employed for the first time. No reason was given for wanting this change.

Response: It is unclear what the commenters would change in the proposed method for calculating the job entry rate. Under our proposed method, the denominator is the unduplicated number of adult recipients who were employed at some point during the year, and the numerator is the unduplicated number of job entries. We believe the commenters are proposing to change the denominator to either employed adult recipients or to all adult recipients. This suggested change would significantly alter the job entry measure. The purpose of this measure is to determine the extent to which unemployed adult recipients enter employment for the first time in the year as a percentage of those who are unemployed. The suggestion, if adopted, would result in a different focus, i.e., of the adult recipients who are employed, how many are new job entries or, of all adult TANF recipients (employed or unemployed), how many are new job entries. We continue to believe that the appropriate focus for this measure should be on the impact of States' efforts on its unemployed caseload. For this reason, we have not made this change.

Comment: One commenter suggested that because research has shown that many TANF recipients attain and lose jobs several times, that we should reward States for job entries over a longer period of time, such as a two-year performance period. Specifically, for the job entry measure, the commenter indicated that we should count only job entries that are the first job entry in a two-year period. They proposed that retention would then be measured from the point of job entry to a time period one year later.

Response: Given the lag in data availability, the longer time frame would not allow us to make the bonus awards in the bonus year to which they apply. If we did not issue the FY 2003 bonus funds by September 30, 2003, they would return to the Treasury, unless Congress reauthorizes the bonus program and appropriates funds. In addition, the statute requires that we award bonuses in each bonus year, not over a two-year period.

Section 270.6 What data for the work measures must a State report to us?

In the NPRM, we proposed that the State, if it chose to compete on any or all of the work measures, must report one of two alternative sets of data, as specified by the Secretary. In one alternative, the State would provide three items of identifying information on its adult TANF recipients that we would match against the NDNH data. In the second alternative, the State would provide actual performance data for the work measures based on data matches with State UI records or other records.

Comments: Most commenters supported reporting minimal information on recipients and the use of the NDNH. A number of States believed strongly that no other source could provide Federal employment and out-of-State employment. However, a number of commenters raised issues about the use of NDNH data. Several questioned whether the NDNH contains all the necessary information to calculate the performance scores for all the work measures. One raised concerns about privacy protection of the NDNH data. Two wanted to use State administrative data to supplement the NDNH data, since we could not detect a period of unemployment within a quarter through the use of NDNH quarterly wage data.

Response: After considering the comments and other factors relating to our operational use of the NDNH, we agree with commenters that State reporting of minimal identifying information on all adult TANF recipients and a match of this information by ACF at the Federal level would result in the least burden to States and the maximum accuracy in implementing the bonus awards.

We have not specified the identifying information that States must submit in §270.6(a). Rather, because some operational factors are unclear in our use of the NDNH, we will specify these data in program guidance. The data that will be required will be limited to some or all of the information proposed in the NPRM, i.e., the name, date of birth, and social security number of all adult TANF recipients.

In addition, we want to clarify what data are available through the NDNH. The NDNH contains not only a national database of new hires, but also national wage data compiled by the State Unemployment Insurance agencies and Federal employment and wages. (This addresses commenters' concerns for information on out-of-State and Federal employment.) Matching adult TANF recipient data with quarterly wage data on the NDNH data base will provide the necessary work performance information to rank States on all the work measures.

With respect to the privacy concerns, the match of adult TANF recipients with the NDNH database will not reflect information about individuals, but will produce only aggregate information for use in calculating the State rankings on the work measures.

Prior to these regulations, we provided States flexibility in what data source(s) they could use for compiling performance data for the work measures. We note that States competing for the FY 1999 bonus awards compiled their work measurement performance data based on their State unemployment wage data system. Our proposal builds on and strengthens that system. The use of the NDNH will ensure that we rank States based on the most uniform, objective, and reliable data available. In addition, States will have the benefit of the employment data on their TANF recipients, including out-of-State employment and Federal employment.

Section 270.7 What data will we use to measure performance on the work support measures?

In the NPRM, we proposed to use Census Bureau data to rank State performance on the Food Stamp and the Family Formation measures. We also proposed to rank State performance on the Medicaid/SCHIP measure based on the data submitted by States following their match of individuals no longer receiving TANF assistance with Medicaid/SCHIP enrollment data.

We have made the following editorial and technical changes in this section: deleted reference to the Family Formation measure, substituted the acronym SCHIP for the acronym CHIP, and clarified that we will rank only those States that choose to compete on these measures.

In addition, we received a number of comments on this section.

Comment: Several commenters expressed concern about the proposed use of Census Bureau data. Commenters based their concerns on perceived problems with the Current Population Survey (CPS) or the decennial census. They cited the lack of reliability of the CPS data and recommended, alternatively, that we base Food Stamp and the Medicaid/SCHIP measures on State administrative data that are more current. They also believed that the decennial census data, despite periodic updates, under-reports many low-income populations, focuses on married households, and undercounts households where two adults may be responsible for parenting and child-rearing. Undercounting the increasing number of grandparents raising children was also of concern to commenters.

Response: We agree that State administrative data, in some cases, are more current than decennial census data or the CPS estimates. Our aim in the NPRM, however, was to propose to use the most uniform, reliable, and objective data available with as little burden to States as possible.

We want to reiterate that, in using the Census Bureau data, we will initially use data from the Supplementary Census 2000

Survey. Later, we will use data from the Census Bureau's American Community Survey (ACS), which will be available in 2003. The 2000 Survey will provide reliable State level data based on a sample of 700,000 cases. The ACS will provide annual reliable State and county-level data.

Comment: A number of commenters recommended that the final rule require States to report data separately on the number of adults and the number of children no longer receiving TANF assistance who are enrolled in Medicaid or SCHIP. They commended our proposal to evaluate States on the percentage of individuals enrolled in Medicaid or SCHIP, rather than the percentage of families enrolled. They based their recommendation on the need for better data and findings from recent studies that indicated that often only selected family members retain health care coverage after leaving welfare. In particular, parents appear to be at much greater risk than children of losing out on health care coverage for which they are eligible.

Response: We agree that information on the participation of adults and children in these programs could be useful in monitoring program outcomes. However, we do not believe that the value of this information justifies the additional data collection effort that would be required.

how much would that be?

Section 270.8 How will we allocate the bonus award?

This section of the NPRM proposed to:

- make awards to the ten States with the highest scores in each measure;
- allocate a total of $140 million to the four work measures as follows:
  - Job entry rate $56 million
  - Success in the work force $35 million
  - Increase in job entry rate $28 million
  - Increase in success in the work force $21 million
- allocate a total of $60 million to the three work support measures ($20 million to each measure); and
- within each measure, distribute the bonus money based on each State's percentage of the total amount of the SFAG of the ten States that will receive a bonus.

There were no major objections to this section of the NPRM, but most of the commenters made alternate recommendations. In general, most States and their representative organizations recommended that the full amount of the annual bonus ($200 million) be awarded based on the work measures. On the other hand, a large number of the other commenters recommended various increases in the amount of funding allocated to the work support measures.

In addition, although there was general support for awarding bonuses to the top ten States with the highest scores in each measure, we received several suggestions for alternative approaches to the Food Stamp and Medicaid/SCHIP measures: (1) award bonuses in each measure for both absolute performance and performance improvement; (2) award five bonuses for absolute performance and five for improved performance; (3) alternatively, award three bonuses for absolute performance and seven for performance improvement; and (4) award the same amount of money for each measure.

In response to comments on the Family Formation measure discussed above, we have dropped the proposed $20 million for the Family Formation measure and reallocated these funds proportionally to each of the work measures. The work support measures (Food Stamps and Medicaid/SCHIP) will continue to receive $20 million each. Other specific comments and our response are discussed below.

Comment: Several commenters recommended specific changes in the amounts proposed for the four work measures that would emphasize "success in the workplace." They believed that the proposed allocations seem unduly weighted towards job entry (i.e., $56 million of the $140 million) at a time when the focus of the TANF program has shifted to an emphasis on earnings gain (measured by success in the work force and increased success in the work force). They indicated that job entry is no longer the critical measure that job success is. One commenter, for example, suggested the following:

- Job entry $28 million
- Success in work force $56 million
- Increase in job entry $21 million
- Increase in success in work force $35 million

<u>Response:</u> We considered this recommendation in light of our knowledge of and experience with State TANF programs to date. At the present time, we believe it is important to retain a priority focus on job entry, not only because of the emphasis throughout the TANF statute on work and economic self-sufficiency, but also because initial employment is a prerequisite for the rest of the work measures. It also remains a primary focus for most State programs in leading to self-sufficiency.

However, we have re-allotted the $20 million proposed for the Family Formation measure among the four work measures, reflecting the elimination of that measure.

Comment: Commenters were concerned that, in competing for the bonus, a State with a relatively small SFAG might be likely to lose money if the cost of competing for the bonus was greater than the amount the State might receive as a winner. They recommended that States should at least be able to recover the costs of applying for the bonus in a category where they made the top ten winners list. They also recommended that we award any State receiving a bonus some minimum amount based on an estimated cost of applying for the bonus in that category. We could allocate the remainder of the award money in that category as proposed.

Response: We are aware that for a few States, it is difficult to compile data in order to compete for the bonuses. In the final rule, we have addressed this difficulty, in part, by requiring minimal information from States for the work measures and matching these data with the NDNH data at the Federal level. With respect to the commenter's specific suggestions, we could find no support for such an approach in the statute and believe it could be very problematic to administer. Thus, we have not accepted these recommendations.

Comment: A number of commenters, including Members of Congress, recommended increases in the amounts allocated to each of the work support measures, ranging from increasing the allocation for the Food Stamp and Medicaid/SCHIP measures to $30, $35, or $40 million; allotting amounts ranging from $20 to $40 million for a new child care measure; and allotting $20 million for a new measure on domestic violence and $20 million each for two measures on worker protections. Commenters offered the following opinions:

- States already have many incentives to help individuals enter the work force, e.g., the penalties if States do not meet the work participation requirements. Skewing performance bonuses further towards work is unnecessary. Giving equal weight to work and work support measures better reflects the reality that a job alone is not enough for a family to succeed.
- Families will not be able to get or maintain employment without these essential supports. Further, the work support measures (including the addition of any new measures related to child care or other measure) support two of the four purposes on TANF by providing assistance so that children can be cared for in their own homes as well as promoting job preparation and work.
- As proposed in the NPRM, the $20 million for each of the Food Stamp and Medicaid/SCHIP measures, divided among the top ten winning States, creates little incentive for States, compared to the more generously funded work measures.

Response: As noted earlier, we have re-allotted the $20 million proposed for the Family Formation measure among the four work measures. We seriously considered increasing the allocations for the Food Stamp measure and the Medicaid/SCHIP measure. However, we continue to believe that the work measures most directly address the overall focus of the TANF program, including purposes one, two, and four of the Act. If you're gonna include them, why not make them meaningful?

Comment: In commenting on one State's receipt of a multi-million dollar bonus in 1999 for 1.7 and 2.9 percent increases in two work measures, one organization objected to the lack of a benchmark or other threshold standard as a part of the bonus system. They believed such "minuscule changes" in State performance do not represent high performance. Rather than funding the ten States with the highest scores in each measure, they recommended that we set limits for what we consider acceptable and successful performance.

Response: In the preamble to the NPRM, we solicited public comment on some of the issues we had considered related to absolute performance, performance improvement, and threshold levels. (See Section IV. Discussion of Other Issues Related to Performance Measurement.) The issue of a threshold level, benchmark, or performance standard is one we struggled with, both internally and in our consultations with external groups. Given the lack of experience in establishing and implementing a bonus system, the general consensus on this matter was that a standard, such as rewarding the ten States with the highest scores, was initially most appropriate.

As we said in the NPRM, awarding bonuses to the top ten States not only provides a clear incentive to States, but also helps avoid problems associated with the need to re-allocate funds. More importantly, we did not want to set a numerical threshold based on an absolute level of performance, given the absence of baseline data. Another factor we considered is that what works now in terms of a bonus system may not be appropriate as the States' caseloads continue to change.

Finally, we believe that State programs are still evolving and continue to reflect the flexibility provided in the statute in their programs and services. Given that diversity, we have not changed the standard as proposed.

Comment: This same commenter recommended that we invest most of the award funds in the work support measures on the grounds that the State Food Stamp and Medicaid/SCHIP enrollment data are the most solid, i.e., they follow individuals over time, and they are backed by quality control efforts. They recommended that we delay awarding bonuses to measure job retention and earnings until we have a valid source of data for these categories.

particularly germane to assessing State caseload reductions, work efforts, or performance; and are not amenable to TANF-like reporting. Our general TANF rules do not allow us any discretion to grant waivers of the SSP-MOE reporting requirements, even in such circumstances. Based on discussions with States, we are concerned that, in some of these cases where the SSP-MOE reporting requirements are particularly problematic, States might elect not to provide certain benefits that support the goals of TANF rather than to develop the data collection and reporting system that the SSP-MOE requirements would entail.

Since these problematic situations can arise with respect to either the high performance bonus or the caseload reduction credit, we wanted to provide an opportunity for waiver of the requirements in both circumstances. We believe the clearest way to make that change is in the general TANF rule. Thus, in this rulemaking, we have revised the TANF final rules at 265.3(d)(2) to allow waivers of the SSP-MOE reporting requirements, under very limited circumstances. More specifically, we would allow waivers only if the benefits being provided in the SSPs were considered assistance under 45 CFR 260.31(a)(3) and the State made a clear case that the cost and burden associated with collection and reporting of the data substantially outweighed any potential benefit.

The first condition means that waivers would be available only for benefits that are defined as "assistance" because they are "supportive services such as transportation and child care provided to families that are not employed." We would not waive SSP-MOE reporting requirements for SSPs that provide assistance under paragraphs (a)(1) or (a)(2) -- that is, for programs that: (1) provide assistance that meets the basic needs of a family (even if the family's receipt of such benefits is conditioned upon participation in work experience or community service); or (2) provide benefits that would have historically been considered "welfare" benefits. For example, we would never waive SSP-MOE reporting when the State had elected to meet the basic needs of its two-parent TANF cases through a SSP. We would only grant waivers for SSPs that provide supportive services, such as transportation and child care, to families that are unemployed. In fact, we anticipate that SSPs receiving reporting waivers would typically be serving a mix of employed and unemployed families, but mostly employed families. However, separating the families into employed and unemployed families and gathering detailed characteristics data on a monthly basis for only the employed families would be extremely burdensome.

this is confusing

In deciding whether a State had made its case, we would look at factors such as: