

- The capacity of the SSP to provide the kind of information required in the SSP-MOE report;
- The size of the separate State program (e.g., the number of beneficiaries and the proportion of the TANF caseload that would represent); and
- Whether the data would be important to a full understanding of the State's work efforts, caseload changes, or performance.

An example of a situation where we might waive SSP-MOE reporting would be the following: a State provides funds to a local transportation initiative that provides shuttle bus service between a low-income, inner-city neighborhood and suburban jobs. While most of the shuttle passengers are employed, unemployed neighborhood residents can use the shuttle to get to a pre-employment training program. Thus, there may be families receiving benefits that meet the definition of "assistance" under §260.31(a)(3). The State agency, working with the transportation program, can determine the proportion of "eligible families" using this service through a simple survey. However, the program does not collect detailed case-specific and monthly information on the families they serve, and it has no mechanism for collecting such data or submitting data electronically to the State. In addition, the number of families receiving "assistance" in the program is thought to be negligible, and they

would have little chance of showing up in, or affecting, the SSP sample.

VIII. Regulatory Impact Analyses

A. Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this final rule is consistent with these priorities and principles.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. This rulemaking implements statutory authority based on broad consultation and coordination. Section 403(a)(4) of the Act requires the Department to consult with the National Governors' Association and the American Public Human Services Association in the development of a system for awarding high performance bonuses. As described earlier in the preamble and in section G. of this Regulatory Impact Analysis, ACF consulted with States, their representative organizations, and a broad range of advocacy groups, researchers, and others to obtain

their views. This rule reflects the discussions with and the concerns of the groups with whom we consulted.

This rule is a significant regulatory action that will have an annual effect on the economy of \$100 million or more, according to section 3(F)(1) of the Executive Order. It will determine how \$200 million will be awarded annually to high performing States to be used to carry out the purposes of the TANF program. It will also have the additional effect of improving State efforts to implement welfare reform. High performing States could see their funding increase by as much as five percent of their State family assistance grant. We believe the cost of competing for a high performance bonus award should be minimal since competition for these awards will be based, to the extent possible, on existing data sources.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities. This rule will affect only the 50 States, the District of Columbia, and certain territories. Therefore,

the Secretary certifies that this rule will not have a significant impact on small entities.

C. Assessment of the Impact on Family Well-Being

We certify that we have made an assessment of this rule's impact on the well-being of families, as required under section 654 of the Treasury and General Appropriations Act of 1999. The high performance bonus awards are a statutory part of the TANF program and are designed to reward State efforts in strengthening the economic and social stability of families and carrying out other purposes in the statute. The final rule does not limit State flexibility to design programs to serve these purposes.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), no persons are required to respond to a collection of information unless it displays a valid OMB control number. As required by the PRA, we have submitted the data collection requirements to OMB for review and approval. We used the NPRM as a vehicle for seeking comment from the public on these and any additional information collection activities that they believe should be added as a part of the bonus award process.

Based on this final rule, we will award bonuses, in FY 2002 and beyond, on four work measures and two work support measures. We have computed the burden based only on the work measures and the measure of Medicaid/SCHIP participation as specified in §270.4. No reporting burden would fall on the States for the Food Stamp measure, also in §270.4, as we initially will use the Census Bureau's Supplementary 2000 Survey, and later the American Community Survey, as the data source for this measure. To measure Medicaid/SCHIP participation, States must match TANF data with Medicaid/SCHIP enrollment data, using the information from HCFA's MSIS system and the HCFA Form 21-E.

BURDEN ESTIMATE FOR THE WORK MEASURES

In §270.6 of the NPRM, we proposed the use of two alternative sets of data. In the first alternative, States would collect quarterly and report semi-annually a minimal set of identifying information on adult TANF recipients that we would match against the information in the National Directory of New Hires (NDNH) to determine the State's scores for the work measures. In the second alternative, the State would submit more detailed work performance data based on its matching of adult recipient data with its UI data. Commenters strongly supported the first alternative and the use of the NDNH whenever possible.

In the final rule, we specify that we will use the first reporting alternative. We estimate the reporting burden for the first reporting alternative in §270.6(a) to be 1,728 hours, based on the requirement that States report some or all of the following three data elements: the name, birth date, and social security number of all adult TANF and SSP-MOE recipients. (The specific data elements will be issued in program guidance.) Our estimate of the burden is as follows: 16 hours per response, times 54 respondents, times two (semi-annual reporting), for a total annual burden of 1,728 hours.

In addition, if a State wishes to receive a high performance bonus, it must report the data in Sections One and Three of the SSP-MOE Data Report as required in §265.3(d) of this chapter. The burden for this reporting requirement was previously estimated in the TANF final rule, published April 12, 1999 (64 FR 17720).) We have not revised our estimates, but we note that this burden may be reduced in view of the amendment to §265.3(d) included in this rulemaking which waives SSP-MOE reporting requirements under certain circumstances.

We believe the burden of reporting the identifying information on work measures will be minimal for most States, particularly as we will be using the NDNH as a match at the Federal level. In addition, States already have experience in extracting case/individual identifying information from their electronic

data bases for matching purposes, including the Income and Eligibility Verification System (IEVS) matches required by statute.

BURDEN ESTIMATE FOR THE MEASURES ON MEDICAID/SCHIP PARTICIPATION

The Medicaid/SCHIP performance measures at §270.4(d) are based on semi-annual reporting of the data from a match of TANF data and Medicaid enrollment data. Because this activity is similar to State activity in matching TANF data and UI data, as is currently done for the ACF-200 (OMB No. 0970-0180), we estimate that the burden will be approximately the same, i.e., 4,320 hours, excluding start-up costs. We understand that some States may not have social security numbers for SCHIP recipients. In that instance, there may be an additional burden.

The total annual burden estimate includes the development of a one-time extraction program (based on our specifications), computer run-time to execute the program, the creation of an extract data file, and transmitting the information.

We estimate that the 50 States, the District of Columbia, Guam, Puerto Rico, and the United States Virgin Islands will be potential respondents. (Currently, American Samoa has not applied to implement the TANF program.)

The annual burden estimate for this data collection is:

INSTRUMENT OR REQUIREMENT	NUMBER OF RESPONDENTS	NUMBER OF RESPONSES PER RESPONDENT	AVERAGE BURDEN HOURS PER RESPONSE	TOTAL BURDEN HOURS
WORK MEASURES	54	2	16	1,728
MEDICAID/SCHIP MEASURES	54	2	40	4,320
Estimated Total Annual Burden Hours:				6,048

E. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the

objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the proposed rule.

We have determined that this final rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year. Competition for a high performance bonus is entirely at State option. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted State or small government.

F. Congressional Review

This final rule is a major rule as defined in 5 U.S.C., Chapter 8.

G. Executive Order 13132

On August 4, 1999, the President issued Executive Order 13132, "federalism." The purposes of the Order are: "to guarantee the

division of governmental responsibilities between the national government and the States that was intended by the Framers of the Constitution, to ensure that the principles of federalism established by the Framers guide the executive departments and agencies in the formulation and implementation of policies, and to further the policies of the Unfunded Mandates Reform Act...."

We certify that this final rule does not have a substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The final rule does not pre-empt State law and does not impose unfunded mandates.

This rule does not contain regulatory policies with federalism implications that would require specific consultations with State or local elected officials. The statute, however, requires consultations with the National Governors' Association and the American Public Human Services Association in the development of a high performance bonus system.

During the development of the NPRM, we held two types of consultations. First, we raised issues related to this provision in the general TANF consultation meetings with a broad range of representatives of State and local governments; nonprofit, advocacy, and community organizations; foundations; and others.

Second, we consulted intensively with representatives of the National Governors' Association, the American Public Human Services Association, the National Conference of State Legislatures, and approximately 30 State representatives who participated by regularly scheduled conference calls over a period of approximately nine months.

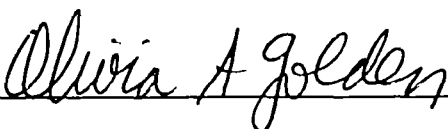
List of Subjects

Grant programs - social programs; Public assistance programs; Reporting and Recordkeeping Requirements; Poverty.

(Catalogue of Federal Domestic Assistance Programs: No. 93.558
Temporary Assistance for Needy Families (TANF) Program; State
Family Assistance Grants; Tribal Family Assistance Grants;
Assistance Grants to Territories; Matching Grants to
Territories; Supplemental Grants for Population Increases;
Contingency Fund; High Performance Bonus; Decrease in
Illegitimacy Bonus)

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Dated: _____

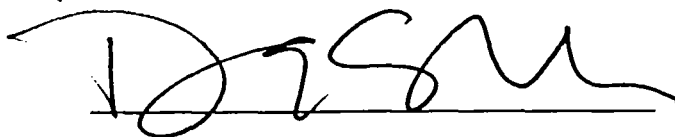


Olivia A. Golden

Assistant Secretary

for Children and Families

Approved: 3/12/00



Donna E. Shalala

Secretary

Department of Health and Human Services

For the reasons set forth in the preamble, we are amending 45 CFR Chapter II as follows:

PART 265 - DATA COLLECTION AND REPORTING REQUIREMENTS

1. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 603, 605, 607, 609, 611, and 613.

2. We are amending §265.3 by redesignating paragraph (d)(2) as paragraph (d)(2)(i) and adding a new paragraph (d)(2)(ii) to read as follows:

§265.3 What reports must the State file on a quarterly basis?

* * * * *

(d)* * *

(2)(i) The State must file the SSP-MOE Data Report only on separate State programs that provide benefits that meet the definition of assistance at § 260.31 of this chapter.

(ii) We may grant waivers of this reporting requirement under certain limited circumstances.

(A) We will only grant waivers for separate State programs that provide benefits that meet the definition of assistance under § 260.31(a)(3) of this chapter; and

(B) The State must demonstrate to our satisfaction that the cost and burden associated with collection and reporting of the data would substantially outweigh any potential benefit.

PART 270 HIGH PERFORMANCE BONUS AWARDS

3. We are adding a new part 270 to read as follows:

Sec.

- 270.1 What does this part cover?
- 270.2 What definitions apply to this part?
- 270.3 What is the annual maximum amount we will award and the maximum amount that a State can receive each year?
- 270.4 On what measures will we base the bonus awards?
- 270.5 What factors will we use to determine a State's score on the work measures?
- 270.6 What data and other information must a State report to us?
- 270.7 What data will we use to measure performance on the work support measures?
- 270.8 How will we allocate the bonus award funds?
- 270.9 How will we re-distribute funds if that becomes necessary?
- 270.10 How will we annually review the award process?

- 270.11 When must the States report the data and other information in order to compete for bonus awards?
- 270.12 Must States file the data electronically?
- 270.13 What do States need to know about the use of bonus funds?

Authority: 42 U.S.C. 603(a)(4)

§270.1 What does this part cover?

This part covers the regulatory provisions relating to the bonus to reward high performing States in the TANF program, as authorized in section 403(a)(4) of the Social Security Act.

§270.2 What definitions apply to this part?

The following definitions apply under this part:

Absolute rate means the actual rate of performance achieved in the performance year or the comparison year.

Act means the Social Security Act, as amended.

Bonus year means each of the fiscal years 2002 and 2003 in which TANF bonus funds are awarded, as well as any subsequent

fiscal year for which Congress authorizes and appropriates bonus funds.

Comparison year means the fiscal or the calendar year preceding the performance year.

Fiscal year means the 12-month period beginning on October 1 of the preceding calendar year and ending on September 30.

Food Stamp Program means the program administered by the United States Department of Agriculture pursuant to the Food Stamp Act of 1977, U.S.C. 2011 et seq.

HCFA is the Health Care Financing Administration.

Improvement rate means the positive percentage point change between the absolute rate of performance in the performance year and the comparison year.

Medicaid is a State program of medical assistance operated in accordance with a State plan under title XIX of the Act.

MSIS is the Medicaid Statistical Information System.

Performance year means the year in which a State's performance is measured, i.e., the fiscal year or the calendar year immediately preceding the bonus year.

SCHIP is the State Children's Health Insurance Program as described in title XXI of the Act.

Separate State Program (SSP) means a program operated outside of TANF in which the expenditure of State funds may count for TANF maintenance-of-effort (MOE) purposes.

SSP-MOE Data Report is the report containing disaggregated and aggregated data required to be filed on SSP-MOE recipients in separate State programs as specified in §265.3(d) of this chapter.

State means each of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa.

TANF means The Temporary Assistance for Needy Families Program.

We (and any other first person plural pronouns) means the Secretary of Health and Human Services or any of the following individuals or organizations acting in an official capacity on

the Secretary's behalf: the Assistant Secretary for Children and Families, the Department of Health and Human Services, and the Administration for Children and Families.

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

(a) Except as provided in §270.9, we will award \$200 million in bonus funds annually, subject to Congressional authorization and the availability of the appropriation.

(b) The amount payable to a State in a bonus year may not exceed five percent of a State's family assistance grant.

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

(a) Performance measures: general.

We will base the high performance bonus awards on four work measures and four measures that support work and self-sufficiency related to participation by low-income working families in the Food Stamp Program and participation of former TANF recipients in the Medicaid and SCHIP programs.

(b) Work Measures.

(1) Beginning in FY 2002, we will measure State performance on the following work measures:

- (i) Job entry rate;
- (ii) Success in the work force rate;
- (iii) Increase in the job entry rate; and
- (iv) Increase in success in the work force rate.

(2) For any given year, we will score and rank competing States and award bonuses to the ten States with the highest scores in each work measure.

(c) Measures of participation by low-income working households in the Food Stamp Program.

(1) Food Stamp absolute measure.

(i) Beginning in FY 2002, we will measure the number of low-income working households with children (i.e., households with children under age 18 who have an income less than 130 percent of poverty and earnings equal to at least half-time, full-year minimum wage) receiving Food Stamps as a percentage of the number of low-income working households with children (as defined in this subparagraph) in the State.

(ii) We will rank all States that choose to compete on this measure and will award bonuses to the three States with the highest scores. We will calculate the percentage rate for this measure to two decimal points. If two or more States have the same percentage rate for the measure, we will calculate the rates for these States to as many decimal points as necessary to eliminate the tie.

(2) Food Stamp improvement measure.

(i) Beginning in FY 2002, we will measure the improvement in the number of low-income working households with children (i.e., households with children under age 18 who have an income less than 130 percent of poverty and earnings equal to at least half-time, full-year Federal minimum wage) receiving Food Stamps as a percentage of the number of low-income working households with children (as defined in this subparagraph) in the State.

(ii) For any given year, we will compare a State's performance on this measure to its performance in the previous year, beginning with a comparison of calendar (CY) 2000 to CY 2001, based on Census Bureau decennial and annual demographic program data.

(iii) We will rank all States that choose to compete on this measure and will award bonuses to the seven States with the greatest percentage point improvement in this measure. We will calculate the percentage rate for this measure to two decimal points. If two or more States have the same percentage rate for this measure, we will calculate the rates for these States to as many decimal points as necessary to eliminate the tie.

(d) Measures of participation by low-income families in the Medicaid/SCHIP Programs.

(1) Medicaid/SCHIP absolute measure.

(i) Beginning in FY 2002, we will measure the number of individuals receiving TANF benefits who are also enrolled in Medicaid or SCHIP, who leave TANF in a calendar year and are enrolled in Medicaid or SCHIP in the fourth month after leaving

TANF assistance, and who are not receiving TANF assistance in the fourth month as a percentage of individuals who left TANF in the fiscal year and are not receiving TANF assistance in the fourth month after leaving.

(ii) We will rank the performance of each State that chooses to compete on this absolute measure and award bonuses to the three States with the highest scores.

(iii) We will calculate the percentage rate for this measure to two decimal points. If two or more States have the same percentage rate for this measure, we will calculate the rates for these States to as many decimal points as necessary to eliminate the tie.

(2) Medicaid/SCHIP improvement measure.

(i) Beginning in FY 2002, we will measure the improvement in the number of individuals receiving TANF benefits who are also enrolled in Medicaid or SCHIP, who leave TANF in a fiscal year and are enrolled in Medicaid or SCHIP in the fourth month after leaving TANF assistance, and who are not receiving TANF assistance in the fourth month as a percentage of individuals who left TANF in the fiscal year and are not receiving TANF assistance in the fourth month after leaving.

(ii) For any given year, we will compare a State's performance on this improvement measure to its performance in the previous year, beginning with a comparison of FY 2000 to FY 2001, based on a quarterly submission by the State as determined by matching individuals (adults and children) who have left TANF

assistance and who are not receiving it in the fourth month with Medicaid or SCHIP enrollment data.

(iii) We will rank the performance of all States that choose to compete on this improvement measure and will award bonuses to the seven States with the greatest percentage point improvement in this measure.

(iv) We will calculate the percentage rate for the measure to two decimal points. If two or more States have the same percentage rate for this measure, we will calculate the rates for these States to as many decimal points as necessary to eliminate the tie.

(e) Option to compete.

Each State has the option to compete on one, any number of, or none of the measures specified in this section.

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

(a) Definitions.

The work measures are defined as follows:

(1) The Job Entry Rate means the unduplicated number of adult recipients who entered employment for the first time in the performance year (job entries) as a percentage of the total unduplicated number of adult recipients unemployed at some point in the performance year.

(2) The Success in the Work Force Rate is composed of two sub-measures defined as follows:

(i) The Job Retention Rate means the performance year sum of the unduplicated number of employed adult recipients in each quarter one through four who were also employed in the first and second subsequent quarters, as a percentage of the sum of the unduplicated number of employed adult recipients in each quarter. (At some point, the adult might become a former recipient.); and

(ii) The Earnings Gain Rate means the performance year sum of the gain in earnings between the initial and second subsequent quarter in each of quarters one through four for adult recipients employed in both these quarters as a percentage of the sum of their initial earnings in each of quarters one through four. (At some point, the adult might become a former recipient.)

(3) The Increase in the Job Entry Rate means the positive percentage point difference between the job entry rate for the performance year and the job entry rate for the comparison year; and

(4) The Increase in Success in the Work Force Rate means the positive percentage point difference between the success in the work force rate for the performance year and the success in the work force rate for the comparison year. It is composed of two sub-measures defined as follows:

(i) The Increase in the Job Retention Rate means the positive percentage point difference between the job retention rate for the performance year and the job retention rate for the comparison year; and

(ii) The Increase in the Earning Gain Rate means the positive percentage point difference between the earnings gain rate for the performance year and the earnings gain rate for the comparison year.

(b) Ranking of States.

(1) We will measure State performance in the work measures over the course of an entire fiscal year both for the performance year and the comparison year, if applicable.

(2) We will rank the competing States on the work measures for which they:

(i) Indicate they wish to compete; and

(ii) Submit the data specified in §270.6 within the time frames specified in §270.11.

(3) We will rank the States on absolute performance in each of the work measures in paragraphs (a)(1) and (a)(2) of this section. For each of the work measures in paragraphs (a)(3) and (a)(4) of this section, we will rank States based on the percentage point increase in their improvement rate in the performance year compared to the comparison year. The rank of the performance in paragraphs (a)(2) and (a)(4) will be a composite weighted score of the rank of the job retention and the earnings gain measures with the job retention rank having a weight of two. We will assign to each State not competing or submitting data for a work measure a rank that is the number following the last rank for States that properly submitted data on a timely basis and notified us of their interest in competing.

(4) We will calculate the percentage rate for each work measure to two decimal points. If two or more States have the same absolute or improvement rate for a specific work measure, we will calculate the rates for these States to as many decimal points as necessary to eliminate the tie.

§270.6 What data and other information must a State report to us?

(a) Data for work measures.

(1) If a State wishes to compete on any of the work measures specified in §270.5(a), it must collect quarterly and report semi-annually for the performance year and, if the State chooses to compete on an improvement measure, the comparison year, the identifying information on all adult TANF recipients as specified in program guidance.

(2) Each State must submit the information in this paragraph for both adult TANF recipients and adult SSP-MOE recipients for whom the State would report the data described in paragraph (b) of this section.

(b) Data on SSP-MOE programs.

In order to compete on any high performance bonus measure, each State must submit the information in Sections One and Three of the SSP-MOE Data Report as specified in §265.3(d) of this chapter.

(c) Intent to compete.

Each State must notify ACF on which of the measures it will compete in each bonus year.

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

(a) We will use Census Bureau data to rank States on their performance on the Food Stamp measures in §270.4(c). We will rank only those States that choose to compete on these measures.

(b) We will rank State performance on the Medicaid/SCHIP measures in §270.4(d) based on data submitted by those States that choose to compete on these measures, as determined by matching TANF individuals who were enrolled in Medicaid/SCHIP and are no longer receiving TANF assistance with Medicaid/SCHIP enrollment data.

§270.8 How will we allocate the bonus award funds?

(a) In FY 2002 and beyond, we will allocate and award \$160 million to the ten States with the highest scores for each work measure as follows, subject to reallocation as specified in

§270.9:

- | | |
|--|---------------|
| (1) Job Entry Rate..... | \$64 million |
| (2) Success in the Work Force..... | \$40 million |
| (3) Increase in Job Entry Rate..... | \$32 million |
| (4) Increase in Success in the Work Force..... | \$24 million; |
| (b) In FY 2002 and beyond, we will allocate | and award |

\$20 million to the ten States with the highest scores on the Food Stamp measures and \$20 million to the ten States with the highest scores on the Medicaid/SCHIP measures, subject to reallocation as specified in §270.9. For each measure, we will:

(1) Award \$6 million to the three States with the highest scores on the Food Stamp absolute measure;

(2) Award \$6 million to the three States with the highest scores on the Medicaid/SCHIP absolute measure;

(3) Award \$14 million to the seven States with the highest scores on the Food Stamp improvement measure; and

(4) Award \$14 million to the seven States with the highest scores on the Medicaid/SCHIP improvement measure.

(c) We will distribute the bonus dollars for each measure based on each State's percentage of the total amount of the State family assistance grants of the ten States that will receive a bonus.

§270.9 How will we redistribute funds if that becomes necessary?

(a) If we cannot distribute the funds as specified in §270.8, due to the statutory limit on the amount of each State's bonus award, we will reallocate any undistributed funds among the measures listed in §270.4.

(b) If we still cannot distribute funds within the bonus year, they will remain available for distribution in the next bonus year, to the extent authorized by law.

§270.10 How will we annually review the award process?

(a) Annual determination.

Annually, as needed, we will review the measures, data sources, and funding allocations specified in this part to determine if modifications, adjustments, or technical changes are necessary. We will add new measures or make changes in the funding allocations for the various measures only through regulations.

(b) Criteria.

We will determine if any modifications, adjustments, or technical changes need to be made based on:

(1) Our experience in awarding high performance bonuses in previous years; and

(2) The availability of national, State-reliable, and objective data.

(c) Consultation.

We will consult with the National Governors' Association, the American Public Human Services Association, and other interested parties before we make our final decisions on any modification, adjustment, or technical changes for the bonus awards. We will notify States and other interested parties of our decisions through annual program guidance. We will also post this information on the Internet.

§270.11 When must the States report the data and other information in order to compete for bonus awards?

(a) All measures.

Each State must submit a list of the measures on which it is competing to ACF by February 28 of each bonus year.

(b) Work measures.

Each State must collect quarterly and submit semi-annually during the bonus year the data specified in §270.6(a) as follows:

(1) The data must be submitted by February 28 of the bonus year for the first and second quarters of the performance year and, if a State chooses to compete on an improvement measure, the first and second quarters of the comparison year.

(2) The data must be submitted by August 31 of the bonus year for the third and fourth quarters of the performance year and, if a State chooses to compete on an improvement measure, the third and fourth quarters of the comparison year.

(c) SSP-MOE reporting.

Each State must collect quarterly its SSP-MOE Data Report as specified in §270.6(b) and submit it:

(1) At the same time as it submits its quarterly TANF Data Report; or

(2) At the time it seeks to be considered for a high performance bonus as long as it submits the required data for the full period for which this determination will be made.

(d) Medicaid/SCHIP measures.

Each State must submit the data required to compete on the Medicaid/SCHIP measures by February 28 and August 31 of each bonus year in a manner that we and HCFA will specify.

§270.12 Must States file the data electronically?

Each State must submit the data required to compete for the high performance bonus work measures and the Medicaid/SCHIP measures electronically in a manner that we and HCFA will specify.

§270.13 What do States need to know about the use of bonus funds?

(a) A State must use bonus award funds to carry out the purposes of the TANF block grant as specified in section 401 (Purpose) and section 404 (Use of Grants) of the Act.

(b) As applicable, these funds are subject to the requirements in and limitations of sections 404 and 408 of the Act and §263.11 of this chapter.

(c) For Puerto Rico, Guam, the Virgin Islands, and American Samoa, the bonus award funds are not subject to the mandatory ceilings on funding established in section 1108(c)(4) of the Act.

(d) States must report quarterly on the use of the bonus funds.

Response: We believe the minimal data States must provide to compete for the work measures, cross-referenced to or matched with the NDNH data, will provide the basis for national uniform, objective, and reliable job retention and earnings information on which we can make bonus awards on these measures with full confidence. As proposed, we will use Census Bureau data as the data source for the Food Stamp measure; we will use State Medicaid and SCHIP data (matched with TANF data at the State level) as the data source for the Medicaid/SCHIP measure.

Comment: Rather than basing the amount of the award on the percentage of TANF funds a State is allotted, one commenter recommended that, in distributing funds among the top ten winners in each measure, we base the bonus amount on the percentage improvement a State achieves.

Response: We continue to believe that the allocation of bonus funds based on a percentage of a State's family assistance grant in relation to the total bonus award for that measure is the most appropriate allocation method. This approach recognizes the potential number of individuals affected by the State's performance, the State resource costs to achieve levels of high performance, and the five-percent funding limitation in the statute.

Section 270.9 How will we redistribute funds if that becomes necessary?

In the NPRM, we proposed a two-step process to redistribute funds, if for some reason we cannot award the full annual amount of \$200 million in any fiscal year. We proposed that, if we could not distribute the funds as specified in §270.8, due to the statutory limit on each State's bonus award, we would reallocate the funds among the measures proposed in §270.4. If the funds still could not be distributed within the bonus year, we proposed that they would be available for distribution in the following year.

Comments: Two commenters concurred with the proposal that we re-allocate any undistributed funds among the top ten States. However, they also recommended that if we still cannot distribute funds within the bonus year, we should award the funds to the eleventh and twelfth State in rank order.

Response: We reconsidered these suggestions, which we had evaluated earlier, in the context of our external consultations. We find no compelling reason to accept this suggestion or to change the process we proposed in the NPRM. As we indicated above, we believe ten awards in each measure offers a reasonable and clear incentive to States. We do not believe diluting this incentive would further the aims of the bonus system,

particularly as we proposed another more efficient mechanism to ensure that funds that cannot be awarded in a fiscal year will remain available, i.e., will be rolled into the next fiscal year's awards.

However, we will reconsider this suggestion if: (1) we find that, in FY 2003, the bonus awards have not been re-authorized in the statute, and we cannot roll funds forward; and (2) we have a situation in which funds would remain unawarded.

Section 270.10 How will we annually review the award process?

In this section of the NPRM, we proposed to annually review the measures, data sources, and funding allocations for the high performance bonus system to determine if modifications, adjustments, or technical changes were needed. We stated explicitly that we would not add new measures or change funding allocations except through regulations.

Also in this section, we proposed that we would consult with NGA and APHSA and other interested parties before we made our final decisions on performance components for bonus awards in FY 2002, FY 2003 and beyond; notify States through program guidance of our decisions; and post this information on the Internet.

Comments: Most commenters were supportive of these proposed provisions but provided additional comments and recommendations.

(1) Regarding the proposed annual review of data sources, one commenter urged us to use the review process to evaluate annually whether new data sources are available. They supported a broader measure for determining State success in assuring health coverage for low-income families that would require additional data sources.

(2) Regarding the proposed consultation activities, a State "welcomed the flexibility and input but only if changes produce little burden on States."

(3) Other commenters urged us to include members of the advocacy community in the review process, i.e., "specify in the final rule that our consultation with interested parties will include, among others, local elected officials (such as mayors and county officials), labor unions, charitable organizations (such as those providing emergency food assistance and monitoring services to families with children), and low-income clients and their advocates."

(4) One commenter recommended that we should release the findings of the annual review process.

Response: One of the purposes of the annual review is to identify and possibly implement certain changes, modifications, and technical corrections in the high performance bonus system,

but not changes in the measures or funding allocations. We will change these latter items only through rulemaking.

We view the high performance bonus system, however, as one that is still new for both the States and the Federal government and one that will evolve and need refinements in the future. We agree with the first commenter and are committed to looking to identify new, more reliable data sources. We also agree that our external consultations, as they have done in the past, will include a broad range of "interested parties." However, we have not added specific examples of such agencies and organizations in the regulatory text because we do not think it is necessary or appropriate. (We specified the National Governors' Association and the American Public Human Services Association in this section because they are specified in the statute.)

Finally, we have not accepted the suggestion to release the findings of the annual review. We believe such a release would be duplicative because the results will be shared through our consultation activities and/or through periodic guidance. If any changes result, the guidance containing these changes will explain the basis for the changes, including our rationale and the results of our review and consultation.

Comment: One commenter recommended that, as a part of the consultation process, we should post the data submitted by States in competing for the bonus on the Internet.

Response: We will make some of the data that are submitted by the States competing for the bonus available annually, after we have ranked the States and officially awarded the bonuses. We will not make any social security numbers available.

oh, good.

Section 270.11 When must the States report the adult recipient data and other information related to the work measures?

In the NPRM, we proposed time frames for States to submit various data required for the proposed work measures.

Comment: One commenter recommended that the final data be reported 13 months after the last quarter of the Federal fiscal year. The commenter did not discuss the reason for the suggested revision.

Response: We have made no change in this section. If we adopted the time frame suggested by the commenter, we could not issue the awards during the bonus year.

Section 270.12 Must States file the data electronically?

In this section, we proposed that, in order to compete for the high performance bonus, each State must submit data electronically on the work measures and on the Medicaid/SCHIP outcome measure in a manner that we and HCFA will specify.

Comment: One commenter said that, if States are to submit data electronically, we must develop procedures well in advance, with adequate testing at the State and Federal levels.

Response: We agree that we should develop and test the data submission procedures in time for use in the FY 2002 bonus year. We intend to have further discussions on these matters with Federal and State staff following publication of the final rules and prior to implementation.

Section 270.13 What do States need to know about the use of bonus funds?

In the NPRM, we specified some of the requirements for the use of bonus funds, e.g., that funds must be used to carry out the purposes of the Act (section 401) and must meet the requirements

of section 404 (Use of Funds) and 408 (Prohibitions; Requirements) of the Act.

We also indicated that any expenditures for "assistance" are subject to the restrictions on the use of Federal funds at 45 CFR 263.11. We revised the proposed regulatory language because we did not want it misinterpreted. Regardless of the purposes to which the bonus funds are put, a State's expenditure of bonus funds is subject to the requirements at 45 CFR 263.11. We had referred specifically to "assistance" in the NPRM because we wanted to alert States to the special restrictions applying to the use of reserved funds (i.e., carryover funds) under section 404(3) of the Act. A State may spend reserved funds only on assistance or related administrative costs. (See 64 FR 17840 for further discussion.)

The majority of commenters on this section urged us to provide as much flexibility as possible in the use of these funds, e.g., to "exempt these funds from the constraints of the regulations and administrative caps associated with the SFAG." One commenter urged us to follow the model of the Department of Agriculture's Food and Nutrition Service, which rewards States for payment accuracy by providing additional administrative funds without restrictions. Without this flexibility, the bonus award would not provide an incentive to achieve but would become "just another quarterly advice of TANF funding availability."

In emphasizing recommendations for flexibility, several commenters noted the lack of congruence between the proposed bonus awards tied to success in the Food Stamp and the Medicaid/SCHIP programs and a State TANF agency's inability to use TANF dollars to, for example, increase health care coverage for an additional portion of the low-income population, provide food stamp outreach, or directly fund food shelves. They recommended that we allow bonus dollars for expenditures that could positively affect the outcomes being measured, i.e., an increase in health care coverage or Food Stamp use.

Other commenters suggested that, if flexibility were provided, States could use bonus funds for a wide range of activities, such as economic development targeted at TANF families; supplemental wages for newly employed TANF workers; allowable medical services; supplements for physician reimbursement rates for Medicaid to stimulate more access to health care; State programs or initiatives that reduce poverty, such as EITC credits; and increases in the number and quality of child care slots.

One commenter, aware of the statutory restrictions on these funds, urged us to seek a legislative amendment to provide greater flexibility.

Response: First, we want to reiterate that a State has the same flexibility in the use of these bonus funds as it has in the use of other TANF block grant funds.

Second, despite a commenter's assertion that the statute does not require these limitations on the bonus funding, sections 404 and 408 of the Act limit the purposes for which high performance bonus funds can be used. Both sections refer to the use of a grant "under section 403." Since high performance bonus awards (as well as bonus awards to reduce out-of-wedlock births, contingency funds, and supplemental funds) are grants under section 403, the limitations in section 404 and 408 are statutory. Likewise, the restriction on the use of TANF funds for Food Stamp outreach is statutory, based on the Agricultural Research, Extension, and Education Reform Act of 1998, Pub.L.105-185. *What is that about - why? who wanted that?*

Comment: One commenter questioned whether 45 CFR 263.13(a)(i) applied the 15-percent administrative cap limitation to the State's SFAG or to all funds a State may receive under section 403 of the Act.

Response: Under 45 CFR 263.13(a)(i), the 15-percent cap applies to all funds a State receives under section 403 of the Act, except for Welfare-to-Work funds under section 403(a)(5). As explained in the preamble to the final TANF rule, this section

provides for a consolidated administrative cap. Thus, it limits the total amount a State could spend on administrative costs based on the total amount of funding a State receives under section 403. We will not apply the 15-percent cap separately to each grant or award under section 403.

Comment: Other commenters asked that we clearly state that the high performance bonus funds, if not expended in the year of the award, would be available in fiscal years until such time as they are spent.

Response: Under section 404 of the Act, there is no expenditure period for TANF funds awarded to States under section 403 of the Act. The "carryover" provision includes the bonus award funds. Therefore, such funds are available until such time as they are spent in accordance with TANF requirements (including the requirement that reserved funds must be spent on "assistance" or associated administrative costs under the TANF program)

For clarity, we have added new paragraph (d) in this section to specify that States must report quarterly on the use of the bonus funds, along with other TANF funds, using the ACF-196.

VII. Amendment to 45 CFR Part 265

Comment: A few commenters objected to the requirement that States must submit Sections One and Three of the SSP-MOE reports in order to qualify for the high performance bonus. They also commented that a State should not be required to submit MOE data as a condition of competing for the food stamp and Medicaid/SCHIP awards since these measures do not use the SSP-MOE data.

Response: This first comment was similar to one we received on the NPRM for the general TANF rule. It reappeared because §270.11(b) of the high performance bonus NPRM reiterated the requirement from the general TANF rule (at 45 CFR 265.3(d)) that States wishing to compete for a high performance bonus must submit data reports on their separate State programs (SSPs). The SSP-MOE reporting requirement in the general TANF rule covers all high performance bonus measures.

Last year, when we published the TANF final rule and the high performance bonus NPRM, we believed that submission of the SSP-MOE reports was critical to understanding State caseload changes and work performance. However, as TANF and SSPs have continued to evolve, and we have gained more experience with the caseload reduction credit and high performance bonus processes, we have encountered situations where a waiver of the SSP-MOE reporting requirement seemed appropriate. Most notably, as discussed in more detail later, States have raised questions about a very few SSPs that do not address basic needs; do not appear to be



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FAX TRANSMITTAL

FAX: 202-395-6974
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Maddy's final fax - let me know
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TO: Laura Withering DATE: 6/28/00
FAX: ()
SUBJECT: HPB Final Rules - Part 3

☐ AS REQUESTED ☐ COMMENT ☐ CLEARANCE ☐ FYI

Attached are all remaining
changes passed to the final
rules

I'll fax the remaining
background materials requested
in our 1:30 conf call tomorrow
morning.

I'll wait to hear back
about whether you have any
comments on these changes
Thanks -

Madeline
*P.S. Change eg. 142 retention/earnings
being revised further based on our
conversations today. will send in an.



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TO: Laura Wilber DATE: 6/28/00
FAX: ()
SUBJECT: HPA Final Rules - Part 2
(Change ps. 4-93)

☐ AS REQUESTED

☐ COMMENT

☐ CLEARANCE

☐ FYI

Attached are all change
pages to the final rules
addressing 6/21 comments, 6/27
edits and discussions in our
cont. call yesterday.

I have a few more
factual pieces of info
answering questions raised
yesterday, but I'll share
those w/ you on the 1:30
call.

Madeline

- F. Congressional Review.
- G. Executive Order 13132.

I. Legislative Background

A. The Temporary Assistance for Needy Families Program

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

98-4
Title I also "de-linked" the eligibility for cash assistance and Medicaid benefits. Under the Medicaid amendments, a family's eligibility for Medicaid is based on whether the family would have been eligible under the State's prior AFDC plan.

TANF replaced the national welfare program known as Aid to Families with Dependent Children (AFDC) that provided cash

assistance to needy families on an entitlement basis. It also replaced the related programs known as the Job Opportunities and Basic Skills Training (JOBS) program and the Emergency Assistance (EA) program.

The new TANF program went into effect on July 1, 1997, except in States that elected to submit a complete plan and implement the program at an earlier date. We published final regulations to implement the work, penalties, and data collection provisions of the TANF program in the Federal Register on April 12, 1999 (64 FR 17720). These rules became effective October 1, 1999. We also published a number of other related regulations, including rules covering annual reports of State child poverty rates in relation to the TANF program (Notice of Proposed Rulemaking published September 23, 1998 (63 FR 50837)) and bonuses to reward States for decreases in out-of-wedlock births (final rule published April 14, 1999 (64 FR 18484)).

pg. 5 [The 1996 welfare reform law reflected widespread, bipartisan agreement on a number of key principles:

- Welfare reform should help move people from welfare to work.
- Welfare should be a short-term, transitional experience, not a way of life.

- Parents should receive the child care, health care, and other supports that they need to protect their children as they move from welfare to work.

pg 6 [• child support enforcement programs should become tougher and more effective in securing support from noncustodial parents.

- Because many factors contribute to poverty and dependency, solutions to these problems should not be "one size fits all." The system should allow States, Indian tribes, and localities to develop diverse and creative responses to these problems.
- The Federal government should place more emphasis on program results.

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

- Minimize double jeopardy or reward. (For example, the law already provides bonuses for reducing out-of-wedlock births, a caseload reduction credit, and penalties and incentives related to child support enforcement and paternity establishment.);
- Avoid additional data collection requirements and costs and build on existing systems;
- Avoid unintended consequences;
- Focus on positive rather than negative measures; and
- Reflect the strong emphasis on employment and self-sufficiency in the Federal law and in the States' implementation of the law. This emphasis should influence the measures included in the system and the distribution of bonus funds.

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pg. 14
We published a Notice of Proposed Rulemaking (NPRM) on December 6, 1999 (64 FR 68202). Since our initial consultations, we have held several additional formal and less formal discussions about TANF performance measures with States, State groups, and others. *selection*

For example, on July 21, 1999, we invited States, advocates, researchers, and others to a day-long consultation on issues related to outcome and performance measurement related to the preparation of a "Study and Report to Congress on Alternative Outcome Measures" (section 107 of the Personal Responsibility and Work Opportunities Reconciliation Act). In addition, the core provisions of the NPRM were very similar to the measures, issues,

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through employment. State performance to ensure that eligible families receive Food Stamps and Medicaid/SCHIP addresses two of the statutory purposes of the TANF program: providing assistance to needy families so that children may be cared for in their own homes and ending the dependence of needy parents on government benefits by promoting job preparation and work. Receipt of Medicaid/SCHIP and Food Stamps supports purpose two by helping make it possible for families to move off of welfare into employment, sustain that employment, and progress on the job to eventual full economic independence.

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

ok, Andrea?

Yes for
now

IV. Overview of the Public Comments

We received 130 comment letters, some with multiple signatures, from a wide range of national, State, and local entities and organizations, including: city and county governments; State

facilitate food stamp and Medicaid participation by low-income families; and the value of encouraging States to take steps necessary to improve access. At the same time, a number of these commenters had suggestions for modifications to the proposals.

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

some States had made significant efforts to improve access prior to the measurement period, and a variety of other issues.

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

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In response to the technical and substantive concerns raised by the States and others, we very carefully considered all the suggestions for how to improve the measures and looked for ways to address the States' concerns. As you will find in the section-by-section analysis, we have made a number of changes that respond to the concerns. For example, we have made it more explicit that States may choose whether to compete on the Food Stamp measure (consistent with our approach for all the measures), dropped the "qualifying conditions" for both the Food

Stamp and Medicaid/SCHIP measures (i.e., the threshold conditions that States had to meet in order to compete on these measures), added awards for absolute performance (not just improvement), and modified the improvement measure so that it is less biased towards States starting with a low level of performance in the comparison year.

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

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• Unlike prior law, under TANF, all the key statutory provisions regarding goals and responsibilities refer to the "State" rather than the "State agency"; the concept of "single State agency" is gone; and all notifications go to the chief executive officer of the State, not the State agency. Thus, the statutory language suggests that it is appropriate for the high performance bonus to look more broadly at State performance rather than TANF State agency performance.

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• The legislative history suggests that Congress intended that Food Stamps and Medicaid remain as part of the safety net for needy families affected by the TANF changes and that Congress was referring to welfare benefits when it included statutory language about reducing dependency on government benefits. More

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

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the managers' statement which: (1) refers to changes in the Food Stamp program, but does not suggest any TANF-related effects; (2) refers to PRWORA as a "fundamental reform of welfare" that "promotes work over welfare" [emphasis added]; and (3) speaks to not abandoning "those Americans who truly need a helping hand" and guaranteeing that children "will continue to receive the support they need." This interpretation of Congressional intent also corresponds with the

commenters commended our efforts to encourage in this area, almost all who commented on the serious methodological and substantive concerns noted that:

- States could earn awards based on this measure thus the measure could have unintended effects.
- The measure fails to reward increases in marriage rates among families with higher incomes.
- Success in increasing marriage among single parents could inadvertently diminish a State's chances of receiving a bonus.
- This measure might also disadvantage those 10 or more States with State or local EITC programs.

Among the philosophical objections were:

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

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was it necessary
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4 -> left with the
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I think it's helpful.
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states

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

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

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

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

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

who was this?

yes -
it's one

While the Centers for Disease Control and Prevention and the Alan Guttmacher Institute both publish State-level teen pregnancy data, some of those data are based on estimates because teen abortion data are not available for all States, and we did not consider them sufficiently reliable for this purpose.

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

ACF has taken several steps to focus more State attention on the family formation and pregnancy prevention goals of TANF. First, we have established new reporting requirements on State spending and program practices. More specifically, under the provisions in the TANF final rules, published on April 12, 1999 (64 FR 17720), the new fiscal reporting form (ACF-196) will capture expenditures on "Two-parent family formation and maintenance activities" and help us determine which States are making the biggest investments in this area. In addition, the new annual report from States will include summaries of State programs and activities directed at the third and fourth TANF purposes (see 45 CFR 265.9(a)(8)). We anticipate that this information will provide leads about promising practices that we can share among

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OK Andrea?

States to encourage innovation and increase efforts in these areas.

Secondly, in the summer of 1999, we issued a TANF funding guidance entitled, "Helping Families Achieve Self-Sufficiency." This document provides several examples of family formation and pregnancy prevention activities States could fund with Federal TANF or State MOE funds.

In the areas of teen pregnancy prevention and out-of-wedlock childbearing, the Department has continued its efforts to improve State and national outcomes. The latest national data show continued success in reducing the teen birth rate (which dropped 18 percent between 1991 and 1998). The rate of births to all unmarried women increased, but the rate for unmarried teens dropped in 1998.

On April 14, 1999, we issued the final regulations on the bonus to reward States with the largest decreases in their out-of-wedlock childbearing. On September 13, 1999, Secretary Shalala announced the first five winners of that bonus: Alabama, California, the District of Columbia, Massachusetts, and Michigan. Each received \$20 million. The reductions in their out-of-wedlock birth ratios ranged from 1.5 to 5.7 percent.

The suggestions for how we should construct a specific child care measure centered primarily on the number of children receiving child care subsidies and/or the amount of expenditures on eligible children. Commenters suggested various target populations, including:

- 1) TANF recipients and former TANF recipients;
- 2) children eligible under the provisions of the Child Care and Development Fund (i.e., at or below 85 percent of State median income);
- 3) children at or below 200 percent of poverty; or
- 4) children served both under the Child Care and Development Fund (CCDF) and, at State option, other subsidy programs.

Commenters also suggested child care as both an absolute and an improvement measure. Some commenters built into their proposed measures factors such as the appropriateness of payment rates, family co-payments, and the utilization of licensed care.

Several commenters also suggested child care as a qualifying condition or a threshold measure - either as a qualifying factor for a child care bonus or in order for a State to receive other bonus awards. For example: (1) before a State could receive a child care bonus, the State must pay a child care rate equal to at least the 75th percentile of the local market rate based on a survey that is not more than two years old; or (2) the State must spend a required percentage of child care funding for care that

(Entire section on
child care is
re-written)

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Response: We wholeheartedly agree that child care is of critical importance to working families, and we share the commenters' views that access to affordable, high quality care is a necessary part of a welfare reform program. In developing the NPRM, we did give considerable thought to the possibility of including a child care measure, not only because of its importance to working families but also because the CCDF program and the TANF program are closely related.

After considering all of the comments on the proposed rule, we decided not to include a child care measure in the high performance bonus system at this time for a number of reasons. Although the commenters provided thoughtful suggestions for a child care measure that went beyond our thinking when we considered a child care measure for the proposed rule, after careful examination, we found that none provided a workable measure that both used presently available data and met the test of a meaningful and effective outcome measure within the Federal child care subsidy world. We identified many issues with commenters' suggestions and realized that it would take considerable time and effort to develop a solid measure. We did not want to be driven by our goal to issue the performance bonus

regulations in time for the 2002 bonus year and end up precipitously adopting a child care measure, that, although was popular in principle with a majority of commenters, was flawed in its message -- potentially resulting in unintended, negative consequences for children -- and possibly so burdensome that it would not generate substantial competition among States.

Even if we used one or more of the less complicated measures that the commenters suggested, the current availability of data is problematic, particularly if we tried to capture data from both the CCDF system and the TANF system. (Recent TANF financial reports show that some States have made a significant investment in child care with untransferred TANF funds.) And if we looked beyond the CCDF and TANF programs to other investments in child care, such as State-only child care funds not required to be reported to TANF or CCDF, or to the Social Services Block grant, the data issues increased exponentially. Not only would data collections need to be designed, depending how broadly we designed a measure, but multiple data systems also would have to be re-tooled to capture the information.

Collecting very simple data, such as the number of children served, or expenditure per child, or even both in some related way, raises serious problems about overlaps and gaps in the existing data systems just between TANF and the CCDF. For example, under title IV-A of the Act, child care expenditures for maintenance of effort can be "double counted" in TANF and CCDF up

to a certain point. Current financial reporting systems do not provide for sorting out the overlap.

Moreover, using a measure of numbers of children served, without considering the amount of child care financial help families receive, could reward States that have very high family co-payments and low provider reimbursement rates -- or worse, drive States in that direction by rewarding higher numbers of children served while disregarding quality issues. We were unable to identify a less complicated measure that did not have the potential for directly impacting, on the question of quality services and quality outcomes for children, in a manner that could produce such unintended, negative consequences.

Current TANF data would not provide information such as family copayments or eligibility levels. Even within the CCDF, measuring payment rates is problematic, since construction of local market rates and reporting of payment rates is not highly regulated in the block grant environment. ACF does not collect information from each State on how its local market rates compare with the 75th percentile market rate benchmark, and there are no uniform standards on how a State must conduct a market survey for the purpose of establishing payment rates.

While some commenters suggested threshold measures related to licensure or certification of providers, information is not available in the TANF system regarding the placement of children

in care that meets either overall State standards or the CCDF health and safety standards. The suggestion for a threshold measure on overall State licensure or certification systems for child care would not necessarily result in a threshold that would relate significantly to the populations captured in a measure covering services to low income children, such as are served through CCDF or TANF or through other programs that would be included in a measure. And threshold measures based on numbers of low income children served or payment rates used suffer the same flaws as recounted above. Further, as discussed later, commenters voiced a number of concerns about threshold measures, and we have decided to drop them from all bonus measures. ✓

Although we have not added a child care measure to the high performance bonus system, we are very interested in continuing to work to improve existing child care data and performance measurement, both through research and collaborative work with States. As a matter of policy, we view child care as a critical support, not only for welfare families, but more broadly, for many if not all low-income working families. ~~Given this view, we need to use other, more universal opportunities for measuring progress in child care. For example, we have recently implemented child care performance measures under the Government Performance and Results Act (GPRA). The Department's 2001 GPRA plan includes a number of measures that ACF developed collaboratively with States that address both the quality and the affordability of child care.~~

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Beyond the focus on measurement, the Child Care Bureau (CCB) within ACF will continue a strong emphasis on providing technical assistance to the States and other child care partners to enhance the quality, affordability, and supply of child care for all families. The Bureau not only administers the CCDF, which is the primary source of Federal funds dedicated to child care for States, Tribes, and Territories, but provides leadership in helping to enhance the quality of child care for all children. Among its priority activities, the Bureau has established the National Child Care Information Center which disseminates information on child care resources to program officials and the general public and shares promising practices and trends from across the country.

Further, ACF will continue to encourage all States -- as some have already done -- to create seamless child care systems that provide subsidies for children of all low-income workers, regardless of their connection to the welfare system. In addition, our technical assistance initiatives will assist States in developing important partnerships with the private sector to improve and expand child care services. Finally, the Bureau is responsible for overseeing a key Federal research initiative on child care and promoting the Department's Healthy Child Care America campaign for safer and healthier child care programs, better informed parents and providers, and improved linkages between child care and health services. Through these efforts, we can identify and promote promising practices that will benefit

not only low-income children receiving financial help with child
care but all children who receive child care.

general public and shares promising practices and trends from across the country.

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

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

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Domestic Violence

Comments: A substantial number of the letters and notecards recommended adding a measure of how well States address domestic violence. In support of this recommendation, some commenters provided detailed background information about the prevalence of domestic violence among women on TANF and how domestic violence can hinder an individual's ability to maintain work in a way that leads to self-sufficiency.

- 89.52
- Provide education, training, and support for battered women and their families;
 - Increase the ability of battered women, including those on welfare, to obtain and retain employment and obtain child support;
 - Encourage greater linkages between child welfare, family and intimate partner violence, and criminal justice fields to better protect both children and parents in homes where violence occurs;
 - Enhance community prevention and response systems by increasing collaboration between the Department's State and Tribal family violence grantees and the Department of Justice's State and community-based grantees and other community-based groups; and
 - Increase the knowledge base about family and intimate partner violence, through data collection and research;

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Specific examples of activities related to this initiative include:

- As the commenters recognized, the TANF final rule includes provisions pertaining to the Family Violence Option instituted under PRWORA. The TANF final rule also provides States penalty relief when they fail to meet the numerical standards for time limits and the work participation rates because they provide good

- ACF has formed an interstate domestic violence working group that is examining a number of issues surrounding domestic violence and child support.
- The Department's Office of the Assistant Secretary for Planning and Evaluation is conducting assessments of State policies and practices regarding domestic violence in the TANF program.

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ACF will issue periodic reports and technical assistance materials reflecting the results of these and other activities. For example, the Center for Law and Social Policy, in conjunction with OCSE, recently published "models of Safe Child Support Enforcement," a guide for States and others.

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

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

to avoid. One commenter specifically acknowledged that it is difficult to measure displacement accurately.

Additionally, as the commenters also observed, the statutory WIA and WtW requirements in the area of worker protection are more detailed than the statutory TANF requirements; these differences would appear to pose problems for establishing uniform standards.

85.58 Response: As we said in the preamble to the TANF final rule, it would not be consistent with the principle of State flexibility embodied in the TANF statute for us to regulate a State's administrative procedures and require States to adopt the more extensive WtW statutory provisions for the TANF program.

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

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

Child Poverty Measure

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

On the other hand, child poverty is an area for which there are other mechanisms in the statute for monitoring and promoting positive State action. Section 413(i) of the Act requires that States report their child poverty rate annually and take corrective action when an increase in the child poverty rate is the result of the TANF program in the State. We published a final rule implementing these provisions on June 23, 2000 (65 FR 39234).

Comments: A number of commenters were concerned that a State could not be performing well if large numbers of already poor children and families were allowed to fall deeper into poverty. One commenter suggested that we add compliance with the child

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. The commenter did not assess the availability and interaction of racial/ethnic data for the various measures. Without doing a full analysis, we were also concerned that the suggestion might require that States conduct additional data collection and analysis. For these reasons, we have decided not to add a performance or a threshold measure based on racial/ethnic disparities.

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.

28.71 We also paid particular attention to the concerns of States and State representative organizations, given the statutory provision on consultation with NGA and APHSA and 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 this diversity. 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:

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.

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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

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. In 1999, participation continued to decline, although the rate of decline has slowed by two ~~percentage points in each of the last two years.~~

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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, the United States Department of Agriculture (USDA) and the Food and Nutrition Service (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

without compromising the food security of the low-income population the program serves. State efforts to conform food stamp rules with TANF rules need to recognize that the Food Stamp Program serves a large and diverse range of people, two-thirds of whom do not receive TANF assistance, i.e., cash assistance and, under certain circumstances, child care and transportation.

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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 assistance programs do not have eligibility standards that exceed 130 percent of poverty. Second, if a State has more liberal disregards, food stamp eligible working households with children are more likely to continue receiving

(Revised to use 85 some terminology throughout this section)

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TANF assistance, 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 assistance. 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 recipients of TANF assistance. Rather, it will be those States that increase food stamp participation the most among all low-income working households with children.

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Similarly, the absolute measure will reward States that serve the greatest percentage of low-income working households with children overall, not the most current or former TANF recipients.

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.

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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. The ratio in a State of working families participating in the Food Stamp program to working families that are income eligible for the program may appear lower than it is because of a State's vehicle asset limits or the Food Stamp Program's financial and non-financial eligibility tests. However, this will be true for every State. Thus, a State should not be disadvantaged in comparison to other States or to itself over time.

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 food stamp costs that are eligible for reimbursement under the Food Stamp Act. This includes the cost of activities to inform

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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, given the focus on work in the TANF statute, including the second purpose of the program. 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.

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Response: The bonuses are intended to reward those States that are the most successful in achieving the goals and purposes of the TANF program. We chose to limit the bonuses to the top 10 States in each performance measure in order to emphasize that the awards recognize the highest performance among States. Increasing the number of States eligible for a bonus under each measure would dilute the significance of the awards. 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

are not properly referred to and assisted in accessing 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 cash assistance. The food stamp outcome measure provides States with an incentive to ensure that eligible former TANF recipients are properly referred to and assisted in obtaining food stamps. 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

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.

(S. 102) 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. We will use the annual State estimates produced by the Census Bureau from its annual household survey program, beginning with the 2000 Census Supplemental Survey and

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transitioning to the Census Bureau's American Community Survey by 2003.

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 participating in the Food Stamp Program in

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3.103) Response: Based on our most recent available data, almost 85 percent of households participating in the Food Stamp Program in 1995 that contained a noncitizen also contained at least one citizen child. Thus, the majority of the noncitizen households identified as part of the low-income working population eligible

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. However, this information will not be used to restrict a State's ability to compete on the work measures.

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

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In addition, 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);

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.

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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. (Delete discussion of regulation)

Response: 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 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. In addition, tracking job characteristics, other than wages, e.g., benefits, would be extremely burdensome, if not impossible.

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

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.

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Response: These recommendations 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 the "sustained employment rate"

recommendation 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 these recommendations 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.

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Response: First, "supported" work currently is counted in the calculation of the work measure. Second, we have decided to count wage-paying, 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 this change will reduce the burden on States as they will not need to separate out and report different types of subsidized jobs. We also note that community service and work experience "jobs" would also count to the extent that wages are actually paid and reported to the State Employment Service agency.

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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.

- 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.

Response: 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.

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Finally, we recalculated the FY 1999 bonus improvement scores based on the recommended adjustment formula and found that it had the effect of narrowing the range of the improvement scores and had some limited impact on bonus winners. There was only a modest change in the improvement rate ranking of "early reform" States, based on this recommended approach. For these reasons, we have not adopted the suggestion to consider past performance earlier than the comparison year.

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

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Response: We have not limited the population we are measuring with the work measures to just those currently receiving cash assistance. We also include all individuals receiving TANF "assistance" as specified in §260.31 of the TANF final rule, i.e., ^{mostly/primarily} cash assistance and, ~~under certain circumstances, child care and transportation.~~ We also look at work-related outcomes for those who received cash assistance in a prior period. 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 unemployed 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 a single performance year, not over a two-year period.

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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

Act. The "carryover" provision includes the bonus award funds. Therefore, bonus funds, once awarded to States, are available until such time as they are spent in accordance with TANF requirements (including the requirement that reserved funds must be spent on "assistance" or associated administrative costs under the TANF program).

In the NPRM, we also indicated that any expenditures for "assistance" are subject to the restrictions on the use of Federal funds at 45 CFR 263.11. We have revised the proposed regulatory language because we did not want it misinterpreted. Regardless of the purpose to which the bonus funds are put, a State's expenditure of bonus funds is subject to the requirements in §263.11. We had referred specifically to "assistance" in the NPRM because we wanted to alert States to the special restrictions applying to the use of reserved (i.e., carryover) funds under section 404(e) of the Act. A State may spend reserved funds on only assistance re related administrative costs. (See 64 FR 17840 for further discussion.)

For clarity, we have added new paragraph (d) in this section to specify that States must report quarterly on the use of the bonus funds, along with other TANF funds, using the ACF-196.

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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. (Deleted sentence)

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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.

In summary, since private plans seldom offer benefits comparable to Medicaid, we would not necessarily want to give States the same credit for private coverage. Furthermore, participation in employer-sponsored insurance does not affect an individual's entitlement to transitional medical assistance.

February 28 of each bonus year. This provision is unchanged from the NPRM. In paragraphs (b) and (d), we specify that the dates for submitting data for the work measures and the Medicaid/SCHIP measures will be specified in program guidance. In paragraph (c), we specify when States must submit SSP-MOE data. This provision is unchanged from the NPRM.

In the NPRM, we proposed that States must submit data for the work measures by February 28 and August 31 of each bonus year. These time frames reflected the proposed option for States to match adult recipient data with Unemployment Insurance data. We have dropped that option in the final rule. The final rule provides that we will match State adult recipient identifying information provided by competing States with wage data in the NDNH. We are working closely with the Office of Child Support Enforcement to finalize all technical issues related to this match, and we will specify the reporting timeframes in program guidance at a later date.

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Comment: One commenter recommended that the final data be reported 13 months after the last quarter of the Federal fiscal year. The commenter did not discuss the reason for the suggested revision.

FYI { Since submitting regs. to OMB, we realized that these proposed dates may not be workable when using CS NDNH data. Therefore, we are changing the regs. to give us time to sort out technical issues w/OCSE. We've included the preamble and reg. changes.

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§270.11 When must the States report the data and other information in order to compete for bonus awards?

(a) All measures.

Each State must submit a list of the measures on which it is competing to ACF by February 28 of each bonus year.

(b) Work measures.

Each State must collect quarterly and submit semi-annually during the bonus year the data specified in §270.6(a) as follows:

(1) The data for the first and second quarters of the performance year and, if a State chooses to compete on an improvement measure, the first and second quarters of the comparison year, must be submitted by the dates we will specify in program guidance.

(2) The data for the third and fourth quarters of the performance year and, if a State chooses to compete on an improvement measure, the third and fourth quarters of the comparison year, must be submitted by the dates we will specify in program guidance.

(c) SSP-MOE reporting.

Each State must collect quarterly its SSP-MOE Data Report as specified in §270.6(b) and submit it:

(1) At the same time as it submits its quarterly TANF Data Report; or