Emil E. Parker
05/15/98 10:57:29 AM

Record Type: Record

To: Melinda D. Haskins/OMB/EOP
cc: Diana Fortuna/OPD/EOP
bcc:
Subject: Re: Final Passback on the HHS Contingency Fund Report

A few minor changes:

In the hand-written insert on the left side of the page, add "during the period from 1991 through 1994," after "34% of the months."

In the insert on the lower right side of the page, replace "degree to which States would make the necessary expenditures to match Federal contingency funds" with "extent of these States' expenditures beyond the CF MOE level, which are needed to match Federal contingency funds."

Thank you.

Melinda D. Haskins 05/15/98 09:53:58 AM

Melinda D. Haskins 05/15/98 09:53:58 AM

Record Type: Record

To: Diana Fortuna/OPD/EOP, Emil E. Parker/OPD/EOP, Sanders D. Korenman/CEA/EOP
cc: Anil Kakani/OMB/EOP, Jeffrey A. Farkas/OMB/EOP
Subject: Final Passback on the HHS Contingency Fund Report

I've just faxed you the proposed final passback to HHS on its contingency fund report. Please provide me with specific edits to the document by 10:30 a.m. today. Thanks.

Sanders D. Korenman
05/15/98 12:23:14 PM

Record Type: Record

To: Melinda D. Haskins/OMB/EOP, Diana Fortuna/OPD/EOP

cc:

Subject: Re: Final Passback on the HHS Contingency Fund Report

Change the phrase "none are predicted" to something like "none are projected in current budget forecasts"

Change "These data are not conclusive" "These data alone are not estimates of the adequacy of the contingency fund during a recession. One would also need to know how many of these states...." then follow with the remainder of the next sentece.

Change the word "match" to "draw down" → Where is this word.

Diana,

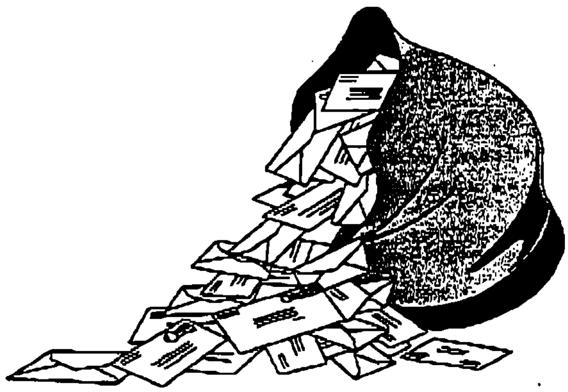
I typed this up. I couldn't find the word "match"! Also, it is saved on my hard drive. If I get a disk, then you can print it.

-d.

OFFICE OF MANAGEMENT AND BUDGET

Legislative Reference Division
Labor-Welfare-Personnel Branch

Telecopier Transmittal Sheet



FROM: Melinda Haskins **395-3923**

DATE: 5/15/98 **TIME:** 9:30 a.m.

Pages sent (including transmittal sheet): 4

COMMENTS: Attached is the proposed passback for the HHS' contingency Fund report. Comments are due to me by 10:30 a.m. TODAY

TO: Diana Fortuna
Sanders Korenman
Emil Parker

Thanks!

PLEASE CALL THE PERSON(S) NAMED ABOVE FOR IMMEDIATE PICK-UP.

OMB passback

IV. ANALYSIS OF THE OPERATION OF THE CONTINGENCY FUND

In order to examine the status and operation of the Contingency Fund to date and consider whether changes or improvements are needed at this time, this report analyzes five key components of the Contingency Fund:

- Total funding available for the Contingency Fund;
- How the eligibility triggers target needy States;
- Contingency Fund maintenance of effort requirements;
- Calculations under the reconciliation formula; and,
- Offsetting funds adjustments required by the Adoption and Safe Families Act of 1997.

Any evaluation of the Contingency Fund at this time must be viewed as preliminary since the economy in most areas of the country is very strong and States are in the early stages of implementing the new TANF program. The Contingency Fund has not yet been tested during the period of economic downturn for which it was designed. Therefore, it would be premature to assess the long-term effectiveness of the fund.

A. *Total Funding Available for the Contingency Fund*

~~Current Funding Needs~~ e

The PRWORA appropriated $2 billion for the operation of the Contingency Fund for FY 1997 through FY 2001. The Adoption and Safe Families Act of 1997 reduced the $2 billion appropriation for the Contingency Fund by $40 million for a total of $1.96 billion. Under current economic assumptions, all estimates indicate that the appropriated funds are adequate to meet the needs during this period.

To date, two States have requested $17.2 million of provisional Contingency Fund payments--payments that must be reconciled under the process described later in this report. The tables in **Appendix D** provide a range of possible amounts payable to the States under the Contingency Fund, including the maximum amount of Contingency Funds that each State could claim if they met the trigger and MOE requirements for a full 12 months in a fiscal year.

The Administration projects Contingency Fund outlays at $210 million for the period FY 1998-2003, while the Congressional Budget Office (CB) budget baseline projects outlays at $435 million for the same period. (Although the Contingency Fund is only authorized and appropriated through FY 2001, the baseline assumes continuation beyond then.) Under either projection, the appropriation is sufficient to meet projected outlays. It should be noted that these outlay estimates were prepared assuming that the current favorable economic climate would continue. Moreover, neither CBO nor OMB forecast economic assumptions on a regional basis. Therefore, if a national economic downturn should occur, or if the economic conditions in specific States should deteriorate, then the actual outlays may differ from the budget estimates that do not build in the possibility of a recessionary scenario.

In addition, the statutory procedure for recovering $40 million from the Contingency Fund as prescribed in the Adoption and Safe Families Act of 1997 will have a direct impact on focuses on the reconciliation process, outlines the circumstances under which the Adoption and Safe Families Act provision could affect the funding available.

Finally, it is important to note that under PRWORA States may reserve any unspent TANF funds indefinitely as a financial cushion for future periods of increased need. During the current period of declining caseloads, most States have some unobligated TANF funds that may be saved for future contingencies. In addition, PRWORA established a Welfare Reform Loan Fund with an appropriation of $1.7 billion for five years in order to assist States during economic downturn. This Loan Fund can be accessed by a State in amounts not to exceed 10% of a State's Family Assistance Grant. We will need time to assess the choices States will make about how to use these funds, in addition to the Contingency Funds, during a recession.

a like that early of the 1990s.

~~Future~~ Funding ~~Needs~~ e

Some have suggested that the Contingency Fund be adjusted to better accommodate national or regional recessions and increased welfare needs. Proposals have included the elimination of the current $2 billion cap, i.e., an open-ended fund, and an automatic increase in the Contingency Fund level triggered by changes in specified economic indicators. As the Administration noted while welfare reform was under consideration by the Congress, the current funding of the CF would be insufficient in all likelihood during a severe recession though none is predicted. ~~Proponents of these changes have pointed to the recession in the early 1990's and the inadequacy of the current Contingency Fund to address needs of such magnitude.~~ e

While it is not possible to develop an accurate numerical estimate of the demand on the Contingency Fund under ~~this previous~~ recession for several reasons, we can provide some context by looking at the number of States that would have met the unemployment rate trigger and the number of months they would have done so.

~~By looking back at the unemployment rates during the previous recession period (1991 through 1994), 39 of the 51 States would have met the trigger for one or more months.~~ During that period there were 2448 months in which State unemployment rates were calculated. (The number of months is derived by multiplying 51 States times 12 months times 4 years.) In 34%, or 828, of these months States would have been eligible to receive provisional payments based on the Contingency Fund unemployment rate trigger level. This count of eligible months was computed by applying the unemployment rate trigger provisions to the actual unemployment rate data for the 1991-94 State unemployment rate data. The trigger provisions take into consideration both the level of the three month average unemployment rate for each month in the period and the "look back" provision which requires the unemployment rate to be at least 110% of the State's rate in one of the prior two years.

Thirty-nine States would have met the trigger for at least one month. States would have been eligible to receive provisional payments in 34% of the months based on the CF unemployment trigger level.

a ~~However, it is not known how many of these eligible States would have met the Contingency Fund MOE requirements or the degree to which States would have the necessary expenditures to match the Federal Contingency Funds.~~ These data, however, are not conclusive. [redacted] We do not know how many of these states would have met the CF MOE requirements or the degree to which states would make the necessary expenditures to match Federal contingency funds.

In addition, due to the changes made to the Food Stamps program by PRWORA comparable Food Stamps caseload data is not available to assess the number of States that would have met the Food Stamps trigger during this same period of time.

~~These and other~~ Proposals to change the Contingency Fund should be thoroughly considered by the Administration and Congress when the Contingency Fund is reauthorized for FY 2002 and beyond. At that point, a complete analysis of the most up-to-date economic projections, state welfare needs, and the degree to which States have used TANF funds to establish contingency or rainy day funds should be conducted in order to have that information on hand as Congress and the Administration evaluate the appropriate level of funding for the Contingency Fund.

	No. of Months	Potential Pay Out If Number-of-Months Adjustment were Eliminated	Paid Out Under Current Adjustment Process	Percentage Reduction
State A	3	$2,000,000	$500,000	75%
State B	6	$2,000,000	$1,000,000	50%
State C	12	$2,000,000	$2,000,000	0%
Total		$6,000,000	$3,500,000	

Questions have been raised about whether the proportion of Federal funds finally retained by needy States, as determined by this reconciliation formula, is too low compared to the required State Contingency Fund MOE and matching expenditures. An alternative to consider would be the elimination of this final step in the reconciliation process. For States that met the trigger level requirements, this change would convert the Contingency Fund to a matching program for State expenditures in excess of the Contingency Fund MOE. Column two in the table demonstrates the impact on State funds if the reconciliation procedures were revised to eliminate the number of months adjustment. Under this alternative, each State in the example would retain a 50% Federal matching rate regardless of the number of months for which they received Contingency Funds. This alternative would treat all States that qualify for Contingency Funds equally, regardless of whether the State met the triggers for 2 months or for the entire year.

Any changes to the reconciliation formula could result in significant increases in Federal costs.

E. *Adoption and Safe Families Act of 1997 Provision*

States receiving Contingency Funds under provisional payments may have received overpayments, and may have to remit all or part of the funds. The Adoption and Safe Families Act of 1997 amendments to the Contingency Fund increased the State remittance amount in order to provide sufficient funding for this key adoption initiative. The provision increases the remittance amounts of all States drawing from the Contingency Fund. This increase, to be shared proportionally by all States drawing funds in a year, total $2 million in FY 1998, $9 million in FY 1999, $16 million in FY 2000, and $13 million in FY 2001. One result of this calculation is that the fewer the number of States receiving funds, the higher their proportionate share of the offset, and the more they will have to remit.

One way to address this issue would be to change the remittance formula in a way that spreads out the recovery of funds. For example, the additional remittance amount could be capped at some percentage, say 25% or 30%, of the Contingency Funds to which they would be otherwise entitled in any given year. ~~Another alternative would be to look for other sources for this $40 million offset in order to avoid such consequences for States meeting the triggers.~~

*11 The Administration will work with Congress to ensure that individual States are not unduly burdened by the [illegible] Safe Families Act provision.

Anil Kakani
05/08/98 04:18:24 PM

Record Type: Record

To: Diana Fortuna/OPD/EOP, Emil E. Parker/OPD/EOP

cc:

Subject: CF report sentence on the $40 million offset

--------------------- Forwarded by Anil Kakani/OMB/EOP on 05/08/98 04:18 PM ---------------------------

Anil Kakani
05/08/98 04:16:17 PM

Record Type: Record

To: Melinda D. Haskins/OMB/EOP@EOP

cc: Matthew McKearn/OMB/EOP@EOP

Subject: CF report sentence on the $40 million offset

How about replacing the last sentence w/ the following:

The Administration will work with Congress to ensure that individual states are not unduly burdened by the Adoption and Safe Families Act provision.

We've talked this over w/ Barbara and she's comfortable with it.

Mary' sentence
- does Kevin really want more

	No. of Months	Potential Pay Out If Number-of-Months Adjustment were Eliminated	Paid Out Under Current Adjustment Process	Percentage Reduction
State A	3	$2,000,000	$500,000	75%
State B	6	$2,000,000	$1,000,000	50%
State C	12	$2,000,000	$2,000,000	0%
Total		$6,000,000	$3,500,000	

Questions have been raised about whether the proportion of Federal funds finally retained by needy States, as determined by this reconciliation formula, is too low compared to the required State Contingency Fund MOE and matching expenditures. An alternative to consider would be the elimination of this final step in the reconciliation process. For States that met the trigger level requirements, this change would convert the Contingency Fund to a matching program for State expenditures in excess of the Contingency Fund MOE. Column two in the table demonstrates the impact on State funds if the reconciliation procedures were revised to eliminate the number of months adjustment. Under this alternative, each State in the example would retain a 50% Federal matching rate regardless of the number of months for which they received Contingency Funds. This alternative would treat all States that qualify for Contingency Funds equally, regardless of whether the State met the triggers for 2 months or for the entire year.

Any changes to the reconciliation formula could result in significant increases in Federal costs.

E. *Adoption and Safe Families Act of 1997 Provision*

States receiving Contingency Funds under provisional payments may have received overpayments, and may have to remit all or part of the funds. The Adoption and Safe Families Act of 1997 amendments to the Contingency Fund increased the State remittance amount in order to provide sufficient funding for this key adoption initiative. The provision increases the remittance amounts of all States drawing from the Contingency Fund. This increase, to be shared proportionally by all States drawing funds in a year, total $2 million in FY 1998, $9 million in FY 1999, $16 million in FY 2000, and $13 million in FY 2001. One result of this calculation is that the fewer the number of States receiving funds, the higher their proportionate share of the offset, and the more they will have to remit.

One way to address this issue would be to change the remittance formula in a way that spreads out the recovery of funds. For example, the additional remittance amount could be capped at some percentage, say 25% or 30%, of the Contingency Funds to which they would be otherwise entitled in any given year. Another alternative would be to look for other sources for this $40 million offset in order to avoid such consequences for States meeting the triggers.

*11

Diana Fortuna 05/07/98 05:12:01 PM

Record Type: Record

To: Melinda D. Haskins/OMB/EOP
cc: Sanders D. Korenman/CEA/EOP, Emil E. Parker/OPD/EOP, Anil Kakani/OMB/EOP, Jeffrey A. Farkas/OMB/EOP
bcc: Records Management
Subject: Re: Redraft of "Future Funding Needs" Section of HHS' Contingency Fund Report

OMB is too bare bones, while HHS's long paragraph of arithmetic is pointless. After the first paragraph, it should say something like, "We are able to look at early 90's recession and determine number of states that would have met ue trigger, and the number of months they would have done so." (Maybe we could then say something short like, "30 states would have met trigger for at least one month, and in 34% of those months sttes would have been eligible to receive porvision payments.") "However, this data is far from conclusive for a number of reasons. First, we don't know how many of these elig. states would have met the cont fund moe requirements or the degree to which states would make (not have!) the necessary expenditures to match fed cont funds. In addition, due to the changes made to the food stamps program by PRWORA..." and continue as HHS had it from there.

Melinda D. Haskins 05/07/98 01:12:06 PM

Melinda D. Haskins 05/07/98 01:12:06 PM

Record Type: Record

To: Sanders D. Korenman/CEA/EOP, Diana Fortuna/OPD/EOP, Emil E. Parker/OPD/EOP
cc:
Subject: Redraft of "Future Funding Needs" Section of HHS' Contingency Fund Report

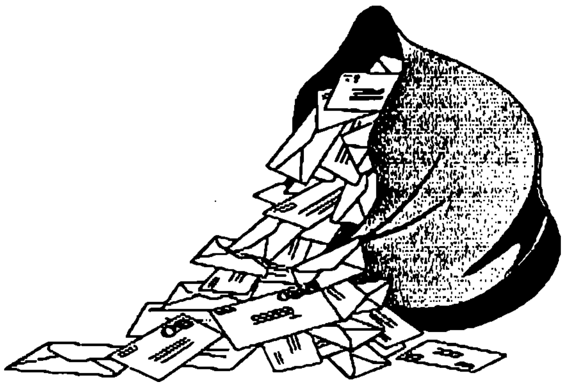
I've just faxed you my and HHS' proposed redrafts of the "Future Funding Needs" section of the Contingency Fund Report. Please provide me with your comments by 2:30 p.m. today. Thanks.

OFFICE OF MANAGEMENT AND BUDGET

Legislative Reference Division
Labor-Welfare-Personnel Branch

Telecopier Transmittal Sheet

URGENT



FROM: Melinda Haskins **395-3923**

DATE: 5/8/98 **TIME:** 12:20 p.m.

Pages sent (including transmittal sheet): 3

COMMENTS:

The attached is what we're proposing to send to HHS re: "Future Funding Needs" in CF Report.

TO: Diana Fortuna

Are you OK? Please advise ASAP. Thanks!

PLEASE CALL THE PERSON(S) NAMED ABOVE FOR IMMEDIATE PICK-UP.

However, this data is not conclusive for a number of reasons. First, we don't know how many of these eligible States would have met the CF Fund MOE requirements or the degree to which States would make the necessary expenditures to match Federal contingency funds.

focuses on the reconciliation process, outlines the circumstances under which the Adoption and Safe Families Act provision could affect the funding available.

Finally, it is important to note that under PRWORA States may reserve any unspent TANF funds indefinitely as a financial cushion for future periods of increased need. During the current period of declining caseloads, most States have some unobligated TANF funds that may be saved for future contingencies. In addition, PRWORA established a Welfare Reform Loan Fund with an appropriation of $1.7 billion for five years in order to assist States during economic downturn. This Loan Fund can be accessed by a State in amounts not to exceed 10% of a State's Family Assistance Grant. We will need time to assess the choices States will make about how to use these funds, in addition to the Contingency Funds, during a recession.

Future Funding Needs

Some have suggested that the Contingency Fund be adjusted to better accommodate national or regional recessions and increased welfare needs. Proposals have included the elimination of the current $2 billion cap, i.e., an open-ended fund, and an automatic increase in the Contingency Fund level triggered by changes in specified economic indicators.

~~Proponents of these changes have pointed to the recession in the early 1990's and the inadequacy of the current Contingency Fund to address needs of such magnitude. While it is not possible to develop an accurate numerical estimate of the demand on the Contingency Fund under this previous recession for several reasons, we can provide some context by looking at the number of States that would have met the unemployment rate trigger.~~

We are able to look at early the 1990's recession and determine the number of States that would have met the trigger and the number of months they would have done so.

~~By looking back at the unemployment rates during the previous recession period (1991 through 1994), 39 of the 51 States would have met the trigger for one or more months. During that period there were 2448 months in which State unemployment rates were calculated. (The number of months is derived by multiplying 51 States times 12 months times 4 years.) In 34%, or 828, of those months States would have been eligible to receive provisional payments based on the Contingency Fund unemployment rate trigger level. This count of eligible months was computed by applying the unemployment rate trigger provisions to the actual unemployment rate data for the 1991-94 State unemployment rate data. The trigger provisions take into consideration both the level of the three month average unemployment rate for each month in the period and the "look back" provision which requires the unemployment rate to be at least 110% of the State's rate in one of the prior two years.~~

In addition,

~~However, it is not known how many of these eligible States would have met the Contingency Fund MOE requirements or the degree to which States would have the necessary expenditures to match the Federal Contingency Funds. In addition,~~ due to the changes made to the Food Stamps program by PRWORA comparable Food Stamps caseload data is not available to assess the number of States that would have met the Food Stamps trigger during this same period of time.

These and other proposals to change the Contingency Fund should be thoroughly considered by the Administration and Congress when the Contingency Fund is reauthorized for FY 2002 and beyond. At that point, a complete analysis of the most up-to-date economic projections, state welfare needs, and the degree to which States have used TANF funds to establish contingency or rainy day funds should be conducted in order to have that information on hand as Congress and the Administration evaluate the appropriate level of funding for the Contingency Fund.

based on the the Contingency Fund unemployment rate trigger level.

Thirty-nine States would have met the trigger for at least one month. States would have been eligible to receive provisional payments in the 34% of the months.

	No. of Months	Potential Pay Out If Number-of-Months Adjustment were Eliminated	Paid Out Under Current Adjustment Process	Percentage Reduction
State A	3	$2,000,000	$500,000	75%
State B	6	$2,000,000	$1,000,000	50%
State C	12	$2,000,000	$2,000,000	0%
Total		$6,000,000	$3,500,000	

Questions have been raised about whether the proportion of Federal funds finally retained by needy States, as determined by this reconciliation formula, is too low compared to the required State Contingency Fund MOE and matching expenditures. An alternative to consider would be the elimination of this final step in the reconciliation process. For States that met the trigger level requirements, this change would convert the Contingency Fund to a matching program for State expenditures in excess of the Contingency Fund MOE. Column two in the table demonstrates the impact on State funds if the reconciliation procedures were revised to eliminate the number of months adjustment. Under this alternative, each State in the example would retain a 50% Federal matching rate regardless of the number of months for which they received Contingency Funds. This alternative would treat all States that qualify for Contingency Funds equally, regardless of whether the State met the triggers for 2 months or for the entire year.

Any changes to the reconciliation formula could result in significant increases in Federal costs.

E. *Adoption and Safe Families Act of 1997 Provision*

States receiving Contingency Funds under provisional payments may have received overpayments, and may have to remit all or part of the funds. The Adoption and Safe Families Act of 1997 amendments to the Contingency Fund increased the State remittance amount in order to provide sufficient funding for this key adoption initiative. The provision increases the remittance amounts of all States drawing from the Contingency Fund. This increase, to be shared proportionally by all States drawing funds in a year, total $2 million in FY 1998, $9 million in FY 1999, $16 million in FY 2000, and $13 million in FY 2001. One result of this calculation is that the fewer the number of States receiving funds, the higher their proportionate share of the offset, and the more they will have to remit.

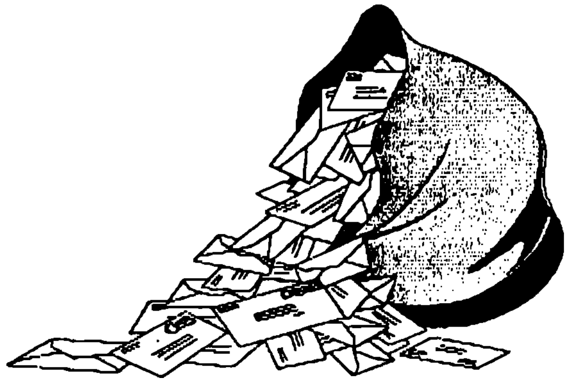
One way to address this issue would be to change the remittance formula in a way that spreads out the recovery of funds. For example, the additional remittance amount could be capped at some percentage, say 25% or 30%, of the Contingency Funds to which they would be otherwise entitled in any given year. ~~Another alternative would be to look for other sources for this $40 million offset in order to avoid such consequences for States meeting the triggers.~~

* Other options could be explored as well.

OFFICE OF MANAGEMENT AND BUDGET

Legislative Reference Division
Labor-Welfare-Personnel Branch

Telecopier Transmittal Sheet



URGENT

FROM: **Melinda Haskins** **395-3923**

DATE: 5/7/98 **TIME:** 1 pm

Pages sent (including transmittal sheet): 3

COMMENTS: Re: "Future Funding Needs" section of HHS' Contingency Fund Report.

Attached is an proposed edit and HHS' redraft of the "Future Funding Needs" section of the CF Report. Please select one or suggest a hybrid.

TO: Diana Fortuna
Emil Parker
Sandy Kornman

HHS is looking for a response this afternoon. Comments are due to me by 2:30 pm.

Thanks.

PLEASE CALL THE PERSON(S) NAMED ABOVE FOR IMMEDIATE PICK-UP.

proposed OMB edits:

Suggested edits to pages 7-8.

* p.7, under header "A: Total Funding Available for the Contingency Fund", delete "Current Funding Needs."

* p. 8, delete "Future Funding Needs" and text that follows header and insert:

"Note: some have suggested that the Contingency Fund be adjusted to better accommodate future national or regional recessions and increased welfare needs. Proposals include the elimination of the current $2 billion cap (i.e., an open-ended fund) and an automatic increase in the Contingency Fund level triggered by changes in specified economic indicators.

These and other proposals to change the Contingency Fund should be thoroughly considered by the Administration and Congress when the Contingency Fund is reauthorized for FY 2002 and beyond. At that point, a complete analysis of the most up-to-date economic projections, state welfare needs, and the degree to which States have used TANF funds to establish contingency or rainy day funds should be conducted in order to have that information on hand as Congress and the Administration evaluate the appropriate level of funding for the Contingency Fund."

[HHS' Redraft]

focuses on the reconciliation process, outlines the circumstances under which the Adoption and Safe Families Act provision could affect the funding available.

Finally, it is important to note that under PRWORA States may reserve any unspent TANF funds indefinitely as a financial cushion for future periods of increased need. During the current period of declining caseloads, most States have some unobligated TANF funds that may be saved for future contingencies. In addition, PRWORA established a Welfare Reform Loan Fund with an appropriation of $1.7 billion for five years in order to assist States during economic downturn. This Loan Fund can be accessed by a State in amounts not to exceed 10% of a State's Family Assistance Grant. We will need time to assess the choices States will make about how to use these funds, in addition to the Contingency Funds, during a recession.

Future Funding Needs

Some have suggested that the Contingency Fund be adjusted to better accommodate national or regional recessions and increased welfare needs. Proposals have included the elimination of the current $2 billion cap, i.e., an open-ended fund, and an automatic increase in the Contingency Fund level triggered by changes in specified economic indicators.

Proponents of these changes have pointed to the recession in the early 1990's and the inadequacy of the current Contingency Fund to address needs of such magnitude. While it is not possible to develop an accurate numerical estimate of the demand on the Contingency Fund under this previous recession for several reasons, we can provide some context by looking at the number of States that would have met the unemployment rate trigger.

By looking back at the unemployment rates during the previous recession period (1991 through 1994), 39 of the 51 States would have met the trigger for one or more months. During that period there were 2448 months in which State unemployment rates were calculated. (The number of months is derived by multiplying 51 States times 12 months times 4 years.) In 34%, or 828, of those months States would have been eligible to receive provisional payments based on the Contingency Fund unemployment rate trigger level. This count of eligible months was computed by applying the unemployment rate trigger provisions to the actual unemployment rate data for the 1991-94 State unemployment rate data. The trigger provisions take into consideration both the level of the three month average unemployment rate for each month in the period and the "look back" provision which requires the unemployment rate to be at least 110% of the State's rate in one of the prior two years.

However, it is not known how many of these eligible States would have met the Contingency Fund MOE requirements or the degree to which States would have the necessary expenditures to match the Federal Contingency Funds. In addition, due to the changes made to the Food Stamps program by PRWORA comparable Food Stamps caseload data is not available to assess the number of States that would have met the Food Stamps trigger during this same period of time.

These and other proposals to change the Contingency Fund should be thoroughly considered by the Administration and Congress when the Contingency Fund is reauthorized for FY 2002 and beyond. At that point, a complete analysis of the most up-to-date economic projections, state welfare needs, and the degree to which States have used TANF funds to establish contingency or rainy day funds should be conducted in order to have that information on hand as Congress and the Administration evaluate the appropriate level of funding for the Contingency Fund.

Total Pages: 20

LRM ID: MDH190

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, May 5, 1998

URGENT

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

Janet R. Forsgren

FROM: Janet R. Forsgren (for) Assistant Director for Legislative Reference

OMB CONTACT: Melinda D. Haskins
PHONE: (202)395-3923 FAX: (202)395-6148

SUBJECT: * REVISED HHS Report on Report on the Status of the Contingency Fund * (3rd Revision)

DEADLINE: Noon Wednesday, May 6, 1998

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. **Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

COMMENTS: Attached is the **third revision** of HHS' Report on the Status of the Contingency Fund. (The appendices are not included.)

THIS DEADLINE IS FIRM.

DISTRIBUTION LIST

AGENCIES:
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Anil Kakani
Jeffrey A. Farkas
Emil E. Parker
Diana Fortuna
Sanders D. Korenman
Richard B. Bavier
Janet Forsgren

LRM ID: MDH190 **SUBJECT:** REVISED HHS Report on Report on the Status of the Contingency Fund

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: **Melinda D. Haskins Phone:** 395-3923 **Fax:** 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-7362

FROM: ______________________ **(Date)**
______________________ **(Name)**
______________________ **(Agency)**
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3rd Revision

Temporary Assistance for Needy Families (TANF)

Report on Status of the Contingency Fund

May 1998

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Executive Summary

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, P.L. 104-193) reformed the goals and structure of the nation's welfare system. In addition to establishing block grants for the States, PRWORA established a Contingency Fund for State Welfare Programs to assist States in meeting the need for welfare assistance during periods of economic downturn. The Contingency Fund would make additional Federal funds available on a matching basis to qualifying needy states that requested such funds.

Section 403(b)(8) of the Social Security Act as amended by PRWORA directed the Secretary of the Department of Health and Human Services (HHS) to report annually to Congress on the status of the Contingency Fund. The Adoption and Safe Families Act of 1997 (section 404, P.L. 105-89) included an amendment to the Contingency Fund, and also directed the Secretary of HHS to report to Congress on recommendations for improvements. Pursuant to these requirements, this report examines the status and operation of the fund to date and considers whether changes or improvements are needed at this time.

Under current national economic projections, the Contingency Fund is adequate to meet the needs of qualifying States. Any evaluation of the Contingency Fund must be viewed as preliminary at this time, however, since the economy in most areas of the country is very strong, and States are in the early stages of implementing the new Temporary Assistance for Needy Families (TANF) program. The Contingency Fund has not yet been tested during the periods of economic downturn for which it was designed.

Therefore, it would be premature to assess the long-term effectiveness of the Contingency Fund. Nothing in this report should be construed as an Administration recommendation or endorsement of an option. As States make further progress in implementing their TANF programs, and we gain more experience in implementation of the Contingency Fund, we will be in a better position to provide a more analytical assessment of the adequacy of the Contingency Fund and the need for changes in our future annual reports to Congress. Our goal for these future reports will be to provide sufficient information for Congress in its preparation for the reauthorization of the Contingency Fund for FY 2002 and beyond.

For our first annual report we are able to provide basic information on the operation of the Contingency Fund, examine possible changes in several of its provisions, and attempt to assess the costs associated with such changes. In particular the report analyzes five key components of the Contingency Fund:

- Total funding available for the Contingency Fund;
- How the eligibility triggers target needy States;
- Contingency Fund maintenance of effort requirements;
- Calculations under the reconciliation formula; and,
- Offsetting funds adjustments required by the Adoption and Safe Families Act of 1997.

This report was prepared after extensive consultations about welfare reform, including the Contingency Fund, with State TANF agency representatives. In addition, the Administration on Children and Families (ACF) considered information and suggestions about the Fund offered by the National Governors' Association, the Congressional Budget Office, Congressional Research Service, and other interested groups and individuals.

We look forward to working with Congress, the States and other interested parties to more fully review the operation and adequacy of the Contingency Fund in the years ahead.

I. INTRODUCTION

A. Background

The PRWORA repealed the Federal Aid to Families with Dependent Children (AFDC) entitlement program. The new legislation replaced AFDC with the Temporary Assistance for Needy Families (TANF) program -- a block grant which provides each State with a fixed amount of Federal funds through the fiscal year 2002. To address concerns that a fixed block grant could threaten States' ability to meet increased needs for TANF during periods of economic downturn, a Contingency Fund for State Welfare Programs was included in PRWORA (sections 403(b) and 409(a)(10) of the Social Security Act as amended by PRWORA). [1]

The Fund was designed to provide additional Federal support on a matching basis for States experiencing increased economic need. Specific statutory provisions were included to ensure that:

- Contingency Funds are targeted to "needy" States;
- States receiving such funds maintain their full level of historic State expenditures for welfare programs; and,
- Federal funds are appropriated for this purpose.

Under PRWORA, $2 billion was appropriated for the Contingency Fund for fiscal years 1997 through 2001 for any of the 50 States and the District of Columbia that qualify. Tribes and territories are not eligible for the Contingency Fund. In order to offset $40 million in expenditures for adoption and related activities, the Adoption and Safe Families Act of 1997 amended the Contingency Fund and changed the amount of funds that each qualifying State may retain.

In October 1997, ACF issued a Program Instruction (PI) establishing procedures for notifying States about eligibility and requests for Contingency Funds. See **Appendix A**. To date, two States (North Carolina and New Mexico) have formally requested Contingency Funds.

B. Statutory Requirements

Section 403(b)(8) of the Social Security Act as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 contained a provision that the Secretary of Health and Human Services should annually report to the Congress on the status of the Contingency Fund. In addition, the Adoption and Safe Families Act of 1997 required the

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[1] Section 403 (b) was amended by P.L. 104-327 and P.L. 105-33. P.L. 104-327 permits the add on of funds to the State Family Assistance Grant (SFAG) for certain States for FY 1997 based on those States' ability to meet certain Contingency Fund requirements. P.L. 105-33 makes technical changes to the Contingency Fund MOE, the Federal Medical Assistance Percentage (FMAP) rate and the penalty provisions. These changes are discussed in more detail in Appendix A.

Secretary to make recommendations to Congress for improving the operation of the Contingency Fund.

C. Scope of Report

This first Annual Report to Congress on the Contingency Fund examines what is known about the status and operation of the Contingency Fund and considers some possibilities for changing its operation. Under current economic projections, the Contingency Fund is adequate to meet the needs of qualifying States and the Administration does not recommend that any changes be made to it. Of course, any evaluation of the Contingency Fund must be viewed as preliminary at this time, since the economy in most areas of the country is very strong, and States are in the early stages of implementing the new Temporary Assistance for Needy Families (TANF) program.

As States make further progress in implementing their TANF programs, and we gain more experience in implementation of the Contingency Fund, we will be in a better position to provide a more analytical assessment of the long term adequacy of the Contingency Fund and the need for changes in our future annual reports to Congress. Our goal for these future reports will be to provide sufficient information for Congress in its preparation for the reauthorization of the Contingency Fund for FY 2002 and beyond.

D. Definition of Terms

Following are definitions of special terms related to the Contingency Fund as used in this report with relevant statutory references:

eligible month - - A month in the 2-month period that begins with any month for which the State is a needy State. Section 403(b)(5)

child care expenditures - - When referencing historic State expenditures, the term *child care expenditures* means the State and Federal share of child care expenditures in FY 1994 under Title IV-A of the Social Security Act, which includes AFDC/JOBS child care, Transitional child care and At-Risk child care.

contingency fund maintenance of effort (MOE) requirement -- In addition to qualifying as a needy State, a State's expenditures for the fiscal year must exceed 100% of a State's historic spending level in 1994. TANF MOE expenditures may be used to meet the Contingency Fund MOE requirement unless they are child care expenditures or expenditures made under "separate State programs." Section 403(b)(4)

historic State expenditures - - The State's share of AFDC benefit payments, AFDC administrative costs, Family Assistance Maintenance Information Systems (FAMIS), Emergency Assistance and JOBS expenditures during certain time periods. Section 409(a)(7)(B)

needy State - - A State is a needy State for a month if it meets either the Unemployment or Food Stamp trigger levels. Section 403(b)(6)

provisional payment - - A preliminary Federal Contingency Fund payment made to a State for an eligible month. Provisional payments are made when a State is notified of its eligibility for a month and then requests a payment. Section 403(b)(3)

reconciliation - - An annual calculation made at the end of the fiscal year to determine how much of the provisional payments a State must remit to the Federal government. Section 403(b)(4)

remittance - - The amount of Federal Contingency Funds paid to the State that must be returned to the Federal government, as calculated in the annual reconciliation. Section 403(b)(4)

State - - Each of the 50 States of the United States and the District of Columbia. Section 403(b)(7)

trigger - - A statutorially defined level for either the average rate of total unemployment in the State or the average Food Stamp caseload in the State. See Section II of this report for a more detailed definition of the triggers. Section 403(b)(6)

II. ACCESS TO CONTINGENCY FUNDS

The following explains the specific statutory requirements of the Contingency Fund and the calculation for providing Contingency Funds to a State. The discussion is arranged in the order in which the steps take place, from determining that a State qualifies as a "needy State" to final calculation of the amount of Contingency Funds to be retained by a State for a given fiscal year.

TRIGGERS

To receive Contingency Funds a State must first qualify as a needy State according to statutory definition, for one or more months in a fiscal year. A "needy State" is a State that has met either the Unemployment Trigger or Food Stamp Trigger.

> Unemployment Trigger - - the State's average unemployment rate for the most recent 3-month period is at least 6.5 percent <u>and</u> at least equal to 110 percent of the State rate for the corresponding 3-month period in either of the two preceding calendar years.
>
> Food Stamp Trigger - - the State's monthly average of individuals participating in the Food Stamp program (as of the last day of the month) for the most recent 3 month period is equal to at least 110 percent of its monthly average of individuals in the corresponding 3-month period in the Food Stamp caseload for FY 1994 or FY 1995, whichever is less, had the immigrant provisions of Title IV and the food stamp provisions under Title VIII of PRWORA been in effect in those years.

PROVISIONAL PAYMENTS

A State may request Contingency Funds for any month for which it qualifies as a needy State. Based on a request for Contingency Funds, the Secretary of Health and Human Services will provide a provisional payment of Federal Contingency Funds for each qualifying month, limited by statute to one-twelfth of 20 percent of the State's family assistance grant (SFAG). This payment is provisional because at the end of the fiscal year an annual reconciliation must be conducted to determine the final amount of Contingency Funds a State may retain.

ELIGIBLE MONTHS

Once a State qualifies as needy and elects to receive Contingency Funds, the State will receive payment for a minimum period of two consecutive months. Payments are made for a 2-month period because the statute defines an eligible month as "a month in the 2-month period that begins with any month for which the State is a needy State" (Section 403(b)(5)). (While qualifying for a minimum 2-month period under the statute, a State has the option to request a payment for only one month.)

RECONCILIATION PROCESS

After the close of the fiscal year, a reconciliation process must be conducted to determine whether a needy State may retain its provisional Contingency Fund payment or whether it must remit some, or all, of the provisional payment back to the Federal Treasury. In order to maintain any of the provisional payment, HHS initially must determine that the State has expended a sufficient amount of State funds in a manner that meets the Contingency Fund maintenance of effort requirement set forth in section 403(b)(4). Additional guidance concerning maintenance of effort requirements was issued by ACF in January 1997 (Policy Announcement No. TANF-ACF-PA-97-1).

If a State meets the Contingency Fund maintenance of effort requirement, then the amount of Contingency Funds it may retain is the lesser of two amounts. The first amount is the Contingency Funds paid to the State for the fiscal year. The second amount is the State expenditures above its MOE level, multiplied by: (1) the State's Federal Medical Assistance Percentage (FMAP) rate applicable for the year in which funds are awarded and (2) 1/12 times the number of months during the fiscal year that the State received Contingency Funds.

For example, a State's expenditures for FY 97 are $103 million. This amount includes $2.5 million in Contingency Funds that have been paid to the State for 6 months. The State's Contingency Fund MOE level is $95 million. The State's FMAP for FY 97 is 50%. In determining how much a State may retain of its Contingency Funds, first subtract from the expenditures made by the State, the Contingency MOE level of expenditures; i.e., $103 million minus $95 million. This difference of $8 million must then be multiplied by the State's FY 97 FMAP rate of 50%. That amount is $4 million. Next, multiply the $4 million by 1/12 times 6 months. The result is $2 million. This is the amount of Contingency Funds that may be retained by the State. Because the State had been paid $2.5 million for the fiscal year, the State must remit $500,000.

The Adoption and Safe Families Act of 1997 amended the annual reconciliation process by increasing the amount States receiving Contingency Funds must remit (repay) to the Federal government in FY's 1998-2001. In effect, this change decreases the amount of funds each State may retain after the reconciliation process. The amount of each State's increased remittance is based on its proportion of total Contingency Fund payments for the fiscal year. The increased remittance total is $40 million over four years ($2 million in FY 1998, $9 million in FY 1999, $16 million in FY 2000, and $13 million in FY 2001).

See **Appendix B** for additional reconciliation examples.

III. ELIGIBILITY STATUS OF STATES IN FY 1997

In FY 1997, eight States met either the Unemployment or Food Stamp triggers for at least one month in the year. The States are:

Alaska
California
District of Columbia
Hawaii
New Mexico
New York
North Carolina
Washington

Appendix C contains tables showing in which months these States met the Unemployment and/or Food Stamp Triggers. It is notable that in 1997 seven of the eight States met the Food Stamp trigger while only New Mexico met the unemployment trigger. In order to retain Contingency Funds, these States must also meet the Contingency Fund MOE requirement and complete the annual reconciliation process.

In October 1997, HHS issued a Program Instruction (PI), TANF-ACF-PI-97-8, to provide guidance to States on eligibility requirements and application procedures for Contingency Fund. **Appendix A** contains a copy of the PI. (The PI also describes the TANF grant add-on funds which are similar to Contingency Funds and which were available only for periods in FY 1997 before a State's implementation of the TANF program. See pages 9 and 10 of Appendix A.)

The PI advised States that they would be informed by letter about any months in which they qualified as a needy State for Contingency Funds. HHS will notify any State qualifying as needy on the basis of meeting either the Unemployment or Food Stamps trigger. The first such letters to the Governors were mailed in early March 1998. States had 15 days from receipt of those letters to request Contingency Funds. Two States, North Carolina and New Mexico, have formally requested Contingency Funds. North Carolina will receive State Family Assistance Grant add-on funds for three months totaling $15.1 million. New Mexico will receive $18.9 million of State Family Assistance Grant add-on funds for 9 months of eligibility prior to their TANF program implementation date and $2.1 million of Contingency Funds for one month after their TANF program began. (See pages 7 and 8 of **Appendix A** for an explanation of how States can be eligible for add-on funds prior to their TANF implementation date.)

IV. ANALYSIS OF THE OPERATION OF THE CONTINGENCY FUND

In order to examine the status and operation of the Contingency Fund to date and consider whether changes or improvements are needed at this time, this report analyzes five key components of the Contingency Fund:

- Total funding available for the Contingency Fund;
- How the eligibility triggers target needy States;
- Contingency Fund maintenance of effort requirements;
- Calculations under the reconciliation formula; and,
- Offsetting funds adjustments required by the Adoption and Safe Families Act of 1997.

Any evaluation of the Contingency Fund at this time must be viewed as preliminary since the economy in most areas of the country is very strong and States are in the early stages of implementing the new TANF program. The Contingency Fund has not yet been tested during the period of economic downturn for which it was designed. Therefore, it would be premature to assess the long-term effectiveness of the fund.

A. *Total Funding Available for the Contingency Fund*

Current Funding Needs

The PRWORA appropriated $2 billion for the operation of the Contingency Fund for FY 1997 through FY 2001. The Adoption and Safe Families Act of 1997 reduced the $2 billion appropriation for the Contingency Fund by $40 million for a total of $1.96 billion. Under current economic assumptions, all estimates indicate that the appropriated funds are adequate to meet the needs during this period.

To date, two States have requested $17.2 million of provisional Contingency Fund payments--payments that must be reconciled under the process described later in this report. The tables in **Appendix D** provide a range of possible amounts payable to the States under the Contingency Fund, including the maximum amount of Contingency Funds that each State could claim if they met the trigger and MOE requirements for a full 12 months in a fiscal year.

The Administration projects Contingency Fund outlays at $210 million for the period FY 1998-2003, while the Congressional Budget Office (CB) budget baseline projects outlays at $435 million for the same period. (Although the Contingency Fund is only authorized and appropriated through FY 2001, the baseline assumes continuation beyond then.) Under either projection, the appropriation is sufficient to meet projected outlays. It should be noted that these outlay estimates were prepared assuming that the current favorable economic climate would continue. Moreover, neither CBO nor OMB forecast economic assumptions on a regional basis. Therefore, if a national economic downturn should occur, or if the economic conditions in specific States should deteriorate, then the actual outlays may differ from the budget estimates that do not build in the possibility of a recessionary scenario.

In addition, the statutory procedure for recovering $40 million from the Contingency Fund, as prescribed in the Adoption and Safe Families Act of 1997 will have a direct impact on the amount of funds available to needy States. Subsection D below, which focuses on the reconciliation process, outlines the circumstances under which the Adoption and Safe Families Act provision could affect the funding available.

Finally, it is important to note that under PRWORA States may reserve any unspent TANF funds indefinitely as a financial cushion for future periods of increased need. During the current period of declining caseloads, most States have some unobligated TANF funds that may be saved for future contingencies. In addition, PRWORA established a Welfare Reform Loan Fund with an appropriation of $1.7 billion for five years in order to assist States during economic downturn. This Loan Fund can be accessed by a State in amounts not to exceed 10% of a State's Family Assistance Grant. We will need time to assess the choices States will make about how to use these funds, in addition to the Contingency Funds, during a recession.

Future Funding Needs

Some have suggested that the Contingency Fund be adjusted to better accommodate national or regional recessions and increased welfare needs. Proposals have included the elimination of the current $2 billion cap, i.e., an open-ended fund, and an automatic increase in the Contingency Fund level triggered by changes in specified economic indicators.

Proponents of these changes have pointed to the recession in the early 1990's and the inadequacy of the current Contingency Fund to address needs of such magnitude. For a very rough example of how great the need might be in a recession, we looked back at the unemployment rates during the previous recession period (1991 through 1994). During that period there were 2448 months in which State unemployment rates were calculated. (The number of months is derived by multiplying 51 States times 12 months times 4 years.) In 34%, or 828, of those months States would have met the Contingency Fund unemployment rate trigger level. This count of eligible months was computed by applying the unemployment rate trigger provisions to the actual unemployment rate data for the 1991-94 State unemployment rate data. The trigger provisions take into consideration both the level of the three month average unemployment rate for each month in the period and the "look back" provision which requires the unemployment rate to be at least 110% of the State's rate in one of the prior two years.

In this theoretical recession scenario in which there were 828 eligible months of high unemployment, we assumed that all eligible States requested Contingency Fund provisional payments for all eligible months and that all eligible States would meet the Contingency Fund MOE requirements. Under these assumptions the total provisional payments to States would be approximately $6.7 billion. While this $6.7 billion figure is a very high, rough estimate representing the maximum amount of "provisional payments" that would be made to States under a recession scenario given States would still have to meet MOE requirements, it does provide some sense of the potential demand on the Contingency Fund in the event of a major recession.

These and other proposals to change the Contingency Fund should be thoroughly considered by the Administration and Congress when the Contingency Fund is reauthorized for FY 2002 and beyond. At that point, a complete analysis of the most up-to-date economic projections, state welfare needs, and the degree to which States have used TANF funds to establish contingency or rainy day funds should be conducted in order to have that information on hand as Congress and the Administration evaluate the appropriate level of funding for the Contingency Fund.

B. Triggers

Targeting Needy States

Do the statutory trigger levels properly target States given that the Contingency Fund was designed to help States that are impacted by a recession or economic downturn? As discussed in Section II of this Report, in order to receive Contingency Funds a State must first qualify as a needy State for one or more months in a fiscal year. A "needy State" is a State that has met either the Unemployment Trigger or the Food Stamp Trigger. Therefore the triggers need to be evaluated to see if they effectively identify the States impacted by recession or economic downturn.

This section of the report examines four topics related to operation of the triggers: level of the triggers, the duration of a State's eligibility, the "look back" trigger requirement and the lag in availability of the trigger data.

Level of the Triggers

One consideration in evaluating the effectiveness of the triggers is whether the level of the trigger is set at an appropriate point to identify or mirror changes in the economic cycle. Are the trigger levels good measures of an economic downturn? It is too soon to judge whether the State unemployment rate trigger and the Food Stamp trigger are serving this function adequately. We will continue to analyze this provision as we gain more experience with the Contingency Fund.

Duration of a State's Eligibility

States are eligible for Contingency Funds if they meet the Unemployment Rate or Food Stamp trigger for only one month (although the trigger is based on a comparison of 3-month averages of unemployment rates or Food Stamp caseloads). Since the State unemployment rate is an estimate based in part on a sample survey, some fluctuations in monthly unemployment rates will occur simply because of survey sampling error. One issue is whether a 3-month average is sufficient to smooth such error so that fluctuations represent genuine changes in the state's economic situation.

In other words, does meeting either the unemployment or Food Stamp trigger for only one month mean that a State has increasing welfare needs? Does meeting the 6.5% unemployment rate for a month or two reflect an economic trend or only some fluctuations in the unemployment estimates? Conversely, if a State meets either trigger for a significant number of consecutive months, would that be a better measure of a State experiencing an economic downturn?

In considering whether short term eligibility for Contingency Funds is desirable, one could examine the effect of a change in the qualifying requirements. For example, one option might require States to meet either trigger for three consecutive months to be eligible to receive Contingency Funds. Another option might allow a State that has met the trigger(s) for six consecutive months to become eligible to receive Contingency Funds for the entire fiscal year.

Another way to address the duration of need concern is to provide only one month's payment for each eligible month. Currently, the statute defines an eligible month as "a month in the 2-month period that begins with any month for which a State is a needy State." Therefore, a State that is needy in one month is deemed needy in the next month and may receive Contingency Fund payments for two consecutive months. This provision was designed to smooth the transition to recovery for States. An alternative, as noted, is to provide one monthly payment for one month of eligibility for Contingency Funds, thereby reducing the amount of Contingency Funds which a State meeting the trigger for one month will receive (but also reducing the amount the state would need to return to the Federal government in the reconciliation process).

The "Look Back" Trigger Requirement

Another triggering question relates to what might be called the "look back" provision in the Food Stamps and unemployment rate triggers: the requirement that the State unemployment rate or Food Stamp caseload for a month be at least 110% of the level it was in a corresponding three month period in either of the preceding two years. In other words, a State's unemployment rate or Food Stamp caseload must not only be at a high level, but it must also be increasing over past levels. The Food Stamp trigger was designed, in part, to address this issue.

This definition excludes certain States with high welfare needs, namely, those States with consistently high, but level unemployment rates. For example, under the current trigger requirement a State with a 6.0% unemployment rate in one year and an increased rate of 6.6% in the second year would be eligible, while a State with a steady rate of 10% in three consecutive years would not be eligible.

Lag in Availability of Trigger Data

There also is a question concerning implementation of the provision given the time lag in compiling and publishing trigger data. Once a State has qualified as a needy State and requested funds, it must expend the Contingency Funds within the fiscal year, as well as expend State funds to meet the Contingency Fund MOE level. For planning purposes, it would be helpful for States to be informed of their eligibility status prior to the end of the fiscal year. Due to the process the Department of Agriculture uses to collect monthly Food Stamp data, the data are not available until 90 to 120 days after the end of the month. For States meeting the triggers late in the fiscal year, there is little, if any, time to obligate the Contingency Funds within that year or make obligation decisions to satisfy Contingency Fund MOE requirements.[2]

For example if a State meets the Food Stamp trigger in August of FY 97, it would not be notified until the start of the next fiscal year. At that point the State would be reimbursed for its previous year's State expenditures with the Contingency Funds for FY 97.

One approach to resolving this problem would be to allow States which qualify for the Contingency Fund on the basis of meeting either the Food Stamps or unemployment triggers after May 31 to be eligible for Contingency Funds in the following fiscal year. The purpose of such an approach would be to allow a State which was eligible to receive Contingency Funds in June through September to expend the corresponding State matching funds in the next fiscal year. For example, a State would meet the Food Stamp Trigger in June 1998, but would be eligible for Contingency Funds in October 1998, which is the beginning of FY 1999. State matching expenditures, which are expenditures in excess of the CF MOE level, would be made in FY 1999 and reconciliation of these funds

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[2] While the statute does not require qualifying expenditures to be made before the close of the fiscal year, the HHS Uniform Administrative Requirements (45 CFR Part 92) do require obligations for such expenditures to be made before the end of the fiscal year.

would be after the end of FY 1999, September 30. Under this approach, the 12 months used for reconciliation purposes would have to be redefined as June through May for all States.

C. Maintenance-Of-Effort (MOE) and Matching Requirements

The Contingency Fund MOE requirement differs from the TANF MOE requirement in the following ways:

(1) States must expend 100% of historic State expenditures for FY 1994 to meet the Contingency Fund MOE requirement, whereas States must expend 75% or 80% to meet the TANF MOE requirement.

(2) As authorized by the PRWORA statute, States may expend their own funds in separate State programs to serve TANF eligible individuals. State expenditures in separate State programs do not count toward the Contingency Fund MOE, while such expenditures do count towards the TANF MOE.

(3) The Contingency Fund MOE excludes the State's child care expenditures under Title IV-A from the historic base level, while the TANF MOE includes the State's historic child care expenditures.

PRWORA included both the TANF and Contingency Fund MOE requirements in order to ensure that States continued their essential partnership role in support of welfare programs. A higher and more stringent MOE was required for the Contingency Fund so that States would meet key goals of the TANF program, while sharing the burden of increased needs during periods of recession or economic difficulties. In essence the law says that, in order for the Federal government to increase its spending to more than 100% of historical levels, States must spend at least 100% of historical levels.

There have been a range of concerns raised about the Contingency Fund MOE requirements -- both from the perspective that TANF MOE and Contingency Fund MOE should be more consistent to the desire for greater Federal support to States during economic downturns. Greater consistency in the MOE requirements could relax funding constraints and ease administrative burdens on the States by making it easier for States to retain Contingency Funds. Any such change would not necessarily make the Contingency Fund more effective and could weaken the incentives put into place to ensure that States share the burden in the event of an economic downturn.

While the Administration does not recommend any change at this time, several options could be considered to adjust the CF MOE requirements. One approach would be to allow States to count expenditures for both child care and separate State programs toward the Contingency Fund MOE, thereby making the treatment of such expenditures consistent with the TANF MOE requirement. A second alternative would be to allow States to count only the expenditures on separate State programs toward the Contingency Fund MOE. A third possible alternative would be to count only child care expenditures towards the Contingency Fund MOE.

There are advantages and disadvantages to each of these alternatives. Making TANF and Contingency Fund MOE requirements similar, would provide administrative simplicity. However, since expenditures under the AFDC child care programs were excluded from the base as well as from the Contingency Fund MOE level, we assume that an adjustment would be required in the Contingency Fund MOE base level to reflect State child care expenditures made under the AFDC child care programs in 1994. This adjustment would produce a higher historical spending level and consequently a higher MOE requirement, as shown in the table in **Appendix E**. In addition, if child care spending were included in the Contingency Fund MOE and matching requirements (including amounts expended by States to qualify for Federal child care matching payments), States could use the same State child care spending to qualify for Federal funds from two sources - - the Contingency Fund and the child care matching amounts made available in section 418.

Expanding the qualifying expenditures definition for the Contingency Fund MOE to include separate State program expenditures, but not child care expenditures, would not be equitable to all States. Currently, only 16 States are expending TANF funds in separate State programs. It is too early in the implementation of the TANF program to know if this number will increase or decrease. While offering the opportunity for a greater number of States to retain Contingency Funds, this alternative does not simplify the Contingency Fund calculation because it does not treat TANF and Contingency Fund MOE requirements in the same manner. Further, it could provide unintended incentives to States to shift more resources from their TANF program to separate State programs where TANF work requirements and other requirements do not apply. Similar arguments could be made for changing the definition to include child care, but not separate State program expenditures. While this alternative would benefit those States who spend relatively large amounts of their TANF funds on child care, it does not simplify the Contingency Fund calculation since there continue to be differences between the TANF and Contingency Fund MOE requirements.

Any changes to the definition of the Contingency Fund MOE requirements could result in significant increases in Federal costs. It remains unclear whether such changes would improve the effectiveness of the fund or maintain the shared Federal /State burden in the event of an economic downturn.

D. *Reconciliation Formula*

Section 403(b)(6) of the Social Security Act as amended by PRWORA provides that State expenditures above the Contingency Fund MOE level are to be matched, at the applicable FMAP rate, by Federal Contingency Funds. In the reconciliation procedure, the amount of matching funds a State may retain decreases for those States receiving Contingency Funds for less than 12 months in a fiscal year. The last step in the reconciliation formula reduces the Federal funds payable to the State to 1/12 times the number of months the State received Contingency Funds in the fiscal year (see page 7). Therefore, a State receiving Contingency Funds for only a portion of the year receives a smaller proportion of Federal funds than a State eligible for all twelve months.

For example, State expenditures in excess of the Contingency Fund MOE amount entitled the State to receive \$2 million at the FMAP rate. However, since the State was eligible for only 6 months in the year, the last step in the reconciliation formula reduced the \$2 million by 6/12ths or \$1 million.

The table below gives additional examples of the application of the reconciliation formula. In this table, the assumption is made that prior to the last step in the process in which the number of months adjustment is made, all States were retaining \$2 million. However, State A received Contingency Funds for 3 months; State B for 6 months; and State C for 12 months. Column three of the table illustrates the effect on funding to States under the current formula. In this example, assuming a State's FMAP rate is 50%, State A's final Federal matching rate is 12.5%, State B's is 25% and State C's remains at 50%.

PAYMENTS

Hypothetical Calculation of CF Payments Based on Actual 1991-94 Unemployment Rates

				(A)		(B)	(A x B)
		# of months	# of			Conting. Fund	1991-1994
		met UR	1-month	TOTAL	TANF	Monthly	PROVISIONAL
STATE		trigger	extra payments	MONTHS	Allocation	Allocation	PAYMENTS
AK	Alaska	24	2	26	63,609,072	1,060,151	27,563,931
AL	Alabama	12	3	15	93,315,207	1,555,253	23,328,802
AR	Arkansas	5	2	7	56,732,858	945,548	6,618,833
AZ	Arizona	22	2	24	222,419,988	3,707,000	88,967,995
CA	California	38	1	39	3,733,817,784	62,230,296	2,426,981,559
CO	Colorado	0	0	0	136,056,690	2,267,611	-
CT	Connecticut	21	1	22	266,788,107	4,446,468	97,822,306
DC	District of Columbia	30	3	33	92,609,815	1,543,497	50,935,398
DE	Delaware	5	2	7	32,290,981	538,183	3,767,281
FL	Florida	24	1	25	562,340,120	9,372,335	234,308,383
GA	Georgia	11	1	12	330,741,739	5,512,362	66,148,348
HI	Hawaii	0	0	0	98,904,788	1,648,413	-
IA	Iowa	0	0	0	131,524,959	2,192,083	-
ID	Idaho	4	1	5	31,938,052	532,301	2,661,504
IL	Illinois	23	5	28	585,056,960	9,750,949	273,026,581
IN	Indiana	7	1	8	206,799,109	3,446,652	27,573,215
KS	Kansas	0	0	0	101,931,061	1,698,851	-
KY	Kentucky	20	1	21	181,287,669	3,021,461	63,450,684
LA	Louisiana	31	6	37	163,971,985	2,732,866	101,116,058
MA	Massachusetts	24	1	25	459,371,116	7,656,185	191,404,632
MD	Maryland	11	1	12	229,098,032	3,818,301	45,819,606
ME	Maine	30	4	34	78,120,889	1,302,015	44,268,504
MI	Michigan	21	1	22	775,352,858	12,922,548	284,296,048
MN	Minnesota	0	0	0	267,984,886	4,466,415	-
MO	Missouri	14	2	16	217,051,740	3,617,529	57,880,464
MS	Mississippi	18	2	20	86,767,578	1,446,126	28,922,526
MT	Montana	20	2	22	45,534,006	758,900	16,695,802
NC	North Carolina	0	0	0	302,239,599	5,037,327	-
ND	North Dakota	0	0	0	26,399,809	439,997	-
NE	Nebraska	0	0	0	58,028,579	967,143	-
NH	New Hampshire	26	1	27	38,521,261	642,021	17,334,567
NJ	New Jersey	26	3	29	404,034,823	6,733,914	195,283,498
NM	New Mexico	19	3	22	126,103,156	2,101,719	46,237,824
NV	Nevada	20	2	22	43,976,750	732,946	16,124,808
NY	New York	26	1	27	2,442,930,602	40,715,510	1,099,318,771
OH	Ohio	19	4	23	727,968,260	12,132,804	279,054,500
OK	Oklahoma	7	1	8	148,013,558	2,466,893	19,735,141
OR	Oregon	23	1	24	167,924,513	2,798,742	67,169,805
PA	Pennsylvania	24	1	25	719,499,305	11,991,655	299,791,377
RI	Rhode Island	24	1	25	95,021,587	1,583,693	39,592,328
SC	South Carolina	18	2	20	99,967,824	1,666,130	33,322,606
SD	South Dakota	0	0	0	21,893,519	364,892	-
TN	Tennessee	12	2	14	191,523,797	3,192,063	44,688,886
TX	Texas	19	1	20	486,256,752	8,104,279	162,085,584
UT	Utah	0	0	0	76,829,219	1,280,487	-
VA	Virginia	6	1	7	158,285,172	2,638,086	18,466,603
VT	Vermont	17	3	20	47,353,181	789,220	15,784,394
WA	Washington	25	1	26	404,331,754	6,738,863	175,210,427
WI	Wisconsin	0	0	0	318,188,410	5,303,140	-
WV	West Virginia	27	2	29	110,176,310	1,836,272	53,251,883
WY	Wyoming	0	0	0	21,781,446	363,024	-
TOTAL		753		828	16,488,667,235	274,811,121	6,746,011,465

Total Pages: 21

LRM ID: MDH176

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

URGENT

Tuesday, April 28, 1998

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

Melinda Haskins for

FROM: Janet R. Forsgren (for) Assistant Director for Legislative Reference

OMB CONTACT: Melinda D. Haskins
PHONE: (202)395-3923 FAX: (202)395-6148

SUBJECT: **2nd REVISION to the HHS Report on the Status of the Contigency Fund**

DEADLINE: **Noon Wednesday, April 29, 1998**

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. **Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

COMMENTS: Attached is the proposed "final" of the HHS Contingency Fund Report to Congress. Please provide Melinda Haskins with "must changes" only by noon tomorrow (4/29). (Note: only Appendix D is being recirculated for comment. The other appendices remain unchanged from previous versions.)

If we do not hear from you by the comment deadline, we will assume that you have no objection to the report.

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LRM ID: MDH176 **SUBJECT:** 2nd REVISION to the HHS Report on the Status of the Contigency Fund

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Melinda D. Haskins Phone: 395-3923 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-7362

FROM: ______________________ (Date)
______________________ (Name)
______________________ (Agency)
______________________ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _________

_____ Other: ______________________

_____ FAX RETURN of _____ pages, attached to this response sheet

Temporary Assistance for Needy Families (TANF)

Report on Status of the Contingency Fund

April 1998

TABLE OF CONTENTS

Executive Summary

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, P.L. 104-193) reformed the goals and structure of the nation's welfare system. In addition to establishing block grants for the States, PRWORA established a Contingency Fund for State Welfare Programs to assist States in meeting the need for welfare assistance during periods of economic downturn. The Contingency Fund would make additional Federal funds available on a matching basis to qualifying needy states that requested such funds.

Section 403(b)(8) of the Social Security Act as amended by PRWORA directed the Secretary of the Department of Health and Human Services (HHS) to report annually to Congress on the status of the Contingency Fund. The Adoption and Safe Families Act of 1997 (section 404, P.L. 105-89) included an amendment to the Contingency Fund, and also directed the Secretary of HHS to report to Congress on recommendations for improvements. Pursuant to these requirements, this report examines the status and operation of the fund to date and considers whether changes or improvements are needed at this time.

Under current national economic projections, the Contingency Fund is fully adequate to meet the needs of qualifying States. Any evaluation of the Contingency Fund must be viewed as preliminary at this time, however, since the economy in most areas of the country is very strong, and States are in the early stages of implementing the new Temporary Assistance for Needy Families (TANF) program. The Contingency Fund has not yet been tested during the periods of economic downturn for which it was designed. CEA ok

Therefore, it would be premature to assess the long-term effectiveness of the Contingency Fund. Nothing in this report should be construed as an Administration recommendation or endorsement of an option. As States make further progress in implementing their TANF programs, and we gain more experience in implementation of the Contingency Fund, we will be in a better position to provide a more analytical assessment of the adequacy of the Contingency Fund and the need for changes in our future annual reports to Congress. Our goal for these future reports will be to provide sufficient information for Congress in its preparation for the reauthorization of the Contingency Fund for FY 2002 and beyond. New

For our first annual report we are able to provide basic information on the operation of the Contingency Fund, examine possible changes in several of its provisions, and attempt to assess the costs associated with such changes. In particular the report analyzes five key components of the Contingency Fund:

Total funding available for the Contingency Fund;
- How the eligibility triggers target needy States;
- Contingency Fund maintenance of effort requirements;
- Calculations under the reconciliation formula; and,

Offsetting funds adjustments required by the Adoption and Safe Families Act of 1997.

This report was prepared after extensive consultations about welfare reform, including the Contingency Fund, with State TANF agency representatives. In addition, the Administration on Children and Families (ACF) considered information and suggestions about the Fund offered by the National Governors' Association, the Congressional Budget Office, Congressional Research Service, and other interested groups and individuals.

We look forward to working with Congress, the States and other interested parties to more fully review the operation and adequacy of the Contingency Fund in the years ahead.

I. INTRODUCTION

A. Background

The PRWORA repealed the Federal Aid to Families with Dependent Children (AFDC) entitlement program. The new legislation replaced AFDC with the Temporary Assistance for Needy Families (TANF) program -- a block grant which provides each State with a fixed amount of Federal funds through the fiscal year 2002. To address concerns that a fixed block grant could threaten States' ability to meet increased needs for TANF during periods of economic downturn, a Contingency Fund for State Welfare Programs was also included in PRWORA (sections 403(b) and 409(a)(10) of the Social Security Act as amended by PRWORA). [1]

The Fund was designed to provide additional Federal support on a matching basis for States experiencing increased economic need. Specific statutory provisions were included to ensure that:

Contingency Funds are targeted to "needy" States;

States receiving such funds maintain their full level of historic State expenditures for welfare programs; and,

Federal funds are appropriated for this purpose.

Under PRWORA, $2 billion was appropriated for the Contingency Fund for fiscal years 1997 through 2001 for any of the 50 States and the District of Columbia that qualify. Tribal Temporary Assistance to Needy Families programs are not eligible for the Contingency Fund. In order to offset $40 million in expenditures for adoption and related activities, the Adoption and Safe Families Act of 1997 amended the Contingency Fund and changed the amount of funds that each qualifying State may retain.

In October 1997, ACF issued a Program Instruction (PI) establishing procedures for notifying States about eligibility and requests for Contingency Funds. See Appendix A. To date, two States (North Carolina and New Mexico) have formally requested Contingency Funds.

B. Statutory Requirements

Section 403(b)(8) of the Social Security Act as amended by the Personal Responsibility

[1] Section 403 (b) was amended by P.L. 104-327 and P.L. 105-33. P.L. 104-327 permits the add on of funds to the State Family Assistance Grant (SFAG) for certain States for FY 1997 based on those States' ability to meet certain Contingency Fund requirements. P.L. 105-33 makes technical changes to the Contingency Fund MOE, the Federal Medical Assistance Percentage (FMAP) rate and the penalty provisions. These changes are discussed in more detail in Appendix A.

and Work Opportunity Reconciliation Act of 1996 contained a provision that the Secretary of Health and Human Services should annually report to the Congress on the status of the Contingency Fund. In addition, the Adoption and Safe Families Act of 1997 required the Secretary to make recommendations to Congress for improving the operation of the Contingency Fund.

C. Scope of Report

This first Annual Report to Congress on the Contingency Fund examines what is known about the status and operation of the Contingency Fund and considers some possibilities for changing its operation. Under current economic projections, the Contingency Fund is fully adequate to meet the needs of qualifying States and the Administration does not recommend any changes be made to it. Of course, any evaluation of the Contingency Fund must be viewed as preliminary at this time, since the economy in most areas of the country is very strong, and States are in the early stages of implementing the new Temporary Assistance for Needy Families (TANF) program.

As States make further progress in implementing their TANF programs, and we gain more experience in implementation of the Contingency Fund, we will be in a better position to provide a more analytical assessment of the long term adequacy of the Contingency Fund and the need for changes in our future annual reports to Congress. Our goal for these future reports will be to provide sufficient information for Congress in its preparation for the reauthorization of the Contingency Fund for FY 2002 and beyond.

D. Definition of Terms

Following are definitions of special terms related to the Contingency Fund as used in this report with relevant statutory references:

eligible month - - A month in the 2-month period that begins with any month for which the State is a needy State. Section 403(b)(6)

child care expenditures - - When referencing historic State expenditures, the term *child care expenditures* means the State and Federal share of child care expenditures in FY 1994 under Title IV A of the Social Security Act, which includes AFDC/JOBS child care, Transitional child care and At-Risk child care.

contingency fund maintenance of effort (MOE) requirement – In addition to qualifying as a needy State, a State's expenditures for the fiscal year must exceed 100% of a State's historic spending level in 1994. TANF MOE expenditures may be used to meet the Contingency Fund MOE requirement unless they are child care expenditures or expenditures made under "separate State programs." Section 403(b)(4)

historic State expenditures - - The State's share of AFDC benefit payments, AFDC administrative costs, Family Assistance Maintenance Information Systems (FAMIS), Emergency Assistance and JOBS expenditures during certain time periods. Section 409(a)(7)(B)

needy State - - A State is a needy State for a month if it meets either the Unemployment or Food Stamp trigger levels. Section 403(b)(6)

provisional payment - - A preliminary Federal Contingency Fund payment made to a State for an eligible month. Provisional payments are made when a State is notified of its eligibility for a month and then requests a payment. Section 403(b)(3)

reconciliation - - An annual calculation made at the end of the fiscal year to determine how much of the provisional payments a State must remit to the Federal government. Section 403(b)(4)

remittance - - The amount of Federal Contingency Funds paid to the State that must be returned to the Federal government, as calculated in the annual reconciliation. Section 403(b)(4)

State - - Each of the 50 States of the United States and the District of Columbia. Section 403(b)(7)

trigger - - A statutorially defined level for either the average rate of total unemployment in the State or the average Food Stamp caseload in the State. See Section II of this report for a more detailed definition of the triggers. Section 403(b)(6)

II. ACCESS TO CONTINGENCY FUNDS

The following explains the specific statutory requirements of the Contingency Fund and the calculation for providing Contingency Funds to a State. The discussion is arranged in the order in which the steps take place, from determining that a State qualifies as a "needy State" to final calculation of the amount of Contingency Funds to be retained by a State for a given fiscal year.

TRIGGERS

To receive Contingency Funds a State must first qualify as a needy State according to statutory definition, for one or more months in a fiscal year. A "needy State" is a State that has met either the Unemployment Trigger or Food Stamp Trigger.

> Unemployment Trigger - - the State's average unemployment rate for the most recent 3-month period is at least 6.5 percent <u>and</u> at least equal to 110 percent of the State rate for the corresponding 3-month period in either of the two preceding calendar years.
>
> Food Stamp Trigger - - the State's monthly average of individuals participating in the Food Stamp program (as of the last day of the month) for the most recent 3-month period is at least equal to 110 percent of its monthly average of individuals in the corresponding 3-month period in the Food Stamp caseload for FY 1994 or FY 1995, whichever is less, had the immigrant provisions of Title IV and the food stamp provisions under Title VIII of PRWORA been in effect in those years.

PROVISIONAL PAYMENTS

A State may request Contingency Funds for any month for which it qualifies as a needy State. Based on a request for Contingency Funds, the Secretary of Health and Human Services will provide a provisional payment of Federal Contingency Funds for each qualifying month, limited by statute to 1/12 of 20 percent of the State's family assistance grant (SFAG). This payment is provisional because at the end of the fiscal year an annual reconciliation must be conducted to determine the final amount of Contingency Funds a State may retain.

ELIGIBLE MONTHS

Once a State qualifies as needy and elects to receive Contingency Funds, the State will receive payment for a minimum period of two consecutive months. Payments are made for a 2-month period because the statute defines an eligible month as "a month in the 2-month period that begins with any month for which the State is a needy State" (Section 403(b)(5)). Note: While qualifying for a minimum 2-month period under the statute, a State has the option to request a payment for only one month.

RECONCILIATION PROCESS

After the close of the fiscal year, a reconciliation process must be conducted to determine whether a needy State may retain its provisional Contingency Fund payment or whether it must remit some, or all, of the provisional payment back to the Federal Treasury. In order to maintain any of the provisional payment, HHS initially must determine that the State has expended a sufficient amount of State funds in a manner that meets the Contingency Fund maintenance of effort requirement set forth in section 403(b)(4). Additional guidance concerning maintenance of effort requirements was issued by ACF in January 1997 (Policy Announcement No. TANF-ACF-PA-97-1).

If a State meets the Contingency Fund maintenance of effort requirement, then the amount of Contingency Funds it may retain is the lesser of two amounts. The first amount is the Contingency Funds paid to the State for the fiscal year. The second amount is the State expenditures above its MOE level, multiplied by: (1) the State's Federal Medical Assistance Percentage (FMAP) rate applicable for the year in which funds are awarded and (2) 1/12 times the number of months during the fiscal year that the State received Contingency Funds.

For example, a State's expenditures for FY 97 are $103 million. This amount includes $2.5 million in Contingency Funds that have been paid to the State for 6 months. The State's Contingency Fund MOE level is $95 million. The State's FMAP for FY 97 is 50%. In determining how much a State may retain of its Contingency Funds, first subtract from the expenditures made by the State, the Contingency MOE level of expenditures; i.e., $103 million minus $95 million. This difference of $8 million must then be multiplied by the State's FY 97 FMAP rate of 50%. That amount is $4 million. Next, multiply the $4 million by 1/12 times 6 months. The result is $2 million. This is the amount of Contingency Funds that may be retained by the State. Because the State had been paid $2.5 million for the fiscal year, the State must remit $500,000.

The Adoption and Safe Families Act of 1997 amended the annual reconciliation process by increasing the amount States receiving Contingency Funds must remit (repay) to the Federal government in FY's 1998-2001. In effect, this change decreases the amount of funds each State may retain after the reconciliation process. The amount of each State's increased remittance is based on its proportion of total Contingency Fund payments for the fiscal year. The increased remittance total is $40 million over four years ($2 million in FY 1998, $9 million in FY 1999, $16 million in FY 2000, and $13 million in FY 2001).

See **Appendix B** for additional reconciliation examples.

III. ELIGIBILITY STATUS OF STATES IN FY 1997

In FY 1997, eight States met either the Unemployment or Food Stamp triggers for at least one month in the year. The States are:

Alaska
California
District of Columbia
Hawaii
New Mexico
New York
North Carolina
Washington

Appendix C contains tables showing in which months these States met the Unemployment and/or Food Stamp Triggers. It is notable that in 1997 seven of the eight States met the Food Stamp trigger while only New Mexico met the unemployment trigger. In order to retain Contingency Funds, these States must also meet the Contingency Fund MOE requirement and complete the annual reconciliation process.

In October 1997, HHS issued a Program Instruction (PI), TANF-ACF-PI-97-8, to provide guidance to States on eligibility requirements and application procedures for Contingency Fund. Appendix A contains a copy of the PI. (The PI also describes the TANF grant add-on funds which are similar to Contingency Funds and which were available only for periods in FY 1997 before a State's implementation of the TANF program. See pages 9 and 10 of Appendix A.)

The PI advised States that they would be informed by letter about any months in which they qualified as a needy State for Contingency Funds. HHS will notify any State qualifying as needy on the basis of meeting either the Unemployment or Food Stamps trigger. The first such letters to the Governors were mailed in early March 1998. States had 15 days from receipt of those letters to request Contingency Funds. Two States, North Carolina and New Mexico, have formally requested Contingency Funds. North Carolina will receive State Family Assistance Grant add-on funds for three months totaling $15.1 million. New Mexico will receive $18.9 million of State Family Assistance Grant add-on funds for 9 months of eligibility prior to their TANF program implementation date and $2.1 million of Contingency Funds for one month after their TANF program began. (See pages 7 and 8 of Appendix A for an explanation of how States can be eligible for add-on funds prior to their TANF implementation date.)

15.1 18.9 prior
2.1

IV. ANALYSIS OF THE OPERATION OF THE CONTINGENCY FUND

In order to examine the status and operation of the Contingency Fund to date and consider whether changes or improvements are needed at this time, this report analyzes five key components of the Contingency Fund:

Total funding available for the Contingency Fund;
- How the eligibility triggers target needy States;
- Contingency Fund maintenance of effort requirements;
- Calculations under the reconciliation formula; and.

Offsetting funds adjustments required by the Adoption and Safe Families Act of 1997.

Any evaluation of the Contingency Fund at this time must be viewed as preliminary since the economy in most areas of the country is very strong and States are in the early stages of implementing the new TANF program. The Contingency Fund has not yet been tested during the period of economic downturn for which it was designed. Therefore, it would be premature to assess the long-term effectiveness of the fund.

A. *Total Funding Available for the Contingency Fund*

Current Funding Needs

The PRWORA appropriated $2 billion for the operation of the Contingency Fund for FY 1997 through FY 2001. The Adoption and Safe Families Act of 1997 reduced the $2 billion appropriation for the Contingency Fund by $40 million for a total of $1.96 billion. Under current economic assumptions, all estimates indicate that the appropriated funds are more than adequate to meet the needs during this period.

To date, two States have requested $17.2 million of provisional Contingency Fund payments--payments that must be reconciled under the process described later in this report. The tables in **Appendix D** provide a range of possible amounts payable to the States under the Contingency Fund, including the maximum amount of Contingency Funds that each State could claim if they met the trigger and MOE requirements for a full 12 months in a fiscal year.

The Administration projects Contingency Fund outlays at $210 million for the period FY 1998-2003, while the Congressional Budget Office (CB) budget baseline projects outlays at $435 million for the same period. Under either projection, the appropriation is sufficient to meet projected outlays. It should be noted that these outlay estimates were prepared assuming that the current favorable economic climate would continue. Moreover, neither CBO nor OMB forecast economic assumptions on a regional basis. Therefore, if a national economic downturn should occur, or if the economic conditions in specific States should deteriorate, then the actual outlays may differ from the budget estimates that do not build in the possibility of a recessionary scenario.

In addition, the statutory procedure for recovering $40 million from the Contingency Fund, as prescribed in the Adoption and Safe Families Act of 1997 will have a direct impact on the amount of funds available to needy States. Subsection D below, which focuses on the reconciliation process, outlines the circumstances under which the Adoption and Safe Families Act provision could affect the funding available.

Finally, it is important to note that under PRWORA States may reserve any unspent TANF funds indefinitely as a financial cushion for future periods of increased need. During the current period of declining caseloads, most States have some unobligated TANF funds that may be saved for future contingencies. In addition, PRWORA established a Welfare Reform Loan Fund with an appropriation of $1.7 billion for five years in order to assist States during economic downturn. This Loan Fund can be accessed by a State in amounts not to exceed 10% of a State's Family Assistance Grant. We will need time to assess the choices States will make about how to use these funds, in addition to the Contingency Funds, during a recession.

Future Funding Needs

Some have suggested that the Contingency Fund be adjusted to better accommodate national or regional recessions and increased welfare needs. Proposals have included the elimination of the current $2 billion cap, i.e., an open-ended fund, and an automatic increase in the Contingency Fund level triggered by changes in specified economic indicators.

severe? - CEA?

? Proponents of these changes have pointed to the recession in the early 1990's and the inadequacy of the current Contingency Fund to address needs of such magnitude. For a very rough example of how great the need might be in a recession, we looked back at the unemployment rates during the previous recession period (1990 through 1994). During that period there were 3060 months in which State unemployment rates were calculated. The number of months is derived by multiplying 51 States times 12 months times 5 years. In forty percent, or 1218, of those months States had monthly unemployment rates of 6.5% or higher. (This count of high unemployment months in the recession did not take into consideration whether any of those States would have met the "look back" portion of trigger rate provision which requires the unemployment rate to be at least 110% of the State's rate in one of the prior two years.) In a theoretical recession scenario in which there were 1218 months of high unemployment, in which every State met the "look back" provision and in which every State requested Contingency Fund provisional payments, the total provisional payments to States would be approximately $6.6 billion, an amount far exceeding the $2 billion now available for this purpose. While this $6.6 billion figure is a very high estimate representing the maximum amount of "provisional payments" that would be made to States under a recession scenario given States would still have to meet MOE requirements, it does provide some sense of the potential demand on the Contingency Fund in the event of a major recession.

Key

OMB?

same time period? -5 yrs?

Better No Lkbk No MOE

Worse Only UE

These and other proposals to change the Contingency Fund should be thoroughly considered by the Administration and Congress when the Contingency Fund is reauthorized for FY 2002 and beyond. At that point, a complete analysis of the most up-to-date economic projections, state welfare needs, and the degree to which States have used TANF funds to establish contingency or rainy day funds should be conducted in order to have that information on hand as Congress and the Administration evaluate the appropriate level of funding for the Contingency Fund.

B. *Triggers*

Targeting Needy States

Do the statutory trigger levels properly target States given that the Contingency Fund was designed to help States that are impacted by a recession or economic downturn? As discussed in Section II of this Report, in order to receive Contingency Funds a State must first qualify as a needy State for one or more months in a fiscal year. A "needy State" is a State that has met either the Unemployment Trigger or the Food Stamp Trigger. Therefore the triggers need to be evaluated to see if they effectively identify the States impacted by recession or economic downturn.

This section of the report examines four topics related to operation of the triggers: level of the triggers, the duration of a State's eligibility, the "look back" trigger requirement and the lag in availability of the trigger data.

Level of the Triggers

One consideration in evaluating the effectiveness of the triggers is whether the level of the trigger is set at an appropriate point to identify or mirror changes in the economic cycle. Are the trigger levels good measures of an economic downturn? It is too soon to judge whether the State unemployment rate trigger and the Food Stamp trigger are serving this function adequately. We will continue to analyze this provision as we gain more experience with the Contingency Fund. better Still work

Duration of a State's Eligibility

States are eligible for Contingency Funds if they meet the Unemployment Rate or Food Stamp trigger for only one month (although the trigger is based on a comparison of 3-month averages of unemployment rates or Food Stamp caseloads). Since the State unemployment rate is an estimate based in part on a sample survey, some fluctuations in monthly unemployment rates will occur simply because of survey sampling error. One issue is whether a 3-month average is sufficient to smooth such error so that fluctuations represent genuine changes in the state's economic situation.

In other words, does meeting either the unemployment or Food Stamp trigger for only one month mean that a State has increasing welfare needs? Does meeting the 6.5% unemployment rate for a month or two reflect an economic trend or only some fluctuations in the unemployment estimates? Conversely, if a State meets either trigger for a significant number of consecutive months, would that be a better measure of a State experiencing an economic downturn?

In considering whether short term eligibility for Contingency Funds is desirable, one could examine the effect of a change in the qualifying requirements. For example, one option considered might require States to meet either trigger for three consecutive months to be eligible to receive Contingency Funds. Another option might allow a State that has met the trigger(s) for six consecutive months to become eligible to receive Contingency Funds for the entire fiscal year.

Another way to address the duration of need concern is to provide only one month's payment for each eligible month. Currently, the statute defines an eligible month as "a month in the 2-month period that begins with any month for which a State is a needy State." Therefore, a State that is needy in one month is deemed needy in the next month and may receive Contingency Fund payments for two consecutive months. This provision was designed to smooth the transition to recovery for States. An alternative, as noted, is to provide one monthly payment for one month of eligibility for Contingency Funds, thereby reducing the amount of Contingency Funds which a State meeting the trigger for one month will receive (but also reducing the amount the state would need to return to the Federal government in the reconciliation process).

The "Look Back" Trigger Requirement

Another triggering question relates to what might be called the "look back" provision in the Food Stamps and unemployment rate triggers: the requirement that the State unemployment rate or Food Stamp caseload for a month be at least 110% of the level it was in a corresponding three month period in either of the preceding two years. In other words, a State's unemployment rate or Food Stamp caseload must not only be at a high level, but it must also be increasing over past levels. The Food Stamp trigger was designed, in part, to address this issue.

This definition excludes certain States with high welfare needs, namely, those States with consistently high, but level unemployment rates. For example, under the current trigger requirement a State with a 6.0% unemployment rate in one year and an increased rate of 6.6% in the second year would be eligible, while a State with a steady rate of 10% in three consecutive years might not be eligible.

Would?

Lag in Availability of Trigger Data

There also is a question concerning implementation of the provision given the time lag in compiling and publishing trigger data. Once a State has qualified as a needy State and requested funds, it must expend the Contingency Funds within the fiscal year, as well as expend State funds to meet the Contingency Fund MOE level. For planning purposes, it would be helpful for States to be informed of their eligibility status prior to the end of the fiscal year. Due to the process the Department of Agriculture uses to collect monthly Food Stamp data, the data are not available until 90 to 120 days after the end of the month. For States meeting the triggers late in the fiscal year, there is little, if any, time to expend the Contingency Funds within that year or make expenditure decisions to satisfy Contingency Fund MOE requirements.

For example if a State meets the Food Stamp trigger in August of FY 97, it would not be notified until the start of the next fiscal year. At that point the State would offset its previous year's State expenditures with the Contingency Funds for FY 97. A reduction in the State's expenditures for FY 97 could have an impact on the State's ability to meet the Contingency Fund MOE requirements.

One approach to resolving this problem would be to allow States which qualify for the Contingency Fund on the basis of meeting either the Food Stamps or unemployment triggers after May 31 to be eligible for Contingency Funds in the following fiscal year. The purpose of such an approach would be to allow a State which was eligible to receive Contingency Funds in June through September to expend the corresponding State matching funds in the next fiscal year. For example, a State would meet the Food Stamp Trigger in June 1998, but would be eligible for Contingency Funds in October 1998, which is the beginning of FY 1999. State matching expenditures, which are expenditures in excess of the CF MOE level, would be made in FY 1999 and reconciliation of these funds would be after the end of FY 1999, September 30. Under this approach, the 12 months used for reconciliation purposes would have to be redefined as June through May for all States

C. Maintenance-Of-Effort (MOE) and Matching Requirements

The Contingency Fund MOE requirement differs from the TANF MOE requirement in the following ways:

(1) States must expend 100% of historic State expenditures for FY 1994 to meet the Contingency Fund MOE requirement, whereas States must expend 75% or 80% to meet the TANF MOE requirement.

(2) As authorized by the PRWORA statute, States may expend their own funds in separate State programs to serve TANF eligible individuals. State expenditures in separate State programs do not count toward the Contingency Fund MOE, while such expenditures do count towards the TANF MOE.

(3) The Contingency Fund MOE excludes the State's child care expenditures under Title IV-A from the historic base level, while the TANF MOE includes the State's historic child care expenditures.

PRWORA included both the TANF and Contingency Fund MOE requirements in order to ensure that States continued their essential partnership role in support of welfare programs. A higher and more stringent MOE was required for the Contingency Fund so that States would meet key goals of the TANF program, while sharing the burden of increased needs during periods of recession or economic difficulties. In essence the law says that, in order for the Federal government to increase its spending to more than 100% of historical needs, States must increase their spending from 80% to 100% of historical levels.

levels!

There have been a range of concerns raised about the Contingency Fund MOE requirements -- both from the perspective that TANF MOE and Contingency Fund MOE should be more consistent to the desire for greater Federal support to States during economic downturns. Greater consistency in the MOE requirements could ease administrative burdens on the States and relax funding constraints by making it easier for States to retain Contingency Funds. Any such change would not necessarily make the Contingency Fund more effective and could weaken the incentives put into place to ensure that States share the burden in the event of an economic downturn.

New

While the Administration does not recommend any change at this time, several options could be considered to adjust ~~to adjust~~ the CF MOE requirements. One approach would be to allow States to count expenditures for both child care and separate State programs toward the Contingency Fund MOE, thereby making the treatment of such expenditures consistent with the TANF MOE requirement. A second alternative would be to allow States to count only the expenditures on separate State programs toward the Contingency Fund MOE. A third possible alternative would be to count only child care expenditures towards the Contingency Fund MOE.

There are advantages and disadvantages to each of these alternatives. Making TANF and Contingency Fund MOE requirements similar, would provide administrative simplicity. However, since expenditures under the AFDC child care programs were excluded from the base as well as from the Contingency Fund MOE level, we assume that an adjustment would be required in the Contingency Fund MOE base level to reflect State child care expenditures made under the AFDC child care programs in 1994. This adjustment would produce a higher historical spending level and consequently a higher MOE requirement, as shown in the table in Appendix E. In addition, if child care spending were included in the Contingency Fund MOE and matching requirements (including amounts expended by States to qualify for Federal child care matching payments), States could use the same State child care spending to qualify for Federal funds from two sources - - the Contingency Fund and the child care matching amounts made available in section 418.

New

Expanding the qualifying expenditures definition for the Contingency Fund MOE to include separate State program expenditures, but not child care expenditures, would not be equitable to all States. Currently, only 16 States are expending TANF funds in separate State programs. It is too early in the implementation of the TANF program to know if this number will increase or decrease. While offering the opportunity for a greater number of States to retain Contingency Funds, this alternative does not simplify the Contingency Fund calculation because it does not treat TANF and Contingency Fund MOE requirements in the same manner. Further, it could provide unintended incentives to States to shift more resources from their TANF program to separate State programs where TANF work requirements and other requirements do not apply. Similar arguments could be made for changing the definition to include child care, but not separate State program expenditures. While this alternative would benefit those States who spend relatively large amounts of their TANF funds on child care, it does not simplify the Contingency Fund calculation since there continue to be differences between the TANF and Contingency Fund MOE requirements.

Any changes to the definition of the Contingency Fund MOE requirements could result in significant increases in Federal costs. It remains unclear whether such changes would improve the effectiveness of the fund or maintain the shared Federal /State burden in the event of an economic downturn.

D. Reconciliation Formula

Section 403(b)(6) of the Social Security Act as amended by PRWORA provides that State expenditures above the Contingency Fund MOE level are to be matched, at the applicable FMAP rate, by Federal Contingency Funds. In the reconciliation procedure, the amount of matching funds a State may retain decreases for those States receiving Contingency Funds for less than 12 months in a fiscal year. The last step in the reconciliation formula reduces the Federal funds payable to the State to 1/12 times the number of months the State received Contingency Funds in the fiscal year (see page 7). Therefore, a State receiving Contingency Funds for only a portion of the year receives a smaller proportion of Federal funds than a State eligible for all twelve months.

For example, State expenditures in excess of the Contingency Fund MOE amount entitled the State to receive \$2 million at the FMAP rate. However, since the State was eligible for only 6 months in the year, the last step in the reconciliation formula reduced the \$2 million by 6/12ths or $1 million.

The table below gives additional examples of the application of the reconciliation formula. In this table, the assumption is made that prior to the last step in the process in which the number of months adjustment is made, all States were retaining $2 million. However, State A received Contingency Funds for 3 months; State B for 6 months; and State C for 12 months. Column three of the table illustrates the affect on funding to States under the current formula. In this example, assuming a State's FMAP rate is 50%, State A's final Federal matching rate is 12.5%, State B's is 25% and State C's remains at 50%.

	No. of Months	Potential Pay Out If Number-of-Months Adjustment were Eliminated	Paid Out Under Current Adjustment Process	Percentage Reduction
State A	3	$2,000,000	$500,000	75%
State B	6	$2,000,000	$1,000,000	50%
State C	12	$2,000,000	$2,000,000	0%
Total		$6,000,000	$3,500,000	

Questions have been raised about whether the proportion of Federal funds finally retained by needy States, as determined by this reconciliation formula, is too low compared to the required State Contingency Fund MOE and matching expenditures. An alternative to consider would be the elimination of this final step in the reconciliation process. For States that met the trigger level requirements, this change would convert the Contingency Fund to a matching program for State expenditures in excess of the Contingency Fund MOE. Column two in the table demonstrates the impact on State funds if the reconciliation procedures were revised to eliminate the number of months adjustment. Under this alternative, each State in the example would retain a 50% Federal matching rate regardless of the number of months for which they received Contingency Funds. This alternative would treat all States that qualify for Contingency Funds equally, regardless of whether the State met the triggers for 2 months or for the entire year.

Any changes to the reconciliation formula could result in significant increases in Federal costs.

E. Adoption and Safe Families Act of 1997 Provision

States receiving Contingency Funds under provisional payments may have received overpayments, and may have to remit all or part of the funds. The Adoption and Safe Families Act of 1997 amendments to the Contingency Fund increased the State remittance amount in order to provide sufficient funding for this key adoption initiative. The provision increases the remittance amounts of all States drawing from the Contingency Fund. This increase, to be shared proportionally by all States drawing funds in a year, total $2 million in FY 1998, $9 million in FY 1999, $16 million in FY 2000, and $13 million in FY 2001. One result of this calculation is that the fewer the number of States receiving funds, the higher their proportionate share of the offset, and the more they will have to remit.

One way to address this issue would be to change the remittance formula in a way that spreads out the recovery of funds. For example, the additional remittance amount could be capped at some percentage, say 25% or 30%, of the Contingency Funds to which they would be otherwise entitled. Another alternative would be to look for other sources for this $40 million offset in order to avoid such consequences for States meeting the triggers.

Appendix D

BIG EIGHT STATES' MINIMUM AND MAXIMUM CONTINGENCY FUND AMOUNTS

STATE	Annual SFAG* Allocation	Contingency Fund Eligible One Month	Contingency Fund Eligible 12 Months
CALIFORNIA	3,733,817,784	62,230,296	746,763,557
FLORIDA	562,340,120	9,372,335	112,468,024
ILLINOIS	585,056,960	9,750,949	117,011,392
MICHIGAN	775,352,858	12,922,548	155,070,572
NEW YORK	2,442,930,602	40,715,510	488,586,120
OHIO	727,968,260	12,132,804	145,593,652
PENNSYLVANIA	719,499,305	11,991,655	143,899,861
TEXAS	486,256,752	8,104,279	97,251,350
Total	10,033,222,641	167,220,377	2,006,644,528

Table D-2

* SFAG = State Family Assistance Grant which is the statutory term for the TANF block grant.