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See my e mail to Jack Lew

THE PRESIDENT HAS SEEN

Carol Rasco
Jack Lew
Chron

THE WHITE HOUSE

WASHINGTON

96 AUG 21 P2:45

SEP -3 1996

August 21, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: Carol Rasco and Jack Lew

SUBJECT: Status of Welfare Reform Implementation

This memo will update you on efforts to ensure that welfare reform is implemented smoothly and effectively.

We have formed an inter-agency working group to coordinate implementation, which met for the first time on August 9 and will meet on a weekly basis. We have established three subgroups. One will monitor key implementation milestones, identify and resolve issues, and ensure deadlines are met. A second group is developing proposals to expand job opportunities for those leaving welfare. A third group will coordinate Presidential welfare events. Separate work is going forward on developing proposals to correct the major flaws in welfare reform which you have identified.

One key element of implementation is work with the states through the National Governors' Association (NGA), the National Conference of State Legislators (NCSL), and the American Public Welfare Association (APWA) to ensure smooth federal-state communication. Intergovernmental Affairs is coordinating Cabinet agency contact with state and local officials on all implementation issues. NGA, NCSL, and APWA will meet on implementation issues on September 9 and 10, including governors' senior policy staff, state legislative leaders, and state social service commissioners. Intergovernmental Affairs is working with NGA to negotiate the agenda of that meeting, including making Federal officials available for briefings.

This memo summarizes the work of the subgroup dealing with implementation. There are a tremendous number of difficult implementation challenges raised by the bill. All affected agencies are at work developing their own timelines and work plans. We will be compiling these agency plans so that there is one overall framework for monitoring implementation. The following is a list of some of the main deadlines and challenges that we have so far identified.

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) BLOCK GRANT

As you know, the bill creates the new block grant to replace AFDC and requires that states transform their AFDC systems to TANF by July 1997. There are several major issues that we will be tracking as HHS manages this transition:

o Early Implementation -- States have the option of implementing the block grant immediately, and it is financially advantageous for them to do so. Some states may be ready to go immediately on enactment. We will be working to clarify with HHS the process and timetable for approving these plans. You should know that many states, including California, will need to seek approval from their state legislatures before submitting plans. No states are expected to call special sessions this fall on these issues.

o Regulations -- HHS is preparing a preliminary list of areas in which it sees a need to regulate under the statute. We will be working with HHS to ensure that the new program is appropriately, but not overly, regulated. Q: can we require states to offer, allow local gov't to offer, wage subsidies to ~~[illegible]~~ private employers plus not gov'ts?

o Guidance to States -- HHS is also considering issuing guidance to states on how to construct their new block grant plans. We will be working closely with HHS on this guidance to ensure that it is useful and helpful to the states.

o Approved Waivers -- The bill lets states continue to operate existing waivers. However, the bill's language is unclear about the scope of these provisions, especially the treatment of work requirements and time limits. It appears that the bill's drafters did not intend to exempt states from the work participation rates, but only to provide them with some flexibility in defining work activities. In addition, waivers that apply to only a few counties in a state can not be extended to the entire state.

Can we at least continue waivers on work participation & to continuation Montgomery waiver?

As for time limits, Michigan has waivers that do not include a time limit on benefits and has indicated it will continue on this course in the plan it submits, rather than adopt time limits as required by the bill. New Hampshire may follow suit. Whether the intent of the waiver provisions can be clarified by administrative action has yet to be determined. Deciding upon the best course for clarifying the intent of the waiver provisions -- seeking legislation or through regulation (which would be our first preference) -- will be one of the implementation group's first major issues.

~~[illegible]~~ (want to [illegible] time limits waiver before ~~[illegible]~~ is made an announced [illegible] waiver

o Pending and Future Waivers -- HHS has approved eight waivers in the past two days, three of which arrived after you announced you would sign the bill (D.C., Idaho, and Kansas). Wisconsin is not yet approved. HHS is prepared to act on future waiver requests until July 1, 1997 should states ask for them.

o Other issues -- There are a whole series of operational issues the group will be addressing including the establishment and management of the Performance Bonus Fund and the Contingency Fund.

agree - (want to discuss before decision made

CHILD SUPPORT ENFORCEMENT

The bill requires an increased Federal role and significant state activity in this area. States must have enabling legislation in place by the end of their 1997 sessions. Federal data processing systems have be able to interact with state systems by October 1997. We must develop a registry of new hires and a case registry, and enhance the Federal Parent Locator Service. HHS has scheduled training conferences and set up joint working groups with the states. One change of interest is that states will no longer be required to pass the first $50 of monthly support collections to the family receiving assistance as of October 1, 1996.

important all agreed to this —

I didn't know this!

IMMIGRANTS

Obviously, the cross-cutting impact of the immigrant provisions of the bill will be a central concern on implementation. Among the key impacts:

- Food Stamps -- Upon enactment, legal aliens applying for food stamps will no longer be eligible. Immigrants currently receiving benefits will lose them at the time of their regularly scheduled recertification. These recertifications would begin immediately upon enactment, with all such immigrants to be removed from the program within one year of enactment. About 900,000 participants (including 300,000 children) will be ineligible in the first year; approximately 250,000 participants will lose benefits in the first three months after enactment.

could also work this on naturalization grounds —

- Supplemental Security Income (SSI) -- Upon enactment, most immigrants who apply for SSI will not be eligible. Current immigrant recipients will get benefits until the Social Security Administration (SSA) determines they are no longer eligible. By March 1997, SSA ~~must send notices~~ to the 1.1 million current recipients who may be legal immigrants and request evidence of their citizenship status. If the immigrant provides evidence that he or she is not eligible or fails to respond, SSA will notify the individual that benefits will be stopped. The amount of time the recipient has to respond to the first notice appears to be at SSA's discretion, although all redeterminations must be completed within one year of enactment. SSA is exploring timing options, with the intent of providing recipients as much time as possible within the law to naturalize. An estimated 300,000 to 400,000 recipients are expected to come off the rolls.

use this year and work w/ INS on here to get as many citizens as possible

We will be focusing on two overarching issues in implementing these and the other immigration provisions:

- Verification -- Developing a workable and fair system of verifying citizenship status that meets the needs of the various systems affected is a daunting challenge. The legislation outlines ambitious timelines, and an administration workgroup is already at work putting proposals and options together.

- **o** Naturalization -- In anticipation of the restrictions on benefits, many immigrants have already applied for citizenship and many more will apply as the restrictions take effect. INS has been working on initiatives to speed up the naturalization process. The Citizenship U.S.A. initiative is designed to respond to the large increase in applications and expects to naturalize 1.2 million immigrants this fiscal year. INS is also working with SSA and OMB on a new regulation that will waive English and civics test requirements for immigrants with certain serious disabilities and perhaps establish a special waiver for many disabled immigrants receiving SSI.

thousands their asset

how big an effect on this year

506—1.2

FOOD STAMPS -- NON-IMMIGRANT PROVISIONS

Eligibility for 18-50 Year-old Childless Adults -- Most able-bodied adults without children will now be limited to 3 months of food stamps in a 36-month period if they are not working or participating in a work or workfare program. For current recipients, this limit is effective 3 months after enactment. One million current recipients will become ineligible within six months. Households remain ineligible for the balance of the 36-month period unless they obtain work or get a slot in a job training or workfare program.

Making the extensive changes to their computer systems to determine the eligibility of individuals who are dropped from the rolls and to track new recipients against the time limits will be a major implementation challenge to states.

Benefit Levels -- Changes to the standard income deduction and the excess shelter deduction will reduce benefits for nearly all of the 25 million monthly participants. Food stamp allotments will still increase under these changes, but much less than under prior law. The impact increases over time -- by 2002, average benefits will be nearly 20% lower.

These provisions involve relatively simple computer changes. The Department of Agriculture (USDA) expects most states will be able to implement them on October 1 and January 1, respectively, without delay.

decided HHS

OTHER KEY PROVISIONS

SSI for Children -- The bill tightens SSI eligibility for children with disabilities. Upon enactment, new applicants who do not meet the new standard will be ineligible. Current recipients will get benefits until SSA makes a redetermination that they are no longer eligible. Children whose cases must be reviewed will receive notices by January 1997. Those found no longer eligible will be sent a notice that benefits will be stopped. In certain cases, benefits may continue until the first level of appeal is completed. The bill calls for all redeterminations to be completed within one year of enactment. An estimated 285,000 initial notices will be sent and an estimated 190,000 children are expected to come off the rolls. SSA is working on the plan for the timing of the release of the first notices and the subsequent processes.

[illegible]

[illegible] changes, [illegible]
[illegible] deal with [illegible]
[illegible] cuts
Tx

Medicaid -- The Medicaid program faces two major challenges in implementation: (1) delinking eligibility for Medicaid from the welfare system, and (2) assessing the impact on pending and existing waivers. The Health Care Financing Administration is working closely with other parts of HHS and with SSA to meet these challenges.

Child Care -- The bill block grants several child care programs, effective at the beginning of the fiscal year. While these changes are mostly positive, the timeframe for implementation is challenging.

Good to do as HHS can which shows positive effects of law

Monitoring and Evaluation -- One key overarching issue will be to ensure that agencies are establishing effective research, evaluation, and monitoring capabilities to identify the impact of these dramatic changes on the individuals and institutions involved.

JOB OPPORTUNITIES agree

The interagency working group on the welfare jobs issue is nearing completion of a package of options. At this point it appears that the components will likely be: about $1 billion in enhancements to the Work Opportunities Tax Credit passed in the minimum wage bill; a $100 million expansion of the Community Develpoment and Financial Institutions program to enhance economic development in distressed areas; a $3 billion spending program to place one million hard-to-employ welfare recipients in unsubsidiezed jobs, with the key feature of withholding full payment to States until successful job placement and retention.

→ Should give credit to [illegible]

NEED FOR LEGISLATION

Work has begun on developing proposals to correct the major flaws in the welfare reform bill. Among those you have noted are: (1) the too-deep cuts in the Food Stamp Program, including the cap on the amount that can be deducted for shelter costs when determining an individual's eligibility; (2) the denial of Federal assistance to legal immigrants and their children, and the state option to do the same; and (3) the failure to provide Food Stamp support to unemployed childless adults who are willing to work, but not offered a work slot.

yy

Additional issues requiring corrective action include: (1) the failure to provide sufficient contingency funding for States that experience a serious economic downturn; and (2) the lack of a provision for in-kind vouchers for children whose parents reach the five-year Federal time limit without finding work.

+ what about the California's concern in Sat 9/25 New York Times

CONCLUSION

We will keep you up to date on developments as we go forward.

cc: Leon Panetta

cc Cynthia, Lyn

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10/9/96

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① CR - good memo. See p.4 for 1 question -

OCT - 9 1996

96 OCT 2 P6: 14

October 2, 1996

② Leon -> you should read this if you haven't already -

BC

MEMORANDUM FOR THE PRESIDENT

FROM: TO Carol H. Rasco CHR
Frank Raines

SUBJECT: Update on Welfare Reform Implementation

We are continuing to work to coordinate the Administration's efforts to implement the new welfare law. We will be providing periodic updates on key issues for you, as well as answers to questions you raise.

PROCESS

Domestic Policy, OMB, Counsel's office, and Intergovernmental are working closely together on all aspects of implementation. We have the following process in motion:

- o DPC chairs bi-weekly meetings of 11 federal agencies and all White House offices.
- o A subgroup of key agencies and offices meets more regularly on nuts-and-bolts implementation issues.
- o We are meeting weekly with the National Governors' Association, the National Conference of State Legislatures, and the American Public Welfare Association.
- o We met with the League of Cities, the Conference of Mayors, and the counties and promised them ongoing input and consultation.

TANF BLOCK GRANT IMPLEMENTATION

The entitlement to AFDC ended on October 1. States can elect to take advantage of the new TANF block grant as of that date, but they must enter the new program by July 1997. The first states to send in state plans were Michigan and Wisconsin, and their plans were approved by HHS on September 30. As of October 1, about 11 states had filed state plans with HHS.

Determining "Completeness" of Plans -- HHS's role in state plans is merely to certify that they are "complete" -- a far different role than they have had in the past. We have worked with HHS to pare down their list of what is required for a plan to be complete. As a result, they produced draft guidance for the states at the NGA conference last month that was quite brief -- and praised by the states as a result.

good

Regulations -- The law provides only limited authority to regulate the TANF block grant. You asked in our last memo whether we can require states to use TANF funds as wage subsidies. This is one of the permissible uses of the funds and one way states can provide work. HHS will be working with states to promote this as a model, but it will not be able to require that states adopt any particular approach to meeting the work requirement.

Grandfathering Waivers -- Counsel's office advises that the welfare law allows states to continue to operate waiver programs that have time limits and work requirements that vary from the terms of the new law (unless the waivers were granted after the new law passed). We will, however, be making it clear in our guidance to states that the Administration believes that all state programs should comply with the law's provisions regarding time limits, work participation rates, and exemptions and extensions. We will also indicate that if states do not bring their programs into line with the law, there will almost certainly be Congressional action (which we would support) to limit the grandfathering provision.

Wisconsin Waiver -- We have resolved Wisconsin's welfare and Medicaid waiver request. On September 30, in its letter approving Wisconsin's new TANF state plan, HHS informed the state that it no longer needs waivers to implement the welfare reform portions of its "W-2" program. Wisconsin still plans to impose a 60-day residency requirement before families can begin to collect benefits, which HHS believes is unconstitutional. The law in this area is unsettled, and the provision will definitely be brought to the courts. HHS simply took note of this issue as part of the plan approval.

ok

On Medicaid, HHS informed the state on September 30 that it will not grant that portion of the state's waiver request because it would have eliminated the Medicaid entitlement and run counter to our commitment to the federal Medicaid guarantee. HHS offered to work with the state on an alternative Medicaid proposal.

Performance Bonus Fund and Contingency Fund -- The new law requires the Secretary of HHS to work with NGA and APWA to set up the Performance Bonus Fund, and gives her a year to develop the formula and process. We are setting up a process with these state groups to work out such a proposal in cooperation. We will keep you apprised as these plans develop. The Contingency Fund to protect states from economic downturns is being established by Treasury in consultation with HHS.

New Mexico -- New Mexico is one of the few states that is disadvantaged by the conversion to a block grant, because its caseload is increasing. The state announced it may have to cut welfare benefits by 12% to live within the new law. However, Senator Domenici may secure a legislative fix that would allow the state to tap into the Contingency Fund for this purpose.

IMMIGRANTS

The immigration issues raised by the law are clearly the thorniest and most difficult to implement.

Squeeze as much as [illegible] can

Means-tested Benefits -- Non-citizens who arrive after the law's enactment are barred from receiving "means-tested benefits" for five years. We have some latitude to define that term, and Counsel's office, OMB, and DOJ are working together to do so.

Food Stamps for Legal Immigrants -- As part of the CR, we were able to persuade Congress to delay cutting off food stamp benefits for legal immigrants now on the rolls until at least April 1, 1997. (Under welfare reform, that change was to have been effective at the recipient's next recertification for benefits.) This ~~change will particularly help California~~, which did not benefit from our earlier effort to delay the impact through USDA waivers, and sought our help as a result. Over 30 states opted for a delay through the waiver option.

However, legal immigrants who are applying for food stamps are not helped by the change in the CR. States are beginning to deny food stamps to these new applicants, although the interpretation of USDA's guidance on when they must comply varies from state to state. USDA instructed states to start denying new applications on September 22; for the next 120 days, states that have implemented this change are not subject to sanctions if they make errors.

Verification -- Administrators of many government programs such as food stamps have an important new role to play in verifying the legal status of non-citizens, and whether they fall into any of the categories exempted from the full impact of this law. One particularly difficult exemption to administer is the "40 quarters" exemption, whereby legal immigrants who have worked at least 40 quarters in this country (in combination with their spouse or parents) can still get benefits. SSA is working on a new system to give other agencies access to this information on an overnight basis, beginning in January 1997.

Good

However, some earnings may never have been reported to SSA, particularly for farmworkers and domestic workers whose employers did not pay the taxes on their behalf. We plan to get instructions to food stamp offices next week on how to address this problem and avoid denying benefits inappropriately.

Reporting of Illegal Aliens -- The law requires states, SSA, and HUD to report quarterly to the INS on any illegal aliens they become aware of. The INS is determining how to implement this provision.

Below are answers to three questions you raised in the last update memo:

- Legal immigrants who get SSI will get notices early next year that SSA will reexamine their eligibility, and benefits will be ended by August 1997. The INS will send them information on naturalization later this fall to ensure that as many as possible who meet the requirements for citizenship are able to naturalize before their benefits end next August.

- o We are working with INS and disability and immigration groups to ensure that the regulation waiving certain testing requirements for immigrants with disabilities is finalized as soon as possible. The comment period ends within the next two weeks, and the rule will be finalized by December.

- o You had noted the statistic that the INS naturalized 1.2 million immigrants this fiscal year, and asked how big an increase it represented over the prior year. Approximately 500,000 people were naturalized last year, so it is a very significant increase.

FOOD STAMPS WORK REQUIREMENT

As you may recall, the new law imposes work requirements on food stamp applicants who are childless and 18–50 years old, but it allows states to apply for a waiver of this requirement in areas of high unemployment. USDA will be issuing guidance shortly on how states can designate such areas.

How is "hi unemployment" defined.

SSI FOR DISABLED CHILDREN

As you know, the law tightened the eligibility standard for SSI for children with disabilities. The law was effective upon enactment for new applicants. As many as 190,000 children now on the rolls will lose eligibility between March and August 1997 because their impairments are not severe enough to qualify under the new law. Two major issues have emerged:

Cut-off Date for Families Who Appeal -- SSA will determine whom to drop from the rolls by August 1997, but families can appeal SSA's decision. If they do so in a timely manner, they are guaranteed continued benefits while they appeal. Legally, SSA had determined that we are able to keep children on the rolls up to a later point in the appeals process than we had expected, and SSA will take advantage of this option. As a result most children who appeal will lose benefits in 1999, rather than late 1997 or 1998. SSA has not yet announced this decision because they want to announce the decision on the second issue at the same time.

Definition of Childhood Disability -- The law includes a new definition of childhood disability. During the lengthy debate on this issue, everyone assumed the new definition would cut 190,000 children from the rolls, and we included savings of $7.6 billion from 1997–2002 in our budget reflecting that estimate. However, from a legal perspective it appears SSA has more flexibility to define childhood disability than we expected. Advocates have united around an interpretation that would drop from the rolls only 20% of the 190,000 children, with a loss of $5.9 billion of the savings, but Congress would undoubtedly view this option as subverting their intent. SSA is seeking a proposal that strikes the right balance.

Important

MEDICAID

In the coming week, HHS will lay out for us an initial position on key Medicaid issues, including how states can reconfigure their systems to accommodate the separate eligibility systems required for Medicaid and TANF; what happens to the Medicaid coverage of those individuals who lose SSI coverage; and the impact on existing waivers.

Another major question is how many states will accept the option to continue Medicaid for current legal immigrants. They must decide by January 1.

CHILD CARE

The new provisions of the law relating to child care went into effect October 1, 1996. This is a very positive story, as HHS worked quickly and effectively to help states understand the new law, develop interim plans to access the new funding, and ensure that states will get their increased money on time. We will be working with Communications to ensure that the opportunity to highlight some good news on this front is not missed.

TECHNICAL CORRECTIONS

The Secretary of HHS is required to report to Congress within 90 days (November 22, 1996) on technical amendments and corrections that are necessary. The other departments as well as many of the groups with which we are working have concerns in this area as well. We will be working closely with HHS as the date for this report draws closer.

cc: Leon Panetta

362 0493

MEMORANDUM FOR THE PRESIDENT

PURPOSE

The purpose of this memo is to provide the Department's perspective on a major welfare reform implementation issue that the Administration is facing -- i.e., what amount of flexibility does the welfare reform statute provide to the states in spending their own money to meet the statute's general maintenance-of-effort (MOE) requirements? It is urgent that we give states an immediate and clear answer on this issue (sometimes called "bifurcation") because state legislatures are currently making key programmatic and financing decisions that will enable them to make welfare reform work. Governors, legislators, and administrators are strongly pushing for a quick response, and the issue is currently under consideration.

The Department's view is that the statute provides states with flexibility in spending their own money for benefits and services that count towards general maintenance of effort, without having to apply the requirements that apply to the TANF program. This view is shared by the key members of Congress, the National Governors Association, the American Public Welfare Association, the National Conference of State Legislatures, and numerous other commentators who have analyzed the legislation.

The statute is clear that states must spend their own money on needy families and for the purposes of the Act, but our view is that qualifying expenditures outside the TANF program are not bound by the other requirements of the Act. That is, the statute allows states to count expenditures in "any other state program," in addition to the TANF program, towards the maintenance-of-effort requirement. Our position thus gives states a wide range of flexibility in spending their money, whether they choose to spend that money for innovative post-employment services, a state EITC, family support services for needy families, or welfare benefits for families who have not met Federal requirements.

NEED FOR DECISION

This issue requires interpretation by HHS because PRWORA is such a large and complex piece of legislation, and there is no single clause in the statute which lays out how much flexibility States have with respect to expenditures of their own funds. The statute does make clear that a number of the TANF requirements apply only when Federal funds are used, and that States also have more flexibility to spend State funds on immigrants and families reaching the time limit. For other requirements, including work requirements and participation rates, data collection, child support assignment and cooperation, and distribution of child support collections, it is less clear whether these requirements apply to the state maintenance-of-effort funds.

The DPC and HHS have different views on this question of interpretation. The DPC believes that the best choice is to exclude from MOE state expenditures that fail to meet those requirements, because of a great concern that such flexibility might undercut the work and participation requirements; they thus oppose bifurcation. HHS shares the DPC's commitment to the work requirements and the legitimate concern that some states may use flexibility to reduce inappropriately the population subject to work participation rates. HHS has a different view of how to promote work and believes that bifurcation is the only option sustainable in working with states.

This decision is urgent because state legislatures are convening right now and making decisions on the scope, nature, and funding of their new programs. In addition, the National Governors Association is meeting beginning next weekend. If an answer is not provided this week, we can expect deep concern from all fifty Governors about Administration silence on this issue. We can also expect to lose valuable time in getting welfare reform up and running.

HHS VIEWS

HHS and the DPC share the common goals of making welfare reform succeed and moving families from welfare to employment. We believe that the best way to meet these goals is to adopt the position that States have the authority under the new welfare law to set up separate State programs -- funded entirely by State funds -- which are not subject to the requirements of the TANF program, but are included in the calculation of MOE. We believe that this position will enable states to get moving on welfare reform, will be consistent with the intentions of the sponsors and the words of the statute, and will avoid losing months or even years in battles with all fifty states over what they will see as Federal bureaucracy attempting to hold on to its power. While we do not believe that all the consequences of bifurcation are desirable, we believe it is the best choice we have. As noted later, we are prepared to take all administrative actions possible to mitigate against negative results and to consider a range of additional next steps if states should abuse this flexibility.

Our principal reasons for taking this position follow.

1. <u>Key Congressional members indicate that this is the interpretation they intended in drafting the bill.</u> As noted in the attached letter from Chairmen Archer and Shaw, the Congress understood that there were potential negative consequences to this State flexibility but nonetheless believed it to be the best available choice. In the letter, Chairmen Archer and Shaw commit themselves to working with us to resolve any problems that might occur if states misuse the flexibility.

2. The States, as represented by the National Governors' Association, American Public Welfare Association, and National Conference of State Legislatures have strongly supported this view. (See attached letter co-signed by the three organizations.) All fifty Governors and state legislatures can be expected to hold this view as a matter of principle: in their view, the Federal government should not be dictating requirements for the expenditure of state money.

3. State flexibility will make possible state creativity and innovation that can support the critical goals of work and responsibility. While not all states will use this flexibility in effective ways, the most creative states could well use it to build models that we all could learn from, and to try out a range of ways to support families in their move from welfare to work. For example, states might choose to use state funds to support a state EITC, or transportation assistance that would help low-wage workers keep their jobs. These uses of funds would be discouraged if we required all these cases to assign child support to the state, provide all the data elements required by the statute, and meet other requirements.

4. Making welfare reform work requires a partnership between the Federal government, the States, community leaders, and private employers. If we take the position envisioned by the drafters of the legislation and proposed by HHS, we will be taking a step that is viewed by States and others as consistent with that partnership. That will put us in the position to hold them accountable for meeting programmatic goals, provide technical assistance, shine a spotlight on success and failure, and do everything else we can in partnership to move families from welfare to work.

5. By contrast, if we take the position that states do not have flexibility with their own funds, we will lose precious months and years in an ongoing battle over Federal micromanagement of state programs. We risk undermining our relationships with the States (and the Hill) at the very beginning of implementation; creating an atmosphere of anger and distrust through our first major policy statement; and shifting the focus from the real issues of work and responsibility to the question of whether the Federal bureaucracy still doesn't understand the Congressional directive for Washington to give up detailed control. No matter how we describe our decision, States, and others, will view a narrow reading on State flexibility as an attempt by the Federal government to overstep its authority and to micromanage State decisions on the expenditure of their own monies. They may accuse us of attempting to transform the new block grant program back into a matching program. They could well argue that, through our policy interpretations, we are actually reducing the flexibility they had under prior law (i.e., the state share of Emergency Assistance expenditures, which were folded into the TANF block grant, supported a wide range of non-welfare activities, including family support, social services, etc.).

6. While we share the concerns of the DPC that the state flexibility approach risks some state "gaming" of key requirements -- and we propose strategies to address these risks below -- we do not believe that state actions under the flexible approach are likely to "gut" the work requirements of the PRWORA.

- First, State MOE funds make up well under half (about 40 percent on average) of the combined Federal/State funding of these programs, and there is no question the work requirements apply to assistance provided by Federal funds.

- Secondly, based on what we have heard so far, States have many different purposes in mind for using their MOE funds and will therefore have many competing demands for scarce resources. Most importantly, MOE monies provide the safety valve available to States to provide benefits to families who need some support but are not necessarily appropriate subjects for time limits and TANF work, child support, and data collection requirements -- such as grandparent caretakers; working families needing work-support services such as wage supplements/tax credits; and victims of domestic violence. In short, States have limited MOE money to serve a lot of very important needs; they will need to think twice about giving short shrift to such needs in order to avoid work requirements.

- Third, the statute requires that states seeking to gain access to the contingency fund spend their maintenance of effort money solely on TANF. Therefore, states that believe they are at risk of needing to use contingency fund resources will have an incentive to avoid making large commitments to state-only programs that would not meet the TANF requirements.

- Within states and their legislatures, supporters of work-based welfare reform are likely to criticize extreme efforts by state administrators to undermine work requirements.

7. Both because of our own commitment to the goal of work and in response to the DPC's concerns, we have identified several steps we would be willing to take in the guidance to discourage state misuse of this flexibility to "game" the work requirements:

i. We would take every administrative action in our power to collect information about the families served by states under their MOE programs, so that we could highlight successful approaches and punish gaming. For example:

- o We could propose in regulation to deny States any reduction in the work participation requirements applicable to them (based on caseload reductions) unless they provide us with information on the families receiving State-funded assistance;

- o We could propose in regulation to look at a state's bifurcation policy in deciding whether it is subject to one of the TANF fiscal penalties (i.e., in deciding whether it has reasonable cause for noncompliance); and

If ? can do this...

- o We could propose in regulation to consider a State's overall work effort in deciding whether they qualify for a high performance bonus.

- o We could publicize the data collected regarding families receiving state-only assistance and thereby put a spotlight on states engaging in inappropriate practices.

ii. In addition to taking every administrative action possible, we would go to Congress with a legislative fix on the data collection provisions to ensure that we have all basic information on the universe of recipients served by State-funded programs and a better ability to determine whether the legislative goals are being achieved.

iii. We could indicate in this initial guidance that even though this is our best interpretation of the statute at this point, we would consider a different interpretation in the final TANF regulation relating to appropriate uses of state and federal funds if we learn that the work provisions are being undermined during this interim period.

iv. We could advise States to think carefully about the risks of bifurcation because such a practice will greatly complicate a State's ability to access contingency funds if and when it faces an economic downturn.

URGENCY

It is important to resolve this issue immediately in light of the upcoming NGA meeting, the continuing press coverage of this issue, and the urgent desire of states to make the key funding decisions and get moving on welfare reform.

Donna E. Shalala

NOTE TO BRUCE REED

FROM John Monahan

RE: Proposed Program Instruction to States

Attached you will find a Department-cleared draft of a program instruction to states regarding the use of federal and state TANF funds. Please note that this draft instruction covers the bifurcation and definition of assistance issues.

Tomorrow morning, we will forward draft questions and answers that could be utilized by Administration officials if this instruction is released.

Please assure that all interested White House and OMB offices receive copies of this instruction prior to the meeting we are in the process of scheduling late Wednesday, January 22, or early on Thursday, January 23.

For questions relating to the guidance, please call Olivia Golden or myself.

cc: Elena Kagan
Ken Apfel
Keith Fontenot
Barry White
Diana Fortuna
Emily Bromberg

I. Nature and Purpose of this Guidance

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) gives States enormous flexibility to design their Temporary Assistance for Needy Family (TANF) programs in ways that promote work, responsibility, and self-sufficiency and strengthen families. Except as expressly provided under the statute, the Federal government may not regulate the conduct of States.

Within this context, we are planning to develop proposed TANF regulations which focus on the areas where Congress has expressly provided for the Secretary to take action -- i.e., with respect to data collection, penalties and bonuses. In developing these rules, we are committed to an extensive outreach strategy which ensures consultation with a wide range of groups that have an interest in children and families. To date, we have called upon State executive and legislative officials and their national representatives, advocates, non-profit organizations and foundations, labor, and business organizations to help us identify issues and ensure that alternative statutory interpretations and perspectives are considered.

Call for Guidance. During this consultation process, we have heard in many forums of the need for early guidance on issues of immediate importance to the development of State programs. Among these issues are Federal requirements related to the expenditure of Federal grant funds, including the definition of "assistance" which triggers these requirements; the scope of State flexibility in using State funds which qualify as expenditures for maintenance-of-effort (MOE) purposes; and State flexibility in using State MOE funds in State programs operated apart from TANF. The need for early guidance is driven by the start of State legislative sessions and the complexity and scope of the TANF statute.

States are understandably anxious to get answers to their questions. However, because of the scope of the TANF statute, and the interrelationships among its many pieces, answers are not easy to develop.

Because the new law represents such a major change in welfare policy, and the stakes are so high, we want to be sure that any guidance we issue is adequately grounded. Also, the TANF statute tries to achieve a balance between the competing goals of State flexibility and program accountability. Before issuing any statutory interpretation, we are taking some care to ensure that we maintain this balance. To ensure that we have a clear understanding of the positions of other key players on important issues, we have been engaged in an ongoing consultation process to get input of key groups. All of these factors have worked to increase the time required to develop policy answers.

Purpose of Guidance. In response to this need for guidance, we

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have developed this paper. It is designed to provide States and other parties with an indication of our initial views of the potential interpretations of the statutory language and of the direction which we are most likely to take in drafting proposed rules. We believe the guidance reflects Congressional intent on TANF policies, and that it will promote program accountability, support substantial innovation in program design and provide States the flexibility they need to serve needy families effectively.

Scope of Guidance. Following a summary of key elements of the guidance and some additional context and background, the paper incorporates the following sections:

II. Basic State Options in Program Design (p.) -- a conceptual framework for the TANF program and its Federal and State components.

III. Use of Federal Funds (p.) -- the flexibility available to States and the limits on use of Federal funds, including restrictions on the assistance payable with Federal funds.

IV. Basic Requirements Governing State MOE Expenditures (p.) -- the requirements governing State expenditures that qualify for TANF MOE purposes and the expanded flexibility available to States to expend State funds on certain needy families, including certain immigrants, individuals who exceed the time limits and teen parents. [NOTE: The immigrant policy on p. 10 gives States broader flexibility to spend State MOE funds on immigrant families than was previously indicated in a Q and A issued by ACF. The new interpretation reflects the additional work done on interpreting "State program under this part" and on trying to give meaning to the many pieces of the statute which directly and indirectly speak to this issue.]

V. Definition of Assistance (p.) -- guidance needed to assess the scope of key TANF provisions, including time limits, work requirements, child support assignment, and data collection.

VI. Monitoring the Impacts of Separate State Programs (p.) -- an important cautionary note expressing concerns about some potential negative consequences of this practice.

VII. Overview of TANF Provisions (p.) -- a chart depicting the applicability of key provisions in the TANF statute, depending on whether Federal or State funds -- and whether a State TANF program or a separate State program -- are involved.

Key points that readers should note include the following:

1) States have the flexibility to count, towards their general TANF MOE requirement, expenditures of State funds

under separate State programs, as long as those expenditures meet the statutory requirements for "qualified State expenditures", including the requirement that they are made on behalf of "eligible families"; such expenditures are not subject to requirements which apply to the TANF program. (see section IV discussion and chart).

Because the statutory language for contingency fund MOE is different, States do NOT have the flexibility to count expenditures under separate State programs for the purpose of meeting the Contingency Fund MOE. All expenditures counted towards the 100% Contingency Fund MOE requirement must be made under the TANF program and therefore must meet TANF requirements.

2) Under the definition of "assistance" included in section V, nearly any form of assistance provided to families under the TANF program would be considered "assistance." Thus, TANF requirements such as time limits, work requirements, assignment of child support, and data collection are applicable (depending on the nature of funding involved).

We recognize that this guidance does not provide answers to all the major pending issues and does not answer many specific questions. Through the regulatory process, we will provide broader and more detailed guidance and direction. We will also provide a more formal process for soliciting and considering the views of interested parties.

While we would encourage States to use this interim guidance, it is not legally binding because it was not developed through the formal rule-making process.

Program Accountability and Interim Penalty Policies. We are committed to making sure that this legislation works, and the goals of welfare and welfare reform are achieved. In Section VI we identify concerns we have about policies which might undermine these objectives or produce other significant negative consequences (such as a serious loss of funds to the Federal ? government). It is important that State policies be consistent with both statutory language and statutory intent. As we later discuss, we will be looking broadly at State practices in TANF implementation for consistency with the statute's intent. If we note major negative effects, we will pursue appropriate remedies.

At the same time, we do not want to discourage State efforts to implement effective and innovative program designs or to develop targeted service strategies which will produce the best outcomes for families with special needs (such as those headed by grandparent caretakers or victimized by family violence). Thus, during this interim period, we do not want States to be unduly fearful of incurring penalties under section 409. Before Federal regulations are in effect, States will not be subject to penalties as long as they implement programs which are related to the intent of the statute and operate within a reasonable interpretation of the statutory language.[1] Also, before we impose penalties, we will look at other factors that might provide "reasonable cause" such as: the need/timing for planning and implementation activities, the degree of compliance, demographic and economic situations, and other State-specific variables. In assessing corrective compliance plans, we will consider the divergent goals a State is trying to achieve, a State's efforts to balance and satisfy the different TANF requirements, and the efforts made to utilize community resources.

In exercising our accountability responsibilities under the statute, we are committed to working in partnership with States to ensure that children and families receive the assistance they need to move along the path to self-sufficiency.

II. Basic State Options on Program Design

To understand the basic options available to States under the new title IV-A, it is important to make note of some of the key terminology used in the statute.

> The term "grant" refers to Federal funds provided to the State under the new section 403 of the Social Security Act[2]. References to amounts "attributable to funds provided by the Federal government" have a similar meaning.
>
> The terms "under the program funded under this part" and "under the State program funded under this part" refer to the State's TANF program. Unlike "grant" references, they encompass programs funded ~~both~~ with Federal funds and with State expenditures made under the TANF plan and program.

What counts as a State expenditure for TANF maintenance-of-effort (MOE) purposes is governed by the language in the new section 409(a)(7) of the Social Security Act. The statutory language in this section allows expenditures "in all State programs" to count as TANF MOE when spent on "eligible families" and meeting other requirements.

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[1] This would include the requirement that both Federal and State "maintenance-of- effort" expenditures must generally support the statutory purposes outlined in section 401 of the Social Security Act, as amended. — gen'l

[2] References to a grant under section 403(a) would exclude the Contingency Fund, but would include other TANF funds in section 403.

When the statutory provisions are read with these terms in mind, it is possible to distinguish three different types of program configuration under the new title IV-A: TANF programs funded by expenditures of Federal grant funds or by co-mingling of State funds and Federal grant funds; TANF programs where Federal grant and State funds are segregated; and programs funded by expenditures of State funds in outside programs (i.e., outside TANF, but counting towards meeting the State's MOE requirements). The language used in a specific TANF provision (or in a related provision elsewhere in the statute) will determine its applicability to these three types of programs.

In order to tailor programs to meet the specific needs of families moving from welfare to work, States may find some advantage to segregating Federal and State TANF dollars or spending State MOE funds in outside programs, rather than TANF. dodge? We encourage States to take great care in making such decisions and to ensure that any such decisions are consistent with meeting the goals of the program.[3]

The definition of "assistance" is also a critical factor in determining the applicability of key TANF provisions. This paper includes a separate discussion of that definition.

III. Use of Federal TANF Funds

Compared to prior law, the TANF statute provides States with enormous flexibility to decide how to spend the Federal funds available under section 403. In repealing the IV-A and IV-F statutes, Congress freed the States from very detailed rules about the types of families that could be served, the benefits that could be provided, administrative procedures that needed to be followed, etc. However, to ensure that programs would achieve key program goals, the new statute imposes certain requirements and limitations on how States can use Federal funds to provide assistance. To a lesser extent, it also limits State flexibility on how to use State funds that count towards MOE. Among the key provisions applicable only to the use of Federal funds are time limits, restrictions on expenditures for medical services and prohibitions on assistance to certain individuals and families,

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[3] Later in the paper, we provide a chart summarizing the applicability of key provisions of the statute to the different program configurations. We also summarize the rules governing allowable uses of Federal and State MOE funds. Because of the complexity of the TANF statute, States should review all of these sections in concert, together with the underlying statutory language, in deciding what program design to pursue.

including certain aliens[4] and teen parents. Also, when Federal TANF funds are spent, all provisions applicable to the TANF program apply. Most importantly, work requirements, data collection, and requirements for child support assignment and cooperation apply. Additional information on the rules applicable to the use of Federal funds is included in the following discussion and the attached table.

Provisions governing the use of Federal TANF funds are found in three sections of the statute.

The new section 404 of the Social Security Act sets forth the basic rules for expenditure of Federal TANF funds.

- They must be: (a) reasonably calculated to accomplish the purposes of the TANF program; or (b) an authorized expenditure for the State under title IV-A or IV-F as of September 30, 1995.

  --The statute specifies that assistance to low-income families for home heating and cooling costs falls within the purview of category (a) above.

  --To fall under category (b), the expenditure would need to be recognized as an allowable expenditure under the State's approved IV-A or IV-F plan in effect as of September 30, 1995.

- Administrative expenditures may not exceed 15 percent of the total grant amount. The statute specifically excludes expenditures on "information technology and computerization needed for tracking or monitoring" required by or under TANF.

- States may transfer up to 30 percent of the total grant to either the Child Care and Development Block Grant or the Social Services Block grant program.

  --No more than 1/3 of the total amount transferred may go to the Social Services Block grant.[5]

  --Once transferred, funds are no longer subject to the requirements of TANF, but are subject instead to the requirements of the program to which they are

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[4] Other restrictions on the use of State funds for aliens are contained in title IV of the PRWORA.

[5] In other words, States must transfer $2 to the Child Care and Development Block Grant in order to transfer $1 to the Social Services Block Grant.

transferred. However, funds transferred to the Social Services Block grant may only be spent on children or families with income below 200 percent of poverty.

- States may reserve their Federal TANF funds for future TANF expenditures without fiscal year limitation.

- States may also use their Federal TANF funds for employment placement programs and for programs to fund individual development accounts.

The new section 408 imposes some restrictions on the use of Federal grant funds. Under this section, Federal funds may not be used to:

1) provide assistance to families that do not include a minor child residing with a custodial parent or other adult caretaker relative (or a pregnant individual);

2) provide assistance to a family that includes an adult who has received 60 months of countable assistance, unless the family qualifies for a hardship exception;

3) provide assistance to families which have not assigned rights to support or to individuals who do not cooperate in establishing paternity or obtaining child support[6];

4) provide assistance to unmarried parents under age 18 who have a child at least 12 weeks old and are not attending high school or an equivalent training program;

5) provide assistance to unmarried parents under age 18 who do not live in appropriate adult-supervised settings (unless exempt);

6) pay for medical services, except pre-pregnancy family planning services;

7) provide cash assistance for a 10-year period following conviction of fraud in order to receive benefits in more than one State;

8) provide assistance to fugitive felons, individuals fleeing felony prosecution or violating conditions of probation and parole violators; or

9) provide assistance for a minor child who is absent (or

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[6] Section 408(a)(2) provides that there must be a deduction of not less than 25 percent and the State may deny the family any assistance.

expected to be absent) from the home, without good cause, for a specified minimum period of time.

Finally, section 115 of PRWORA calls for denial of TANF assistance to any individual convicted of a drug-related felony after August 22, 1996. However, the State may opt out of this provision or reduce its applicability, and certain kinds of Federal benefits are excepted.

IV. Basic Requirements Governing State MOE Expenditures

TANF[7] MOE Requirements--General. States may expend their MOE funds on a broad range of activities without necessarily triggering Federal TANF requirements (such as time limits). Although States have significant discretion, especially with respect to State expenditures they make under separate State programs, there are statutory requirements which define the State expenditures which can be counted as TANF MOE. These are found at the new section 409(a)(7) of the Social Security Act.

Section 409(a)(7)(A) provides for a dollar-for-dollar reduction in a State's State Family Assistance Grant (SFAG) to the extent that "qualified State expenditures" in the immediately preceding fiscal year are less than an applicable percentage of "historic State expenditures." "Historic State expenditures" are subsequently defined to include expenditures by the State for FY 1994 under title IV-A (AFDC, EA, and child care) and IV-F (JOBS), as in effect during FY 1994 .[8]

If a State fails to meet the work program participation requirements for a fiscal year, its MOE requirement is set at 80 percent of "historic State expenditures." If a State meets these requirements, its MOE requirement is set at 75 percent of historic State expenditures.
Also, in determining a State's MOE requirement, any IV-A expenditures made by the State in 1994 on behalf of individuals now covered by a Tribal TANF program are excluded from "historic

[7] For Contingency Fund MOE purposes, State expenditures outside the TANF program do not count. See discussion in the following subsection for a further explanation. NOTE: This footnote was added because the contingency MOE discussion was moved down.

[8] See section 409(a)(7)(B)(iii) for the statutory provisions governing the definition of historic State expenditures.

State expenditures."[9]

Contingency Fund MOE Requirements. MOE requirements governing State access to the Contingency Fund are found at section 403(b) and 409(a)(10). In general, this paper does not address special requirements pertaining to the Contingency Fund MOE. However, for the purpose of program planning, it is important for States to note that only State expenditures made within the TANF program count towards the Contingency Fund MOE. State expenditures in outside programs may count towards the TANF MOE, but they do not qualify for Contingency Fund MOE purposes[10].

Qualified State Expenditures. In order for State expenditures to be considered "qualified State expenditures" for TANF MOE purposes, they must: (1) be made to or on behalf of a family that is eligible under TANF or that would be eligible for TANF except for the fact that the family had exceeded its 5-year limit on assistance or has been excluded from receiving assistance under TANF by PRWORA's immigration provisions (see discussion elsewhere in this paper for guidance on definition of "eligible families" and allowable immigrant expenditures); (2) be for one of the types of assistance listed in section 409(a)(7)(B)(i)(I); and (3) comply with all other requirements and limitations in section 409(a)(7).

moe - gen'l

Section 409(a)(7)(B)(i) defines "qualified State expenditures" as total expenditures by the State in a fiscal year <u>under all State programs</u> for the following activities with respect to "eligible families":

- o *(aa) - Cash assistance;*
- o *(bb) - Child care assistance;*
- o *(cc) - Educational activities designed to increase self-sufficiency, job training, and work, excluding any expenditure for public education in the State except which involve the provision of services or assistance to a member of an eligible family which is not generally available to persons who are not members of an eligible family;*

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[9] In section 409(a)(7)(B)(iii)(II), the statute suggests an alternative calculation of historic expenditures. This language is apparently left over from a time when the bill included a fixed appropriation for State Family Assistance grants. We believe it is no longer viable, based on the final appropriation language.

[10] The statutory language in both sections dealing with Contingency Fund MOE refers to State expenditures "under the State program funded under this part." The TANF MOE counts expenditures "under all State programs," if otherwise qualified.

- o *(dd) - administrative costs in connection with the matters described in items (aa), (bb) and (cc) and (ee), but only to the extent that such costs do not exceed 15 percent of the total amount of qualified State expenditures for the fiscal year;*
- o *(ee) - any other use of funds allowable under section 404(a)(1).*

Meaning of "Eligible Families." Under the new section 409(a)(7)(B)(i)(I) of the Social Security Act, in order to count as qualified State expenditures for MOE purposes, State expenditures must be made with respect to "eligible families." Subclause (III) defines "eligible families" for this purpose to mean families eligible for assistance under the State TANF program and families who would be eligible for assistance except for the time-limit provision and the alien restrictions at section 402 of PRWORA.

We interpret this language to mean that State expenditures count as MOE only if made to or on behalf of families which:

- o have a child living with a parent or other adult relative (or to individuals which are expecting a child); and

- o are needy under the TANF income standards established by the State under its TANF plan.[11]

Finally, many of the restrictions at section 408 -- including the teen parent provisions and the provisions on denial of assistance in fraud and fugitive felon cases -- do not apply to State MOE expenditures because they are written as restrictions on the use of the Federal grant. Additional information on these restrictions can be found in the chart and the discussion on use of Federal funds.

Allowable Immigrant Expenditures.[12] States have the flexibility

[11] We are not suggesting a definition of "child" for this purpose, but would expect States to use a definition consistent either with the "minor child" definition in section 419 or some other definition of child applicable under State law.

We are also not proposing Federal guidelines for what income standards would be used to determine if a family is needy, but will defer to State standards, for both TANF and MOE purposes.

[12] As noted on p. 2, the following immigrant policy gives States broader flexibility to spend State MOE funds on immigrant families than was previously indicated in a Q and A issued by

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to use State MOE funds to serve "qualified"[13] aliens. They also have the flexibility to use Federal TANF funds to serve "qualified" aliens who arrived prior to the enactment of the PRWORA (August 22, 1996). For "qualified" aliens arriving after enactment, there is a bar on the use of Federal TANF funds which extends five years from the date of entry[14].

States also have the flexibility to use State MOE funds to serve ?? legal aliens who are not "qualified".[15]

Finally, under section 411(d) of PRWORA, States have the flexibility to use State MOE funds to serve aliens who are not illegals lawfully present in the U.S., but only through enactment of a State law, after the date of PRWORA enactment, which "affirmatively provides" for such benefits.

Restrictions on Educational Expenditures. We believe the intent of the language in section 409(a)(7)(B)(i)(I)(cc) is to exclude general educational expenditures by State or local governments for services or activities at the elementary, secondary, or postsecondary level which serve general educational purposes. Expenditures on services targeted on "eligible families", but not available to the general public, may be included. For example, MOE could include special classes for teen parents (that are TANF eligible) at high schools or other educational settings. Services to "eligible families" designed to accomplish the purposes specified in section 401 may also be included, pursuant

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ACF. The new interpretation reflects the additional work done on interpreting "State program under this part" and on trying to find the appropriate meaning for the many pieces of the statute which directly and indirectly speak to this issue.

[13] As defined under section 431 of PRWORA.

[14] Pursuant to section 403(b) of PRWORA, the five-year bar does not apply to refugees, asylees, aliens whose deportation is being withheld under section 243(h) of the Immigration and Nationality Act, and U.S. veterans and their spouses and unmarried dependent children. no 408

[15] There is a technical problem in section 411 of PRWORA that prevents States from providing State or local public benefits to a handful of categories of legal aliens, e.g., temporary residents under IRCA, aliens with temporary protected status, and aliens in deferred action status. The structure of section 411 indicates Congress' belief that section 411(a) included all groups of aliens lawfully present in the U.S. Therefore, the Administration has proposed a technical amendment that would allow States to provide State or local public benefits to all aliens lawfully present in the U.S.

to section 409(a)(7)(B)(i)(I)(ee).

General restrictions. Pursuant to section 409(a)(7)(B)(iv), the following types of expenditures may NOT be included as part of a State's MOE:

1) expenditures of funds which originated with the Federal government;

2) State Medicaid expenditures;

3) State funds which match Federal funds (or State expenditures which support claims for Federal matching funds); and

4) expenditures which States make as a condition of receiving Federal funds under other programs[16].

Special Child Care Rules. Notwithstanding this last restriction, when the following requirements are met, expenditures by a State for child care may satisfy both the TANF MOE requirement and the MOE requirement related to accessing child care matching funds at the new section 418(a)(2)(C) of the Social Security Act. First, the amount of child care expenditures countable for TANF MOE purposes may not exceed the child care MOE requirement for the State. Secondly, to count as TANF MOE, the expenditures must meet all the other requirements of section 409(a)(7); to count as child care MOE, expenditures must be allowable under the requirements of the Child Care and Development Fund. Before claiming child care expenditures under both MOE provisions, States need to check that the expenditures in fact meet the requirements of both programs. (E.g., there may be different families eligible for child care assistance under the two programs which prevent all expenditures from counting as MOE in both.)

Because of the general restrictions cited above, child care expenditures by the State which are matched with Federal funds (pursuant to section 418(a)(2)(C)) do not qualify as expenditures for TANF MOE[17].

Interpretation of MOE Exclusion Language. Numerous questions have arisen about the language at section 409(a)(7)(B)(i)(II), entitled "Exclusion of Transfers from Other State and Local Programs." yes!

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[16] Note the child care exception below.

[17] Likewise, State expenditures which receive Federal child care matching funds do not qualify for child care MOE.

We believe part of the confusion derives from the caption; it refers to transfers, but the actual statutory language does not. Our view is that the provision should be read as a provision applicable only to State MOE expenditures made under separate State programs. Such expenditures may not involve a literal transfer of funds, but in a figurative sense, they would involve taking funds that are outside the program and bringing them into the program's purview (for MOE purposes).

In general, our view is that this provision is designed to prevent supplantation. We believe Congress wanted to prevent States from substituting expenditures they had been making in outside programs for expenditures on cash welfare and related benefits to needy families. The language in (aa) specifically addresses this point. It provides that States may get credit for MOE purposes only for additional or new expenditures from State and local programs. The standard for determining this is whether their expenditures in the preceding fiscal year were above the levels expended in the 12 months preceding October 1, 1995.

Section 409(a)(7)(B)(i)(II)(bb) can be read as an exception to the general rule in (aa). It would allow States to make expenditures in outside programs which were previously allowable under section 403 (and allowable at the time of enactment) and get full credit for such expenditures. In other words, there is not a requirement that these expenditures be additional or new expenditures (above FY 95 levels).

Ultimately, we do expect to require that States be able to document that any outside expenditures they claim for MOE purposes meet the requirements of (aa).[18] At a minimum, States would have to identify the outside programs whose expenditures will be reflected as State MOE, establish what the State contributions to such programs were in the 12 months preceding October 1, 1995, and document the total State expenditures in such programs for the preceding fiscal year. States would also have to provide evidence that expenditures in outside programs which they want credited as MOE be expenditures on behalf of "eligible families". This evidence may be in the form of documentation of eligibility rules and procedures, or in other forms established by the State.[19]

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[18] Pursuant to the Paperwork Reduction Act of 1995, States will not be subject to specific documentation or reporting requirements prior to OMB approval.

[19] States would also have to be able to document that MOE expenditures on educational assistance and administrative costs meet the special limitations at sections 409(a)(7)(B)(i)(I)(cc) and (dd), respectively.

NGA - let states define

V. Definition of Assistance

The terms "assistance" and "families receiving assistance" are used in the PRWORA in many critical places, including: 1) in most of the prohibitions and requirements of section 408, which limit the provision of assistance; 2) the denominator of the work participation rates in section 407(b); and 3) the data collection requirements of section 411(a). Because TANF replaces AFDC, EA and JOBS, and provides much greater flexibility than any of these programs, what constitutes assistance is less clear than it was previously. Furthermore, because many of the above-referenced sections are addressed in the penalty provisions of section 409, it is very important that States have some idea of our views of what constitutes assistance so that they can meet Federal requirements and avoid penalties.[20]

The complexities involved in formulating a definition of "assistance" suggest that it is an area which could be greatly illuminated by both State practice under TANF and by the rulemaking process. Thus, we welcome suggestions from States and other parties as to what an appropriate definition would be. However, in the meantime, because States are looking for guidance which they can use in designing their programs, we are offering an initial perspective on the matter. Our general view is that, because of the combining of the funding streams for AFDC, EA and JOBS, some forms of support that a State is permitted to carry out under TANF are not what would be considered to be welfare. Thus, our initial perspective is to exclude some of those forms of support as assistance. More specifically, we would define "assistance" as every form of support provided to families under TANF except for the following:

1) services that have no direct monetary value to an individual family and that do not involve implicit or explicit income support, such as counseling, case management, peer support and employment services that do not involve subsidies or other forms of income support; and

2) one-time, short-term assistance (e.g., automobile repair to retain employment and avoid welfare receipt and appliance repair to maintain living arrangements).

We believe that these exclusions are consistent with

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[20] In the absence of any statutory language or legislative history to indicate the contrary, we are viewing the term "assistance" as having the same meaning wherever it occurs in the statute in phrases such as "families receiving assistance" and "no assistance for..."

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Congressional intent to provide States with flexibility to design programs that will focus their resources on enhancing parental responsibility and self-sufficiency. At the same time, it will enable them, for example, to exclude families who receive no financial support from participation rate calculations and individuals who only receive one-time help in avoiding welfare dependency from requirements such as assignment of child support rights.

VI. Monitoring the Impacts of Separate State Programs

When the Personal Responsibility and Work Opportunity Reconciliation Act was enacted, it was impossible to know what the overall effects of the legislation would be. No one knew how States would use the new flexibility available to them in designing their programs -- whether the new welfare programs would look similar to the AFDC and demonstration programs with which everyone was familiar or if they would incorporate a much different array of benefits, services, and eligibility rules. For this reason, the statute incorporates a series of provisions designed to gather information on the families receiving assistance, the assistance provided, and the effects on children and families.

One special area of uncertainty is what States will do with the flexibility they have to set up separate programs which qualify for MOE purposes, but are not subject to many of the TANF rules. With this new flexibility, States can:

their?

- make their programs more responsive to the individual and diverse needs of families;
- provide services and impose expectations appropriate to individual family circumstances;
- target resources more effectively.

At the same time, States could use this new flexibility in ways that might undermine important goals of welfare reform. In particular, we are concerned that States could design their programs so as to avoid time limits and the work requirements in section 407, thereby circumventing legislative intent to make assistance temporary and engage parents and caretakers in appropriate work.

We are also concerned that the development of separate State programs could have other unintended negative consequences. One major concern is that we will lose critical information about how the new programs are serving needy parents and children. Without a national view of State efforts (including efforts undertaken within separate State programs), we will have a diminished ability to measure program performance and impacts accurately and equitably. A second major concern is about the potential loss to the Federal budget of its share of child support collections. In assessing the potential budgetary impact of this bill, Congress apparently did not envision such losses. We do not intend to allow States to set up separate State programs with the intent of retaining what would otherwise be the appropriate Federal share of child support collections.

In stating these concerns, we do not intend to stifle creative State thinking about how best to serve their needy families and children. We recognize that the ability of States to set up separate State programs can result in much more responsive and why? effective programs. At the same time, States should be aware of the Federal perspective of the risks involved. We believe it is our responsibility to monitor the overall implementation of this legislation and to assess whether it is having the intended consequences. If we find major problems, we believe we have the further responsibility to advise Congress and to work with it in identifying ways to resolve them.

Why not all →

Fed #/6b State MOE a13 #/1b 3 15EA 20AFDC
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VII. OVERVIEW OF TANF PROVISIONS UNDER DIFFERENT PROGRAM CONFIGURATIONS

408 + other ... 'grant'?

PROVISION	FEDERAL TANF PROGRAMS[1]	SEGREGATED STATE TANF PROGRAMS[2]	SEPARATE STATE PROGRAMS[3]
Covered by State plan	Yes	Yes	No
Needy per income stds in State TANF plan	Yes	Yes	Yes [4]
Restricted disclosure	Applicable	Not applicable	Not applicable
Allowable expenditures	For purposes and as authorized under IV-A or IV-F as of 9/30/95	Count towards both TANF and contingency fund MOEs. Must be for purposes of program or for cash asst, child care, certain education, or admin costs	Count only towards TANF MOE (not contingency fund MOE). See State TANF section for allowable purposes.
15 % admin cost cap	Yes; ADP exception	Yes	Yes
Medical services	Only pre-pregnancy family planning	No specific restriction	No specific restriction
24-month work reqt	Yes	Yes	No
2-month work reqt	Yes	Yes	No
407 work reqts	Yes	Yes	No
work sanctions	Yes	Yes	No
non-displacement	Yes	No Labor?	No
child reqt	Yes; "minor child"	Yes [4]	Yes [4]
child ineligible when absent minimum period	Yes	No	No
child support	Assignment & cooperation req'd. Share of collections to Fed govt.	Assignment & cooperation req'd. Share of collections to Fed govt.	Assignment & cooperation may not be req'd. No share of collections for Fed. govt.
time limit on assistance	Yes	No	No
teen school attendance	Required	No requirement	No requirement
teen parent living arrangements	Must be adult-supervised	No requirement	No requirement
Federal non-discrimination statutes	4 statutes applicable	4 statutes applicable	No specific provision
fraud cases	10-yr exclusion	No exclusion	No exclusion
drug felons	Receive reduced benefits	Receive reduced benefits	No provision

[1] This column would also apply programs where State MOE funds are co-mingled with Federal TANF funds.

[2] Under this scenario, Federal and State funds are not commingled. Since State funds are segregated, some -- but not all -- of the Federal TANF rules apply.

[3] These programs count towards State MOE. They are not subject to TANF requirements, per se, but are subject to the MOE restrictions at section 409(a)(7).

[4] Per definition of "eligible families."

data reporting	Applicable	Applicable	Not applicable
fugitive felons	Barred from assistance	No bar	No bar