Issue: If HHS is able to argue that no state waiver can affect the denominator of the participation rates, why can't they also argue that other waiver practices should/must be excluded?

Which ones: -what counts as work (job search, voc ed, college)
-how many hours constitute work
-time limit exceptions/exemptions

Denominator of participation rates: means exemptions from work requirements for disabled,etc.

HHS argument as to why no denominator:

- never granted a waiver of participation rate -- but old law had none? Yes, it did.
  - wouldn't this argue something never waived (voc ed) shouldn't continue?

and

- never granted a waiver that added new exemptions from work reqs -- i.e., it was all in one direction -- overall effort made more people subject to work requirement

  - wouldn't this argue that other things that tightened can't now be used to loosen?
    ---- what would this apply to?
    -not job search waivers -- those loosened
    -hours of work -- were these also loosening? – 20 hrs JOBS req? -ck
    -time limits: these tightened, but exceptions/exemptions loosened

402a - how elig
- indiv reqs

482 - What prog is

~~Denom Issue~~

Maddy + penalties

5-0 - High perf.

→ Memo - just wk pe

Issue 2 - how compr?
(Who from OMB)

title or under title I, X, XIV, XVI, XIX, or XX, or the supplemental security income program established by title XVI, (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program, (C) the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental entity which is authorized by law to conduct such audit or activity, and (E) reporting and providing information pursuant to paragraph (16) to appropriate authorities with respect to known or suspected child abuse or neglect; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an entity referred to in clause (D) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient; but such safeguards shall not prevent the State agency or the local agency responsible for the administration of the State plan in the locality (whether or not the State has enacted legislation allowing public access to Federal welfare records) from furnishing a State or local law enforcement officer, upon his request, with the current address of any recipient if the officer furnishes the agency with such recipient's name and social security account number and satisfactorily demonstrates that such recipient is a fugitive felon, that the location or apprehension of such felon is within the officer's official duties, and that the request is made in the proper exercise of those duties;[10]

(10)(A) provide that all individuals wishing to make application for aid to families with dependent children shall have opportunity to do so, and that aid to families with dependent children shall, subject to paragraphs (25) and (26), be furnished with reasonable promptness to all eligible individuals; and

(B) provide that an application for aid under the plan will be effective no earlier than the date such application is filed with the State agency or local agency responsible for the administration of the State plan, and the amount payable for the month in which the application becomes effective, if such application becomes effective after the first day of such month, shall bear the same ratio to the amount which would be payable if the application had been effective on the first day of such month as the number of days in the month including and following the effective date of the application bears to the total number of days in such month;

(11) provide for prompt notice (including the transmittal of all relevant information) to the State child support collection agency (established pursuant to part D of this title) of the furnishing of aid to families with dependent children with respect to a child who has been deserted or abandoned by a parent (including a child born out of wedlock without regard to whether the paternity of such child has been established);

[10] See Vol. II, P.L. 82-183, §618, the "Jenner Amendment", with respect to a condition under which grant-in-aid or other payment may not be withheld.

(B) any income remaining (which amount is less than the applicable monthly standard) shall be treated as income received in the first month following the period of ineligibility specified in subparagraph (A);

except that the State may at its option recalculate the period of ineligibility otherwise determined under subparagraph (A) (but only with respect to the remaining months in such period) in any one or more of the following cases: (i) an event occurs which, had the family been receiving aid under the State plan for the month of the occurrence, would result in a change in the amount of aid payable for such month under the plan, or (ii) the income received has become unavailable to the members of the family for reasons that were beyond the control of such members, or (iii) the family incurs, becomes responsible for, and pays medical expenses (as allowed by the State) in a month of ineligibility determined under subparagraph (A) (which expenses may be considered as an offset against the amount of income received in the first month of such ineligibility);

(18) provide that no family shall be eligible for aid under the plan for any month if, for that month, the total income of the family (other than payments under the plan), without application of paragraph (8), other than paragraph (8)(A)(v) or 8(A)(viii)[15], exceeds 185 percent of the State's standard of need for a family of the same composition, except that in determining the total income of the family the State may exclude any earned income of a dependent child who is a full-time student, in such amounts and for such period of time (not to exceed 6 months) as the State may determine;

(19) provide—

(A) that the State has in effect and operation a job opportunities and basic skills training program which meets the requirements of part F;

(B) that—

(i) the State will (except as otherwise provided in this paragraph or part F), to the extent that the program is available in the political subdivision involved and State resources otherwise permit—

(I) require all recipients of aid to families with dependent children in such subdivision with respect to whom the State guarantees child care in accordance with section 402(g) to participate in the program; and

(II) allow applicants for and recipients of aid to families with dependent children (and individuals who would be recipients of such aid if the State had not exercised the option under section 407(b)(2)(B)(i)) who are not required under subclause (I) to participate in the program to do so on a voluntary basis;

(ii) in determining the priority of participation by individuals from among those groups described in clauses (i), (ii), (iii), and (iv) of section 403(l)(2)(B), the State will give first consideration to applicants for or

[15] As in original; "8(A)(viii)" should be "(8)(A)(viii)".

recipients of aid to families with dependent children within any such group who volunteer to participate in the program;

(iii) if an exempt participant drops out of the program without good cause after having commenced participation in the program, he or she shall thereafter not be given priority so long as other individuals are actively seeking to participate; and

(iv) the State need not require or allow participation of an individual in the program if as a result of such participation the amount payable to the State for quarters in a fiscal year with respect to the program would be reduced pursuant to section 403(l)(2);

(C) that an individual may not be required to participate in the program if such individual—

(i) is ill, incapacitated, or of advanced age;

(ii) is needed in the home because of the illness or incapacity of another member of the household;

(iii) subject to subparagraph (D)—

(I) is the parent or other relative of a child under 3 years of age (or, if so provided in the State plan, under any age that is less than 3 years but not less than one year) who is personally providing care for the child, or

(II) is the parent or other relative personally providing care for a child under 6 years of age, unless the State assures that child care in accordance with section 402(g) will be guaranteed and that participation in the program by the parent or relative will not be required for more than 20 hours a week;

(iv) works 30 or more hours a week;

(v) is a child who is under age 16 or attends, full-time, an elementary, secondary, or vocational (or technical) school;

(vi) is pregnant if it has been medically verified that the child is expected to be born in the month in which such participation would otherwise be required or within the 6-month period immediately following such month; or

(vii) resides in an area of the State where the program is not available;

(D) that, in the case of a family eligible for aid to families with dependent children by reason of the unemployment of the parent who is the principal earner, subparagraph (C)(iii) shall apply only to one parent, except that, in the case of such a family, the State may at its option make such subparagraph inapplicable to both of the parents (and require their participation in the program) if child care in accordance with section 402(g) is guaranteed with respect to the family;

(E) that—

(i) to the extent that the program is available in the political subdivision involved and State resources otherwise

wise permit, in the case of a custodial parent who has not attained 20 years of age, has not successfully completed a high-school education (or its equivalent), and is required to participate in the program (including an individual who would otherwise be exempt from participation in the program solely by reason of subparagraph (C)(iii)), the State agency (subject to clause (ii)) will require such parent to participate in an educational activity; and

(ii) the State agency may—

(I) require a parent described in clause (i) (notwithstanding the part-time requirement in subparagraph (C)(iii)(II)) to participate in educational activities directed toward the attainment of a high school diploma or its equivalent on a full-time (as defined by the educational provider) basis,

(II) establish criteria in accordance with regulations of the Secretary under which custodial parents described in clause (i) who have not attained 18 years of age may be exempted from the school attendance requirement under such clause, or

(III) require a parent described in clause (i) who is age 18 or 19 to participate in training or work activities (in lieu of the educational activities under such clause) if such parent fails to make good progress in successfully completing such educational activities or if it is determined (prior to any assignment of the individual to such educational activities) pursuant to an educational assessment that participation in such educational activities is inappropriate for such parent;

(F) that—

(i) if the parent or other caretaker relative or any dependent child in the family is attending (in good standing) an institution of higher education (as defined in section 481(a) of the Higher Education Act of 1965[16]), or a school or course of vocational or technical training (not less than half time) consistent with the individual's employment goals, and is making satisfactory progress in such institution, school, or course, at the time he or she would otherwise commence participation in the program under this section, such attendance may constitute satisfactory participation in the program (by that caretaker or child) so long as it continues and is consistent with such goals;

(ii) any other activities in which an individual described in clause (i) participates may not be permitted to interfere with the school or training described in that clause;

(iii) the costs of such school or training shall not constitute federally reimbursable expenses for purposes of section 403; and

[16]See Vol. II, P.L. 89-329.

(iv) the costs of day care, transportation, and other services which are necessary (as determined by the State agency) for such attendance in accordance with section 402(g) are eligible for Federal reimbursement;

(G) that—

(i) if an individual who is required by the provisions of this paragraph to participate in the program or who is so required by reason of the State's having exercised the option under subparagraph (D) fails without good cause to participate in the program or refuses without good cause to accept employment in which such individual is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined to be a bona fide offer of employment—

(I) the needs of such individual (whether or not section 407 applies) shall not be taken into account in making the determination with respect to his or her family under paragraph (7) of this subsection, and if such individual is a parent or other caretaker relative, payments of aid for any dependent child in the family in the form of payments of the type described in section 406(b)(2) (which in such a case shall be without regard to clauses (A) through (D) thereof) will be made unless the State agency, after making reasonable efforts, is unable to locate an appropriate individual to whom such payments can be made; and

(II) if such individual is a member of a family which is eligible for aid to families with dependent children by reason of section 407, and his or her spouse is not participating in the program, the needs of such spouse shall also not be taken into account in making such determination;

(ii) any sanction described in clause (i) shall continue—

(I) in the case of the individual's first failure to comply, until the failure to comply ceases;

(II) in the case of the individual's second failure to comply, until the failure to comply ceases or 3 months (whichever is longer); and

(III) in the case of any subsequent failure to comply, until the failure to comply ceases or 6 months (whichever is longer);

(iii) the State will promptly remind any individual whose failure to comply has continued for 3 months, in writing, of the individual's option to end the sanction by terminating such failure; and

(iv) no sanction shall be imposed under this subparagraph—

(I) on the basis of the refusal of an individual described in subparagraph (C)(iii)(II) to accept employment, if the employment would require such individual to work more than 20 hours a week, or

(II) on the basis of the refusal of an individual to participate in the program or accept employment, if child care (or day care for any incapacitated individual living in the same home as a dependent child) is necessary for an individual to participate in the program or accept employment, such care is not available, and the State agency fails to provide such care; and

(H) the State agency may require a participant in the program to accept a job only if such agency assures that the family of such participant will experience no net loss of cash income resulting from acceptance of the job; and any costs incurred by the State agency as a result of this subparagraph shall be treated as expenditures with respect to which section 403(a)(1) or 403(a)(2) applies;

(20) provide that the State has in effect a State plan for foster care and adoption assistance approved under part E of this title;

(21) provide—

(A) that, for purposes of this part, participation in a strike shall not constitute good cause to leave, or to refuse to seek or accept employment; and

(B)(i) that aid to families with dependent children is not payable to a family for any month in which any caretaker relative with whom the child is living is, on the last day of such month, participating in a strike, and (ii) that no individual's needs shall be included in determining the amount of aid payable for any month to a family under the plan if, on the last day of such month, such individual is participating in a strike;

(22) provide that the State agency will promptly take all necessary steps to correct any overpayment or underpayment of aid under the State plan, and, in the case of—

(A) an overpayment to an individual who is a current recipient of such aid (including a current recipient whose overpayment occurred during a prior period of eligibility), recovery will be made by repayment by the individual or by reducing the amount of any future aid payable to the family of which he is a member, except that such recovery shall not result in the reduction of aid payable for any month, such that the aid, when added to such family's liquid resources and to its income (without application of paragraph (8)), is less than 90 percent of the amount payable under the State plan to a family of the same composition with no other income (and, in the case of an individual to whom no payment is made for a month solely by reason of recovery of an overpayment, such individual shall be deemed to be a recipient of aid for such month);

(B) an overpayment to any individual who is no longer receiving aid under the plan, recovery shall be made by appropriate action under State law against the income or resources of the individual or the family; and

(C) an underpayment, the corrective payment shall be disregarded in determining the income of the family, and shall be disregarded in determining its resources in the negotiate and enter into an agreement with the State agency that specifies such matters as the participant's obligations under the program, the duration of participation in the program, and the activities to be conducted and the services to be provided in the course of such participation. If the State agency exercises the option under the preceding sentence, the State agency must give the participant such assistance as he or she may require in reviewing and understanding the agreement.

(3) The State agency may assign a case manager to each participant and the participant's family. The case manager so assigned must be responsible for assisting the family to obtain any services which may be needed to assure effective participation in the program.

(c) PROVISION OF PROGRAM AND EMPLOYMENT INFORMATION.—(1) The State agency must ensure that all applicants for and recipients of aid to families with dependent children are encouraged, assisted, and required to fulfill their responsibilities to support their children by preparing for, accepting, and retaining such employment as they are capable of performing.

(2) The State agency must inform all applicants for and recipients of aid to families with dependent children of the education, employment, and training opportunities, and the support services (including child care and health coverage transition options), for which they are eligible, the obligations of the State agency, and the rights, responsibilities, and obligations of participants in the program.

(3) The State agency must—

(A) provide (directly or through arrangements with others) information on the types and locations of child care services reasonably accessible to participants in the program,

(B) inform participants that assistance is available to help them select appropriate child care services, and

(C) on request, provide assistance to participants in obtaining child care services.

(4) The State agency must inform applicants for and recipients of aid to families with dependent children of the grounds for exemption from participation in the program and the consequences of refusal to participate if not exempt, and provide other appropriate information with respect to such participation.

(5) Within one month after the State agency gives a recipient of aid to families with dependent children the information described in the preceding provisions of this paragraph, the State agency must notify such recipient of the opportunity to indicate his or her desire to participate in the program, including a clear description of how to enter the program.

482 (d) SERVICES AND ACTIVITIES UNDER THE PROGRAM.—(1)(A) In carrying out the program, each State shall make available a broad range of services and activities to aid in carrying out the purpose of this part. Such services and activities—

(i) shall include—

(I) educational activities (as appropriate), including high school or equivalent education (combined with training as needed), basic and remedial education to achieve a basic literacy level, and education for individuals with limited English proficiency;

(II) job skills training;

(III) job readiness activities to help prepare participants for work; and

(IV) job development and job placement; and

(ii) must also include at least 2 of the following:

(I) group and individual job search as described in subsection (g);

(II) on-the-job training;

(III) work supplementation programs as described in subsection (e); and

(IV) community work experience programs as described in subsection (f) or any other work experience program approved by the Secretary.

(B) The State may also offer to participants under the program (i) postsecondary education in appropriate cases, and (ii) such other education, training, and employment activities as may be determined by the State and allowed by regulations of the Secretary.

(2) If the State requires an individual who has attained the age of 20 years and has not earned a high school diploma (or equivalent) to participate in the program, the State agency shall include educational activities consistent with his or her employment goals as a component of the individual's participation in the program, unless the individual demonstrates a basic literacy level, or the employability plan for the individual identifies a long-term employment goal that does not require a high school diploma (or equivalent). Any other services or activities to which such a participant is assigned may not be permitted to interfere with his or her participation in an appropriate educational activity under this subparagraph.

(3) Notwithstanding any other provision of this section, the Secretary shall permit up to 5 States to provide services under the program, on a voluntary or mandatory basis, to non-custodial parents who are unemployed and unable to meet their child support obligations. Any State providing services to non-custodial parents pursuant to this paragraph shall evaluate the provision of such services, giving particular attention to the extent to which the provision of such services to those parents is contributing to the achievement of the purpose of this part, and shall report the results of such evaluation to the Secretary.

(e) WORK SUPPLEMENTATION PROGRAM.—(1) Any State may institute a work supplementation program under which such State, to the extent it considers appropriate, may reserve the sums that would otherwise be payable to participants in the program as aid to families with dependent children and use such sums instead for the purpose of providing and subsidizing jobs for such participants (as described in paragraph (3)(C)(i) and (ii)), as an alternative to the aid to families with dependent children that would otherwise be so payable to them.

(2)(A) Notwithstanding section 406 or any other provision of law, Federal funds may be paid to a State under part A, subject to this subsection, with respect to expenditures incurred in operating a work supplementation program under this subsection.

(B) Nothing in this part, or in any State plan approved under part A, shall be construed to prevent a State from operating (on such terms and conditions and in such cases as the State may find to be necessary or appropriate) a work supplementation program in accordance with this subsection and section 484.

Work Experience

Job Search on Cntr progs

(C) Notwithstanding section 402(a)(23) or any other provision of law, a State may adjust the levels of the standards of need under the State plan as the State determines to be necessary and appropriate for carrying out a work supplementation program under this subsection.

(D) Notwithstanding section 402(a)(1) or any other provision of law, a State operating a work supplementation program under this subsection may provide that the need standards in effect in those areas of the State in which such program is in operation may be different from the need standards in effect in the areas in which such program is not in operation, and such State may provide that the need standards for categories of recipients may vary among such categories to the extent the State determines to be appropriate on the basis of ability to participate in the work supplementation program.

(E) Notwithstanding any other provision of law, a State may make such further adjustments in the amounts of the aid to families with dependent children paid under the plan to different categories of recipients (as determined under subparagraph (D)) in order to offset increases in benefits from needs-related programs (other than the State plan approved under part A) as the State determines to be necessary and appropriate to further the purposes of the work supplementation program.

(F) In determining the amounts to be reserved and used for providing and subsidizing jobs under this subsection as described in paragraph (1), the State may use a sampling methodology.

(G) Notwithstanding section 402(a)(8) or any other provision of law, a State operating a work supplementation program under this subsection (i) may reduce or eliminate the amount of earned income to be disregarded under the State plan as the State determines to be necessary and appropriate to further the purposes of the work supplementation program, and (ii) during one or more of the first 9 months of an individual's employment pursuant to a program under this section, may apply to the wages of the individual the provisions of subparagraph (A)(iv) of section 402(a)(8) without regard to the provisions of subparagraph (B)(ii)(II) of such section.

(3)(A) A work supplementation program operated by a State under this subsection may provide that any individual who is an eligible individual (as determined under subparagraph (B)) shall take a supplemented job (as defined in subparagraph (C)) to the extent that supplemented jobs are available under the program. Payments by the State to individuals or to employers under the work supplementation program shall be treated as expenditures incurred by the State for aid to families with dependent children except as limited by paragraph (4).

(B) For purposes of this subsection, an eligible individual is an individual who is in a category which the State determines should be eligible to participate in the work supplementation program, and who would, at the time of placement in the job involved, be eligible for aid to families with dependent children under an approved State plan if such State did not have a work supplementation program in effect.

(C) For purposes of this section, a supplemented job is—

(i) a job provided to an eligible individual by the State or local agency administering the State plan under part A; or

(ii) a job provided to an eligible individual by any other employer for which all or part of the wages are paid by such State or local agency.

A State may provide or subsidize under the program any job which such State determines to be appropriate.

(D) At the option of the State, individuals who hold supplemented jobs under a State's work supplementation program shall be exempt from the retrospective budgeting requirements imposed pursuant to section 402(a)(13)(A)(ii) (and the amount of the aid which is payable to the family of any such individual for any month, or which would be so payable but for the individual's participation in the work supplementation program, shall be determined on the basis of the income and other relevant circumstances in that month).

(4) The amount of the Federal payment to a State under section 403 for expenditures incurred in making payments to individuals and employers under a work supplementation program under this subsection shall not exceed an amount equal to the amount which would otherwise be payable under such section if the family of each individual employed in the program established in such State under this subsection had received the maximum amount of aid to families with dependent children payable under the State plan to such a family with no income (without regard to adjustments under paragraph (2)) for the lesser of (A) 9 months, or (B) the number of months in which such individual was employed in such program.

(5)(A) Nothing in this subsection shall be construed as requiring the State or local agency administering the State plan to provide employee status to an eligible individual to whom it provides a job under the work supplementation program (or with respect to whom it provides all or part of the wages paid to the individual by another entity under such program), or as requiring any State or local agency to provide that an eligible individual filling a job position provided by another entity under such program be provided employee status by such entity during the first 13 weeks such individual fills that position.

(B) Wages paid under a work supplementation program shall be considered to be earned income for purposes of any provision of law.

(6) Any State that chooses to operate a work supplementation program under this subsection shall provide that any individual who participates in such program, and any child or relative of such individual (or other individual living in the same household as such individual) who would be eligible for aid to families with dependent children under the State plan approved under part A if such State did not have a work supplementation program, shall be considered individuals receiving aid to families with dependent children under the State plan approved under part A for purposes of eligibility for medical assistance under the State plan approved under title XIX.

(7) No individual receiving aid to families with dependent children under a State plan shall be excused by reason of the fact that such State has a work supplementation program from any requirement of this part relating to work requirements, except during periods in which such individual is employed under such work supplementation program.

(f) COMMUNITY WORK EXPERIENCE PROGRAM.—(1)(A) Any State may establish a community work experience program in accordance with this subsection. The purpose of the community work experience program is to provide experience and training for individuals not otherwise able to obtain employment, in order to assist them to move into regular employment. Community work experience programs shall be designed to improve the employability of participants through actual work experience and training and to enable individuals employed under community work experience programs to move promptly into regular public or private employment. The facilities of the State public employment offices may be utilized to find employment opportunities for recipients under this program. Community work experience programs shall be limited to projects which serve a useful public purpose in fields such as health, social service, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, public facilities, public safety, and day care. To the extent possible, the prior training, experience, and skills of a recipient shall be used in making appropriate work experience assignments.

(B)(i) A State that elects to establish a community work experience program under this subsection shall operate such program so that each participant (as determined by the State) either works or undergoes training (or both) with the maximum number of hours that any such individual may be required to work in any month being a number equal to the amount of the aid to families with dependent children payable with respect to the family of which such individual is a member under the State plan approved under this part, divided by the greater of the Federal minimum wage or the applicable State minimum wage (and the portion of a recipient's aid for which the State is reimbursed by a child support collection shall not be taken into account in determining the number of hours that such individual may be required to work).

(ii) After an individual has been assigned to a position in a community work experience program under this subsection for 9 months, such individual may not be required to continue in that assignment unless the maximum number of hours of participation is no greater than (I) the amount of the aid to families with dependent children payable with respect to the family of which such individual is a member under the State plan approved under this part (excluding any portion of such aid for which the State is reimbursed by a child support payment), divided by (II) the higher of (a) the Federal minimum wage or the applicable State minimum wage, whichever is greater, or (b) the rate of pay for individuals employed in the same or similar occupations by the same employer at the same site.

(C) Nothing contained in this subsection shall be construed as authorizing the payment of aid to families with dependent children as compensation for work performed, nor shall a participant be entitled to a salary or to any other work or training expense provided under any other provision of law by reason of his participation in a program under this subsection.

(D) Nothing in this part or in any State plan approved under this part shall be construed to prevent a State from operating (on such terms and conditions and in such cases as the State may find to be necessary or appropriate) a community work experience program in accordance with this subsection and subsection (d).

(E) Participants in community work experience programs under this subsection may perform work in the public interest (which otherwise meets the requirements of this subsection) for a Federal office or agency with its consent, and, notwithstanding section 1342 of title 31, United States Code[182], or any other provision of law, such agency may accept such services, but such participants shall not be considered to be Federal employees for any purpose.

(2) After each 6 months of an individual's participation in a community work experience program under this subsection, and at the conclusion of each assignment of the individual under such program, the State agency must provide a reassessment and revision, as appropriate, of the individual's employability plan.

(3) The State agency shall provide coordination among a community work experience program operated pursuant to this subsection, any program of job search under subsection (g), and the other employment-related activities under the program established by this section so as to insure that job placement will have priority over participation in the community work experience program, and that individuals eligible to participate in more than one such program are not denied aid to families with dependent children on the grounds of failure to participate in one such program if they are actively and satisfactorily participating in another. The State agency may provide that part-time participation in more than one such program may be required where appropriate.

(4) In the case of any State that makes expenditures in the form described in paragraph (1) under its State plan approved under section 482(a)(1), expenditures for the operation and administration of the program under this section may not include, for purposes of section 403, the cost of making or acquiring materials or equipment in connection with the work performed under a program referred to in paragraph (1) or the cost of supervision of work under such program, and may include only such other costs attributable to such programs as are permitted by the Secretary.

(g) JOB SEARCH PROGRAM.—(1) The State agency may establish and carry out a program of job search for individuals participating in the program under this part.

(2) Notwithstanding section 402(a)(19)(B)(i), the State agency may require job search by an individual applying for or receiving aid to families with dependent children (other than an individual described in section 402(a)(19)(C) who is not an individual with respect to whom section 402(a)(19)(D) applies)—

(A) subject to the next to last sentence of this paragraph, beginning at the time such individual applies for aid to families with dependent children and continuing for a period (prescribed by the State) of not more than 8 weeks (but this requirement may not be used as a reason for any delay in making a determination of an individual's eligibility for such aid or in issuing a payment to or on behalf of any individual who is otherwise eligible for such aid); and

(B) at such time or times after the close of the period prescribed under subparagraph (A) as the State agency may determine but not to exceed a total of 8 weeks in any period of 12 consecutive months.

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182 See Vol. II, Title 31.

In no event may an individual be required to participate in job search for more than 3 weeks before the State agency conducts the assessment and review with respect to such individual under subsection (b)(1)(A). Job search activities in addition to those required under the preceding provisions of this paragraph may be required only in combination with some other education, training, or employment activity which is designed to improve the individual's prospects for employment.

(3) Job search by an individual under this subsection shall in no event be treated, for any purpose, as an activity under the program if the individual has participated in such job search for 4 months out of the preceding 12 months.

(h) DISPUTE RESOLUTION PROCEDURES.—Each State shall establish a conciliation procedure for the resolution of disputes involving an individual's participation in the program and (if the dispute involved is not resolved through conciliation) shall provide an opportunity for a hearing with respect to the dispute, which hearing may be provided through a hearing process established for purposes of resolving disputes with respect to the program or through the provision of a hearing pursuant to section 402(a)(4); but in no event shall aid to families with dependent children be suspended, reduced, discontinued, or terminated as a result of a dispute involving an individual's participation in the program until such individual has an opportunity for a hearing that meets the standards set forth by the United States Supreme Court in Goldberg v. Kelly, 397 U.S. 254 (1970).

(i) SPECIAL PROVISIONS RELATING TO INDIAN TRIBES.—(1) Within 6 months after the date of the enactment of the Family Support Act of 1988[183], an Indian tribe or Alaska Native organization may apply to the Secretary to conduct a job opportunities and basic skills training program to carry out the purpose of this subsection. If the Secretary approves such tribe's or organization's application, the maximum amount that may be paid to the State under section 403(l) in which such tribe or organization is located shall be reduced by the Secretary in accordance with paragraph (2) and an amount equal to the amount of such reduction shall be paid directly to such tribe or organization (without the requirement of any nonfederal share) for the operation of such program. In determining whether to approve an application from an Alaska Native organization, the Secretary shall consider whether approval of the application would promote the efficient and nonduplicative administration of job opportunities and basic skills training programs in the State.

(2) The amount of the reduction under paragraph (1) with respect to any State in which is located an Indian tribe or Alaska Native organization with an application approved under such paragraph shall be an amount equal to the amount that bears the same ratio to the maximum amount that could be paid under section 403(l) to the State as—

(A) the number of adult Indians receiving aid to families with dependent children who reside on the reservation or within the designated service area[184] bears to the number of all such adult recipients in the State, or

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[183] P.L. 100-485, enacted October 13, 1988.

[184] P.L. 103-432, §241(a), struck out "members of such Indian tribe receiving aid to families with dependent children" and substituted "Indians receiving aid to families with dependent children who reside on the reservation or within the designated service area", effective October 1, 1995.

(iii) the Secretary finds that the corrective action plan (and any amendment thereto approved by the Secretary under clause (ii)), is being fully implemented by the State and that the State is progressing in accordance with the timetable contained in the plan to achieve substantial compliance with such requirements.

(B) A suspension of the penalty under subparagraph (A) shall continue until such time as the Secretary determines that—

(i) the State has achieved substantial compliance,

(ii) the State is no longer implementing its corrective action plan, or

(iii) the State is implementing or has implemented its corrective action plan but has failed to achieve substantial compliance within the appropriate time period (as specified in subparagraph (A)(i)).

(C)(i) In the case of a State whose penalty suspension ends pursuant to subparagraph (B)(i), the penalty shall not be applied.

(ii) In the case of a State whose penalty suspension ends pursuant to subparagraph (B)(ii), the penalty shall be applied as if the suspension had not occurred.

(iii) In the case of a State whose penalty suspension ends pursuant to subparagraph (B)(iii), the penalty shall be applied to all quarters ending after the expiration of the time period specified in such subparagraph (and prior to the first quarter throughout which the State program is found to be in substantial compliance).

(3) For purposes of this subsection, section 402(a)(27), and section 452(a)(4), a State which is not in full compliance with the requirements of this part shall be determined to be in substantial compliance with such requirements only if the Secretary determines that any noncompliance with such requirements is of a technical nature which does not adversely affect the performance of the child support enforcement program.

[(i) Repealed.[38]]

[(j) Repealed.[39]]

(k)(1) Each State with a plan approved under part F shall be entitled to payments under subsection (l) for any fiscal year in an amount equal to the sum of the applicable percentages (specified in such subsection) of its expenditures to carry out the program under part F (subject to limitations prescribed by or pursuant to such part or this section on expenditures that may be included for purposes of determining payment under subsection (l)), but such payments for any fiscal year in the case of any State may not exceed the limitation determined under paragraph (2) with respect to the State.

(2) The limitation determined under this paragraph with respect to a State for any fiscal year is—

(A) the amount allotted to the State for fiscal year 1987 under part C of this title as then in effect, plus

(B) the amount that bears the same ratio to the amount specified in paragraph (3) for such fiscal year as the average monthly number of adult recipients (as defined in paragraph (4)) in the State in the preceding fiscal year bears to the average monthly number of such recipients in all the States for such preceding year.

(3) The amount specified in this paragraph is—

[38] P.L. 101-239, §8004(b); 103 Stat. 2460.
[39] P.L. 101-239, §8004(b); 103 Stat. 2460.

(A) $600,000,000 in the case of the fiscal year 1989,
(B) $800,000,000 in the case of the fiscal year 1990,
(C) $1,000,000,000 in the case of each of the fiscal years 1992, and 1993,
(D) $1,100,000,000 in the case of the fiscal year 1994,
(E) $1,300,000,000 in the case of the fiscal year 1995, and
(F) $1,000,000,000 in the case of the fiscal year 1996 and succeeding fiscal year,

reduced by the aggregate amount allotted to all the States for year 1987 pursuant to part C of this title as then in effect.

(4) For purposes of this subsection, the term "adult recipient" in the case of any State means an individual other than a dependent child (unless such child is the custodial parent of another dependent child) whose needs are met (in whole or in part) with payments of aid to families with dependent children.

(5) None of the funds available to a State for purposes of the programs or activities conducted under part F shall be used for construction.

(l)(1)(A) In lieu of any payment under subsection (a), the Secretary shall pay to each State with a plan approved under section 482(a) (subject to the limitation determined under section 482(i)(2)) with respect to expenditures by the State to carry out a program under part F (including expenditures for child care under section 402(g)(1)(A)(i), but only in the case of a State with respect to which section 1108 applies), an amount equal to—

(i) with respect to so much of such expenditures in a fiscal year as do not exceed the State's expenditures in the fiscal year 1987 with respect to which payments were made to such State from its allotment for such fiscal year pursuant to part C of this title as then in effect, 90 percent; and

(ii) with respect to so much of such expenditures in a fiscal year as exceed the amount described in clause (i)—

(I) 50 percent, in the case of expenditures for administrative costs made by a State in operating such a program for such fiscal year (other than the personnel costs for staff employed full-time in the operation of such program) and the costs of transportation and other work-related supportive services under section 402(g)(2), and

(II) the greater of 60 percent or the Federal medical assistance percentage (as defined in section 1118 in the case of any State to which section 1108 applies, or as defined in section 1905(b) in the case of any other State), in the case of expenditures made by a State in operating such a program for such fiscal year (other than for costs described in subclause (I)).

(B) With respect to the amount for which payment is made to a State under subparagraph (A)(i), the State's expenditures for the costs of operating a program established under part F may be in cash or in kind, fairly evaluated.

(2)(A) Notwithstanding paragraph (1), the Secretary shall pay to a State an amount equal to 50 percent of the expenditures made by such State in operating its program established under part F (in lieu of any different percentage specified in paragraph (1)(A)) if less than 55 percent of such expenditures are made with respect to individuals who are described in subparagraph (B).

(B) An individual is described in this paragraph if the individual—

(i)(I) is receiving aid to families with dependent children, and (II) has received such aid for any 36 of the preceding 60 months;

(ii)(I) makes application for aid to families with dependent children, and (II) has received such aid for any 36 of the 60 months immediately preceding the most recent month for which application has been made;

(iii) is a custodial parent under the age of 24 who (I) has not completed a high school education and, at the time of application for aid to families with dependent children, is not enrolled in high school (or a high school equivalency course of instruction), or (II) had little or no work experience in the preceding year; or

(iv) is a member of a family in which the youngest child is within 2 years of being ineligible for aid to families with dependent children because of age.

(C) This paragraph may be waived by the Secretary with respect to any State which demonstrates to the satisfaction of the Secretary that the characteristics of the caseload in that State make it infeasible to meet the requirements of this paragraph, and that the State is targeting other long-term or potential long-term recipients.

(D) The Secretary shall biennially submit to the Congress any recommendations for modifications or additions to the groups of individuals described in subparagraph (B) that the Secretary determines would further the goal of assisting long-term or potential long-term recipients of aid to families with dependent children to achieve self-sufficiency, which recommendations shall take into account the particular characteristics of the populations of individual States.

(3)(A) Notwithstanding paragraph (1), the Secretary shall pay to a State an amount equal to 50 percent of the expenditures made by such State in a fiscal year in operating its program established under part F (in lieu of any different percentage specified in paragraph (1)(A)) if the State's participation rate (determined under subparagraph (B)) for the preceding fiscal year does not exceed or equal—

(i) 7 percent if the preceding fiscal year is 1990;

(ii) 7 percent if such year is 1991;

(iii) 11 percent if such year is 1992;

(iv) 11 percent if such year is 1993;

(v) 15 percent if such year is 1994; and

(vi) 20 percent if such year is 1995.

(B)(i) The State's participation rate for a fiscal year shall be the average of its participation rates for computation periods (as defined in clause (ii)) in such fiscal year.

(ii) The computation periods shall be—

(I) the fiscal year, in the case of fiscal year 1990,

(II) the first six months, and the seventh through twelfth months, in the case of fiscal year 1991,

(III) the first three months, the fourth through sixth months, the seventh through ninth months, and the tenth through twelfth months, in the case of fiscal years 1992 and 1993, and

(IV) each month, in the case of fiscal years 1994 and 1995.

(iii) The State's participation rate for a computation period shall be the number, expressed as a percentage, equal to—

(I) the average monthly number of individuals required or allowed by the State to participate in the program under part F who have participated in such program in months in the computation period, plus the number of individuals required or allowed by the State to participate in such program who have so participated in that month in such period for which the number of such participants is the greatest, divided by

(II) twice the average monthly number of individuals required to participate in such period (other than individuals described in subparagraph (C)(iii)(I) or (D) of section 402(a)(19) with respect to whom the State has exercised its option to require their participation).

For purposes of this subparagraph, an individual shall not be considered to have satisfactorily participated in the program under part F solely by reason of such individual being registered to participate in such program.

(C) Notwithstanding any other provision of this paragraph, no State shall be subject to payment under this paragraph (in lieu of paragraph (1)(A)) for failing to meet any participation rate required under this paragraph with respect to any fiscal year before 1991.

(D) For purposes of this paragraph, an individual shall be determined to have participated in the program under part F, if such individual has participated in accordance with such requirements, consistent with regulations of the Secretary, as the State shall establish.

(E) If the Secretary determines that the State has failed to achieve the participation rate for any fiscal year specified in the numbered clauses of subparagraph (A), he may waive, in whole or in part, the reduction in the payment rate otherwise required by such subparagraph if he finds that—

(i) the State is in conformity with section 402(a)(19) and part F;

(ii) the State has made a good faith effort to achieve the applicable participation rate for such fiscal year; and

(iii) the State has submitted a proposal which is likely to achieve the applicable participation rate for the current fiscal year and the subsequent fiscal years (if any) specified therein.[40]

(4)(A)(i) Subject to subparagraph (B), in the case of any family eligible for aid to families with dependent children by reason of the unemployment of the parent who is the principal earner, the State agency shall require that at least one parent in any such family participate, for a total of at least 16 hours a week during any period in which either parent is required to participate in the program, in a work supplementation program, a community work experience or other work experience program, on-the-job training, or a State designed work program approved by the Secretary, as such programs are described in section 482(d)(1). In the case of a parent under age 25 who has not completed high school or an equivalent course of education, the State may require such parent to participate in educational activities directed at the attainment of a high school diploma (or equivalent) or another basic education program in lieu of one or more of the programs specified in the preceding sentence.

[40] This paragraph is repealed effective October 1, 1995 [P.L. 100-485, §204(b)(2); 102 Stat. 2381] (except that subparagraph (A) shall remain in effect for purposes of applying any reduction in payment rates required by that subparagraph for any of the fiscal years specified therein).

(ii) For purposes of clause (i), an individual participating in a community work experience program under section 482 shall be considered to have met the requirement of such clause if he participates for the number of hours in any month equal to the monthly payment of aid to families with dependent children to the family of which he is a member, divided by the greater of the Federal or the applicable State minimum wage (and the portion of such monthly payment for which the State is reimbursed by a child support collection shall not be taken into account in determining the number of hours that such individual may be required to work).

(B) The requirement under subparagraph (A) shall not be considered to have been met by any State if the requirement is not met with respect to the following percentages of all families in the State eligible for aid to families with dependent children by reason of the unemployment of the parent who is the principal earner:

(i) 40 percent, in the case of the average of each month in fiscal year 1994,

(ii) 50 percent, in the case of the average of each month in fiscal year 1995,

(iii) 60 percent, in the case of the average of each month in fiscal year 1996, and

(iv) 75 percent in the case of the average of each month in each of the fiscal years 1997 and 1998.

(C) The percentage of participants for any month in a fiscal year for purposes of the preceding sentence shall equal the average of—

(i) the number of individuals described in subparagraph (A)(i) who have met the requirement prescribed therein, divided by

(ii) the total number of principal earners described in such subparagraph (but excluding those in families who have been recipients of aid for 2 months or less if, during the period that the family received aid, at least one parent engaged in intensive job search).

(D) If the Secretary determines that the State has failed to meet the requirement under subparagraph (A) (determined with respect to the percentages prescribed in subparagraph (B)), he may waive, in whole or in part, any penalty if he finds that—

(i) the State is operating a program in conformity with section 402(a)(19) and part F,

(ii) the State has made a good faith effort to meet the requirement of subparagraph (A) but has been unable to do so because of economic conditions in the State (including significant numbers of recipients living in remote locations or isolated rural areas where the availability of work sites is severely limited), or because of rapid and substantial increases in the caseload that cannot reasonably be planned for, and

(iii) the State has submitted a proposal which is likely to achieve the required percentage of participants for the subsequent fiscal years.

(m)(1) During the 12-month period beginning on July 1, 1988 (in this subsection referred to as the "moratorium period"), the Secretary shall not impose any reductions in payments to States pursuant to subsection (i) (or prior regulations), or pursuant to any comparable provision of law relating to the programs under this part in Puerto Rico, Guam, the Virgin Islands, American Samoa, or the Northern Mariana Islands.

TO: Elena

FR: Diana

cc: Cynthia

Here's the stuff on grandfathering waivers I can find: the guidance HHS sent to states in September; the relevant section of the law; and a section of a memo we sent the President on this.

See p. 2

DRAFT

"...our nation's answer to this great social challenge will no longer be a never-ending cycle of welfare, it will be the dignity, the power and the ethic of work. Today, we are taking an historic chance to make welfare what it was meant to be: a second chance, not a way of life." *President William J. Clinton*

STATE GUIDANCE

FOR THE

TEMPORARY ASSISTANCE

FOR

NEEDY FAMILIES

PROGRAM

Department of Health and Human Services
Administration for Children and Families
370 L'Enfant Promenade, S.W., Washington, D.C. 20447
September 1996

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WAIVERS

Do you intend to continue one or more individual waivers as provided under section 415? If so, please identify each waiver provision and each provision of new law that you believe are inconsistent, and provide the basis for your assessment of inconsistency. (You may wish to consult with the chief law officer of your State in making this assessment.) What is the name of the 1115 demonstration which contains the waiver? What are the beginning and ending dates of the demonstration? Is the waiver incorporated into your TANF plan applicable statewide? If not, how will TANF operate in those areas of the State not covered by the continuing waivers? Note: Future legislative or regulatory action may limit which provisions of the TANF may be considered inconsistent with waivers for purposes of determining penalties. If this happens, States will have an opportunity to submit a new plan in order to come into compliance with the requirements.

Description of Attachments

In additions to this guidance, we are providing three attachments that State policy makers may wish to use in developing their State TANF plans. Attachment A is a copy of the statutory requirements regarding the state plan. Attachment B contains suggested formats for the required certifications that must be submitted with a state plan. Attachment C provides technical information for financial officers of the program regarding funding and a mechanism for States to request TANF funds.

Paperwork Reduction Act

The information in the State TANF plan is collected in accordance with section 402 of the Social Security Act, as amended. Information received in the State plans sets forth how the TANF program will be administered and operated in the States.

The response burden for this collection of information is estimated to be 60 hours per response, including the time for reviewing the statute, this guidance gathering and preparing the information, and reviewing the information.

The information collected is mandatory in accordance with the above-mentioned citations.

This information is not considered confidential; therefore, no additional safeguards are considered necessary beyond that customarily applied to routine government information.

Inquiries

Inquiries should be addressed to the appropriate Regional Administrator, Administration for Children and Families. Information about all State plans will be posted on the ACF home page.

1998, 1999, 2000, 2001, and 2002 for payment to the Bureau of the Census to carry out subsection (a).

waivers

"SEC. 415. WAIVERS.

"(a) CONTINUATION OF WAIVERS.—

"(1) WAIVERS IN EFFECT ON DATE OF ENACTMENT OF WELFARE REFORM.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), if any waiver granted to a State under section 1115 of this Act or otherwise which relates to the provision of assistance under a State plan under this part (as in effect on September 30, 1996) is in effect as of the date of the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (other than by section 103(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) shall not apply with respect to the State before the expiration (determined without regard to any extensions) of the waiver to the extent such amendments are inconsistent with the waiver.

child care??

"(B) FINANCING LIMITATION.—Notwithstanding any other provision of law, beginning with fiscal year 1996, a State operating under a waiver described in subparagraph (A) shall be entitled to payment under section 403 for the fiscal year, in lieu of any other payment provided for in the waiver.

"(2) WAIVERS GRANTED SUBSEQUENTLY.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), if any waiver granted to a State under section 1115 of this Act or otherwise which relates to the provision of assistance under a State plan under this part (as in effect on September 30, 1996) is submitted to the Secretary before the date of the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and approved by the

- true of all

Secretary on or before July 1, 1997, and the State demonstrates to the satisfaction of the Secretary that the waiver will not result in Federal expenditures under title IV of this Act (as in effect without regard to the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) that are greater than would occur in the absence of the waiver, the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (other than by section 103(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) shall not apply with respect to the State before the expiration (determined without regard to any extensions) of the waiver to the extent the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 are inconsistent with the waiver.

"(B) NO EFFECT ON NEW WORK REQUIREMENTS.—Notwithstanding subparagraph (A), a waiver granted under section 1115 or otherwise which relates to the provision of assistance under a State program funded under this part (as in effect on September 30, 1996) shall not affect the applicability of section 407 to the State.

This's only applies to new waivers.

- Only new!

"(b) STATE OPTION TO TERMINATE WAIVER.—

"(1) IN GENERAL.—A State may terminate a waiver described in subsection (a) before the expiration of the waiver.

"(2) REPORT.—A State which terminates a waiver under paragraph (1) shall submit a report to the Secretary summarizing the waiver and any available information concerning the result or effect of the waiver.

"(3) HOLD HARMLESS PROVISION.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, a State that, not later than the date described in subparagraph (B) of this paragraph, submits a written request to terminate a waiver described in subsection (a) shall be held harmless for accrued cost neutrality liabilities incurred under the waiver.

"(B) DATE DESCRIBED.—The date described in this subparagraph is 90 days following the adjournment of the first regular session of the State legislature that begins after the date of the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

"(c) SECRETARIAL ENCOURAGEMENT OF CURRENT WAIVERS.—The Secretary shall encourage any State operating a waiver described in subsection (a) to continue the waiver and to evaluate, using random sampling and other characteristics of accepted scientific evaluations, the result or effect of the waiver.

"(d) CONTINUATION OF INDIVIDUAL WAIVERS.—A State may elect to continue 1 or more individual waivers described in subsection (a).

"SEC. 416. ADMINISTRATION.

~~"The programs under this part and part D shall be administered by an Assistant Secretary for Family Support within the Department of Health and Human Services, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be in addition to any other Assistant Secretary of Health and Human Services provided for by law, and the Secretary shall reduce the Federal workforce within the Department of Health and Human Services by an amount equal to the sum of 75 percent of the full-time equivalent positions at such Department that relate to any direct spending program, or any program funded through discretionary spending, that has been converted into a block grant program under the Personal Responsibility and Work Opportunity Act of 1996 and the amendments made by such Act, and by an amount equal to 75 percent of that portion of the total full-time equivalent departmental management positions at such Department that bears the same relationship to the~~

~~cc Cuplinkin by~~ See page 2

THE PRESIDENT HAS SEEN
10/9/96

THE WHITE HOUSE

WASHINGTON

(1) CR - good news. 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 -

MEMORANDUM FOR THE PRESIDENT

FROM: Carol H. Rasco CHR
Frank Raines

SUBJECT: Update on Welfare Reform Implementation

BC

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.

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.

"...our nation's answer to this great social challenge will no longer be a never-ending cycle of welfare, it will be the dignity, the power and the ethic of work. Today, we are taking an historic chance to make welfare what it was meant to be: a second chance, not a way of life." *President William J. Clinton*

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September 1996

DRAFT

DRAFT

A New Beginning...

The Temporary Assistance for Needy Families (TANF) Program

On August 22, President Clinton signed into law the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996," a comprehensive bipartisan welfare reform bill that establishes the Temporary Assistance for Needy Families (TANF) program. This legislation will dramatically change the nation's welfare system into one that requires work in exchange for time-limited assistance. It contains strong work requirements, a performance bonus to reward States for moving welfare recipients into jobs, State maintenance of effort requirements, comprehensive child support enforcement, and supports for families moving from welfare to work.

In signing the bill, President Clinton said, "This is not the end of welfare reform, this is the beginning." He went on to say:

> Today, we are ending welfare as we know it. But I hope this day will be remembered not for what it ended, but for what it began -- a new day that offers hope, honors responsibility, rewards work, and changes the terms of the debate....

The new legislation gives States the opportunity to create a new system that promotes work and responsibility, and strengthens families. It challenges us all to remedy what is wrong with the old system, and to provide opportunities that will help needy families under a framework of new expectations.

Starting the Program

The new TANF program replaces the AFDC, JOBS and EA programs with a new block grant program. A State is eligible to participate in the new program no earlier than the submittal of its State TANF plan. A State will receive its block grant funds once the Secretary has found the State's plan to be complete.

States must submit their TANF plans no later than July 1, 1997, but can submit them earlier if they choose. States should consider several factors in deciding whether to implement the TANF program prior to July 1, 1997. In States with reduced caseloads, funding for the AFDC, EA and JOBS programs may be less than the amounts the States would receive under the new block grant. Thus, it may be financially advantageous for some States to accelerate their effective date.

In addition to the financial implications, States should also weigh other considerations in determining when to implement the new program. Given the complexity of the new legislation and the tremendous range of options available, designing and implementing a new program will require a significant effort on the part of States. They must consult and coordinate with numerous parties, undertake staff training and modify computer systems.

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Inadequate attention to these activities could undermine the long-term effectiveness of the State's program. Further, once States submit their plans, the work requirements and the 5-year time limit begin. Penalty and data collection requirements begin July 1, 1997, or 6 months after the plan has been submitted, whichever is later.

Suggested State Plan Outline

The statute requires States to outline how they intend to conduct a program that provides assistance to needy families with children and provide parents with job preparation, work and support services to enable them to leave the program and become self-sufficient.

We recommend that States use the State plan process to consider and address a set of important questions, and to outline to the citizens of the State, other interested parties, and the Federal government how those questions will be addressed in the operation of the State's program. Toward that end, we suggest that a State plan include discussion of the issues outlined below as well as addressing all other requirements specified in the law. Attachment A provides a copy of the statutory text.

A possible format is a 15-20 page document that describes the State's program goals, approach, and program features. Some States may emphasize some areas more than others depending on the circumstances in the State. States must submit plans every two years. They may submit amendments to keep the plan current whenever they wish to make changes in the administration or operation of the program. A State plan will be considered complete as long as it includes the information required by the Act.

GOALS, RESULTS AND PUBLIC INVOLVEMENT

What are the overarching goals for your program? How were local governments and private sector organizations involved in designing the TANF plan? How has the public been involved in program design and has the public had the opportunity to provide input? How will you judge and measure progress toward goals? What results will be measured and how will accountability be ensured?

NEEDY FAMILIES

Who will be assisted under this program? How will "needy families" be defined? Will all families in the State have access to the same program or will it vary? Will the same services be offered to families who have moved from another State? How will eligible non-citizens be treated within the program? How will the privacy of families be protected? What rights will applicants and beneficiaries have to challenge decisions?

DRAFT

WORK AND SELF-SUFFICIENCY

What are your overall goals for work and self-sufficiency? How will the program move families to work and ultimately to self-sufficiency? What services will be available to move clients to work? How will you identify and provide additional, targeted support to victims of domestic violence and others who may have particular difficulty successfully making the transition from welfare to work? How will current workers be protected from displacement? How will various community, education, business, religious, local governments, and non-profit organizations be involved in the effort to provide work for clients? How will the delivery of services vary across the State?

BENEFITS

What benefits will be given to needy families? Will benefits be delivered through cash, in-kind, vouchers, or electronic benefits transfer (EBT)? How will time limits and sanctions be incorporated into the program? What supportive services will be available to clients? How will child care be provided to allow parents to go to work?

CULTURE CHANGE

What measures will be taken to change the culture of the welfare office to support work and self-sufficiency? What kind of training will take place for staff who will be involved in administering the program?

PARENTAL RESPONSIBILITY

How will parental responsibility be encouraged? How will child support enforcement interact with the TANF program? Will non-custodial parent be involved in any work programs? What efforts will be made to reduce the incidence of out-of-wedlock births? How will problems of domestic violence and statutory rape be addressed?

TRIBES

How will you ensure equitable access to your program for members of Indian tribes who are not eligible for assistance under a tribal family assistance plan? How will you assist tribes in implementing their programs? What kind of assistance will be available to tribes in implementing their programs?

ADMINISTRATION

What is the structure of the agency administering the program? What will be the role of public or private contractors in the delivery of services? How will elements of the program be phased-in? Will the implementation date differ from the plan submittal date?

DRAFT

WAIVERS

Do you intend to continue one or more individual waivers as provided under section 415? If so, please identify each waiver provision and each provision of new law that you believe are inconsistent, and provide the basis for your assessment of inconsistency. (You may wish to consult with the chief law officer of your State in making this assessment.) What is the name of the 1115 demonstration which contains the waiver? What are the beginning and ending dates of the demonstration? Is the waiver incorporated into your TANF plan applicable statewide? If not, how will TANF operate in those areas of the State not covered by the continuing waivers? Note: Future legislative or regulatory action may limit which provisions of the TANF may be considered inconsistent with waivers for purposes of determining penalties. If this happens, States will have an opportunity to submit a new plan in order to come into compliance with the requirements.

Description of Attachments

In additions to this guidance, we are providing three attachments that State policy makers may wish to use in developing their State TANF plans. Attachment A is a copy of the statutory requirements regarding the state plan. Attachment B contains suggested formats for the required certifications that must be submitted with a state plan. Attachment C provides technical information for financial officers of the program regarding funding and a mechanism for States to request TANF funds.

Paperwork Reduction Act

The information in the State TANF plan is collected in accordance with section 402 of the Social Security Act, as amended. Information received in the State plans sets forth how the TANF program will be administered and operated in the States.

The response burden for this collection of information is estimated to be 60 hours per response, including the time for reviewing the statute, this guidance gathering and preparing the information, and reviewing the information.

The information collected is mandatory in accordance with the above-mentioned citations.

This information is not considered confidential; therefore, no additional safeguards are considered necessary beyond that customarily applied to routine government information.

Inquiries

Inquiries should be addressed to the appropriate Regional Administrator, Administration for Children and Families. Information about all State plans will be posted on the ACF home page.

The actual waivers are now the first 4 pages

Date: 10/24/97

Total pages: Cover + ___ pag

Administration for Children and Families
Office of Planning, Research and Evaluation
370 L'Enfant Promenade, SW
Washington, DC 20447

TO: Diana Fortuna

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FROM: Nancye Campbell

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MESSAGE: Terms and Conditions

DEPARTMENT OF HEALTH AND HUMAN SERVICES
ADMINISTRATION FOR CHILDREN AND FAMILIES

OFFICE OF FAMILY ASSISTANCE
WAIVER AUTHORITY

STATE: Virginia

Waivers of the following provisions of the Social Security Act are provided to the State of Virginia to operate the Virginia Independence Program (VIP):

Section 402(a)(1) and 402(a)(19)(A), and various provisions of the regulations at 45 CFR 205.120(a), 233.10(a)(1)(iv), and 250.11: Statewideness -- to allow the State to operate VIP as set forth in section 2 of the Waiver Terms and Conditions and to exclude those assigned to the control group from having the VIP provisions applied to them, except that provision 2.1 of the Waiver Terms and Conditions will also be applied to the control group.

Section 402(a)(43)(B)(ii) and (iv) and various provisions of the regulations at 45 CFR 233.107(a)(2) and (3): Minor Parent Requirement -- to allow the State to require minor parents to reside in the home of a parent or person standing "in loco parentis" as a condition of AFDC eligibility as described in 2.1 1) of the Waiver Terms and Conditions.

Section 402(a): Fiscal Sanctions -- to allow the State to reduce the benefit level for minor children, including minor mothers, who fail to meet the State's compulsory school attendance standards due to unexcused absences, as set forth in 2.1 2) of the Waiver Terms and Conditions.

Section 1115(a)(2) authority is provided, at the assistance payments matching rate, to allow the State to provide one-time assistance as set forth in 2.2 1) of the Waiver Terms and Conditions.

Section 402(a): Family Cap/Differential Payments -- to allow the State to implement different methods of determining the amount of assistance for VIP participants, as set forth in 2.2 2) of the Waiver Terms and Conditions.

Section 402(a): Amount of Assistance/Immunizations -- to allow the State to impose fiscal sanctions on AFDC recipients whose children have not received immunizations, as set forth in 2.2 3) of the Waiver Terms and Conditions.

Section 402(a)(26) and various provisions of the regulations at 45 CFR 232.12(b) and (d) and 232.13(b): Sanction for Non-Cooperation -- to allow the State to impose sanctions for non-cooperation in child support enforcement as set described in 2.2 4) of the Waiver Terms and Conditions.

Section 402(a)(19)(A) and various provisions of the regulations at 45 CFR 250.36: Conciliation Requirements -- to allow the State to eliminate the conciliation requirement, as described in 2.2 5) of the Waiver Terms and Conditions.

Section 402(a)(19)(G)(i)(I) and various provisions of the regulations at 45 CFR 250.34(a)(1)(i): JOBS Sanctions -- to allow the State to apply a JOBS sanction, as described in 2.2 5) of the Waiver Terms and Conditions.

Section 402(a)(33) and various provisions of the regulations at 45 CFR 233.51: Eligibility for Aliens -- to allow the State to exempt alien sponsors and their spouses who receive food stamps from the alien sponsor deeming requirement when determining eligibility and benefits for AFDC.

Section 402(a): Sanctions -- to allow the State to terminate benefits for refusal by the caretaker to sign the Agreement of Personal Responsibility, as set forth in 2.3 1) of the Waiver Terms and Conditions.

Section 402(a)(7)(A) and (8)(A) and various provisions of the regulations at 45 CFR 233.20(a)(3)(ii)(A) and (B) and (11)(i) and (ii): Income Disregards - to allow the State, in determining eligibility, to count income as set forth in section 2.3 2) of the Waiver Terms and Conditions.

Section 402(a)(18) and various provisions of the regulations at 45 CFR 233.20(a)(3)(xiii): Gross Income Test - to allow the State to not apply the gross income test in determining continuing eligibility of participants in VIP, as set forth in 2.3 2) of the Waiver Terms and Conditions.

Section 402(a)(7)(B)(i) and various provisions of the regulations at 45 CFR 233.20(a)(3)(i)(B)(2): Resources -- to allow the State in determining eligibility to exclude the value of one vehicle up to $7500 fair market value.

Section 402(a): AFDC Benefit Time Limit -- to allow the State to establish a time limit for the receipt of AFDC benefits, and exemptions from that limit, as described in 2.3 4) of the Waiver Terms and Conditions.

Section 402(a)(19)(C) and various provisions of the regulations at 45 CFR 250.30: Exemptions -- to allow the State to implement VIEW exemptions, as described in 2.3 4) of the Waiver Terms and Conditions.

Section 402(g)(1)(A)(ii) and various provisions of 45 CFR 256.2(b)(1): Transitional Child Care -- to allow the State to provide transitional child care, if needed, for up to one year for cases where eligibility has been terminated and such assistance enables the individual to work.

Section 1115(a)(2) authority is provided, at the 50 percent matching rate, to allow the State to provide transitional transportation, if needed, for up to one year to participants whose case has been terminated if such assistance enables the individual to work.

Section 402(a)(19)(A) and various provisions of the regulations at 45 CFR 250.60(c): Job Search -- to allow the State to require participation in job search without the limitations on the number of weeks, as described in 2.3 8) of the Waiver Terms and Conditions.

Section 402(a)(19)(E) and various provisions of the regulations at 45 CFR 250.32: Work Requirement -- to allow the State to place 19-year-old VIEW participants into a work experience placement immediately.

Section 402(a)(19)(G)(i) and (ii) and various regulations at 45 CFR 250.34(a) and (c)(1): Sanctions -- to allow the State to impose sanctions, as described in 2.3 10) of the Waiver Terms and Conditions.

Section 402(a)(19)(B)(iii) and various provisions of the regulations at 45 CFR 250.31(b)(1): Volunteer Sanction -- to allow the State to sanction individuals who are not required to sign an Agreement of Personal Responsibility but who volunteer to do so as described in Terms and Conditions 2.3 11).

Section 402(a)(19)(B)(ii) and various provisions of the regulations at 45 CFR 250.31: Priority for Volunteers -- to allow the State to assign participants to VIEW status without regard to the requirements to give assignment priority to volunteers.

Section 402(a)(19)(A) and various provisions of the regulations at 45 CFR 250.45, and 250.47: Employment Program -- to allow the State to:

- Establish a Full Employment Program (FEP), as set forth in section 2.4 of the Waiver Terms and Conditions;
- Establish a wage pool for the purposes of reimbursing employers as set forth in section 2.4 2) of the Waiver Terms and Conditions; and
- Establish supplemental payments from the wage pool for participants according to the rules set forth in section 2.4 3) of the Waiver Terms and Conditions.

Section 1115(a)(2) authority is provided to allow the State to claim Federal financial participation, at the assistance payments matching rate, for: 1) subsidizing wages paid to FEP participants who are AFDC recipients, as set forth in section 2.4 2) of the Waiver Terms and Conditions; and 2) allowable expenditures for supplemental payments funded by the FEP in excess of those funded by diverting AFDC and Food Stamp benefits to the wage pool, as described in section 2.4 3) of the Waiver Terms and Conditions.

WAIVER TERMS AND CONDITIONS

Virginia

SECTION 1: GENERAL ISSUES

1.0 The Department of Health and Human Services and the Department of Agriculture (hereinafter referred to as the Departments) will grant waivers to the State of Virginia (hereinafter referred to as the State) under Section 1115 of the Social Security Act, as amended, and section 17(b) of the Food Stamp Act, as amended, to operate the Virginia Independence Program, or VIP (hereinafter referred to as the demonstration) as set forth in these Waiver Terms and Conditions. Each Department reserves the right, in its sole discretion, to withdraw any and all waivers granted by that Department at such time(s) that either Department determines that the State has materially failed to meet the requirements as set forth in these Waiver Terms and Conditions. The State also retains the right to terminate the demonstration. In addition, the State may request amendments of the demonstration including waivers and Terms and Conditions at any time within the period approved for the demonstration.

1.1 Failure to operate the demonstration as approved and according to Federal and State statutes and regulations will result in withdrawal of waivers. The Federal statutes and regulations with which the State must comply in the operation of the demonstration include civil rights statutes and regulations that prohibit discrimination on the basis of race, color, national origin, disability, sex and age, including Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975 and the nondiscrimination provisions of the Omnibus Budget Reconciliation Act of 1980. After waivers are granted, the Departments reserve the right to withdraw them if agreement cannot be reached on any item(s) cited in this document as needing approval by the Departments. The State also has the same right.

1.2 If Federal or State statutes or regulations that would have a major effect on the design and impacts of this demonstration are enacted, the Departments and the State will reassess the overall demonstration and develop a mutually agreed-upon strategy for dealing with the demonstration in the context of such changes. If such a mutually agreed-upon strategy cannot be developed, each Department reserves the right, in its sole discretion, to withdraw any or all waivers at such time(s) as that Department determines.

1.3 The demonstration provisions will be implemented statewide no earlier than July 1, 1995, and no later than June 30, 1996. The implementation date of the demonstration shall be the first day on which the first case is made subject to any of the provisions of this demonstration. For cost neutrality purposes, the demonstration shall be deemed to begin on the first day of the calendar quarter (hereinafter "quarter") which includes the implementation date. The demonstration shall end no later than the last day of the 32nd quarter ending after the deemed beginning date. The demonstration provisions shall be as specified in Section 2. Waivers necessary for the demonstration are approved upon acceptance by the Departments and the State of these Waiver Terms and Conditions. They will become effective as of the implementation date and will remain in effect until the last day of the 32nd quarter ending after the deemed beginning date, unless the project is terminated earlier.

1.4 Federal approval of waivers, subject to these Waiver Terms and Conditions, shall not be construed to establish any precedent that either Department will follow in the granting of any subsequent request for waivers.

SECTION 2: IMPLEMENTATION

2.0 Under these Waiver Terms and Conditions, the State will operate a demonstration of VIP statewide with a random assignment evaluation conducted in research sites consisting of the localities of Lynchburg, Norfolk, Petersburg, Prince William and Wise. For evaluation and cost neutrality purposes, the Prince William research site will represent Economic Development District 6 [Northern Virginia]; the Petersburg research site will represent Economic Development Districts 12 and 16 [Richmond area]; the Norfolk research site will represent Economic Development Districts 15 and 17 [Urban Tidewater area]; and a research site comprised of Lynchburg and Wise will represent Economic Development Districts in the remainder of the State. A detailed reference to these Economic Development Districts and their respective localities is contained in Section 7.

Within the research sites, current AFDC recipients and newly approved AFDC cases will be randomly assigned to one of three groups: 1) a primary experimental group, whose eligibility and amount of benefits for AFDC, Food Stamps (for AFDC cases only), and Medicaid will be determined based on VIP provisions,; 2) a secondary experimental group whose eligibility and amount of benefits for AFDC, Food Stamps (for AFDC cases only), and Medicaid will also be determined based on VIP provisions; and 3) a control group whose eligibility and amount of benefits will be determined according to the State's approved AFDC and Medicaid State Plans and approved Food Stamp Plan of Operations, except that provisions in 2.1 will also be applied to the control group.

In the remainder of the State (i.e., outside the research sites) AFDC recipients and newly approved AFDC cases will also be assigned to the secondary experimental group whose eligibility and amount of benefits for AFDC, Food Stamps (for AFDC cases only), and Medicaid will also be determined based on VIP provisions.

The primary experimental and secondary experimental groups together will comprise the treatment group. The primary experimental group and control group together will comprise the "research sample." The secondary experimental group will be used to corroborate the results of the primary experimental group.

2.1 Under VIP, the State will implement the following provisions statewide upon implementation for all recipients:

1) Minor parents will be required to reside in the home of a parent or person standing "in loco parentis" (referred to as "responsible adult") as a condition for AFDC eligibility. All persons in the case will retain the same Medicaid eligibility they would have had without the waiver. The State will provide an exemption from this requirement if the minor parent meets the following conditions:

   a) has no responsible adult who is living or whose whereabouts is known;

   b) is married;

   c) a determination has been made that the physical or emotional health or safety of the individual or his/her dependent child would be jeopardized;

   d) there is good cause for waiving the requirements subject to regulations promulgated by the State Board of Social Services.

In cases where a minor parent is granted an exemption, the Social Services Department will assist the parent in locating an adult-supervised living arrangement.

2) Families with children under 18 years of age, including minor mothers, who fail to meet the State's compulsory school attendance standards due to unexcused absences, will be reported to the local social services agency, where the reason for non-attendance will be ascertained and an attempt made to correct the attendance problem. The case manager and casehead will mutually develop a plan to establish milestones for attendance and addressing problems associated with an inadequate level of attendance. If the casehead refuses to develop a plan or comply with the plan, then the family's AFDC grant will be reduced such that the AFDC payment equals the amount the family would receive if the non-attending child's needs were removed in calculating the AFDC grant. The child will be considered an AFDC recipient for all other purposes including Medicaid eligibility. The sanction will be cured by school attendance in accordance with the plan.

2.2 Under VIP, the State will apply the following provisions statewide upon implementation to all treatment cases:

1) In lieu of AFDC benefits, for AFDC-eligible applicants who volunteer, the State will provide in the form of vendor payments, cash assistance or services necessary to remedy an immediate problem, in an amount of up to 120 days worth of AFDC benefits, to be paid only once in a 60 month period. All persons in the case will receive Medicaid benefits for up to 4 months. An eligible applicant who volunteers for this option would waive his/her eligibility for regular AFDC for a period of up to 160 days, but will be able to reapply for, be eligible for, and receive AFDC-related Medicaid.

2) No additional AFDC cash benefit will be issued due to the birth of a child when the birth occurs more than 10 calendar months after the later of (i) the month in which the first payment is made, (ii) the date of implementation of the demonstration, or (iii) for active cases, the date of the notice outlining the family cap provision, except as specified below. This provision applies equally to adopted children.

The benefit cap will not apply:

a) when the additional child was conceived as a result of verified rape or incest;

b) to children who are the firstborn (including all children in the case of a multiple birth) of minors included in an AFDC grant;

c) to a child who does not reside with his or her parent;

d) or to a child that was conceived in a month the assistance unit (i.e., the entire family) was not receiving AFDC, except that the benefit cap will apply to a child conceived within 6 calendar months after a case is closed.

Children who return or enter the household who were born prior to the periods identified above are not included in this restriction.

Children subject to this provision will not be included in the need standard for purposes of determining AFDC eligibility and the income of the child, including child support, will not be considered in determining the AFDC payment amount for the family. The child will be considered an AFDC recipient for all other purposes including Medicaid coverage.

The benefit cap applies to families whose benefits have been suspended because the casehead failed to comply with the provisions of VIP, if the provision would have applied if the family were receiving AFDC benefits.

The State will offer family planning services as under section 402(a)(15) of the Social Security Act.

3) Fiscal sanctions will be imposed on AFDC recipients whose children have not received immunizations, as established by State policy. The State shall advise AFDC recipients of the availability of standard childhood immunizations through the county public health unit. The recipient must submit proof that all children for whom they receive benefits have their standard childhood immunizations up to date. If a recipient fails to provide such proof, the State will impose fiscal sanctions by reducing the AFDC benefit for the assistance unit by $50 for the first child and $25 for each additional child for whom verification is not provided.

Sanctions will not be imposed until the reason for the failure to comply has been identified and any barriers to access have been addressed. Sanctions will not be applied if the failure to immunize a child is because of medical or religious reasons. Sanctions will cease upon receipt of proof that the immunization sequence has been scheduled and started.

The State will ensure that immunizations are accessible and available to all AFDC recipients subject to this provision. In order to ensure the appropriate involvement and coordination at the State level, the State's health authority will review the details of this provision and will provide an analysis of its impact on the State's immunization action plan (IAP).

4) AFDC cases with children born out of wedlock and for whom paternity still has not been established after six months of AFDC receipt will be reviewed to determine whether the failure to establish paternity is the responsibility of the IV-D agency or whether it is due to the non-cooperation of the caretaker relative. If failure to establish paternity is determined to be due to the caretaker relative's non-cooperation, then the family's entire AFDC cash benefit will be terminated for a period of a minimum of one month and until the caretaker relative begins to cooperate with the IV-D agency to establish paternity. All persons in the case will retain the same Medicaid eligibility they would have had in the absence of the AFDC waiver.

The State will require that AFDC applicants and recipients provide:

(a) the first and last name of the non-custodial parent/putative father; and

(b) additional information items sufficient to verify the non-custodial parent/putative father's identity, including, at a minimum three of the following:

(i) social security number;

(ii) race;

(iii) date of birth;

(iv) place of birth;

(v) telephone number;

(vi) address;

(vii) schools attended;

(viii) occupation;

(ix) employer;

(x) driver's license number;

(xi) make and model of motor vehicle;

(xii) motor vehicle license plate number;

(xiii) places of social contact;

(xiv) banking institutions utilized;

(xv) names, addresses or telephone numbers of parents, friends, or relatives; or

other information that the State determines is likely to lead to the establishment of paternity.

The State will establish criteria for cooperation in those instances where it determines that the applicant/recipient cannot reasonably be expected to know the identifying information relating to the child's father.

The local social services agency will inform the applicant/recipient that the names of all possible putative fathers must be provided when assistance is requested for a child. The State will provide the first two genetic tests for the two putative fathers who are designated by the applicant/recipient. If both designated putative fathers are excluded from paternity as a result of genetic testing, the State will impose a sanction for noncooperation until paternity is established for the child. The State will make every effort to complete the paternity establishment process with reasonable promptness.

5) JOBS sanctions will be imposed as appropriate without first conducting the conciliation process. For the first offense, a JOBS sanction will be applied for a period of at least one month or until compliance, whichever is longer. Fair hearings procedures outlined under current law still apply.

6) Alien sponsors and their spouses who receive food stamps will be exempt from the alien sponsor deeming requirement when determining eligibility and benefits for AFDC.

2.3 Under VIP, the State will implement the following provisions statewide as part of the Virginia Initiative for Employment Not Welfare (VIEW) program. VIEW will be implemented statewide on a geographically phased-in basis over the first four years of the demonstration beginning with the implementation date. Economic Development Districts 15 and 17 (Urban Tidewater) shall be implemented in the same or subsequent quarters. Economic Development Districts 12 and 16 (Richmond area) shall also be implemented in the same or subsequent quarters. For evaluation and cost neutrality purposes, the State will propose, for approval by the Departments, a scheduled quarter for implementation of VIEW provisions in Economic Development District 1. VIEW provisions will apply only to AFDC cases subject to time-limited benefits as described in 4 below. Under VIEW:

1) AFDC cash benefits will be terminated for the entire case for refusal of the casehead to sign the Agreement of Personal Responsibility. This fiscal sanction shall continue until the casehead complies.

2) Applying all disregards under current law, participants will maintain AFDC eligibility and earned income will be disregarded during the 24-month time limit so long as earnings plus the AFDC benefits are equal to or less than the current Federal Poverty Guidelines. For any month in which earnings plus the AFDC benefit exceed the Federal Poverty Guidelines, AFDC benefits will be reduced dollar for dollar from the AFDC grant.

3) When determining eligibility, the value of one vehicle up to $7,500 fair market value will be excludable from countable resources.

Time-limited Benefits

4) AFDC cash benefits will be time-limited to 24 cumulative months for cases headed by non-exempt caretakers. The following caseheads will be exempt in such cases:

a) any individual, including all minor caretakers, under sixteen years of age;

b) any individual at least 16, but no more than 19 years of age, who is enrolled full-time in elementary or secondary school, including vocational or technical school programs. The vocational or technical school must be equivalent to a secondary school. Once an individual loses this exemption, s/he cannot requalify for the exemption even if s/he returns to school, unless the case is closed and reopened or he becomes exempt for another reason. Whenever feasible, such recipients should participate in summer work;

c) any individual unable to participate because of a temporary medical condition that prevents entry into employment or training, as determined by a physician, must provide to the local department a written statement from such physician to specify that s/he is incapacitated, the nature and scope of the incapacity, and the duration of the incapacity. The worker must re-evaluate the participant's incapacity at the time prescribed by the medical statement or every 60 days, whichever come first. The recipient must provide verification that s/he continues to be incapacitated.

d) any individual who is incapacitated, as determined by receipt of Social Security Disability Benefits or Supplemental Security Income. This exemption shall not be granted to either parent in an AFDC-UP case; eligibility shall be evaluated for regular AFDC on the basis of the parent's incapacity;

e) any individual sixty years of age or older;

f) any individual who is the sole care giver of another member of the household who is incapacitated, and whose presence is essential for the care of the member on a substantially continuous basis. Incapacity is determined by receipt of Social Security Disability Benefits or Supplemental Security Income. The sole other condition under which an individual may be determined incapacitated is by a written medical statement from a physician.

g) a parent or caretaker relative of a child under 18 months of age who personally provides care for the child. A parent of a child not considered part of the AFDC assistance unit under Virginia Code section 65.1-105.7 may be granted a temporary exemption of not more than six weeks after the birth of the child;

h) children receiving AFDC-Foster Care;

i) families where the primary caretakers of a child or children are legal guardians, grandparents, foster parents, or other persons standing in loco parentis and are not the adoptive or biological parents of the child; and

j) a female who is in her fourth through ninth month of pregnancy as determined by a written medical statement provided by a physician.

In an AFDC-UP case, both parents shall be referred for participation unless one meets an exemption; only one parent can be exempt. If both parents meet an exemption criterion, they shall decide who will be referred for participation.

Cases which are exempt from the time limit because their casehead meets any conditions listed above shall be exempt only for such period(s) as such conditions exist. If a time limit has already begun for the case, accrual of months toward the time limit will be suspended while such conditions exist.

During the time-limited period established, non-exempted adults must participate in employment-related activities in accordance with VIEW and their Agreement of Personal Responsibility. During this time participants will receive case management, which may include education, training, and employment activities.

At the end of the time limit AFDC cash benefits will be terminated for the case. Any individuals who lose AFDC cash benefits will retain the same Medicaid eligibility they would have had in the absence of the AFDC waiver. However, cases may apply for a hardship exception under criteria specified below.

a) Hardship exceptions will not be granted if the casehead:

- o has, during the program, not actively sought employment and otherwise satisfactorily participated in all assigned program activities without good cause;

- o has been sanctioned more than once during the time-limited period for failing to comply with program requirements; or

- o has voluntarily quit a job, or rejected a bona fide offer of employment, without good cause.

b) A hardship exception shall, if the local department determines that the participant meets all criteria, be granted by the local agency for up to one year in the following circumstances:

- o factors relating to job availability are unfavorable. To qualify under this exception the participant must have been actively seeking employment. Job availability is defined as an unemployment rate of 10% or greater in the participant's locality, for the two most recent quarters prior to the end of the two-year time limitation. This data is available from the Virginia Employment Commission. If data are not available for one of the two most recent quarters, the local agency will use the most current data, or

- o an exception to the time limit will enable an casehead to complete employment-related education or training.

Participants granted hardship exemptions under the circumstances in this section shall be re-evaluated every 90 days to determine if a basis for the hardship exception continues to exist. During the exception, the participant must continue in the program and work-related activities.

c) A hardship exception shall, if the local department determines that the individual meets all criteria, be granted by the local agency for up to 90 days in the following circumstances:

- o the individual has been actively seeking unsubsidized employment and is unable to find a job or jobs that would, in combination with any other income or sources of assistance that the individual is receiving, pay an amount equal to or exceeding the case's AFDC cash benefits and standard work deduction, or

- o the individual demonstrates an extreme hardship because of loss of job resulting from factors unrelated to job performance, which is defined as those situations in which the Virginia Unemployment Commission would determine that the individual would be eligible for unemployment compensation if the individual had worked sufficient hours to qualify.

Extensions of hardship exceptions will be granted for the circumstances in this section in very limited circumstances and only to those persons who demonstrate an extreme hardship. If an extension is granted, the individual will participate immediately in work components, unless good cause exists.

The local agency shall request an extension, if it determines that the individual may meet the criteria below, and refer the case to a panel composed of the Commissioner of the Virginia Department of Social Services, the Commissioner of the Virginia Employment Commission, and the Executive Director of the Governor's Employment and Training Department.

The criteria that will be considered in making a determination that an individual's benefits should be extended will include but need not be limited to: 1) the panel determines that the individual meets all the general criteria for receiving the hardship exception; 2) the individual has applied for and been found ineligible for unemployment compensation because he has not worked sufficient hours to qualify; 3) the individual is unable to find a job or a combination of jobs that would, in combination with any other income or sources of assistance that the individual is receiving, equal or exceed the amount of the AFDC grant plus the standard work deduction; and 4) the individual enters a job search and work component at the time of application and complies with all other program requirements pending and after application approval. The panel will examine each case individually and may consider other extenuating circumstances in deciding whether to grant or deny an exception.

The panel will re-evaluate the individual's case as it determines necessary, but at least every 90 days, in order to determine whether the conditions justifying the exception continue to exist.

d) If an individual is sanctioned while under a hardship exception, the hardship exception will be revoked upon notice as required under current law and the case will not be eligible for further consideration for hardship exceptions.

Work Program Provisions

5) Transitional medical assistance will be provided for individuals who lose AFDC because of increased earnings.

6) Transitional Child Care will be provided, if needed, for up to one year for cases where eligibility has been terminated if such assistance enables the participant to work.

7) Transitional transportation assistance will be paid, if needed, for up to one year to participants whose case has been terminated if such assistance enables the individual to work.

8) Job search will be required for non-exempt AFDC recipients without regard to time limits (i.e., unrestricted by the eight week and four month limitations and the three-week limit prior to the conduct of an assessment).

9) VIEW participants between the ages of 19 and 24 may be placed immediately into either work experience placements or education.

10) Failure to participate in required VIEW activities, without good cause, will result in the imposition of fiscal sanctions as follows:

a) for the first offense, the entire AFDC cash benefit will be suspended for one month, or until compliance, whichever is longer;

b) for the second offense, the entire AFDC cash benefit will be suspended for three months, or until compliance, whichever is longer;

c) for the third and subsequent offenses, the entire AFDC cash benefit will be suspended for six months, or until compliance, whichever is longer.

11) All VIEW volunteers who sign the Agreement of Personal Responsibility will be subject to the same sanctions as VIEW non-exempt participants.

12) The State may assign participants to VIEW status without regard to the requirement to give assignment priority to volunteers.

AFDC-related Medicaid Provisions

13) Up to a 12-month Medicaid transition benefit will be provided to any cases in the treatment group who lose AFDC eligibility for reasons other than earnings, if quarterly income is below 185 percent of the Federal Poverty Guidelines.

14) Medicaid transition benefits will be provided to all cases in the treatment group without regard to whether they were eligible for AFDC in 3 of the previous 6 months.

Public Assistance Food Stamp Provisions

15) The State will continue to consider persons determined ineligible for AFDC for not attending school regularly, as categorically eligible for food stamp purposes.

16) The State will allow workfare placements under the Community Work Experience Component into other than public or private non-profit jobs. The State agency must submit for USDA approval criteria for the selection of these workfare sites.

17) The State agency may require participants in the Community Work Experience Component to work up to, but not exceed, 32 hours per week.

2.4 The Full Employment Program (FEP)

1) The State will implement a component of VIEW called the Full Employment Program that utilizes AFDC and food stamp benefits to subsidize employment in the private sector. Persons in VIEW not able to find unsubsidized employment and who are eligible for both AFDC and food stamp benefits may participate in FEP.

2) Beginning with the month of the first wages from a subsidized placement and continuing through the month the participant ceases to be in a subsidized placement, the family's AFDC grant and Food Stamp allotment benefits will be deposited in the Wage Pool. This fund will be used only to reimburse participating employers for costs related to the employment of, and wages paid to, FEP participants up to the combined amount of AFDC and food stamp benefits. The

employer is responsible for the employer's share of premiums for Social Security contributions, Unemployment Insurance and Worker's Compensation related to such amount of wages.

3) If a FEP participant earns less in net wages (i.e., wages after taxes) plus advance EITC for a given month than the participant's case would otherwise receive in AFDC and Food Stamp benefits, reduced by the amount of net wages not paid due to missed hours of work without good cause, the State will make a supplemental payment to the participant. The amount of Food Stamp benefits the participant's case would have otherwise received will be increased by a factor equal to the State and local sales tax rate for food purchases.

The amount of the supplemental payment for a given month will be determined by subtracting the participant's net wages plus advance EITC from the cash value of AFDC and Food Stamp benefits. The cash value of AFDC and Food Stamp benefits will be determined by freezing benefits at the amount received by the participant immediately preceding enrollment in this component as described in 5) and 6) below. Participants will remain eligible for AFDC for the period of their placement in each subsidized job.

The determination of the need for, and amount of, supplemental payments will be based on employer reports or other information received by the State. Employers will be required to report on the gross and net wages and advance EITC paid to participants in each monthly payroll period (i.e., the budget month), including information on the number of paid hours and the number of unpaid hours due to both excused and unexcused absences from work.

Supplemental payment amounts will be computed for a given month (i.e., the payment month) based on the net wages and advance EITC expected to be received in that monthly period (i.e., the budget month). Participants will regularly receive supplemental payments for the budget month within 30 days of the end of the budget month.

The State will inform participants, prior to their entry into FEP, of the procedures for qualifying for and receiving supplemental payments. Also, in all cases where the participant receives less in net wages, advance EITC and supplemental payments (including any emergency payment) for a given budget month than the cash value of AFDC and Food Stamp benefits the case would have otherwise received because of unpaid hours for absences not excused by the employer, the State will notify the participant of that fact within the first 15 days of the payment month. The notice will inform the participant of the amount of the shortage, her/his right to a hearing as prescribed under the provisions of 45 CFR 205.10(a)(4)(i)(B), the timeframe within which the participant must apply for a hearing, and about the procedures to follow to obtain a hearing.

4) Placements will be limited to six months per individual placement. At the end of each placement the participant may be placed in another placement.

Public Assistance Food Stamp Provisions

5) AFDC and food stamp benefits of participants in FEP will be "frozen" at the amount received by the participant immediately preceding enrollment in the component. The combined benefit will be increased to the extent necessary to compensate FEP households for the cost of State and local sales tax on food purchases. In accordance with section 17(b)(1)(B)(i)(II) of the Food Stamp Act, the increase in food stamp benefits due to sales tax is a cost to be borne solely by the State and may not be included in the cost-neutrality calculation described under Section 4 of the Waiver Terms and Conditions.

6) Participants in FEP whose household circumstances change resulting in at least a $25 increase in food stamp benefits, shall have their FEP case reviewed to determine whether the net wages including the advance EITC payment continue to equal or exceed the combined AFDC/FS benefit amount. If the new benefit amount exceeds net wages, the household shall be entitled to receive a supplemental check as described above. If the net wages continue to exceed the new combined AFDC/FS benefit amount, no change will be made.

7) The State must develop and submit for USDA's approval a mechanism to compensate FEP participants that incur an additional tax liability due to the counting of the cash value of food stamp benefits in their yearly income for tax purposes.

2.5 Federal funding will be available:

1) under title IV-A at the AFDC matching rate for:

a) allowable expenditures for AFDC cases funded by the State in excess of those funded by diverting AFDC and cashed-out Food Stamp benefits; and

b) cash and vendor payments designed to remedy a temporary set-back which has resulted from, or may result in, job loss or impoverishment, as specified in 2.2(1).

c) transitional transportation assistance provided to enable individuals whose case has been terminated to work, as specified in 2.3(7).

2) under title XIX at the Medicaid matching rate for:

a) Payment of up to 12-month Medicaid transition benefits provided to cases in the treatment group who lose AFDC eligibility, for reasons other than in earnings, if quarterly income is below 185 percent of the Federal Poverty Guidelines as described in 2.3(13).

b) Medicaid transition benefits provided to cases in the treatment group without regard to whether they were eligible for AFDC in 3 of the previous 6 months as described in 2.3(14).

c) Transitional medical assistance provided for individuals who lose AFDC because of increased earnings, as specified in 2.3(5).

2.6 For purposes of Quality Control, the eligibility of and amount of benefits for treatment group cases in VIP will be reviewed against the rules of the demonstration, in lieu of the rules being waived.

SECTION 3: EVALUATION

3.0 The costs of approved evaluation activities will be matched by DHHS at 50 percent for the duration of the evaluation and are excluded from cost neutrality requirements. Evaluation components not approved by the Departments will not qualify for Federal matching funds. Evaluation costs will include all costs necessary to carry out the approved evaluation plan, including costs for evaluation activities carried out by State and local agencies as well as those carried out by the evaluation contractor.

3.1 Within 60 days after acceptance by the State of these Waiver Terms and Conditions, the State will submit to the Departments, for approval, a draft Request for Proposals (RFP) for a contract to conduct an evaluation of the demonstration. The RFP must specify, in sufficient detail, the objectives of the project, the evaluation design, the specific tasks to be conducted, the time frames for conducting those tasks, and a schedule and list of deliverables. The research questions to be studied, the major variables to be measured, the data collection methodology, and the major data analyses to be performed must be clearly described.

The evaluation contractor must be an entity independent of the Executive Branch of the State government (state universities qualify under this provision), and must be qualified and have experience in evaluating social experiments of the design, scale, and duration of that proposed by the State.

The RFP will also indicate that the selected contractor will be required to address in its evaluation plan any potential problems inherent in the evaluation design related to analyzing the impact of the program interventions under this demonstration and the methodology it will employ to minimize such problems. This must include methods of analysis which adjust for, or minimize, the potential influence of any factors which might bias conclusions concerning project impacts.

Possible confounding effects from other demonstrations, if any, running concurrently with VIP also must be addressed in detail. The RFP must indicate that the contractor will discuss the feasibility of evaluating the impact of individual provisions of VIP, as well as the impact of the project as a whole. In particular, the evaluation of the VIEW provisions must be addressed.

The evaluation of the impact of individual provisions listed in 2.2 through 2.4 must be within the constraints of the existing control sample. The evaluation of provisions listed in 2.1 (minor parent and school attendance provisions) must utilize non-experimental methods of sufficient rigor. The RFP shall indicate that the evaluation contractor will explain how the impact provisions in 2.1 will be evaluated.

The RFP must also indicate that the evaluation contractor will explain how entry effects can be determined and will describe the methodology which will be employed to determine the entry effects of VIP (i.e., how VIP affects the application rate for AFDC and how that affects the AFDC caseload).

3.2 The selected evaluation contractor will be required to develop an evaluation plan that will be submitted by the State to the Departments for approval not later than 60 days after contract award. The evaluation plan must present the research questions to be studied, the major variables to be measured, the sources of data for these variables, the data collection procedures, and the major data analyses to be performed. The evaluation plan will specify the data that will be gathered and the analyses that will be performed.

3.3 For the purposes of evaluation, the State will submit to the Departments for approval, prior to the date of implementation, a final sampling plan for AFDC cases active in the month containing the implementation date and for newly approved AFDC cases beginning with the implementation date. The plan will include, for approval of the Departments, the designation of the research sites for each of the four regions identified in 2.0. The plan will describe how families will be randomly assigned to the experimental and control groups (i.e., the research sample) in order to meet the objective that the families in the control group are, to the extent possible, comparable to the families in the primary experimental group. The plan will also describe how the evaluation contractor will monitor random assignment in order to ensure that it is carried out during the project in such a way as to prevent crossover of individuals between the experimental and control groups.

3.4 For purposes of evaluation and cost neutrality the State will be divided into 4 regions based on Economic Development Districts (EDDs). Region A will consist of the localities in EDD 6, Region B will consist of the localities in EDD 12 and EDD 16, Region C will consist of the localities in EDD 15 and 17, and Region D will consist of the localities in all the remaining EDDs. In Region D, at least two localities will be chosen as the research site for that region.

In each research site, all AFDC cases active in the month of implementation will be randomly assigned to one of three groups: the primary experimental group, the control group and the secondary experimental group. From cases active in the month of implementation in each research site, at least 1000 currently active cases will be assigned to the control group and at least an equal number to the primary experimental group. If there are not enough cases in the research site to assign 1,000 to the primary experimental group and 1,000 to the control group, then all cases will be assigned to the research sample with equal numbers being assigned to the primary experimental group and to the control group.

3.5 Beginning with the date of implementation, newly approved AFDC cases in each research site will be randomly assigned to the control group, the primary experimental group, and the secondary experimental group, using a sampling ratio that will result in an efficient sampling design, such that the expected number of newly approved AFDC cases in the primary experimental and control groups will be at least equal to the number of current cases assigned to these groups. These sampling ratios are subject to approval by the Departments. Random assignment of newly approved AFDC cases will continue for at least 5 years after the implementation date of the demonstration or until 2 years after the last research site has implemented VIEW, whichever is later.

3.6 All cases assigned to either the primary experimental, control, or the secondary experimental group will maintain their assigned status for the full period of the demonstration as long as they reside in one of the research sites. Specifically, if any case loses AFDC eligibility and reapplies for AFDC at any time during the demonstration, it must retain its originally assigned status. For cases that have been randomly assigned and then split (e.g., when minor parents start their own case), the prior treatment status will be maintained for both cases and both cases will remain in the research sample. For cost neutrality purposes, split cases will be counted as one ever-assigned case and benefits for both cases will be included in determining cost neutrality. Procedures to resolve treatment assignments when AFDC cases with different assigned statuses combine must be submitted to the Departments for approval within 60 days of the implementation date of the demonstration. To the extent possible, the designation of an AFDC case as a primary experimental, control, or secondary experimental case will follow the head of the original assistance unit or household.

3.7 Outcome data will be collected for all cases assigned to the research sample, to the extent possible, for the duration of the demonstration, regardless of whether the cases continue to receive assistance or, with regard to applicant cases, ever receive assistance. Data stored in automated data bases available to the State, such as AFDC, Emergency Assistance, Food Stamp and Medicaid benefits and wage data, will be collected for all cases assigned to the research sample for the duration of the demonstration. Data that must be collected through surveys or other non-routine data collection efforts, such as data regarding new applicant cases denied assistance, will be collected in sufficient quantity to produce meaningful evaluation results, as specified and approved in the evaluation plan. Data collection may cease after it is determined that a family in the research sample no longer resides in the State. The State will submit, for approval, not later than 30 days after the implementation date, a plan to track and collect data regarding cases in the research sample that no longer receive AFDC benefits.

3.8 The impact evaluations will compare the primary experimental and control groups for statistically significant differences on selected outcome measures related to provisions in 2.2 through 2.4. By other methods, in accordance with an approved evaluation plan, a separate impact evaluation will also determine effects related to provisions in 2.1. At a minimum, these impact evaluations will test the following research questions, as applicable:

- o Does the demonstration affect AFDC, Food Stamp, and Medicaid participation and program costs? Outcome measures related to this question include, at a minimum: incidence of AFDC and Food Stamp benefit receipt; AFDC and Food Stamp payments; exit and recidivism rates for AFDC, with recidivism that occurs during the Medicaid transition benefit distinguished from recidivism that occurs at other times, and with recidivism among cases who lose AFDC eligibility due to earnings distinguished from those who lose eligibility for other reasons ; receipt of Medicaid services; use of child care; and child care payments under section 402(g).

- o Do the "3 of 6" waiver and giving transitional benefits to those losing AFDC for reasons other than earnings induce people to apply for AFDC? Outcome measures related to this question include, at minimum: cases losing AFDC eligibility for reasons other than earnings and receiving Medicaid transition benefits; cases who were eligible for AFDC for less than 3 of the previous 6 months and receiving the Medicaid transition benefits, with those who lose AFDC eligibility due to earnings distinguished from those who lose eligibility for other reasons? Are Medicaid months saved through reduced recidivism offset by entry effects?

- o Does the demonstration promote self-sufficiency? Outcome measures related to this question include, at a minimum: employment rates; length of employment; amount of earned income; hours worked per month; child support collections; total family income; and accumulated savings.

- o Does the demonstration affect participation in JOBS, cooperation with the Child Support Enforcement Program? Outcome measures related to this question include, at a minimum: participation and completion rates in JOBS or other employment and training components; sanction rates, including age and race of those subject to sanctions rates; the proportion of cases with child support orders; the proportion of cases receiving child support payments that are due; the amount of child support payments received in total and as a proportion of total amount due.

- o Does the demonstration affect family structure and stability? Outcome measures related to this question include, at a minimum: marriage and separation rates; homelessness of children and adults, rate and use of foster care, status changes between AFDC-UP and AFDC-Basic.

- o Does the demonstration affect the well-being of children, including their long-term prospects for self-sufficiency? Outcome measures related to this question include: measures of child well-being such as reported child abuse and neglect, health and insurance status as in extant data available from local records and medical records, and school truancy.

- o Does the demonstration affect the rate of immunization of AFDC preschool age children? Outcome measures related to this question include: immunization rates of AFDC preschool age children.

- o Does the demonstration affect school attendance as measured, at minimum, by the following outcomes: school attendance for recipients subject to school attendance.

- o Does the demonstration affect the prevalence of employer group health insurance coverage for FEP participants?

- o Does the Food Stamp cash-out increase the incidence of acute food shortages or change the perceived adequacy of the home food supply. Outcomes measures related to this question include at a minimum: the perceived sufficiency of food eaten, the number of days without food or resources and the frequency of meals skipped due to inadequate food resources.

With the approval of the Departments, additional research questions and outcome measures may also be included.

3.9 To the extent that sample size allows, the impact evaluations will include the analysis of subgroups of the AFDC population with regard to the outcome measures described in 3.8. This subgroup analysis will include, but not be limited to, cases active in the month of implementation of the demonstration and newly approved AFDC cases beginning with the month of implementation; cases by region; and the characteristics of age and race.

3.10 The evaluation will include interim and final process studies that will describe how the parts of the demonstration were implemented and operated for both the primary and secondary experimental groups. This study will, as appropriate, examine the following aspects of the demonstration:

- The organizational aspects, such as the planning process; staffing structure; funding committed; level of acceptance by field staff; and methods of project implementation at various organizational levels including ongoing monitoring, oversight and problem resolution.

- The service aspects, such as the characteristics, roles, and training of the field staff (e.g., eligibility workers and case managers); the extent to which staff communicate new rules to participants; the exemption and sanctioning process; type and duration of services provided; and timeliness and scheduling in the provision of project components and services.

- The contextual factors, such as the social, economic, and political forces that may have a bearing on the replicability of the intervention or influence the implementation or effectiveness of the demonstration.

- The differences between the experimental and control groups with regard to comparable resources, services, activities, staffing, etc.

- Regarding payments in lieu of AFDC benefits in accordance with 2.2(1): the number and proportion of eligible applicants choosing this option; the average payment made, etc.

- Regarding subsidized employment under FEP: the take up rate by employers in terms of offering temporary subsidized job placements; the number of subsidized job placements; the number of unsubsidized job placements following subsidized employment with the same employer, etc.

- Regarding school attendance and immunization requirements: the number of families being reported to the social services agency for non-attendance of school and the proportion thereafter complying or sanctioned; the proportion and number of treatment cases sanctioned for failing to immunize children; the average length of sanctions for non-attendance of failure to immunize children, etc.

- o Regarding nutrition education for FEP participants, documentation of: collaborative activities with other public agencies such as the Cooperative Extension Service, Expanded Food and Nutrition Education Program (EFNEP), WIC, public health and community action agencies, and local schools; types of nutrition education activities conducted; and the number and types of individual and families offered these activities.

3.11 The evaluation will include a cost-benefit analysis that will seek to determine whether the costs of the demonstration are justified by the benefits produced. Comparisons will be made from the viewpoint of the program participants, the various levels of government, and society as a whole. Analyses will involve quantifying program outcomes and projecting both costs and benefits into the future. Costs for all pertinent programs will be included, whether or not they are subject to the cost neutrality requirements in Section 4 of these Waiver Terms and Conditions. Data for the cost-benefit analysis will be from administrative and case records, as well as other sources to be determined by the State and the Departments.

3.12 Additional program changes that are not applied equally to treatment and control groups or that would substantially affect the evaluation of the demonstration must be approved by the Departments.

3.13 A final evaluation report integrating the impact study, the process study, and the cost-benefit analysis will be due 9 months after termination of the demonstration. The State will also have the evaluation contractor produce and make available public-use data tapes, including documentation, containing data collected during the demonstration.

Interim impact and process studies will also be submitted to the Departments as follows:

a) Prior to the conclusion of the eighth quarter ending after the implementation date of the demonstration covering the first 7 quarters of the demonstration for Region D. These reports shall provide an added focus on those counties of the region made subject to time-limited benefits in the first year of the demonstration.

b) Prior to the conclusion of the seventh quarter ending after the implementation date of the time-limited benefit provisions in the research site for Region A, covering the time from the implementation date of the demonstration through the first 6 quarters recipients are subject to the time-limited provisions for Region A.

c) Prior to the conclusion of the seventh quarter ending after the implementation date of the time-limited benefit provisions in the research site for Region B, covering the time from the implementation date of the demonstration through the first 6 quarters recipients are subject to the time-limited provisions for Region B.

d) Prior to the conclusion of the seventh quarter ending after the implementation date of the time-limited benefit provisions in the research site for Region C, covering the time from the implementation date of the demonstration through the first 6 quarters recipients are subject to the time-limited provisions for Region C.

The latter of reports c and d will include process and impact evaluation of the other regions of the state covering the time from the implementation date of the demonstration through the end of the first 6 quarters recipients are subject to the time-limited provisions for Region C.

Additional reports may be proposed by the State and, subject to approval by the Departments, may be considered allowable components of the evaluation of the demonstration.

3.14 Public release of any evaluation or monitoring reports funded under this agreement will be made only by the Departments or the State. Prior to public release of such reports, the Departments and the State will have at least a 30-day period for review and comment.

SECTION 4: COST NEUTRALITY

4.0 For activities within 90 days of the implementation date specified in 1.3 above, the Federal government will match the administrative costs related to development of the demonstration project (otherwise called developmental costs) at the applicable matching rate. Also, developmental costs for a particular Region incurred prior to implementation of VIEW within that Region will be matched by the Federal government. Such costs may include automated systems development and changes, policy procedures development, and staff training. Not later than 45 days after the State formally accepts these Terms and Conditions, the State will submit a plan, for approval by the Departments, designating which administrative costs will be treated as developmental costs for purposes of this section. This section is not intended to supersede other requirements for Federal approval for administrative costs of the programs involved in the demonstration.

4.1 Except for costs of evaluating and developing this project (as specified in 3.0 and 4.0 above), beginning with the deemed beginning date the operation of this demonstration is to be cost-neutral to the Federal government with respect to benefit and administrative costs for AFDC, Emergency Assistance, Food Stamps, and Medicaid. For purposes of calculating cost neutrality, child care costs made under section 402(g)(1)(A)(i) and (ii) of the Social Security Act, matchable at the Federal medical assistance percentage, are considered to be AFDC administrative costs. Also, for purposes of calculating cost neutrality: a) AFDC benefit costs will be net of child support collections retained by the State: and b) overpayments recovered from AFDC cases and Food Stamp claims collected from Food Stamp households will be considered as program savings to the applicable program.

4.2 Cost neutrality computations will be made by the State on a quarterly basis. These computations will determine the Federal share of excess costs or savings of the demonstration in total, as well as separately for each program, and separately for benefit and administrative costs. Excess costs or savings of the demonstration are relative to what costs would have been in the absence of the demonstration. All costs referred to in the rest of Section 4 are to be taken to mean the Federal share of costs. In the remainder of Section 4, the term "cumulative" in the context of costs will indicate that costs are to be summed for all quarters from the deemed beginning date through the quarter in question. The term "total" in the context of costs will mean that all benefit and administrative costs are to be summed for the AFDC, Emergency Assistance, Food Stamp, and Medicaid programs.

4.3 Within 30 days after the implementation date of the demonstration, the State will submit, for approval by the Departments, a cost allocation plan concerning how AFDC, Emergency Assistance, Food Stamp, and Medicaid administrative costs will be determined and assigned to primary experimental and control cases.

Calculation of Excess Costs or Savings

4.4 The calculations described in 4.4 through 4.6 will be carried out separately for each of the 4 research sites using the primary experimental and control groups in that site. The calculation of the baseline benefit and administrative costs for the primary experimental group described in steps (1) and (2) below will be performed to obtain separate baseline costs for benefits for each program (AFDC, Emergency Assistance, Food Stamps, and Medicaid) and administrative costs for each program. This will yield eight separate baseline costs, which will be determined cumulatively each quarter as follows:

(1) Calculate the average cost per control group case by dividing the cumulative costs for control cases by the number of ever-assigned control cases.

(2) Multiply the average derived in step (1) above by the number of ever-assigned primary experimental cases. The result is the cumulative baseline cost for primary experimental cases, as applicable, for each program's benefit and administrative costs.

In this section through 4.6 step (1) and below, numbers of ever-assigned cases and costs will be derived by weighting, taking into account sampling ratios. The methodology for weighting must be submitted to, and approved by the Departments at least 30 days prior to any changes in previously approved sampling ratios.

4.5 Each quarter the total cumulative excess costs or savings will be calculated for the primary experimental group in each research site as follows:

(1) For each program, for benefit and administrative costs, subtract the cumulative baseline costs, as derived in step (2) of 4.4 above, from the cumulative actual costs for those in the primary experimental group. This will yield a cumulative excess costs or savings figure for each program for benefits and administrative costs. If the resulting amounts are positive in value, the amount reflects an "excess cost;" if negative, the amount reflects "savings."

(2) Calculate the total cumulative excess costs or savings for the primary experimental group by summing the excess costs or savings derived from the eight calculations in step (1) above. In summing excess costs or savings, savings will be taken to be negative.

4.6 The total cumulative excess costs or savings for all cases in each of the research sites will be calculated quarterly as follows:

(1) Divide the total cumulative excess costs or savings for the primary experimental group derived in step (2) of 4.5 above, by the cumulative AFDC benefit costs for primary experimental cases to derive a single excess costs or savings ratio which is to be used to determine total cumulative excess costs or savings for all treatment cases (i.e., cases in the primary and secondary experimental groups).

(2) For each research site, multiply the ratio derived in step (1) above by the amount of cumulative AFDC benefit costs (unweighted) of all treatment cases in the corresponding Region. This yields 4 total cumulative excess costs or savings of the demonstration - one for each region.

4.7 Each quarter, the total cumulative excess cost or savings for the demonstration as a whole will be determined by summing the total cumulative excess costs or savings for each of the four regions. Total cumulative excess costs or savings for the demonstration will be reconciled as described in 4.8 through 4.14 below.

Reconciliation of Costs or Savings

4.8 For the period through the fourth quarter ending after the deemed beginning date the Federal government will provide Federal financial participation (FFP) and will not, during that period, recover excess costs.

4.9 Starting with the fifth quarter ending after the deemed beginning date, FFP will be limited so that the total cumulative excess costs will be recovered from the State and eliminated by the end of the demonstration. The State will not be allowed to owe the Federal government more than an allowable overage for any quarter. For each of the 5th through the 16th quarters ending after the deemed beginning date, the total allowable overage is $10 million. The allowable overage for each of the remaining quarters is:

1) the total cumulative excess costs at the end of the 16th quarter (adjusted for any net amount of excess costs reimbursed in prior quarters);

2) multiplied by the ratio of the number of quarters remaining in the demonstration to 16.

In no case will the allowable overage be less than zero.

Reimbursement will be made for the 5th through the 32nd quarters ending after the deemed beginning date such that the total cumulative Federal payments through the quarter in question will equal the lesser of:

1) the total cumulative actual costs or

2) the total cumulative actual costs, minus the total cumulative excess costs, plus the allowable overage for that quarter.

4.10 A report showing the total cumulative allowable actual costs of the demonstration to date by program and calculations of the total cumulative excess costs or savings shall be submitted to the Departments within 60 days following the end of each quarter.

4.11 Within 60 days after the end of the demonstration period, a final reconciliation will be done to ensure that there are no remaining excess costs. If there are savings at the time of final reconciliation, the Departments agree to authorize FFP for approved and matchable demonstration expenses to the extent that the total of such FFP provided does not exceed the amount of savings. If there are remaining excess costs at the time of reconciliation, the State agrees to repay the excess costs in equal quarterly amounts over the next four quarters. At the State's request, the final reconciliation can be adjusted for a period of up to 2 years after the termination of the project if additional cost data become available.

4.12 Reimbursements of Federal excess costs in accordance with 4.9 and 4.11 above, or 6.2 below, shall be made as adjustments to AFDC, Medicaid, and Food Stamp claims submitted quarterly by the State (e.g., Form FSA-231 for AFDC claims), beginning with the fifth quarter ending after the deemed beginning date. The State will send the appropriate claim forms to the agencies as required under current Federal procedures; in addition, the State will send the Federal Project officer a copy of such forms, showing adjustments made. The Departments will provide the State with a methodology for appropriately allocating the costs among the affected Federal programs.

4.13 If, at the time costs are calculated under 4.5 and 4.6 above, the data on Medicaid costs are incomplete, then another method, approved by DHHS, of estimating Medicaid costs will be used. If the State believes that, for some

Regions, the corresponding research site generated estimate of excess costs or savings derived in 4.6 (2) is highly distorted, the State may propose methodologies of adjusting such excess costs or savings for approval by the Departments.

SECTION 5: MONITORING

5.0 For the purpose of monitoring the demonstration, the State will submit to the Departments, for review and acceptance, an interim implementation status report prepared by the evaluation contractor.

At a minimum, the State will report on critical implementation tasks necessary for the operation of the demonstration as approved, interim factors associated with outcome measures, and tasks or data necessary to support the evaluation. The report is to include findings on:

- implementation tasks, including but not limited to: the development and implementation of automated systems required to carry out the demonstration provisions; adequate staffing levels; staff training; and issuance of revised policies and procedures;

- interim factors related to outcomes, including but not limited to: changes in the employment take-up rate during the interim period; changes in the take-up rate of training programs; and changes in sanction rates; and

- evaluation issues, including but not limited to: research sample attrition rate; the availability and reliability of data required to conduct analyses as proposed in the approved evaluation plan; and the adequacy of the random assignment methods implemented.

The report will cover the first 4 quarters ending after the implementation date and must be submitted no later than 90 days after the end of the 4th quarter.

5.1 The State shall submit quarterly progress reports throughout the project period summarizing project and evaluation activities and accomplishments during the quarter as well as interim findings from the evaluation, if available, the number of demonstration participants who have reached the time-limits imposed by the demonstration, and cost neutrality reports. The cost neutrality data shall be in an integrated format approved by the Departments. The quarterly monitoring reports shall indicate issues or problems and resolutions regarding the implementation of the demonstration or evaluation as approved. These reports are due no later than 60 days after the conclusion of each quarter.

SECTION 6: TERMINATION PROCEDURES

6.0 Federal financial participation in demonstration activities requiring waivers will not be provided beyond the period approved by the Departments.

6.1 No later than 90 days after acceptance of these Waiver Terms and Conditions, the State will provide, for the Departments' approval, a plan to phase down and end the demonstration to ensure there are no waiver-related Federal costs incurred beyond the period approved by the Departments. All activities requiring waivers must cease on the date decided by the Departments if the project is terminated prior to the end of the 28th quarter after the deemed beginning date.

6.2 If for any reason the demonstration is terminated either by the State or by the Departments prior to recovery of all of the total cumulative excess costs (as defined in Section 4: Cost Neutrality), the State agrees to repay the Federal government for all such remaining excess costs unless Federal law modifies this obligation. Repayment will be achieved through adjustments to AFDC, Food Stamp, and Medicaid grant awards. Repayments will be made in no more than eight equal payments, starting with the first quarter after completion of the phaseout.

SECTION 7 - ADDENDUM

Listing of Economic Development Districts and Localities

ECONOMIC DEVELOPMENT DISTRICT 1:

Buchanon	Norton	Wise
Dickenson	Russell	Tazewell
Lee	Scott	

ECONOMIC DEVELOPMENT DISTRICT 2:

Bland	Galax	Washington
Bristol	Grayson	Wythe
Carroll	Smyth	

ECONOMIC DEVELOPMENT DISTRICT 3:

Alleghany	Floyd	Radford
Botetourt	Franklin City	Roanoke
Clifton Forge	Giles	Roanoke County
Craig	Montgomery	
Covington	Pulaski	

ECONOMIC DEVELOPMENT DISTRICT 4:

Augusta	Highland	Staunton
Bath	Lexington	Waynesboro
Buena Vista	Rockbridge	
Harrisonburg	Rockingham	

ECONOMIC DEVELOPMENT DISTRICT 5:

Clarke	Page	Warren
Frederick	Shenadoah	Winchester

ECONOMIC DEVELOPMENT DISTRICT 6:

Alexandria	Fairfax County	Manassas Park
Arlington	Falls Church	Manassas Park
Fairfax	Louden	Prince William

ECONOMIC DEVELOPMENT DISTRICT 7:

Culpepper	Madison	Rappahannock
Fauquier	Orange	

ECONOMIC DEVELOPMENT DISTRICT 8:

Albemarle	Fluvanna	Louisa
Charlottesville	Greene	Nelson

ECONOMIC DEVELOPMENT DISTRICT 9:

Amherst	Bedford	Campbell
Appomattox	Bedford County	Lynchburg

ECONOMIC DEVELOPMENT DISTRICT 10:

Danville	Henry	Patrick
Halifax	Martinsville	Pittsylvania

ECONOMIC DEVELOPMENT DISTRICT 11:

Amelia	Cumberland	Mecklenburg
Brunswick	Emporia	Nottoway
Buckingham	Greensville	Prince Edward
Charlotte	Lukenburg	

ECONOMIC DEVELOPMENT DISTRICT 12:

Chesterfield	Hanover	Powhatan
Goochland	Henrico	Richmond

ECONOMIC DEVELOPMENT DISTRICT 13:

Caroline	King George	Stafford
Fredericksburg	Spotsylvania	

ECONOMIC DEVELOPMENT DISTRICT 14:

Essex	Lancaster	Northumberland
King and Queen	Matthews	Richmond City
King William	Middlesex	Westmoreland

ECONOMIC DEVELOPMENT DISTRICT 15:

Charles City	James City	Poquoson
Gloucester	New Kent	Williamsburg
Hampton	Newport News	York

ECONOMIC DEVELOPMENT DISTRICT 16:

Colonial Heights	Petersburg	Sussex
Dinwiddie	Prince George	
Hopewell	Surry	

ECONOMIC DEVELOPMENT DISTRICT 17:

Chesapeake	Norfolk	Suffolk
Franklin	Portsmouth	Virginia Beach
Isle of Wight	Southhampton	

ECONOMIC DEVELOPMENT DISTRICT 18:

Accomack	Northampton

October 26, 1997

NOTE TO BRUCE AND ELENA

FROM: CYNTHIA

SUBJ: MONDAY'S TANF REGULATION MEETING

I've tried to make it fun...well, easy anyway.... to prepare for Monday's TANF regulation meeting. Attached are:

1) A list of the eight issues that will form the basis of the discussion. We sent this version of the list to HHS today; it is very close to the one you saw on Friday but the order of issues and the description of some issues has changed. In addition, Bruce said Friday he wanted to re-open the issue re: classification of fingerprinting and drug testing, so it's listed as issue 6 c).

2) A one pager on the penalty structure in the current draft regulation -- should be a helpful reference guide to this confusing topic.

3) For each issue, a description of our position, our justification, and, where appropriate, expected counter-arguments and possible compromises. Please look carefully at Issue 7 - waivers, which I believes pushes the envelope as far as it can go.

I believe that it is most important that we hold firm on the following:

1) Issue 1 relating to diversion to separate state programs;

2) Issue 3 b) relating to the Secretary's option to reduce penalties;

3) Issue 4 relating to child only cases;

4) Issue 7 a), b), c), and e) relating to waivers.

Bruce -- you indicated Friday that Issue 6 a) and b) (relating to the caseload reduction credit) weren't important to you and that you wanted to amend Issue 2 to ensure states that fail the two parent work rates won't be penalized so much (the latter I list as a "possible compromise" that you can raise in the meeting to show them good faith).

HHS, as you know, is very opposed to Issue 5 (domestic violence waivers and the time limit). They also seem to feel quite strongly about #3 b) and 1 b).

~~Call Karl's status?~~ → look more closely at rationale
prior law → waiver → new law

Lawyer on lawyer ~~first~~
Know what RW say

Waivers

Rob Weiner – ~~[illegible]~~ : Question how inconsist.
Then no goodies
→ Can we legally do 1, 2 or 3? Same basis to?
→ When do waivers expire – those w/ TL?

Summary: The reg would permit states to continue features of their waivers that are "inconsistent" with provisions of the law in such areas as the definition of work, hours of work, and time limits, for as long as the waiver is in effect. → why limit to 407 + t-l
→ What's in P?

– why only? Call HHS

Law and Prior Guidance: The statute states that waivers granted before the law passed are grandfathered with the entire law to the extent that the law is "inconsistent with the waiver." In its original guidance, HHS asked states to identify areas where waivers are inconsistent with the law, but it has taken no action since then. → leg fix; all grandfathering ends in 2000

~~Call~~ Howard → TL bigger issue than ~~wk req~~ (same end) (in Pres?)

Draft Reg: ~~The draft reg identifies~~ Section 407 and the time limits as the parts of the law with provisions that may be inconsistent with a waiver. (Section 407 includes the work participation rates, the caseload reduction credit, hours of work required, definition of work activities, the requirement for sanctions for refusal to work, and nondisplacement provisions.) "Inconsistent" means that "complying with a TANF requirement would necessitate that a state change a policy reflected in an approved waiver."

BR – do waiver states hv to rpt same data as non-w states – still
– also in 2 parent rate (100 hr rule for 2 parents – not comm.)

Section 407/Work Requirement: The draft reg explicitly states that HHS will recognize inconsistencies in two areas: the definition of work and hours of work required per week to be considered "engaged in work." However, the draft reg states that HHS will not permit inconsistencies that affect the denominator of the participation rates -- i.e., limit the universe of people to whom the participation rates are applied. It is not clear why HHS is able to prohibit this waiver practice and not others.

Time Limits: States whose waivers have time limits may argue that their time limits are inconsistent with the law. No states have time limits greater than five years, but many states have time limits with exemption and extension policies more liberal than current law.

bigger

- Extensions -- The draft reg says that both the federal and state clocks must start ticking simultaneously but that, once the federal clock expires, the state may grant extensions in accordance with the approved waiver until the waiver expires. The reg also says that a state need not comply with the law's 20% limit on exemptions if its waiver's extension policies cause it to exceed 20%.

- Exemptions -- The draft reg also says that months during which a recipient is exempt from time limits because of waiver policy do not count toward the federal five-year limit.

Proposed Strategy: We are still examining whether there is any basis in the law for not permitting these inconsistencies to continue. Failing that, we can press HHS on monitoring and enforcement of these provisions. There is nothing in the draft reg about how HHS will determine which items are inconsistent, monitor state actions, or impose penalties on this issue. We are asking HHS to provide us with a list of inconsistencies and its plans to review them.

Prior law | Waiver obj. | New law

Time Limits – HHS arg that it's TL + ex/except
not ex/except

Denom – Who subj to reqs x people
more

Why OK to do S-O on CRC (p35 of law?) diverted?
law sec TANF

Cyphira -

Work Requirements for Separate State Programs

Summary: The draft reg permits state-funded programs outside TANF to count toward the maintenance of effort requirement without being subject to the welfare law's requirements, including time limits and work participation rates.

Law and Prior Guidance: The law is unclear on this point. HHS and the states argued that bifurcation was permissible because the law uses the term "the state program funded under this part" to refer to TANF and its requirements, while the maintenance of effort section defines MOE as spending under "all state programs."

In a memo you wrote to the President in January, you recommended that we allow states to set up programs that are free of the law's requirements, but that we take additional steps outlined below.

1. Issue a regulation to ensure that we can monitor whether states are using state-only programs to avoid sharing child support collections with the federal government, and advise states that they should not do so.
2. Issue a regulation that a state will not qualify for a caseload reduction credit unless it demonstrates that the reduction did not result from transferring people from TANF into a separate state program.
3. Issue a regulation that a state cannot receive any mitigation in penalty for failure to meet work participation rates unless it shows that it has not used a state-only program to "escape the force of work participation rates."

EK: clearly vetted by their lawyers

(You also recommended that HHS look at a state's overall work effort in its regulation on the high performance bonus, and that we seek a legislative change stating that HHS will consider separate state programs in determining whether a state has met the participation rates.)

Draft Reg: The draft reg does not take the first action. It does a reasonably good job on the second action. On the third, it takes a softer approach. In describing how HHS will implement the statutory requirement that it reduce penalties based on the degree of a state's noncompliance, it states that, "We will look beyond the participation rates for the TANF caseload to the efforts a State is making to engage recipients of assistance in separate State programs in work activities."

Proposed Strategy: We propose to push for language that, unless a state proves it has not used a separate state program to get around the work participation rates, it is not eligible for a (1) reasonable cause exception to a penalty, (2) a reduction in penalty based on the degree of non-compliance, or (3) a corrective compliance plan. HHS may express concerns about whether they have the legal authority to do this. In fact, HHS argues that it does not have legal authority even to require states to report data on separate state programs. HHS's solution is to say that states will not be eligible for a high performance bonus, a caseload reduction credit, or a reduction in penalty unless it reports on these programs. We are also exploring whether we could prohibit states from moving families to a separate state program retroactively, to limit gaming by states.

lock in permanently - EK?
I say no - is she right?

→ Child-only -
WK Partic Rate
Penalty

Caseload Reduction Credit

Summary: The draft reg will make it easier for states to obtain the credit and it gives states a lot of latitude in estimating the credit. It requires states to submit data by November 30 of each year, and gives HHS the power to approve or disapprove plans by February 28. It also states that HHS will not consider a caseload reduction factor for approval unless the state reports data on separate state programs.

Law and Prior Guidance: The law permits states to reduce their minimum work participation rate if their current caseload is smaller than their FY95 caseload. The reduction is measured as the number of percentage points by which the current caseload is less than the FY95 caseload. This caseload credit from one fiscal year is applied to the participation rate for the following year -- i.e., a state whose caseload was 10 percent lower in FY 1997 than in FY 1995 would have a minimum participation rate in FY 1998 of 20 percent rather than 30. The credit must not count families dropped due to eligibility changes, although it "places the burden on the Secretary to prove that such families were diverted as a direct result of differences in such eligibility criteria."

Draft Reg:

- The draft reg requires states to compare their TANF + MOE caseloads for a given year with their AFDC caseload from FY 1995. This seems designed to ensure that a state will not qualify for a caseload reduction credit simply by transferring people from TANF into a separate state program. However, for purposes of this calculation, the reg excludes from the caseload people "receiving services that have no direct monetary value...such as counseling...and employment services" and those "receiving one-time, short-term assistance" for 90 days or less. This may make it easier for some states to qualify for the credit:
- States that shift to providing only non-cash or short-time services will receive higher caseload reduction credits.
- At the same time, the draft reg invites a state that does not wish to include some or all families in a separate state program in the calculation to submit reasons for doing so. This may help prevent certain states from losing a caseload credit because they serve in MOE individuals who wouldn't have been eligible for AFDC.

Still an issue - ask Bruce

- For two-parent families, the draft reg permits states to use either the overall reduction or the two-parent reduction, whichever will reduce the participation rate the most.

- Another way in which the draft reg makes it easier for states to claim the credit is that it allows states that have expanded eligibility to get credit for caseload reductions that would have occurred if they had not done so (e.g., increases in earned income that is disregarded). Presumably the logic here is not to discourage eligibility expansions, but the legal authority is unclear. Many states say that their difficulty in meeting the two-parent rate is due in part to eligibility expansions they granted.

- The analysis and data that a state must submit are unnecessarily vague. So are the criteria under which HHS will review a state's proposed reduction factor -- "quality of data; adequacy of the documentation; and completeness of the list of changes in eligibility." It's unclear whether HHS will have the information needed to, as the statute requires "prove that such families were diverted as a direct result of differences in such eligibility criteria."

- The draft reg's list of what constitutes an eligibility change to be factored out has some questionable items. In addition to more straightforward items like changes in income and resource limitations, the imposition of time limits, grant reductions, and changes in requirements based on residency, age, or other demographic or categorical factors, it includes:
    - fingerprinting;
    - drug testing;
    - waiting lists for assistance; and
    - sanctions that terminate a family's grant — only s relttd to wk

This broad list of "eligibility changes" will make it harder for states to reduce the participation rate. However, singling out these policies may be HHS's way of discouraging states from adopting them and we may not want to be in that position.

Proposed Strategy: We should ensure that the work rates are not undermined by an excessively generous caseload reduction credit. We should seek to ensure that states submit consistent and objective information to HHS and that they do not use the caseload reduction credit as a way to provide relief for the two parent work rates.

Can waiver states

Penalties

Summary: HHS should toughen its rules on imposing penalties significantly. The regulation is our best opportunity to ensure that the penalties have some teeth, since it will always be more difficult to impose penalties when faced with a specific state in a specific situation.

Law and Prior Guidance: The attached chart summarizes the penalties in the law. The law permits a state to be excused from most penalties if it had "reasonable cause." It also permits a state to enter into a corrective compliance plan to correct a deficiency for most penalties. For the work participation rates only, the statute allows states a third opportunity for a break: it requires HHS to reduce a penalty "based on the degree of non-compliance." States can appeal any adverse action to the HHS Departmental Appeals Board, which is subject to judicial review.

Draft Reg: The draft reg follows the statute pretty closely for most penalties. It states that its interpretations are not retroactive, and that HHS will enforce the law before the regulation is issued only against a reasonable interpretation of the law.

Reasonable Cause: The reg generally limits reasonable cause to unforeseen events like natural disasters. However, the draft reg describes two specific instances in which HHS will grant reasonable cause -- for certain types of refugees, and for domestic violence waivers.

Refugees: A state will be found to have reasonable cause if it demonstrates that it missed the work participation rates because it provided services to certain types of refugees.

Domestic Violence Waivers: Currently, states can exempt victims of domestic violence from the work rates and time limits, so long as they put 30 percent of their overall caseload to work and enforce the federal five year time limit for 80 percent of the caseload. Under this proposed reg, HHS will grant states reasonable cause exceptions to penalties if they fail to meet the work rates or exempt more than 20 percent of the caseload from the time limit if the failure is attributable to their granting of "good cause domestic violence waivers." To qualify as a "good cause domestic violence waivers," these waivers were temporary and included services to help individuals become self-sufficient.

As currently drafted, the reg would give states reasonable cause for missing the work rates and the time limit exceptions by as many people as they granted good cause domestic violence waiver to (see attached table). We would like to ensure that this calculation does not over-estimate how many of these individuals would have been working if they had not gotten a waiver.

As shown in the attached, we would propose to revise the reg so that the state could receive reasonable cause only for the number of good cause waivers multiplied by the work participation rate. Thus, if a state granted 10,000 good cause waivers, it could get reasonable cause for missing the work rates by only 3,000 (30% x 10,000). OMB has proposed a similar change for the time limit, although the situation is analogous.

Corrective Compliance Plans: The draft reg has vague and loose guidelines on when states may enter into corrective compliance plans. disaster?

- States may take up to 12 months to correct violations under corrective compliance plans.
- While the draft reg has a general definition of what a corrective compliance plan should include, it does not offer any insight into how HHS will determine if the plan is acceptable.
- Even if a corrective compliance plan fails, a state may not face the full penalty. The statute says that HHS shall impose "some or all" of a penalty if a state's corrective compliance plan is unsuccessful. The reg's interpretation is that a penalty may be reduced if a state:
  - "expended more resources toward eliminating the violation than it was committed to expend under the corrective compliance plan;"
  - "made considerable progress in meeting the actions and outcomes" in its plan; and
  - "encountered circumstances that could not have been anticipated at the time" the plan was developed.

Reductions in Participation Rate Penalties Based on Degree of Non-Compliance: The draft reg is not very strict in interpreting the statutory language requiring HHS to reduce the penalty for failure to meet the participation rate "based on the degree of non-compliance." (Unfortunately, the statute itself is not very strict here.) To measure the degree of non-compliance and determine if a state is eligible for a reduction in penalty, the reg proposes that HHS should: outcome - sliding scale?

- "consider the objective evidence of the good-faith efforts the state has made to achieve the rates (e.g., its investment of resources, new program development, and staff training)."
- "look beyond the participation rates for the TANF caseload to the efforts a state is making to engage recipients of assistance in separate State programs in work activities."

Rather than emphasize outcomes, this invites states to submit reams of evidence on its process.

Proposed Strategy: The regulation should clearly spell out objective and outcome-oriented criteria for when penalties will be imposed.

Other Issues/Features

Definition of administrative costs: OMB is very concerned that the draft reg does not define administrative costs subject to the statute's 15% cap.

Definition of assistance: This is defined to exclude short-term or one-time assistance, so that people who benefit from diversion programs are not subject to all the law's requirements. However, for MOE purposes, all types of assistance are permitted to count.

Individual work requirements: There is no enforcement of Section 402 work requirements (work after 2 years, community service after 2 months). Also, states may define work in any way they wish for the purposes of Section 402. The statute may support both of these interpretations.

rptg w/or w/o penalty

Work Activities: As expected, Section 407 work activities are not defined. The six-week job search limit is defined as annual.

Non-Displacement: The draft reg does not take an alternative step that could strengthen the statute. The statute requires states to "establish and maintain a grievance procedure." The draft reg simply repeats this phrase rather than defining what an adequate procedure would be.

Data and reporting requirements: We are slogging through the question of whether the regulation requires enough data to measure success, but not so much that it becomes burdensome to states or can be publicly attacked. The requirements appear voluminous, but states are permitted to submit a data sample.

Form and length of the rule: The draft reg is about 100 pages long, with a 300-page preamble and a large appendix. HHS argues that they are unable to drop much in the way of existing regs at this time, since AFDC and EA are still being phased out for bookkeeping purposes. We are working with OIRA to ensure that the reg is as streamlined as possible.

Domestic Violence Waivers

WORK PARTICIPATION RATES Examples assume a caseload of 100,000, a 30 percent work rate, and 10,000 welfare recipients receiving good cause domestic violence waivers, which must be temporary and must include services to ensure safety, promote independence, and prepare recipients for employment.			
	DISCRETION	PARTICIPATION RATE CALCULATION	END RESULT
HHS	Discretion: If HHS determines that the states do not meet the work participation rates because they've granted good cause domestic violence waivers, then HHS will not penalize them.	30% of 100,000 or 30,000 must work.	HHS can allow states to lower the number of people working from 30,000 to 20,000 without penalty, if they find they have granted 10,000 good cause domestic waivers.
OMB	No Discretion: If HHS determines that the states do not meet the work participation rates because they've granted good cause domestic violence waivers, then HHS will not grant them a reasonable cause exception to the penalties.	If a state grants 10,000 domestic violence waivers, then 30% of 90,000 or 27,000 must work.	States have to put 27,000 people to work or be subject to penalties.
IDEAL	Discretion: If HHS determines that the states do not meet the work participation rates because they've granted good cause domestic violence waivers, then HHS will not penalize them.	30% of 100,000 or 30,000 must work.	HHS can allow states to lower the number of people working from 30,000 to 27,000 without penalty, if they find they have granted 10,000 good cause domestic violence waivers.

TIME LIMITS Examples assume a caseload of 100,000, a maximum of 20 percent of caseload which can be exempt from the five year time limit, and 10,000 welfare recipients receiving good cause domestic violence waivers, which must be temporary and must include services to ensure safety, promote independence, and prepare recipients for employment.			
	DISCRETION	TIME LIMIT CALCULATION	END RESULT
HHS	Discretion: If HHS determines that the states have exempted more than 20 percent of individuals from the five year time limit because they've granted good cause domestic violence waivers, then HHS will not penalize them.	No more than 20% of 100,000 or 20,000 can be exempt from the time limit.	HHS can allow states to increase the number of people receiving federal assistance from 20,000 to 30,000, if they find they have granted 10,000 good cause domestic waivers.
OMB	Discretion: If HHS determines that the states have exempted more than 20 percent of individuals from the five year time limit because they've granted good cause domestic violence waivers, then HHS will not penalize them.	No more than 20% of 100,000 or 20,000 can be exempt from the time limit.	HHS can allow states to increase the number of people receiving federal assistance from 20,000 to 24,000, if they find they have granted 10,000 good cause domestic waivers. (5000*(.20*95,000))
?POSS IDEAL	Discretion: If HHS determines that the states have exempted more than 20 percent of individuals from the five year time limit because they've granted good cause domestic violence waivers, then HHS will not penalize them.	No more than 20% of 100,000 or 20,000 can be exempt from the time limit.	HHS can allow states to increase the number of people receiving federal assistance from 20,000 to 22,000, if they find they have granted 10,000 good cause domestic waivers. ? (10,000*.2)+(100,000*.2)