Waiver Policy Proposal

I. STATUTE

"Waivers in Effect on Date of Enactment of Welfare Reform": "... if any waiver granted to a state...is in effect as of the date of enactment...., the amendments made by [PRWORA]...shall not apply with respect to the state before the expiration (determined without regard to any extension) of the waiver to the extent such amendments are inconsistent with the waiver."

"Waivers Approved Subsequently" section says that such a waiver "shall not affect the applicability of section 407 to the state." (Work requirements)

Legislative History: statutory language was narrowed from 'if have a waiver, new law does not apply' to "inconsistent" standard. Final report language added clause re: "program features of state program not specifically covered by the waiver must conform to this part."

II. HHS PROPOSED REG

Legal Theory:

A provision of TANF is inconsistent with a waiver only if the State must change its waiver policy in order to comply. The definition of a waiver can include applicable provisions of prior law if their inclusion was necessary to achieve the objective of the approved waiver. For example, a state whose waiver program counted community college attendance as work did not need a waiver of AFDC law in order to do this. The reg would permit such a practice to continue, because it would require a change in state policy to do otherwise, and it's inconsistent with TANF's definition of work. Legally, the reg defends the decision to consider prior law as part of the waiver on the grounds that doing otherwise would allow very few waiver practices to continue (largely just time limits), rendering that section of the law meaningless.

Policy Effect:

Work Requirements:

Section 407 doesn't apply to waivers to the extent their features are inconsistent with current law. Examples given are looser definitions of work and requiring fewer hours of work per week to be counted as working. However, states may not claim inconsistencies that affect the denominator of the participation rates -- i.e., limit the universe of people to whom the participation rates are applied. The reg defends this decision by noting that HHS never granted a waiver of a participation rate, nor a waiver that granted new exemptions from work requirements.

Time Limits:

States whose waivers have time limits may use their waiver's more liberal exemption and extension policies.

- 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.

III. OUR PROPOSAL

The Challenge: To define "inconsistent" in a way that narrows the effect of the provision without rendering the entire provision meaningless.

Work Requirements:

- Argue that definitions of work activity were not necessary to achieve objective of approved waiver (objective was to put more people to work)-- thus no grandfathering of more liberal job search and voc ed criteria.

- Alternative argument with the same result: Only permit specific items waived from compliance with prior law, rather than allowing states to import "provisions of prior law" into the definition of waiver. In this case, the definition of work in any waiver could not be inconsistent with the law, because in no case was the definition of work activities a "program feature...specifically covered by the waiver". Thus more liberal definitions of job search and vocational education could not be continued under the guise of waivers. [This theory may not, however, allow the policy listed in next bullet below; thus it may result in the provision having no effect on work rates, which HHS argues it must since the statute specifically exempts "waivers granted subsequently" from having any effect on work rates.]

look at prior waivers

- Allow, as the draft reg now does, for waivers to be considered inconsistent if they specified the number of hours of work to be determined according to individual circumstances, but make explicit that these inconsistent waivers can only be continued in the same geographic areas as originally approved in the waiver and in effect at date of enactment [i.e., if a state had approval to expand a waiver statewide but had not done so yet, it could not].

Time Limits:

- Allow, as the draft reg now does, for exemption and extension policies to be considered inconsistent, but make explicit that these waivers can only be continued in the same geographic areas as originally approved in the waiver and in effect at date of enactment [i.e., if a state had approval to expand a waiver statewide but had not done so yet, it could not].

Changes Applying to Both Work Requirements and Time Limits:

- A state that continues a waiver inconsistent with PRWORA's time limits or work requirements shall not be eligible for a high performance bonus or a caseload reduction credit.

- A state that continues a waiver inconsistent with PRWORA's time limits or work requirements shall not be eligible to receive a reasonable cause penalty exception, to enter into a corrective action plan, or receive reduced penalties.

rationale for each

- In order to continue a waiver inconsistent with PRWORA's time limits or work requirements, the state must notify the Secretary in writing ~~in a letter signed by the governor.~~

- The regulation shall place the burden of proof that waivers are inconsistent with the law on the state and must collect information necessary for the Secretary to make that determination.

5 states expire after 2002

IV. EFFECT ON STATES

Comparison of Proposals: Effect on Connecticut

	State View of Effect of New Law	HHS Proposed Reg	Our Proposal
Under waiver, state could offer exemptions from and extensions to the time limits in conformance with its waiver	Continue	Continue	Continue, but only to extent that state had implemented this when law was passed
Definition of work that includes unlimited job search	Continue	Continue	No
Individualized employability plans that allow state to tailor hours of work	Continue	Continue	Continue, but only to extent that state had implemented this when law was passed
Exempting categories of people from work requirements and participation rates	Continue	No	No
Old control group cases from demonstration can continue all AFDC policies	Continue	Continue, as long as state maintains research group treatments for the purpose of completing an impact evaluation.	Continue, as long as state maintains research group treatments for the purpose of completing an impact evaluation.

States with work policies that could override the law (as identified by states):

Connecticut	Delaware
Hawaii	Illinois
Massachusetts	Minnesota
Missouri	Nebraska
New Hampshire	South Carolina
South Dakota	Tennessee
Texas	Utah
Virginia	Washington

Also possibly:

Georgia	Iowa
Kansas	Michigan
Montana	North Carolina
North Dakota	Oregon
Vermont	Wisconsin

States with time limit policies that could override the law:

Connecticut
Delaware
Florida
Hawaii
Illinois
Iowa
Louisiana
Nebraska
North Carolina
Ohio
Oregon
South Carolina
Tennessee
Virginia
Wisconsin

Update on TANF Regulation Negotiations

Proposed Change	Change Made	Partial Change Made	To Be Resolved
DOMESTIC VIOLENCE			
1) HHS may grant reasonable cause exemptions from penalties to states that fail to meet the work participation rates due to granting of good cause domestic violence waivers.		X[1]	
2) States will be exempted from penalties only if they fail the work rate by no more than the number of individuals granted good cause waivers multiplied by the participation rate.	X		
3) HHS may grant reasonable cause exemptions from penalties for those good cause domestic violence waivers only for waivers that were granted appropriately.	X		
4) HHS may grant reasonable cause exemptions from penalties only for good cause domestic violence waivers that are temporary (less than six months long).	X		
5) HHS shall not grant reasonable cause exceptions to penalties to states for exempting more than 20 percent of the caseload from the five year time limit due to granting of good cause domestic violence waivers.			X

[1] The reg is now changed to say the the Secretary "will determine whether a State has reasonable cause based on its demonstration that its failure to meet the work participation rates is attributable to its provision of good cause domestic violence waivers. If a state fails to meet these standards to the satisfaction of the Secretary, the Secretary will not grant the exemption." Is this enough?

Proposed Change	Change Made	Partial Change Made	To Be Resolved
Caseload Reduction Credit			
1) States that have expanded eligibility shall not get credit for caseload reductions that would have happened in the absence of the expansion.	X		
2) States shall not have a choice of applying the two parent caseload reduction or the overall caseload reduction as a credit to the two parent work participation rate.	OK		X
3) HHS shall <u>not</u> have the option to allow states to exclude some or all families in any separate State program from the caseload reduction calculation "based on nature of benefits provided."	me + Elena		X
4) Fingerprinting, drug testing, and whole grant sanctions shall not be defined as eligibility changes that must be factored out of the caseload credit.	Bruce Strong	X[2]	
5) Individuals receiving one-time, short-term assistance, or services with no monetary value shall not be eliminated from the caseload reduction credit calculation.	OK	X[3]	

[2] The reg now refers more generally to excluding "procedural changes that have the effect of delaying or denying eligibility" but HHS policy would be to tell states that caseload changes from fingerprinting, etc., should count in that category. This HHS policy could help prevent states from gutting the work requirements: by not allowing a state to claim a caseload credit for caseload reductions due to fingerprinting (up to 15% in some states) the policy could prevent a state from lowering its work rate from, say, 50% to 35%.

[3] The reg eliminates these cases from both comparison years, thus making more of an "apples to apples" comparison. For purposes of calculating the caseload credit, the TANF + MOE caseload not receiving short-term or non-monetary assistance in a given year is compared to the FY 1995 AFDC caseload without any short-time Emergency Assistance cases. The policy effect of this definition is that states that shift their services from monthly cash grants to either non-monetary services or one-time diversion grants will receive higher caseload credits. me

Proposed Change	Change Made	Partial Change Made	To Be Resolved
6) States shall report eligibility changes on a form consistent across states and the regulation shall define a more specific set of criteria upon which the Secretary shall evaluate this information.	X		
PENALTIES			
1) In order for a state to be eligible to receive a reasonable cause penalty exception, to enter into a corrective compliance plan, or receive reduced penalties ("some or all") or penalties based on degree of non-compliance, a state must prove that it did not divert families to a separate state program for purposes of avoiding the work participation rates or preventing the federal collection of child support.	X[4]		X[5]
2) States may not retrospectively reclassify families in TANF as "state only" in order to game the work rates.	X		

can by quarter

[4] HHS has made the following changes: in order to be eligible for a reasonable cause penalty exception or a reduced penalty based on degree of non-compliance, a state must prove that it did not divert families to a separate state program for the purpose of avoiding work participation rates. What is threshold for diversion

[5] HHS has not agreed to make the following changes: 1) in order to enter into corrective compliance plan or receive a reduction in penalties ("some or all") for not correcting a failure through such a plan, a state must prove that it did not divert families to a separate state program for the purpose of avoiding work participation rates; 2) condition a state's eligibility for any of the penalty exceptions/reductions on the state proving that it did not divert families in order to prevent the federal collection of child support; and 3) to collect data that will help determine if states are diverting individuals to separate state programs (include in the MOE data report information on whether individuals served in the separate state program were on TANF within the last six months).

Proposed Change	Change Made	Partial Change Made	To Be Resolved
3) States shall provide quarterly data regarding how many people have been sanctioned for not working. The data reports shall include the information necessary to determine if the state imposed a pro-rata reduction required by law, and whether the state required the individual to perform work within two years.	X[6]		
4) HHS shall enter into a corrective action plan with a state only if such a plan: a) contains monthly process and outcome goals that the state must meet in order to continue to operate under a corrective action plan; b) contains significant new actions the state plans to take to meet the law's requirements; c) contains a letter signed by the governor outlining the need for the corrective action plan; d) shall be no longer than six months.	X (all but six month limit)		X[7]

[6] Need to confirm through change pages.

no

[7] HHS does not want to limit the compliance plan to six months. They've made the argument that the statute allows states up to two months to complete and file the plan, so in reality the compliance plan is in effect for 10 months. A six month time limit would give states only four months to comply.

Still no obj criteria to approve

Proposed Change	Change Made	Partial Change Made	To Be Resolved
5) The regulations shall detail a sliding penalty scale that will be imposed based on degree of noncompliance with the work participation rates.	X[8]		X[9]
6) Eliminate the option for the Secretary to reduce the penalty on a state that has failed to correct a violation through a corrective compliance plan if a state a) expended more resources; b) made substantial progress; or c) encountered cirumstances that could not have been anticipated.			X[10]
7) OMB has sought to allow the Secretary to include certain child only cases in the work participation rate (denominator and, if applicable, numerator) if the Secretary determines that the state re-classified families as "child only" for purposes of avoiding the work rates (by statute, the work rates don't apply to child only cases).			X

80% OK

New issue - if not full compliance, must be @ 80% NOE

[8] HHS has agreed to a sliding scale as follows: only states that met at least 75 percent of the work participation rate (e.g., 75% of 30% or 22.5%) would be eligible for a sliding penalty based on degree of non-compliance. All states falling below that standard will receive the full penalty. If a state failed both the overall and the two parent work rates, then its penalty would be reduced in direct proportion to the level of achievement above the 75 percent threshold (e.g., if a state were halfway between 22.5% and 30%, its penalty would be reduced in half). If a state failed only the two parent rate, its penalty would be first be multiplied by 10 percent and then reduced in direct proportion to the level of achievement above the 75 percent threshold.

[9] We proposed that the threshold be raised from 75 percent to 90 percent -- only states meeting a 90 percent of the work participation rate would be eligible for a sliding penalty based on degree of non-compliance. HHS has objected to this change.

[10] HHS has proposed only minor word changes to this section, such as adding "expended <u>significantly</u> more resouces", made "<u>substantial</u> progress", and "encountered <u>overriding</u> cirumstances that <u>were beyond its control</u> and could not have been anticipated."

should be nada for work penalty - alr degree of noncomp.

Proposed Change	Change Made	Partial Change Made	To Be Resolved
ADMINISTRATIVE COSTS			
1) OMB has sought to have a federal, rather than state, definition of adminstrative costs, which the statute limits to 15 percent of the total block grant.		X[11]	X[12]
WAIVERS			HHS is awaiting our proposal.

[11] OMB has succeeded in getting HHS to agree to include several types of spending in a federal definition.

[12] OMB is still seeking to include spending on case management and eligibility determination in the federal definition of administrative costs.

carice @ erols.com
10/22/97 02:57:00 AM

Record Type: Record

To: Cynthia A. Rice, diana fortuna

cc:
Subject: Waiver idea

Building upon the fact that the statute refers to "waivers in effect on date of enactment" and the conference report language says:

> "The conference agreement follows the Senate amendment, with the modification that such waivers may only apply to the geographical areas of the State and to the specific program features for which the waiver was granted. All geographical areas of the State and program features of the State program not specifically covered by the waiver must conform to this part."

maybe we could push a policy that would:

Work Requirements

The definitions of what counts as "work" in PRWORA would not be considered inconsistent with any waivers because in no case was the definition of work activities a "program feature...specifically covered by the waiver" [This is why they need to "include provisions of prior law"]. Thus more liberal definitions of job search and vocational education could not be continued under the guise of waivers.

Allow, as the draft reg now does, for waivers to be considered inconsistent if they specified the number of hours of work to be determined according to individual circumstances, but make explicit that these inconsistent waivers can only be continued in the same geographic areas as originally approved in the waiver and in effect at date of enactment [i.e., if a state had approval to expand a waiver statewide but had not done so yet, it could not].

Time Limits

Allow, as the draft reg now does, for inconsistent exemption and extension policies to be considered inconsistent, but make explicit that these inconsistent waivers can only be continued in the same geographic areas as originally approved in the waiver and in effect at date of enactment [i.e., if a state had approval to expand a waiver statewide but had not done so yet, it could not].

[Don't think we can do much else here. The new law policy restricting all extension and exemptions to a 20 percent cap does seem to be inconsistent with the waiver policy. Any broader change I've thought of would render the section meaningless.]

Reas Cause –

Corrective Compliance

some or all

Work

Degree of non-compl → sliding

10/15/97 -- 1:00

Proposed Changes to Reg

Waivers

1) A state that continues a waiver inconsistent with PRWORA's work participation rates or time limits shall not be eligible for a high performance bonus or a caseload reduction credit.

2) A state that continues a waiver inconsistent with PRWORA's work participation rates or time limits shall not be eligible to receive a reasonable cause penalty exception, to enter into a corrective action plan, or receive reduced penalties based on degree of non-compliance.

3) A state can continue a waiver inconsistent with PRWORA's work participation rates or time limits only if the waiver when granted explicitly named the policy that the state now wants to continue (i.e., state can continue waivers inconsistent with the new law, not policies operated under waivers inconsistent with the new law).

4) A state can continue a waiver inconsistent with PRWORA's work participation rates or time limits only in the geographic area for which the waiver was granted and implemented.

5) In order to continue a waiver inconsistent with PRWORA's work participation rates or time limits, the state must notify the Secretary in writing in a letter signed by the governor.

6) The burden of proof on proving waivers are inconsistent with the law shall rest with the state and the regulation will require that the information necessary for the Secretary to make that determination will be collected. States operating under waivers will report performance and be monitored like any other state.

Inconsistencies apply to all

Caseload Reduction Credit

1) States that have expanded eligibility shall not get credit for caseload reductions that would have happened in the absence of the expansion.

2) States shall apply the two parent caseload reduction as a credit to the two parent work participation rate and the overall caseload reduction as a credit to the overall work participation rate. Willing to give - 2 parent a problem

3) Fingerprinting, drug testing, and sanctions shall not be defined as eligibility changes that must be factored out of the caseload reduction credit.

4) Individuals "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 shall not be eliminated from the caseload reduction credit calculation. BR don't care

5) States shall report eligibility changes to the Secretary on a form consistent across states and the regulation shall define a more specific set of criteria upon which the Secretary shall evaluate this information.

Add: drop 271.42c - invite to excl ~~[illegible]~~ [illegible] from CR factn

Which waiver inconsists f17?

TL's - just 7?

Evil?

Va?

KL
Ita
Ind
Ve

Add some orall - same as reasonable cause

Think about this - how prove didn't divert

Penalties

proof wld be movement

1) A state that does not prove that it did not divert families to a separate state program for purposes of avoiding the work participation rates or preventing the federal collection of child support shall not be eligible to receive a reasonable cause penalty exception, to enter into a corrective action plan, or receive reduced penalties based on degree of non-compliance. States must decide at the beginning of the quarter which families are in TANF and which families are in the separate state program (no retrospective reclassifying to game the work rates).

Way to get to 2yr

2) States shall provide quarterly data regarding how many people have been sanctioned for not working. The data reports shall include the information necessary to determine if the state imposed a pro-rata reduction required by law, and whether the state required the individual to perform community service within two months and/or to work within two years.

Carl Levin campaign thing

3) Good cause domestic violence waivers --

a) HHS may (rather than shall) grant reasonable cause exemptions from penalties to states that fail to meet the work participation rates so long as the states do not fail to meet the work rate by more than the number of individuals granted good cause waivers multiplied by the participation rate.

b) HHS may grant reasonable cause exemptions from penalties for those good cause domestic violence waivers (as now granted in the reg) that HHS determines were granted appropriately.

c) HHS may grant reasonable cause exemptions from penalties only for good cause domestic violence waivers that are temporary, i.e., less than six months long.

d) HHS shall not grant reasonable cause exceptions to penalties to states for exempting more than 20 percent of the caseload from the five year time limit.

4) Corrective action plans -- [seeking help from OMB on this one]

HHS shall enter into a corrective action plan with a state only if such a plan:

a) contains monthly process and outcome goals that the state must meet in order to continue to operate under a corrective action plan;

b) contains significant new actions the state plans to take to meet the law's requirements;

c) contains a letter signed by the governor outlining the need for the corrective action plan;

d) shall be no longer than six months.

5) Reductions Based on Degree of Noncompliance --

The regulations shall detail a sliding penalty scale that will be imposed based on degree of noncompliance.

but nicer on 2 parent

2 tier - de minimus structure

5-10% of rate, then small

- Dom viol.
- 30/90 – OK?
- CRC – no fingerpr, drug, sancts
  - expand elig
  - S-O removal
  - choice 2 rates

Penalties

Laura Oliven Silberfarb
10/08/97 09:42:25 AM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP, Diana Fortuna/OPD/EOP, Emil E. Parker/OPD/EOP, Anil Kakani/OMB/EOP

cc:

Subject: Conference Call today

We will use Keith Fontenot's office from 12:00-2:00 to meet to take the conference call - room 8222 in the NEOB. HHS called to say they will follow the questions in order, but will reserve the following for tomorrow's meeting:

Waiivers - question numbers: 31-36, 50-54
Domestic Violence Option - 1,3,4,29
Administrative Cost - 44

And anything else we don't get to today.

See you at 12:00. Thanks.

Don viol:

New: Data report shld ask for penalties

10-6-97

1. 270.30, p. 323-324. Does the individual have to participate in "~~appropriate~~ services plan designed to provide safety and lead to work" for a certain number of hours per week? If so, why not?

DV

No, individualized

This section also proposes to grant good cause waivers for failure to meet the work rates if that failure is attributable to a state's provision of assistance to refugees. On what basis and for what reason does HHS make this proposal? Does this proposal exclude all refugees from the work participation rates? What percentage of two parent TANF families would fall under this definition?

p. 357

4,000 refugees, SomD, Ky, Mass, NV

Fish-Wilson - early 80's special demo 3 or 4 demos - Calif may not have one

2. 270.30, p.322 (also referred to on p. 353)
Issue: definition of "assistance: excluded from the definition is one-time, short-term assistance paid within a 90-day period
Problem: the 90-day time period is too long, and inconsistent with prior language for Emergency Assistance
Proposed Fix: reduce period from 90 days to 30 days

Want diversion - tend to be 90 days

DV ~~Skip~~

3. (p. 323)
Issue: definition of "good cause domestic violence waiver": "temporary" waiver from program requirements
Problem: the term "temporary" not being defined can allow states to use the waiver for a significant part of its caseload for an indefinite period of time
Proposed Fix: the regs should define "temporary" (i.e. 90/120 days or less)

G Don't want to define, shld be individ; Anil pushes

DV ~~Skip~~

4. 270.30, p.323,324 Why is this GCDVW regulated only in this definitional section. It would appear that we should at least outline the recordkeeping/reporting requirements to ensure enforcement authority

Can only reg w/regard to penalties

Disagg data indicates DV cases

all have opted out exc 4

Why not just ask?

5. 271.10/page 333: Is there any way to enforce Sec. 402 work requirements (work after 2 years, community service after 2 weeks)? Or request information from states? And are states totally free to define work for purposes of Section 402?

data shld let us do it

yes - precluded by statute bec no penalty

will do

6. 271.20, p. 337-338; outlines the general work participation requirements. Shouldn't subsection (a) stating the two separate work participation rates use the phrase "work activities as described at section 271.30" rather than "work or training"?

equity q'n penalty

7. 271.22, p.339. Is it possible for reg to prohibit retroactive reclassification of families as state-only? → Not legal auth till state submits q'ly data; Feb 15 date of 1st [illegible] [illegible]

[illegible] - nothing [illegible] - report is 1st opp.

8. 271.22, p. 339-340; In outlining the overall participation rate calculation, this section says that a family that receives assistance for only part of the month may be counted as participating for an entire month if the adult is engaged in work for the minimum average number of hours in each full week that the family receives assistance in that month. What is the HHS's reasoning in proposing to allow this here and in section 271.24?

- at least mid-month

- Denom at least a wk - all

- If in denom, shld be in num.

BBA – this plus optg req-SSI SSI, DI, ~~[illegible]~~ adult or child get them

simultaneously but no link

2 parent issue only

9. 271.24, p. 340-341; In outlining the two parent participation rate calculation, this proposed regulation says that a family that includes a disabled parent shall not be considered a two-parent family for the purpose of the participation rate. Does this regulation define "disabled parent"? If not, why not? Similarly, why not define "disabled" and "severely disabled" in section 271.32(c)(1)?

HHS may add — Don't even req States to tell us what def they use

yes — **10. 271.34, p. 348.** In item (c), should "in any fiscal year" be added after "weeks"?

? — **11. 271.40, p. 348**; defines the basic caseload reduction calculation. Does this calculation ensure that any caseload reduction for which a state gets credit is not due the state having transferred beneficiaries from TANF into a separate state program? Does this prevent after-the-end-of-the-fiscal year gaming, such as transfers into state programs not counted for TANF MOE, in order to increase the caseload reduction credit?

diff Q

12. 271.40, p.349

Yes.

Issue: reducing state participation rates with caseload reductions
Problem: need to clarify language: "the minimum participation rate the State must meet for the following year will decrease by the number of percentage points the ** caseload fell in comparison to the FY 1995 caseload."
Proposed Fix: insert "average monthly" where the asterisks appear

Yes

13. *Issue*: definition of "family" in discussion of caseload reduction credit
Problem: since there is no definition of "family" in the bill or regs, a caseload reduction credit which accounts for a reduction in families might allow states to exclude from the calculation any non-"family" units receiving assistance. Wld include child-only
Proposed Fix: either change "families" to "cases" or "units," or define "families" for this purpose to include units such as child-only cases, etc. (§271.43 refers to "cases receiving assistance")

14. 271.41, p.349
Issue: determining/calculating the caseload reduction factor — Form ok; HHS: thorny, field talks
Problem: no clear definition for calculating caseload reduction factor — Concerned re burden of proof
- the regulations effectively use a reasonable test, "based on an established set of criteria" (quality of data, adequacy of documentation, completeness of list of changes in eligibility) ==> how are quality, adequacy or completeness measured?
- no specifications on how data is to be submitted (in what form) ==> a state must submit ... "the methodology and data that it used to calculate its caseload reduction factor"
Proposed Fix: the regulations must precisely define the calculation for the reduction factor, what data states must submit, and in what form the data is to be submitted
- the regulations should also require states to provide brief descriptions of each program which they use in determining their caseloads — Don't know what else specify

If form ok + also translate elig into # cases – what else – they ask us –

15. 271.41, p. 350; provides states with the option of using overall caseload reduction as the basis for a credit to reduce the two parent work rates. On what basis and for what reason does HHS want to do this? Doesn't this simply give the state the option of choosing the number which will give it the largest credit?

– Statute unclear – rate not rates
– dsn't mention 2 parent
– not sure state can do 2 parent – UP c-l is only record
– base ~~[illegible]~~ not comp
– only UP – # 95 [illegible]
many did away w/

yes

16. 271.41, p. 349,350; outlines the information that the State must submit to qualify for the Caseload Reduction Factor. HHS should consider developing a form to facilitate the submission of this information. This will promote consistency and completeness in the data provided and may reduce the need for HHS to follow up with States on the "reasonableness" of the data.

Just proposed rule

17. 271.41(d)(2), p 351: Is requirement that states respond to HHS within 2 weeks if they request additional info unreasonable? Should it be a month, given timelines HHS has given itself (3 months to review the methodology)?

Sept 30 → Nov 30 → Feb 28
No penalty till 12/31

18. 271.42, p. 352; lists "drug testing" as a specific eligibility change for which states must factor out caseload reductions for purposes of the credit. Doesn't the general category of "changes in requirements based on residency, age or other demographic or categorical factors" include this since persons found to be using drugs would be a category? This section also lists "fingerprinting" as an eligibility change. Why is this not considered an anti-fraud measure?

not finding fraud - they refuse to drift
CRC - shld be working - fprtg - 10-15%

19. 271.42, p. 352; allows states that have expanded eligibility for assistance since FY 1995 to get a caseload reduction credit if its caseload would have gone down in absence of the eligibility expansion. On what basis and for what reason does HHS want to do this?

Can (statute does say changes, not reductions) - doesn't but also says "diverted / precluded from"

20. 271.42(c), p.352. HHS invites States that believe that some or all of the families in a separate State program should be excluded from the calculation of the caseload reduction factor, based on the type of families served or the nature of the benefits provided, to substantiate such a claim with data. What does HHS contemplate would be a basis for exclusion from the factor? In addition, don't MOE programs have to use the same definition of eligible families anyway?

e.g., only nutrition svcs; or never on AFDC
pregn prevention

Wldn't that be picked up by elig ch?

21. 271.42, p.351

Issue: effect of eligibility changes on caseload reduction

Problem: states are only required under the proposed regulations to submit a "complete listing of eligibility changes" (as per §271.41(b)(2)), but apparently not the number of recipients dropped due to each of the changes

Proposed Fix: require that states also submit the number of recipients dropped from the rolls due to each of the listed eligibility changes

Will do

22. 271.42(a), page 351-52: On draft's list of what constitutes eligibility changes for the purpose of factoring out eligibility from the caseload reduction credit: how would HHS know if there were waiting lists for assistance? What is the rationale for including sanctions that terminate a family's grant on the list?

Will know
Not permanently

Any such

23. 271.43(b), p.352

Issue: definition of "cases receiving assistance"

Problem: the regs suggest that certain types of assistance (that can count towards MOE in a separate state program) can be excluded from the defn of cases receiving assistance for the purpose of calculating caseload reduction credits

==> this could result in states transferring TANF individuals to a separate state program for services not permitted under TANF (but countable towards MOE under the separate program),

Confusing; talk to Ann

create incentive?

and thereby counting them as caseload reductions.

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Proposed Fix: these expenditures should not be excluded for calculating caseload reductions (they are already excluded as types of TANF assistance)

24. Section 271.43, p. 352-353; for purposes of calculating the caseload reduction credit, requires states to compare a given year's data to fiscal year 1995 excluding those on the caseload receiving only non-monetary services or only one-time, short-term assistance. Does HHS expect states to know how many in their fiscal year 1995 caseload received such assistance, i.e, assistance for less than 90 days? Isn't there a possibility that this definition combined with the lack of FY 1995 data will result in awarding a state too large a caseload reduction credit?

related to conforming JJ

25. (271.44), p. 354 February 28 could be a bit late, from a planning standpoint, to make the decision on a State's proposed caseload reduction factor. Is there any way to move this up?

They say can't

26. 271.53, p 357: Under what circumstances would HHS reject a corrective compliance plan? Shouldn't this be defined? See p369 —Oc

27. 271.51(b)(1), p.355

Issue: penalty for noncompliance with participation rate; separate state programs

Problem: the regulation allows for a reduction in the penalty for a state not meeting participation rates, given the state's efforts "to engage recipients of assistance in separate state programs in work activities." The problem here is twofold:

(1) it doesn't prevent a state from meeting the participation rate by transferring individuals into a separate state program;

(2) what does the quoted phrase mean? ==> does this mean its okay for a state to place all of its hardest to employ recipients into a separate state program so long as the state is making an "effort" to "engage" them...?

Proposed Fix: something closer to ensuring that states don't simply transfer the hardest to employ into separate state programs in order to meet participation rates

28. 271.51 p. 354-356; states that HHS will reduce the amount of the penalty for failure to meet work participation rates based on the degree of noncompliance, as required by the statute. Is there any basis in the statute for providing a reduction due to "good faith efforts" made to achieve the rates? Does HHS consider "good faith efforts" a measure of degree of noncompliance? Shouldn't the rule define "non-compliance."

See preamble for more on good faith efforts

Secy's want flexibility what if economy

Yes

The draft regulation states that HHS will look beyond TANF to efforts a state is making to put individuals in separate state programs to work. Shouldn't this be revised to make clear that a state will not receive a good cause exception or a reduction in penalty based on the degree of non-compliance, or have its corrective compliance plan accepted by HHS unless it proves it has not used a separate state program to escape the work participation rates? Big issue for us

*

In addition, the draft regulation states that in deciding whether or not to reduce the amount of the penalty, HHS will take into consideration "whether a state has missed one or both rates." On what basis and for what reason does HHS make this proposal?

OK?

Rewriting p.358

DV

29. Section 271.52, p. 356-357; states that the Secretary will grant reasonable cause to a state that fails to meet the work participation rate due to its provision of good cause domestic violence waivers. Doesn't this provision assume that all of those receiving such waivers would have otherwise been working, instead of the 25 to 50 percent required by law? Why not grant a state good cause only for those individuals who would otherwise have been working by subtracting the number of good cause domestic violence waivers from the denominator of the participation rate?

→ waivers only at point of failure

30. 271.54, p. 357; states that if HHS determines that a state has failed to penalize individuals for not working as required in section 407(e), then the agency shall reduce a state's grant. What information will HHS systematically gather in order to know whether a state is violating section 407(e)? What kind of proof must the state accept from a single custodial parent who is unable to obtain needed child care? – Single audit - pull cases

state decides

31. 271.60, p. 359 (also applies to 271.4(e)): Draft says that the provisions of section 407 of the law do not apply to states that have an approved waiver to the extent those provisions are inconsistent with the waiver. Why does the draft limit potential inconsistencies to section 407 of the law? – AZ sez minor parent living – if state can't find OK; TANF requires state to find; No waying been lose penalties

Section 407 includes work participation rates, the caseload reduction credit, hours of work required, the definition of work activities, the sanction for refusal to work, and nondisplacement provisions. What constitutes a provision for the purposes of this section? May a state opt out of or modify the work participation rates, but still take advantage of the caseload reduction credit? Do any states have waivers that would allow them inconsistent work participation rates? If so, please list them. – NO

will give us

How will HHS determine what it will consider inconsistent? HHS asked states to identify those inconsistencies in their state TANF plans, but states varied in the thoroughness of their responses. Does HHS have a compendium of these responses, including an evaluation of whether in fact it considers them to be inconsistencies? Please provide us with the most recent list. Does HHS plan to survey them again? How and when will HHS notify states that they their proposed inconsistencies are accepted or not accepted? What is the penalty for a state that continues a waiver provision that is not inconsistent with the law but differs from the law?

No action since sp – only did Hawaii

Would tell
Right to disapprove? – No right to ask; but risk a penalty

underlying penalty After reg

will send us

32. 271.60(b)(1) Please provide us with a list of states that have waivers with work activities that are inconsistent with current law, along with the nature of the inconsistency. What are examples of waivers with provisions of prior law that you would still consider inconsistent even though they did not require waivers (see definition of waiver in 270.30)?

30% limit on educ

Please provide us with a list of states that have waivers with inconsistent "minimum average hours of work per week necessary to be 'engaged in work' for a month", along with the nature of the inconsistency (271.60(b)(2))? Why wouldn't all such cases be prohibited as inconsistencies under 271.60(b)(2)(ii) because they were increases in work requirements over prior law? – disabled must work, but only 8 hours

Will do list

Please provide us with a list of other waiver inconsistencies that HHS recognizes, by state and by feature of the waiver.

What is the draft's legal basis for 271.60(c), which prohibits waiver inconsistencies that affect the denominator of the participation rates? Def of waiver - objective - was never to narrow the universe of people who must work

33. 271.60(b) - (d) and 274.1(e)- (I), p 391-92: How will HHS monitor these provisions? Will HHS monitor states to ensure that they are following their own waiver policies? How?
Yes thru data collection; Penalty: same as underlying - but not pulls out of numerator

34. 271.60(b), p. 359: The rule lists areas where waiver inconsistencies will be recognized. Why list these areas? Sanctions
will revisit - may add other

Change page **35. 271.60(b)(2)(ii), p. 360:** "Prior law standards are not part of the waiver...." Seems unclear. (HHS informs us they may rewrite this one.)

~~change page~~ **36. 271.60(c), p. 360**: No prior law exemptions recognized as part of the waiver with respect to denominator of participation rates: What would be an example of this?
disabled adults; kids under X

37. 271.70, p. 360-61: Non-displacement: (b) says "A state must establish and maintain a grievance procedure to resolve complaints of alleged violations of this displacement rule." Could draft add more specificity on what is required in a grievance procedure? Should it?
No auth - reg'ly state conduct + no penalty
New Q - they want to restore

OK **38. 272.1, p. 363** In item 12 (and elsewhere--e.g., item (e)(1) on page 364), the State is penalized for not spending additional funds to replace reductions due to penalties, but the question of "additional relative to what?" is not answered. The prior year's level? The TANF MOE level? I realize the statute is if anything more unclear on this point. Also, the regulations call for the State to expend additional funds in the same fiscal year; the statute appears to require the additional spending in the immediately succeeding fiscal year.

39. 272.3, p. 365

Done? This section provides how HHS will assess penalties and the data that will be used as a basis for determining when to assess the penalty. This appears to be THE regulatory section on oversight. The rule specifies that it will rely on non-financial data reports to enforce only two regulatory requirements: five year limit and participation rates. HHS will rely on the Single Audit Act process to enforce misuse of TANF funds; IEVS participation; paternity establishment and child support requirements and the child care exception for children under six. Yet, the rule includes a larger scope of regulatory requirements, that are theoretically enforceable by HHS that do not necessarily involve a penalty.

Are all other requirements in the rule non-enforceable? It would appear that HHS needs to build in broader regulatory authority to enforce these requirements through the use of data reported.

For each penalty, please provide a written list of what data you would have available to enforce it.

How does the Single Audit process work? Who conducts the audit and how often? How will auditors, for example, enforce the child care exception?

40. 272.3(b) and (c), p. 366: Data in state reports "are subject to our verification in accordance with 275.6," which is requirement to send data electronically. Is this right section to reference?

Done - right

41. 272.6(h), p. 370-71: The criteria for reducing the penalty if the corrective compliance plan fails is vague. When would/would not HHS reduce the penalty under this circumstance?

Alr discussed above

42. Section 272.6, p. 369-371; outlines the types of information a state must submit as part of a corrective action plan. How will HHS determine if actions, outlines, and time limits in the plan are acceptable? Shouldn't this section state clearly that penalties will be immediately imposed on a state that does not submit an acceptable corrective action plan?

Yes, will do

This proposal allows corrective action plans to last for up to 12 months. How did HHS decide upon that limit? Doesn't a 12 month limit mean a state could be continuously operating under a corrective action plan (i.e., enter into one for each 12 month fiscal year)?

from date notified (Jan) – used in child report

statute: "impose some/all"

This section also allows HHS to reduce the penalty in one or more circumstances in which the state has not corrected the failure pursuant to its corrective action plan (i.e., if the state expended more resources, made considerable progress, or encountered unanticipated circumstances). On what basis and for what reason does HHS make this proposal?

43. (273.2) P. 376. In item (b)(1), are those four categories exhaustive; i.e., are there individuals who are lawfully present but do not fit into the first four categories? Also, the language should be changed (e.g., by adding "in the case of" after "less than one year or" and before "aliens"), to clarify that only aliens not lawfully present need a State law affirmatively providing benefits in order to remain eligible.

change page

44. 273.2(a)(5), p.375
Issue: definition of "administrative costs"
Problem: though limited to 15 percent of total amt of countable expenditures, the regs provide no definition of "administrative costs"
Proposed Fix: for program integrity and to ensure expenditures on benefits and services, "administrative costs" need to be defined here

Skip

45. 273.2(d), p.377
Issue: state expenditures counting towards MOE
Problem: this section provides that assistance, for MOE purposes, can be ongoing, short-term or one-time, and may include services; this is not the case if part of a TANF program
Proposed Fix: specify that, to count towards MOE, TANF program expenditures must abide by the "assistance" defn in §270.30; expenditures in separate state programs need not meet this defn, but also cannot count towards contingency fund MOE

? Ask Ani

46. 273.5, p.378
Which data elements will we use in the proposed data collection to ensure that States that set up separate programs do not retain what would otherwise be the appropriate Federal share of child support collections?

47. (273.7), p. 380 Does item 1 encompass TANF activities, or only those in separate State programs.

48. **273.7, p. 379**: Will the data from this annual addendum be sufficient to allow us to judge if states are meeting work participation rates for state-only programs? Q by data

49. **273.22, p. 386** Re: (c)(2), is there a definition of "qualified principal residence" in the regulations?

yes 50. **274.1(e), p. 390**: Before "was approved by July 1, 1997", shouldn't it say "was submitted before 8/22/96 and", so it will not be more expansive than the statute?

yes 51. **274.1, p. 389.** Should the language in item © be changed to clarify that the maximum number of extensions is an average monthly number (i.e., the number of extensions each month will be averaged and compared to the average monthly caseload).

52. **274.1, p.. 391**. Is it possible for an adult to reach the Federal time limit without reaching a State time limit (e.g., a 24 in 48 time limit)? If so, how would this be handled? Yes, but

53. **274.1(e), p. 390**: How many waivers granted by HHS fall into the second category in the law -- submitted before law passed and granted before 7/97? Please list them. None

Rewriting 54. **274.1(g) and (h), p. 391-92**: What is the difference between (g) and (h)? They both apply to extensions, and yet they lay out separate procedures.

Do any state waivers have time limits in excess of 60 months? Which states have waivers with extension and exemption policies more liberal than current law that you believe qualify as inconsistencies? Please provide us a list of the states, along with the specific waiver features that you believe qualify as inconsistencies.

55. **274.74, p. 400-401.** Why is the clause "then multiplied by 1/12 times the number of months the State received contingency funds" needed? Although the language is from the statute, but it appears to make little sense, given that the paragraph is discussing funds paid and expended for a fiscal year. Can the regulation help clarify the statute?

56. **275.3(B)(1), p.409**
Issue: TANF data report -- disaggregated data
Problem: the reg refers to data reporting on adults, "including non-custodial parents who are participating in work activities"
- this does not seem totally consistent w/ the preamble (p.153) which allows for services to non-custodial parents to "engage in activities such as work or educational activities, counseling, or parenting and money management classes."
Proposed Fix: a couple of issues need to be resolved here:
- are all of these activities listed in the preamble intended to be included as TANF activities => if so, do we want that and don't we need data on more than just the work activities?
- should non-custodial parents be specifically mentioned in the defn of "TANF family" in §275.2(b)?

57. **275.3(b)(1), p. 409**: For how long must states report on those no longer receiving TANF

First month after
Will only know via evals

assistance?

NO – penalty applies to 411a – that's data on TANF recip not MOE

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58. 275.8(b), p. 417: Is there any way the reporting penalty could apply to MOE data report?

59. 275.9(b), p. 418: Must state file separate state MOE report annually or quarterly? Annual attachment to quarterly report?

Both – plus qtrly narrative
Cagg / disagg

60. Appendix A: TANF Data Report, Section One. Disaggregated Data for Families Receiving TANF

no info → not to Cong ; not monitoring/penalty

It is unclear why HHS has chosen to add certain breakout information and how this data will be used. Is it for monitoring purposes, i.e. accuracy in accurate citizenship/qualified alien status? If so, the authority to use this data for monitoring must be built into the regulation. If not, please present a justification for the need for additional reporting requirements not specified in the law. We have identified some examples below:

#13 Why do we need detailed break-out on type of subsidized housing? } Laura challenges
#15 - Why do we need a break-out on type of Food Stamp subsidy?
#51-55 - Where does the statute specify five types of disability benefits?
#61- Why do we need nine break-outs of citizenship status? The law only requires "citizenship."
#57-60; p. 267: The preamble notes that HHS needs this for time limits for receipt of assistance. Is this the correct reference. The connection between these data elements and time limits is not obvious. Yes

61. Appendix B: TANF Data Report, Section Two. Disaggregated Data for Families No Longer Receiving TANF

Why do we need 46 data elements on families no longer on assistance? The law, Section 411 (a)(xvi) includes only five items on why they left the roles - is this the basis for Section 2? If we already have electronic information on these families through reporting on Section One, why would we need to have States do a sample to provide all the data again? If we see a closure flag on a file, we could do this analysis with the existing data we will maintain at the Federal level.

have basis – 5 elements – 411a xvi

Finally, we note that even State MOE programs would be subject to the 46 data element requirement. This may serve as a disincentive to report on the MOE programs.

plus 411b – demog/fin char

↳ balanced by positive of CRC, high perf bonus

MISCELLANEOUS

Yes **62. p. 277**. Please provide the OMB number to the interim financial reporting form approved by OMB.

Yes **63. p. 300**. HHS should include an estimate of annual Federal expenditures on the TANF program in this section..

64. Citing section 404(a)(2), as amended by section 5503 of the BBA, the preamble notes (p.178-9) that Federal TANF funds can be used "in any manner that the State was authorized to use amounts received under Part A or F, as such parts were in effect on September 30, 1995 or (at the option of the State) August 21, 1996."

HHS interprets this to allow a State to use Federal TANF funds for juvenile justice activities in "States whose approved AFDC State plans included juvenile justice activities as of September 30, 1995, or, at State option, August 21, 1996..." The language needs to be clarified here and in the reg such that, for juvenile justice activities, only states who had approved AFDC State plans permitting such activities can use Federal TANF funds for them.

Fortuna questions on TANF reg:

- 270.3/page 325: Is definition of a needy state same as in statute? S
  Not before BBA: now reqd penalty - for 407e
- 271.10/page 333: Are there state or individual penalties if state doesn't meet Sec. 402 work requirements (work after 2 years, community service after 2 ~~weeks~~ months)? (Latter is effective 8/97, FYI.)

  Flag as 'no' for BR

  Is the definition of work for Sec. 402 different than for Sec. 407? I think answer is that state can totally define work for Section 402.

  ~~[illegible]~~ Any way to ask about this?
- 271.16/page 337: Is this the Nickles amendment? Does HHS deviate from it in any way? S
- 271.22/page 339: In determining a state's participation rate, HHS lets states subtract from the denominator families sanctioned for refusal to work (unless the family has been sanctioned for more than 3 of the last 12 months). I assume the intent is not to give states an incentive to sanction people in order to meet the work rates. Do we think this is a fair way to do it? Statute
- 271.24(d)/page 341: HHS says that a family with a disabled parent does not count as a two-parent family. Is there a definition of "disabled"? And ~~are we sure~~ what is HHS has legal authority to do this? In BBA
- 271.32(c)(1)/page 345-6: HHS says work rates for 2-parent families only apply if "an adult in the family is not disabled or caring for a severely disabled child." Is there legal authority here?
- 271.34/page 347: Job search limit is annual. Flag BR
- 271.34(b)/page 347: I assume 12 week job search limit for states with unemployment ~~50%~~ greater than US average or ~~needy states~~ is in statute? S
  added in technical
- 271.34(c) and (d)/page 348: No more than 4 consecutive weeks of job search; and 3 or 4 days of job search can count ~~as a week~~ not more than once per individual: I assume these are in law?
- 271.41(b)/page 350: ~~I assume~~ we are sure that HHS has authority to require this information. CRC
- 271.41(d)/ page 350-51: Should HHS be more specific on whether caseload reduction factor methodology is acceptable? ("quality of data, adequacy of documentation, and completeness of the list of changes in eligibility") Maybe it should use a form, too?
- 271.41(d)(2)/page 351: Isn't requirement that states respond to HHS within 2 weeks if they request additional info unreasonable? Should be a month, given timelines HHS has

given itself (3 months to review the methodology).

- 271.42(a)/ page 351-52: Do we agree with HHS's list of what constitutes eligibility changes for the purpose of factoring out eligibility from the caseload reduction credit (fingerprinting, drug testing, waiting lists for assistance, and sanctions that terminate a family's grant)? how wld you know? ask for data — What's the rationale? BR flag re elig.

- 271.42(b)/ page 352: HHS proposes that states that have expanded eligibility get credit for caseload reductions that would have occurred in the absence of the expansion. While this may be seen as fair (holding constant for eligibility changes), does HHS have authority for it? (A lot of states have expanded eligibility in small ways, and will submit data here.) BR

- 271.42(c)/page 352: HHS proposes that if a state wants to exclude families in a separate state program from the caseload reduction credit, it must substantiate its claim. Why allow this possibility at all? What is pt? MOE same fam

- 271.43/page 352: Is the definition of assistance here identical to the definition in 270? I think so. Anil

- 271.50/page 354: penalty ~~can never~~ exceed 21%: Is this statutory? S

- 271.51/page 355: Draft says "We will reduce the amount of the penalty based on the degree of the state's noncompliance." Why not say, "We may...." Statute says shall
consider defining?

- 271.52/page 356: Is reasonable cause statutory? S
357 Under what arcs will HHS divg a CAP

- 271.54/page 357-58: Penalty for ~~state~~ failure to sanction individuals: matches statute? S

- 271.55(c)/page 358-59: Reasonable cause and corrective compliance plan provisions of 272 do not apply to this penalty: Why not? Ck S

- 271.60(b)/page 359: Draft list areas where waiver inconsistencies will be recognized. Why list these areas?

- 271.60(b)(2)(ii)/page 360: "Prior law standards are not part of the waiver...." What does this do?

- 271.60(c)/page 360: No prior law exemptions recognized as part of the waiver with respect to denominator of participation rates: What would be an example of this?
flag for BR ← Control gp exception: why?

- 271.70/page 360-61: Non-displacement: Make sure it matches statute (I think it does). Also, (b) says "A state must establish and maintain a grievance procedure to resolve complaints of alleged violations of this displacement rule." Could HHS add more specificity on what is required in a grievance procedure? S

Do you have standards

Flag for BR

- 272.3(b) and (c)/page 366: Data in state reports "are subject to our verification in accordance with 275.6," which is requirement to send data electronically. Is this right section to reference?

- 272.3(d)/page 366: Not ~~sure~~ what this means.

- 272.6(h)/pages 370-71: Criteria for reducing penalty if corrective compliance plan fails: too vague? CR did

- 273.2(b)(1)/page 376: what immigrant categories does this list of eligible families leave out? (Ask Jack Smalligan) For which groups must the state enact a law that "affirmatively provides" for services? Why?

- 273.2(d)/page 377: Why is definition of assistance different for MOE purposes?

- 273.5/page 378: Expenditures of separate state programs count in their entirety if they "were previously authorized and were allowable under section 403 of prior law." If not, then only the amount in excess of that expended in 1995 counts. Why? statute, but clearer

- 273.7/page 379: Will the data from this annual addendum be sufficient to allow us to judge if states are meeting work participation rates for state-only programs? Data gen'l

- 273.11/page 382: What are these misuses of funds (section 115 of PRWORA, part 92, OMB Circular A-87)?

- 273.13/page 383: Won't the lack of definition of administrative costs encourage states to hit the 15% limit? Adm

- 274.1(b)(1)/page 389: Why can't you count toward 5 year limit "any month of receipt of assistance by an individual when she was a minor who was not the head of household or married to the head of household"? Statute

- 274.1(b)(3)/page 389: Why can't you count "funds provided under section 403(a)(5) of the act"? WTW – statute

- 274.1(d)/page 390: Why is state only permitted to determine whether a family has an extension from the time limit once it hits the time limit? What would be wrong with letting states count determine it earlier? Helping states not use up their 20% too early? a/b Ami'l

- 274.1(e)/page 390: Before "was approved by July 1, 1997", shouldn't it say "was submitted before 8/22/96 and", so it will not be more expansive than the statute?

- 274.10/page 393: What is purpose of IEVS stuff? check it out

- 274.70/page 399: State can only get 20% of its TANF grant from contingency fund in a year; tracks statute?

ask OMB

- 274.74(a)/page 400: Formula for returning contingency funds is clear as mud; also, what do food stamp and unemployment triggers in (c) refer to?

- 275.2(b)/page 408: Want data on more than "TANF family." Why? - make consistent states freedom on def of family - fed def of family

- 275.3(b)(1)/page 409: Are we sure we have statutory authority for disaggregated data, including everyone's SSN? What data ask for that not explicitly in statute

  For how long must states report on those no longer receiving TANF assistance?

- 275.3(d)/page 411: Are 3 incentives for states to report on state-only programs the right ones? (high performance bonus, caseload reduction credit, possible reduction in work participation rate penalty) good cause exemption to penalty, is way CA suggested

  Will we also have data on who state considers a family

- 275.8(b)/page 417: Reporting penalty doesn't apply to MOE data report -- any way it could?

- 275.9(b)/page 418: Must state file separate state MOE report annually or quarterly? Annual attachment to quarterly report?

Out of order:

- Is it possible for reg to prohibit retroactive reclassification of families as state-only?

- Anil point re definition of assistance and caseload reduction credit?

5

Penalty | Amount | RC/CCP | Reduct DNC | When | Source of Data

Penalties

1. Misuse of TANF funds: penalty of amount misused
2. 5% for intentional misuse
3. 4% for failure to submit an accurate, complete, and timely required report
4. up to 21% for failure to meet participation rates
5. no more than 2% for failure to participate in IEVS
6. no more than 5% for failure to enforce penalties on recipients not cooperating with state child support agency
7. failure to repay a federal loan
8. failure to meet TANF MOE requirement (penalty equal)
9. 5% for failure to comply with 5 year time limit
10. unremitted contingency funds
11. no more than 5% for failure to maintain assistance to a single parent who cannot get child care for a child under 6
12. no more than 2% plus, if state fails to spend to compensate for penalty
13. Failure to meet TANF MOE if you get WTW grant (amount of grant)
14. Between 1-5% for failure to sanction recipients refusing work without good cause

- If multiple penalties, add all %'s and assess against pre-penalty grant
- 1, 2, 6 for quarter that immediately follows decision; others for year that immediately follows decision
- penalties can't exceed 25% of grant; if so, get it from following year's grant
- state must spend amount of penalties
- 1, 2, 7-12 applicable on first day state operates TANF
- 3, 4, 5, 6 for conduct occurring on or after 7/97 or 6 months after state enters TANF, whichever is later
- prior to final rule, will judge behavior against reasonable interpretation of the statute

Source of Data for Penalties

- Single audit will be used to judge: misusing, intentionally misusing, IEVS, paternity estab/child support, and cutting off support for parent who can't get child care for child under 6
- Data reports in part 275 will be used to judge: participation rates, time limit; data in reports subject to HHS verification (refers to 275.6, but not clear how that's relevant)
- TANF financial reports will be used to judge: failure to meet MOE, contingency fund MOE requirement, and to replace penalties with state-only funds.

- Reasonable cause and corrective compliance plan are not available for: failure to repay federal loan, meet MOE requirement, replace penalties with state funds, maintain effort if you get a WTW grant

- Reasonable cause if: disaster, erroneous federal guidance, or one-time problem

Data Collection and Reporting

1. Case record info (disaggregated and aggregated) on those in quarterly TANF data report
   - Disaggregated on both families receiving assistance and families no longer receiving assistance

2. Expenditure data in quarterly TANF financial report
3. Annual info on definitions and expenditures that goes with 4th quarter financial report
4. Annual info on state programs and performance for report to Congress (?)
5. TANF MOE Data Report quarterly (or annually with quarterly financial report?)

State must re-file report if it changes substantially definition of: admin costs, work activities, transitional services, sanctions

If state wants MOE credit for state-only program, must collect same data on families as TANF report IF it wants to: receive a high performance bonus, get caseload reduction credit, or be considered for reduction in work participation rate penalty.

Sampling OK for disaggregated data

Cynthia: actually some state's participation rate data should be in on October 31. ACTUALLY, how do states know they have to report by Nov. 15 without the reg??

<u>NPRM Response to PL 105-33 - Balanced Budget Act of 1997</u>

I. WELFARE-TO-WORK (Section 5001)

--Creation of Welfare-to-Work Block Grant program (5001(a)) **Not applicable; DOL regs; WTW definition added for reference purposes, pages I-40 and V-11.**

--Conforming amendments to section 409(a)(7)(B)(iv) (definition of the term 'expenditures by the State')(5001(a)(2)) **See pages III-62 and VII-18.**

--Amendment to section 1108, to exclude WTW grants from cap (5001(b)) **Not applicable.**

--WTW grants to Tribes (5001(c)) **Not applicable; DOL reg responsibility**

--Amendments to section 408(a)(7)(A) (Inapplicability to WTW grants and non cash assistance)(5001(d)) **See pages III-85, 96, and VII-29.**

--Amendments to section 411(a) (WTW data collection)(5001(e)) **Not applicable; deferred to future rulemaking.**

--Amendments to section 413 (Evaluations)(5001(f)) **Not applicable; rulemaking not required.**

--Amendments to section 409(a), (b)(2), and (b)(4) (penalty for failure of WTW grantee state to meet TANF MOE requirements, inapplicability of good cause exception,inapplicability of corrective compliance plan) (5001(g)(1)) **See pages III-65-66.**

--Amendment to section 409 (penalty for misuse of Competitive WTW funds)(5001(g)(2)) **Defer to DOL**

--Amendments to section 408 (clarification of relationship of sanctions against TANF recipients to wage rate requirements)(5001(h)) **Not applicable; DOL reg responsibility.**

--GAO study on effect of Family Violence **Not regulatory, but minor changes to preamble to acknowledge Congressional decision not to amend TANF statute.** (5001(i)) **See pages I-28 and III-87-88.**

II. OTHER WELFARE RELATED PROVISIONS

o Amendments to section 404(d) related to amount transferable to title XX programs (5002) **See pages III-78 and 79.**

- o Amendments to section 407(c)(2)(D) related to number of persons who may be treated as engaged in work by reason of participation in educational activities (5003) **See pages II-30-31 and VI-15.**

- o Amendments to section 409(a) related to penalties for failure of States to reduce assistance for recipients refusing without good cause to work (5004) **Changes in parts 271 and 275, see pages II-49-50, IV-52, VI-2, and VI-25-26.**

III. Welfare Reform Technical Corrections

Sec. 5501 Eligible States; State plan.

(a) Changes when the state must have submitted its TANF state plan from 2 years before the fiscal year to include the first quarter of the current fiscal year.
Not applicable

(b) Applies exception from individual penalty for lack of child care to requirement to work after 24 months. **See subpart A, part 271, page II-6.**

(c) Corrects citation reference in 402(a)(1)(A)(v). **Not applicable**

(d) Adds provision for amending TANF state plans to 402. **Not applicable**

Sec. 5502 Grants to States.

(a) Makes provision for the territories to be eligible for the illegitimacy bonus and alters the funding as a result. **Not applicable**

(b) Allows a territory to qualify for the illegitimacy bonus without ranking against states. **Not applicable**

(c) Changes the measure of illegitimacy from the number of out-of-wedlock births to the ratio of out-of-wedlock births to all births. **Not applicable**

(d) Changes data source for illegitimacy bonus from fiscal year to calendar year. **Not applicable**

(e) Corrects year in 403(a)(3)(C)(ii) heading. **No change required.**

(f) Makes corrections to the contingency fund section. **See pages III-113-133 and VII-38-44.**

(g) Makes the HHS the administrator of the contingency fund instead of Treasury. **No change necessary.**

Sec. 5503 Use of grants.

(a) "Corrects" a ~~date~~ in 404(a)(2). **See page III-70.**

Sec. 5504 Mandatory work requirements.

(a) Removes 2-parent families with a disabled parent from the 2-parent participation rate. **See pages II-15, VI-10, Appendix A page 18, and Appendix E page 136.**

(b) Changes pro rata reduction heading to include reference to changes in state eligibility criteria. **No changes needed**

(c) Gives states the option to include individuals in tribal a work program in the participation rate calculation, in addition to the option regarding those in a tribal TANF program. **See pages II-16, VI-10, Appendix A page 40, and Appendix E page 162.**

(d) Adds provision to allow parents in a 2-parent family to share the 35-hour (or 55-hour, where applicable) work requirement. Also, removes the distinction in allowable work activities between the first and second parents. **See pages II-27-29 and VI-12-15.**

(e) Changes standard of work for 2-parent families from "making progress" to "participating", the same standard in the overall rate. **See pages II-27 and VI-13 and 14.**

(f) Extends job search and job readiness assistance to 12 weeks if the state is a "needy state", as defined in the contingency fund. **See pages II-33 and VI-16.**

(g) Clarifies that, in addition to a single parent, a single custodial caretaker of a child under age 6 count as engaged in work with an average of 20 hours of work activities per week. **See pages II-33-34, VI-16, Appendix A page 42 and Appendix E page 164.**

(h) Modifies the provision permitting teens to count for participating in educational activities to include married teens as well as single teen heads of households. **See pages II-29 and VI-15.**

(i) Changes the number of hours a teen parent must participate in educational activities to count from the same average number of hours as for other activities to an average of 20 hours per week in a month. **See pages II-29 and VI-15.**

(j) Clarifies that the exception for lack of child care to an individual penalty applies to refusal to engage in any work required by 407, not just "work". **See subpart A, part 271, pages II-6 and VI-6.**

<u>Sec. 5505 Prohibitions; requirements.</u>

(a) Removes redundant language concerning the time limit **and minor child** from 408(a)(1). The language to be deleted duplicated 408(a)(7). **See page III-96.**

(b) Alters the language of the requirement to assign support rights (408(a)(3)) to clarify that "leaves the program" means "ceases to receive assistance". **No change required.**

(c) Removes an extraneous space. **No change required.**

(d) Clarifies that the number of families who can be exempt from the time limit is a monthly average number. Also, permits a state to choose whether to calculate the number of families it may exempt from the time limit based on the average monthly caseload for the current fiscal year or the previous fiscal year. Also, alters the language of the disregard for months in which an adult lived on an Indian reservation with high unemployment to use the term "Indian country" rather than "Indian reservation". **See pages III-84-84, 88-89, 93 and 96, VII-29-30 and Appendix A page 22.**

(e) Reinstates deeming and other rules applicable to aliens who entered the U.S. under affidavits of support formerly used. **No change required.**

<u>Sec. 5506 Penalties.</u>

(a) Increases the amount of time in which a state may file a quarterly report from 1 month to 45 days. **Changes in parts 272 and 275, see pages IV-38,39,45 and 50, and VIII-7.**

(b) Modifies the definition of "qualified state expenditure" to include child support that the state collects and distributes to the family. **See pages III-49 and VII-15.**

(c) Clarifies that funds the state expends to replace any penalties HHS takes out of its grant (per 409(a)(12) are not qualified state expenditures. **See pages III-63 and VII-18.**

(d) Modifies the definition of "eligible families" to include the families of aliens lawfully in the U.S. who would be eligible for aid in the absence of title IV of PRWORA. **See pages III-43 and 45.**

(e) Removes some extraneous language from 409(a)(7)(B)(ii). **No change required.**

(f) Adds a provision specifying the source of historic state expenditure data for FYs 1994 and 1995. **See page III-35.**

(g) Rewrites 409(a)(8) to make the IV-A penalties conform with the IV-D performance-based standards. **No change required; not in package.**

(h) Corrects statutory reference in 409(a)(9) from "408(a)(1)(B)" to "408(a)(7)". **No change required.**

(i) Corrects several errors in the way the penalty for failure to meet the contingency fund maintenance of effort requirement describes the qualified state expenditures. **See pages III-131 and VII-42.**

(j) Modifies the language of 409(a)(12) to make clear that HHS may take a penalty if the state does not expend sufficient state funds to replace any grant reductions. **See pages III-5, 15, 109-111 and VII-37-38.**

(k) Adds to the list of penalties for which reasonable cause exceptions are NOT permitted the penalties under 409(a)(6), (10), and (12). **See pages III-111, 131-132 and VII-38,42.**

(l) Modifies the corrective compliance plan language to make clear that a state may correct "or discontinue" a violation. **See pages III-25-28.**

(m) Adds to the list of penalties for which a state may not enter into a corrective compliance plan the penalties under 409(a)(7), (8), (10), and (12). **See pages III-66 and VII-20.**

(n) Modifies the penalty for failure to meet the minimum participation rate by requiring the penalty to equal the percentage defined in the statute, rather than not exceeding that amount. Also, adds a new condition under which HHS must reduce the penalty: if noncompliance is due to extraordinary circumstances (such as natural disaster or regional recession) and requires HHS to submit a report to Congress if it reduces the penalty for this reason. **See pages II-44-47 and VI-2 and 22-24.**

<u>Sec. 5507 Data Collection and Reporting</u>

(a) Amends data elements on disability and relationship. **On disabilty see Appendix A pages 29 and 55, Appendix B pages 78 and 94, Appendix E pages 149 and 173, and Appendix F pages 193 and 206; on relationship see Appendix A pages 29 and 55, Appendix B pages 80 and 96, Appendix E pages 152 and 175, and Appendix F pages 195 and 208.**

(b) Makes other minor changes. **No change required.**

(c) Changes to aggregate data reporting requirements. **See page IV-25.**

Sec. 5508 Direct funding and Administration by Indian Tribes

Most changes will be addressed in Tribal regs. No conforming changes required.

Sec. 5509 Research, Evaluations, and National Studies.

Most changes are beyond scope of NPRM; no change needed in OWB data.

Sec. 5510 Report on Data Processing

No changes required.

Sec. 5511 Study on Alternative Outcome Measures

No changes required.

Sec. 5512 Limitation on Payments to the Territories

See pages III-134-135 and VII-45-49.

Sec. 5513 Conforming Amendments to Social Security Act

No changes required.

Sec. 5514 Other Conforming Amendments

No changes required.

Sec. 5515 JOLI Modifications

No changes required.

Sec. 5516 Denial of Assistance and Benefits for Drug-Related Convictions

No changes required.

Sec. 5517 Transition Rule.

Corrects the provisions of the delayed effective date to ensure that the old IV-A and IV-F reporting requirements and IV-D penalty requirements remain in effect until June 30, 1997, or 6 months after receiving a complete plan, whichever is later (rather than just until 6/30/97). **No change necessary.**

Sec. 5518 Effective Dates.

Amendments take effect as if they had been included in PRWORA when it was enacted. **No change necessary.**

V. Related General Changes

- Update of discussion of Administration Work Initiatives **See pages I-26-27.**
- Updated discussion on regulatory context/pending WTW regs **See pages I-12-14.**
- Updated discussion of statutory context **See page I-17.**

Additional Corrections/Updates Outside of Budget Reconciliation

- Clean-up of reg impact statements for completeness and consistency. **See page IV-58.**
- Adding Fish-Wilson alien projects to reasonable cause exceptions from work participation rates. **See pages II-48 and VI-25.**
- Child care MOE. **See pages III-53-57 and VII-16-17.**

(3) purpose, scope, long list – we'll decide later – could set up TC is especially

Time limits v3. work region

(1) Only if served a diff purpose
If intent was wtw,
(2) By .3sme

Waiver

No unless demo continues

1) only spec & to AFDC law
2) all underlying law
→ 3) only some – where prior law was integral part of demo

hrs of work – all, not indivd.
Time limits lifts day

⇒ Practical implics?

$407 must
$ algo

Inconsistency

1) All inconsistent
2) No inconsistent
→ 3) Inconsistent only if must & ~~AFDC~~ waiver to comply w/ TANF

1) How impt is this prior law deal?
2) Is no denom an opening
3) Other constructs of waiver + inconsistency (render meaningless)

WAIVERS (MA)

The Clinton Administration approved waivers to implement one welfare reform demonstration for Massachusetts.

- **Welfare Reform '95 (Approved August 1995/Amended October 1995)**

  Statewide, reduces benefits of non-exempt recipients 2.75 percent, while providing earned income disregard of $30 and one-half indefinitely; establishes Work Program requiring recipients who cannot find at least 20 hours per week of paid employment after 60 days of AFDC receipt to do community service and job search to earn a cash "subsidy"; funds subsidized jobs from value of AFDC grant plus cash value of Food Stamps for limited number of volunteer recipients; sanctions individuals who fail to comply with the Work Program by a reduction in assistance equal to the parent's portion of the grant; establishes an Employment Development Plan (EDP) for non-exempt participants not required to participate in the Work Program, requiring community service for second failure to comply with EDP and full-family sanction for second failure to comply with community service; requires teen parents to live with guardian or supportive living arrangements and attend school; requires children under age 14 to attend school; strengthens paternity establishment requirements and allow the IV-D agency to determine if participants are cooperating; allows courts to order parents unable to pay child support to community service programs; excludes from the grant calculation children conceived while parent received AFDC; requires child immunization; increases asset level to $2,500 and vehicle equity limit to $5,000; strengthens fraud provisions; disregards first $600 of lump sum income; suspends grandparent deeming of income; and disregards the 100-hour rule for eligibility for two-parent families.

Waivers pending upon enactment of PRWORA:

- **Welfare Reform '95 - Further Amendments**

  This waiver request includes time limit provisions that would be inconsistent with TANF.

WAIVERS (DE)

The Clinton Administration approved waivers to implement one welfare reform demonstration for Delaware.

- **A Better Chance (Approved May 1995)**

  The Welfare Reform Project (WRP), the state's first stage of welfare reform will operate statewide after a phased implementation and include: 2-year limit on cash benefits for cases with employable adults age 19 and over with up to two more years of benefits provided under pay-after-performance work experience program; non-time-limited benefits for unemployable cases; self-sufficiency contract requirements; education and employment-related sanctions equal to 1/3 reduction in AFDC benefits for first offense, 2/3 reduction for second, and AFDC loss for third; penalty for failure to comply with other contract requirements of $50 the first month, increasing by $50 per month until compliance; full-family sanction for noncooperation with Child Support; no benefit increase for children conceived while receiving AFDC; eliminating AFDC-UP 100-hour and work history rules; exempting special education and business accounts up to $5,000; fill-the-gap budgeting using child support and earnings; $4500 auto resource limit; $50 bonus for high school graduation; additional 12 months of transitional child care and Medicaid; no time limit on job search; requiring teen parents to live in adult supervised setting, attend school, participate in parenting and family planning education, and immunize children; and providing JOBS services to non-custodial parents.

WAIVERS (IN)

The Clinton Administration approved waivers to implement two welfare reform demonstrations for Indiana.

- **Impacting Families Welfare Reform Demonstration Project (IMPACT) (Approved December 1994)**

  Originally approved as "Manpower, Placement and Comprehensive Training Program.

  Statewide, for up to 12,000 job-ready AFDC adult recipients, measured at any point in time: limits AFDC cash benefits to 24 consecutive months; extends grant diversion to up to 24 months; freezes AFDC benefits for up to 24 months for working recipients at the payment level in effect at entry into employment; increases the AFDC resource limit to $1,500; extends post-employment supportive services (e.g., case management); and increases sanctions for failure to comply with JOBS program requirements. For all AFDC families statewide: eliminates the incremental increase in AFDC benefits for additional children conceived on welfare and does not count such additional children for purposes of the JOBS exemption for the care of a child under age 3; establishes fiscal sanctions for voluntarily terminating employment; requires AFDC applicants and recipients to sign a personal responsibility agreement; eliminates the 100-hour rule for AFDC-UP; requires children to attend school and to be immunized; eliminates the JOBS exemptions for recipients living in rural or hard-to-access areas and those employed 30 or more hours per week; establishes food stamp eligibility periods that are consistent with those in AFDC and Medicaid; for the purposes of determining food stamp eligibility and benefits, disregards child support payments and earnings for a 6-month period following the initiation of employment; and requires Food Stamp Program fair hearing requests to be in writing. Also, in up to 5 counties, the State may implement Emergency Assistance pilots.

- **Impacting Families Welfare Reform Demonstration Project (IMPACT) - Amendments (Approved August 1996)**

  Statewide, amends previously implemented demonstration to impose 24-month limit on AFDC; provide 1 additional month for each 6 months full-time employment; require minor parents to live with a specified relatives and count the relative's income and resources; extend fraud penalties; establish 3 unexcused absences as "unacceptable school attendance" for dependent children; provide one-half the amount otherwise payable for family cap child as a voucher; allow employed AFDC recipient option of receiving child care or an AFDC payment equal to the family's benefit before employment; require establishment of paternity as a condition of eligibility; establish additional conditions of eligibility for AFDC; impose penalties for illegal drug use; subject JOBS volunteers to JOBS sanctions; eligibility test will be 100% of the federal poverty in lieu of 185% of need; expand voluntary quit penalties; and limit transitional child care to 12 months in the period of the demonstration.

throughout which the program is found to be in substantial compliance with such requirements by—

"(i) not less than 1 nor more than 2 percent;

"(ii) not less than 2 nor more than 3 percent, if the finding is the 2nd consecutive such finding made as a result of such a review; or

"(iii) not less than 3 nor more than 5 percent, if the finding is the 3rd or a subsequent consecutive such finding made as a result of such a review.

"(B) DISREGARD OF NONCOMPLIANCE WHICH IS OF A TECHNICAL NATURE.—For purposes of subparagraph (A) 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 State's program operated under part D.

[redacted] 8(a)(7)

"(9) FAILURE TO COMPLY WITH 5-YEAR LIMIT ON ASSISTANCE.—If the Secretary determines that a State has not complied with section 408(a)(1)(B) during a fiscal year, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by an amount equal to 5 percent of the State family assistance grant.

"(10) FAILURE OF STATE RECEIVING AMOUNTS FROM CONTINGENCY FUND TO MAINTAIN 100 PERCENT OF HISTORIC EFFORT.—If, at the end of any fiscal year during which amounts from the Contingency Fund for State Welfare Programs have been paid to a State, the Secretary finds that ~~the expenditures under the State program funded under this part for the fiscal year (excluding any amounts made available by the Federal~~ Government) are less than 100 percent of historic State expenditures (as defined in paragraph (7)(B)(iii) of this subsection), the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by the total of the amounts so paid to the State.

State expenditures on TANF and and additional child care expenditures

"(11) FAILURE TO MAINTAIN ASSISTANCE TO ADULT SINGLE CUSTODIAL PARENT WHO CANNOT OBTAIN CHILD CARE FOR CHILD UNDER AGE 6.—

"(A) IN GENERAL.—If the Secretary determines that a State to which a grant is made under section 403 for a fiscal year has violated section 407(e)(2) during the fiscal year, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by an amount equal to not more than 5 percent of the State family assistance grant.

"(B) PENALTY BASED ON SEVERITY OF FAILURE.—The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance.

"(12) FAILURE OF STATE TO EXPEND ADDITIONAL STATE FUNDS TO REPLACE GRANT REDUCTIONS.—If the grant payable to a State under section 403(a)(1) for a fiscal year is reduced by reason of this subsection, the State shall, during the immediately succeeding fiscal year, expend under the State program funded under this part an amount equal to the total amount of such reductions.

[redacted]

"(b) REASONABLE CAUSE EXCEPTION.—

"(1) IN GENERAL.—The Secretary may not impose a penalty on a State under subsection (a) with respect to a requirement if the Secretary determines that the State has reasonable cause for failing to comply with the requirement.

"(2) EXCEPTION.—Paragraph (1) of this subsection shall not apply to any penalty under paragraph (7) or (8) of subsection (a).

(6, 7, 7, 10, 1–)

"(c) CORRECTIVE COMPLIANCE PLAN.—

"(1) IN GENERAL.—

"(A) NOTIFICATION OF VIOLATION.—Before imposing a penalty against a State under subsection (a) with respect to a violation of this part, the Secretary shall notify the State of the violation and allow the State the opportunity to enter into a corrective compliance plan in accordance with this subsection which outlines how the State will correct the violation and how the State will insure continuing compliance with this part.

"(B) 60-DAY PERIOD TO PROPOSE A CORRECTIVE COMPLIANCE PLAN.—During the 60-day period that begins on the date the State receives a notice provided under subparagraph (A) with respect to a violation, the State may submit to the Federal Government a corrective compliance plan to correct the violation.

"(C) CONSULTATION ABOUT MODIFICATIONS.—During the 60-day period that begins with the date the Secretary receives a corrective compliance plan submitted by a State in accordance with subparagraph (B), the Secretary may consult with the State on modifications to the plan.

"(D) ACCEPTANCE OF PLAN.— A corrective compliance plan submitted by a State in accordance with subparagraph (B) is deemed to be accepted by the Secretary if the Secretary does not accept or reject the plan during 60-day period that begins on the date the plan is submitted.

"(2) EFFECT OF CORRECTING VIOLATION.—The Secretary may not impose any penalty under subsection (a) with respect to any violation covered by a State corrective compliance plan accepted by the Secretary if the State corrects the violation pursuant to the plan.

"(3) EFFECT OF FAILING TO CORRECT VIOLATION.—The Secretary shall assess some or all of a penalty imposed on a State under subsection (a) with respect to a violation if the State does not, in a timely manner, correct the violation pursuant to a State corrective compliance plan accepted by the Secretary.

"(4) INAPPLICABILITY TO FAILURE TO TIMELY REPAY A FEDERAL LOAN FUND FOR A STATE WELFARE PROGRAM.—This subsection shall not apply to the imposition of a penalty against a State under subsection (a)(6).

"(d) LIMITATION ON AMOUNT OF PENALTIES.—

"(1) IN GENERAL.—In imposing the penalties described in subsection (a), the Secretary shall not reduce any quarterly payment to a State by more than 25 percent.

"(2) CARRYFORWARD OF UNRECOVERED PENALTIES.—To the extent that paragraph (1) of this subsection prevents the Secretary from recovering during a fiscal year the full amount of penalties imposed on a State under subsection (a) of this section for a prior fiscal year, the Secretary shall apply any remaining amount of such penalties to the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year.

42 USC 610.

"SEC. 410. APPEAL OF ADVERSE DECISION.

"(a) IN GENERAL.—Within 5 days after the date the Secretary takes any adverse action under this part with respect to a State, the Secretary shall notify the chief executive officer of the State of the adverse action, including any action with respect to the State plan submitted under section 402 or the imposition of a penalty under section 409.

"(b) ADMINISTRATIVE REVIEW.—

"(1) IN GENERAL.—Within 60 days after the date a State receives notice under subsection (a) of an adverse action, the State may appeal the action, in whole or in part, to the Departmental Appeals Board established in the Department of Health and Human Services (in this section referred to as the 'Board') by filing an appeal with the Board.

"(2) PROCEDURAL RULES.—The Board shall consider an appeal filed by a State under paragraph (1) on the basis of such documentation as the State may submit and as the Board may require to support the final decision of the Board. In deciding whether to uphold an adverse action or any portion of such an action, the Board shall conduct a thorough review of the issues and take into account all relevant evidence. The Board shall make a final determination with respect to an appeal filed under paragraph (1) not less than 60 days after the date the appeal is filed.

"(c) JUDICIAL REVIEW OF ADVERSE DECISION.—

"(1) IN GENERAL.—Within 90 days after the date of a final decision by the Board under this section with respect to an adverse action taken against a State, the State may obtain judicial review of the final decision (and the findings incorporated into the final decision) by filing an action in—

"(A) the district court of the United States for the judicial district in which the principal or headquarters office of the State agency is located; or

"(B) the United States District Court for the District of Columbia.

"(2) PROCEDURAL RULES.—The district court in which an action is filed under paragraph (1) shall review the final decision of the Board on the record established in the administrative proceeding, in accordance with the standards of review prescribed by subparagraphs (A) through (E) of section 706(2) of title 5, United States Code. The review shall be on the basis of the documents and supporting data submitted to the Board.

42 USC 611.

"SEC. 411. DATA COLLECTION AND REPORTING.

"(a) QUARTERLY REPORTS BY STATES.—

"(1) GENERAL REPORTING REQUIREMENT.—

"(A) CONTENTS OF REPORT.—Each eligible State shall collect on a monthly basis, and report to the Secretary on a quarterly basis, the following disaggregated case record information on the families receiving assistance under the State program funded under this part:

"(i) The county of residence of the family.

(written to define "disabled"

"(ii) Whether a child receiving such assistance or an adult in the family is disabled.

"(iii) The ages of the members of such families.

"(iv) The number of individuals in the family, and the relation of each family member to the youngest child in the family.

"(v) The employment status and earnings of the employed adult in the family.

"(vi) The marital status of the adults in the family, including whether such adults have never married, are widowed, or are divorced.

"(vii) The race and educational status of each adult in the family.

"(viii) The race and educational status of each child in the family.

"(ix) Whether the family received subsidized housing, medical assistance under the State plan approved under title XIX, food stamps, or subsidized child care, and if the latter 2, the amount received.

"(x) The number of months that the family has received each type of assistance under the program.

"(xi) If the adults participated in, and the number of hours per week of participation in, the following activities:

"(I) Education.

"(II) Subsidized private sector employment.

"(III) Unsubsidized employment.

"(IV) Public sector employment, work experience, or community service.

"(V) Job search.

"(VI) Job skills training or on-the-job training.

"(VII) Vocational education.

"(xii) Information necessary to calculate participation rates under section 407.

"(xiii) The type and amount of assistance received under the program, including the amount of and reason for any reduction of assistance (including sanctions).

"(xiv) Any amount of unearned income received by any member of the family.

"(xv) The citizenship of the members of the family.

"(xvi) From a sample of closed cases, whether the family left the program, and if so, whether the family left due to—

"(I) employment;

"(II) marriage;

"(III) the prohibition set forth in section 408(a)(7);

"(IV) sanction; or

"(V) State policy.

w/ respect to <20, whether indiv is parent of child

"(B) USE OF ESTIMATES.—

SAMPLES

"(i) AUTHORITY.—A State may comply with subparagraph (A) by submitting an estimate which is obtained through the use of scientifically acceptable sampling methods approved by the Secretary.

"(ii) SAMPLING AND OTHER METHODS.—The Secretary shall provide the States with such case sampling plans and data collection procedures as the Secretary

(3) Isolated, non-recurring problems of minimal impact that are not indicative of a systemic problem.

(b) A State may also use the additional factors for claiming reasonable cause for failure to satisfy the five-year limit at §274.3 of this chapter and to meet the minimum participation rates at §271.52 of this chapter.

§272.6 What if a State does not demonstrate reasonable cause?

(a) A State may accept the penalty or enter into a corrective compliance plan that will correct or discontinue the violation within 12 months 3 mos in order to avoid the penalty if:

(1) A State does not claim reasonable cause; or

(2) We find that the State does not have reasonable cause.

(b) A State that does not claim reasonable cause will have 60 days from receipt of our notice described in §272.4(a) to submit its corrective compliance plan.

(c) A State that unsuccessfully claimed reasonable cause, will have 60 days from the date it received our second notice, described in §272.4(f), to submit its corrective compliance plan.

(d) The corrective compliance plan must include:

(1) An analysis of why the State did not meet the

requirements;

(2) A description of how the State will correct or discontinue, as appropriate, the violation in a timely manner; and

(3) The actions, outcomes and time line the State will undertake to assure compliance.

(e) During the 60-day period following our receipt of the State's corrective compliance plan, we may request additional information and consult with the State on modifications to the plan.

(f) A corrective compliance plan is deemed to be accepted if we take no action during the 60-day period following our receipt of the plan. Stat

(g) We will not impose a penalty against a State with respect to any violation covered by a corrective compliance plan that we accept if the State corrects or discontinues, as appropriate, the violation within the period covered by the plan. This period must be no longer than 12 months from the date the State received our notice of the violation.

(h) We will assess some or all of the penalty if the Statute State fails to correct or discontinue the violation pursuant to its corrective compliance plan in a timely manner. If the violation has not been fully corrected or discontinued, we may reduce the amount of the penalty based on one or more of the following situations:

(1) The State expended more resources toward

newsard waste - Elena

eliminating the violation than it was committed to expend under the corrective compliance plan;

(2) Although it did not achieve these commitments, the State made considerable progress in meeting the actions and outcomes it identified in its corrective compliance plan; and

(3) The State encountered circumstances that could not have been anticipated at the time the corrective compliance plan was developed.

<u>§272.7 How can a State appeal our decision to take a penalty?</u>

(a) We will formally notify the chief executive officer of the State of an adverse action (i.e., the reduction in the SFAG) within five days after we determine that a State is subject to a penalty under parts 271 - 275 of this chapter.

(b) The State may file an appeal of the action, in whole or in part, to the HHS Departmental Appeals Board (the Board) within 60 days after the date it receives notice of the adverse action. The State must include the brief and all supporting documents with its appeal when it is filed. The State must send a copy of the appeal to the Office of the General Counsel, Children, Families and Aging Division, Room 411-D, 200 Independence Avenue, S.W., Washington, D.C.

"(c) NONDISCRIMINATION PROVISIONS.—The following provisions of law shall apply to any program or activity which receives funds provided under this part:

"(1) The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.).

[redacted]

"(2) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

"(3) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

"(4) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

Insert

"(d) ALIENS.—For special rules relating to the treatment of aliens, see section 402 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

C 609.

"SEC. 409. PENALTIES.

[redacted]

"(a) IN GENERAL.—Subject to this section:

"(1) USE OF GRANT IN VIOLATION OF THIS PART.—

"(A) GENERAL PENALTY.—If an audit conducted under chapter 75 of title 31, United States Code, finds that an amount paid to a State under section 403 for a fiscal year has been used in violation of this part, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year quarter by the amount so used.

"(B) ENHANCED PENALTY FOR INTENTIONAL VIOLATIONS.—If the State does not prove to the satisfaction of the Secretary that the State did not intend to use the amount in violation of this part, the Secretary shall further reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year quarter by an amount equal to 5 percent of the State family assistance grant.

"(2) FAILURE TO SUBMIT REQUIRED REPORT.—

"(A) IN GENERAL.—If the Secretary determines that a State has not, within ~~1 month~~ 45 days after the end of a fiscal quarter, submitted the report required by section 411(a) for the quarter, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by an amount equal to 4 percent of the State family assistance grant.

"(B) RESCISSION OF PENALTY.—The Secretary shall rescind a penalty imposed on a State under subparagraph (A) with respect to a report if the State submits the report before the end of the fiscal quarter that immediately succeeds the fiscal quarter for which the report was required.

"(3) FAILURE TO SATISFY MINIMUM PARTICIPATION RATES.—

"(A) IN GENERAL.—If the Secretary determines that a State to which a grant is made under section 403 for a fiscal year has failed to comply with section 407(a) for the fiscal year, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by an amount equal to not more than the applicable percentage of the State family assistance grant.

"(B) APPLICABLE PERCENTAGE DEFINED.—As used in subparagraph (A), the term 'applicable percentage' means, with respect to a State—

"(i) if a penalty was not imposed on the State under subparagraph (A) for the immediately preceding fiscal year, 5 percent; or

"(ii) if a penalty was imposed on the State under subparagraph (A) for the immediately preceding fiscal year, the lesser of—

"(I) the percentage by which the grant payable to the State under section 403(a)(1) was reduced for such preceding fiscal year, increased by 2 percentage points; or

"(II) 21 percent.

penalty or grant – Elena

"(C) PENALTY BASED ON SEVERITY OF FAILURE.—The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance, and may reduce the penalty if the noncompliance is due to circumstances that caused the State to become a needy State (as defined in section 403(b)(6)) during the fiscal year.

"(4) FAILURE TO PARTICIPATE IN THE INCOME AND ELIGIBILITY VERIFICATION SYSTEM.—If the Secretary determines that a State program funded under this part is not participating during a fiscal year in the income and eligibility verification system required by section 1137, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by an amount equal to not more than 2 percent of the State family assistance grant.

"(5) FAILURE TO COMPLY WITH PATERNITY ESTABLISHMENT AND CHILD SUPPORT ENFORCEMENT REQUIREMENTS UNDER PART D.—Notwithstanding any other provision of this Act, if the Secretary determines that the State agency that administers a program funded under this part does not enforce the penalties requested by the agency administering part D against recipients of assistance under the State program who fail to cooperate in establishing paternity or in establishing, modifying, or enforcing a child support order in accordance with such part and who do not qualify for any good cause or other exception established by the State under section 454(29), the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year (without regard to this section) by not more than 5 percent.

"(6) FAILURE TO TIMELY REPAY A FEDERAL LOAN FUND FOR STATE WELFARE PROGRAMS.—If the Secretary determines that a State has failed to repay any amount borrowed from the Federal Loan Fund for State Welfare Programs established under section 406 within the period of maturity applicable to the loan, plus any interest owed on the loan, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year quarter (without regard to this section) by the outstanding loan amount, plus the interest owed on the outstanding amount. The Secretary shall not forgive any outstanding loan amount or interest owed on the outstanding amount.

"(7) FAILURE OF ANY STATE TO MAINTAIN CERTAIN LEVEL OF HISTORIC EFFORT.—

February 28.

Subpart E -- State Work Penalties

§271.50 What happens if a State fails to meet the participation rates?

(a) If we determine that a State did not achieve one of the required minimum work participation rates, we must reduce the SFAG payable to the State.

(b)(1) If there was no penalty for the preceding fiscal year, the penalty for the current fiscal year is five percent of the adjusted SFAG.

(2) For each consecutive year that the State is subject to a penalty under this part, we will increase the amount of the penalty by two percentage points over the previous year's penalty. However, the penalty can never exceed 21 percent of the State's adjusted SFAG.

(c) We impose a penalty by reducing the SFAG payable for the fiscal year that immediately follows our final determination that a State is subject to a penalty and our final determination of the penalty amount.

§271.51 Under what circumstances will we reduce the amount of the penalty below the maximum?

(a) We will reduce the amount of the penalty based on the degree of the State's noncompliance.

(b) In determining the size of any reduction, we will 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).

(1) 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.

(2) We will take into consideration evidence documenting the severity of the failure, whether the State missed one or both rates, and whether the State has failed to meet the rate in prior years.

(3) We will consider information provided to us through reports filed under part 275 of this chapter.

(c)(1) We may reduce the penalty if the State failed to achieve a participation rate because--

(i) It meets the definition of a needy State, specified at §270.30 of this chapter, or

(ii) Noncompliance is due to extraordinary circumstances such as a natural disaster or regional recession.

(2) In determining noncompliance, we will consider any objective evidence of extraordinary circumstances that the

State chooses to submit.

(d)(1) In accordance with the procedures specified at §272.4 of this chapter, a State may dispute our determination that it is subject to a penalty.

(2) A State may also use the procedures specified at §272.4 of this chapter to provide supplemental information demonstrating that it made a good-faith effort to achieve its work participation rates or faced extraordinary circumstances and should be subject to a smaller penalty.

<u>§271.52 Is there a way to waive the State's penalty for failing to achieve either of the participation rates?</u>

(a) We will not impose a penalty under this part if we determine that the State has reasonable cause for its failure.

(b) In addition to the general reasonable cause criteria specified at §272.5 of this chapter, a State may also submit a request for a reasonable cause exemption from the requirement to meet the minimum participation rate based on the following criteria:

(1) We will determine that a State has reasonable cause if it demonstrates that its failure to meet the work participation rates is attributable to its provision of good cause domestic violence waivers.

(i) A State may demonstrate this reasonable cause by

Caseload Reduction

3 months within the preceding 12-month period (whether or not consecutive).

"(2) 2-PARENT FAMILIES.—

"(A) AVERAGE MONTHLY RATE.—For purposes of subsection (a)(2), the participation rate for 2-parent families of a State for a fiscal year is the average of the participation rates for 2-parent families of the State for each month in the fiscal year.

"(B) MONTHLY PARTICIPATION RATES.—The participation rate of a State for 2-parent families of the State for a month shall be calculated by use of the formula set forth in paragraph (1)(B), except that in the formula the term 'number of 2-parent families' shall be substituted for the term 'number of families' each place such latter term appears.

"(3) PRO RATA REDUCTION OF PARTICIPATION RATE DUE TO CASELOAD REDUCTIONS NOT REQUIRED BY FEDERAL LAW.—

Caseload Reduction

"(A) IN GENERAL.—The Secretary shall prescribe regulations for reducing the minimum participation rate otherwise required by this section for a fiscal year by the number of percentage points equal to the number of percentage points (if any) by which—

"(i) the average monthly number of families receiving assistance during the immediately preceding fiscal year under the State program funded under this part is less than

why OK to do C-O full

"(ii) the average monthly number of families that received aid under the State plan approved under part A (as in effect on September 30, 1995) during fiscal year 1995.

The minimum participation rate shall not be reduced to the extent that the Secretary determines that the reduction in the number of families receiving such assistance is required by Federal law.

"(B) ELIGIBILITY CHANGES NOT COUNTED.—The regulations required by subparagraph (A) shall not take into account families that are diverted from a State program funded under this part as a result of differences in eligibility criteria under a State program funded under this part and eligibility criteria under the State program operated under the State plan approved under part A (as such plan and such part were in effect on September 30, 1995). Such regulations shall place the burden on the Secretary to prove that such families were diverted as a direct result of differences in such eligibility criteria.

"(4) STATE OPTION TO INCLUDE INDIVIDUALS RECEIVING ASSISTANCE UNDER A TRIBAL FAMILY ASSISTANCE PLAN.—For purposes of paragraphs (1)(B) and (2)(B), a State may, at its option, include families in the State that are receiving assistance under a tribal family assistance plan approved under section 412.

"(5) STATE OPTION FOR PARTICIPATION REQUIREMENT EXEMPTIONS.—For any fiscal year, a State may, at its option, not require an individual who is a single custodial parent caring for a child who has not attained 12 months of age to engage in work, and may disregard such an individual in determining the participation rates under subsection (a) for not more than 12 months.

<1
not count

"(c) ENGAGED IN WORK.—

"(1) GENERAL RULES.—

"(A) ALL FAMILIES.—For purposes of subsection (b)(1)(B)(i), a recipient is engaged in work for a month in a fiscal year if the recipient is participating in work activities for at least the minimum average number of hours per week specified in the following table during the month, not fewer than 20 hours per week of which are attributable to an activity described in paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (12) of subsection (d), subject to this subsection:

10-3-97

1. Section 270.30, p. 323-324. ~~Why doesn't HHS define "temporary" in this definition?~~ Does the individual have to participate in "appropriate services plan designed to provide safety and lead to work" for a certain number of hours per week? If so, why not? Domestic

This section also proposes to grant good cause waivers for failure to meet the work rates if that failure is attributable to a state's provision of assistance to refugees. On what basis and for what reason does HHS make this proposal? Does this proposal exclude all refugees from the work participation rates? What percentage of two parent TANF families would fall under this definition?

2. 270.30 (p.322) (also referred to on p. 353)
Issue: definition of "assistance: excluded from the definition is one-time, short-term assistance paid within a 90-day period
Problem: the 90-day time period is too long, and inconsistent with prior language for Emergency Assistance
Proposed Fix: reduce period from 90 days to 30 days

3. (p. 323)
Issue: definition of "good cause domestic violence waiver": "temporary" waiver from program requirements
Problem: the term "temporary" not being defined can allow states to use the waiver for a significant part of its caseload for an indefinite period of time
Proposed Fix: the regs should define "temporary" (i.e. 90/120 days or less)

4. 270.30, p.~~324,325~~ 323-24 Why is this regulated only in this definitional section. It would appear that we should at least outline the recordkeeping/reporting requirements to ensure enforcement authority also - good cause

5. **271.10/page 333**: Is there any way to enforce Sec. 402 work requirements (work after 2 years, community service after 2 weeks)? Or request information from states? And are states totally free to define work for purposes of Section 402?

6. (271.15). P. 337 I realize this is the language from the statute, but I've always found it confusing. Number one (appropriate child care within a reasonable distance) seems to encompass numbers two (informal child care by a relative) and three (appropriate and affordable formal child care). Wouldn't "appropriate and affordable child care within a reasonable distance" be sufficient (i.e., in lieu of the three reasons)? Dropped

7. Section 271.20, p. 337-338; outlines the general work participation requirements. Shouldn't subsection (a) stating the two separate work participation rates use the phrase "work activities as described at section 271.30" rather than "work or training"?

8. Section 271.22, p. 339-340; In outlining the overall participation rate calculation, this section says that a family that receives assistance for only part of the month may be counted as participating for an entire month if the adult is engaged in work for the minimum average number of hours in each full week that the family receives assistance in that month. What is the HHS's reasoning in proposing to allow this here and in section 271.24?

9. 271.24(d)/page 341: HHS says that a family with a disabled parent does not count as a two-parent family. Is there a definition of "disabled"?

10. 271.24, p. 340-341; In outlining the two parent participation rate calculation, this proposed regulation says that a family that includes a disabled parent shall not be considered a two-parent family for the purpose of the participation rate. Does this regulation define "disabled parent"? If not, why not? Similarly, why not define "disabled" and "severely disabled" in section 271.32(c)(1)?

11. §271.33(b) (p.346) technicals fixed
Issue: special requirements concerning educational activities in determining monthly participation activities
Problem: does the statute allow married teen heads of households to count school attendance or education related to employment to count toward the work requirement?
Proposed Fix: remove "married"; applies only to single teen heads of households

12. (271.34) P. 348. In item (c), should "in any fiscal year" be added after "weeks"?

13. 271.40, p. 348; defines the basic caseload reduction calculation. Does this calculation ensure that any caseload reduction for which a state gets credit is not due the state having transferred beneficiaries from TANF into a separate state program? Does this prevent after-the-end-of-the-fiscal year gaming, such as transfers into state programs not counted for TANF MOE, in order to increase the caseload reduction credit? Elena

14. 271.40 (p.349)
Issue: reducing state participation rates with caseload reductions
Problem: need to clarify language: "the minimum participation rate the State must meet for the following year will decrease by the number of percentage points the ** caseload fell in comparison to the FY 1995 caseload."
Proposed Fix: insert "average monthly" where the asterisks appear

15. *Issue*: definition of "family" in discussion of caseload reduction credit
Problem: since there is no definition of "family" in the bill or regs, a caseload reduction credit which accounts for a reduction in families might allow states to exclude from the calculation any non-"family" units receiving assistance.
Proposed Fix: either change "families" to "cases" or "units," or define "families" for this purpose to include units such as child-only cases, etc. (§271.43 refers to "cases receiving assistance")

16. 271.41 (p.349)
Issue: determining/calculating the caseload reduction factor
Problem: no clear definition for calculating caseload reduction factor
- the regulations effectively use a reasonable test, "based on an established set of criteria" (quality

of data, adequacy of documentation, completeness of list of changes in eligibility) ==> how are quality, adequacy or completeness measured?
- no specifications on how data is to be submitted (in what form) ==> a state must submit ... "the methodology and data that it used to calculate its caseload reduction factor"
Proposed Fix: the regulations must precisely define the calculation for the reduction factor, what data states must submit, and in what form the data is to be submitted
- the regulations should also require states to provide brief descriptions of each program which they use in determining their caseloads

17. 271.41, p. 350; provides states with the option of using overall caseload reduction as the basis for a credit to reduce the two parent work rates. On what basis and for what reason does HHS want to do this? Doesn't this simply give the state the option of choosing the number which will give it the largest credit?

18. 271.41, p. 349,350; outlines the information that the State must submit to qualify for the Caseload Reduction Factor. HHS should consider developing a form to facilitate the submission of this information. This will promote consistency and completeness in the data provided and may reduce the need for HHS to follow up with States on the "reasonableness" of the data.

19. 271.41(d)/ page 350-51: Should reg be more specific on whether caseload reduction factor methodology is acceptable? ("~~quality of data~~, adequacy of documentation, ~~and completeness of~~ the list of changes in eligibility") Maybe it should use a form, too?

20. 271.41(d)(2)/page 351: Is requirement that states respond to HHS within 2 weeks if they request additional info unreasonable? Should it be a month, given timelines HHS has given itself (3 months to review the methodology)?

21. Section 271.42, p. 352; lists "drug testing" as a specific eligibility change for which states must factor out caseload reductions for purposes of the credit. Doesn't the general category of "changes in requirements based on residency, age or other demographic or categorical factors" include this since persons found to be using drugs would be a category? This section also lists "fingerprinting" as an eligibility change. Why is this not considered an anti-fraud measure?

22. Section 271.42, p. 352; allows states that have expanded eligibility for assistance since FY 1995 to get a caseload reduction credit if its caseload would have gone down in absence of the eligibility expansion. On what basis and for what reason does HHS want to do this? 26

23. Section 271.42(c), p.352. HHS invites States that believe that some or all of the families in a separate State program should be excluded from the calculation of the caseload reduction factor, based on the type of families served or the nature of the benefits provided, to substantiate such a claim with data. What does HHS contemplate would be a basis for exclusion from the factor? 23 + 27

24. 271.42 (p.351)
Issue: effect of eligibility changes on caseload reduction
Problem: states are only required under the proposed regulations to submit a "complete listing of

eligibility changes" (as per §271.41(b)(2)), but apparently not the number of recipients dropped due to each of the changes
Proposed Fix: require that states also submit the number of recipients dropped from the rolls due to each of the listed eligibility changes

25. 271.42(a)/ page 351-52: On draft's list of what constitutes eligibility changes for the purpose of factoring out eligibility from the caseload reduction credit: how would HHS know if there were waiting lists for assistance? What is the rationale for including sanctions that terminate a family's grant on the list?

26. 271.42(b)/ page 352: Draft proposes that states that have expanded eligibility get credit for caseload reductions that would have occurred in the absence of the expansion. Does HHS have authority to do this? Won't these adjustments be very hard to isolate and identify? zz

27. 271.42(c)/page 352: HHS proposes that if a state wants to exclude families in a separate state program from the caseload reduction credit, it must substantiate its claim. Why allow this possibility or highlight it? (And don't MOE programs have to use the same definition of families anyway?)
eligible

not the big one *

28. 271.43(b) (p.352)
Issue: definition of "cases receiving assistance" for caseload reduction credit
Problem: the regs suggest that certain types of assistance (that can count towards MOE in a separate state program) can be excluded from the defn of cases receiving assistance for the purpose of calculating caseload reduction credits
==> this could result in states transferring TANF individuals to a separate state program for services not permitted under TANF (but countable towards MOE under the separate program), and thereby counting them as caseload reductions
Proposed Fix: these expenditures should not be excluded for calculating caseload reductions (they are already excluded as types of TANF assistance)

supposed to be both (if they know)

29. Section 271.43, p. 352-353; for purposes of calculating the caseload reduction credit, requires states to compare a given year's data to fiscal year 1995 excluding those on the caseload receiving only non-monetary services or only one-time, short-term assistance. Does HHS expect states to know how many in their fiscal year 1995 caseload received such assistance, i.e, assistance for less than 90 days? Isn't there a possibility that this definition combined with the lack of FY 1995 data will result in awarding a state too large a caseload reduction credit?
STATE PENALTIES

30. (271.44). P. 354 February 28 could be a bit late, from a planning standpoint, to make the decision on a State's proposed caseload reduction factor. Is there any way to move this up?

31. 271.51/page 355: Draft says "We will reduce the amount of the penalty based on the degree of the state's noncompliance." Should reg define the term "degree of noncompliance"?

page 357: Under what circumstances would HHS reject a corrective compliance plan? Shouldn't this be defined?

32. 271.51(b)(1) (p.355)
Issue: penalty for noncompliance with participation rate; separate state programs
Problem: the regulation allows for a reduction in the penalty for a state not meeting participation rates, given the state's efforts "to engage recipients of assistance in separate state programs in work activities." The problem here is twofold: ?? Memo
(1) it doesn't prevent a state from meeting the participation rate by transferring individuals into a separate state program;
(2) what does the quoted phrase mean? ==> does this mean its okay for a state to place all of its hardest to employ recipients into a separate state program so long as the state is making an "effort" to "engage" them...?
Proposed Fix: something closer to ensuring that states don't simply transfer the hardest to employ into separate state programs in order to meet participation rates

Diana to add?

33. 271.51 p. 354-356; states that HHS will reduce the amount of the penalty for failure to meet work participation rates based on the degree of noncompliance, as required by the statute. Is there any basis in the statute for providing a reduction due to "good faith efforts" made to achieve the rates? Does HHS consider "good faith efforts" a measure of degree of noncompliance?

The draft regulation states that HHS will look beyond TANF to efforts a state is making to put individuals in separate state programs to work. Shouldn't this be revised to make clear that a state will not receive a good cause exception unless it proves it has not used a separate state program to escape the work participation rates? = This is it.

strong enough? (exc all penalties?)

In addition, the draft regulation states that in deciding whether or not to reduce the amount of the penalty, HHS will take into consideration "whether a state has missed one or both rates." On what basis and for what reason does HHS make this proposal?

34. Section 271.52, p. 356-357; states that the Secretary will grant reasonable cause to a state that fails to meet the work participation rates due to its provision of good cause domestic violence waivers. Doesn't this provision assume that all of those receiving such waivers would have otherwise been working, instead of the 25 to 50 percent required by law? Why not grant a state good cause only for those individuals who would otherwise have been working by subtracting the number of good cause domestic violence waivers from the denominator of the participation rate?

35. Section 271.54, p. 357; states that if HHS determines that a state has failed to penalize individuals for not working as required in section 407(e), then the agency shall reduce a state's grant. What information will HHS systematically gather in order to know whether a state is violating section 407(e)? What kind of proof must the state accept from a single custodial parent who is unable to obtain needed child care?

36. 271.60/page 359 (also applies to 271.4(e)): Draft says that the provisions of section 407 of the law do not apply to states that have an approved waiver to the extent those provisions are inconsistent with the waiver. Why does the draft limit potential inconsistencies to section 407 of the law?

Section 407 includes work participation rates, the caseload reduction credit, hours of work required, the definition of work activities, the sanction for refusal to work, and nondisplacement provisions. What constitutes a provision for the purposes of this section? May a state opt out of or modify the work participation rates, but still take advantage of the caseload reduction credit?

A copy?

How will HHS determine what it will consider inconsistent? HHS asked states to identify those inconsistencies in their state TANF plans, but states varied in the thoroughness of their responses. Does HHS have a compendium of these responses, including an evaluation of whether in fact it considers them to be inconsistencies? Does HHS plan to survey them again? How and when will HHS notify states that they their proposed inconsistencies are accepted or not accepted? What is the penalty for a state that continues a waiver provision that is not inconsistent with the law but differs from the law? List ?

Do any states hv waivers w/ wk particip rates?

37. 271.60(b)(1) Which states have waivers with work activities that differ from current law? List
What are examples of waivers with provisions of prior law that you would still consider inconsistent even though they did not require waivers (see definition of waiver in 270.30)? List the diffs

Do any states have waivers with inconsistent "minimum average hours of work per week necessary to be 'engaged in work' for a month" (271.60(b)(2))? Which ones? Why wouldn't all such cases be prohibited as inconsistencies under 271.60(b)(2)(ii) because they were increases in work requirements over prior law?

What is the draft's legal basis for 271.60(c), which prohibits waiver inconsistencies that affect the denominator of the participation rates?

38. 271.60(b) - (d) and 274.1(e)- (i)/page 391-92: How will HHS monitor these provisions? Will HHS monitor states to ensure that they are following their own waiver policies? How?

39. 271.60(b)/page 359: Draft lists areas where waiver inconsistencies will be recognized. Why list these areas?

40. 271.60(b)(2)(ii)/page 360: "Prior law standards are not part of the waiver...." Seems unclear. (HHS informs us they may rewrite this one.)

41. 271.60(c)/page 360: No prior law exemptions recognized as part of the waiver with respect to denominator of participation rates: What would be an example of this?

42. 271.70/page 360-61: Non-displacement: (b) says "A state must establish and maintain a grievance procedure to resolve complaints of alleged violations of this displacement rule." Could draft add more specificity on what is required in a grievance procedure? Should it?

43. (272.1). P. 363 In item 12 (and elsewhere--e.g., item (e)(1) on page 364), the State is penalized for not spending additional funds to replace reductions due to penalties, but the question of "additional relative to what?" is not answered. The prior year's level? The TANF MOE level? I realize the statute is if anything more unclear on this point. Also, the regulations call for the State to expend additional funds in the same fiscal year; the statute appears to require the additional spending in the immediately succeeding fiscal year.

44. Section 272.3, p. 365
This section provides how HHS will access penalties and the data that will be used as a basis for determining when to assess the penalty. This appears to be THE regulatory section on oversight. The rule specifies that it will rely on non-financial data reports to enforce only two regulatory requirements: five year limit and participation rates. HHS will rely on the Single Audit Act process to enforce misuse of TANF funds; IEVS participation; paternity establishment and child support requirements and the child care exception for children under six. Yet, the rule includes a larger scope of regulatory requirements, that are theoretically enforceable by HHS that do not necessarily involve a penalty. Are all other requirements in the rule non-enforceable? It would appear that HHS needs to build in broader regulatory authority to enforce these requirements through the use of data reported.

How does the Single Audit process work? Who conducts the audit and how often? How will auditors, for example, enforce the child care exception?

For each penalty, list what data you would have to judge enforce it.

45. 272.3(b) and (c)/page 366: Data in state reports "are subject to our verification in accordance with 275.6," which is requirement to send data electronically. Is this right section to reference?

46. 272.6(h)/pages 370-71: The criteria for reducing the penalty if the corrective compliance plan fails is vague. When would/would not HHS reduce a penalty under this circumstance? Add calendar

~~Add to Compliance!~~

47. Section 272.6, p. 369-371; outlines the types of information a state must submit as part of a corrective action plan. How will HHS determine if actions, outlines, and time limits in the plan are acceptable? Shouldn't this section state clearly that penalties will be immediately imposed on a state that does not submit an acceptable corrective action plan?

This proposal allows corrective action plans to last for up to 12 months. How did HHS decide upon that limit? Doesn't a 12 month limit mean a state could be continuously operating under a corrective action plan (i.e., enter into one for each 12 month fiscal year)?

This section also allows HHS to reduce the penalty in one or more circumstances in which the state has not corrected the failure pursuant to its corrective action plan (i.e., if the state expended more resources, made considerable progress, or encountered unanticipated circumstances). On what basis and for what reason does HHS make this proposal?

48. (273.2) P. 376. In item (b)(1), are those four categories exhaustive; i.e., are there individuals who are lawfully present but do not fit into the first four categories? Also, the language should be changed (e.g., by adding "in the case of" after "less than one year or" and before "aliens"), to clarify that only aliens not lawfully present need a State law affirmatively providing benefits in order to remain eligible.

49. 273.2(b)(1)/page 376: what immigrant categories does this list of eligible families ~~leave out?~~ For which groups must the ~~state enact a~~ law that "affirmatively provides" ~~for~~ services?

50. 273.2(d)/page 377: Why is definition of assistance different for MOE purposes?

51. (273.2) P. 377. What is the rationale for item (d)? Why further broaden the definition of assistance for MOE purposes?

52. 273.2(a)(5) (p.375)
Issue: definition of "administrative costs"
Problem: though limited to 15 percent of total amt of countable expenditures, the regs provide no definition of "administrative costs"
Proposed Fix: for program integrity and to ensure expenditures on benefits and services, "administrative costs" need to be defined here

53. 273.2(d) (p.377)
Issue: state expenditures counting towards MOE
Problem: this section provides that assistance, for MOE purposes, can be ongoing, short-term or one-time, and may include services; this is not the case if part of a TANF program
Proposed Fix: specify that, to count towards MOE, TANF program expenditures must abide by the "assistance" defn in §270.30; expenditures in separate state programs need not meet this defn, but also cannot count towards contingency fund MOE

54. 273.3 (p.377)
Issue: child care expenditures
Problem: the reg references §418(a)(2)(C) of the Act -- is this the correct reference?
Proposed Fix: if the cite is incorrect, it needs to be fixed; otherwise further specify where this is

55. 273.5/page 378: Expenditures of separate state programs count in their entirety if they "were previously authorized and were allowable under section 403 of prior law." If not, then only the amount in excess of that expended in 1995 counts. ~~This is a confusing area of law that reg is trying to make clearer, I think.~~ Is this clear enough?

CS issue 1 of 3

56. 273.5 (p.378)
Issue: expenditures in separate state programs
Problem: the regulation provides specific requirements to count separate state program expenditures for MOE; no indication here, though, that child support rights must be assigned in order for the expenditure to count
Proposed Fix: include as a requirement (here or some other place) that child support rights be assigned in order for expenditures in these programs to count as MOE (this is consistent w/ the January ACF guidance (PA-97-1), which provides that, "as part of the regulatory requirements .. we will seek to incorporate requirements for States to report child support information for families in State MOE programs, as well as TANF.)

or enforce is CS reg

It would ~~Will we have data~~ that data to know wh st are shifting people to sep st progs in order to retain what wld

57. (273.7). P. 380 Does item 1 encompass TANF activities, or only those in separate State programs.

58. 273.7/page 379: Will the data from this annual addendum be sufficient to allow us to judge if states are meeting work participation rates for state-only programs?

59. (273.13) P. 383. Who defines "reasonable"? This item continues to be a problem.

60. (273.22). P. 386 Re: (c)(2), is there a definition of "qualified principal residence" in the regulations?

61. 274.1(a)(3) (p.389)
Issue: time excluded from 5-year time limit
Problem: there is a reference to §403(a)(5) of the Act, which appears not to be in the Act
Proposed Fix: fix the reference or further specify.

62. 274.1(e)/page 390: Before "was approved by July 1, 1997", shouldn't it say "was submitted before 8/22/96 and", so it will not be more expansive than the statute?

63. 274.1(c)(2) (p.389)
Issue: 20 percent exception to 5-year limit
Cynthia
Problem: the reg includes a list of specific instances which allow a state to extend assistance past the 5-year limit; is this list supposed to constitute the conditions that qualify under the "good cause family violence waiver"?
Proposed Fix: if so, perhaps this should serve as a notice of what is included under the family violence waiver option

64. (274.1) P. 389. Should the language in item © be changed to clarify that the maximum number of extensions is an average monthly number (i.e., the number of extensions each month will be averaged and compared to the average monthly caseload).

Email
65. (274.1) P. 391. Is it possible for an adult to reach the Federal time limit without reaching a State time limit (e.g., a 24 in 48 time limit)? If so, how would this be handled?

66. 274.1(e)/page 390: How many waivers granted by HHS fall into the second category in the law -- submitted before law passed and granted before 7/97?

67. 274.1(g) and (h)/page 391-92: What is the difference between (g) and (h)? They both apply to extensions, and yet they lay out separate procedures.

Do any state waivers have time limits in excess of 60 months? Which states have waivers with extension and exemption policies more liberal than current law that you believe qualify as inconsistencies?
Dist w/ Feating

68. (274.74) P. 400-401. Why is the clause "then multiplied by 1/12 times the number of months the State received contingency funds" needed? I know the language is from the statute, but it appears to make little sense, given that the paragraph is discussing funds paid and expended for a fiscal year.

69. 275.3(B)(1) (p.409)
Issue: TANF data report -- disaggregated data
Problem: the reg refers to data reporting on adults, "including non-custodial parents who are

participating in work activities"
- this does not seem totally consistent w/ the preamble (p.153) which allows for services to non-custodial parents to "engage in activities such as work or educational activities, counseling, or parenting and money management classes."
Proposed Fix: a couple of issues need to be resolved here:
- are all of these activities listed in the preamble intended to be included as TANF activities => if so, do we want that and don't we need data on more than just the work activities?
- should non-custodial parents be specifically mentioned in the defn of "TANF family" in §275.2(b)?

70. 275.3(b)(1)/page 409: For how long must states report on those no longer receiving TANF assistance?

71. 275.8(b)/page 417: Is there any way the reporting penalty could apply to ~~MOE~~ data report?

72. 275.9(b)/page 418: Must state file separate state MOE report annually or quarterly? Annual attachment to quarterly report?

73. Appendix A: TANF Data Report, Section One. Disaggregated Data for Families Receiving TANF
It is unclear why HHS has chosen to add certain breakout information and how this data will be used. Is it for monitoring purposes, .i.e. accuracy in accurate citizenship/qualified alien status? If so, the authority to use this data for monitoring must be built into the regulation. If not, please present a justification for the need for additional reporting requirements not specified in the law. We have identified some examples below:

#13 Why do we need detailed break-out on type of subsidized housing?
#15 - Why do we need a break-out on type of Food Stamp subsidy?
#51-55 - Where does the statute specify five types of disability benefits?
#61- Why do we need nine break-outs of citizenship status? The law only requires "citizenship."
#57-60; p. 267: The preamble notes that HHS needs this for time limits for receipt of assistance. Is this the correct reference. The connection between these data elements and time limits is not obvious.

74. Appendix B: TANF Data Report, Section Two. Disaggregated Data for Families No Longer Receiving TANF
Why do we need 46 data elements on families no longer on assistance? What is the time frame for this, i.e. those that have left that month? (Page 268). The law, Section 411 (a)(xvi) includes only five items on why they left the roles - is this the basis for Section 2? If we already have electronic information on these families through reporting on Section One, why would we need to have States do a sample to provide all the data again? If we see a closure flag on a file, we could do this analysis with the existing data we will maintain at the Federal level.

Finally, we note that even State MOE programs would be subject to the 46 data element requirement. This may serve as a disincentive to report on the MOE programs.

75. p. 277. Please provide the OMB number to the interim financial reporting form approved by OMB.

76. p. 300. HHS should include an estimate of annual Federal expenditures on the TANF program in this section..

OF to give cite

77. Is it possible for reg to prohibit retroactive reclassification of families as state-only?

TANF SYSTEMS REPORT

We do not believe that the statute requires HHS to include a recommended option in the HHS Report on Data Processing under the Temporary Assistance for Needy Families Program. The Report provides an excellent summary of the options that Congress may choose from to build on the automated data processing systems of the States to establish a system with the capabilities described in subsection (a)(2). However, without additional guidance from Congress on a variety of factors including how such a mechanism should be administered, and a funding source, it is premature to recommend any of the viable options.

Retroactive State-only not OK?

VS - wk from Friday cob Wed

Comment: new waivers st's must be submtd bef 8/96 p390

Issues in TANF Reg

- Waivers -- when does grandfather clause trump welfare law? Time limits? Definition of work?
- State-only programs -- Which federal rules apply to state-only programs as well? Which do not?
- Caseload reduction credit -- How easy/hard does HHS make it? → set define of family
- Work requirements -- def. of work; job search annual; voc ed now settled?
- MOE --
- Data reporting --
- Penalties -- Generally right balance? Need a list
- Form/length of the rule

Data on sep st prog

too literal on def fam, chrdy, def. asstce

+ dom viol
+ ch care <6

Definition of assistance
Definition of administrative costs
Displacement
Contingency fund
(Territories)
Dom viol.

What's not defined admin cost - wk reqs

Anti-assistc not mtg def'd asstce ...
(<90 days ... mon.)

work, penalties, data

Penalty for comm... 2 most wk 2 yrs?

Can't ask for st only progr data (for MOE) - hv incentives to rpt c-l data to us on this

2 parent rate probs → state reclassify as st-only?

5 yr limit applies @ end of per, not stg-clocking prov

Svcs to non-custod parents allowed - GA

WORK REQUIREMENTS

Section 271.20, p. 337-338; outlines the general work participation requirements. Shouldn't subsection (a) stating the two separate work participation rates use the phrase "work activities as described at section 271.30" rather than "work or training"?

Section 271.22, p. 339-340; In outlining the overall participation rate calculation, this section says that a family that receives assistance for only part of the month may be counted as participating for an entire month if the adult is engaged in work for the minimum average number of hours in each full week that the family receives assistance in that month. What is the HHS's reasoning in proposing to allow this here and in section 271.24?

Section 271.24, p. 340-341; In outlining the two parent participation rate calculation, this proposed regulation says that a family that includes a disabled parent shall not be considered a two-parent family for the purpose of the participation rate. Does this regulation define "disabled parent"? If not, why not? Similarly, why not define "disabled" and "severely disabled" in section 271.32(c)(1)?

Section 271.40, p. 348; defines the basic caseload reduction calculation. Does this calculation ensure that any caseload reduction for which a state gets credit is not due the state having transferred beneficiaries from TANF into a separate state program? Does this prevent after-the-end-of-the-fiscal year gaming, such as transfers into state programs not counted for TANF MOE, in order to increase the caseload reduction credit?

Section 271.41, p. 350; provides states with the option of using overall caseload reduction as the basis for a credit to reduce the two parent work rates. On what basis and for what reason does HHS want to do this? Doesn't this simply give the state the option of choosing the number which will give it the largest credit?

mushy

invites states

GRC

Section 271.42, p. 352; lists "drug testing" as a specific eligibility change for which states must factor out caseload reductions for purposes of the credit. Doesn't the general category of "changes in requirements based on residency, age or other demographic or categorical factors" include this since persons found to be using drugs would be a category? This section also lists "fingerprinting" as an eligibility change. Why is this not considered an anti-fraud measure?

Section 271.42, p. 352; allows states that have expanded eligibility for assistance since FY 1995 to get a caseload reduction credit if its caseload would have gone down in absence of the eligibility expansion. On what basis and for what reason does HHS want to do this?

Section 271.43, p. 352-353; for purposes of calculating the caseload reduction credit, requires states to compare a given year's data to fiscal year 1995 excluding those on the caseload receiving only non-monetary services or only one-time, short-term assistance. Does HHS expect states to know how many in their fiscal year 1995 caseload received such assistance, i.e, assistance for less than 90 days? Isn't there a possibility that this definition combined with the lack of FY 1995 data will result in awarding a state too large a caseload reduction credit?

STATE PENALTIES

Section 271.51 p. 354-356; states that HHS will reduce the amount of the penalty for failure to meet work participation rates based on the degree of noncompliance, as required by the statute. Is there any basis in the statute for providing a reduction due to "good faith efforts" made to achieve the rates? Does HHS consider "good faith efforts" a measure of degree of noncompliance?

The draft regulation states that HHS will look beyond TANF to efforts a state is making to put individuals in separate state programs to work. Shouldn't this be revised to make clear that a state will not receive a good cause exception unless it proves it has not used a separate state program to escape the work participation rates?

In addition, the draft regulation states that in deciding whether or not to reduce the amount of the penalty, HHS will take into consideration "whether a state has missed one or both rates." On what basis and for what reason does HHS make this proposal?

Section 271.52, p. 356-357; states that the Secretary will grant reasonable cause to a state that fails to meet the work participation rates due to its provision of good cause domestic violence waivers. Doesn't this provision assume that all of those receiving such waivers would have otherwise been working, instead of the 25 to 50 percent required by law? Why not grant a state good cause only for those individuals who would otherwise have been working by subtracting the number of good cause domestic violence waivers from the denominator of the participation rate?

This proposed regulation references the definition of "good cause domestic violence waiver" in section 270.30, p. 323-324. Why doesn't HHS define "temporary" in this definition? Does the individual have to participate in "appropriate services plan designed to provide safety and lead to work" for a certain number of hours per week? If so, why not?

This section also proposes to grant good cause waivers for failure to meet the work rates if that failure is attributable to a state's provision of assistance to refugees. On what basis and for what reason does HHS make this proposal? Does this proposal exclude all refugees from the work participation rates? What percentage of two parent TANF families would fall under this definition?

Section 271.54, p. 357; states that if HHS determines that a state has failed to penalize individuals for not working as required in section 407(e), then the agency shall reduce a state's grant. What information will HHS systematically gather in order to know whether a state is violating section 407(e)? What kind of proof must the state accept from a single custodial parent who is unable to obtain needed child care?

Section 272.6, p. 369-371; outlines the types of information a state must submit as part of a corrective action plan. How will HHS determine if actions, outlines, and time limits in the plan are acceptable? Shouldn't this section state clearly that penalties will be immediately imposed on a state that does not submit an acceptable corrective action plan?

This proposal allows corrective action plans to last for up to 12 months. How did HHS decide upon that limit? Doesn't a 12 month limit mean a state could be continuously operating under a corrective action plan (i.e., enter into one for each 12 month fiscal year)?

This section also allows HHS to reduce the penalty in one or more circumstances in which the state has not corrected the failure pursuant to its corrective action plan (i.e., if the state expended more resources, made considerable progress, or encountered unanticipated circumstances). On what basis and for what reason does HHS make this proposal?

Record Type: Record

To: Laura Oliven Silberfarb/OMB/EOP

cc: Cynthia A. Rice/OPD/EOP, Anil Kakani/OMB/EOP, Emil E. Parker/OPD/EOP
Subject: Final changes to TANF reg question list

Below is the draft we were working off of Friday afternoon. I have made a few changes. So you can easily spot them, I have bolded/italicized all of them. (Note that I have *not* made the many other changes we agreed on Friday afternoon that I assume you are implementing.)

- I have slightly rewritten the questions where we want an answer in writing from HHS (mostly in the waiver sections -- 36, 37, 44, 67).
- There is also a spot where I modified a question based on input we got Friday -- #33.
- I have added a question in #44.
- For item #77, I have added a section number reference so that you can put it in the right order.

Not sure what's easier, so I am attaching it both ways.

lastdpc.wpd

33. 271.51 p. 354–356; states that HHS will reduce the amount of the penalty for failure to meet work participation rates based on the degree of noncompliance, as required by the statute. Is there any basis in the statute for providing a reduction due to "good faith efforts" made to achieve the rates? Does HHS consider "good faith efforts" a measure of degree of noncompliance?

The draft regulation states that HHS will look beyond TANF to efforts a state is making to put individuals in separate state programs to work. Shouldn't this be revised to make clear that a state will not receive a good cause exception ***or a reduction in penalty based on the degree of non–compliance, or have its corrective compliance plan accepted by HHS*** unless it proves it has not used a separate state program to escape the work participation rates?

In addition, the draft regulation states that in deciding whether or not to reduce the amount of the penalty, HHS will take into consideration "whether a state has missed one or both rates." On what basis and for what reason does HHS make this proposal?

36. 271.60/page 359 (also applies to 271.4(e)): Draft says that the provisions of section 407 of the law do not apply to states that have an approved waiver to the extent those provisions are

inconsistent with the waiver. Why does the draft limit potential inconsistencies to section 407 of the law?
Section 407 includes work participation rates, the caseload reduction credit, hours of work required, the definition of work activities, the sanction for refusal to work, and nondisplacement provisions. What constitutes a provision for the purposes of this section? May a state opt out of or modify the work participation rates, but still take advantage of the caseload reduction credit? ***Do any states have waivers that would allow them inconsistent work participation rates? If so, please list them.***

How will HHS determine what it will consider inconsistent? HHS asked states to identify those inconsistencies in their state TANF plans, but states varied in the thoroughness of their responses. Does HHS have a compendium of these responses, including an evaluation of whether in fact it considers them to be inconsistencies? ***Please provide us with the most recent list.*** Does HHS plan to survey them again? How and when will HHS notify states that they their proposed inconsistencies are accepted or not accepted? What is the penalty for a state that continues a waiver provision that is not inconsistent with the law but differs from the law?

37. 271.60(b)(1) ***Please provide us with a list of states that have waivers with work activities that are inconsistent with current law, along with the nature of the inconsistency.*** What are examples of waivers with provisions of prior law that you would still consider inconsistent even though they did not require waivers (see definition of waiver in 270.30)?

Please provide us with a list of states that have waivers with inconsistent [redacted]minimum average hours of work per week necessary to be 'engaged in work' for a month[redacted], along with the nature of the inconsistency (271.60(b)(2))? Why wouldn't all such cases be prohibited as inconsistencies under 271.60(b)(2)(ii) because they were increases in work requirements over prior law?

Please provide us with a list of other waiver inconsistencies that HHS recognizes, by state and by feature of the waiver.

What is the draft's legal basis for 271.60(c), which prohibits waiver inconsistencies that affect the denominator of the participation rates?

44. Section 272.3, p. 365
This section provides how HHS will access penalties and the data that will be used as a basis for determining when to assess the penalty. This appears to be THE regulatory section on oversight. The rule specifies that it will rely on non–financial data reports to enforce only two regulatory requirements: five year limit and participation rates. HHS will rely on the Single Audit Act process to enforce misuse of TANF funds; IEVS participation; paternity establishment and child support requirements and the child care exception for children under six. Yet, the rule includes a larger scope of regulatory requirements, that are theoretically enforceable by HHS that do not necessarily involve a penalty. Are all other requirements in the rule non–enforceable? It would

appear that HHS needs to build in broader regulatory authority to enforce these requirements through the use of data reported.

How does the Single Audit process work? Who conducts the audit and how often? How will auditors, for example, enforce the child care exception?

For each penalty, please provide a written list of what data you would have available to enforce it.

67. 274.1(g) and (h)/page 391–92: What is the difference between (g) and (h)? They both apply to extensions, and yet they lay out separate procedures.

Do any state waivers have time limits in excess of 60 months? Which states have waivers with extension and exemption policies more liberal than current law that you believe qualify as inconsistencies? ***Please provide us a list of the states, along with the specific waiver features that you believe qualify as inconsistencies.***

77. Is it possible for reg to prohibit retroactive reclassification of families as state–only? ***This should be moved to 271.22.***

S Elena - 3 items
W ~~Do waivers hv wk part rates~~
W ~~Stronger reg for HHS chart~~
S ~~Remind HHS agreement~~
S -All penalties + ccp - no gd cause etc. if bad on sep st progs
0 ~~Corrective compl plan calendar 60 days +~~

Laura - ~~Which in writing~~
~~Cite on no retro s-o~~
(~~[illegible]~~ 271.22)

Issues in TANF Reg

#13
(28) Def of assistance
32 Red. in wk penalty
33 if gd def
HHS
wk s-o

- Waivers -- When does grandfather clause trump welfare law? Time limits? Definition of work?
- State-only programs -- Which federal rules apply to state-only programs as well? Which do not?
- Caseload reduction credit -- How easy/hard does HHS make it?
- Work requirements -- definition of work; job search annual; voc ed now settled?
- Domestic violence
- Data reporting -- enough data to measure success, but not burdensome?
- Penalties -- Generally right balance? Reasonable cause and corrective compliance plans too easy?
- Form/length of the rule
- Definition of assistance
- Definition of administrative costs
- Displacement
- Contingency fund ~~OK?~~

Wed 2-4

* What in writing to Laura

Noon Monday

Cite on no retroactive reclassification of families as state-only

* - Heumann + Susan → deadline
- ~~missing~~
- Labor + 3 vice chairs
- ~~tell~~ Laura

~~Q's include: do waivers hv wk particip rates~~

~~- Strengthen reg fr HHS chart~~

~~- give HHS reminder~~

~~All Penalties - no gd cause if bad on sep st prog~~

~~or corrective action plan~~

→ Float tougher w/ Haskins

~~Corrective Compliance calendar w/ 60 days + 60 days~~

This is some
BBA language
I do have
CR
SANCTIONS next page

`(j) EVALUATION OF WELFARE-TO-WORK PROGRAMS-

`(1) EVALUATION- The Secretary, in consultation with the Secretary of Labor and the Secretary of Housing and Urban Development--

`(A) shall develop a plan to evaluate how grants made under sections 403(a)(5) and 412(a)(3) have been used;

`(B) may evaluate the use of such grants by such grantees as the Secretary deems appropriate, in accordance with an agreement entered into with the grantees after good-faith negotiations; and

`(C) is urged to include the following outcome measures in the plan developed under subparagraph (A):

`(i) Placements in unsubsidized employment, and placements in unsubsidized employment that last for at least 6 months.

`(ii) Placements in the private and public sectors.

`(iii) Earnings of individuals who obtain employment.

`(iv) Average expenditures per placement.

`(2) REPORTS TO THE CONGRESS-

`(A) IN GENERAL- Subject to subparagraphs (B) and (C), the Secretary, in consultation with the Secretary of Labor and the Secretary of Housing and Urban Development, shall submit to the Congress reports on the projects funded under section 403(a)(5) and 412(a)(3) and on the evaluations of the projects.

`(B) INTERIM REPORT- Not later than January 1, 1999, the Secretary shall submit an interim report on the matter described in subparagraph (A).

`(C) FINAL REPORT- Not later than January 1, 2001, (or at a later date, if the Secretary informs the Committees of the Congress with jurisdiction over the subject matter of the report) the Secretary shall submit a final report on the matter described in subparagraph (A).'.

(g) PENALTIES-

(1) PENALTY FOR FAILURE OF STATE TO MAINTAIN HISTORIC EFFORT DURING YEAR IN WHICH WELFARE-TO-WORK GRANT IS RECEIVED-

(A) IN GENERAL- Section 409(a) (42 U.S.C. 609(a)) is amended by adding at the end the following:

`(13) PENALTY FOR FAILURE OF STATE TO MAINTAIN HISTORIC EFFORT DURING YEAR IN WHICH WELFARE-TO-WORK GRANT IS RECEIVED-

If a grant is made to a State under section 403(a)(5)(A) for a fiscal year and paragraph (7) of this subsection requires the grant payable to the State under section 403(a)(1) to be reduced for the immediately succeeding fiscal year, then the Secretary shall reduce the grant payable to the State under section 403(a)(1) for such succeeding fiscal year by the amount of the grant made to the State under section 403(a)(5)(A) for the fiscal year.'.

(B) INAPPLICABILITY OF GOOD CAUSE EXCEPTION- Section 409(b)(2) of such Act (42 U.S.C. 609(b)(2)), as amended by section 5506(k) of this Act, is amended by striking `or (12)' and inserting `(12), or (13)'.

(C) INAPPLICABILITY OF CORRECTIVE COMPLIANCE PLAN- Section 409(c)(4) of such Act (42 U.S.C. 609(c)(4)), as amended by section 5506(m) of this Act, is amended by striking `or (12)' and inserting `(12), or (13)'.

(2) PENALTY FOR MISUSE OF COMPETITIVE WELFARE-TO-WORK FUNDS- Section 409(a)(1) of such Act (42 U.S.C. 609(a)(1)) is amended by adding at the end the following:

`(C) PENALTY FOR MISUSE OF COMPETITIVE WELFARE-TO-WORK FUNDS- If the Secretary of Labor finds that an amount paid to an entity under section 403(a)(5)(B) has been used in violation of subparagraph (B) or (C) of section 403(a)(5), the entity shall remit to the Secretary of Labor an amount equal to the amount so used.'.

(h) CLARIFICATION THAT SANCTIONS AGAINST RECIPIENTS UNDER TANF PROGRAM ARE NOT WAGE REDUCTIONS-

(1) IN GENERAL- Section 408 (42 U.S.C. 608) is amended--

(A) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(B) by inserting after subsection (b) the following:

`(c) SANCTIONS AGAINST RECIPIENTS NOT CONSIDERED WAGE REDUCTIONS-

A penalty imposed by a State against the family of an individual by reason of the failure of the individual to comply with a requirement under the State program funded under this part shall not be construed to be a reduction in any wage paid to the individual.'.

(2) RETROACTIVITY- The amendments made by paragraph (1) shall take effect as if included in the enactment of section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

TABLE OF CONTENTS - 8/27 DRAFT TANF NPRM

D. **STATE TANF EXPENDITURES - PART 273**

Subpart A -- What Rules Apply to a State's Maintenance of Effort?