— waiver
— admin tef
— State only

TANF SUMMARY

Subject	Statutory Requirement	Regulatory Requirement	Comments
PART 270 – General TANF Provisions		270.30 •HHS has chosen not to define the following: family, head of household, administrative costs, individual work activities •proposing definitions for assistance, waiver and inconsistency, various types of expenditures, Family Violence Option	•decided that segregated State funds and funds in separate State programs are not subject to most Federal TANF requirements

Subject	Statutory Requirement	Regulatory Requirement	Comments
PART 271 - Subpart A- Individual Responsibility	402(a)(1)(A)(ii) •statute does not provide definition	271.10(a) •HHS has allowed States to define what it means to engage in work for this requirement.	•refers to "parents or caretakers receiving assistance under the program"
Work requirements	402(a)(1)(B)(iv) •statute does not provide definition	271.10(b) •HHS has allowed the States to determine the minimum hours per week and the tasks the individual must perform as part of the community service employment	
Individual responsibility plans	408(b)(1)	271.11 •assessments required, IRPs optional	•requirements apply to "the State program funded under this part"
	408(b)(2)	271.12	
	408(b)(3)	271.13	
Penalties	407(e)(1)	271.14	•requirements apply to "the State program funded under this part"
	407(e)(2)	271.15	

TANF SUMMARY

Subject	Statutory Requirement	Regulatory Requirement	Comments
PART 271 - Subpart B- State Accountability	409(3)(A)	271.20	
Participation rates	407(a)(1), 407(b)(1)	271.21, 271.22	•applies to all families receiving assistance under the State program funded under this part – implies that even segregated State TANF funds are subject to this requirement
	407(b) •The statute does not address the issue of partial months of participation or assistance	271.22(d), §271.24(c) •specifies that "if a family receives assistance for only part of a month, the State may count it as a month of participation if an adult in the family is engaged in work for the minimum average number of hours in each full week that the family receives assistance in that month."	
	407(a)(2), 407(b)(2)	271.23, 271.24 •repeats two-parent work rates and calculation of rates	•applies to all families receiving assistance under the State program funded under this part – implies that even segregated State TANF funds are subject to this requirement
	407(b)(4)	271.25	

vs. sep st progs

Subject	Statutory Requirement	Regulatory Requirement	Comments
PART 271 - Subpart C- Work Activities and How to Count Them	407(d)	271.30 •repeats list of work activities •allows States to define work activities – definition must be submitted to HHS	•may raise issues of data comparability
Minimum hours per week	407(c) •The statute states that to be counted in the work participation rate, an individual must engage in a minimum number of hours per week, not fewer than 20 hours per week of which are attributable to a certain subset of the approved work activities.	271.31, 271.32 •repeats average hours per week participants must work • identifies subset of work activities that count for *the first* 20 hours of participation (271.31(b)(1)). The equivalent situation exists for the calculation of the two-parent rate in §271.32(b)(1).	•Is this specification that the first 20 hours be spent on these certain activities more restrictive than the language in the statute? – doubt?
Limitations on certain work activities	407(c)(2) limitations •The statute states, "For purposes of determining monthly participation rates...,not more than 20 percent of individuals in all families and in 2-parent families may be determined to be engaged in work in the State for a month by reason of participation in vocational educational training or deemed to be engaged in work by reason of subparagraph (C) of this paragraph".	271.33 •repeats limits on work activities •HHS has determined that the 20 percent limit on the amount of the caseload that can be determined to be engaged in work for a month by reason of participation in voc. ed. training applies to the broader base of "individuals in all families receiving assistance" rather than to the number of adults participating in work activities.	70% – [illegible]
	407(c)(2)(A)(i) •statute specifies a 6 week limitation on counting job search as work activity and refers to paragraph (a) which states that "a recipient is engaged in work for a month in a fiscal year...."	271.34 HHS has interpreted this limit on counting job search as a work activity to mean six weeks in a fiscal year.	•limitation on job search activities refers to individuals in a State program funded under this part
	407(c)(2)(B)	271.35	
		271.36	

Subject	Statutory Requirement	Regulatory Requirement	Comments
PART 271 - Subpart D- Caseload Reduction Factor for Minimum Participation Rates	407(b)(3)	271.40	
	407(b)(3)(B) • states that "the Secretary shall prescribe regulations for reducing the min. participation rate..." •places burden on Secretary for proving that families were diverted as a direct result of differences in eligibility criteria	271.41 •allows States to calculate caseload reduction factor; must be approved by HHS; requires States to submit documentation to HHS to support calculation	•does HHS proposal fulfill statutory requirements?
	•statute silent on these issues	271.42 •specifies meaning of "changes in eligibility," possibility for caseload reduction factor if State expands eligibility, steps States should take to justify excluding families from calculation	
	407(b)(3)(A)(i) •"the average monthly number of families receiving assistance during the immediately preceding fiscal year under the State program funded under this part..." (p.2130).	271.43 •defines "case receiving assistance" for calculation of caseload as cases in both TANF and separate State programs	•HHS specified in the preamble to the regulation that "the State program funded under this part" means the TANF program, not separate State programs (p.???). HHS in this and data collection sections appears to be subordinating the "State program funded under this part" provision to the "families receiving assistance" provision, applying the definition of "assistance" they have established.
	047(b)(3)(A)	271.44	

Subject	Statutory Requirement	Regulatory Requirement	Comments
PART 271 - Subpart E- State Work Penalties	409(a) penalties • The statute gives HHS the authority to penalize a State for failing to submit a quarterly report and authority to penalize a State for not meeting participation rates.	271.50 •If a State fails to provide complete and accurate data on work participation, HHS has determined that it will assess the penalty as if the State has not achieved its participation rates... where?	•In order to avoid having a dual penalty system such that a State not providing information on their work participation rate could receive a lesser penalty than a State that has reported that data, HHS proposes to combine the two penalties into one.
	409(a)(3)(C) •statute says penalty may be reduced if noncompliance is due to State becoming a needy State (based on unemployment and food stamp participation)	271.51 •Specifies that determination of size of penalty will consider States' "good-faith efforts" to achieve rates, whether or not the State qualifies as needy.	•does HHS have authority to reduce penalty based on something other than circumstances resulting in State being "needy"?
Reasonable cause	409(b) • "the Secretary may not impose a penalty on a State...if the Secretary determines that the State has reasonable cause for failing to comply with the requirement"	271.52 •defines specific criteria for determining good cause for failing to meet work participation rates - Dom. viol. waiver - [illegible]	•are these criteria reasonable?
	409(c)	271.53	

Subject	Statutory Requirement	Regulatory Requirement	Comments
PART 271 - Subpart F- Waivers	415(a)	271.60 •defines inconsistencies which will allow State waiver provisions contrary to PRWORA to persist	•see discussion in preamble re: definition of waivers and inconsistencies
PART 271 - Subpart G- Non-displacement	407(f) •The statute specifies that these terminations or reductions in work force must have occurred "in order to fill the vacancy so created with an adult [receiving TANF assistance funded by the federal government]".	271.70 •The regulation states that "an adult taking part in a work activity outlined in §271.30 may not fill a vacant employment position if...the employer has terminated the employment of any regular employee or caused an involuntary reduction in its work force."	•is this a significant difference? •requirements apply to "the State program funded under this part"

Subject	Statutory Requirement	Regulatory Requirement	Comments
Part 272 **Accountability Provisions -- General**	409(a)(2)(A) •State faces a 4 percent penalty for failing to submit a quarterly report	272.1(a)(3) •Specifies that the penalty applies if a State fails to submit "an accurate, complete and timely" report	•Does HHS have the authority to add this specification?
Summary of penalties	409(a)(5) •penalty for not cooperating with State agency administering part D applies to the grant for the immediately succeeding fiscal year	272.1(c)(1) •penalty applies to the SFAG payable for the *quarter* that immediately follows the final decision	•Does HHS have the authority to change when the penalty will be assessed? •requirements apply to "the State program funded under this part"
	409(a)(12) •penalty for failure to expend additional State funds to replace grant reductions; does not specify reporting or enforcement	272.1(e)(2) •requires States to document compliance with this provision in its TANF Financial Report	
	409(a)	272.2	
Determination of penalties and State response	409(a) •specifies use of audit to determine any misuse of funds; other penalties apply "if the Secretary determines" that a violation has occurred •statute does not refer to this maintenance of records	272.3 •specifies what instruments will be used to monitor violations: single audit, quarterly data reports, quarterly financial reports •requires States to maintain records in accordance with §92.42 of this title	
	409(c)	272.4(g) •specifies procedure for responding to HHS determination of a penalty •requires States to submit additional information requested within two weeks of the request	•is this two weeks reasonable?
Reasonable cause	409(b) •does not define "reasonable cause"	272.5(a) •defines factors a State may use to claim reasonable cause in order to avoid penalties	

Subject	Statutory Requirement	Regulatory Requirement	Comments
Corrective compliance plans	409(c)(3) •the Secretary may impose a penalty "if the State does not, in a timely manner, correct the violation pursuant to a State corrective compliance plan accepted by the Secretary"	272.6 • (a) specifies that the corrective compliance plan must correct the violation within 12 months in order for the State to avoid the penalty • (d) specifies the contents of the corrective compliance plan • (h) specifies circumstances under which HHS may reduce the amount of the penalty	•is the 12 month provision reasonable? •are these specifications reasonable?
Appeals	410 •(b)(1) statute refers to "such documentation as the State may submit and as the Board may require" •statute does not specify ACF requirement or appeal provisions	272.7 •specifies that the brief and all supporting documents with its appeal when it is filed •requires ACF to file its reply brief and supporting documentation within 30 days after the State files its appeal •specifies that the appeal to the Board must follow the provisions of the rules under this section and those at §§16.2, 16.9, 16.10, and 16.13-16.22 of this title	

Subject	Statutory Requirement	Regulatory Requirement	Comments
Part 273 -- **State TANF Expenditures** **Subpart A --** **Maintenance of Effort**	409(a)(7)(B)(ii),(iii)	273.1 repeats spending levels	
	409(a)(7)(B)(i)(I)	273.2 •types of expenditures that count for MOE	•defines qualified State expenditures as spending on assistance for families eligible for assistance under TANF and families that would be eligible for assistance except for the time limit restriction or PRWORA §402
	409(a)(7)(B)(i)(I)(cc) 409(a)(7)(B)(i)(II)	273.3, 273.4, 273.5 specifications regarding child care, education and separate State program expenditures	
	409(a)(7)(B)(iv)(II) • 'expenditures by the State' do not include any State funds expended for the Medicaid program under title XIX	273.6 •does not include this restriction	
	409(a)(7)(A) •Secretary has authority to reduce grant if State does not meet MOE	273.7 •requires States to report expenditures quarterly •requires States to submit an annual addendum to financial report; specifies contents •requires descriptive and expenditure-related information on the State's separate MOE program	•is there statutory authority to require the collection of this information?
Penalty	409(a)(7)(A)	273.8	
	409(b)(2) 409(c)(1)(A)	273.9	

Subject	Statutory Requirement	Regulatory Requirement	Comments
Subpart B- What Rules Apply to the Use of Federal Funds?	409(a)(1)(A) 409(a)(1)(B)	273.10	
Misuse of funds	•statute does not define misuse of funds	273.11 •defines misuse of funds as use of funds in violation of the provisions of the Act, section 115 of PRWORA, the provisions of part 92 of this title and OMB Circular A-87	•are these standard provisions? •prohibitions and requirements listed in 408(a) apply to the use of Federal funds with the following exceptions: (2), (3), (11) apply to State programs funded under this part
	409(a)(1)(B) •statute says, "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..." – no further definition of intentional misuse	273.12 •defines evidence of intentional misuse of funds: existence of supporting documentation indicating that Federal TANF funds could not be used for that purpose and continuation by the State to use funds in an improper manner after notification	
Administration cost definition	404(b)	273.13 •allows States to define types of activities subject to the 15 percent administrative cost limit •requires States to submit definition with fourth quarter submission of the TANF Financial Report and on the quarterly report following a change in definition	•is it appropriate to allow States to set definition of administration costs?

Subject	Statutory Requirement	Regulatory Requirement	Comments
Subpart C -- What Rules Apply to Individual Development Accounts?	404(h)(3),(5)	273.20 definitions from statute	
	404(a)	273.21	
	404(h)(2)(C)	273.22 •restrictions on use of funds	
	404(h)(2)(D) •the Secretary shall establish such regulations as may be necessary to ensure that funds held in an individual development account are withdrawn only for qualified purposes	273.23 •specifies steps States may take to prevent recipients from using IDA accounts improperly: count withdrawals as earned income in the month of withdrawal (unless already counted as income); count withdrawals as resources in determining eligibility; or such other policies as the State may enact	•are these steps in keeping with intent of IDA and intent that recipients not be penalized for having accumulated these funds?

Subject	Statutory Requirement	Regulatory Requirement	Comments
Part 274 – Other Accountability Provisions	408(a)(7)	274.1	
Subpart A – What Specific Rules Apply for Other Program Penalties?		274.1(d) •"If a State opts to extend assistance to part of its caseload as permitted under paragraph (c) of this section, it only determines whether or not the extension applies to a specific family once an adult in the family has received 60 cumulative months of assistance."	
Time limits and waivers		274.1(e),(f),(g),(h),(i) •specifications regarding inconsistency of five-year limit with a State's waiver	
Penalties	409(a)(9)	274.2	
	409(b),(c) •statute does not specify this interpretation of "good cause" •statute does not specify	274.3 •State can qualify for good cause exception from penalty if State can demonstrate that it exceeded the 20 percent limitation because of providing waivers to victims of domestic violence •State can demonstrate reasonable cause if, when good cause waivers are excluded, the percentage of cases receiving federally-funded assistance for more than 60 months did not exceed 20 percent of the total	
IEVS	409(a)(4)	274.10 •requirement that State do computer matching of data records under IEVS to verify recipient information	•requirements apply to "the State program funded under this part"
	409(a)(4)	274.11	

TANF SUMMARY

Subject	Statutory Requirement	Regulatory Requirement	Comments
penalty for sanctioning single parent of child under six who cannot get child care	409(a)(11)(A) •criteria not specified in statute	274.20 •preamble lists criteria HHS will use to determine if States violated the exception to the penalty •decided not to specify process or procedures States must follow •CCDF regulation will contain requirement for States to define criteria they will use to judge unavailability of child care and to inform parents of this exception	•requirements apply to "the State program funded under this part"
	•not specified in statute	274.20(b),(c) •provisions for imposing maximum and reduced penalties •will impose maximum penalty if there is no statewide process for parents to demonstrate inability to obtain child care	
procedures for ensuring cooperation with child support enforcement req.		274.30(a),(b)	
	408(a)(2)	274.30(c)	
penalty for non-compliance with IV-D sanction requirements	409(a)(8)	274.31	
penalty for non-repayment of loan	409(a)(6)	274.40	

Subject	Statutory Requirement	Regulatory Requirement	Comments
Part 274 -- Subpart B -- What funding restrictions apply to the use of contingency funds?	403(b)	274.70	•requires 100 percent of historic State expenditures
	403(b)(4)(A), as amended by P.L.104-327	274.71, 274.72 annual reconciliation	
		274.73 HHS proposing that most TANF MOE provisions apply to State expenditures under the Contingency Fund provision	
	403(b)(4)	274.74	
	410	274.75 right to appeal	
	•statute does not specify	274.75(b) •reasonable cause exceptions and corrective compliance regulations do not apply to the remittance of funds under the annual reconciliation requirement	
		274.76 •requires information to be conveyed to HHS through quarterly TANF financial report	
		274.77 •contingency funds subject to the restrictions and prohibitions in effect for Federal TANF funds	

Subject	Statutory Requirement	Regulatory Requirement	Comments
Subpart C -- What Rules Pertain Specifically to the Spending Levels of the Territories	1108(b)(1)	274.80	•regulations pertaining to Sec. 1108 had not previously been issued to clarify MOE requirements
		274.81 •applying most of the same requirements to the Matching Grant MOE requirement that apply to TANF MOE	
		274.82 •applying most of the same requirements to the Matching Grant FAG amount requirement that apply to TANF MOE	
	1108(e)	274.83	
		274.84 •applying most of the same requirements to the section 1108(e) MOE requirements that apply to TANF MOE	
		274.85 •requires the submission of a Territorial Financial Report similar to the TANF Financial Report	
		274.86 •disallows the matching grant if the territory fails to meet the MOE requirement	
		274.87 •appeals to be conducted under 45 CFR part 16, not under the TANF appeals process	

Subject	Statutory Requirement	Regulatory Requirement	Comments
Part 275 --Data Collection and Reporting Requirements		275.2 •defines "TANF family" for purposes of data collection	
Data Report	411(a) •specifies the disaggregated case record information to be included in quarterly data reports •aggregated data not required by statute •411(a)(1) specifies data collection only for families currently receiving assistance •411(a)(1)(A)(xvi) requires some data collection on closed cases •411(b) requests demographic characteristics of families applying for assistance	275.3(a),(b) •requires both the TANF data report and the TANF financial report •requires the collection of both disaggregated case record information and aggregated data for both families currently receiving TANF assistance and families no longer receiving TANF assistance •aggregate data required for families applying for, receiving and no longer receiving TANF assistance	•HHS says that they need the aggregated data in order to verify and validate the quality and consistency of the disaggregated data
Financial Report	Sections justifying the collection of information in the Financial Report: 411(a)(2),(3),(4) 403(c)(1) 409(a)(7) 409(a)(7)(B)(i)(I)(dd) 403(b) 409(a)(1),(10) 405(c)(1): specifies that quarterly grants be determined by reports submitted by the States to the Secretary estimating amount to be expended in the coming quarter •statute does not specifically require Financial Report, nor does it mention these provisions	275.3(c) •requires States to file expenditure data on the State's use of Federal and State TANF expenditures, and MOE funds in separate State programs, distinguishing between assistance and non-assistance •requires States to file annually definitions and descriptive information on the TANF program and descriptive and expenditure-related information on the State's separate MOE program – States may change definition of admin. cost, work activities, or transitional services at any time •if a State is expending TANF funds received in prior fiscal years, it must file a separate quarterly TANF Financial Report for each fiscal year	•is it acceptable that these definitions could be changed annually?

TANF SUMMARY

Subject	Statutory Requirement	Regulatory Requirement	Comments
Data Requirements for Separate State Programs	411(a) •requires States to file disaggregated case record information on the families receiving assistance under the State program funded under this part	275.3(d) •requires States to collect and file disaggregated and aggregated data on families receiving and no longer receiving assistance under the separate State program if it wishes to receive a high performance bonus, qualify for work participation caseload reduction credit, or be considered for a reduction in the penalty for failing to meet the work participation requirements	•HHS has defined "state program funded under this part" to mean the TANF program – does HHS have the authority to require the collection of disaggregated case record information for people in separate State programs?
	411(a), 409(a)(2), PRWORA 116	275.4 •due dates for quarterly reports	
Sampling	411(a)(1)(B)	275.5	
	•statute does not specify method for filing reports	275.6 •reports must be filed electronically	
Penalties	409(a)(2) •penalty applies "if the Secretary determines that a State has not, within 1 month after the end of a fiscal quarter, submitted the report required by section 411(a)"	275.7, 275.8 •criteria for meeting reporting requirement – must be "complete and accurate" and filed by due date – must be free from computational errors and internally consistent •penalty will not apply to the TANF-MOE data report, the annual program and performance report specified in §275.9, or other information on individuals and families required by 411(b)	•can HHS add the "complete and accurate" requirement? • HHS is developing reporting software; program should notify user when elements are not internally consistent

Subject	Statutory Requirement	Regulatory Requirement	Comments
	411(a)(5) •requires quarterly reporting on the total amount expended by the State to provide transitional services, and a description of such services 411(b) •requires HHS to report on State's progress in meeting objectives, characteristics of people receiving assistance, characteristics of each State program, trends in employment and earnings	275.9 •(a) States must submit annually definitions for administrative costs, each work activity, and transitional services provided to families no longer receiving assistance due to employment •(b) States must file with the fourth quarter Financial Report the information on separate State MOE programs for the year specified at §273.7 •(c) States must file annual program and performance report	•annual report is new requirement not specified by statute

271 - Wk
272 - Gov't Acctbility
273 - State TANF exp.
274 - Other Acctbility
275 - Data Coll/Rptg

Work reqs
Waivers
def of assist
data coll

271 A - Indiv Resp
B - State Acctbility
C - Wk Req't + Handling
D - Caseload Red
E - Wk Penalties
F - Waivers
G - Non-displ.

Penalties
fiscal issues
Reconciliation

8/6/97

Reg - Maddy

Work - Part 271
No def of wk activs - States must define + send in
Job search - 6 wks/yr, not lifetime
Caseload Red - rely on states to est
- states give list of elig svs
- def of elig svs
Dom Viol option - 22 states hv taken option
Subpt A + B - not reg, but bkgrd?

Howard

Waivers - prob defining waiver + inconsistency
- don't needlessly delay
- waiver basic purpose
- wk req   time limits   evals/exp + control
↳ Rates can't be waived
↳ can't narrow denom. ~~waivers narrowed~~ - both waiver + TANF hv same purpose
↳ does allow more to count in numerator (what counts as work) - drug trtmt - educ - job srch

Time limits
↳ all < 5 yrs
↳ but not all lifetime - analyzing; most complex
↳ exemptions + ~~exceptions~~ extensions
↳ synchronize St + Fed clock - disabled/incapacity - age of youngest child
- exhaust 5 yrs: - can get more til end of demo

SUBJECT: KEY ISSUES IN THE TANF REGULATION

I. BACKGROUND AND CONTEXT

- ACF's first regulation on the TANF program

- Incorporates the core TANF accountability provisions, including work requirements, time limits, state penalties, and data collection and reporting. (It does not include the Tribal, bonus or child poverty provisions.)

- Federal role and federal regulatory authority under TANF limited under section 417 of the Social Security Act

  > No officer or employee of the Federal Government may regulate the conduct of States under this part or enforce any provision of this part, except to the extent expressly provided in this part.

- Package reflects attempt to achieve delicate, but critical balance between accountability and flexibility.

- Four goals governing effort were:

  1. <u>Provide states with clarity and a basic set of "rules of the game" that will enable them to get on with implementation of welfare reform.</u>

  2. <u>Send signals to states and others about what is most important in TANF (especially work)</u>

  3. <u>Demonstrate our good faith in implementing the law and assuming our new federal role</u>

  4. <u>Encourage and support state flexibility, innovation, and creativity</u>

II. PROCESS TO DATE/CONSULTATIONS

- Overview of the process, internal and external

- External consultations:

  --Extensive consultations took place in both Washington and the regions on these regulatory issues, starting in October.

  --Involved hundreds of state and local government officials and their representatives, advocates, labor organizations, academics, researchers and technical experts.

  --Attached list shows breadth and scope of formal central office consultations; comparable efforts took place in all our regional offices.

o Overall findings from the consultations

III. EXAMPLES OF KEY POLICY ISSUES

1. Provide states with clarity and a basic set of "rules of the game" that will enable them to get on with implementation of welfare reform.

--overall scope of the regulation
--regulating on penalties, establishing basis for reasonable cause, corrective compliance and penalty reductions
--waivers as they affect penalties
--domestic violence as it affects penalties
--data collection instruments
--definition of assistance; 5-year limit
--allowable uses of federal and state MOE funds (e.g., juvenile justice costs)

2. Send signals to states and others about what is most important in TANF (especially work)

TOUGH ON WORK:
--MOE data collection
--TANF data collection
--~~caseload reduction~~ factor exc when elig 88 / must give no infl get credit on elig-based - fingerp, fraud
--approach to penalties, corrective action, reasonable cause
--waivers numerator or no exceptions to denom strong fewer denom red.
--definition of assistance

w/ really exempt/ extensions
waivers rules apply during life of w.
Many stickiest w/ 1671

FISCAL ACCOUNTABILITY:
--MOE data collection
--TANF data collection
--enforcing MOE (and other) penalties
--application of other federal law (Comptroller General opinions, part 92)

3. Demonstrate our good faith in implementing the law and assuming our new federal role; and

4. Encourage and support state flexibility, innovation, and creativity

--work activities req states to define
--administrative costs
--~~20% caseload~~ vested lib
--no enforcement of plan compliance
--balanced approach to definition of assistance
--balanced approach to waivers
--balanced approach to data collection

Target
don't have auth hard to reg spa's

V. NEXT STEPS

- We are eager to provide you with the NPRM package and with as much briefing/information as you would find useful.

- Timely publication important (aiming perhaps for publication by August 22, the anniversary of enactment).

- We must monitor Congressional action on budget reconciliation, which is likely to include a number of provisions that would affect the NPRM.

Center for Law and Social Policy
CLASP

Waivers and the New Welfare Law: Initial Approaches in State Plans

by Mark Greenberg and Steve Savner

The Personal Responsibility and Work Opportunities Reconciliation Act (PRWORA) imposes a set of requirements on States receiving Temporary Assistance for Needy Families (TANF) block grants. However, the PRWORA also provides that if a State opts to continue a waiver that was in effect on the date of enactment of the new law (i.e., August 22, 1996), the State need not comply with PRWORA provisions that are inconsistent with the waiver until the expiration of the waiver. There are many unresolved questions about how to determine whether a State's waiver should be considered "inconsistent" with a PRWORA provision. The federal Department of Health and Human Services (HHS) has not yet provided an interpretation of when it believes a waiver is "inconsistent" with a PRWORA provision. Instead, HHS has suggested that when a State submits a State Plan, the State should describe the areas in which the State believes that its waiver is inconsistent with one or more provisions of the PRWORA.

CLASP has reviewed the State Plans submitted by thirty-two States. This document summarizes the areas in which those States have identified inconsistencies between requirements of the PRWORA and their waivers. In their submissions, at least half of the States are indicating an intent to continue one or more waivers, but States are taking a range of approaches: some States have been quite explicit and specific in identifying areas of inconsistencies, some States have worded their plans in more ambiguous ways, some have made no reference whatsoever to their current waivers; and some have expressly indicated that they have no applicable waivers or wish to terminate their existing waivers.

A State's silence or ambiguity (or assertion that it has no applicable waivers) should not preclude the State from arguing the existence of inconsistency at a later point, because HHS has requested States to identify inconsistencies in their State Plan submissions, but there is no legal requirement that States do so. At the same time, if a State that believes it is not subject to particular requirements of the PRWORA because they appear inconsistent with the State's waiver, the State may conclude it is advantageous to explicitly describe the inconsistencies in its State Plan. This is because most penalties that States risk in relation to their TANF block grants are subject to a "reasonable cause" exception. A State that has expressly articulated the basis for believing a provision of the law is inconsistent with the waiver may be in a better position to assert that the State had reasonable cause for its conduct or non-conduct.[1]

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[1] For example, Arizona's State Plan expressly notes: "Arizona expects DHHS to advise the State of any Federal statutes which conflict with this State Plan and to notify the State of any potential penalties."

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The following text first briefly summarizes the law concerning the relation between waivers and inconsistent PRWORA requirements,[2] and then specifically outlines the approach of each State whose plan CLASP has had the opportunity to review.[3]

Provisions of the Law

The PRWORA creates a new Section 415 of the Social Security Act, which relates to both waivers that were in effect as of the date of enactment of the PRWORA (i.e., August 22, 1996), and to waivers that were pending as of the date of enactment and approved on or before July 1, 1997.

First, Section 415 provides that if a State has a waiver which relates to the provision of assistance under a State plan (as in effect on September 30, 1996) and which is in effect as of the date of enactment of the PRWORA (i.e., August 22, 1996), then the amendments made by the PRWORA (other than those relating to the repeal of certain child care programs) shall not apply to the State before the expiration of the waiver "to the extent such amendments are inconsistent with the waiver."

Second, the PRWORA provides that if a waiver application was filed before the date of enactment, but is granted subsequent to the date of enactment (but on or before July 1, 1997), then such a waiver is to be treated in the same manner as waivers in effect as of the date of enactment, subject to two key differences:

- The state will only be freed from the obligation to comply with inconsistent provisions of the Act _if_ the State demonstrates to the satisfaction of the Secretary that the waiver will not result in Federal expenditures under Title IV of the Social Security Act (as in effect without regard to the amendments made by the Act) that are greater than would occur in the absence of the waiver; and

- Receiving approval after the date of enactment for a waiver application pending on the date of enactment "shall not affect the applicability of section 407 to the State." Section 407 is the provision of TANF that establishes the all-family and two-parent-family participation rates, the requirements for sanctioning in connection with non-compliance

[2] This text only discusses the law relating to the effect of a provision of the PRWORA being inconsistent with a State waiver. There may also be other factors that could affect whether a State retains a waiver, e.g., cost-neutrality and evaluation considerations. A more detailed discussion of Section 415 may be found in CLASP's **WAIVERS AND BLOCK GRANT IMPLEMENTATION: INITIAL QUESTIONS** (August 12, 1996).

[3] The States whose plans are covered in this report include: Alabama, Arizona, California, Connecticut, Florida, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Wisconsin, and Wyoming.

with work requirements, and the limited protection for single parents of children under age 6 who are unable to comply with work requirements due to the unavailability of needed child care.

The wording of Section 415 provides little guidance to a State seeking to decide whether it considers the requirements of the new law inconsistent with an existing waiver. To date, HHS' only written discussion has been a suggestion, in draft State Plan Guidance, that a State's Plan should include a discussion of whether the State intends to continue one or more individual waivers, along with an identification of each waiver provision and provision of the new law that the State believes is inconsistent, and the basis for the assessment of inconsistency. HHS' draft guidance also notes that: "Future legislative or regulatory action may limit which provisions of the TANF may be considered inconsistent with waivers for purposes of determining penalties. If this happens, States will have an opportunity to submit a new plan in order to come into compliance with the requirements."[4]

State Approaches, In General

To date, State approaches can generally be categorized in the following ways:

- Twelve States have expressly identified one or more inconsistencies in their State Plans. (Alabama, Arizona, Connecticut, Massachusetts, Michigan, Missouri, Nebraska, New Hampshire, Oregon, South Carolina, South Dakota, Texas).

- Five States generally assert their intention to continue a waiver, without specifically identifying areas of inconsistencies. (Indiana, Oklahoma[5], North Carolina, Tennessee, Vermont).

- Two States appear to be awaiting State legislative sessions. California appears to be expressing an intent to assert inconsistencies until State law is changed and Utah indicates that because its waivers are referenced in State law, the waivers must be retained until after the next legislative session.

- Two States (Florida and Mississippi) expressly assert their interest in engaging in further consultation with federal officials before deciding whether to terminate their waivers.

- Two States (Kentucky and Nevada) indicate that they do not have any Section 1115 waivers.

[4] Department of Health and Human Services, DRAFT State Guidance for the Temporary Assistance for Needy Families Program (September 1996), p.4.

[5] Oklahoma's waiver is a two-county learnfare waiver; the State indicates its intention to continue it until completion but does not indicate which, if any, TANF provisions the waiver is inconsistent with.

- Four States express an intent to terminate waivers or indicate that no waivers are applicable (Louisiana, Maryland, New Jersey, Wyoming).

- Three States are silent on the question of waivers (Kansas, Maine, New York).

- Two States have language in their State plans which is difficult to classify (Ohio, Wisconsin).

Note that in some cases, a State originally sought a waiver in order to implement specific State legislation. If a waiver is based on the requirements of State legislation, the State agency may lack the authority under State law to act to terminate the waiver without authorization from the State legislature. (California and Utah expressly note that they intend to continue under their waivers until there is a change in State law.) Once a waiver is terminated, it may not be possible to reinstate it even if the legislature subsequently decides that it was inappropriate for the agency to have acted to terminate it. Accordingly, in any State in which the agency is seeking to terminate the State's waiver, it is appropriate to ensure that the agency has the authority to do so under State law.

Areas of Inconsistencies

States have asserted inconsistencies with a range of PRWORA provisions, including (but not limited to) those relating to teen parent school attendance, teen parent living arrangement requirements, child support cooperation penalties, work and participation requirements, penalties for non-compliance with work requirements, transitional assistance, and time limit policies.[6] The approaches taken by each individual State are described in the subsequent section of this document.

There has been considerable discussion about the relationship between Section 415 and the PRWORA work and participation and time limit requirements. Some States are specifically asserting inconsistencies relating to the work and participation requirements and/or the time limit provisions of the PRWORA. No State has asserted that it believes it is not subject to any participation rate, but some States are asserting that they believe that participation or participation rate requirements should be modified to reflect exemption, hourly requirements, or countable activities under their waivers. Similarly, no State has asserted that it believes it is not subject to any time limit, but some States are asserting that time-limit policies under their waivers should apply.

[6] In the following discussion, it is possible -- and in some instances likely -- that additional States are intending to assert inconsistencies, but we have limited our listing to those instances where the identification of an inconsistency is expressly noted in the State Plan.

Work and Participation Requirements: The single most common area in which States have identified inconsistencies concerns the law's work and participation requirements. Under the PRWORA, a State's Plan must outline how the State will comply with three distinct work and participation requirements:

- the requirement that individuals must be engaged in work (as defined by the State) within 24 months;

- the PRWORA's all-families participation rate; and

- the two-parent families participation rate.[7]

In discussing these State plan provisions, a State might assert an inconsistency relating to one or more of the these three provisions. As a practical matter, however, States asserting inconsistencies relating to the all-families participation rate have either been silent about the two-parent rate, or have worded their assertions of inconsistencies in such a way that the assertion may also apply to the two-parent rate, but it is difficult to be certain.

As to the 24-month work requirement, the statutory provision does not expressly provide for any exemptions. Connecticut, Massachusetts and New Hampshire each indicate that they will use the exemption policies operating under their waivers for purposes of the 24-month requirement. Texas may be envisioning a similar approach: in addressing the 24-month requirement, Texas notes it will "require parents or caretakers to engage in work at least 20 hours per week in accordance with the terms and conditions of the State's Title IV-A waiver."

As to the all-families participation rates, a State might assert that the PRWORA's exemption provisions, the Act's hourly participation requirements, or the Act's definitions of countable activities are inconsistent with its waiver. Each of these has been expressly asserted by one or more States.

- Connecticut, New Hampshire and South Dakota are asserting that the Act's exemption provisions are inconsistent with their waivers.[8]

- Connecticut and Massachusetts assert that the Act's hourly participation requirements are inconsistent with their waivers.

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[7] A fourth requirement, that non-exempt parents or caretakers participate in community service employment after two months of receiving assistance, applies to the State within one year from the date of enactment of the new law unless the State opts out.

[8] Other States may be envisioning a similar approach, but do not explicitly assert the inconsistency. For example, Nebraska indicates that the State will use its existing exemption policies, without expressly noting that they are inconsistent with PRWORA requirements. Texas indicates that it will use "the participation rate methodologies previously approved for JOBS under the waiver."

- Seven States (Connecticut, Missouri, Nebraska, New Hampshire, South Carolina, South Dakota and Texas) assert that they will apply a definition of countable activities different from the definition generally applicable to participation rates under the PRWORA.

In some instances, a State is asserting that there is a direct conflict between a specific provision of the PRWORA and a specific provision of the State's waiver. However, when a State asserts an inconsistency with the exemption, required hours, or countable activities provisions of the TANF participation rates, the State may instead be asserting an inconsistency in a broader sense: the State may be asserting, in effect, that the details of the participation rate requirements would force the State to operate its program in a manner inconsistent with the approach the State was taking under its waiver-based welfare reform initiative. For example, many States had used the waiver process to broaden the number of families who were subject to program participation requirements, but States often operated with flexible and individualized determinations of the activities in which individuals were required to participate, or the levels of required participation. The PRWORA does not prohibit States from making extensive use of activities such as job search or education and training, but sharply limits when they are countable toward the Act's participation rates. A State may conclude that an inconsistency exists because the redesign of allowable activities that would be necessary to meet the TANF participation rates using the TANF definition of countable activities would require a fundamental alteration of the approach taken under the State's waiver.

Note that under a narrow reading of Section 415, one might suggest that no State was operating a waiver inconsistent with the Act's new participation rates.[9] However, the plain language of Section 415 creates a strong implication that it was envisioned that States with waivers in effect on the date of enactment could assert inconsistencies with the participation rate requirements of Section 407.[10]

Time Limits: As to time limits, three States (Arizona, Connecticut, and South Dakota) expressly identify inconsistencies, and several others describe seemingly inconsistent time limits without expressly asserting an inconsistency.

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[9] Under prior law, no State had ever received a waiver to narrow who was subject to JOBS participation rates, or to reduce countable hours requirements for JOBS participation rates, or to change which activities counted toward JOBS participation rates. This was because HHS' waiver authority under Section 1115 of the Social Security Act authorized waivers of Section 402 of the Social Security Act, and the requirements relating to JOBS participation rates were contained in Section 403.

[10] We reach this conclusion because Section 415 draws an explicit distinction between waivers in effect on the date of enactment, and waivers pending on the date of enactment and granted subsequently. As to the latter group, the Act says that the granting of the waiver "shall not affect the applicability of Section 407 to the State." The existence of this language in relation to pending waivers and its absence in the discussion of waivers in effect on the date of enactment creates a strong implication that Congress did envision that States with waivers in effect on the date of enactment would be able to assert inconsistencies that would affect the applicability of Section 407.

A State might be asserting that its time limit is inconsistent either because it wishes to use its waiver exemption and extension policies rather than the PRWORA's 20% hardship exceptions, or because the State wishes to take an approach other than terminating family assistance (e.g., reducing assistance, requiring participation in a work program) after a family reaches a time limit. Even if a State envisions making use of a time limit shorter than five years, the State still may assert an inconsistency if, for example, the State anticipates that the percentage of cases subject to exemptions or extensions could exceed the federal 20% cap.[11] For example, Connecticut is making use of a 21-month limit for non-exempt families, but asserts that its exemption and extension policies create an inconsistency with the 60-month-limit/20% exceptions provisions of the PRWORA.

Specific State Approaches

The following text specifically summarizes the approach to inconsistencies taken in each State Plan we have reviewed. This listing of identified inconsistencies is not intended to suggest that HHS will necessarily agree with each identified inconsistency (or that CLASP necessarily agrees with each identified inconsistency); rather, we have simply sought to list the approaches taken by States to date.

Alabama: The State Plan indicates that the State intends to continue implementation of its ASSETS waiver in three counties designated in the waiver as pilot sites. In those three counties, waiver provisions concerning income, assets, and assistance unit composition will be followed. The State expressly notes that it intends to continue a provision inconsistent with TANF concerning the eligibility of a child living with a non-relative caretaker.

Arizona: The State indicates that it intends to continue operating under the terms and conditions of its EMPOWER waiver. While a number of the terms and conditions are consistent with TANF, the State identifies the following specific inconsistencies:

Time Limits: The State indicates that time limits "will follow the welfare reform waiver initiative implemented November 1, 1995" and that adult household members can only receive cash assistance for 24 months during a five year period, and will only receive 60 months of assistance during their lifetime. Exemptions from the time limit may be due to being physically or mentally unable to go to work or training; being the only member of the assistance unit who can stay home to care for another physically or mentally disabled household member; or being a participant in the JOBSTART demonstration project. Up to two four-month extensions can be allowed for completing education or training, and an extension of up to six months can be allowed for good cause.

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[11] For example, in CLASP's review of State time-limit approaches in the waiver process, a number of States seeking to implement time-limits shorter than five years were making use of exemption policies under which more than 20% of the caseload was projected to be exempt from the time limit. See Greenberg, Savner, and Swartz, **Limits on Limits: State and Federal Policies on Welfare Time Limits** (Center for Law and Social Policy, June 1996).

Transitional Benefits: Under the EMPOWER waiver, Transitional Child Care and Transitional Medicaid are each extended to 24 months. The State notes that while the length of Transitional Child Care is left to State option under the new law, Transitional Medicaid remains a 12-month program, and so the continuation of the waiver is required.

Teen Parents: Under the State's waiver, teen parents are required to live with a parent or other responsible relative in order to receive cash assistance. While this is also required under TANF, the State notes that it will not provide or assist the teen parent in locating a second-chance home, maternity home, or other appropriate adult-supervised living arrangement (as required under TANF).

California: The State Plan indicates that California's Program "will include California's existing Section 1115 demonstration projects, including the California Work Pays Demonstration Project (CWPDP)." The State indicates that it intends to seek a change in state law to require work in accordance with the TANF 24-month requirement; however, until State law changes, the State will continue to operate its GAIN program under its federally approved waiver and the State statute. Under the waiver, GAIN participants who have received aid for 22 of the last 24 months and meet other specified criteria are required to participate in at least 100 hours a month in preemployment preparation or work experience activities.

It is unclear whether the State is also asserting that its waiver is inconsistent with the participation requirements of Section 407. The text describes operations of the State's GAIN Program and work requirements applicable to certain families "consistent with the CWPDP."

Connecticut: The State Plan expressly notes that the Terms and Conditions for the State's Reach for Jobs First Waiver are to be considered part of the State Plan, and the following inconsistencies are expressly identified:

Statewideness: The State notes that its waiver provides for different treatment of control group cases in the research sites, and that "[t]o the extent this different treatment would be considered to be a separate 'program', as opposed to a lack of uniformity permissible under the new law, this waiver provision is inconsistent with the law, and therefore supersedes it."

Child Support Distribution: The State's waiver provides for passing-through to a family the first $100 of child support received, with federal participation in the cost of the pass-through. Under prior law, the federal government participated in the cost of a $50 pass-through, but the PRWORA eliminates this federal participation. The State indicates that "[s]ince federal financial participation in this pass-through is inconsistent with Title IV-D distribution provisions, as amended by PRWORA, the waiver provision takes precedence. Federal financial participation should continue for the pass-through."[12]

[12] The PRWORA provides that a State electing to continue its waiver will only qualify for its TANF block grant amount, as opposed to funding under prior AFDC rules. Connecticut appears to be asserting, however, that this provision does not prevent federal participation in additional costs through the IV-D system (rather than through TANF). Note, however, that the waiver must still maintain overall federal cost-neutrality.

Time Limits: The State's waiver includes a 21-month time limit for non-exempt families and provides for extensions for qualified families who reach the time limit. The State notes that the waiver provisions are inconsistent with the 60 month time limit in the PRWORA with regard to both extensions and exemptions provided for in the waiver.

Extensions: The waiver provides for extensions for six months at a time, and the number of six month extensions is not limited so long as the family qualifies. A family that reaches the time limit will qualify for an extension if the adult in the family has made a good faith effort to find employment, but has income less than the state's payment standard. In addition, families suffering from domestic violence or other circumstances beyond their control which prevent the adult from working may qualify for extensions. As the overall duration of the extensions for which a family may qualify is not limited, and the number of families who may qualify is not limited to a specific percentage. "Federal financial participation is available for all those qualifying for an extension, regardless of the length of the time receiving assistance."

Exemptions: The waiver specifies that the following families will be exempt from the state's time limit: a family with an adult relative who is incapacitated or of advanced age; a family with an adult relative needed in the home to care for an incapacitated household member; a family with an adult relative caring for a child under the age of one who is not covered under the waiver's family cap provision; a family with a pregnant or postpartum adult relative who is unable to work; and a family with an adult relative who is determined to be unemployable.

Families that meet any of these criteria and do not include another adult who is non-exempt are not subject to the time limit during any period in which they qualify for an exemption. There is no limit to the number of families that may be exempt at any point in time. "Federal financial participation is available for those exempt from the time limit for the duration of their assistance."

Definition of Work Activities: The State's waiver requires non-exempt individuals to participate in job search and job readiness activities for up to 12 months prior to an employability assessment, and may provide for additional periods of job search thereafter. This State asserts that this provision is inconsistent with provisions of the PRWORA that limit the extent to which job search may be treated as a countable activity in calculating a state's participation rate. Therefore, "[i]ndividuals participating in job search and job readiness activities should be considered to be "engaged in work" for the purposes of calculating the participation rate for as long as they are satisfactorily participating in such activities."

Hours of Participation: Under the State's waiver, required hours of participation will vary based on the specific activity to which an individual is assigned, and full participation may be less than 20 hours per week. The State asserts that this provision is inconsistent with the provisions of the PRWORA that mandate minimum hours of participation in calculating a State's participation rate. Therefore, an individual who is participating in a work activity to the extent required in the individual's employability plan should be considered to be "engaged in work" for purposes of determining the state's participation rate.

Assessment/Employability plan: The State's waiver includes a two step assessment process. The first step requires participation in self-directed job search for six to 12 months. If an individual satisfactorily completes the job search component but fails to secure unsubsidized employment, an employability assessment is undertaken to develop an individualized employability plan. The State asserts that these provisions of the waiver are inconsistent with timing and substance of the employability plan provisions of Section 408(b)(2)(B), and therefore the waiver provisions take precedence.

Exemptions from Work Requirements: The State's waiver exempts several categories of individuals from work requirements, including: children under 18, except for minor parents who are not in school; individuals who are incapacitated or of advanced age; individuals needed in the home to care for an incapacitated household member; individuals caring for a child under the age of one who is not covered under the waiver's family cap provision; pregnant or postpartum women who are unable to work; and individuals who are determined to be unemployable.

The State asserts that these exemption policies are inconsistent with the requirement that all adults must engage in work by the 24-mont point, and are also inconsistent with the all-families participation rate, which only allows an optional exemption for parents of children under age one when calculating a state's participation rate. The PRWORA does "...not recognize additional exemptions by considering them in the calculation of the participation rates." "Individuals exempt under these waiver provisions should not be required to participate in work activities and should not be considered in calculating the state's participation rate."

Minor Parents and School Attendance: Under the State's waiver, a minor parent who does not have a diploma or GED, and who is not in school, loses her exempt status from JOBS participation. If the minor parent then fails to participate in JOBS without good cause, she is subject to the JOBS sanction (as modified by the waiver), which is a percentage reduction of the grant that increases with each violation and upon the third or subsequent violation results in ineligibility for the entire family. The State asserts that this provision is inconsistent with the provision of the PRWORA which specifies that if the minor parent fails to attend school she is ineligible for assistance. The "...waiver provision prevails."

Penalties for Failure to Comply: In the event an individual fails without good cause to comply with child support cooperation or work requirements, the State's waiver provides a specific progression of penalty amounts based on the number of prior violations, and minimum durations for each penalty, without regard to whether the individual begins or resumes compliance prior to the end of the specified period. The PRWORA penalty for non-cooperation with child support is a 25% reduction in the assistance payment -or complete denial -at the state's option. The penalty for failure to comply with work requirements is a pro rata reduction in benefits during the period of refusal. The State asserts that "...this is an area of inconsistency and the waiver prevails."

Minor parents Living with Adults: The State's waiver includes a provision requiring certain minor parents to live with a parent or legal guardian.

- The waiver, unlike the PRWORA, requires <u>married</u> teen parents who are not living with their spouses to live with an adult or in an adult supervised setting.
- The waiver specifies that a minor parent who is not living with her parent or legal guardian must live in adult supervised setting regardless of whether the current living arrangement would be considered appropriate. The minor parent is only allowed to live in the current arrangement if no adult supervised setting is available. The PRWORA specifies that if a parent or legal guardian is unavailable or inappropriate, the minor must live in an adult supervised setting unless her current arrangement is determined to be appropriate.
- The waiver requires the supervising adult with whom the minor is living to act as representative payee for the minor. The PRWORA does not include such a requirement.

The State asserts that because of these inconsistencies, "...the waiver provisions take precedence."

Medicaid Extension: The State's waiver provides for a 24-month extension of Medicaid for families who become ineligible because of increased earnings, loss of earned income disregards, or an increase in child support. Families are also eligible for the extension if an individual becomes employed within six months after leaving AFDC, even if no one in the family was employed at the time their case closed. There are no quarterly reports required, nor income tests during the period of the extension. The State asserts that since these provisions are inconsistent with the Medicaid extension provided for under the PRWORA, "...the waiver provisions take precedence."

Florida: The State Plan does not identify specific inconsistencies, but notes that the State has three currently approved waiver packages and does not opt to terminate these waivers at this time. Rather, the State wishes to consult further with the Administration for Children and Families regarding the usefulness of continuation of some of the evaluation activities before making this decision.

Indiana: The State Plan indicates that Indiana intends to continue to operate the IMPACT waiver, as modified in August 1996. The State Plan does not expressly indicate which provisions of the PRWORA are inconsistent with the State's waiver package, but does state that "those provisions which are inconsistent with the waivers received by the State of Indiana prior to enactment of the Act shall not apply."

Kansas: The State Plan makes no reference to the State's currently approved waiver.

Kentucky: The State has no current waivers, and accordingly indicates that the issue of relation of waivers to the PRWORA is "not applicable."

Louisiana: The State Plan expressly states that "No Waivers will be applicable."

Maine: It is unclear whether the State is asserting any inconsistencies. The State Plan makes no reference to existing waivers, but in describing its Plan in relation to the 24-month-work requirement and the participation requirements of Section 407, the State attaches its manual pages describing JOBS exemptions and also notes that "recipients of AFDC based on unemployment and single parents with skills necessary to work who have no children under age 5 will be referred immediately to ASPIRE for Job Search activities. These activities will continue throughout receipt of AFDC."

Maryland: It is unclear whether the State is asserting any inconsistencies. In its Plan, the State makes no direct assertion of inconsistencies, but does describe a 20-hour-a-week work activity requirement and states that exemptions from this requirement will include adults and children who are severely disabled. The State does indicate that it is opting to terminate its Primary Prevention Waiver and the cash assistance component of its Family Investment Waiver.

Massachusetts: The State Plan indicates that the State will comply with requirements of the PRWORA with the exception of those provisions identified in a section of the State Plan entitled 'Provisions which Massachusetts will Continue to Implement under its 1115 Waiver Authority.'" In that section, the State identifies the following areas:

Work Requirements: Under the State's waiver, a recipient who is nonexempt and whose youngest child is of school age must work and/or perform community service for 20 hours a week. In two-parent households, both parents are subject to the work program requirement unless exempt. The State has its own definition of "nonexempt." The State indicates it will retain this work requirement. The State expressly notes that it is applying its work requirement rather than the community service requirements of TANF, that it is applying its own definition of "nonexempt" for purposes of the 24-month-work requirement, and that it will apply its own standard for number of required hours (20 hours a week) and its own penalties (described below) for purposes of the TANF participation rate requirements. (The State does not expressly say that it is applying its own definitions of who is exempt for purposes of the TANF participation rates.)

Sanctions: Under the State's waiver, a mandated parent or caretaker who fails to comply with work requirements without good cause will be ineligible for cash assistance. Failure to do so on more than one occasion will result in termination of assistance for the entire household. For two-parent households, both parents may be sanctioned for failure to comply. The State indicates it will continue this waiver approach.

Job Search: Under its waiver, the State may require job search without a limit on the number of weeks. The State indicates it will continue this waiver. It is not clear if the State envisions that such extended participation in job search would be countable toward participation rate requirements.

Child Support Cooperation: Under the State's waiver, a caretaker relative who fails to cooperate with child support requirements without good cause will have his or her grant reduced by an amount equal to the caretaker's portion of the grant. Massachusetts indicates that it will retain this sanction for failure to comply with child support requirements.

Transitional Child Care: Under its waiver, a family may be eligible for Transitional Child Care without having met the requirement to have received assistance in at least three of the prior six months. The State indicates it will continue to provide Transitional Child Care assistance to such recipients under its waiver authority.

Transitional Medical Assistance: Under its waiver, a family may be eligible for Transitional Medical Assistance without satisfying quarterly reporting requirements and without meeting the requirement to have received assistance in at least three of the prior six months. The State indicates it will continue to provide Transitional Medical Assistance to such recipients under its waiver authority.

Michigan: Michigan's Plan includes a copy of the State's "To Strengthen Michigan Families 1992-1994-1996 Waiver package booklet" to describe the policies that Michigan intends to implement in the future. In addition, the State Plan identifies three specific inconsistencies:

Sanction policy: The State will maintain its policy, approved by federal waiver, of reducing the cash assistance grant by 25% for persons who fail to cooperate with work requirements without good cause. This is in lieu of the TANF provisions which provide for reducing assistance on a pro rata basis for failure to comply with work requirements.

Child Support Cooperation: Michigan will, if its pending waiver is approved, remove the needs of the non-cooperating person from the grant until cooperation occurs; if cooperation has not occurred by the end of a four-month-period, the family's grant will be terminated. Michigan's policy would be in lieu of the TANF policy, which requires a minimum 25% grant reduction for failure to cooperate with child support enforcement requirements.

Reporting Absence of a Child: Michigan will allow 10 days for clients to report changes in family circumstances, rather than the TANF requirement that a child's absence affecting eligibility must be reported within five days.

Mississippi: The State Plan does not expressly identify any areas of inconsistency, but does state: "Mississippi wishes to continue all approved waivers at this time. Based on our conversation with federal, APWA, and NGA staff we do not believe that is has been definitively determined what provisions are inconsistent with TANF and with other aspects of the Personal Responsibility and Work Opportunity Reconciliation Act. For example, the Medicaid linkage implications of terminating a waiver in TANF have not yet been decided. Continuing all of our waivers until all appropriate federal decisions are made will ensure that Mississippi will have the ability to continue all aspects of its current program."

Missouri: The State Plan states that Missouri will retain its Missouri Families Mutual Responsibility Plan (MF-MRP) which is statewide, and its 21st Century Communities Demonstration Project, which operates in specific zip codes of Jackson County. The State indicates that: "Allowable work activities in the Missouri Families Mutual Responsibility Plan are inconsistent with the new law. MFMRP counts all components under the previous Title IV-F JOBS Program. The state intends to continue allowing all work activities as defined in the Social Security Act Section 482, and previously approved under the State's Title IV-F JOBS State Plan, to meet work participation rates as required under PRWORA."

Nebraska: The State expressly indicates an inconsistency in the context of countable activities for work requirements: the State Plan indicates that the State will use its existing policies and procedures to define the activities that will be accepted as meeting work requirements, and will use the definition as outlined in the State's waiver which differs from the Act. The State also indicates (without expressly noting an inconsistency between State waiver policies and the Act) that the State will use existing policies and procedures to define those individuals who are temporarily exempt from work requirement; use existing sanction procedures; and limit services to families with an employable adult to no more than two years without earned income and no more than 60 months regardless of source of income.

Nevada: The State Plan indicates: "There are no 1115 waivers in Nevada."

New Hampshire: The contents of New Hampshire's State Plan describe the program in effect on October 1, 1996. The Plan indicates that on January 1, 1997, the State will begin implementation of the "New Hampshire Employment Program/Family Assistance Program," as approved in New Hampshire's prior waiver application . HHS approved the waiver in June 1996. The Plan indicates that amendments will be made as implementation occurs. The Plan indicates that inconsistent provisions of the waiver will supersede the provisions of the Act, and that additions or changes to the list of inconsistencies described below may be made in the future.

Definition of Work Activities: The State notes that the definition of the activities that count toward participation for purposes of the work and participation requirements of the PRWORA are more restrictive than the work activities that may be required under the State program. Under the State program, activities that qualify as work include: job search, unsubsidized work, a subsidized job, on-the-job training, community service, alternative work experience programs, work supplementation, adult basic education services, job readiness programs, community services and resources, training programs and post secondary education activities, work for benefits programs, and any other employment related activity as determined by the state agency. The Plan indicates that the State will use its own definition of work instead of the definition included in the Act.

Limitation on Job Search: The Act limits the duration of job search activities that will count toward the work and participation rates. As these activities are not time-limited under New Hampshire's program, the State asserts that its provisions supersede the limitations included in the Act.

Limitation on Vocational Educational Training: The state's waiver does not limit the number of individuals who may be treated as being engaged in work as a result of participation in vocational education activities or being the head of a household with satisfactory school attendance. Under the waiver, participation in all approved activities are treated equally. The State asserts that its waiver provisions supersede the Act's limitation on the number of individuals who may be counted as being engaged in work as a result of participation in vocational educational activities or being the head of household with satisfactory school attendance.

Exemptions from Work Requirements: The State's waiver provides exemptions from participation consistent with prior JOBS exemptions and provides for an additional exemption based on an agency determination that an individual has "...significant employment related barriers." The State asserts that its waiver provisions supersede inconsistent provisions of the Act which specify both for purposes of calculating the state's work participation rate, and for purposes of the "24 month work requirement," that the only exemption available is for those caring for a child under the age of 12 months.

Medicaid: The State's waiver allows it to use the income and resources methodologies of the waiver demonstration in place of those contained in the state's AFDC State Plan. The State asserts that its provisions supersede inconsistent provisions of the Act which specify that States must continue to use pre-Act eligibility criteria for determining Medicaid eligibility.

Transitional Medicaid: The state's waiver provides that a family need not have received cash assistance during three of the last six months in order to be eligible for transitional Medicaid. The State asserts that these provisions supersede the Act's requirement that eligibility for transitional Medicaid be conditioned on having received aid in three of the last six months.

Definition of Dependent Child: The State's waiver defines a dependent child as including a child up to age 20 provided the child is a full-time student in a secondary school or in an equivalent level of vocational or technical training. The State asserts that its provision supersedes the Act's provision defining a minor child as an individual under the age of 18, or under the age of 19 and a full-time secondary school student or in an equivalent level of vocational or technical training.

Use of TANF Funds for Medical Services: The state's waiver authorizes payment for medical and dental services if the agency determines that such services are needed to help an individual obtain or retain employment. The State asserts that its provision supersedes the provision of the Act that bars the use of TANF funds to pay for medical services.

New Jersey: The State Plan states that "New Jersey wishes to discontinue its Title IV-A/F waivers since the law allows states the flexibility to implement provisions without the need for waivers."

New York: The State Plan makes no reference to existing waivers. The Plan, in outlining how the State will conduct a program that provides assistance to needy families, indicates that the State will "fulfill this goal for the immediate future by implementing a program which to the extent practicable conforms with the program policy provisions" of the State AFDC and JOBS plans that existed as of September 30, 1996, (subject to new penalty policies when an adult applying for assistance fails to perform assigned job search activities or fails to submit to required finger imaging. Instead of outlining how the State will satisfy the participation rate requirements of Section 407, the Plan states that New York will "ensure that parents and caretakers receiving assistance under the program engage in work activities in accordance with the aforementioned JOBS State Plan."

North Carolina: The State Plan notes that a waiver package was approved in February 1996 and took effect on July 1, 1996. The State Plan asserts: "This state plan is based on North Carolina's existing state plan for Title IV-A of the Social Security Act and waivers that were approved in February, 1996. Inconsistencies between this state plan and the requirements of P.L. 104-193 [i.e., the PRWORA], not expressly prohibited by federal law, are supported by approved waivers, as interpreted with reference to the laws in effect at the time."

The State Plan does not expressly identify any inconsistencies, although the narrative does describe the State's sanction policy ($50 for three months, then $75 for three months, then $75 for six months, then $75 for twelve months) and notes that these sanctions were included in the approved waiver package.

Ohio: The State Plan indicates that for the immediate future the State will implement a program which to the extent practicable conforms with the program policy provisions of the Ohio State AFDC and JOBS plans, and the Terms and Conditions to Waivers of the AFDC and JOBS programs as of September 30, 1996. However, the plan also states that in implementing TANF "the State will defer to any existing TANF provisions or subsequent changes in federal law which may be in conflict with its AFDC and JOBS state plans." The State does not specify whether it will also defer to TANF provisions which may be in conflict with its waivers.

Oklahoma: The State indicates that it will continue a two-county learnfare waiver until its completion (although the plan does not indicate what, if any, provision of TANF the waiver might be inconsistent with.)

Oregon: The State Plan repeatedly makes references to features of the Oregon Option Waiver Project which appear inconsistent with PRWORA requirements, but the State Plan only expressly notes one inconsistency:

Child Care: Parents of infants under 90 days are exempt under the Oregon Option Waiver, and the State Plan says that "[t]he State will continue to use the Oregon Option exemption for infants less than 90 days old, rather than the new federal exemption for parents of children under age 6 who claim that suitable child care is not available."[13]

In addition, the State describes a set of exemptions from required participation under the Oregon Option. These exemptions are not provided under the PRWORA. The State also describes its time limit (24 months in an 84 month period), and describes exemptions and extensions for its time limit, without expressly noting whether the State is asserting inconsistency with the federal sixty-month limit.

The State may also be asserting inconsistency with the participation rate requirements of Section 407. In Section (1)(A)(I) of its State Plan, the State describes its approach under its JOBS Program. Then, in describing its approach to Section 407, the State Plan says "The State will ensure that parents and caretakers receiving assistance under the program engage in work activities through the JOBS Program as described in Section (1)(A)(I) of this document."

[13] Note, however, that federal law does not provide for an exemption for parents with children under age 6 when child care is unavailable. Rather, the federal law provides that a State may not reduce or terminate assistance to a single parent of a child under age 6 if the parent is unable to comply with work requirements due to the unavailability of needed child care.

South Carolina: The State indicates that it intends to retain certain waivers which "appear to be in conflict with the TANF legislation." Five specific areas are identified:

Transitional Medicaid: The State indicates that it will provide up to 24 months of transitional Medicaid for AFDC recipients who lose eligibility because of employment or who become unemployed after losing eligibility due to the AFDC time limit, whose earnings are less than the Federal Poverty Guidelines and whose employment would be jeopardized by medical expenditures.

Non-Custodial Parent Participation: The State Plan indicates that the State will require court-ordered non-custodial parents of children receiving AFDC to participate in the Family Independence Employment and Training Program.

Individual Development Accounts (IDA): The State indicates that under its waiver, the State will exclude as a resource for applicants and recipients funds up to $10,000 deposited in an IDA and will disregard from income a lump sum payment of $10,000 or less that is deposited in an IDA within 30 days of receipt. (The State will count any amount toward the family's resource limit that is transferred to a non-exempt account or withdrawn for other than allowable purposes.)[14]

Ninety-Day Medicaid Extension: The State indicates that it will extend Medicaid eligibility to individuals who are participating in an alcohol or drug treatment program for up to 90 days after termination of AFDC benefits due to the removal of the dependent child(ren) from the home due to abuse or neglect.

Definition of Work: The State indicates that "[u]nder the Terms and Conditions agreed to in the Section 1115 Waiver, [the State] will continue to define work as involvement in specific components that will lead to employment or improved employability as specified in the legislation. Components which will continue to count toward participation are (1) the Family Life Skills requirements mandated by the Family Independence Act and (2) the various Job Club curricula. Included within Job Club is the mandatory 60-day job search. In addition, [the State] intends to define as work participation various components required under the Family Independence Act of 1995. Participation in Literacy Classes, Adult Education, GED classes, technical schools, vocational training, Work Experience and On-the-Job Training will all count toward the participation rate, all of which were countable components as of the date waiver terms and conditions were granted to South Carolina."

South Dakota: The State's Plan identifies four "primary inconsistencies" with TANF provisions:

Treatment of Disabled: The State Plan notes that under the State's currently approved waiver, disabled adults and adults needed in the home to care for a disabled family member are exempt from work requirements and time limits. Accordingly, the State indicates an intent to

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[14] The State does not specify how its IDA provision is inconsistent with the PRWORA. Under the PRWORA, a State would be free to develop its own rules for treatment of resources and lump sums. The PRWORA does contain its own IDA provision, which generally provides that if an IDA is designed in accordance with the statutory provisions, a State may elect to provide that the funds deposited in the IDA will not affect eligibility for federal means-tested programs. It is not clear whether the State is seeking to combine its own IDA design rules with those in the statute.

exclude such individuals from the numerator and denominator for purposes of calculating participation rates, and that the State will not count these individuals against the 20% hardship exceptions to the 60-month time limit.

Twenty-Four Month Work Requirement: The State notes that TANF allows for up to 24 months of benefits prior to requiring a parent or caretaker to engage in a work activity, but that South Dakota plans to count months of benefits received under the State's waiver when determining if the parent or caretaker is ready to engage in work or has received 24 months of countable benefits, whichever is earlier.

Secondary Education and Job Readiness: The State Plan notes that TANF is more restrictive about when secondary education and job readiness components count as participation than is true under the State's waiver, so the State will continue current provisions regarding both activities. "All participation in secondary education, (high school, alternative high school, GED, basic/remedial education, or English as a second language instruction), will count towards an individual's first 20 hours of participation regardless of the person's age for both 'all families' and 'two-parent families.' Likewise job readiness pre-employment training will be defined as a work activity for determining participation rates."

Postsecondary Education and Vocational Training: The State indicates that college education and vocational training will be considered as acceptable work activities and counted when determining South Dakota's work participation rates for both "all families" and "two-parent families."

Tennessee: The State expresses its intent to continue operating its statewide waiver. The State does not explicitly identify inconsistencies with TANF, but at least the following areas of inconsistency appear to exist from the State's Plan: 1) Exemptions: The State allows a set of exemptions from its work requirements (i.e., disabled, age 60 or greater, providing in-home care for a disabled relative, not included in the assistance group, incapacitated, parent of a newborn who is four months of age or less). TANF does not allow all of these exemptions. 2) Countable Activities: The State's Plan provides that nonexempt parents and caretakers must engage in work plan activities, but the list of countable activities is broader than the list counting toward TANF participation rates. 3) The State has a 60-month lifetime time limit but provides for an express set of exemptions.

Texas: Texas initially states that "Texas operates a TANF block grant assistance program on a statewide basis in accordance with state law, the terms and conditions of its 1115 waiver, and state policy to the extent that they are inconsistent with federal law." The two areas of inconsistency specifically noted are:

24-Month Work Requirement: In describing the State's approach to the 24-month work requirement, the State Plan states: "Texas requires parents or caretakers to engage in work at least 20 hours per week in accordance with the terms and conditions of the State's Title IV-A waiver."

Participation Rates: In describing the State's approach to the participation rates of Section 407, the State Plan states: "Texas requires parents or caretakers to engage in work activities in accordance with the terms and conditions of the State's Title IV-A waiver. This includes the use of participation rate methodologies previously approved for JOBS under the waiver."

Utah: The State Plan notes: "Because all Single Parent Employment Demonstration Project waivers are currently referenced in the Employment Assistance for Utah Families State Statute, the State must keep all waivers until after the next legislative session. The State fully intends to comply with the TANF requirement that the Federal Government must be notified no later than 90 days after the end of the State's legislative session concerning which waivers the State will elect to maintain."[15]

Vermont: The State Plan does not expressly identify inconsistencies, but notes that Vermont implemented a 7-year welfare restructuring demonstration project on July 1, 1994, and that the Welfare Restructuring Project provides transitional assistance through Vermont's AFDC program, Aid to Needy Families with Children (ANFC), and its welfare-to-work component, Reach-Up. The State Plan further states that "Submission of this State Plan commits the State of Vermont to operating TANF in accordance with current state policies and procedures applicable to Vermont's AFDC program, Aid to Needy Families with Children, and JOBS program, Reach Up." The State further notes that "the State will continue to require a parent or caretaker receiving assistance to engage in work according to the provisions of the WRP waiver terms and conditions, Act 106, and applicable regulations in Vermont's Welfare Assistance Manual."

Wisconsin: The State Plan does not identify any areas of inconsistencies, but references, among other documents "as policy for phase-in of the TANF block grant" the State's currently approved waivers and the W-2 (pending waiver) program narrative.

Wyoming: The State Plan indicates that "Wyoming has requested the approved and submitted waivers be terminated."

Future Updates

CLASP will update this listing of identified inconsistencies as other State Plans are submitted in the coming months.

[15] Note that Section 415 does not require that a State provide such a notice within ninety days of the end of the next regular State legislative session, but does provide that if the State has accrued any federal cost-neutrality liability, the State will be held harmless if the waiver is terminated by that date.

Use this version — ignore previous version!

ADMINISTRATION FOR CHILDREN AND FAMILIES

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TO: Laura Oliver
395-6974
re: TANF regs.

DATE: 10/22/97
(Second try)

__ **URGENT** __ **AS REQUESTED** __ **COMMENT** __ **CLEARANCE** __ **FYI** __ **REPLY ASAP**

Attached are proposals for changing TANF regs in response to conference call yesterday in the following areas:

1) Domestic violence
2) Caseload reduction
3) Penalties

I've also included a list of items that could be included in a definition of admin costs

ADMINISTRATION COSTS

The costs of administration are those that are necessary for the proper administration of the TANF program and separate State programs. They include the costs for general administration and coordination of these programs, including indirect (or overhead) costs. Examples of administrative costs include:

1) salaries and benefits of staff not directly related to the provison of eligibility and case management services

2) preparation of program plans, budgets, schedules

3) monitoring of programs and projects

4) fraud and abuse units

5) procurement activities

6) public relations

7) services related to accounting, litigation, audits, management of property, payroll, and personnel

8) costs for goods and services required for administration of the program such as rental and purchase of equipment, utilities, office supplies, postage, and rental and maintenance of office space

9) travel costs inclurred for official business

10) management information systems not related to the tracking and monitoring of TANF requirements (e.g., a personnel and payroll system for State staff)

11) preparing reports and other documents related to program requirements

FAX COVER

Income Maintenance Branch
Office of Management and Budget
Executive Office of the President
Washington, D.C. 20503

To: Diana Fortuna

Organization:

Fax Number: 6-7431

From: Anil Kakani

Date/Time:

Number of Pages: Cover + 9

Notes:

Waiver change pages from HHS.

Income Maintenance Fax Number: (202) 395-0851
Voice Confirmation: (202) 395-4686

Bin. 91

ADMINISTRATION FOR CHILDREN AND FAMILIES

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TO: Anil Kakani
375-0851
re: TANF regs.

DATE: 10/17/97

__ URGENT ✓ AS REQUESTED __ COMMENT __ CLEARANCE __ FYI __ REPLY ASAP

Attached is revised waiver language in the TANF regs. Thanks for circulating and reviewing.

Maddy

Bin. 9/

See revisions on following page

§274.1 What restrictions apply to the length of time Federal TANF assistance may be provided?

(a) No State may use any of its Federal TANF funds to provide assistance (as defined in §270.30 of this chapter) to a family that includes an adult who has received assistance for a total of five years (60 cumulative months, whether or not consecutive).

(b) States must not count towards the five-year limit:

(1) 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;

(2) Any month in which an adult lived in Indian country (as defined in section 1151 of title 18, United States Code) or Native Alaskan Village and at least 50 percent of the adults were not employed; and

(3) Funds provided under section 403(a)(5) of the Act.

(c) States have the option to extend assistance from Federal TANF funds beyond the five-year limit for up to 20 percent of their average monthly number of families receiving assistance during the fiscal year or the immediately preceding fiscal year, whichever the State elects. States are permitted to extend assistance to a family only on the basis of:

(1) Hardship, as defined by the State; or

(2) The fact that the family includes someone who has

been battered, or subject to extreme cruelty based on the fact that the individual has been subjected to:

(i) Physical acts that resulted in, or threatened to result in, physical injury to the individual;

(ii) Sexual abuse;

(iii) Sexual activity involving a dependent child;

(iv) Being forced as the caretaker relative of a dependent child to engage in non-consensual sexual acts or activities;

(v) Threats of, or attempts at, physical or sexual abuse;

(vi) Mental abuse; or

(vii) Neglect or deprivation of medical care.

(d) If a State opts to extend assistance to part of its caseload as permitted under paragraph (c) of this section, it only determines whether or not the extension applies to a specific family once an adult in the family has received 60 cumulative months of assistance.

replace with attachment

(e) If the five-year limit is inconsistent with a State's waiver, which was in effect on August 21, 1996, or was approved by July 1, 1997, and was granted under section 1115 of the Act, the State need not comply with the inconsistent provisions of the five-year limit until the waiver expires. The five-year limit is inconsistent with the State's waiver only:

(1) If the State has an approved waiver that provides

for terminating cash assistance to individuals or families because of the receipt of assistance for a period of time, specified by the approved waiver; and

(2) The State would have to change its waiver policy in order to comply with the five-year limit.

(f) Inconsistencies applicable to a case that is in a control group or experimental treatment group will be maintained, but only to the extent a State continues its experimental research design for the purpose of completing an impact evaluation of the waiver policies.

(g) Generally, under an approved waiver, a State will count, toward the five-year limit, all months for which the adult subject to a State waiver time limit receives assistance with Federal TANF funds, just as it would if it did not have an approved waiver. However, the State may continue to provide assistance with Federal TANF funds for more than 60 cumulative months in accordance with the terms of the approved waiver for extending assistance beyond the State's time limit as long as the State's waiver authority has not expired.

(h) In lieu of the provision of paragraph (c) of this section, the State may apply extensions of its time limit, without caseload limits, in accordance with the terms of its approved waiver.

(i) The State need not count, toward the five year limit, any months for which an adult receives assistance with Federal TANF funds while the adult is exempt from the State's time limit because of the terms of the State's approved waiver.

§274.2 What happens if a State does not comply with the five-year limit?

If we determine that a State has not complied with the requirements of §274.1, we will reduce the SFAG payable to the State for the immediately succeeding fiscal year by five percent of the adjusted SFAG unless the State demonstrates to our satisfaction that it had reasonable cause or we approve a corrective compliance plan.

§274.3 How can a State avoid a penalty for failure to comply with the five-year limit?

(a) We will not impose the penalty if the State demonstrates to our satisfaction that it had reasonable cause for failing to meet the five-year limit or it completes a corrective compliance plan pursuant to §§ 272.5 and 272.6 of this chapter.

(b)(1) In addition, we will determine a State has reasonable cause if it demonstrates that it exceeded the 20 percent limitation on exceptions to the time limit because of good cause waivers it provided to victims of domestic

§271.60 How do existing welfare waivers affect the participation rate?

(a) If a State is implementing policies in accordance with an approved waiver that meets the provisions of section 415(a)(1)(A) of the Act and the definition of a waiver at §270.30 of this chapter, the provisions of section 407 of the Act do not apply, to the extent that they are inconsistent with the waiver.

See replacement language

(b)(1) In the case of waivers addressing activities in which an individual may participate in order to be "engaged in work" and count toward the minimum participation rates (as specified at §271.30):

all ?

(i) We will include provisions of prior law as part of such waivers; and

(ii) We will recognize such waivers as inconsistent.

(2) In the case of waivers addressing minimum average hours of work per week necessary to be "engaged in work" for a month (as specified at §§ 271.31 and 271.32):

(i) We will recognize the waiver as inconsistent if it specifies an individual's mandated hours of participation in accordance with his/her particular circumstances, either as specified by criteria described in the waiver or under an individualized plan or similar agreement for achieving self-sufficiency; and

(ii) We will not recognize as inconsistent any waiver designed to increase the mandatory work hours for a class of recipients under the former JOBS program.

Fax 67431

ADMINISTRATION FOR CHILDREN AND FAMILIES

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TO: Laura Oliver

DATE: 10/16/97

395-6974 395-8851

re: TANF regs.

__ URGENT ✓ AS REQUESTED __ COMMENT __ CLEARANCE __ FYI __ REPLY ASAP

As discussed this morning attached are the following pieces of info:

1

Laura – I pulled the last couple of pages together quickly. Please call if we need to discuss or if you can't follow.

Penalties + Data

409(a)(1) -- Misuse of funds

ACF-196 will be used to identify potential problems (i.e., expenditures that are not for TANF purposes. Single audit (including supplements and additional reviews, as appropriate) will be main vehicle for identifying misuse or improper accounting. We can also check for assistance paid in violation of provisions in section 404 or 408 through reviews of case records and financial records. ACF will also conduct reviews, or request the OIG to conduct reviews, if complaints of misuse of funds are received from reputable sources.

409(a)(2) -- Data reporting

We will monitor for timeliness and completeness based on submission of reports. We have authority to validate data and can penalize (here and elsewhere) where data are missing or deficient. We also have authority to approve sampling methods. States must maintain adequate documentation trails for data validation purposes. Through single audit or other reviews, we can check whether electronically submitted data are consistent with case records in State offices and States are properly sampling.

409(a)(3) -- Participation Rates

Primary vehicle is the data reported under section 411(a). We can penalize State if that data are missing or deficient. We have data validation authority to determine if electronically submitted data are valid.

409(a)(4) -- IEVS

We expect to use essentially the same system as we have now. Single audit can be used to check for adequacy of procedures and to examine case records for evidence of matches and follow-up.

409(a)(5) -- Child Support Cooperation Penalty Enforcement

Single audit will be primary vehicle. Can pull cases where no child support collections exist and check with child support agency for case status info. Can also do profiling to see whether individual States should receive special attention based on sanction info in the 411(a) data.

409(a)(6) -- Loan Repayment

We will just monitor receipt of payments against the payment schedule.

409(a)(7) -- TANF MOE

Will use ACF-196 (including addendum) to verify that State is meeting minimum requirements. Can look at this form and supplemental info on separate State programs to see if there is a reason to question whether all State MOE expenditures are "qualified." Can provide compliance supplements to look at this issue or conduct special reviews where need is indicated.

409(a)(9) -- Time Limit

411(a) data collection will be primary source of info to see whether 20 percent exception is exceeded. This will be supplemented by single audit and data validation activities.

409(a)(10) -- Contingency Fund MOE

Will use same general approach as discussed at 409(a)(7), but separate State program expenditures are out of scope.

409(a)(11) -- Sanctions in Young Child Cases

Single audit will be primary vehicle; can look at both the adequacy of procedures and individual case records. Can use 411(a) data to determine if a State has an unusually high number of these sanction or termination cases and to identify single parents with young children who received work sanctions (or were terminated) for audit sample frame. Also, we expect that we might hear direct complaints in this area.

409(a)(12) -- Failure to Replace Funds

ACF-196 contains data element. Can audit to validate data.

409(a)(13) -- WTW MOE

Same basis as 409(a)(7)

409(a)(14) -- Enforcement of Work Sanctions

Single audit will be primary vehicle. Can review procedures as well as individual case records. Section 411(a) data can be used to identify States with low sanction rates and to develop sample frame for case-record reviews.

1. Elements on Child Support:

TANF Data Report - Section One:
Item #20: Amount of child Support

Under Reason for and Amount of Reduction in Assistance
Item #35: Non-Cooperation with Child Support

Item #101: Cooperation with Child Support

TANF Data Report - Section Two:
Item #52: Cooperation with Child Support

TANF MOE Data Report - Section One:
Item #17: Amount of child Support

Under Reason for and Amount of Reduction in Assistance
Item #32: Non-Cooperation with Child Support

Item #93: Cooperation with Child Support

TANF MOE Data Report - Section Two:
Item #48: Cooperation with Child Support

2. Separate State Programs data elements for work participation:

TANF MOE Data Report - Section One:
Item #9: Type of Family for Work Participation

Item #40: Waiver Evaluation Research Group

Item #59: Work Participation Status

Work Activities: items #60 - item #72

Item #74: Required Hours of Work under Waiver Demonstration

Other data elements that may be used in the program are:
Item #1: State FIPS Code
Item #3: Reporting Month
Item #4: Stratum
Item #7: Disposition
Item #41: Family Affiliation
Item #42: Noncustodial Parent Indicator
Item #53: Relationship to Head of Household

Time Limits: No data elements

1) TANF Penalties -- DATA Elements

Time Limits -- #41, 43, 44, 62-65

Work -- #8, 12, 43, 67, 68-83

Sanction cases could be identified through #32, #35 and age of child

2) How enforcing IDA's?

No general compliance authority to enforce IDA's and no penalty associated with IDA's. However, could use special audit to examine what's happening and in some cases where abuses are identified may be able to use misuse of funds authority.

3) Data elements for housing, food stamps and citizenship

Housing

Information on the nature of housing subsidies is vital because public housing residents represent a significant (1 of 11) subset of recipients with particular characteristics. Thus, there are reasons to believe that individuals receiving housing assistance could respond to welfare reform differentially depending on that nature of their subsidy. For example, individuals in public housing are more likely to be more disadvantaged and live in worse neighborhoods that those receiving vouchered assistance, or not receiving any assistance at all. Furthermore, states and housing authorites are undertaking different approaches to self-sufficiency in public housing where there is greater geographic concentration of welfare recipients than with vouchers. Other studies including the National Evaluation of Welfare to Work Strategies (formerly the National JOBS Evaluation) have produced important information by looking at the subset of individuals in public housing. Finally, the data have been collected under AFDC with these types of subsidy breakouts, so that conitnuing to do so will not only not create a new burden, but it will allow us to understand whether the welfare population under TANF shifts in important ways from that served under AFDC.

Food stamps

Food stamps data is needed for report to Congress as well as to track fate of individuals receiving food stamps who are impacted by the TANF program.

Citizenship

In answer to OMB's question #61: Why do we need nine break-outs of citizenship status? The law only requires "citizenship", the answer is:

We believe the 8 non-citizen codes are the minimum number necessary to ensure proper administration of TANF in terms of the alien provisions in title IV of PRWORA. These codes are necessary to track the proper use of TANF funds in terms of the types of aliens served to ensure that TANF benefits are going to eligible aliens. The welfare reform law created complex and confusing eligibility criteria for different types of qualified aliens, made even more confusing by the imposition of certain time limits in regard to U.S. residency for certain groups of qualified aliens such as refugees.

This would be the only vehicle for obtaining data on the number of TANF recipients in the different alien groups. This is information that Congress will want to know. In particular, Congressional members frequently request information on refugee/entrant/Amerasian welfare dependency rates. The Administration has not been able to provide that information to Congress due to the unavailability of data.

In order to meet the alien provisions in the law, States will have to track the receipt of benefits by each of the different alien categories. Reporting on the 8 non-citizen codes will not require States to collect data they are not already required to collect in accordance with title IV of PRWORA.

104TH CONGRESS *2d Session*	HOUSE OF REPRESENTATIVES	REPORT 104–725

PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996

CONFERENCE REPORT

TO ACCOMPANY

H.R. 3734

Early Senate
was waiver
no law

JULY 30, 1996.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1996

26–206

82. WAIVERS

Present law

Section 1115 of the Social Security Act authorizes the HHS Secretary to waive specified requirements of State AFDC plans in order to enable a State to carry out any experimental, pilot, or demonstration project that the Secretary judges likely to assist in promoting the program's objectives. Some 38 States have received waivers from the Clinton Administration for welfare reforms, as of late May 1996.

House bill

This section provides that terms of AFDC waivers in effect, or approved, as of September 30, 1995, will continue until their expiration, except that beginning with fiscal year 1996 a State operating under a waiver shall receive the block grant described under Section 403 in lieu of any other payment provided for in the waiver. The section also allows for continuation, under certain conditions of waivers on or approved before July 1, 1997, on the basis of applications made before enactment of the new program.

States have the option to terminate waivers before their expiration, but projects that are ended prematurely must be summarized in written reports. A State that submits a request to end a waiver within 90 days after the adjournment of the first regular session of the State legislature that begins after the date of enactment will be held harmless for accrued cost neutrality liabilities incurred under the waiver.

The Secretary is directed to encourage any State now operating a waiver to continue the project and to evaluate its result or effect. A State may elect to continue one or more individual waivers.

Senate amendment

Same.

Conference agreement

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. Conferees urge the Secretary to approve the Wisconsin comprehensive welfare reform waiver request (published in the Federal Register on June 10, 1996) by September 1, 1996.

83. ADMINISTRATION (AND REDUCTION IN FEDERAL WORKFORCE)

Present law

An Assistant Secretary for Family Support, appointed by the President by and with consent of the Senate, is to administer AFDC, child support enforcement, and the Jobs Opportunities and Basic Skills (JOBS) program.

of the amendments made by title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 on a random national sample of recipients of assistance under State programs funded under this part and (as appropriate) other low-income families, and in doing so, shall pay particular attention to the issues of out-of-wedlock birth, welfare dependency, the beginning and end of welfare spells, and the causes of repeat welfare spells, and shall obtain information about the status of children participating in such panels.

"(b) APPROPRIATION.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $10,000,000 for each of fiscal years 1996, 1997, 1998, 1999, 2000, 2001, and 2002 for payment to the Bureau of the Census to carry out subsection (a).

"SEC. 415. WAIVERS.

"(a) CONTINUATION OF WAIVERS.— 42 USC 615.

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

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

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

"(2) WAIVERS GRANTED SUBSEQUENTLY.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), if any waiver granted to a State under section 1115 of this Act or otherwise which relates to the provision of assistance under a State plan under this part (as in effect on September 30, 1996) is submitted to the Secretary before the date of the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and approved by the Secretary on or before July 1, 1997, and the State demonstrates to the satisfaction of the Secretary that the waiver will not result in Federal expenditures under title IV of this Act (as in effect without regard to the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) that are greater than would occur in the absence of the waiver, the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (other than by section 103(c) of the Personal Responsibility and Work

Opportunity Reconciliation Act of 1996) shall not apply with respect to the State before the expiration (determined without regard to any extensions) of the waiver to the extent the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 are inconsistent with the waiver.

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

"(b) STATE OPTION TO TERMINATE WAIVER.—

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

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

"(3) HOLD HARMLESS PROVISION.—

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

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

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

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

42 USC 616.

"SEC. 416. ADMINISTRATION.

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

104TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
104–430

PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY ACT OF 1995

CONFERENCE REPORT

TO ACCOMPANY

H.R. 4

DECEMBER 20, 1995.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
21–625 WASHINGTON : 1995

House bill

The Secretary may conduct research on the effects, costs, benefits, and caseloads of State programs funded under this part. The Secretary may assist the States in developing, and shall evaluate (using random assignment to experimental and control groups to the maximum extent feasible), innovative approaches to employing recipients of cash aid under this part. The Secretary may conduct studies of the welfare caseloads of States operating welfare reform programs. The Secretary shall develop innovative methods of disseminating information on research, evaluations, and studies.

Senate amendment

The Secretary may conduct research on the effects, benefits, and costs of operating different State programs of Temporary Assistance for Needy Families, including time limits for eligibility. The research shall include studies on the effects of different programs and the operation of the programs on welfare dependency, illegitimacy, teen pregnancy, employment rates, child well-being, and any other appropriate area. The Secretary may assist States in developing, and shall evaluate innovative approaches for reducing welfare dependency and increasing the well-being of minor children, using random assignments in these evaluations "to the maximum extent feasible."

The Secretary shall develop innovative methods of disseminating information on research, evaluations, and studies, including ways to facilitate sharing of information via computers and other technologies.

The Senate amendment makes a State eligible to receive funding to evaluate its family assistance program if it submits an evaluation design determined by the Secretary to be rigorous and likely to yield credible and useful information. The State must pay 10 percent of the study's cost, unless the Secretary waives this rule. For these State-initiated evaluation studies of the family assistance program (and for costs of operating and evaluating demonstration projects begun under the AFDC waiver process) the amendment authorizes to be appropriated, and appropriates, to total of $20 million annually for 5 years (FYs 1996–2000).

Conference agreement

The conference agreement follows the Senate amendment except that $15 million is appropriated annually for this purpose. Conferees agree that the Secretary can use funds appropriated for research to pay for evaluations conducted by both governmental and non-governmental organizations.

M. Waivers

Present law

The law authorizes the DHHS Secretary to waive specified requirements of State AFDC plans in order to enable a State to carry out any experimental, pilot, or demonstration project that the Secretary judges likely to assist in promoting the program's objective. (Sec. 1115 of Social Security Act) Some 34 States have received

waivers from the Clinton Administration for welfare reforms of their own.

House bill

Repeals AFDC. Also, expressly repeals authority for waiver of specified provisions of AFDC law (Sec. 402, State plan requirements, and Sec. 403, terms of payment to States) for demonstration projects.

Senate amendment

Provides that terms of AFDC waivers in effect, or approved, as of October 1, 1995, will continue until their expiration, except that beginning with FY1996 a State operating under a waiver shall receive the block grant described under Section 403 in lieu of any other payment provided for in the waiver. The amendment gives States the option to terminate waivers before their expiration, but requires that early-ended projects be summarized in written reports. The amendment provides that a State that submits a request to end a waiver by January 1, 1996, or 90 days after adjournment of the first regular session of the State legislature that begins after the date of enactment, shall be held harmless for accrued cost neutrality liabilities incurred under the waiver.

The Secretary is directed to encourage any State now operating a waiver to continue the project and to evaluate its result or effect. The amendment allows a State to elect to continue one or more individual waivers.

Conference agreement

The conference agreement follows the Senate amendment.

N. Studies by the Census Bureau (Sections 103 and 105)

Present law

No provision.

House bill

The Census Bureau must expand the Survey of Income and Program Participation (SIPP) to evaluate the impact of welfare reforms made by this title on a random national sample of recipients and, as appropriate, other low-income families. The study should focus on the impact of welfare reform on children and families, and should pay particular attention to the issues of out-of-wedlock birth, welfare dependency, the beginning and end of welfare spells, and the causes of repeat welfare spells. $10 million per year for 7 years in entitlement funds are authorized for this study.

Senate amendment

Expansion of SIPP is identical to House provision.

In addition, the Secretary of Commerce shall expand the Census Bureau's question (for the decennial census and mid-decade census) concerning households with both grandparents and their grandchildren so as to distinguish between households in which a grandparent temporarily provides a home and those where the grandparent serves as primary caregiver.

"(1) IN GENERAL.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $15,000,000 for each fiscal year specified in section 403(a)(1) for the purpose of paying—

"(A) the cost of conducting the research described in subsection (a);

"(B) the cost of developing and evaluating innovative approaches for reducing welfare dependency and increasing the well-being of minor children under subsection (b);

"(C) the Federal share of any State-initiated study approved under subsection (f); and

"(D) an amount determined by the Secretary to be necessary to operate and evaluate demonstration projects, relating to this part, that are in effect or approved under section 1115 as of September 30, 1995, and are continued after such date.

"(2) ALLOCATION.—Of the amount appropriated under paragraph (1) for a fiscal year—

"(A) 50 percent shall be allocated for the purposes described in subparagraphs (A) and (B) of paragraph (1), and

"(B) 50 percent shall be allocated for the purposes described in subparagraphs (C) and (D) of paragraph (1).

"SEC. 414. STUDY BY THE CENSUS BUREAU.

"(a) IN GENERAL.—The Bureau of the Census shall expand the Survey of Income and Program Participation as necessary to obtain such information as will enable interested persons to evaluate the impact of the amendments made by title I of the Personal Responsibility and Work Opportunity Act of 1995 on a random national sample of recipients of assistance under State programs funded under this part and (as appropriate) other low income families, and in doing so, shall pay particular attention to the issues of out-of-wedlock birth, welfare dependency, the beginning and end of welfare spells, and the causes of repeat welfare spells.

"(b) APPROPRIATION.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $10,000,000 for each of fiscal years 1996, 1997, 1998, 1999, 2000, 2001, and 2002 for payment to the Bureau of the Census to carry out subsection (a).

"SEC. 415. WAIVERS.

"(a) CONTINUATION OF WAIVERS.—

"(1) WAIVERS IN EFFECT ON DATE OF ENACTMENT OF WELFARE REFORM.—Except as provided in paragraph (3), if any waiver granted to a State under section 1115 or otherwise which relates to the provision of assistance under a State plan under this part (as in effect on September 30, 1995) is in effect as of the date of the enactment of the Personal Responsibility and Work Opportunity Act of 1995, the amendments made by such Act shall not apply with respect to the State before the expiration (determined without regard to any extensions) of the waiver to the extent such amendments are inconsistent with the waiver.

"(2) WAIVERS GRANTED SUBSEQUENTLY.—Except as provided in paragraph (3), if any waiver granted to a State under section 1115 or otherwise which relates to the provision of assistance under a State plan under this part (as in effect on September 30, 1995) is submitted to the Secretary before the date of the enactment of the Personal Responsibility and Work Opportunity Act of 1995 and approved by the Secretary before the effective date of this title, and the State demonstrates to the satisfaction of the Secretary that the waiver will not result in Federal expenditures under title IV of this Act (as in effect without regard to the amendments made by the Personal Responsibility and Work Opportunity Act of 1995) that are greater than would occur in the absence of the waiver, such amendments shall not apply with respect to the State before the expiration (determined without regard to any extensions) of the waiver to the extent such amendments are inconsistent with the waiver.

"(3) FINANCING LIMITATION.—Notwithstanding any other provision of law, beginning with fiscal year 1996, a State operating under a waiver described in paragraph (1) shall be entitled to payment under section 403 for the fiscal year, in lieu of any other payment provided for in the waiver.

"(b) STATE OPTION TO TERMINATE WAIVER.—

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

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

"(3) HOLD HARMLESS PROVISION.—

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

"(B) DATE DESCRIBED.—The date described in this subparagraph is the later of—

"(i) January 1, 1996; or

"(ii) 90 days following the adjournment of the first regular session of the State legislature that begins after the date of the enactment of the Personal Responsibility and Work Opportunity Act of 1995.

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

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

"SEC. 416. ASSISTANT SECRETARY FOR FAMILY SUPPORT.

"The programs under this part and part D shall be administered by an Assistant Secretary for Family Support within the Department of Health and Human Services, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be in addition to any other Assistant Secretary of Health and Human Services provided for by law.

104TH CONGRESS
1st Session

COMMITTEE PRINT

S. PRT.
104–34

BUDGET RECONCILIATION RECOMMENDATIONS OF THE COMMITTEE ON FINANCE

AS SUBMITTED TO THE COMMITTEE ON THE BUDGET PURSUANT TO H. CON. RES. 67

COMMITTEE ON FINANCE
UNITED STATES SENATE

WILLIAM V. ROTH, JR., *Chairman*

Comm rev
9 HR 4

OCTOBER 1995

Printed for the use of the Committee on Finance

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WASHINGTON : 1995

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r. Research, evaluations, and national studies.

The Secretary of HHS shall conduct research on the effects, costs, and benefits of operating State programs funded under the State Family Assistance Grant. The Secretary of HHS may assist States in developing innovative approaches to helping welfare recipients attain self-sufficiency through employment and shall evaluate the effectiveness of such approaches.

The Secretary of HHS is required annually to rank the States in order of their success in moving individuals receiving assistance into long-term private sector jobs. In addition, the Secretary is to undertake an annual review of the 3 States most recently ranked highest and the 3 States most recently ranked lowest.

The Secretary of HHS is required to conduct a study of outcomes measures for evaluating the success of a State in moving individuals receiving assistance off of welfare through employment and report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives not later than September 30, 1998.

The Secretary of HHS shall annually rank States on their reduction of out-of-wedlock births and review the 5 States most recently ranked highest and the 5 States most recently ranked the lowest.

s. Study by the Census Bureau.

The Bureau of the Census is directed to expand the Survey of Income and Program Participation as necessary to obtain information to enable interested persons to evaluate the impact of State programs funded under the State Family Assistance Grant.

t. Waivers.

States that have a waiver under section 1115 or otherwise relating to AFDC programs under Title IV–A in effect on October 1, 1995, may continue to operate a program under the terms of the waiver notwithstanding any other provision of the Committee bill. The State is not, however, entitled to any Federal payments under the waiver.

A State may terminate a waiver, if it so chooses, and must submit a report to the Secretary of HHS on the result or effect of such waiver. A State is relieved of any accrued cost neutrality liabilities under the waiver if the State terminates the waiver by the later of January 1, 1996, or 90 days following the adjournment of the first regular session of the State legislature that begins after the date of enactment of the Committee bill.

u. State demonstration programs.

The Committee bill is not intended to limit in anyway the ability of a State to conduct demonstration projects in 1 or more political subdivisions directed at identifying innovative or effective programs.

Certain counties with populations greater than 500,000 will be able to participate in a demonstration program where the county can opt to receive its portion of the State Family Assistance Grant directly. In order to be eligible, a county must currently be administering an AFDC program that represents less than 25 percent of

the State's total welfare caseload and be located in a State with more than one County with a population greater than 500,000.

v. Direct funding and administration for Indian tribes.

Indian tribes and Alaska native organizations with a plan approved by the Secretary of HHS are eligible to receive direct funding. Funding to the Indian tribes shall be taken from the State Family Assistance Grant in the State where the tribe resides and is equal to the expenditures attributable to such Indian families.

w. Assistant Secretary for Family Support.

The Assistant Secretary for Family Support within the Department of Health and Human Services will administer the programs under Title IV–A and IV–D.

x. Limitation on Federal authority.

The Secretary of HHS and the Secretary of the Treasury may not regulate the conduct of States under this program or enforce any provision, except to the extent expressly provided under Title IV–A of the Social Security Act.

y. Appeal of adverse decision.

States shall continue to have the right to appeal any decision to the Departmental Appeals Board established in the Department of HHS.

z. Eligibility for child care assistance.

The State agency administering the program(s) under Title IV–A shall determine eligibility for all child care assistance provided under this part.

aa. Collection of overpayments from Federal tax refunds.

The Secretary of Treasury shall withhold any overpayments made under Title IV–A from an individuals income tax refund.

SERVICES PROVIDED BY CHARITABLE, RELIGIOUS, OR PRIVATE ORGANIZATIONS

(Sec. 7202)

States are allowed to contract with private and religious organizations to provide services to State Family Assistance Grantrecipients.

LIMITATIONS OF USE OF FUNDS FOR CERTAIN PURPOSES

(Sec. 7203)

No funds provided directly to institutions or organizations to provide services and administer programs shall be expended for sectarian worship or instruction. This shall not apply to assistance provided in the form of certificates, vouchers, or other forms of disbursement if the recipient chooses where the assistance shall be redeemed.

recent fiscal year for which information is available; over

"(II) the total number of births in families receiving assistance under the State program under this part in the State for such year.

"(ii) NET CHANGES IN THE OUT-OF-WEDLOCK RATIO.—The difference between the ratio described in subparagraph (A)(i) for the most recent fiscal year for which information is available and such State's ratio determined for the preceding year.

"(2) ANNUAL REVIEW.—The Secretary shall review the programs of the 5 States most recently ranked highest under paragraph (1) and the 5 States most recently ranked the lowest under paragraph (1).

"(f) STUDY ON ALTERNATIVE OUTCOMES MEASURES.—

"(1) STUDY.—The Secretary shall, in cooperation with the States, study and analyze outcomes measures for evaluating the success of a State in moving individuals out of the welfare system through employment as an alternative to the minimum participation rates described in section 404. The study shall include a determination as to whether such alternative outcomes measures should be applied on a national or a State-by-State basis and a preliminary assessment of the job placement performance bonus established under section 403(f).

"(2) REPORT.—Not later than September 30, 1998, the Secretary shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report containing the findings of the study described in paragraph (1).

"(g) STATE-INITIATED STUDIES.—A State shall be eligible to receive funding to evaluate the State's family assistance program funded under this part if—

"(1) the State submits a proposal to the Secretary for such evaluation,

"(2) the Secretary determines that the design and approach of the evaluation is rigorous and is likely to yield information that is credible and will be useful to other States, and

"(3) unless otherwise waived by the Secretary, the State provides a non-Federal share of at least 10 percent of the cost of such study.

"(h) ADDITIONAL AMOUNT FOR STUDIES AND DEMONSTRATIONS.—

"(1) IN GENERAL.—There are authorized to be appropriated and there are appropriated for each fiscal year described in section 403(a)(1) an additional $20,000,000 for the purpose of paying—

"(A) the Federal share of any State-initiated study approved under subsection (g);

"(B) an amount determined by the Secretary to be necessary to operate and evaluate demonstration projects, relating to part A of title IV of this Act, that are in effect or approved under section 1115 as of October 1, 1995, and are continued after such date;

"(C) the cost of conducting the research described in subsection (a); and

"(D) the cost of developing and evaluating innovative approaches for reducing welfare dependency and increasing the well-being of minor children under subsection (b).

"(2) ALLOCATION.—Of the amount appropriated under paragraph (1) for a fiscal year—

"(A) 50 percent shall be allocated for the purposes described in subparagraphs (A) and (B) of paragraph (1), and

"(B) 50 percent shall be allocated for the purposes described in subparagraphs (C) and (D) of paragraph (1).

"SEC. 411. STUDY BY THE CENSUS BUREAU.

"(a) IN GENERAL.—The Bureau of the Census shall expand the Survey of Income and Program Participation as necessary to obtain such information as will enable interested persons to evaluate the impact of the amendments made by the Work Opportunity Act of 1995 on a random national sample of recipients of assistance under State programs funded under this part and (as appropriate) other low-income families, and in doing so, shall pay particular attention to the issues of out-of-wedlock births, welfare dependency, the beginning and end of welfare spells, and the causes of repeat welfare spells.

"(b) APPROPRIATION.—Out of any money in the Treasury of the United States not otherwise appropriated, the Secretary of the Treasury shall pay to the Bureau of the Census $10,000,000 for each of fiscal years 1996, 1997, 1998, 1999, and 2000 to carry out subsection (a).

"SEC. 412. WAIVERS.

"(a) CONTINUATION OF WAIVERS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), if any waiver granted to a State under section 1115 or otherwise which relates to the provision of assistance under a State plan under this part is in effect or approved by the Secretary as of October 1, 1995, the amendments made by subtitle D of title I and subtitles C, D, E, F, and G of title VII of the Balanced Budget Reconciliation Act of 1995 shall not apply with respect to the State before the expiration (determined without regard to any extensions) of the waiver to the extent such amendments are inconsistent with the terms of the waiver.

"(2) FINANCING LIMITATION.—Notwithstanding any other provision of law, beginning with fiscal year 1996, a State operating under a waiver described in paragraph (1) shall receive the payment described for such State for such fiscal year under section 403, in lieu of any other payment provided for in the waiver.

"(b) STATE OPTION TO TERMINATE WAIVER.—

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

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

"(3) HOLD HARMLESS PROVISION.—

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

"(B) DATE DESCRIBED.—The date described in this subparagraph is the later of—

"(i) January 1, 1996; or

"(ii) 90 days following the adjournment of the first regular session of the State legislature that begins after the date of the enactment of the Work Opportunity Act of 1995.

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

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

"SEC. 413. STATE AND COUNTY DEMONSTRATION PROGRAMS.

"(a) NO LIMITATION OF STATE DEMONSTRATION PROJECTS.—Nothing in this part shall be construed as limiting a State's ability to conduct demonstration projects for the purpose of identifying innovative or effective program designs in 1 or more political subdivisions of the State: *Provided,* That such State contains more than one county with a population of greater than 500,000.

"(b) COUNTY WELFARE DEMONSTRATION PROJECT.—

"(1) IN GENERAL.—The Secretary of Health and Human Services and the Secretary of Agriculture shall jointly enter into negotiations with all counties having a population greater than 500,000 desiring to conduct a demonstration project described in paragraph (2) for the purpose of establishing appropriate rules to govern the establishment and operation of such project.

"(2) DEMONSTRATION PROJECT DESCRIBED.—The demonstration project described in this paragraph shall provide that—

"(A) a county participating in the demonstration project shall have the authority and duty to administer the operation of the program described under this part as if the county were considered a State for the purpose of this part;

"(B) the State in which the county participating in the demonstration project is located shall pass through directly to the county the portion of the grant received by the State under section 403 which the State determines is attributable to the residents of such county; and

"(C) the duration of the project shall be for 5 years.

"(3) COMMENCEMENT OF PROJECT.—After the conclusion of the negotiations described in paragraph (2), the Secretary of Health and Human Services and the Secretary of Agriculture may authorize a county to conduct the demonstration project

described in paragraph (2) in accordance with the rules established during the negotiations.

"(4) REPORT.—Not later then 6 months after the termination of a demonstration project operated under this subsection, the Secretary of Health and Human Services and the Secretary of Agriculture shall submit to the Congress a report that includes—

"(A) a description of the demonstration project;

"(B) the rules negotiated with respect to the project; and

"(C) the innovations (if any) that the county was able to initiate under the project.

"(5) ELIGIBLE COUNTY.—A county may participate in a demonstration project under this subsection if the county is—

"(A) a county that is already administering the welfare program under this part;

"(B) represents less than 25 percent of the State's total welfare caseload.

"SEC. 414. DIRECT FUNDING AND ADMINISTRATION BY INDIAN TRIBES.

"(a) PURPOSE.—The purpose of this section is—

"(1) to strengthen and enhance the control and flexibility of local governments over local programs; and

"(2) in recognition of the principles contained in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)—

"(A) to provide direct Federal funding to Indian tribes for the tribal administration of the program funded under this part; or

"(B) to enable Indian tribes to enter into agreements, contracts, or compacts with intertribal consortia, States, or other entities for the administration of such program on behalf of the Indian tribe.

"(b) GRANT AMOUNTS FOR INDIAN TRIBES.—

"(1) IN GENERAL.—For each of fiscal years 1996, 1997, 1998, 1999, and 2000, the Secretary shall pay to each Indian tribe that has an approved tribal family assistance plan a tribal family assistance grant for the fiscal year in an amount equal to the amount determined under paragraph (2).

"(2) AMOUNT DETERMINED.—

"(A) IN GENERAL.—The amount determined under this paragraph is an amount equal to the total amount of the Federal payments to a State or States under section 403 for fiscal year 1994 (as in effect during such fiscal year) attributable to expenditures by the State or States under part A and part F of this title (as so in effect) in such year for Indian families residing in the service area or areas identified by the Indian tribe in subsection (c)(1)(C).

"(B) USE OF STATE SUBMITTED DATA.—

"(i) IN GENERAL.—The Secretary shall use State submitted data to make each determination under subparagraph (A).

"(ii) DISAGREEMENT WITH DETERMINATION.—If an Indian tribe or tribal organization disagrees with