ADMINISTRATION FOR CHILDREN AND FAMILIES

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TO: Laura Oliver 395-~~6994~~ 5176
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DATE: 11/12/97

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

Attached is our proposed revision to the waiver section of the TANF regs for discussion at our noon conf. call.

Also attached are two versions of fingerprinting language for your rx as well.

Thanks —
Maddy

Waivers

<u>§272.8 What is the relationship of continuing waivers on the penalty process for work participation and time limits?</u>

(a) For the State's alternative waiver requirements to be considered in the calculation of the work participation rate and the time limit requirement, the Governor must certify in writing to the Secretary:

(1) The specific inconsistencies (i.e., alternative waiver requirements) that the State chooses to continue;

(2) The reasons for continuing the alternative waiver requirements, including how their continuation is consistent with the purposes of the waiver; and

(3) Consistent with the waiver and its purpose, the standards the State will use to:

(i) Assign individuals to the alternative waiver work activities or to an alternative number of hours; and

(ii) Determine exemptions from or extensions to the time limit.

(b) If a State using the alternative waiver requirements fails to meet the work participation rate or the time limit requirement:

(1) The State would not be eligible for reasonable cause for the penalty; and

(2) The State would have to consider modification of its alternative waiver requirements as part of the corrective compliance plan.

(3) The Secretary will use the data submitted by the States at ______________ to calculate and make public the work participation rates and the percent of families with an adult that received Federal TANF benefits for more than 60 months under both the inconsistent TANF requirement and the alternative waiver requirement.

(1) Same pen as diversion

~~Hg adv~~?

~~will we know by then~~

(2) Preamble Wk activity is consistently lower, we will consider

Data elements for discussion

(3) + back on [illegible]

Fingerprinting - "Revised new version"

methodology, estimates and impact compared to other States; quality of data; and completeness and adequacy of the documentation.

(2) If we request additional information, the State must provide the information within two weeks of the date of our request.

(3) The State must provide sufficient data to document the information submitted under paragraph (b) of this section.

(e) We will not consider a caseload reduction factor for approval unless the State reports case-record data on individuals and families served by any separate State program, as required under §275.3(d) of this chapter.

(f) A State may only apply the caseload reduction factor that we have determined to its participation rate. If a State disagrees with our caseload reduction factor, then the determination may be considered an adverse action; therefore, a State has the right to appeal such a decision, as specified at §272.7 of this chapter.

§271.42 Which reductions count in determining the caseload reduction factor?

(a)(1) Each State's estimate must factor out any caseload decreases due to Federal requirements or State changes in eligibility rules since FY 1995 that directly affected a family's eligibility for assistance (e.g., more

stringent income and resource limitations, time limits, or waiting periods).

(2) A State need not factor out calculable effects of enforcement mechanisms or procedural requirements that are used to enforce existing eligibility criteria (e.g., fingerprinting or other verification techniques) to the extent that such mechanisms or requirements identify or deter families ineligible under existing rules.

(b) States must include cases receiving assistance in separate State programs as part of its caseload. However, we will consider excluding cases in the separate State program under the following circumstances, if adequately documented:

(1) The cases overlap with or duplicate cases in the TANF caseload;

(2) They are cases made ineligible for Federal benefits by Pub. L. 104-193 that are receiving only State-funded cash assistance, nutrition assistance, or other benefits; or

(3) They are cases that are receiving only State earned income tax credits, child care, transportation subsidies or benefits for families that are not directed at their basic needs.

§271.43 What is the definition of a "case receiving assistance" in calculating the caseload reduction factor?

vulnerable families. Thus, we propose to give States credit for caseload reductions except when those caseload reductions arise from two kinds of changes in eligibility: (1) changes in eligibility rules that directly affect a family's eligibility for benefits (e.g., more stringent income and resource limitations or time limits); or (2) changes in procedural conditions of eligibility that also have a direct effect on caseloads by delaying or denying eligibility also have a direct effect on caseloads by delaying or denying eligibility (e.g., documentation requirements that create extra obstacles or delay receipt of benefits).

Under this approach, we would not give States credit for caseload reductions due to new procedural requirements where such requirements served simply to keep eligible families from seeking or receiving assistance.

We would allow States to get caseload reduction credit where they can make estimates showing the number of families excluded through new enforcement mechanisms or procedural requirements (such as fingerprinting or other verification techniques) who were ineligible under existing eligibility rules. In making this distinction, States could report the actual number of cases identified as fraudulently seeking benefits, or they could use a sample or other method of estimation to determine what percentage of cases were

deterred because they were ineligible (and not accurately reporting their circumstances).

Unless a State provided documented evidence that cases were diverted from the rolls due to fraud or misreporting, we would exclude all cases diverted from the rolls by procedural requirements from the State's caseload reduction credit.

Through this policy approach, we are seeking to achieve the balance identified by Congress: that a State should receive credit for moving families off welfare, including by detecting and preventing fraud, but should not be able to avoid its accountability for work as a result of any changes that restrict program eligibility.

All caseload decreases other than those that reflect eligibility changes will count toward the reduction. We are defining a change in eligibility for this purpose to include: changes in income and resource limitations; time limits; grant reductions; changes in requirements based on residency, age or other demographic or categorical factors; and grant-terminating sanctions.

Likewise, a State can argue that some or all of the families in any separate State programs should not be included in this calculation, based on the type of family served or the

Fingerprinting – "the silent option" to be defined in data form

that would create inadvertent incentives for changes in State policy that were unrelated to work and harmful to vulnerable families. Thus, we propose to give States credit for caseload reductions except when those caseload reductions arise from two kinds of changes in eligibility: (1) changes in eligibility rules that directly affect a family's eligibility for benefits (e.g., more stringent income and resource limitations or time limits); or (2) changes in procedural conditions of eligibility that also have a direct effect on caseloads by delaying or denying eligibility (e.g., documentation requirements that create extra obstacles or waiting). In short, we are seeking to achieve the balance identified by Congress: that a State should receive credit for moving families off welfare, but should not be able to avoid its accountability for work as a result of any changes that restrict program eligibility.

All caseload decreases other than those that reflect eligibility changes will count toward the reduction. We are defining a change in eligibility for this purpose to include: changes in income and resource limitations; time limits; grant reductions; changes in requirements based on residency, age or other demographic or categorical factors; and grant-terminating sanctions.

Likewise, a State can argue that some or all of the families

DIVERSION TO STATE-ONLY PROGRAMS

Note: See attached charts for illustratration of which of the 14 penalties these provisions would apply to and which they would not.

REG LANGUAGE:

271.51: Degree of Non-Compliance and 272.5 -- Reasonable Cause Exception

Here is the language HHS has already agreed to:

We will not forgive the state penalty under 272.1(a)(4) [work participation rate penalty] based on reasonable cause unless a state demonstrates as part of its reasonable cause application that it has not diverted cases to a separate state program for the purpose of avoiding the TANF work participation requirements.

Possible revision:

Work: We will not forgive the state penalty under 272.1(a)(4), 272.1(a)(9), 272.1(a)(11), or 272.1(a)(14) based on reasonable cause if we detect a significant pattern of diversion of families to a separate state program that achieves the effect of avoiding the work participation rates.

[Note: 4 penalties above are work participation, time limit, failure to maintain assistance to parent who can't get child care for child under 6, and failure to sanction individuals who refuse to work.]

Child Support: We will not forgive the state penalty under 272.1(a)(~~1~~ 2) and 272.1(a)(6) based on reasonable cause if we detect a significant pattern of diversion of families to a separate state program that achieves the effect of preventing the federal collection of child support.

[Note: ~~2~~ 4 penalties above are misuse of funds and failure to require individuals to cooperate with child support rules.]

272.6(I) -- "Some or all" of penalty after corrective compliance plan fails:

Work: We will not reduce the penalty under 272.1(a)(4), 272.1(a)(9), 272.1(a)(11), or 272.1(a)(14) if we detect a significant pattern of diversion of families to a separate state program that achieves the effect of avoiding the work participation rates.

Child Support: We will not reduce the state penalty ~~under~~ 272.1(a)(1) and 272.1(a)(6) if we detect a significant pattern of diversion of families to a separate state program that achieves the effect of preventing the federal collection of child support.

[Note: same penalties as under reasonable cause.]

PREAMBLE LANGUAGE:

In several places where we discuss penalties, we note that we will not forgive certain penalties due to reasonable cause, reduce certain penalties after a corrective compliance fails, or reduce the work participation rate penalty based on the degree of non-compliance if we detect a significant pattern of diversion of families to a separate state program that achieves the effect of avoiding the work participation rates. The same is true for certain other penalties if we detect a significant pattern of diversion of families to a separate state program that achieves the effect of preventing the federal collection of child support.

We plan to monitor states' actions to determine if they constitute a significant pattern of diversion. For example, if we found that the work participation rates in the TANF program were 50% higher than they are in a state's separate state programs, we could conclude that this is a significant pattern of diversion, and would deny that state certain types of penalty relief. Similarly, if we found that a state that achieved the TANF program's work participation rates would have failed to achieve that rate by more than 25% had families in a separate state program been included in TANF, we could conclude that this is a significant pattern of diversion.

For child support collections, if we found that 75% of the families in the top quartile of child support collections per family were in a separate state program instead of TANF, we could conclude that this is a significant pattern of diversion.

A state would be permitted the opportunity to prove that this pattern was actually the result of state policies and objectives that were entirely unrelated to the goal of diversion, but we would make the final judgment as to what constitutes a significant pattern of diversion.

General reminder: We need to make sure we are collecting data on separate state programs that will permit us to make all these judgments for child support collections.

Howard

Anne 11/7

Anne 11/11

Work Rates: Proposal Would Deny the Following Relief from Penalties to States that Divert Hard-to-Employ Families from TANF to Avoid Work Participation Requirements

Penalty	Set Based on Degree of Non-Compliance	Reasonable Cause Exception	Corrective Compliance Plan	Can be Reduced After Plan Does Not Correct Violation
	If shaded, doesn ot now apply to that penalty.			
1. Misuse of TANF funds				
2. Failure to Submit Report				
3. Failure to Meet Participation Rates	Agreed	Agreed		Proposed
4. Failure to Participate in Income and Eligibility Verification System				
5. Failure to Require Individuals to Cooperate with Child Support Rules				
6. Failure to Repay Federal Loan				
7. Failure to meet TANF MOE Requirement				
8. Substantial Noncompliance with Child Support Requirements	Not addressed in this draft regulation.			
9. Failure to Comply with Time Limit		Proposed		Proposed
10. Failure to Maintain 100% MOE if Received Contingency Funds				
11. Failure to Maintain Assistance to Parents who Can't Get Child Care for Child under Six and Doesn't Work		Proposed		Proposed
12. Failure to Expend Additional State Funds to Replace Grant Reductions				
13. Failure to meet TANF MOE if get DOL Welfare to Work Grant				
14. Failure to Sanction Individuals who Refuse to Work.		Proposed		Proposed

Child Support: Proposal Would Deny the Following from Penalties to States that Divert Families from TANF to Avoid Federal Collection of Child Support

Penalty	Set Based on Degree of Non-Compliance	Reasonable Cause Exception	Corrective Compliance Plan	Can be Reduced After Plan Does Not Correct Violation
	If shaded, doesn ot now apply to that penalty.			
1. Misuse of TANF funds		~~Proposed~~		~~Proposed~~
2. Failure to Submit Report				
3. Failure to Meet Participation Rates	Proposed?	Proposed		Proposed
4. Failure to Participate in Income and Eligibility Verification System				
5. Failure to Require Individuals to Cooperate with Child Support Rules		Proposed		Proposed
6. Failure to Repay Federal Loan				
7. Failure to meet TANF MOE Requirement				
8. Substantial Noncompliance with Child Support Requirements	Not addressed in this draft regulation.			
9. Failure to Comply with Time Limit		Prop		Proposed
10. Failure to Maintain 100% MOE if Received Contingency Funds				
11. Failure to Maintain Assistance to Parents who Can't Get Child Care for Child under Six and Doesn't Work				
12. Failure to Expend Additional State Funds to Replace Grant Reductions				
13. Failure to meet TANF MOE if get DOL Welfare to Work Grant				
14. Failure to Sanction Individuals who Refuse to Work.		Proposed		Proposed

DEPARTMENT OF HEALTH & HUMAN SERVICES · USA

→ Data for Diversion

ADMINISTRATION FOR CHILDREN AND FAMILIES

Part II

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TO: Laura Oliver 395-6974
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Anil Kakani 395-0851
Emil Parker 456-2223
re: TANF

DATE: 11/12/97

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

The following language is attached:
① Waiver preamble language
② Diversion reg language –
preamble language will follow
in about 20 min.

☆ Preamble language for diversion

In TANF-ACF-PA-97-1, we indicated that States not making a good-faith effort on work in their separate State programs would not be eligible for a reasonable cause exception from the penalty for failing to achieve their work rate. The proposed rule incorporates and expands that proposal. ~~reflects a modest change to that proposal. Under the proposed rule, good-faith effort would be a consideration in determining the size of the penalty rather than a consideration in determining whether or not to impose a penalty.~~

Corr compliance
ad/10 - parent

More specifically, it indicates that States would not be eligible for reasonable cause for the time-limit penalty or any of the three work-related penalties if we detect a significant pattern of diversion of families to separate State programs that has the effect of undermining the work participation requirements of the Act. Diverting States would not be generally eligible for reductions in the work penalty amounts. Finally, they would be ineligible for a penalty reduction under corrective compliance if they did not correct the diversion and meet the other conditions for reduction specified in these proposed rules.

In the January guidance we expressed similar concerns about the effect of separate State programs on the Federal share of child support collections. Therefore our proposal in this area is similar to our proposal to prevent undermining of the work participation provisions. More specifically, we would deny States reasonable cause for the time-limit, work participation, child support cooperation, and work sanction penalties if we detect a significant pattern of diversion of families into separate State programs that results in the diversion of the Fderal share of child support collections to State coffers. States undertaking such diversions would also be ineligible for reductions in the amounts of any of these four penalties under corrective compliance unless they also corrected the diversion during the corrective compliance process.

In making these proposals, we note that the Secretary has considerable discretion in determining whether to reduce penalties or grant good cause.

OK

Getting recipients to work is the most critical component to achieving the purposes of TANF -- making welfare a program of temporary assistance for families moving to self-sufficiency. The Secretary has determined that, to prevent circumvention of this purpose by States, it is appropriate to limit reasonable cause and penalty reduction if States try to avoid the work participation requirements. Congress has reinforced the importance of appropriate work for recipients in four of the established penalties in section 409 of the Act -- work participation rates, continuing assistance when child care is not available, sanctioning families that fail to participate in work, and continutaion of assistance beyond 60 months. To carry out the intent of Congress that work be a central part of the TANF program, if we detect that States are avoiding the work requirements by diverting a significant number of families to separate State programs, we will not grant them reasonable cause for any of these four penalties, reduction in their work penalty based on degree of non-compliance, or reduction in any of these four penalties as the result of achieving substantial (but not full) compliance.

not link to budget?

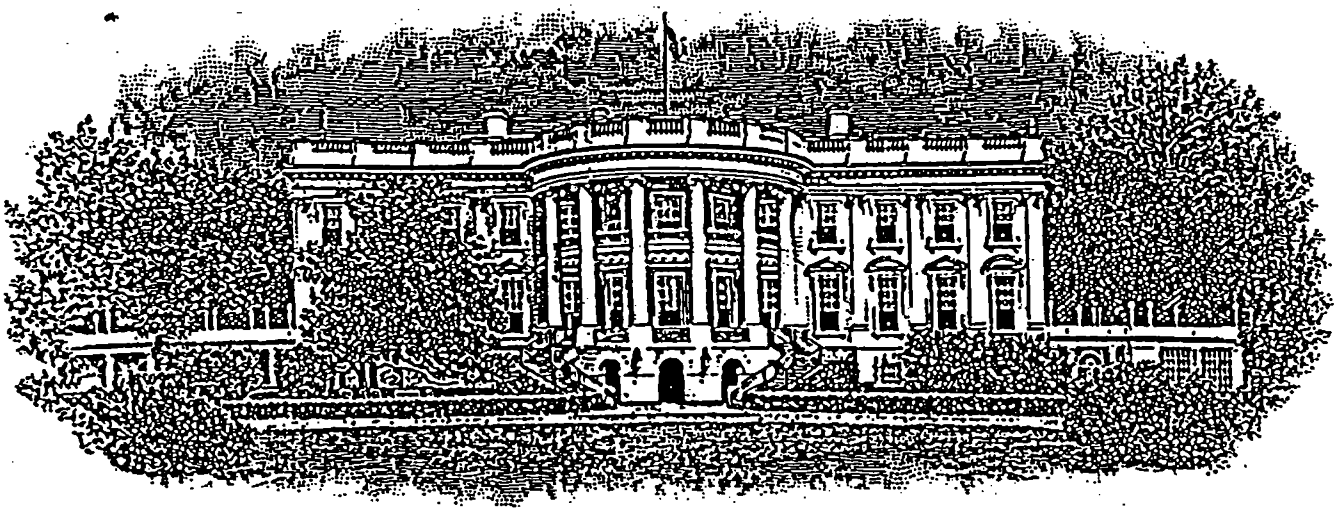
The other key component to achieving self-sufficiency is implementation of the child support enforcement provisions. The Federal government has a major role to play in such enforcement (particularly with regard to the operation of the New Hire Directory and the Federal Parent Locator Service). It also has a continuing interest in the effectiveness of these programs and, under TANF, maintains its commitment to the funding of needy families whose children have been deprived of parental support and care.

We are concerned that States diverting cases to separate State programs would not only have unintended, negative consequences for the Federal budget and the Federal government's ability to ensure an effective child support program; it would also diminish the State's accountability for ensuring that needy families take appropriate steps towards achieving self-sufficiency. The Secretary has determined that, in the interest of protecting the key goals of TANF, it is appropriate to use her leverage in setting penalty amounts and forgiving penalties to ensure that States do not divert cases inappropriately. Thus, if we detect a significant pattern of diversion of families to separate State programs that has the effect of diverting the Federal share of child support collections, we will not grant reasonable cause or reduced penalties through corrective compliance for the following four penalties: work participation, time limits, failure to cooperate with paternity establishment and child support enforcement requirements, or failure to impose work sanctions.

Why?

For the specific regulatory changes associated with these policies, see §§ 271.51, 272.5(c) and (d), and 272.6(i)(2).

The White House



DOMESTIC POLICY

FACSIMILE TRANSMISSION COVER SHEET

TO: Laura Oliven 5-6974 Mattie Mocko 401-456

FAX NUMBER: Anil 5-0851 Emil Parker 6-2223

TELEPHONE NUMBER:

FROM: Cynthia Rice

TELEPHONE NUMBER: 456-2846 (p) 456-7431 (f)

PAGES (INCLUDING COVER): 4

COMMENTS: Fingerprinting

Fingerprinting - "Revised new version"

Rule

p.1

methodology, estimates and impact compared to other States; quality of data; and completeness and adequacy of the documentation.

(2) If we request additional information, the State must provide the information within two weeks of the date of our request.

(3) The State must provide sufficient data to document the information submitted under paragraph (b) of this section.

(e) We will not consider a caseload reduction factor for approval unless the State reports case-record data on individuals and families served by any separate State program, as required under §275.3(d) of this chapter.

(f) A State may only apply the caseload reduction factor that we have determined to its participation rate. If a State disagrees with our caseload reduction factor, then the determination may be considered an adverse action; therefore, a State has the right to appeal such a decision, as specified at §272.7 of this chapter.

<u>§271.42 Which reductions count in determining the caseload reduction factor?</u>

(a)(1) Each State's estimate must factor out any caseload decreases due to Federal requirements or State changes in eligibility rules since FY 1995 that directly affect~~ed~~ a family's eligibility for assistance (e.g., more

Rule 2 p. 6

stringent income and resource limitations, time limits, ~~or waiting periods)~~.

(2) A State need not factor out calculable effects of enforcement mechanisms or procedural requirements that are used to enforce existing eligibility criteria (e.g., fingerprinting or other verification techniques) to the extent that such mechanisms or requirements identify or deter families ineligible under existing rules.

(b) States must include cases receiving assistance in separate State programs as part of its caseload. However, we will consider excluding cases in the separate State program under the following circumstances, if adequately documented:

(1) The cases overlap with or duplicate cases in the TANF caseload;

(2) They are cases made ineligible for Federal benefits by Pub. L. 104-193 that are receiving only State-funded cash assistance, nutrition assistance, or other benefits; or

(3) They are cases that are receiving only State earned income tax credits, child care, transportation subsidies or benefits for families that are not directed at their basic needs.

<u>§271.43 What is the definition of a "case receiving assistance" in calculating the caseload reduction factor?</u>

that would create inadvertent incentives for changes in State policy that were unrelated to work and harmful to vulnerable families. Thus, we propose to give States credit for caseload reductions except when those caseload reductions arise from ~~two kinds of changes in eligibility: (1)~~ changes in eligibility rules that directly affect a family's eligibility for benefits (e.g., more stringent income and resource limitations or time limits)~~; or (2) changes in procedural conditions of eligibility that also have a direct effect on caseloads by delaying or denying eligibility (e.g., documentation requirements that create extra obstacles or waiting)~~. In short, we are seeking to achieve the balance identified by Congress: that a State should receive credit for moving families off welfare, but should not be able to avoid its accountability for work as a result of any changes that restrict program eligibility.

Preamble

All caseload decreases other than those that reflect eligibility changes will count toward the reduction. We are defining a change in eligibility for this purpose to include: changes in income and resource limitations; time limits; ~~grant reductions;~~ and changes in requirements based on residency, age or other demographic or categorical factors~~;~~ ~~and grant-terminating sanctions~~.

Likewise, a State can argue that some or all of the families

4:30 - Conf call
w/ EK + OG

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc: Cynthia A. Rice/OPD/EOP
Subject: Waiver info; expiration dates are in parentheses

I. The following states used definitions of work or hours of work in their waivers that did not require waivers of prior law, but would qualify as inconsistencies under HHS's proposed reg and therefore could continue:

Connecticut (2003)
Hawaii (2004–2005)
Minnesota (2001 – 2002)
Nebraska (2002)
North Dakota (2003)
South Dakota (1999)
Texas (2002)
Vermont (2001)

Delaware (2002)
Massachusetts (2005)
Missouri (2000)
New Hampshire (2001–2002)
South Carolina (2003 – 2004)
Tennessee (2007 – 2008)
Utah (2000)

HHS says the list above is probably incomplete, and it may also include:
Virginia, Indiana, Iowa, Illinios, and maybe Oregon and Michigan

II. The following states have time limits that could continue because they are inconsistent with current law:

Arizona (2002)
Delaware (2002)
Hawaii (2004 – 2005)
Indiana (2002)
Louisiana (2002)
North Carolina (2001 – 2002)
Oregon (2002)
Tennessee (2007–2008)
Virginia (2003)

Connecticut (2003)
Florida (2001)
Illinois (2000)
Iowa (1998)
Nebraska (2002)
Ohio (2001)
South Carolina (2003–2004)
Texas (2002)
Wisconsin (2006)

if a signif patt of abuse
we will do X

11/5 UPDATE

Issues

No agreement

1. **Penalty; Diversion to Separate State Programs** - To discourage states from diverting families from TANF to state programs in order to avoid work penalties or avoid sharing child support collections with the federal government, add these provisions to the proposed regulation:

a) In order to enter into corrective compliance plan for any violation or to receive a reduction in penalties after failing to correct a violation, a state must prove that it did not divert families to a separate state program for the purpose of avoiding work participation rates.

b) In order for a state to be eligible to receive a reasonable cause penalty exception, to enter into a corrective compliance plan, or to receive reduced penalties or a penalty based on degree of non-compliance, a state must prove that it did not divert families to a separate state program for purposes of preventing the federal collection of child support.

c) Include in the MOE data report information on whether individuals served in the separate state program were on TANF within the last six months and other information to help the Secretary determine if diversion has occurred.

Agreed

2. **Penalty; Threshold Level** - States that achieve at least 90 percent (rather than 75 percent) of the required work participation rate shall be eligible for a reduced penalty based on degree of non-compliance.

3. **Penalty; Corrective Compliance Plan** -

Agreed

a) Reduce the amount of time that States have to complete corrective actions from 12 to 6 months.

Agreed w/ change

b) Eliminate the option for the Secretary to reduce the penalty on a state that has failed to correct a violation through a corrective compliance plan if a state expended more resources, made substantial progress, or encountered circumstances that could not have been anticipated. → Secretary can reduce penalty if substantial progress, defined as closing half the gap between rate achieved and goal.

No agreement — to discuss 11/6 see attached

4. **Child Only Cases** -

a) The Secretary will analyze data on a state's child-only cases to determine if the state has reclassified cases as child-only in order to avoid penalty for failure to meet the fiscal year work participation rate or for exceeding the 20% hardship exemption for the five year time limit. If the Secretary finds that the state has reclassified cases for this purpose, she will include the reclassified cases in the calculation of the state's work participation rate and hardship exemption.

b) The regulation will identify which data elements will allow the Secretary to make this determination.

11/5

See new proposal (attached)

5. **Domestic Violence** - The Secretary shall not grant reasonable cause exceptions to penalties to states that exempt more than 20 percent of their caseload from the five year time limit due to the granting of good cause domestic violence waivers.

6. **Caseload Reduction Factor** -

Agreed

a) Remove the provision that would provide states with a choice of applying the two parent caseload reduction or the overall caseload reduction as a credit to the two parent work participation rate.

Revised language from HHS

b) Remove the provision that would allow states to exclude "based on nature of benefits provided" some or all families in the separate State program when comparing a given year's caseload to that from FY 1995.

No agreement to discuss 11/6

c) Fingerprinting, drug testing, and whole grant sanctions shall not be considered eligibility changes that must be disregarded for purposes of calculating the caseload reduction factor. This will be accomplished by listing eligibility changes in the regulation without listing these items and making clear on the Caseload Reduction Report form that these policies are not eligibility changes.

7. **Waivers** -

No agreement

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

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

c) Prior law definitions of work activities may not be continued under waivers.

?

d) Waivers that are inconsistent can only be continued in the same geographic areas as they were originally approved in the waiver and were in effect on date of enactment.

Agreed

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

Revised language from HHS

8. **Administrative Costs** - Include case management and eligibility determination in the definition of administrative costs.

10/26/97

<u>Child Only Cases</u> -- Revised 11/5

States have flexibility to define the terms:

1) "families... that include an adult or a minor child head of household" as used in Section 407(b)(1)(B)(i) to regarding the calculation of the participation rates; and

2) "a family that includes an adult" used in Section 408(a)(7)(A) regarding the five year time limit.

However, states may not define these terms in a manner which excludes families for the purpose of avoiding penalties.

Where the Secretary finds that a state has excluded families for the purpose of avoiding a penalty for work participation or time limits, she shall include those families in the calculation in Section 407(b)(1)(B)(i) and Section 408(a)(7)(A).

States shall report annually to HHS on the number of families excluded from the calculation in Section 407(b)(1)(B)(i) and Section 408(a)(7)(A) and the circumstances underlying the exclusion.

Caseload Reduction Credit:

Fingerprinting, Drug Testing, and Whole Grant Sanctions as "Eligibility Changes"

Original proposal: Fingerprinting, drug testing, and whole grant sanctions shall not be considered eligibility changes that must be disregarded for purposes of calculating the caseload reduction factor.

Revised proposal: Changes such as fingerprinting that help enforce existing eligibility standards or document identity shall not be considered eligibility changes for the purposes of calculating the caseload reduction credit.

documented effects of enf mechs

§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 provided to victims of domestic violence.

(2)(i) To demonstrate reasonable cause under paragraph (b)(1) of this section, a State must provide evidence that, when cases with active good cause waivers are excluded from the calculation, the percentage of cases receiving federally-funded assistance for more than 60 months did not exceed 20 percent of the total.

#5

(ii) To qualify for exclusion, such cases must have good cause domestic violence waivers that:

(A) Reflect the State's assessment that the individual was temporarily unable to work because of domestic violence;

(B) Were in effect after the family had received federally-funded assistance for 60 or more months; and

(C) Were granted appropriately, in accordance with the criteria specified at §270.30 of this chapter.

(iii) If a State fails to meet the criteria specified for "good cause domestic violence waivers" at §270.30 or any of the other conditions in paragragh (b)(2)(ii) of this section, the Secretary will not grant reasonable cause under paragraph (b)(1) of this section.

Section 270.30 (2)

Good cause domestic violence waiver means a waiver of one or more program requirements granted by a State to a victim of domestic violence under the Family Violence Option that is: (1) based on an individualized assessment; (2) temporary; and (3) accompanied by an appropriate services plan designed to provide safety and lead to work.

THE PRESIDENT HAS SEEN
1-30-97

THE WHITE HOUSE
WASHINGTON

January 29, 1997

MR. PRESIDENT:

The attached memo from Bruce Reed and Elena Kagan reflects a joint recommendation from DPC and HHS on how to proceed with implementing the portion of the maintenance-of-effort provision in the welfare law that restricts how states can spend these funds.

Erskine, Sylvia, Rahm and Marcia concur in the approach and OMB has no objections to the memo.

In order for the plan to be rolled-out to various Governors in advance of the NGA meeting, Bruce/Elena and IGA would appreciate your action as soon as possible.

This looks right to me -

Phil Caplan
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THE WHITE HOUSE

WASHINGTON

THE PRESIDENT HAS SEEN
1-30-97

January 28, 1997

Looks good — [illegible]

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED BR
ELENA KAGAN EK

SUBJECT: WELFARE LAW IMPLEMENTATION ISSUE

Before the NGA meeting, we need to give states an answer to the question of whether a state must comply with the welfare law's requirements in order to get maintenance-of-effort credit for a state expenditure. States would like to spend their money in separate, non-TANF programs, free from all federal restrictions, but still counting toward the maintenance-of-effort standard. Allowing them to do so, however, may deprive the federal government of a great deal of money and may undermine the law's work requirements. This memo contains a joint HHS and DPC recommendation as to the proper Administration approach to this issue.

Background and analysis

As you know, the maintenance-of-effort provision of the welfare law requires states to spend each year a set percentage of their FY 1994 welfare expenditures. Each state meeting its work participation rate must spend 75 percent of FY 1994 expenditures; any state failing to meet its rate must spend 80 percent of that sum. If a state fails to spend this amount of money, its next year's block grant is reduced accordingly.

The question here concerns the restrictions that apply to expenditure of these "maintenance-of-effort funds." (All agree that no federal restrictions apply to state monies for which the state is not seeking maintenance-of-effort credit.) The law is clear that certain restrictions -- the limits on benefits to aliens and the five-year time limit -- do not apply to maintenance-of-effort funds. The law is far less clear as to whether other requirements apply. But it is difficult, as a legal matter, to pick and choose among these remaining requirements: HHS cannot, for example, say that work requirements, but not reporting requirements, apply.

The governors have argued vehemently that applying federal restrictions to state maintenance-of-efforts funds would impede state innovation. And because the advocacy groups would like to undermine some of the federal requirements -- particularly regarding work -- they have joined the states in taking this position.

But a completely "hands-off" approach -- which would allow the states to set up wholly independent programs, free of all federal restrictions, with maintenance-of-effort dollars -- poses two significant problems. First, states could place the families most likely to make child support

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payments in the state-only program and thereby avoid sharing child support collections with the federal government. OMB estimates that the amount of money at stake could exceed $1 billion per year.

Second, such an approach could seriously undermine the work provisions of the welfare law. As you know, the law requires states to show, on pain of financial penalty, that a certain percentage of families receiving assistance under TANF are engaged in work. The governors' approach would allow states to get around this requirement by transferring their hardest-to-employ welfare recipients from the TANF program (where they would count as part of the denominator in calculating the percentage) to a separate state program funded by maintenance-of-effort dollars (where they would not so count). Indeed, under one interpretation of the law, such a transfer might count as the kind of "reduction in caseload" that operates to reduce the minimum participation rate applicable to the state. Hence by the simple device of shifting beneficiaries from one program to another, a state could simultaneously make it easier to meet the existing participation rate and lower the participation rate applicable in the future.

Recommendation

To provide the states with needed flexibility, protect the government's share of child support collections, and maintain the integrity of the law's work participation requirements -- and to do all this in a legally defensible way -- HHS and the DPC recommend the following actions:

1. Interpret the law so as to give the states far-reaching discretion and flexibility over maintenance-of-effort funds. Under this interpretation, states can set up programs that are free of any of the welfare law's prohibitions and requirements.

2. Advise states that they should not use their own programs to appropriate child support collections that otherwise would go to the federal government; issue regulations authorizing HHS to collect the data necessary to monitor whether states are using their programs for this purpose; and work with both the governors and Congress to ensure that states do not do so. Conversations with Governors have suggested a willingness to work cooperatively on this issue. We also have every reason to think that Congress -- which in assessing the budgetary impact of the bill, did not envision a reduction in federal child support collections -- would legislate a remedy if that is necessary.

Not in regs? CS

3. Issue a regulation providing that a state cannot receive a reduction in its participation rate for reducing its caseload unless the state shows that the caseload reduction is real and not simply the result of transferring beneficiaries from TANF into a separate state program. Such a regulation, which rejects the interpretation of the law most beneficial to states, will prevent states from decreasing their obligation to put people to work through making purely formal changes in the structure of assistance programs.

Yes CRC

4. Issue a regulation providing that a state cannot receive any good cause consideration --

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makes sense? -

_Cannot not stick

i.e., any mitigation in penalty for failure to meet work participation rates -- unless the state shows that it has not used its own program to escape the force of work participation rates. This regulation will create a disincentive for states to use their own programs as dumping grounds for hard-to-place beneficiaries.

Not sure - some credit but not reqd. HSPerf

5. Issue a regulation providing that HHS will look at a state's overall work effort -- i.e., its success in putting to work the beneficiaries of both TANF and separate state programs -- in determining whether the state qualifies for a high-performance bonus. This regulation too will encourage states to make real efforts to place in work activities those individuals who receive assistance from separate state programs.

6. Work with Congress and the Governors to enact a legislative clarification to ensure that states do not use their discretion over maintenance-of-effort funds to evade the participation requirements. Specifically, we will seek language making clear that calculation of whether a state has met the applicable participation rate shall take into account the state's success in placing in work activities the participants in both the TANF program and any separate state program that counts toward the maintenance-of-effort standard.

Together, these steps should give governors broad flexibility to run their own programs without giving them perverse incentives to evade the work requirements. Please let us know if this resolution of the issue meets with your approval. If it does, we would like to roll out this program prior to the NGA meeting.

DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR CHILDREN AND FAMILIES
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

January 31, 1997

Mrs. Martha S. Nachman
Commissioner
Alabama State Department of Human Resources
50 Ripley Street
Montgomery, Alabama 36130-4000

Dear Mrs. Nachman:

We have heard from many State leaders about the need for Federal guidance on key policy questions to assist in their efforts to successfully implement the new welfare reform law. In response, we have been periodically sharing with you information on critical areas of the law.

The enclosed announcement gives you the flexibility you need to design a Temporary Assistance for Needy Families (TANF) program that is responsive to your State's needs and upholds the central goal of welfare reform: moving people from welfare to work. In it we provide guidance in several areas of policy important to implementation of TANF, including maintenance of effort and the definition of assistance.

We hope you will find this information useful as you plan and implement your new TANF program. We are committed to continuing to work with you on successful implementation of the new law.

Sincerely,

Lavinia Limón

Lavinia Limón
Director
Office of Family Assistance

Enclosure

Temporary Assistance for Needy Families Policy Announcement

U.S. Department of Health and Human Services
Administration for Children and Families
Office of Family Assistance
Washington, DC 20447

No. TANF-ACF-PA-97-1

Date: January 31, 1997

TO: State agencies administering the Temporary Assistance for Needy Families program and other interested parties.

SUBJECT: Guidance concerning maintenance of effort, definition of assistance and other provisions in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

BACKGROUND: This announcement provides guidance in several areas of policy important to implementation of the Temporary Assistance for Needy Families Program.

INQUIRIES: Comments and questions should be directed to the appropriate Administration for Children and Families (ACF) Regional Administrator.

Lavinia Limón

Lavinia Limón
Director
Office of Family Assistance

I. Nature and Purpose of this Guidance

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

Within this context, we are planning to focus our proposed TANF regulations on areas where Congress has expressly provided for the Secretary to take action -- i.e., with respect to data collection, penalties and bonuses. We have also been undertaking extensive outreach to ensure consultation with a wide range of persons and organizations holding perspectives on children and families. To date, we have asked State executive and legislative officials and their national representatives, advocates, local government representatives, non-profit organizations and foundations, labor, and business organizations to participate in this consultation process.

Because State legislative sessions are starting and the TANF statute is so far-reaching, we have frequently heard of the need for early guidance on certain issues of immediate importance to the development of State programs. Among these issues are Federal requirements related to the expenditure of Federal grant funds, including the definition of "assistance" which triggers these requirements; the scope of State flexibility in using State funds which qualify as expenditures for maintenance-of-effort (MOE) purposes; and State flexibility in using State MOE funds in State programs operated apart from TANF.

Consequently, we are providing preliminary guidance on these important issues. However, because of the scope of the TANF statute, and the interrelationships among its many pieces, it is important to note that many other questions will be answered through the regulatory process. We believe the guidance reflects Congressional intent on TANF policies, and that it will promote program accountability, support substantial innovation in program design, provide States the flexibility they need to serve needy families effectively, and help achieve the central goal of welfare reform: moving people from welfare to work.

Key Points

The guidance makes the following key points:

1) States have the flexibility to count, toward their general TANF MOE requirement, expenditures of State funds under separate State programs. These expenditures must meet the statutory requirements for "qualified State expenditures," including the requirement that they are made on behalf of "eligible families," but are not subject to requirements which apply to the TANF program. (see section VI discussion and chart).

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

*Ck if this exactly matches POTUS letter

2) In order to ensure that State decisions to establish separate programs do not undermine the work provisions of the new law, undercut Congressional intent to share child support collections between the Federal and State governments, or have other negative consequences, we will be taking steps to obtain additional information on State practices, exercising the administrative authority available under the statute to support the legislative goals of PRWORA, and seeking certain legislative changes (see discussion in section II below).

3) Under the definition of "assistance" included in section VII, all but two forms of assistance provided to families under the TANF program would be considered "assistance." Thus, TANF requirements such as time limits, work requirements, assignment of child support, and data collection are applicable (depending on the nature of funding involved).

4) During the interim period before final rules are available, any penalty decisions will be based solely on whether violations of the <u>statute</u> occurred. Further, statutory interpretations forthcoming in final rules will apply prospectively only; they will not be a basis for penalties during this interim period. States will need to conform their programs to Federal rules after final rules are promulgated.

II. Ensuring Positive Impacts

Program Accountability. At this point, we do not know what States will do with the flexibility they have to set up separate programs which qualify for MOE purposes, but are not subject to many of the TANF rules (see section IV). The flexibility provided in this guidance gives States the opportunity to try out some innovative and creative strategies for supporting the critical goals of work and responsibility. For example, States might choose to use State funds to support a State EITC or transportation assistance that would help low-wage workers keep their jobs.

At the same time, States could use this new flexibility in ways that might undermine important goals of welfare reform. In particular, we are concerned that States could design their programs so as to avoid the work requirements in section 407 or to avoid returning a share of their child support collections to the Federal government.

We believe it is our responsibility to use the administrative avenues available to us to mitigate these potential negative consequences.

WORK

We intend to take administrative action to collect information about the families served by States under their separate MOE programs, so that we can: 1) better identify which States are truly successful in serving needy families; and 2) promote work and the other legislative goals. For example, in the proposed regulations we are developing on work requirements, penalties, and high performance bonuses, we intend to require that information be provided on families served by separate State programs and, to the maximum extent possible, consider the effects of State policies in setting up separate programs. More specifically, we intend to propose regulations to:

- deny States any reduction in the work participation requirements applicable to them (i.e., not give them credit for caseload reductions) unless they provide us with caseload information CRC for separate MOE as well as TANF programs, and they demonstrate by this data that TANF caseload reductions are not artifacts of the way they structured their programs (i.e., the result of transferring beneficiaries from TANF to separate MOE programs); CRC

just that penalty

- deny "reasonable cause" to a State whose MOE policies work to circumvent the work requirements of the Act. If a State fails to meet the participation rates, the Secretary would not entertain "reasonable cause" considerations unless the State provided information about its MOE program. It must also demonstrate that it was making a good faith effort in the work area with respect both to its TANF and its separate MOE programs and that it was not using its separate MOE program to evade the force of the work participation rates; and Pen

- look at a State's overall work effort in deciding whether it qualifies for a high performance bonus, i.e., a State's success with its TANF program cannot be adequately judged without knowing how the State's TANF and separate MOE programs are configured and what is happening to needy families in the separate MOE programs. Hi Perf

Additional information on participants in separate MOE programs will help us evaluate whether work goals are being undermined and publicly report our findings.

To ensure that we have critical information which will enable us to determine whether the work and other legislative goals are being achieved, we will propose a change to the statutory provisions on data collection which will enable collection of information on recipients served by separate State programs that are used as MOE.

This guidance sets forth our best current interpretation of the statutory language on the fiscal and programmatic implications of different program configurations. However, we would consider a different interpretation in the final TANF regulation if we learn that the work provisions are being undermined during this interim period.

Also, we strongly advise States to think carefully about the risks to the long-term viability of their TANF program if they rely too extensively on separate State programs. Because States cannot receive Contingency Funds unless their expenditures within the TANF program are at 100 percent of historical State expenditures, excessive State reliance on outside expenditures for their TANF MOE may make access to Contingency Funds much more difficult during economic downturns.

Finally, we intend to work with Congress and the Governors in a bipartisan fashion to ensure that each State's overall work effort meets the statute's work participation requirements. Specifically, we will seek language making clear that calculation of whether a State has met the applicable participation rate shall take into account the State's success in placing participants in both TANF and MOE programs in work activities.

CHILD SUPPORT

In assessing the potential budgetary impact of this bill, Congress apparently did not envision major losses in the Federal share of child support collections. We are advising States not to set up separate State programs which retain what would otherwise be the appropriate Federal share of child support collections.

In order to track State practices in this area, as part of the regulatory efforts proposed above, we will seek to incorporate requirements for States to report child support information for families in State MOE programs, as well as TANF. Likewise, in our legislative proposal on data collection for recipients served outside the TANF program, we will be asking for authority to collect child support data.

We also intend to work with the Governors and the Congress to identify approaches that will ensure that States do not use the flexibility provided to retain Federal dollars in State coffers.

Summary. Because the States' ability to set up separate State programs can result in much more responsive and effective programs, we do not want to stifle creative State thinking about how best to serve their needy families and children. We will monitor the overall implementation of this legislation to assess whether the goals of welfare reform are being achieved. We will work with the Congress and the Governors on legislative remedies in the areas noted.

III. Overview of Guidance.

This section summarizes the remaining sections of the guidance, provides some additional context, and sets forth our policies on penalties in the interim period before final rules are available.

We recognize that this guidance does not provide answers to all the major issues and does not answer many specific questions. Through the regulatory process, we will provide broader and more specific guidance. The rulemaking process will also permit us to take into consideration ongoing input we receive from various interested parties.

Interim Penalty Policies. We want to strongly encourage State efforts to implement effective and innovative program designs and develop targeted service strategies which will produce the best outcomes for families (including those with special needs, such as those headed by grandparent caretakers). Thus, during this interim period, States should not be unduly fearful of incurring penalties under section 409. Before Federal regulations are in effect, States will not be subject to penalties under the new law so long as they implement programs which are related to the intent of the statute and operate within a reasonable interpretation of the statutory language.[1] Also, there are possible "reasonable cause" exceptions and an opportunity to undertake corrective compliance before imposition of most penalties.

IV. Basic State Options on Program Design

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

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

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

When the statutory provisions are read with these terms in mind, it is possible to distinguish three different types of program configurations under the new title IV-A: TANF programs funded by expenditures of Federal grant funds or by co-mingling of State funds and Federal grant funds; TANF programs where Federal grant and State funds are segregated; and programs outside of TANF and funded by expenditures of State funds, but counting toward meeting the State's MOE

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

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

requirements. The language used in a specific TANF provision (or in a related provision elsewhere in the statute) will determine its applicability to these three types of programs.

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

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

V. Use of Federal TANF Funds

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

The key provisions applicable only to the use of Federal funds are time limits, restrictions on expenditures for medical services and prohibitions on assistance to certain individuals and families, including certain aliens[4] and teen parents. Also, when Federal TANF funds are spent, all provisions applicable to the TANF program apply. Most importantly, work requirements, data collection, and requirements for child support assignment and cooperation apply.

More specifically, provisions governing the use of Federal TANF funds are found in three sections of the statute.

> The new section 404 of the Social Security Act sets forth the basic rules for expenditure of Federal TANF funds.
>
> - They must be: (a) reasonably calculated to accomplish the purposes of the TANF program; or (b) an authorized expenditure for the State under title IV-A or IV-F as of September 30, 1995.

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

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

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

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

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

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

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

  --Once transferred, funds are no longer subject to the requirements of TANF, but are subject instead to the requirements of the program to which they are transferred. However, funds transferred to the Social Services Block grant may only be spent on children or families with income below 200 percent of poverty.

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

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

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

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

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

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

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

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

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

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

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

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

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

9) provide assistance for a minor child who is absent (or expected to be absent) from the home, without good cause, for a specified minimum period of time.

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

VI. Basic Requirements Governing State MOE Expenditures

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

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

If a State fails to meet the work program participation requirements for a fiscal year, its MOE requirement is set at 80 percent of "historic State expenditures." If a State meets these requirements, its MOE requirement is set at 75 percent of historic State expenditures.

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[7] For Contingency Fund MOE purposes, State expenditures outside the TANF program do not count. See discussion in the following subsection for a further explanation.

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

Also, in determining a State's MOE requirement, any IV-A expenditures made by the State in 1994 on behalf of individuals now covered by a Tribal TANF program are excluded from "historic State expenditures."[9]

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

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

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

> *(aa) - Cash assistance;*
> *(bb) - Child care assistance;*
> *(cc) - Educational activities designed to increase self-sufficiency, job training, and work, excluding any expenditure for public education in the State except which involve the provision of services or assistance to a member of an eligible family which is not generally available to persons who are not members of an eligible family;*
> *(dd) - administrative costs in connection with the matters described in items (aa), (bb) and (cc) and (ee), but only to the extent that such costs do not exceed 15 percent of the total amount of qualified State expenditures for the fiscal year;*
> *(ee) - any other use of funds allowable under section 404(a)(1).*

Meaning of "Eligible Families." Under the new section 409(a)(7)(B)(i)(I) of the Social Security Act, in order to count as qualified State expenditures for MOE purposes, State expenditures must be

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

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

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made with respect to "eligible families." Subclause (III) defines "eligible families" for this purpose to mean families eligible for assistance under the State TANF program and families who would be eligible for assistance except for the time-limit provision and the alien restrictions at section 402 of PRWORA.

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

- have a child living with a parent or other adult relative (or to individuals which are expecting a child); and
- are needy under the TANF income standards established by the State under its TANF plan.[11]

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

Allowable Immigrant Expenditures.[12] States have the flexibility to use State MOE funds to serve "qualified"[13] aliens. They also have the flexibility to use Federal TANF funds to serve "qualified" aliens who arrived prior to the enactment of the PRWORA (August 22, 1996). For "qualified" aliens arriving after enactment, there is a bar on the use of Federal TANF funds which extends five years from the date of entry.[14]

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

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

[12] As noted on p. 2, the following immigrant policy gives States broader flexibility to spend State MOE funds on immigrant families than was indicated in guidance sent to the State Commissioners on October 9, 1996 (i.e., in the answer to Q. 3). The new interpretation reflects the additional work done on interpreting "State program under this part" and on trying to find the appropriate meaning for the many pieces of the statute which directly and indirectly speak to this issue.

[13] As defined under section 431 of PRWORA.

[14] Pursuant to section 403(b) of PRWORA, the five-year bar does not apply to refugees, asylees, aliens whose deportation is being withheld under section 243(h) of the Immigration and Nationality Act, and U.S. veterans and their spouses and unmarried dependent children.

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

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

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

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

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

(2) State Medicaid expenditures;

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

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

Special Child Care Rules. The statute provides an exception to restriction (4) for certain child care expenditures. When the following requirements are met, expenditures by a State for child care may satisfy both the TANF MOE requirement and the MOE requirement related to accessing child care matching funds at the new section 418(a)(2)(C) of the Social Security Act. First, the amount of child care expenditures countable for TANF MOE purposes may not exceed the child care MOE requirement for the State. Secondly, to count as TANF MOE, the expenditures must meet all the other requirements of section 409(a)(7); to count as child care MOE, expenditures must be allowable

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

[16] Note the special child care rules below.

under the requirements of the Child Care and Development Fund.[17] Before claiming child care expenditures under both MOE provisions, States need to check that the expenditures in fact meet the requirements of both programs. (E.g., there may be different families eligible for child care assistance under the two programs which prevent all expenditures from counting as MOE in both.)

Because of general restriction (3) cited above, child care expenditures by the State which are matched with Federal funds (pursuant to section 418(a)(2)(C)) do not qualify as expenditures for TANF MOE.[18]

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

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

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

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

Through regulation, we do expect to require that States be able to document that any outside expenditures they claim for MOE purposes meet the requirements of (aa).[19] At a minimum, States would have to identify the outside programs whose expenditures will be reflected as State MOE, establish what the State contributions to such programs were in the 12 months preceding October 1,

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[17] This is the name given by ACF for all the child care funding streams under title VI of PRWORA, including the discretionary Child Care and Development Block Grant and the non-discretionary funds under section 418 of the Social Security Act.

[18] Likewise, State expenditures which are used to qualify for Federal child care matching funds do not qualify as child care MOE.

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

1995, and document the total State expenditures in such programs for the preceding fiscal year. States would also have to provide evidence that expenditures in outside programs which they want credited as MOE be expenditures on behalf of "eligible families". This evidence may be in the form of documentation of eligibility rules and procedures, or in other forms established by the State.[20]

VII. Definition of Assistance

The terms "assistance" and "families receiving assistance" are used in the PRWORA in many critical places, including: 1) in most of the prohibitions and requirements of section 408, which limit the provision of assistance; 2) the denominator of the work participation rates in section 407(b); and 3) the data collection requirements of section 411(a).[21] Largely through reference, the term also affects the scope of the penalty provisions in section 409. Thus, it is important that States have some idea of our views of what constitutes assistance. At the same time, because TANF replaces AFDC, EA and JOBS, and provides much greater flexibility than these programs, what constitutes assistance is less clear than it was previously.

Because States are currently making key program decisions for which this information is relevant, we are offering an initial perspective on the matter. Our general view is that, because of the combining of the funding streams for AFDC, EA and JOBS, some forms of support that a State is permitted to carry out under TANF are not what would be considered to be welfare. Thus, our initial perspective is to exclude some of those forms of support as assistance. More specifically, we would define "assistance" as every form of support provided to families under TANF except for the following:

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

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

We believe that these exclusions are consistent with Congressional intent to provide States with flexibility to design programs that will focus their resources on enhancing parental responsibility and self-sufficiency. At the same time, it will enable them, for example, to exclude families who receive no financial support from participation rate calculations and individuals who only receive

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

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

one-time help in avoiding welfare dependency from requirements such as assignment of child support rights.

The complexities involved in formulating a definition of "assistance" suggest that it is an area which could be greatly illuminated by both State practice under TANF and by the rulemaking process. Thus, we welcome suggestions from States and other parties as to what an appropriate definition would be.

VIII. Conclusion

As we continue to work on the development of proposed -- and then final -- TANF rules, we welcome comments and suggestions on major issues like those discussed in this paper. In particular, we welcome suggestions about policy positions and administrative actions which we could adopt which would help further the work objectives and other goals of welfare reform.

IX. OVERVIEW OF TANF PROVISIONS IN DIFFERENT PROGRAM CONFIGURATIONS

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

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

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

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

[4] Per definition of "eligible families."

Caseload Reduction Credit

Section 271.42 Which reductions count in determining the caseload reduction factor?

(a) Each State's estimate must factor out any caseload decreases due to Federal requirements or State changes ~~since FY 1995 that affect an individual's eligibility for assistance. These include:~~

~~(1) Changes~~ in eligibility rules since FY 1995 that directly affect a family's eligibility for benefits (e.g., more stringent income and resource limitations or time limits)~~; and~~

~~(2) Procedural changes that have the effect of significantly delaying or denying eligibility (e.g., documentation requirements that create obstacles to the receipt of assistance).~~

A State need not factor out ~~calculable~~ the effects of enforcement mechanisms or procedural requirements that are used to enforce existing eligibility criteria (e.g., fingerprinting or other verification techniques) to the extent such mechanisms or requirements identify or deter families ~~that were~~ ineligible under existing eligibility rules.

Preamble language for Section 271.42

Thus, we propose to give States credit for caseload reductions except when those caseload reductions arise from two kinds of changes in eligibility: (1) changes in eligibility rules that directly affect a family's eligibility for benefits (e.g., more stringent income and resource limitations or time limits); or (2) changes in procedural conditions of eligiblity that also have a direct and significant effect on caseloads by delaying or denying eligibility ~~(e.g., documentation requirements that create extra obstacles or delay receipt of benefits).~~

Under this approach, we would not give States credit for caseload reductions due to new procedural requirements where such requirements served simply ~~as an obstacle that had the effect of keeping~~ to keep eligible families from seeking or receiving assistance. We would allow States to get caseload reduction credit where ~~they can show (through actual case studies, sampling, or other reliable techniques) that~~ new enforcement mechanisms or procedural requirements (such as fingerprinting or other verification techniques) have resulted in the identification of families that were ineligible under existing eligibility rules, or the deterrence of such families from applying for benefits. ~~In making this distinction, States could report the actual number of cases identified as fraudulently seeking benefits or they could use a sample to determine what percentage of cases were deterred because they were ineligible (and not accurately reporting their circumstances). Unless a State provided documented evidence that cases were diverted from the rolls due to fraud or misreporting, we would exclude all cases diverted from the rolls by procedural requirements from the State's caseload reduction credit.~~'

Through this policy approach, we are seeking to achieve the balance identified by Congress: that a State should receive credit for moving families off welfare, including by detecting and preventing fraud, but should not be able to avoid its accountability for work as a result of any changes that restrict program eligibility.

IV. EFFECT ON STATES

Comparison of Proposals: Effect on Connecticut

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

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

WORK

Connecticut ~~12/03~~ 12/03
? Hawaii
Massachusetts 9/05
Missouri 5/00
New Hampshire 7/96-7/97 + 5yrs ~~7/01~~ 7/02
South Dakota 3/99
Texas 6/02
Virginia 6/03

Delaware 9/02
Illinois 9/00 10/01 - 10/02
Minnesota (10/96-10/97 + 5yrs)
Nebraska 9/02
South Carolina 1/96-6/97 + 7yrs
Tennessee 9/96-9/97 + 11yrs 7/03 - 6/04
Utah 12/00 9/07 - 9/08
Washington 12/05

Also possibly:

Georgia 12/98 10 pilots - start 11/95-10/96 + 5yrs 11/01 - 10/02
Kansas 9/96-8/97 + 7yrs 9/03 - 8/04
Montana 12/04
North Dakota 3/02
Vermont 6/01

Iowa 9/98
Michigan 9/99
North Carolina 3/96-3/97 + 5yrs 3/01 - 3/02
Cabarrus County 5/96-5/97 + 2yrs 5/98 - 5/99
Oregon 6/02
Wisconsin 12/03

Please use the attached to look up the end date for each state waiver i.e. the year.

Changes to ~~job sanctions under~~ section 1115 waivers

States with time limit policies that could override the law:

Connecticut 12/03
Florida 12/01
Illinois 9/00
Louisiana 12/02
North Carolina start btwn 3/96 & 3/97; 5 yr duration
Oregon 6/02
Tennessee start btwn 9/96 & 9/97; 11 yrs duration
Wisconsin 12/06

Delaware 9/02
Hawaii btwn 10/96 + 10/97; duration 8 yrs
Iowa 9/98
Nebraska 9/02
Ohio btwn 6/96 & 12/96; 5 yr duration
South Carolina btwn 6/96 + 6/97; 7 yr duration
Virginia 6/03

North Carolina 3/01 or 3/02

Tennessee 9/07 or 9/08

10/04 or 10/05 Hawaii

6/01 or 12/01 Ohio

6/03 or 6/04 South Carolina

TIME LIMITS

Section 1115 waivers w/ time limits

FAX COVER

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

To: Fortuna / Rice

Organization:

Fax Number: 6-7431

From: Anil Kakani

Date/Time:

Number of Pages: Cover +

Notes:

More stuff from Maddie

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

Are telling states no

Examples - Inconsistencies Claimed vs. NPRM

The examples below illustrate the extent to which inconsistencies related to waivers identified by states in the process of submitting TANF plans would be recognized under the NPRM in relation to the calculation of the work participation rate and compliance with the 60-month time limit on TANF assistance.

can't tell which sections were waived

Connecticut

Connecticut would be able to claim each inconsistency it has identified in regard to time limits, including:

- exemptions from the time limit on assistance and indefinite extensions of the time limit, without a limit on the number of families receiving such exemptions or extensions.

The State could also support its claims pertinent to work requirements, but could not go as far as they suggest regarding the participation rate calculation. For example, the state claims inconsistencies related to:

def of wk vs of wk

- a broader definition of what activities and hours constitute participation in work activities for purposes of calculating the participation rate; and
- broader exemptions from work requirements (inconsistent with both the requirement that all parents participate after 24 months of receipt of assistance and the participation rate calculations).

They may claim that prior law defining JOBS activities and applicable waivers defining allowable JOBS activities such as unlimited job search define allowable work activities under TANF. They could also claim their waiver structures individualized employability plans which may tailor hours of required work activity to individualized circumstances. Each of these inconsistencies also have bearing on the calculation of the participation rate.

However, inconsistencies claimed related to exemptions from work activities would not be recognized under the NPRM. All cases with adults would be subject to work requirements and included in the denominator of the participation rate calculation.

The state also explicitly claims:

- differential treatment of control group cases, to the extent that it constitutes a separate "program," as opposed to a lack of uniformity in the TANF program.

This inconsistency is recognized under the NPRM for as long as the state maintains research group treatments for the purpose of completing an impact evaluation. Connecticut qualifies along with eight other states which received Federal funding to continue impact evaluations under experimental design. Some of these others (like Indiana) have also explicitly identified this inconsistency.

Hawaii

Hawaii intends to retain the waivers which exempt certain cases from both its time limit and work requirements, and to exclude these families in the calculation of participation rates. While the NPRM would allow the time-limited assistance exemptions to apply for the duration of the waiver, it would not recognize the work participation exemptions.

The state also claims to have defined satisfactory participation for the purpose of calculating participation rates as "participation in work activities for at least the average of not fewer than 18 hours per week." The NPRM allows states to claim that the weekly hours of work requirement is met by a lower threshold where a waiver provides for differential requirements based on individualized circumstances specified in the waiver. Hawaii has such provisions in their waivers, but for a limited class of individuals, not universally as they claim in their state plan.

Massachusetts

Massachusetts would count in its determination of work participation rate all activities formerly counted toward its JOBS participation rate, including job placement, job readiness, job search, education, training, the Full Employment Program, Supported Work, community service, any subsidized or unsubsidized job, and programs that extend beyond the time constraints specified in the PRWORA such as a 2-year community college program. This would be permissible under the NPRM.

However, Massachusetts indicates in its state plan (but, has not explicitly identified as an inconsistency) that it will require a nonexempt recipient (including both parents in a two-parent household) to work and/or perform community service for 20 hours per week. If the state tried to count this provision as requiring less than the prescribed hours of work required under TANF to count towards the participation rate, we would deny the claim under the NPRM. when law > 20?

Further, the state has been explicit that it intends to continue to apply the work program exemptions established under its waiver demonstration as an inconsistency. The NPRM would not recognize this inconsistency.

New Hampshire

The state's TANF plan identifies the inconsistencies related to waiver and prior law definitions as to what counts as work activities, including delaying the applicability of limits on the proportion of cases engaged in educational activities. However, the state also seek recognition as an inconsistency its requirement that individuals engage in work once the state determines the parent or caretaker is ready to engage in work, or once the parent or caretaker has received assistance for 24 months, whichever is earlier. The NPRM would not recognize this inconsistency as a means to exempt an individual from work for the purpose of determining the state's participation rate.

South Dakota

Like other states South Dakota would have leeway under its waivers for determining what counts toward work activities for the purpose of calculating its participation rate. However, the state also wishes to continue to exempt disabled individuals from both work and the time limits. Like other states who wish to exempt individuals from work participation, it would not be allowed to do so as an inconsistency under the NPRM. As, for time-limited assistance, South Dakota is an example of a state with waivers with time-limit rules related to continuing, but not terminating, assistance.

In South Dakota, cases which received assistance in excess of their "time limit" must participate in CWEP or alternative work experience activities in order to continue to receive benefits. Because it does not have a waiver terminating benefits after a set period of time, the NPRM would allow no inconsistencies to be recognized related to time limits.

Virginia

state plan

The state does not intend to limit either the duration or the number of job search assignments to which a participant may be assigned and each assignment will be calculated in the participation rate for full allowable credit. Under the NPRM it would be allowed to do this based on its waiver. Despite not addressing other work activities, under the NPRM it could claim other activities recognize under prior law for JOBS, including unlimited assignment to educational activities. ?

Virginia makes two claims to inconsistencies beyond what would be recognized in the NPRM.

- First, it intends to exempt from work persons under age 16 or over 59, full-time students, incapacitated or disabled individuals, persons who are the sole caregiver of another household member who is incapacitated, the parent of a child under 18 months of age, caretakers other than parents, and women in their fourth through ninth month of pregnancy. In effect, this would exempt about 50 percent of cash assistance recipients.

wow!

- Second, it notes that under waivers, Virginia has no lifetime limit on benefits. Once a recipient has received cash assistance for 24 months and transitional assistance for 12 months, he or she will be ineligible for 24 months, but there is no restriction on the number of times a person may cycle on and off the program. The NPRM would require Virginia to recognize the Federal 5-year lifetime time-limit. It would recognize any exemptions from the time limit under the state's time limit and it would allow any extension policies to also apply to the Federal time limit. But, any assistance provided to families with adults in excess of 60 months would have to be based on extension policies allowed under the waivers or under the TANF hardship exemption.

State	Time Limit	Exemptions	Extensions
Ohio TANF Effective: 10/96 **5-Year Time Limit: 10/01** Demonstration Approved: 3/95 Implemented: 7/96 Time Limit: 8/99 End Date: 12/01	36 out of 60 (waiver) The TANF program is based on the States existing AFDC/JOBS State plans and approved waivers.	• a dependent child who resides with a caretaker relative who is not a member of the AFDC assistance unit • the assistance group is one for which staff of the local county department of human services determines that the time limit would impose a hardship • the assistance group is headed by an individual who is exempt from JOBS • the assistance group is headed by an individual who is not able to actively participate in a JOBS component because she/he is on a waiting list as maintained by the county department of human services • or other good cause exists as determined by criteria established by the county department of human services	The State's outline says it will defer to any existing TANF provisions which may be in conflict with its AFDC and JOBS State plans.
Oregon TANF Effective: 10/96 5-Year Time Limit: 10/01 Demonstration Approved: 3/96 Implemented: 7/96 Time Limit: 3/98 End Date: 06/02	24 within 84 consecutive Limit the duration of AFDC benefits to no more than 24 cumulative months in any period of 84 consecutive months.	• a month in which a dependent child receiving AFDC resides with a person other than the child's natural or adoptive parents • up to 3 months within a 2-year period for the care of any family members who suffer serious health conditions • a household with only one parent in which the basis of eligibility is the incapacity of that parent or, in a household with two parents, if both parents are incapacitated or one parent is required in the home to care for an incapacitated parent or child • if a person is required to participate in the JOBS Program, unless the person has been offered the opportunity to participate in a education employment, or job training program, including teen parent programs or is participating in an employment and training program, including job search activities	A person who, except for the time limit would be eligible for the AFDC benefits, will become eligible to receive benefits, in excess of 24 months if: a dependent child in a two parent household and the primary wage earner dies; a dependent child resides with a person other than the parents with whom the child lived while receiving AFDC benefits; a parent of a dependent child, his/her dependent children and the State will determine if the parent is making a diligent effort in good faith to obtain permanent employment. The number of families under this may not be more than 1% of the total families receiving aid that month or 400 families.

State	Time Limit	Exemptions	Extensions
South Carolina TANF Effective: 10/96 5-Year Time Limit: 10/01 Demonstration Approved: 5/96 Implemented: 10/96 Time Limit: 11/98 End Date: 08/04	24 out of 120/60 lifetime No more than 24 months out of 120 months and for no more than 60 months in a lifetime.	• head of the household is permanently or totally disabled, whether physically or mentally • head of the household is providing full-time care for a disabled individual in the home • parent of the child for whom the assistance is received is a minor under the age of 18, who has not completed high school. Assistance must be provided for a period of up to 24 months after the minor parent attains the age of 18 or completes high school, whichever occurs first • individual is involved in an approved training program which will not be completed by the 24th month. No extension may be given beyond the 30th month without the express permission of the county director • adult caretaker is not parent of child and not included in check • adult caring for a child whom has been abandoned and for whom alternative would be placement in foster care • child care or transportation is not reasonably available • diligently seeking employment • willingness to relocate • cooperating to become employed and State is satisfied that no employment is available, assistance only extended for an additional 12 months	

State	Time Limit	Exemptions	Extensions
Tennessee <u>TANF</u> Effective: 10/96 5-Year Time Limit: 10/01 <u>Demonstration</u> Approved: 7/96 Implemented: Time Limit: End Date: 09/08	18 months for units not meeting exceptions 60 month lifetime An assistance unit that includes an eligible adult will not be eligible to receive assistance for a period of time greater than 60 months in its lifetime, unless the assistance group meets certain exceptions.	• all minors/minor parents are exempt until the minor parent turns 18 and has graduated from high school or until the graduation of the class that the teen is a member of when the teen turns 18 • assistance groups that do not have an eligible adult • assistance groups where the caretaker is age 60 or greater • assistance groups where the caretaker is disabled • assistance groups where the caretaker must provide a home care for a relative who is a member of the household, such as a parent, child, spouse, and so forth. who is disabled and requires full time care • an adult whose functional literacy level is 8.9 or less, until such time as that individual reaches 9th grade literacy level and so long as the participant is enrolled at least 20 hours per week in an approved GED program and is making satisfactory progress in the prescribed education program	Each period of eligibility can be extended from 18 to 24 months if the assistance group resides in a county with high unemployment and the family is in compliance with its PRP. The 18 and 60-month periods can also be extended on a case-by-case basis for good cause or because the State failed to provide child care, transportation, education or job training prescribed in the PRP. Tennessee will permit a family to receive AFDC for several month long periods separated by only a 3-month hiatus. However, the total period of eligibility cannot exceed 60 months.

State	Time Limit	Exemptions	Extensions
Texas TANF Effective: 11/96 5-Year Time Limit: 11/01 Demonstration Approved: 3/96 Implemented: 06/96 Time Limit: 6/97 End Date: 03/02	Time limits refer to individuals, not cases. Cash assistance for the remaining members of the unit will continue as long as all other eligibility criteria are met. (1) 12 cumulative months of AFDC cash benefits with: (a) 18 months of recent work experience, (b) high school diploma/GED certificate/diploma, (c) certificate from post-secondary school, or (d) certificate or degree from vocational or technical school. (2) 24 cumulative months of AFDC cash benefits with: (a) 6 through 17 months of recent work experience, or (b) completed education equal to the 11th grade but less than 12th grade. (3) 36 cumulative months of AFDC cash benefits with: (a) less than 6 months recent work experience, and (b) less than 3 completed years	Time limit applies to non-exempt JOBS participants and volunteers. Additionally, exemptions of no longer than 6 months at a time will be available if: • individual lives in an area of economic hardship, or experiences severe personal hardship and they have been in compliance with all work-related requirements and have requested consideration for an exemption.	If it is determined by the employment services program that a non-exempt recipient or exempt volunteer is functioning at a lower educational level than their completed level of education, the employment services program will inform the eligibility worker that the recipient's time limit should, if applicable, be adjusted to reflect her/his functional level of education.

State	Time Limit	Exemptions	Extensions
Virginia TANF Effective: 02/97 5-Year Time Limit: 02/02 Demonstration Approved: 7/95 Implemented: 7/95 Time Limit: 7/97 End Date: 06/03	24 in any 60-month time period (plus a year of transitional benefits)	• persons under 16 • full-time students • incapacitated or disabled • age 60 or older • sole care giver of another household member who is incapacitated • parent or caretaker relative of a child under 18 months • children who receive foster care • caretakers other than parents • women in fourth through ninth month of pregnancy	Hardship extensions of between three months and one year may be provided to: participants who are actively seeking employment but unable to find a job, participants who lose employment due to no fault of their own, participants in continued education and training related directly to employability, and participants living in areas of the state that have unemployment rates above 10 percent. These hardship extensions will only be granted in cases when the individual participant has satisfactorily participated during their VIEW assignments, have not been sanctioned more than once during the 24 months of participation, and have not quit a job without good cause.
Wisconsin (2 counties) TANF Effective: 09/96 5-Year Time Limit: 09/01 Demonstration Approved: 11/93 Implemented: 1/95 Time Limit: 1/97 End Date: 12/06	2 counties: 24 within 48 Cases may receive a WNW grant for 24 months and transitional benefits for 12 months within a 48-month period beginning with the first month of eligibility under WNW. No cash benefits will be available for a period of 36 months after the last of the 24 WNW payments is made. Remaining State: 60	• teen parent subject to Wisconsin's Learnfare requirement • minor • sole custodial parent or both parents are temporarily incapacitated • parent is caring for an incapacitated dependent person • sole custodial parent or both parents are on SSI • non-legally responsible relative not included in the grant • parent is caring for a child under 1 year of age that was conceived before the group first received WNW benefits (during the period in which a subsequent child, is less than 6 months old, the parent will be exempt from the work requirement, but the time limits will not be extended)	