

## § 262.7

penalty, the State must demonstrate that it met one or both of the following conditions:

(1) Although it did not achieve full compliance, the State made significant progress towards correcting or discontinuing the violation; or

(2) The State's failure to comply fully was attributable to either a natural disaster or regional recession.

[64 FR 17890, Apr. 12, 1999, as amended at 71 FR 37481, June 29, 2006]

### § 262.7 How can a State appeal our decision to take a penalty?

(a)(1) We will formally notify the Governor and the State agency of an adverse action (i.e., the reduction in the SFAG) within five days after we determine that a State is subject to a penalty under parts 261 through 265 of this chapter.

(2) Such notice will include the factual and legal basis for taking the penalty in sufficient detail for the State to be able to respond in an appeal.

(b)(1) The State may file an appeal of the action, in whole or in part, with the HHS Departmental Appeals Board (the Board) within 60 days after the date it receives notice of the adverse action. The State must submit its brief and supporting documents when it files its appeal.

(2) The State must send a copy of the appeal, and any supplemental filings, to the Office of the General Counsel, Children, Families and Aging Division, Room 411-D, 200 Independence Avenue, SW., Washington, DC 20201.

(c) We will submit our reply brief and supporting documentation within 45 days of the receipt of the State's submission under paragraph (b) of this section.

(d) The State may submit a reply and any supporting documentation within 21 days of its receipt of our reply under paragraph (c) of this section.

(e) The appeal to the Board must follow the provisions of the rules under this section and those at §§ 16.2, 16.9, 16.10, and 16.13-16.22 of this title, to the extent that they are consistent with this section.

(f) The Board will consider an appeal filed by a State on the basis of the documentation and briefs submitted, along with any additional information the

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Board may require to support a final decision. Such information may include a hearing if the Board determines that it is necessary. In deciding whether to uphold an adverse action or any portion of such action, the Board will conduct a thorough review of the issues.

(g)(1) A State may obtain judicial review of a final decision by the Board by filing an action within 90 days after the date of such decision. It should file this action with the district court of the United States in the judicial district where the State agency is located or in the United States District Court for the District of Columbia.

(2) The district court will review the final decision of the Board on the record established in the administrative proceeding, in accordance with the standards of review prescribed by 5 U.S.C. 706(2). The court will base its review on the documents and supporting data submitted to the Board.

## PART 263—EXPENDITURES OF STATE AND FEDERAL TANF FUNDS

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AUTHORITY: 42 U.S.C. 604, 607, 609, and 862a; Pub. L. 109-171.

SOURCE: 64 FR 17893, Apr. 12, 1999, unless otherwise noted.

**§ 263.0 What definitions apply to this part?**

(a) Except as noted in § 263.2(d), the general TANF definitions at § 260.30 through § 260.33 of this chapter apply to this part.

(b) The term “administrative costs” means costs necessary for the proper administration of the TANF program or separate State programs.

(1) It excludes direct costs of providing program services.

(i) For example, it excludes costs of providing diversion benefits and services, providing program information to clients, screening and assessments, development of employability plans, work activities, post-employment services, work supports, and case management. It also excludes costs for contracts devoted entirely to such activities.

(ii) It excludes the salaries and benefits costs for staff providing program services and the direct administrative costs associated with providing the services, such as the costs for supplies, equipment, travel, postage, utilities, rental of office space and maintenance of office space.

(2) It includes costs for general administration and coordination of these programs, including contract costs and all indirect (or overhead) costs. Examples of administrative costs include:

- (i) Salaries and benefits of staff performing administrative and coordination functions;
- (ii) Activities related to eligibility determinations;
- (iii) Preparation of program plans, budgets, and schedules;
- (iv) Monitoring of programs and projects;
- (v) Fraud and abuse units;
- (vi) Procurement activities;
- (vii) Public relations;
- (viii) Services related to accounting, litigation, audits, management of property, payroll, and personnel;
- (ix) Costs for the goods and services required for administration of the program such as the costs for supplies, equipment, travel, postage, utilities, and rental of office space and maintenance of office space, provided that such costs are not excluded as a direct administrative cost for providing program services under paragraph (b)(1) of this section;
- (x) Travel costs incurred for official business and not excluded as a direct administrative cost for providing program services under paragraph (b)(1) of this section;
- (xi) Management information systems not related to the tracking and monitoring of TANF requirements (e.g., for a personnel and payroll system for State staff); and
- (xii) Preparing reports and other documents.

**Subpart A—What Rules Apply to a State’s Maintenance of Effort?**

**§ 263.1 How much State money must a State expend annually to meet the basic MOE requirement?**

(a)(1) The minimum basic MOE for a fiscal year is 80 percent of a State’s historic State expenditures.

(2) However, if a State meets the minimum work participation rate requirements in a fiscal year, as required under §§ 261.21 and 261.23 of this chapter, after adjustment for any caseload reduction credit under § 261.41 of this chapter, then the minimum basic MOE for that fiscal year is 75 percent of the State’s historic State expenditures.

(3) A State that does not meet the minimum participation rate requirements in a fiscal year, as required