

criteria in paragraphs (b)(2) and (b)(3) of this section are considered to be eligible for TANF assistance for the purposes of paragraph (b)(1)(i) of this section.

(e) Expenditures for benefits or services listed under paragraph (a) of this section may include allowable costs borne by others in the State (e.g. local government), including cash donations from non-Federal third parties (e.g., a non-profit organization) and the value of third party in-kind contributions if:

(1) The expenditure is verifiable and meets all applicable requirements in 45 CFR 92.3 and 92.24;

(2) There is an agreement between the State and the other party allowing the State to count the expenditure toward its MOE requirement; and

(3) The State counts a cash donation only when it is actually spent.

(f)(1) The expenditures for benefits or services in State-funded programs listed under paragraph (a) of this section count only if they also meet the requirements of § 263.5.

(2) Expenditures that fall within the prohibitions in § 263.6 do not count.

(g) State funds used to meet the Healthy Marriage Promotion and Responsible Fatherhood Grant match requirement may count to meet the MOE requirement in § 263.1, provided the expenditure also meets all the other MOE requirements in this subpart.

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§ 263.3 When do child care expenditures count?

(a) State funds expended to meet the requirements of the CCDF Matching Fund (i.e., as match or MOE amounts) may also count as basic MOE expenditures up to the State's child care MOE amount that must be expended to qualify for CCDF matching funds.

(b) Child care expenditures that have not been used to meet the requirements of the CCDF Matching Fund (i.e., as match or MOE amounts), or any other Federal child care program, may also count as basic MOE expenditures. The limit described in paragraph (a) of this section does not apply.

(c) The child care expenditures described in paragraphs (a) and (b) of this section must be made to, or on behalf

of, eligible families, as defined in § 263.2(b).

§ 263.4 When do educational expenditures count?

(a) Expenditures for educational activities or services count if:

(1) They are provided to eligible families (as defined in § 263.2(b)) to increase self-sufficiency, job training, and work; and

(2) They are not generally available to other residents of the State without cost and without regard to their income.

(b) Expenditures on behalf of eligible families for educational services or activities provided through the public education system do not count unless they meet the requirements under paragraph (a) of this section.

§ 263.5 When do expenditures in State-funded programs count?

(a) If a current State or local program also operated in FY 1995, and expenditures in this program would have been previously authorized and allowable under the former AFDC, JOBS, Emergency Assistance, Child Care for AFDC recipients, At-Risk Child Care, or Transitional Child Care programs, then current fiscal year expenditures in this program count in their entirety, provided that the State has met all requirements under § 263.2.

(b) If a current State or local program also operated in FY 1995, and expenditures in this program would not have been previously authorized and allowable under the former AFDC, JOBS, Emergency Assistance, Child Care for AFDC recipients, At-Risk Child Care, or Transitional Child Care programs, then countable expenditures are limited to the amount by which total current fiscal year expenditures that meet the requirements under § 263.2 exceed total State expenditures in the program during FY 1995.

§ 263.6 What kinds of expenditures do not count?

The following kinds of expenditures do not count:

(a) Expenditures of funds that originated with the Federal government;

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(b) State expenditures under the Medicaid program under title XIX of the Act;

(c) Expenditures that a State makes as a condition of receiving Federal funds under another program that is not in Part IV-A of the Act, except as provided in § 263.3;

(d) Expenditures that a State made in a prior fiscal year;

(e) Expenditures that a State uses to match Federal Welfare-to-Work funds provided under section 403(a)(5) of the Act; and

(f) Expenditures that a State makes in the TANF program to replace the reductions in the SFAG as a result of penalties, pursuant to § 264.50 of this chapter.

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§ 263.8 What happens if a State fails to meet the basic MOE requirement?

(a) If any State fails to meet its basic MOE requirement for any fiscal year, then we will reduce dollar-for-dollar the amount of the SFAG payable to the State for the following fiscal year.

(b) If a State fails to meet its basic MOE requirement for any fiscal year, and the State received a WtW formula grant under section 403(a)(5)(A) of the Act for the same fiscal year, we will also reduce the amount of the SFAG payable to the State for the following fiscal year by the amount of the WtW formula grant paid to the State.

§ 263.9 May a State avoid a penalty for failing to meet the basic MOE requirement through reasonable cause or corrective compliance?

No. The reasonable cause and corrective compliance provisions at §§ 262.4, 262.5, and 262.6 of this chapter do not apply to the penalties in § 263.8.

Subpart B—What Rules Apply to the Use of Federal TANF Funds?

§ 263.10 What actions would we take against a State if it uses Federal TANF funds in violation of the Act?

(a) If a State misuses its Federal TANF funds, we will reduce the SFAG payable for the immediately succeeding fiscal year quarter by the amount misused.

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(b) If the State fails to demonstrate that the misuse was not intentional, we will further reduce the SFAG payable for the immediately succeeding fiscal year quarter in an amount equal to five percent of the adjusted SFAG.

(c) The reasonable cause and corrective compliance provisions of §§ 262.4 through 262.6 of this chapter apply to the penalties specified in paragraphs (a) and (b) of this section.

§ 263.11 What uses of Federal TANF funds are improper?

(a) States may use Federal TANF funds for expenditures:

(1) That are reasonably calculated to accomplish the purposes of TANF, as specified at § 260.20 of this chapter; or

(2) For which the State was authorized to use IV-A or IV-F funds under prior law, as in effect on September 30, 1995 (or, at the option of the State, August 21, 1996).

(b) We will consider use of funds in violation of paragraph (a) of this section, sections 404 and 408 and other provisions of the Act, section 115(a)(1) of PRWORA, the provisions of part 92 of this title, or OMB Circular A-87 to be misuse of funds.

§ 263.12 How will we determine if a State intentionally misused Federal TANF funds?

(a) The State must show, to our satisfaction, that it used these funds for purposes that a reasonable person would consider to be within the purposes of the TANF program (as specified at § 260.20 of this chapter) and consistent with the provisions listed in § 263.11.

(b) We may determine that a State misused funds intentionally if there is supporting documentation, such as Federal guidance or policy instructions, precluding the use of Federal TANF funds for such purpose.

(c) We may also determine that a State intentionally misused funds if the State continues to use the funds in the same or similarly improper manner after receiving notification that we had determined such use to be improper.