

NLWJC - Kagan

DPC - Box 062 - Folder-009

Welfare-Illegitimacy Bonus

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REGULATORY REVIEW WORKSHEET

OMB NUMBER: 0970-A216
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CHRONOLOGY: No previous Reference

RECEIVED: 11/26/1997
DUE DATE: 02/24/1998
APPEALED: __/__/__

AGENCY: Department of Health and Human Services
SUBAGENCY: Administration for Children and Families

TITLE: Implementation of Section 403 (a)(2) of the Social Security Act, Bonus to Reward
Decrease in Illegitimacy

ECONOMICALLY SIGNIFICANT: No
STAGE: Proposed Rule
LEGAL DEADLINE: No

- 1. Preamble
- 2. Name of Bonus in
title
 - a. 2 places in P. 1
 - b. "ratio"

Signatures and Dates

Budget	Desk Officer	Other	OIRA
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For the reasons set forth in the preamble, we propose to add part 283 to title 45 of the CFR to read as follows:

PART 283 -- Bonus to Reward Decreases in ^{the ratio of} Out-of-Wedlock Births ~~Ratio~~ to Total Births

Sec. .

- 283.1 What does this part cover?
- 283.2 What definitions apply to this part?
- 283.3 What steps will we follow to award the bonus?
- 283.4 If a State wants to be considered for bonus eligibility, what birth data must it submit?
- 283.5 How will we use these birth data to determine bonus eligibility?
- 283.6 If a State wants to be considered for bonus eligibility, what data on abortions must it submit?
- 283.7 How will we use these data on abortions to determine bonus eligibility?
- 283.8 What will be the amount of the bonus?
- 283.9 What do eligible States need to know to access the bonus funds?

Authority: 42 U.S.C. 603

§283.1 What does this part cover?

This part explains how States may be considered for the Bonus to Reward Decrease in ^{the ratio} Out-of-Wedlock Births ^{to total births} Ratio,

authorized by section 403(a)(2) of the Social Security Act.

It describes the data on which we will base the bonus, how we will make the award, and how we will determine the amount of the award.

§283.2 What definitions apply to this part?

The following definitions apply to this part:

(a) "Abortions" means induced pregnancy terminations, including both medically and surgically induced pregnancy terminations.

(b) "Act" means the Social Security Act.

(c) "Bonus" refers to the Bonus to Reward Decrease in Illegitimacy, as set forth in section 403(a)(2) of the Social Security Act.

Ratio

(d) "Calculation period" refers to the four calendar years used for determining the decrease in the out-of-wedlock birth ratios for a bonus year. (The years included in the calculation period change from year to year.)

(e) "Most recent two-year period for which birth data are available" means the most recent two calendar years for which the National Center for Health Statistics has obtained final birth data by State.

(f) "Most recent year for which abortion data are available" means the year that is two calendar years prior to the current calendar year. (For example, for eligibility determinations made during calendar year 1999, the most recent year for which abortion data are available would be calendar year 1997.)

(g) "NCHS" means the National Center for Health Statistics, in the Centers for Disease Control and

Prevention, U.S. Department of Health and Human Services.

(h) "Number of out-of-wedlock births for the State" means the final number of births occurring outside of marriage to residents of the State, as reported in NCHS vital statistics data.

(i) "Number of total births for the State" means the final total number of births to residents of the State, as reported in NCHS vital statistics data.

(j) ^{Ratio refers to the ratio of} ~~the ratio of out-of-wedlock births to total births~~ the ratio of out-of-wedlock births to total births, as defined in §283.5(b).

(k) "Rate of abortions" means the number of abortions reported by the State in the most recent year for which abortion data are available divided by the State's total number of resident births reported in vital statistics for that same year. (This measure is also more traditionally known as the "abortion to live birth ratio.")

(l) "State" means the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa, as provided in section 419(a)(5) of the Act.

(m) "Vital statistics data" means the data reported by State health departments to NCHS, through the Vital Statistics Cooperative Program (VSCP).

§283.3 What steps will we follow to award the bonus?

(a) For each of the fiscal years 1999 through 2002 we will:

(1) Calculate the ~~out-of-wedlock birth~~ ratios for the most recent two years for which data are available, and for the prior two years, as described in §283.5. We will do this for every State that submits the necessary vital statistics data to NCHS, as described in §283.4.

(2) Calculate the proportionate change between these two ratios, as described in §283.5.

(3) Identify as potentially eligible those States that have qualifying decreases in their ~~out-of-wedlock birth~~ ratios, using the methodology described in §283.5. We will identify fewer than five States if fewer than five States experience decreases in their ~~out-of-wedlock birth~~ ratios. We will identify more than five States if Guam, American Samoa or the Virgin Islands, in addition to five other States, have qualifying decreases in their out-of-wedlock birth ratios.

(4) Notify these potentially eligible States that we will consider them for the bonus if they submit data on abortions as stated in §283.6.

(5) Identify which of the potentially eligible States that submitted the required data on abortions have experienced decreases in their rates of abortion relative to 1995, as described in §283.7. These States will receive the bonus.

(b) We will determine the amount of the grant for each eligible State, based on the number of eligible States, and whether Guam, American Samoa or the Virgin Islands are eligible. No State will receive a bonus award greater than \$25 million in any year.

§283.4 If a State wants to be considered for bonus eligibility, what birth data must it submit?

(a) To be considered for a bonus, the State must have submitted data on out-of-wedlock births as specified below:

(1) The State must have submitted to NCHS final vital statistics data files for all births occurring in the State. These files must show, among other elements, the number of total births and the number of out-of-wedlock births occurring in the State. These data must conform to the Vital Statistics Cooperative Program contract for all years in the calculation period. This contract specifies, among other things, the guidelines and time-lines for submitting vital statistics data files.

(2) The State must have submitted these data for the most recent two years for which NCHS reports final data, as well as for the previous two years.

(b) If a State has changed its method of determining marital status for the purposes of these data, the State also must have met the following requirements:

(1) The State has identified all years for which the method of determining marital status is different from that used for the previous year.

(2) For those years identified under paragraph (b) (1) of this section, the State has replicated as closely as possible the previous year's method for determining marital status at time of birth, and the State has reported to NCHS the resulting alternative number of out-of-wedlock births.

(3) The State has also submitted to NCHS documentation on what the changes in determination of marital status were for those years and how it determined the alternative number of out-of-wedlock births for the State.

(4) For methodology changes that occurred prior to 1998 or final rule publication, the State must have submitted the information described in paragraphs (b) (1), (2) and (3) of this section within 1 year of final rule publication. For such changes occurring during or after 1998 and after final rule publication, the State must have submitted such information according to the same deadline that applies to its vital statistics data for that year.

Deadline for Information on Changes in Data Reporting				
If Change in Data Collection Occurred:	Prior to 1998	Prior to final rule	During 1998, after final rule	After 1998, after final rule

Then Deadline for Information on Alternative Data is:	Within 1 year of final rule	Within 1 year of final rule	NCHS deadlines	NCHS deadlines

§283.5 How will we use these birth data to determine bonus eligibility?

(a) We will use the number of out-of-wedlock births and total births among women living in each State provided by NCHS as follows.

(1) If a State has not changed its method of determining marital status, these numbers will be based directly on their vital statistics data files.

(2) For years when the determination of marital status has been changed during the calculation period, NCHS will provide the number of out-of-wedlock births from vital statistics as well as an adjustment factor to disregard the effects of this change.

(b) We will use these data provided by NCHS to calculate the decrease in ^{the} ~~out-of-wedlock birth~~ ratios for each State, as described below:

(1) We will calculate the ~~out-of-wedlock birth~~ ratio as the number of out-of-wedlock births for the State during

the most recent two-year period for which NCHS has final birth data divided by the number of total births for the State during the same period. We will calculate, to three decimal places, the ratio for each State that submits the necessary data on total and out-of-wedlock births described in §283.4.

(2) We will calculate the ~~out-of-wedlock birth~~ ratio for the previous two-year period using the same methodology.

(3) We will calculate the proportionate change in the ~~out-of-wedlock birth~~ ratio as the ^{ratio of} ~~out-of-wedlock births~~ ^{to total births} ratio for the most recent two-year period minus the ^{ratio} ~~out-of-wedlock~~ ^{to total births} ~~births ratio~~ from the prior two-year period, all divided by the ^{ratio} ~~out-of-wedlock~~ ^{births to total births} ~~ratio~~ for the prior two-year period. A negative number will indicate a decrease in the ~~out-of-wedlock birth~~ ratio and a positive number will indicate an increase in the ratio.

(c) We will identify which States have a decrease in their ~~out-of-wedlock birth~~ ratios large enough to make them potentially eligible for the bonus, as follows:

(1) For States other than Guam, American Samoa and the Virgin Islands, we will use this calculated change to rank the States and identify which five States have the largest decrease in their ~~out-of-wedlock birth~~ ratios. Only States among the top five will be potentially eligible for the bonus. We will identify fewer than five such States as potentially eligible if fewer than five experience decreases

in their ~~out-of-wedlock birth~~ ratios. We will not include Guam, American Samoa and the Virgin Islands in this ranking.

(2) If we identify more than five States due to a tie in the decrease, we will recalculate the ~~out-of-wedlock-birth~~ ratio and the decrease in the ratio to as many decimal places as necessary to eliminate the tie. We will identify no more than five States.

(3) For Guam, American Samoa and the Virgin Islands, we will use the calculated change in the ~~out-of-wedlock-birth~~ ratio to identify which of these States experienced a decrease at least as large as the smallest qualifying decrease identified in paragraph (c)(1) of this section. These identified States will be potentially eligible for the bonus also.

(4) We will notify the potentially eligible States, as identified under paragraphs (a)-(c) of this section that they must submit the information on abortion rates specified under §283.6 if they want to be considered for the bonus.

§283.6 If a State wants to be considered for bonus eligibility, what data on abortions must it submit?

(a) To be considered further for bonus eligibility, each potentially eligible State, as identified under §283.5, must then submit to ACF data and information on the number of abortions for calendar year 1995 within two months of

this notification. This number must measure either of the following:

(1) For calendar year 1995, the total number of abortions performed by all providers within the State; or

(2) For calendar year 1995, the total number of abortions that were performed by all providers within the State on the total population of State residents only. This is the preferred measure.

(b) States must have obtained these data on abortions for calendar year 1995 by the end of calendar year 1997, or within 60 days of publication of the final rule on the bonus, whichever is later. Within two months of notification by ACF of potential eligibility, the State must submit records documenting when it obtained the abortion data for calendar year 1995.

(c) The State also must submit data on the number of abortions for the most recent year for which abortion data are available, as defined in §283.2. In measuring the number of abortions, the State must use the same definition, either under paragraph (a)(1) or (a)(2) of this section, for both 1995 and the most recent year.

(d) The State must adjust the number of abortions reported to ACF in any year to exclude increases or decreases due to changes in data collection or methodology relative to the number of abortions reported to ACF for 1995. The Governor, or his or her designee, must certify to

ACF that such adjustments have been made.

§283.7 How will we use these data on abortions to determine bonus eligibility?

(a) For those States that have met all the requirements under §§ 283.1-283.6, we will calculate the rate of abortions for calendar year 1995 and for the most recent year for which abortion data are available. These rates will equal the number of abortions reported by the State to ACF for the applicable year, divided by total births among women living in the State reported by NCHS for the same year. We will calculate the rates to three decimal places.

(b) If ACF determines that the State's rate of abortions for the most recent year for which abortion data are available is less than the rate for 1995, and, if the State has met all the requirements listed elsewhere under this part, the State will receive the bonus.

§283.8 What will be the amount of the bonus?

(a) If, for a bonus year, none of the eligible States is Guam, American Samoa or the Virgin Islands, then the amount of the grant shall be:

(1) \$20 million if there are five eligible States; or

(2) \$25 million if there are fewer than five eligible States.

(b) If for a bonus year, Guam, the Virgin Islands, or American Samoa is an eligible State, then the amount of the grant shall be:

(1) In the case of such a State, 25 percent of the mandatory ceiling amount as defined in section 1108 of the Act; and

(2) In the case of any other State the amount of the grant shall be \$100 million, minus the total amount of any bonuses paid to Guam, the Virgin Islands, and American Samoa, and divided by the number of eligible States other than such territories, not to exceed \$25 million.

§283.9 What do eligible States need to know to access the bonus funds?

(a) We will pay the bonus to the Executive Office of the Governor of the eligible State.

(b) (1) States must use the bonus to carry out the purposes of the Temporary Assistance for Needy Families Block Grant in section 404 of the Social Security Act.

(2) These funds are also subject to the limitations in, and requirements of, sections 404 and 408 of the Act.



Cynthia A. Rice

01/29/98 07:23:14 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP
cc: Andrea Kane/OPD/EOP, Diana Fortuna/OPD/EOP
Subject: Bonus Reg and the term "illegitimacy"

HHS and now Sally Katzen want to rename the illegitimacy bonus the "bonus to reward decrease in out-of-wedlock birth ratio." The statute (as amended by the technicals bill) consistently refers to the "illegitimacy ratio" as the measure upon which the bonus will be based (calling the bonus the "bonus to reward decrease in illegitimacy ratio") but uses the term "out-of-wedlock births" when discussing births.

Apparently HHS officially stopped using the term "illegitimate" in 1977 and Katzen's folks believe the rule should follow the data procedures of the executive branch. I think that the statute walks the very fine line of not labeling individuals "illegimate" by using "out of wedlock" regarding births, but using "illegitimacy ratio" for the statistic. You should note that Senator Moynihan is very particular in insisting that "illegitimacy ratio" is the proper term.

My gut reaction is that we should not stick out our necks on this issue, and we should follow the statute. While it's unlikely anyone would notice, there's a small chance someone like George Will would say we are too timid to condemn the practice of people having children out of wedlock and our refusal to use the term "illegitimacy ratio" is symbolic of that. However, Sally Katzen apparently thinks I'm nuts, and may be calling Elena about this.

February 13, 1998

NOTE TO ELENA

FROM: CYNTHIA

RE: HIGH PERFORMANCE BONUS

Melissa suggested, and Bruce agreed, that we should leak high performance bonus alone. McCurry agreed to a Post leak for Tuesday. Bruce suggested I give Melissa backup so she could make the case that this is something the President fought for.

Attached are:

1. The information I gave Melissa;
 2. The Q&As for our press office for Tuesday -- please review this weekend.
Thanks.
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P.S. Sally Katzen agreed to our change in the title of the rule, with one minor change --

They proposed: Bonus to Reward Decrease in Out of Wedlock Births Ratio to Total Births

We proposed: Bonus to Reward Decrease in Illegitimacy Ratio

We agreed on: Bonus to Reward Decrease in Illegitimacy

Bruce said he was willing to combine if need be, i.e., Bonus to Reward Decrease in Illegitimacy, the Ratio of Out of Wedlock Births to Total Births, so I think we did okay.

We made changes throughout the preamble and sent back to HHS Friday afternoon. If HHS agrees (Katzen's office strongly suggested they should), it will go the Register early next week and be published the week after. I told the President in my draft weekly that we were not planning to do any press on ~~the~~ ^{it}, but that we were leaking high performance.

Cynthia -

Excellent! How did that happen?
I ran into Sally on Fri. morning
and she seemed dubious.

Elena