NLWJC - Kagan
DPC - Box 058 - Folder-021

Welfare - Bifurcation Issue [1]

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Bruce Reed to Elena Kagan re:no subject [partial] (1 page)	04/16/1997	P6/b(6)

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Elena Kagan
OA/Box Number: 14371

FOLDER TITLE:
Welfare- Bifurcation Issue [1]

2009-1006-F
bm7

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
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b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

E

2:00- Anti-war actions
of past Kent.

NATIONAL GOVERNORS' ASSOCIATION

DPC welfare items
WP - Education

Bob Miller
Governor of Nevada
Chairman

George V. Voinovich
Governor of Ohio
Vice Chairman

Raymond C. Scheppach
Executive Director

Hall of the States
444 North Capitol Street
Washington, D.C. 20001-1512
Telephone (202) 624-5300

May 12, 1997

The President
The White House
Washington, DC 20500

Dear Mr. President:

The nation's Governors want to express our strong opposition to a proposal that is being advanced by your administration to impose federal Temporary Assistance to Needy Families (TANF) requirements on separate state maintenance-of-effort (MOE) welfare programs. We believe this proposal dismantles the careful agreement worked out among Governors, Congress, and your administration during last year's welfare reform deliberations. It will limit state innovation and creativity and imperil successful welfare reform. **We urge you to withdraw the proposal.**

The National Governors' Association (NGA) is strongly opposed to your administration's proposal to limit state flexibility in the use of state MOE funds beyond those limitations currently in the law. Governors supported a welfare block grant because we believed it would provide the flexibility states need to create successful programs that will reduce welfare dependency and increase self-sufficiency. The understanding that states would have greater flexibility in the use of their own state MOE dollars than in the use of the federal TANF dollars was integral to Governors' support of welfare reform. This flexibility will enable states to design programs to serve the particular needs of their populations and to ensure that the most vulnerable families are protected. A maintenance-of-effort requirement was included to guarantee a minimum level of state spending on needy families, not to impose prescriptive federal requirements on the use of those dollars.

The policy guidance from the U.S. Department of Health and Human Services dated January 31, 1997, provided what we believed to be a reasonable and accurate interpretation of the statute. The guidance recognized that state maintenance-of-effort dollars used to serve eligible families in separate state programs are not to be encumbered by federal requirements and restrictions. However, your administration would like to reverse that interpretation with a legislative proposal to require that all state MOE spending—even if in a separate state program—be subject to federal work, child support, and data reporting requirements. Governors believe that limiting state flexibility in separate state and MOE programs would break the agreement that Congress and your administration made with Governors on welfare reform.

Governors should be given a chance to implement welfare reform within the current parameters of the law. We believe it is grossly premature to restrict state flexibility and innovation when states have only just begun to implement the law. If, down the road, the administration or Congress finds that states have adopted programs or policies that appear contrary to the intent of the law, then Governors would be happy to work with all parties to address the problem.

We are unaware of any states creating separate state programs to "game" the work requirement or siphon off the federal share of child support collections. In fact, states appear to be moving very cautiously in the creation of separate programs. However, Governors are interested in preserving the option to create separate state MOE programs, if future circumstances and needs suggest that it would be the best way to serve particular clients or provide particular services.

Already take place in setting the work rate

Those states that are considering creating separate state programs are doing so for very legitimate and appropriate reasons. States are considering these programs as a way to serve the most vulnerable families and individuals for whom a twenty-five, thirty, or thirty-five hour per week work requirement might not be a realistic or even desirable goal. This might include families with elderly or disabled caretakers or disabled children, victims of domestic violence, and individuals needing substance abuse treatment before going to work. States may also decide to serve individuals who are ineligible for federal TANF assistance, such as legal immigrants, in separate state programs. It would be a broad stretch of federal authority to require states to impose the federal work requirements on individuals who are not even eligible to receive federal dollars.

This makes some more

The flexibility currently in the law will enable states to consider a variety of innovative approaches with their MOE spending. For example, states may want to create a state earned income credit (EIC). However, requiring the assignment of child support rights and tracking hours of work for families receiving an EIC would be burdensome and costly to states. Imposing federal requirements will have the very unfortunate result of curbing innovative and creative state solutions.

We would also like to raise a related issue concerning the contingency fund. Your administration's unwarranted concern around separate state programs has led administration officials to oppose NGA's recommendation for fixing the contingency fund. The inclusion of a $2 billion contingency fund was an important element in Governors' support for welfare reform. Congress and your administration also gave strong support to the contingency fund, reflecting bipartisan agreement that both the federal and state governments should share the cost of meeting increased needs during periods of economic downturn.

Another complaint - by proposal

NGA, however, is very concerned that certain provisions in the welfare law will make it difficult for states to access the contingency fund during periods of economic hardship, thereby defeating the purpose of the fund. Specifically, there is a problem with the definition of what state spending counts toward the 100 percent maintenance-of-effort requirement that states must meet in order to draw down the additional matching dollars. Even if a state's spending equaled 100 percent MOE for the basic TANF block grant, that state might not be eligible for the contingency fund because the definition of MOE under the contingency fund is much narrower than the definition under TANF. As a result, it will be very difficult for states to meet the criteria—even while investing in high levels of spending on welfare programs—if they have any MOE spending in separate programs, as is permitted under TANF.

Governors are recommending that the contingency fund MOE requirement be changed to mirror the TANF MOE with respect to qualified state spending. Unfortunately, your administration erroneously believes that the current, more restrictive MOE requirement for the contingency fund will be a disincentive to states to create state-only funded programs and is opposing our recommendation. In structuring their welfare programs, however, most states are not weighing access to the contingency fund very heavily but rather are giving priority to designing programs that will enable them to meet the

varying needs of their clients in the most appropriate manner. If the MOE language for the contingency fund is not modified, the result will not be fewer separate state programs but rather fewer states that are able to access the contingency fund to help assist needy families during periods of economic downturn. **We urge you to withdraw your opposition to our proposed modification to the contingency fund so that it may be included in the welfare reform technical corrections bill.**

We are concerned that the nation's Governors were not adequately consulted prior to the announcement of the administration's proposal concerning maintenance-of-effort and separate state programs. This proposal was not put forward in the spirit of partnership or with the goal of making welfare reform a success. As a former Governor, you know that states have been at the forefront in developing innovative and successful strategies to move individuals from welfare to work. Governors are deeply committed to welfare reform and we urge you to work with us to make it a success.

Sincerely,

Governor Bob Miller
State of Nevada
Chairman

Governor George V. Voinovich
State of Ohio
Vice Chairman

Governor Tom Carper
State of Delaware
Co-Lead Governor on Welfare Reform

Governor John Engler
State of Michigan
Co-Lead Governor on Welfare Reform

cc: Donna Shalala, Secretary, Department of Health and Human Services
Bruce Reed, Domestic Policy Advisor

WR - bifurcation

Cynthia A. Rice 05/23/97 01:02:09 PM

Record Type: Record

To: Emil E. Parker/OPD/EOP, Kenneth S. Apfel/OMB/EOP, Keith J. Fontenot/OMB/EOP

cc: Elena Kagan/OPD/EOP, Diana Fortuna/OPD/EOP
Subject: Child Support/bifurcation/request for meeting

Elizabeth Donahue from the National Women's Law Center asked if she could bring in a group of child support experts to discuss our position on collecting a federal share of child support collections in MOE programs as well as TANF ones.

I have proposed Monday June 2nd at 1:00 in Room 211 -- but I only want to meet if folks from OMB who have been most active on this issue can be there too.

Ken/Keith -- I realize Cynthia Smith is now working on health care. Who from your staff is working on child support now?

WR - bifurcation

MAINTENANCE OF EFFORT LEGISLATIVE SPECIFICATIONS
APRIL 17, 1997

I. WORK PARTICIPATION REQUIREMENTS

Apply TANF participation rate requirements under section 407 of the Social Security Act (the Act) to separate state MOE programs. Amend section 407 of the Act to provide that each of the requirements of the section, including participation requirements under paragraph (a), the calculation of such rates under paragraph (b), the work rules including hours of participation under paragraph (c), the definition of work activities under paragraph (d), the penalties against individuals provision under paragraph (e), and the nondisplacement requirements under paragraph (f) apply to families receiving assistance under separate State programs supported by MOE dollars, subject to the penalty provided under section 409(a)(3) of the Act.

II. CHILD SUPPORT ENFORCEMENT COLLECTIONS

Apply TANF assignment requirements at section 408(a)(3) to families receiving assistance under State programs supported by MOE dollars and apply TANF child support distribution requirements at section 457 of the Act to support collected on behalf of such families to secure a Federal share of child support collections. Related to the assignment requirement, amend section 408(a)(3) to include reference to separate State programs supported by MOE dollars (along with the existing reference to grants made under section 403) and to include reference to families receiving assistance under such separate State programs.

Also, amend section 457(c), related to the definition of assistance for purposes of distribution of child support payments under 457(a), to provide that 'assistance from the State' includes assistance under a separate State program supported by MOE dollars. Make conforming changes to section 454(a)(4) related to State requirements to provide services; section 458, related to State incentives; and, any other appropriate sections of title IV-D of the Act which reference "assistance provided under the program funded under part A" to include families receiving services under separate State programs supported by MOE dollars.

III. DATA COLLECTION

Apply data collection and reporting requirements similar to those provided for TANF families under section 411(a) of the Social Security Act to recipients of assistance under separate state MOE programs. Also, consider modifying existing TANF reporting requirements under section 411(a) to reduce state reporting burden in limited areas where data are likely to lack reliability.

MAINTENANCE OF EFFORT AMENDMENTS

SEC. . MANDATORY WORK REQUIREMENTS IN SEPARATE STATE MOE PROGRAMS

(a) PARTICIPATION RATE REQUIREMENTS FOR MOE PROGRAMS.--Section 407(a) (42 U.S.C. 607(a)) is amended in paragraphs (1) and (2) by inserting "or which establishes a separate State assistance program supported by maintenance of effort expenditures under section 409(a)(7)" after "for a fiscal year", and by inserting "or, under a separate State program supported by maintenance of effort expenditures under section 409(a)(7)" after "under this part" .

(b) CALCULATION OF PARTICIPATION RATES FOR MOE PROGRAMS.--Section 407(b) (42 U.S.C. 607(b)) is amended by inserting "or, assistance under a separate State program supported by maintenance of effort expenditures under section 409(a)(7)" after "the State program funded under this part" in paragraph (1)(B)(i).

(c) ENGAGED IN WORK - HOURS PER WEEK UNDER MOE PROGRAMS.--Section 407(c) (42 U.S.C. 607(c)) is amended by inserting "or a separate State assistance program supported by maintenance of effort expenditures under section 409(a)(7)" after "a State program funded under this part" in paragraph (2)(A)(i).

(d) PENALTIES AGAINST INDIVIDUALS RECEIVING ASSISTANCE UNDER A SEPARATE MOE PROGRAM.--Section 407(e) is amended by inserting "or under a separate State assistance program supported by maintenance of effort expenditures under section 409(a)(7)" after "under this part" in paragraphs (1) and (2).

(e) NONDISPLACEMENT IN MOE PROGRAM WORK ACTIVITIES.--Section 407(f) is amended by inserting "or under a separate State program supported by maintenance of effort expenditures under section 409(a)(7)" after "under this part" in paragraphs (1) and (3).

SEC. . CHILD SUPPORT ENFORCEMENT COLLECTIONS

(a) ASSIGNMENT OF SUPPORT RIGHTS IN SEPARATE STATE MOE PROGRAMS.--Section 408(a)(3) (42 USC 608(a)(3)) is amended by inserting "or which establishes a separate State assistance program supported by maintenance of effort expenditures under section 409(a)(7)" after "a grant is made under section 403" in paragraph (B) and by inserting "or assistance provided under a separate State program supported by maintenance of effort expenditures" after "the State program funded under this part", in paragraph (A).

(b) DISTRIBUTION OF SUPPORT COLLECTIONS MADE ON BEHALF OF RECIPIENTS OF ASSISTANCE IN SEPARATE STATE MOE PROGRAMS.--Section 457(c) (42 USC 657(c)) is amended by striking "and" at the end of paragraph (1)(A); redesignating paragraph (B) as paragraph (C); and, inserting a new paragraph (B) to read as follows:

"(B) assistance under a separate State program supported by maintenance of effort expenditures under section 409(a)(7); and".

(c) IV-D SERVICES FOR FAMILIES RECEIVING ASSISTANCE UNDER SEPARATE STATE MOE PROGRAMS.--Section 454(a)(4) (42 USC 654(a)(4)) is amended by inserting in paragraph (A)(i) "or under a separate State program supported by maintenance of effort expenditures under section 409(a)(7)" after "under part A of this title" and by inserting in paragraph (B), "or assistance provided by under a separate State program supported by maintenance of effort expenditures under section 409(a)(7)" after "funded under part A".

(d) INCENTIVES FOR COLLECTIONS IN CASES RECEIVING ASSISTANCE UNDER SEPARATE STATE MOE PROGRAMS.--Section 458(b) (42 USC 658(b)) is amended by replacing "title IV-A collections" each place it appears with "title IV-A and MOE collections".

(e) PENALTY FOR NONCOOPERATION IN CASES RECEIVING ASSISTANCE UNDER SEPARATE STATE MOE PROGRAMS.--Section 408(a)(2)(A) (42 USC 608(a)(2)(A) is amended by inserting "or under a separate State program supported by maintenance of effort expenditures under section 409(a)(7)" after "funded under this part".

SEC. . DATA COLLECTION

(a) DATA COLLECTION FOR SEPARATE STATE MOE PROGRAMS.--Section 411(a) (42 USC 611(a)) is amended by inserting "FOR PROGRAMS UNDER PART A" after "CONTENTS OF REPORT" in paragraph (1)(A); by renumbering paragraph (1)(B) as (1)(C); and, by adding a new paragraph (1)(B) to read as follows:

"(B) CONTENTS OF REPORT FOR SEPARATE STATE MOE PROGRAMS UNDER SECTION 409(A)(7).-Each eligible State shall collect on a monthly basis, and report to the Secretary on a quarterly basis, the following disaggregated case record information on the families receiving assistance under separate State MOE programs:

"(i) The county of residence of the family.

"(ii) Whether a child receiving such assistance or an adult in the family is disabled.

"(iii) The ages of the members of such families.

"(iv) The number of individuals in the family, and the relation of each family member to the youngest child in the family.

"(v) The employment status and earnings of the employed adult in the family.

"(vi) The marital status of the adults in the family, including whether such adults have never married, are widowed, or are divorced.

"(vii) The race and educational status of each adult in the family.

"(viii) The race and educational status of each child in the family.

"(ix) Whether the family received subsidized housing, medical assistance under the State plan approved under title XIX, food stamps, or subsidized child care, and if the latter 2, the amount received.

"(x) The number of months that the family has received each type of assistance under the program.

"(xi) If the adults participated in, and the number of hours per week of participation in, the following activities:

"(I) Education.

"(II) Subsidized private sector employment.

"(III) Unsubsidized employment.

"(IV) Public sector employment, work experience, or community service.

"(V) Job search.

"(VI) Job skills training or on-the-job training.

"(VII) Vocational education.

"(xii) Information necessary to calculate participation rates under section 407.

"(xiii) The type and amount of assistance received under the program.

"(xiv) If a family member received unearned income, amount of unearned income received in the following areas

(I) Child Support;
(II) Social Security;
(III) SSI;
(IV) Worker's compensation; and
(V) Other Unearned Income .

"(xv) The citizenship of the members of the family.

"(xvi) From a sample of closed cases, whether the family left the program, and if so, whether the family left due to-

"(I) employment;

"(II) sanction; or

"(III) State policy.

(b) MOE REPORTS.--Section 411(a) (42 USC 611(a)) is amended by renumbering paragraph (6) as paragraph (7) and inserting after paragraph (5), the following:

"(6) AGGREGATED REPORT OF FAMILIES RECEIVING ASSISTANCE UNDER THE SEPARATE STATE PROGRAMS-- The report required by paragraph (1) for a fiscal quarter shall include for each month in the quarter the number of families and individuals receiving assistance under the separate State MOE Programs funded with State TANF maintenance of effort dollars under section 409(a)(7) (including the number of 2-parent, 1-parent, and no-parent families) and the total dollar value of assistance received by all families."

(c) CONFORMING CHANGES.--

(1) Section 411(b)(2) (42 USC 611(b)(2)) is amended by inserting "in newly approved cases" after "applying for assistance".

(2) Section 411(a)(1)(A)(xvi) (42 USC 611(a)(1)(A((xvi) is amended by striking paragraph (II) and renumbering paragraphs "III", "IV" and "V" as paragraphs "II", "III" and "IV".

(3) Section 411 (42 USC 611) is amended by adding a new paragraph (d) at the end of the section, to read as follows:

"(d) STUDY ON APPLICATION PROCESS.--The Secretary shall conduct studies on the application process in not less than 5 states, which include information on denied applicants."

(4) Section 413(d)(1) (42 USC 613(d)(1)) is amended by replacing the word "jobs" with "employment" in the phrase "long-term private sector jobs."

Withdrawal/Redaction Marker
Clinton Library

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001. email	Bruce Reed to Elena Kagan re:no subject [partial] (1 page)	04/16/1997	P6/b(6)

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Domestic Policy Council
Elena Kagan
OA/Box Number: 14371

FOLDER TITLE:
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WR - bifurcation

Bruce N. Reed
04/16/97 11:29:38 AM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc:
Subject: ...no subject...

P6/(b)(6) [001]

---------- Forwarded by Bruce N. Reed/OPD/EOP on 04/16/97 11:33 AM ----------

jmonahan @ os.dhhs.gov
04/16/97 06:15:00 AM

Record Type: Record

To: Bruce N. Reed

cc:
Subject: ...no subject...

Bruce, I am sorry I was out of town at the EZ Conference yesterday in Detroit.

Rich and Emily briefed me about Rich's meeting with Ron and Deborah and our commitment to provide draft legislative language.

I am glad that we are briefing DGA and Susan, Sheri, and Elaine tomorrow before we send something up to Ron.

However, I am concerned that our governor friends will be justified in not seeing this as the "consultation" which we promised in the bifurcation guidance. Ray and others will then have both process and substance to argue against us. As you know, it is my role to worry about these relationship issues, and we know there will be unanticipated times in which we want their help, etc.

On a final note, I understand your desire to create some space between us and the states, which I think is healthy and necessary as we go through implementation. I agree that we need to be positioned as having opposed state efforts to evade work requirements and as having offered a tough legislative proposal. Thus, when the inevitable story comes out that some state is using creative accounting to avoid being serious about work, we can legitimately claim the high ground. I just think we could go through a real consultation with affected parties and (since the chance of prevailing with our initial proposal is limited) achieve the tactical distance we need from the states which may aggressively bifurcate.

Similarly, given the politics of individual states, we want to be in a position to be concerned about state practices in general we don't like (e.g., pulling money out of the family support system for other purposes, lack of child care, refusals to implement key child support enforcement provisions). We just want our position to be focused on the substance, not process; and we should stay focused on achieving our tactical goal of distance between us and the states, not pushing a particular fix which may not happen on the Hill and will only agitate our state friends.

Sorry for this long note, John

wp-bifurcation

MAINTENANCE OF EFFORT LEGISLATIVE SPECIFICATIONS
APRIL 17, 1997

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II. CHILD SUPPORT ENFORCEMENT COLLECTIONS

Apply TANF assignment requirements at section 408(a)(3) to families receiving assistance under State programs supported by MOE dollars and apply TANF child support distribution requirements at section 457 of the Act to support collected on behalf of such families to secure a Federal share of child support collections. Related to the assignment requirement, amend section 408(a)(3) to include reference to separate State programs supported by MOE dollars (along with the existing reference to grants made under section 403) and to include reference to families receiving assistance under such separate State programs.

Also, amend section 457(c), related to the definition of assistance for purposes of distribution of child support payments under 457(a), to provide that 'assistance from the State' includes assistance under a separate State program supported by MOE dollars. Make conforming changes to section 454(a)(4) related to State requirements to provide services; section 458, related to State incentives; and, any other appropriate sections of title IV-D of the Act which reference "assistance provided under the program funded under part A" to include families receiving services under separate State programs supported by MOE dollars.

III. DATA COLLECTION

Apply data collection and reporting requirements similar to those provided for TANF families under section 411(a) of the Social Security Act to recipients of assistance under separate state MOE programs. Also, consider modifying existing TANF reporting requirements under section 411(a) to reduce state reporting burden in limited areas where data are likely to lack reliability.

WR-bifurcatic

THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

APR 9 1997

The Honorable E. Clay Shaw, Jr.
Chairman
Subcommittee on Human Resources
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am pleased to offer the Department's support for the Welfare Reform Technical Corrections Act of 1997 (HR 1048). This legislation will help ensure the effective implementation of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

As you know, the Commissioner of Social Security and I forwarded our recommendations for technical and conforming amendments to the landmark welfare reform legislation in December. We are pleased that your bill includes most of the amendments recommended by HHS as well as a number of others that, upon further review, were found to be necessary. We would be happy to work with you and the affected agencies to facilitate the inclusion of other Administration recommendations into the bill.

In addition, we look forward to working with you in the weeks ahead on other important issues relating to the implementation of welfare reform. In particular, we want to collect information on how states are using their dollars to ensure that state policies focus on work. We want to work with you and the Governors in a bipartisan fashion to ensure that each state's overall work effort meets the statute's work participation requirements by clarifying that the calculation of whether a state has met the applicable participation rate shall take into account the state's success in placing in work activities participants both in TANF and in state maintenance of effort programs. We also want to work with the states and Congress to ensure that state

flexibility in maintenance of effort programs does not result in costs to the Federal Government due to the potential loss of child support collections. We want to engage in constructive discussions with the Congress, Governors and other state officials concerning specific legislative proposals in these and other areas.

I want to thank you and Representative Levin for the bipartisan manner in which you have developed HR 1048. My staff and I hope to work with you to ensure speedy enactment of this important legislation, and to address the other issues related to welfare reform implementation.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the presentation of this report.

Sincerely,

Donna E. Shalala

WR-Likwcatica

Cynthia A. Rice 04/07/97 10:45:14 AM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc:
Subject: FYI: note to Bruce re: bifurcation

---------- Forwarded by Cynthia A. Rice/OPD/EOP on 04/07/97 10:47 AM ----------

Cynthia A. Rice 04/07/97 10:44:05 AM

Record Type: Record

To: Bruce N. Reed/OPD/EOP

cc: Cathy R. Mays/OPD/EOP
Subject: Bifurcation: Elena and I think the letter Thurm sent you is unacceptable

Bruce, as you know, Elena and I have been insisting the HHS agree to propose language to apply the work rates to the state programs, and a key part of that is getting them to say they plan to do so in the letter they are sending to the Hill re: technicals bill being marked up Wednesday.

We sent them a perfectly reasonable redraft on Friday. Thurm sent you a redraft that completely ignores our concerns. We're holding our ground. FYI -- Attached is the letter we've proposed.

bif0404.9

WR - bifurcation issue

Cynthia A. Rice 04/03/97 08:17:54 PM

Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Diana Fortuna/OPD/EOP
bcc:
Subject: Re: Question re: description of our work proposal in HHS letter to Hill

Testimony:

"We want to work with you and the States to include an additional change in this package to ensure that each state's overall work effort meets the statutue's work participation requirements. Specifically, we want to make it clear that the calculation of whether a state has met the applicable participation rate shall take into account the state's success in placing in work activities participants both in TANF and in state maintenance of effort programs. This clarification will protect the welfare law's tough work requirements."

January 31st Guidance:

"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."

Elena Kagan

Elena Kagan
04/03/97 07:23:16 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP

cc:
Subject: Re: Question re: description of our work proposal in HHS letter to Hill

What did we say in the testimony and guidance?

WR-bifurcation

DRAFT FOR DISCUSSION -- 04-03-97

"SEC. 411. DATA COLLECTION AND REPORTING.

"(a) QUARTERLY REPORTS BY STATES.-

"(1) GENERAL REPORTING REQUIREMENT.-

"(A) CONTENTS OF REPORT.-Each eligible State shall collect on a monthly basis, and report to the Secretary on a quarterly basis, the following disaggregated case record information on the families receiving assistance ~~under the State program funded under this part~~ under separate State MOE programs:

"(i) The county of residence of the family.

"(ii) Whether a child receiving such assistance or an adult in the family is disabled.

"(iii) The ages of the members of such families.

"(iv) The number of individuals in the family, and the relation of each family member to the youngest child in the family.

"(v) The employment status and earnings of the employed adult in the family.

"(vi) The marital status of the adults in the family, including whether such adults have never married, are widowed, or are divorced.

"(vii) The race and educational status of each adult in the family.

"(viii) The race and educational status of each child in the family.

"(ix) Whether the family received subsidized housing, medical assistance under the State plan approved under title XIX, food stamps, or subsidized child care, and if the latter 2, the amount received.

~~"(x) The number of months that the family has received each type of assistance under the program.~~

[NOTE: Exact definitions for items (xi) and (xii) depend on policy approach taken]

"(xi) If the adults participated in, and the number of hours per week of participation in, the following activities:

"(I) Education.

"(II) Subsidized private sector employment.

"(III) Unsubsidized employment.

"(IV) Public sector employment, work experience, or community service.

"(V) Job search.

"(VI) Job skills training or on-the-job training.

"(VII) Vocational education.

"(xii) Information necessary to calculate participation rates under section 407.

"(xiii) The type and amount of assistance received under the program~~, including the amount of and reason for any reduction of assistance (including sanctions)~~.

"(xiv) If a family member received unearned income, ~~A~~any amount of unearned income received ~~by any member of the family~~ in the following areas

(I) Child Support;
(II) Social Security;
(III) SSI;
(IV) Worker's compensation; and
(V) Other Unearned Income .

"(xv) The citizenship of the members of the family.

~~"(xvi) From a sample of closed cases, whether the family left the program, and if so, whether the family left due to~~

~~—~~

~~"(I) employment;~~

~~—~~

~~"(II) marriage;~~

~~—~~

~~"(III) the prohibition set forth in section 408(a)(7);~~

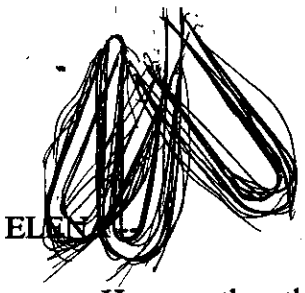
~~—~~

~~"(IV) sanction; or~~

~~—~~

~~"(V) State policy.~~

" (6) AGGREGATED REPORT OF FAMILIES RECEIVING ASSISTANCE UNDER THE SEPARATE STATE PROGRAMS-- The report required by paragraph (1) for a fiscal quarter shall include for each month in the quarter the number of families and individuals receiving assistance under the separate State MOE Programs funded with State TANF maintenance of effort dollars (including the number of 2-parent, 1-parent, and no-parent families) and the total dollar value of assistance received by all families."



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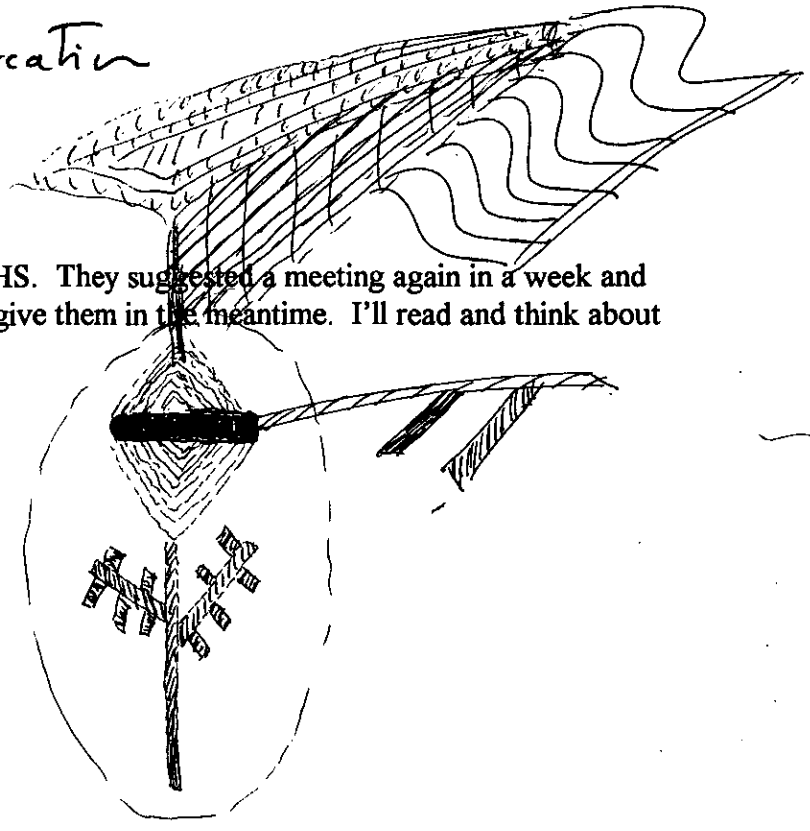

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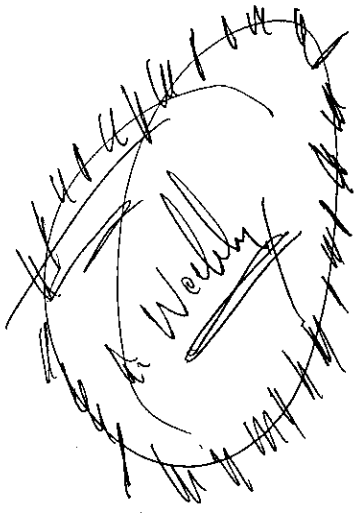

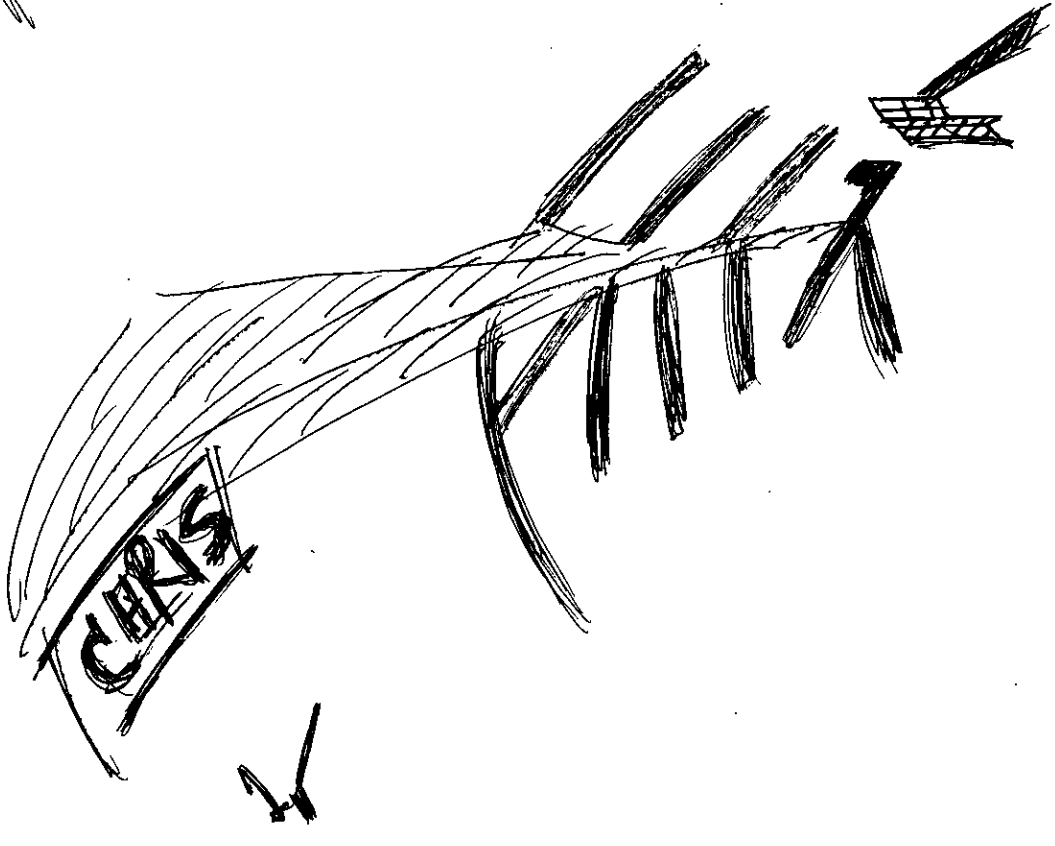

DRAFT - 3/21/97

Child Support Collections and Flexibility Under TANF

I. Principles to Guide Decision-making

Any proposal must:

A. Preserve the return expected on Federal investment in the child support enforcement program by protecting against lost Federal child support revenues due to State flexibility under the TANF program to set up State only programs. (We do not expect to recapture Federal losses resulting from declining assistance caseloads, family-first distribution policies and State hold-harmless provisions based on a family-first distribution policy. It may be impossible to determine reduced collections attributable only to bifurcation.)

B. Be administratively simple, with verifiable results.

C. Maintain incentives for strong child support enforcement programs.

D. Ensure availability of adequate funds for training, technical assistance and expansion of the Federal Parent Locator Service.

E. Retain State flexibility under TANF and any incentives to make families better off.

F. Consider the impact on the Federal government, State governments, and families.

II. Options

A. **<u>Send strong message, require reporting and monitor State behavior to determine whether further action is needed:</u>**
Send a strong message that expects States to act responsibly in addressing issues that impact Federal revenue from the child support program. Through legislation, require States to report certain data on families receiving services under State only programs and monitor Federal return on investment.

Pros:

- o Avoids developing solution based on guesswork
- o Allows time to gauge State intentions and actions and take action accordingly
- o Allows time to work with States to design programs that most benefit families and meet goals of welfare reform.
- o Consistent with flexibility in PRWORA

Cons:

- o Does not clarify limitations on State flexibility
- o May not be the type of legislative proposal expected
- o Does not immediately protect Federal share
- o May be more difficult to get support for legislative fix later after State implementation

B. **Triggered Fix: Require States to pay a Federal share of child support collected in cases receiving assistance under State-only programs. Recoup Federal share either by reducing a State's block grant or alternatively by reducing Federal funding of IV-D administrative costs.**

Pros:

- o Only affects States establishing separate MOE program -- does not reduce State flexibility until States take certain actions
- o May forestall State action -- sends a message that there are consequences only if certain behavior occurs
- o Administratively simple
- o Meets all guiding principles
- o Equitable--only impacts States to the extent they benefit from State-only programs
- o Reducing block grant may be logical in that the block grant formula included what is otherwise the Federal share of collections
- o Reducing Federal funding of State administrative costs would parallel the method of paying the Federal share in TANF cases

Cons:

- Will entail new reporting requirements for State only programs
- Will require a compatible definition of assistance for purposes of sharing in child support collections
- Lost revenue may be perceived as limiting State flexibility
- Reducing block grant might risk opening up broader funding issues
- Reducing Federal funding of State administrative costs may be viewed as effectively reducing the matching rate for the child support program and thus be opposed by States
- Reducing Federal funding of State administrative costs penalizes the child support program for unrelated TANF flexibility

C. **Triggered Fix and Allow Collections Which Benefit Families to Count as MOE: Require States to pay a Federal share of child support collected in cases receiving assistance under State-only programs and allow the State share of support collections distributed to families and disregarded in determining their eligibility for and the amount of State-funded assistance to count as MOE. Recoup Federal share either by reducing a State's block grant or alternatively reducing Federal funding of IV-D administrative costs.**

Pros:

- This would provide States an incentive to benefit families compatible with the goal of protecting the Federal share
- Only affects States establishing separate MOE program -- does not reduce State flexibility until States take certain actions
- May forestall State action -- sends a message that there are consequences only if certain behavior occurs
- Administratively simple
- Meets all guiding principles
- Equitable--only impacts States to the extent they benefit from State-only programs
- Reducing block grant may be logical in that the block grant formula included what is otherwise the Federal share of collections
- Reducing Federal funding of State administrative costs would parallel the method of paying the Federal share in TANF cases

Cons:

- Will entail new reporting requirements for State only programs
- Will require a compatible definition of assistance for purposes of sharing in child support collections
- Lost revenue may be perceived as limiting State flexibility
- Reducing block grant might risk opening up broader funding issues
- Reducing Federal funding of State administrative costs may be viewed as effectively reducing the matching rate for the child support program and thus be opposed by States
- Reducing Federal funding of State administrative costs penalizes the child support program for unrelated TANF flexibility

D. **Triggered Fix, Unless Collections Benefit Families: Require States to pay a Federal share of child support collected in cases receiving assistance under State-only programs unless all collections are passed through to families and disregarded for purposes of eligibility and assistance payment amounts. Recoup Federal share either by reducing a State's block grant or alternatively by reducing Federal funding of IV-D administrative costs.**

Pros:

- Benefits families to extent States opt to pass through and disregard collections
- Only affects States establishing separate MOE program -- does not reduce State flexibility until States take certain actions
- May forestall State action -- sends a message that there are consequences only if certain behavior occurs
- Administratively simple
- Meets all guiding principles
- Equitable--only impacts States to the extent they benefit from State-only programs
- Reducing block grant may be logical in that the block grant formula included what is otherwise the Federal share of collections
- Reducing Federal funding of State administrative costs would parallel the method of paying the Federal share in TANF cases

Cons:

- Could result in loss of Federal share to the extent families are benefitted
- Will entail new reporting requirements for State only programs
- Will require a compatible definition of assistance for purposes of sharing in child support collections
- Lost revenue may be perceived as limiting State flexibility
- Reducing block grant might risk opening up broader funding issues
- Reducing Federal funding of State administrative costs may be viewed as effectively reducing the matching rate for the child support program and thus be opposed by States
- Reducing Federal funding of State administrative costs penalizes the child support program for unrelated TANF flexibility

An option that has been suggested by others but is not under consideration by the Administration:

Up-front reduction in block grants. Reduce each State's block grant by an amount equal to the Federal share of collections for FY 1996.

Pros:

- Protects Federal share
- Administratively simple, reduces administrative complexity
- Maintains State incentives for strong child support program because Feds do not share in increased collections

Cons:

- Opens up the block grant and the block grant funding formula for all fifty states
- Would be difficult to achieve a result that was perceived as fair by all the states
- Precludes possibility of increased Federal share unless complicated adjustment factor is built in
- Would reduce support for child support program because recoupment for the Federal government generates support
- Administrative costs to Federal government could escalate if States only pay only 34 percent of the cost and keep 100 percent of collections
- Federal government would not benefit from improved enforcement as a result of PRWORA or subsequent initiatives
- Would require extensive changes to assignment and distribution statutory requirements
- Does not recognize reductions in Federal share built into statute
- Would require other mechanisms for paying incentive payments and funding training, technical assistance and development of enhanced Federal Parent Locator Service

ELENA --

Here are the other handouts from HHS. They suggested a meeting again in a week and asked for whatever verbal feedback we can give them in the meantime. I'll read and think about these this weekend. Let's talk next week.

CYNTHIA

DRAFT - 3/21/97

CHILD SUPPORT COLLECTIONS AND FLEXIBILITY UNDER TANF

The Issue

- Under title I of PRWORA, States may count as part of their Maintenance of Effort expenditures, expenditures under separate assistance programs using only State funds (State-only programs). These State-only programs are not subject to requirements under the TANF program.

- One such requirement is that states pay to the Federal government a share (the FMAP percentage) of child support collections for TANF cases. This requirement does not apply to collections for families who are enrolled in State-only programs.

- Rules for TANF cases. TANF requires the mandatory assignment to the State of any rights to child support as a condition of receiving assistance under the TANF program. Support collections are retained and shared between the State and Federal governments as reimbursement for assistance paid to the family.

- Rules for families in state-only programs. Neither TANF assignment requirements nor the requirement to pay the Federal government a share of collections apply to State-only programs. Therefore, collections under such programs must be paid to the family (unless there is a pre-existing assignment of support under AFDC/TANF program). A State could choose to:
    - benefit financially from the collections, by reducing the family's assistance payment under a State-only program by the amount of child support paid;
    - not benefit financially but provide additional support for the family, by disregarding the amount of child support paid in calculating the family's payment under the State-only program; or
    - combine these two approaches in some way.

- No matter which of the above approaches a state takes to the pass through and disregard of child support collections for families in State-only programs, the Federal government would not receive a share of the child support collections in these cases.

Other Changes in the Distribution of Support Enacted in PWRORA

- There are explicit, complicated rules for distributing child support collected through the IV-D program. Rules differ depending on whether the family is receiving assistance under TANF, formerly received assistance under TANF or AFDC or has never received AFDC or TANF. Changes made by the PWRORA will have multiple effects, going in both directions, on the Federal share of child support collections.

- For TANF cases, PWRORA changed the distribution rules from what had existed before for AFDC, by eliminating prior provisions that guaranteed that a share of support would be passed through to the family and disregarded. Instead, collections are used to reimburse the Federal and State governments for assistance paid. (More specifically, States must pay the Federal government its share of any collections and may retain, or pay to the family, the State share of the collections.) The effect of this change is to increase the Federal government's collections.

- On the other hand, for cases formerly on TANF, PRWORA changes distribution hierarchy over the next several years to favor paying most support collected to families once they leave the assistance roles, consistent with promoting self-sufficiency. This family-first distribution will reduce the level of reimbursement of Federal expenditures under the TANF program.

- States, on the other hand, are held harmless from the effects of family-first distribution, or reduced collections in TANF cases due to shrinking welfare rolls, because they are guaranteed at least the equivalent of the State share of collections in FY1995.

Funding Mechanisms and Interactions

- Before enactment of PRWORA, States reduced their expenditure claims under the AFDC program by the amount of the Federal share of collections. With enactment of the TANF program, this repayment mechanism ceased to exist. Therefore, States will now reduce their claims for reimbursement of administrative costs of the IV-D program by the Federal share of collections.

- On the TANF side, block grant amounts are based on gross historical expenditures before reductions for the Federal share of collections. Therefore, the level of State funding under the TANF program includes the Federal share of collections.

What makes this so difficult

- We have no experience or hard evidence to illustrate what States might do. Given the flexibility under TANF, a multitude of scenarios could occur, including:
  - state-only programs designed to put the Federal share of collections in State coffers;
  - state-only programs designed to pass through more support to families and disregard that support from state benefit calculations;
  - state-only programs created for another purpose (eg, to serve families on assistance over five years or to provide different kinds of services to hard-to-employ families) that nonetheless have the effect of eliminating the Federal share of child support; and
  - no or very little development of state-only programs.

- We have not yet seen evidence of movement towards state-only programs from this winter's legislative sessions, but it is very early and state decision-making is far from over.

- Because it is unclear what States will do, it is difficult to choose a legislative proposal which will prevent unwanted effects, and even more difficult to anticipate possible unintended consequences of any legislative proposal.

DRAFT

LEGISLATIVE SPECS FOR WORK REQUIREMENTS UNDER SEPARATE STATE PROGRAMS

Background

Under the guidance issued in January by the Department of Health and Human Services (HHS), states were given broad flexibility over their state expenditures which qualify as maintenance of effort (MOE) for the Temporary Assistance for Needy Families (TANF) program. The guidance clarified that states have the flexibility to count, toward the general TANF MOE requirement, expenditures of state funds under separate state programs. Expenditures for separate state programs must meet the statutory requirements for MOE expenditures -- that is, they must meet the general purposes of the statute and be spent on needy families. However, these programs are not subject to requirements which apply to TANF program, including the work requirements.

The nature and content of separate state programs could take many diverse and innovative forms as states respond to the flexibility available to them -- some of which may go beyond the traditional conceptions of "welfare." States have indicated they may use these resources to serve families who they feel may be more effectively served outside the TANF program -- such as those who reach the five-year time limit, legal immigrants, grandparents who are responsible for raising a child, or individuals suffering from severe disabilities, very low literacy levels, substance abuse, or domestic violence. States could also provide services besides cash assistance with these resources including specialized counseling, treatment programs, vouchers for specific services, or feeding programs for legal immigrants.

The guidance issued by HHS specified that the Administration would take steps -- including legislative proposals -- to ensure that state decisions to establish separate programs do not undermine the work provisions of the new law. As outlined below, HHS has developed a potential set of legislative options regarding the work requirements that would apply to separate state programs supported by MOE dollars. The legislative specifications for these proposals are designed both to ensure that welfare programs encourage work and to provide states with adequate flexibility over programs funded with their own resources.

Potential Options for Legislative Specifications

Option 1: Specify work requirements for separate state programs

Under this option, the legislative proposal would set forth specific work requirements for separate state programs as outlined below.

Participation Rates. The participation rates that apply to TANF programs would also apply to separate state programs. For all families, the rates would start at 25 percent in FY 1997 and increase to 50 percent in FY 2002. For two-parent families, the rates would start at 75 percent

in FY 1997 and increase to 90 percent in FY 1999.

Alternatives: (1) Different rates because MOE flexibility might result in programs and populations very different from AFDC; (2) Lower rates for two parent families.

Hours of Participation. To be considered engaged in work for the purpose of the all families rate, individuals would be required to participate an average of 20 hours per week (with no increase in later years). In order to meet the two-parent participation requirement, an individual would be required to participate an average of 35 hours per week (under TANF, states are not allowed to average the weekly hours for two-parent families).

Alternative: (1) Same hours as for TANF.

Allowable Work Activities: The following activities would be considered work activities for the purpose of meeting the participation rates (both the all-family and two-parent rate) for separate state programs.

1. *Unsubsidized employment*
2. *Subsidized private sector employment*
3. *Subsidized public sector employment*
4. *Work experience*
5. *On-the-job-training*
6. *Job search and job readiness assistance (with no limitation on length)*
7. *Community service programs*
8. *Vocational educational training (with no limitation on length)*
9. *Provision of child care services to individuals participating in community service programs.*
10. *Job skills training directly related to employment.*
11. *Education directly related to employment (no limitation that this option is only available to those without a high school diploma)*
12. *Satisfactory attendance at secondary school or GED program if individual has not completed secondary school.*

(The list above takes the work activities from the TANF statute and lifts the limitations . In addition, there would be no limitation on the number of individuals in vocational training or teen parents in school that could count toward the work requirement.)

Alternatives: (1) Expand the list of allowable activities, for example, to include basic skills, literacy or language instruction; post-secondary education; substance abuse treatment programs; or programs for victims of domestic violence; (2) Explicitly allow states to define allowable activities; (3) Use the same activities as in TANF (including limitations on job search and job readiness, vocational training, hours in non-work activities, education for those with a high school diploma, and percentage in vocational

training and school for teens.)

Exemptions. States are given the option to exempt single parents with a child under the age of 1 from the work participation rates for up to 12 months and to disregard these individuals in calculating the participation rate (no limitation that the exemption from the calculation of the participation rate is only available for up to 12 months per individual).

Alternatives: (1) Exempt certain individuals, e.g., those past the 5-year time limit, disabled; (2) Use the same exemptions as in TANF.

Caseload Reduction Credit. The caseload reduction credit used for the TANF work requirements would be extended to the participation requirements for separate state programs. For each state, the caseload reduction credit would be calculated based on caseload reductions since FY 1995 in both TANF and the separate state program (i.e. there would be one caseload reduction credit based on reductions in both programs combined).

Penalties for Individuals. States would be given flexibility to determine sanctions for those who do not meet the work requirements in separate state programs. The TANF provision which prohibits states from reducing or terminating assistance for single parents with a child under 6 with a demonstrated inability to obtain needed child care would be maintained.

Alternative: Use the same penalties in TANF -- a pro rata reduction in assistance based on hours of nonparticipation is the minimum sanction.

Penalties for States. The penalties in the TANF statute for not meeting the work requirements would be extended to the separate state program. If a state did not meet the work participation rates for a fiscal year for one or both programs, the state's grant for the immediately succeeding fiscal year would be reduced. If the state had not been penalized in the prior year, the penalty could be up to 5 percent of the state's family assistance grant. If the state had been penalized in the prior year, the penalty could be up to the amount of the previous year's penalty, increased by 2 percentage points, subject to a maximum penalty of 21 percent.

Option 2: Accountability through stringent disclosure and reporting requirements

Under this legislative proposal, states would be given the flexibility to determine the content of their separate state programs -- including the work requirements. However, states would be held accountable for their efforts to move recipients into work under these programs through several mechanisms:

- *As part of their state plan, states would be required to establish work-related performance goals for their separate state programs and would be required to document their progress in achieving these goals.*

- *Governors would also be required to certify that the separate state program operating in their state was effective in achieving the work-related performance goals.*

- *State agencies would be required to report detailed information on the content and work requirements for their separate state programs to HHS as part of their state plans or through some other mechanism. Information states would be required to report includes: the nature and content of services offered, characteristics of families that were served, how participation rates are calculated, participation rates achieved, hours of participation required, allowable work activities, exemptions from the participation requirement, and penalties on individuals for not meeting the requirements.*

- *This information on separate state programs would be provided to Congress and the public on an annual basis.*

- *HHS could also be required to publish annual rankings on effectiveness of separate state programs in moving recipients into work, using criteria similar to those established for the TANF program.*

While there would be no fiscal penalties for states regarding work requirements for separate state programs, requiring states to disclose this information would provide incentives to ensure they implement relatively rigorous work requirements for these programs. As specified in the guidance, the Administration would also consider whether states were using separate state programs to undermine the work requirements in awarding performance bonuses, calculating caseload reduction factors, and determining good cause for noncompliance with work requirements.

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 and provide States the flexibility they need to serve needy families effectively.

Key Points

The guidance makes the following key points:

1) States have the flexibility to count, towards 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 V

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 towards the 100% Contingency Fund MOE requirement must be made under the TANF program and therefore must meet TANF requirements.

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 VI, 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 statute 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 against 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 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);

- deny good 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 good 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

- look at a State's <u>overall</u> 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.

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 that statute's work participation requirements. Specifically, we will seek language making clear that calculation of whether a States 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.

Section IV. Basic State Options in Program Design (p.) -- a conceptual framework for the TANF program and its Federal and State components.

Section V. Use of Federal Funds (p.) -- the flexibility available to States and the limits on use of Federal funds, including restrictions on the assistance payable with Federal funds.

Section VI. Basic Requirements Governing State MOE Expenditures (p.) -- the requirements governing State expenditures that qualify for TANF MOE purposes and the expanded flexibility available to States to expend State funds on certain needy families, including certain immigrants, individuals who exceed the time limits and teen parents. [NOTE: The immigrant policy on pp. 12-13 gives States broader flexibility to spend State MOE funds on immigrant families than was previously indicated in guidance sent to State Commissioners on October 9, 1996. 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.]

Section VII. Definition of Assistance (p.) -- guidance needed to assess the scope of key TANF provisions, including time limits, work requirements, child support assignment, and data collection.

Section VIII. Overview of TANF Provisions (p.) -- a chart depicting the applicability of key provisions in the TANF statute, depending on whether Federal or State funds -- and whether a State TANF program or a separate State program -- are involved.

Section IX. Conclusion (p.)

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

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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.

(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 configuration 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 funded by expenditures of State funds in programs outside of TANF, but counting towards meeting the State's MOE 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 towards MOE.

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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.

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.

  --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

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

[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.

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];

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

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[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.

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.

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

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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.

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 towards the Contingency Fund MOE. State expenditures in outside programs may count towards 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;*

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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.

- *o (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;*
- *o (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 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:

- o have a child living with a parent or other adult relative (or to individuals which are expecting a child); and
- o 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

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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

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]

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

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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.

[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.

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 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]

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[16] Note the special child care rules below.

[17] This is the name given by ACF to 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 receive Federal child care matching funds do not qualify for child care MOE.

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 additional or new 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, 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

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

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 looking for guidance which they can use in designing their programs, 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).

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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..."

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 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 towards both TANF and contingency fund MOEs. Must be for purposes of program or for cash asst, child care, certain education, or admin costs	Count only towards 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."

DRAFT

QUESTIONS AND ANSWERS ON GUIDANCE

Q What message are you sending states?

A We are giving states the flexibility and creativity they need to develop programs. At the same time we are telling states that we ~~hope and expect them to uphold~~ will hold them to the central goal of welfare reform: moving people from welfare to work.

Q What is the legal basis for your telling the states how to spend their dollars?

A Over the past months, Federal and state agencies have been engaged in the massive process of implementing the new welfare law. We have resolved many issues and answered many questions that the states have had, and many are still being resolved. The question here is how to implement the law's requirement that states must continue to spend some of their own dollars to help families

Under the statute, states must maintain either 75% or 80% of their 1994 state spending level under the old AFDC and related programs. The guidance clarifies for the states the legal interpretations as to whom the states provide support or "eligible families," what types of support they provide or "assistance" and what state dollars count to meet the statute's requirement for that maintenance-of-effort. The legal reading intends that states use their dollars for needy families as they define them and that assistance whether in direct cash or other non-cash supports keep the statute's aim to move people from welfare to work. ~~Within that general direction~~ states have ~~the~~ flexibility in the use of their dollars which will count toward their maintenance-of-effort requirement.

The guidance defines "assistance" with federal dollars ~~more~~ strictly. The administration wants to insure that federal support is being used to further more specific work and work related activities.

If states exceed their federal block grant allocations, they can obtain additional federal funds from the contingency fund in the statute. However, the administration reads the Congressional intent for this provision as for states to draw those funds, they will have to spend 100% of their 1994 spending level dollars on families that meet the federal TANF requirements.

Q Why are you drawing the definition of assistance so tight?

A We are committed to the fundamental goal of this historic welfare reform which is to require people to work. And, the statute gives us the authority to do so.

Q Will states be allowed to spend their funds for services like transportation subsidies, one-time grants to families to avoid receiving welfare, subsidized child care or parenting classes toward fulfilling their maintenance of effort requirements?

A Yes, states may use their funds those and a variety of other services, as long as the family has a child and is needy according to the state income standards in its TANF program. These funds will count toward the 75% or 80% maintenance-of-effort requirement. They will not be able to use state funds for those purposes to meet the contingency fund maintenance-of-effort requirement.

generally

also

overall work effort

In calculating whether the state has met its work participation requirements.

But we ~~expect to reach~~ will do all we can to prevent ~~many~~ states from using this flexibility to get around work requirements — both by issuing regulations and seeking legislation. We will insist that the state's overall work effort — not just its effort within the TANF ~~the work requirements~~

by

participation rates. We also will seek legislation making clear that the work participation rates apply to any program counting toward/ the MOE requirement, and not just to the TANF program.

Q Under your guidance, will states have to force grandmothers to work in order to receive assistance?

A No. States will have the option to place grandparents in a state-funded program and not subject them to federal work requirements. Assistance provided to them will count toward the state's 75/80% maintenance-of-effort requirement, but not the 100%.

Q What about the time limit? Will states be able to provide assistance with state dollars after five years?

A Yes. In the statute, Congress prohibited only the expenditure of federal funds for families beyond the five year limit. The Clinton administration is also serious about time limiting assistance so that welfare truly becomes a transitional program.

Q Will states be able to provide assistance to legal immigrants who are in the country after August 22, 1996?

A Yes. States will be able to use state funds for legal immigrant families who arrive in the country after August 22nd. HHS submitted a technical correction to the statute, based on Congressional intent, that fixes an error which goes along with the interpretation in the guidance of the use of state dollars. The combination of these two efforts will enable states to use their dollars for legal immigrants which will count toward the 75/80% maintenance-of-effort requirement.

Q How will you make sure that states that states are upholding the central goal of welfare reform: moving people from welfare to work?

A We are confident that the states will use the flexibility in this new law and this guidance to strengthen the focus on work, not evade it. However, we will use all the means at our disposable ~~and new ones if we need them~~ to insure that states make welfare reform real by requiring work and moving families to self-sufficiency. We will do this in several ways: ~~by the stricter definitions of federal assistance and requirements for states to access the contingency fund; by imposing fair but tough penalties by denying good cause to states who fail to require work participation rates; by thoroughly and carefully collecting data on how states are using their dollars to insure that they don't undermine the mission of work and to deny bonuses for successes. As we closely monitor the state's implementation, we will share the good and the bad with Congress and the American people to judge how state's are faithfully reforming welfare.~~

Add Seek legislative Congress re work rqmts

Q How will you make sure states don't retain what would be federal share of child support collections?

A We will closely monitor the actions states take with regard to child support collections through the data information we gather. If states act irresponsibly, we will inform the Congress and work to solve the problem.

Q Are you going beyond your authority with this guidance?

A No.

Q Aren't you stifling state creativity?

A No. We are assuring the balance of state flexibility and accountability to the fundamental objection of welfare reform to move people into work.

Q Is this the final word on this issue?

We will issue regulations that ~~will~~ create disincentives for states to evade statute's work requirements through the use of separate programs. If states try to get around the work requirements they will not receive ~~full~~ maintenance of effort credit or good cause consideration for failing to meet

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THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

JAN 28 1997

MEMORANDUM FOR BRUCE REED

Enclosed is a revised draft of our proposed guidance on "bifurcation," or development of separate state programs which are not subject to many of the requirements of the Temporary Assistance to Needy Families (TANF) program. We have included all the elements that were in the material you and I discussed yesterday. Per your suggestion, the guidance is now quite clear about the consequences with respect to penalties for states that attempt to use bifurcation to game federal work requirements. More specifically, we have added the following:

1) With respect to the work participation rates, we propose to regulate that:

a) states must report the number of families receiving assistance under a state-only maintenance-of-effort (MOE) program, if they want to get credit for caseload reductions in meeting participation rates;

b) states must report both the number of families receiving assistance under a state-only MOE program and the work activities in which they are engaged, and HHS will not find good cause for failure to meet the participation rates for any state that either fails to provide the data or whose data suggests that they are undercutting the work focus of the statute; and

c) the above information must be reported, and will be taken into account, in determining whether a state is eligible for a high performance bonus, i.e., states which either do not report or game bifurcation will not be treated as "successful" TANF states.

2) We will propose legislation to collect critical information on families receiving assistance under state-only MOE programs in order to determine whether work and other welfare reform goals are being met.

3) We will consider approaches other than bifurcation in the final regulations if we learn that work provisions are being undermined.

4) We advise states to think carefully about the risks of bifurcation because of their subsequent ability to access the contingency fund.

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I believe that these actions significantly strengthen the guidance and meet our mutual concerns that welfare reform succeed. Because of our shared sense of urgency, I have asked John Monahan to follow up with you soon to discuss this latest draft and our plans to disseminate the final version.

Donna E. Shalala

Enclosure

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, 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 informal 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 and provide States the flexibility they need to serve needy families effectively.

Key Points

Among the key points made in this paper are the following:

1) States have the flexibility to count, towards 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 V 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 towards the 100% Contingency Fund MOE requirement must be made under the TANF program and therefore must meet TANF requirements.

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 Federal and State government, or have other negative consequences, we will be taking steps to obtain additional information on state practices, ~~and~~ exercising the administrative authority available under the statute to support the legislative goals of PRWORA, (sse discussion in section II. below).

and seeking certain legislative changes.

3) Under the definition of "assistance" included in section VI, 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 statute 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 be asked to conform their programs, if necessary, after the final rules are promulgated.

II. Ensuring Positive Impacts

Program Accountability. At this point, we cannot say 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). This flexibility 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 against these potential negative consequences.

Work

We intend to take administrative action to collect information about the families served by states under their MOE programs, so that we can: 1) better identify which states are truly more successful in serving their 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 ~~are looking at~~ regulatory ~~proposals:~~

- to deny States any reduction in the work participation requirements applicable to them (i.e., we would not give them credit for caseload reductions) unless they provide us ~~with~~ caseload information for the state-only as well as TANF programs ~~in order to~~ demonstrate that ~~TANF~~ caseload reductions are not artifacts of the way they structured their programs; (e.g., the result of transferring beneficiaries to an ~~single~~ MOE program)

- to ~~consider whether a state's MOE policies work to support or~~ circumvent the work requirements of the Act, if a State fails to meet the participation rates, the Secretary would not entertain good cause considerations unless the state provided information about its MOE program and demonstrated that it was making a good faith effort in the work area with respect both to its TANF and MOE programs; and

- to look at a State's overall work effort in deciding whether they qualify 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 MOE programs are configured and what is happening to needy families in the affiliated MOE programs.

With the additional information we collect on participants in State-only programs, we can 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 legislative change on the data collection provisions which will provide for collection of information on the universe of recipients served by State-funded programs.

While this guidance sets forth our best interpretation of the statute at this point, 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.

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 with the intent of retaining what would otherwise be the appropriate Federal share of child support collections. We are prepared to work with the Governors and the Congress on remedies to identify approaches that will ensure that states do not use the flexibility provided to retain federal dollars in State coffers.

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

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.

IV. Basic State Options in Program Design (p.) -- a conceptual framework for the TANF program and its Federal and State components.

V. Use of Federal Funds (p.) -- the flexibility available to States and the limits on use of Federal funds, including restrictions on the assistance payable with Federal funds.

VI. Basic Requirements Governing State MOE Expenditures (p.) -- the requirements governing State expenditures that qualify for TANF MOE purposes and the expanded flexibility

available to States to expend State funds on certain needy families, including certain immigrants, individuals who exceed the time limits and teen parents. [NOTE: The immigrant policy on p. 10 gives States broader flexibility to spend State MOE funds on immigrant families than was previously indicated in a Q and A issued by ACF. The new interpretation reflects the additional work done on interpreting "State program under this part" and on trying to give meaning to the many pieces of the statute which directly and indirectly speak to this issue.]

VII. Definition of Assistance (p.) -- guidance needed to assess the scope of key TANF provisions, including time limits, work requirements, child support assignment, and data collection.

VIII. Overview of TANF Provisions (p.) -- a chart depicting the applicability of key provisions in the TANF statute, depending on whether Federal or State funds -- and whether a State TANF program or a separate State program -- are involved.

IX. Conclusion

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. In spite of these concerns, we want to strongly encourage State efforts to implement effective and innovative program designs or to 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, we do not want States to 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 as 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, before we would impose penalties, we will look at other factors that might provide "reasonable cause" such as: the need/timing for planning and implementation activities, the degree of compliance, demographic and economic

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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.

situations, and other State-specific variables. In assessing corrective compliance plans, we will consider the divergent goals a State is trying to achieve, a State's efforts to balance and satisfy the different TANF requirements, and the efforts made to utilize community resources.

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 configuration 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 funded by expenditures of State funds in outside programs (i.e., outside TANF, but counting towards meeting the State's MOE 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 outside programs, rather than TANF. We encourage States to take great care in making such decisions

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

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 towards MOE. Among 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. Additional information on the rules applicable to the use of Federal funds is included in the following discussion and the attached table.

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

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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.

of September 30, 1995.

--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

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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.

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];

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).

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[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.

[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. NOTE: This footnote was added because the contingency MOE discussion was moved down.

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.
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 towards the Contingency Fund MOE. State expenditures in outside programs may count towards the TANF MOE, but they do not qualify for Contingency Fund MOE purposes[10].

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

[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.

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 under all State programs 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 made with respect to "eligible families." Subclause (III) defines "eligible families" 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

- o 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].

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

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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 previously indicated in a Q and A issued by ACF. 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.

[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.,

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. Notwithstanding this last restriction, 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

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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 child care exception below.

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 under the requirements of the Child Care and Development Fund. 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 the general restrictions 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[17].

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 States to make expenditures in outside programs which were previously allowable 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

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[17] Likewise, State expenditures which receive Federal child care matching funds do not qualify for child care MOE.

expenditures (above FY 95 levels).

Ultimately, 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).[18] 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, 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.[19]

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). Because TANF replaces AFDC, EA and JOBS, and provides much greater flexibility than any of these programs, what constitutes assistance is less clear than it was previously. Furthermore, because many of the above-referenced sections are addressed in the penalty provisions of section 409, it is very important that States have some idea of our views of what constitutes assistance so that they can meet Federal requirements and avoid penalties.[20]

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

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

[19] 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.

[20] 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..."

rulemaking process. Thus, we welcome suggestions from States and other parties as to what an appropriate definition would be. However, in the meantime, because States are looking for guidance which they can use in designing their programs, 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 one-time help in avoiding welfare dependency from requirements such as assignment of child support rights.

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 to ensure that we 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 towards both TANF and contingency fund MOEs. Must be for purposes of program or for cash asst, child care, certain education, or admin costs	Count only towards 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	Applicable	Applicable	Not applicable
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 commingled. 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."

NOTE TO BRUCE REED

FROM John Monahan

RE: Proposed Program Instruction to States

Attached you will find a Department-cleared draft of a program instruction to states regarding the use of federal and state TANF funds. Please note that this draft instruction covers the bifurcation and definition of assistance issues.

Tomorrow morning, we will forward draft questions and answers that could be utilized by Administration officials if this instruction is released.

Please assure that all interested White House and OMB offices receive copies of this instruction prior to the meeting we are in the process of scheduling late Wednesday, January 22, or early on Thursday, January 23.

For questions relating to the guidance, please call Olivia Golden or myself.

cc: Elena Kagan
Ken Apfel
Keith Fontenot
Barry White
Diana Fortuna
Emily Bromberg

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 develop proposed TANF regulations which focus on the areas where Congress has expressly provided for the Secretary to take action -- i.e., with respect to data collection, penalties and bonuses. In developing these rules, we are committed to an extensive outreach strategy which ensures consultation with a wide range of groups that have an interest in children and families. To date, we have called upon State executive and legislative officials and their national representatives, advocates, non-profit organizations and foundations, labor, and business organizations to help us identify issues and ensure that alternative statutory interpretations and perspectives are considered.

Call for Guidance. During this consultation process, we have heard in many forums of the need for early guidance on 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. The need for early guidance is driven by the start of State legislative sessions and the complexity and scope of the TANF statute.

States are understandably anxious to get answers to their questions. However, because of the scope of the TANF statute, and the interrelationships among its many pieces, answers are not easy to develop.

Because the new law represents such a major change in welfare policy, and the stakes are so high, we want to be sure that any guidance we issue is adequately grounded. Also, the TANF statute tries to achieve a balance between the competing goals of State flexibility and program accountability. Before issuing any statutory interpretation, we are taking some care to ensure that we maintain this balance. To ensure that we have a clear understanding of the positions of other key players on important issues, we have been engaged in an ongoing consultation process to get input of key groups. All of these factors have worked to increase the time required to develop policy answers.

Purpose of Guidance. In response to this need for guidance, we

weird

have developed this paper. It is designed to provide States and other parties with an indication of our initial views of the potential interpretations of the statutory language and of the direction which we are most likely to take in drafting proposed rules. We believe the guidance reflects Congressional intent on TANF policies, and that it will promote program accountability, support substantial innovation in program design and provide States the flexibility they need to serve needy families effectively.

Scope of Guidance. Following a summary of key elements of the guidance and some additional context and background, the paper incorporates the following sections:

II. Basic State Options in Program Design (p.) -- a conceptual framework for the TANF program and its Federal and State components.

III. Use of Federal Funds (p.) -- the flexibility available to States and the limits on use of Federal funds, including restrictions on the assistance payable with Federal funds.

IV. Basic Requirements Governing State MOE Expenditures (p.) -- the requirements governing State expenditures that qualify for TANF MOE purposes and the expanded flexibility available to States to expend State funds on certain needy families, including certain immigrants, individuals who exceed the time limits and teen parents. [NOTE: The immigrant policy on p. 10 gives States broader flexibility to spend State MOE funds on immigrant families than was previously indicated in a Q and A issued by ACF. The new interpretation reflects the additional work done on interpreting "State program under this part" and on trying to give meaning to the many pieces of the statute which directly and indirectly speak to this issue.]

V. Definition of Assistance (p.) -- guidance needed to assess the scope of key TANF provisions, including time limits, work requirements, child support assignment, and data collection.

VI. Monitoring the Impacts of Separate State Programs (p.) -- an important cautionary note expressing concerns about some potential negative consequences of this practice.

VII. Overview of TANF Provisions (p.) -- a chart depicting the applicability of key provisions in the TANF statute, depending on whether Federal or State funds -- and whether a State TANF program or a separate State program -- are involved.

Key points that readers should note include the following:

1) States have the flexibility to count, towards their general TANF MOE requirement, expenditures of State funds

under separate State programs, as long as those expenditures meet the statutory requirements for "qualified State expenditures", including the requirement that they are made on behalf of "eligible families"; such expenditures are not subject to requirements which apply to the TANF program. (see section IV 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 towards the 100% Contingency Fund MOE requirement must be made under the TANF program and therefore must meet TANF requirements.

2) Under the definition of "assistance" included in section V, nearly any form 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).

We recognize that this guidance does not provide answers to all the major pending issues and does not answer many specific questions. Through the regulatory process, we will provide broader and more detailed guidance and direction. We will also provide a more formal process for soliciting and considering the views of interested parties.

While we would encourage States to use this interim guidance, it is not legally binding because it was not developed through the formal rule-making process.

Program Accountability and Interim Penalty Policies. We are committed to making sure that this legislation works, and the goals of welfare and welfare reform are achieved. In Section VI we identify concerns we have about policies which might undermine these objectives or produce other significant negative consequences (such as a serious loss of funds to the Federal government). It is important that State policies be consistent with both statutory language and statutory intent. As we later discuss, we will be looking broadly at State practices in TANF implementation for consistency with the statute's intent. If we note major negative effects, we will pursue appropriate remedies.

At the same time, we do not want to discourage State efforts to implement effective and innovative program designs or to develop targeted service strategies which will produce the best outcomes for families with special needs (such as those headed by grandparent caretakers or victimized by family violence). Thus, during this interim period, we do not want States to be unduly fearful of incurring penalties under section 409. Before Federal

regulations are in effect, States will not be subject to penalties as 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, before we impose penalties, we will look at other factors that might provide "reasonable cause" such as: the need/timing for planning and implementation activities, the degree of compliance, demographic and economic situations, and other State-specific variables. In assessing corrective compliance plans, we will consider the divergent goals a State is trying to achieve, a State's efforts to balance and satisfy the different TANF requirements, and the efforts made to utilize community resources.

In exercising our accountability responsibilities under the statute, we are committed to working in partnership with States to ensure that children and families receive the assistance they need to move along the path to self-sufficiency.

II. 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.

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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.

When the statutory provisions are read with these terms in mind, it is possible to distinguish three different types of program configuration 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 funded by expenditures of State funds in outside programs (i.e., outside TANF, but counting towards meeting the State's MOE 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 outside programs, rather than 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.

III. 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 towards MOE. Among 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,

[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.

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. Additional information on the rules applicable to the use of Federal funds is included in the following discussion and the attached table.

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.

Rules for federal 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.

  --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

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

[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.

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];

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

[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.

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.

IV. 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.
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

[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. NOTE: This footnote was added because the contingency MOE discussion was moved down.

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

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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 towards the Contingency Fund MOE. State expenditures in outside programs may count towards 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 under all State programs 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;*

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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.

why the difference?

[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.

- *(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 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.

(Ch) Is a family eligible if person is not working after 2 yrs?

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

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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 previously indicated in a Q and A issued by

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].

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

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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

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ACF. 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.

[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.

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. Notwithstanding this last restriction, 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 under the requirements of the Child Care and Development Fund. 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 the general restrictions 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[17].

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."

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[16] Note the child care exception below.

[17] Likewise, State expenditures which receive Federal child care matching funds do not qualify for child care MOE.

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 additional or new 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 States to make expenditures in outside programs which were previously allowable 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).

Ultimately, 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).[18] 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, 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.[19]

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

[19] 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.

V. 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). Because TANF replaces AFDC, EA and JOBS, and provides much greater flexibility than any of these programs, what constitutes assistance is less clear than it was previously. Furthermore, because many of the above-referenced sections are addressed in the penalty provisions of section 409, it is very important that States have some idea of our views of what constitutes assistance so that they can meet Federal requirements and avoid penalties.[20]

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. However, in the meantime, because States are looking for guidance which they can use in designing their programs, 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

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[20] 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..."

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

VI. Monitoring the Impacts of Separate State Programs

When the Personal Responsibility and Work Opportunity Reconciliation Act was enacted, it was impossible to know what the overall effects of the legislation would be. No one knew how States would use the new flexibility available to them in designing their programs -- whether the new welfare programs would look similar to the AFDC and demonstration programs with which everyone was familiar or if they would incorporate a much different array of benefits, services, and eligibility rules. For this reason, the statute incorporates a series of provisions designed to gather information on the families receiving assistance, the assistance provided, and the effects on children and families.

One special area of uncertainty is 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. With this new flexibility, States can:

- make their programs more responsive to the individual and diverse needs of families;
- provide services and impose expectations appropriate to individual family circumstances;
- target resources more effectively.

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 time limits and the work requirements in section 407, thereby circumventing legislative intent to make assistance temporary and engage parents and caretakers in appropriate work. different under Statute!

We are also concerned that the development of separate State programs could have other unintended negative consequences. One major concern is that we will lose critical information about how the new programs are serving needy parents and children. Without a national view of State efforts (including efforts undertaken within separate State programs), we will have a diminished ability to measure program performance and impacts accurately and

equitably. A second major concern is about the potential loss to the Federal budget of its share of child support collections. In assessing the potential budgetary impact of this bill, Congress apparently did not envision such losses. We do not intend to allow States to set up separate State programs with the intent of retaining what would otherwise be the appropriate Federal share of child support collections.

how can you stop it, you're right?

In stating these concerns, we do not intend to stifle creative State thinking about how best to serve their needy families and children. We recognize that the ability of States to set up separate State programs can result in much more responsive and effective programs. At the same time, States should be aware of the Federal perspective of the risks involved. We believe it is our responsibility to monitor the overall implementation of this legislation and to assess whether it is having the intended consequences. If we find major problems, we believe we have the further responsibility to advise Congress and to work with it in identifying ways to resolve them.

VII. OVERVIEW OF TANF PROVISIONS UNDER 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 towards both TANF and contingency fund MOEs. Must be for purposes of program or for cash asst, child care, certain education, or admin costs	Count only towards 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

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

[2] Under this scenario, Federal and State funds are not commingled. 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."

data reporting	Applicable	Applicable	Not applicable
fugitive felons	Barred from assistance	No bar	No bar

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515-6348

January 22, 1997

The Honorable Donna E. Shalala, Ph.D.
Secretary of Health and Human Services
615F Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Shalala:

We have noticed several stories in the media about discussions within your Department regarding the definition of state maintenance of effort under the new welfare reform law. If either your Department or the Office of Management and Budget are considering imposing all federal requirements on every dollar of state spending, we hope you will decide against imposing this degree of federal control over state welfare spending.

In writing the welfare reform bill, our goal was to give states as much flexibility as possible. But there were selected requirements -- including the 5-year time limit, work, paternity establishment, and school attendance for teen mothers -- that we believed were so important that they should apply to all states. Thus, the new welfare block grant greatly increased state flexibility while nonetheless maintaining an important set of federal standards.

As the Congressional debate proceeded, a bipartisan agreement developed in favor of requiring states to maintain a specified level of welfare spending from their own funds. After considerable discussion, Congress set this minimum level, called the maintenance of effort, at 80 percent of 1994 state welfare spending (75 percent if a state meets the mandatory work requirements of the welfare reform law).

The question then arose whether federal requirements applied to all maintenance of effort funds. As outlined in the new section 409(a)(7) of the Social Security Act, we granted states more flexibility in spending their own funds. For example, states are allowed to count state spending on families with adults who have exceeded the 5-year time limit toward fulfilling their maintenance of effort requirement -- despite the fact that federal dollars are restricted for both groups.

As participants in the legislative drafting of these arrangements, we want you to know that it was our intent, which we believe is well-expressed in the statutory language of section 409(a)(7), to allow states more flexibility in the use of state dollars. Thus, for HHS to now impose all the federal requirements on every dollar of state spending is both unwise policy and inconsistent with the statute.

Of course, we are aware that the funding arrangements in the statute might potentially allow states to "game" the federal requirements. States could, for example, establish two cash welfare programs for families with children, one funded by a combination of federal and state dollars and a second by state funds only. The state could then avoid the federal requirements in the program funded exclusively with state dollars -- and still count the spending toward their maintenance of effort requirement. A second possibility would be for states to place families most likely to make child support payments in the program funded only by state dollars. In this way, states could avoid sharing child support collections with the federal government.

We greatly appreciate your concern about states' setting up dual programs. However, we hope you will come to the same conclusion we reached and allow states the flexibility to spend their own dollars within the broad guidelines established by the language of section 409. Then we should work together to ensure that states do not take advantage of the flexibility we have granted them. If they do, we will work with you to find either a statutory or regulatory solution.

Thanks for your attention to this important issue. As always, we would be pleased to discuss this matter in more detail, either directly or through our staffs.

Sincerely,

Clay Shaw

E. Clay Shaw, Jr.
Chairman, Subcommittee
on Human Resources

Bill Archer
Chairman
Committee on Ways and Means

NATIONAL GOVERNORS ASSOCIATION

AMERICAN PUBLIC WELFARE ASSOCIATION

National Conference of State Legislatures

January 17, 1997

The Honorable Donna Shalala
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Shalala:

We are writing to you on an issue of paramount importance to Governors, state administrators, and state legislators regarding whether federal prohibitions under the new welfare law apply to state maintenance-of-effort (MOE) dollars. We strongly believe that any effort to apply all federal TANF prohibitions and requirements to state maintenance-of-effort spending is unacceptable and would be a misinterpretation of the law.

States are now at a critical time in planning the implementation of their welfare reform efforts. State legislative sessions are starting, and foremost on the agenda in many states is welfare reform. Governors are now submitting to their state legislatures comprehensive welfare reform proposals, and detailed budget plans for the next fiscal year (beginning July 1 for most states). These budget requests will include state spending to meet the maintenance-of-effort requirements for the TANF block grant. In many of the states that have already submitted their state plans, administrators are beginning to implement many of the provisions of the block grant.

Given this activity at the state level, it is absolutely essential that the administration immediately clarify the maintenance-of-effort requirement under TANF and what constitutes qualified state expenditures for meeting the MOE. The U.S. Department of Health and Human Services (HHS) has not been forthcoming on this issue, placing states in a very difficult position as they move into their legislative sessions. Moreover, we are greatly alarmed by comments from HHS officials that among the range of interpretations under consideration by the department is that all the federal prohibitions and requirements imposed on federal TANF dollars would also be applied to state MOE dollars—even those in separate state-only funded programs. We believe such an interpretation is not supported by the language of the law and would be contradictory to the intent of Congress. It would have the immediate effect of curbing state flexibility and innovation in providing a variety of services, and greatly inhibit the ability of states to expend state dollars on vulnerable children and families, as states deem appropriate.

must apply!

doesn't apply

Clearly, the expenditure of federal funds under the TANF block grant is governed by a wide variety of prohibitions and requirements including the sixty-month lifetime limit on assistance, the assignment of child support rights, work requirements, requirements that teen parents live at home and stay in school, and extensive reporting requirements. However, the language of the statute treats state spending that qualifies toward the MOE requirement quite differently. We believe P.L. 104-193 gives states broad authority on how to spend their state maintenance-of-effort dollars. As long as spending is on allowable activities, including cash, child care, and job placement, and for eligible families, including those who have lost federal benefits due to the time limit or immigrant status, then such state spending should be considered qualified state expenditures and count toward the MOE. We believe that under the statute, eligible families are

specified

those eligible for assistance under a state TANF program even if they are not eligible for federally-funded assistance because of a federal prohibition. This is quite clear from Section 409(a)(7) of the law. Additionally, if such spending occurs in a separate state-only funded program, then federal prohibitions and requirements are not applicable. There is no language in the bill to support imposing them, nor does HHS have the authority to impose these limitations through regulation.

We believe it is important to remember that a maintenance-of-effort requirement is very different from a matching requirement. For the latter, it is readily agreed that conditions imposed on federal dollars do attach to state matching dollars. However, the purpose of the maintenance-of-effort requirement under TANF was to ensure that states would continue to spend some portion of their own funds on needy families. It was not to impose prescriptive requirements on that spending. Some states may have state-only funded programs so that in providing family support services, one-time emergency assistance, and transportation and job retention services, the sixty-month time limit or other federal requirements will not be triggered.

States, if they choose, may also use their MOE dollars to support the most vulnerable such as children in families that have exceeded the sixty-month time limit; the legal noncitizen family barred from federal assistance for five years; the single parent for whom taking care of her severely disabled child is more than a full-time job; and the client not disabled enough to qualify for SSI but not able to work the required twenty to thirty hours a week. Again, we believe the language of the law and congressional intent gives states the flexibility to spend their maintenance-of-effort dollars on these families and not be encumbered by federal requirements or prohibitions.

We believe the language of the bill is also clear with respect to state MOE spending that occurs within *the state program funded under this part*—that is, the welfare program a state creates that combines federal TANF dollars and state dollars. Some of the prohibitions are clearly imposed only on funds *attributable to the federal grant* (sixty-month time limit) or states are prohibited from using *any part of the grant* to provide assistance to certain individuals (for example, teens not living at home or in an adult-supervised setting, teens not in school, or fugitive felons). We believe that the language is unequivocal that these prohibitions apply only to federal dollars. Thus, to the extent a state can and chooses to distinguish between federal and state dollars within its program, these prohibitions would not apply to individuals receiving assistance funded by state dollars.

Governors, state legislators, and state administrators are committed to implementation of welfare reform and agree that successful welfare reform will require boldness and innovation. We urge the administration to support us in our efforts and allow states to implement welfare reform in accordance with the flexibility contained in the law. We believe any interpretation regarding maintenance-of-effort that is contrary to what we have outlined is unacceptable and not sustainable under the law. We feel strongly that this issue must be resolved immediately, but

certainly before the President meets with the Governors in early February. Until we receive a response from the administration, we will continue to provide our members with the above interpretation. We consider this issue to be of paramount importance to states and would be more than willing to meet with you to discuss the matter in greater detail.

Sincerely,

Raymond C. Scheppach
Executive Director
National Governors' Association

A. Sidney Johnson III
Executive Director
American Public Welfare Association

William T. Pound
Executive Director
National Conference of State Legislatures

cc: Olivia Golden
Bruce Reed

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF THE GENERAL COUNSEL
CHILDREN, FAMILIES AND AGING DIVISION

FACSIMILE TRANSMISSION

FROM: Robert E. Keith
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456-5557

Total Number of Pages: Cover + 10

Date: 24 Jan 97

REMARKS:

IF RETRANSMISSION IS NECESSARY PLEASE PHONE SENDER LISTED ABOVE.

The Relationship Between State-Funded Assistance and the TANF Block Grant

In initial planning for TANF implementation, questions have arisen as to whether or when federal TANF requirements apply to assistance provided by a state with state funds. In the new structure, a state might use state funds in one of three ways: the state might operate a single "TANF Program" in which federal and state funding is blended in each case; the state might operate a single "TANF program," but in which federal and state funds are segregated so that some cases are federally-funded and some cases are state-funded; or the state might operate two (or more) programs, and operate one or more programs wholly funded with state-only dollars. Questions have arisen as to whether or when federal requirements would apply to state-funded cases in a "TANF Program" or to state-funded cases in a wholly separate state program.

In answering these questions, it is important to distinguish between two issues. When a state is providing state-funded assistance, one question is whether TANF requirements apply to the assistance, and a separate question is whether the state-funded assistance counts toward TANF maintenance of effort. It should be clear, for instance, that if a state chooses to operate a general assistance program with no federal funds, that program is not subject to federal TANF requirements. However, expenditures under that general assistance program may or may not qualify to count toward TANF maintenance of effort requirements.

While the new law is not always consistent in its use of language, we believe that the following conclusions flow from a close reading of the statute:

- Some TANF requirements, including most prohibitions on assistance, are worded to provide that a state receiving a TANF grant "shall not use any part of the grant to provide assistance to" particular categories of individuals or families. Where the statute uses such language, the prohibition applies to use of federal, not state funds. Thus, such requirements do not apply to state-funded cases in a state-funded program or to state-funded cases if state funds are used in the state's AFDC-replacement program funded under TANF.

- Other TANF requirements, such as the work and participation requirements, apply to "families receiving assistance under the State program funded under this part." While the statutory language is not always consistent, the stronger statutory argument is that requirements that apply to "families receiving assistance under the State program funded under this part" apply to both federally-funded and state-funded cases if they are being assisted under the state program funded under TANF. Again, any requirement applicable to "families receiving assistance under the State program funded under this part" are clearly inapplicable to wholly-state funded assistance in a separate state program.

- As to maintenance of effort (MOE), there is an important distinction between basic MOE and contingency fund MOE. Expenditures only count toward contingency fund MOE if they are expenditures "under the State program funded under this part." In contrast,

expenditures under "all State programs" may count toward basic MOE if they are "qualified expenditures" for families "eligible for assistance under the state program funded under this part" (or families who would be eligible for such assistance but for the time limits or a restriction on assistance to immigrants.) Based on the language of the two provisions, we conclude that state expenditures may count toward both basic MOE either if they are "under the State program funded under this part," or if they are made in a separate State program, so long as they meet the definition of qualified expenditures for eligible families. In contrast, expenditures can count toward contingency fund MOE only if the expenditures are made "under the State program funded under this part."

The remainder of this memo outlines in considerably more detail how we reach the above conclusions.

1. Principal State Alternatives in Using State Funds in the New Structure

In the AFDC Program, states typically blended federal and state funding in every case. For example, if a state had 100 cases, and a 50% match rate, all 100 cases would typically be viewed as involving 50% federal funding, 50% state funding.

In the TANF structure, matching requirements are eliminated. Instead, states face a basic maintenance of effort requirement that must be fulfilled to avoid receiving a reduced TANF grant. In this new structure, states face three principal choices about how to spend their state funds:

- **Model 1: Blended Federal and State Funding in a Single "TANF Program"**: As in AFDC, a state might choose to operate a single program, with federal and state funding blended in every case.

- **Model 2: Separate Federal and State Funding, but in a Single Program:** Alternatively, a state might choose to operate a single "TANF program", but have some cases federally-funded, and some cases state-funded. For example, a state with 100 cases, and for which half of the money in the program is state money, might choose to structure its caseload so that 50 of the cases were federally funded and 50 were state-funded.

- **Model 3: Separate Federal and State Programs:** Alternatively, a state might choose to operate two (or more) programs, of which one is funded with federal TANF funds (and perhaps some state funds) and one (or more) is wholly funded with state dollars. For example, a state might choose to operate one TANF Program, and a state-funded General Assistance for Families Program.

As a practical matter, there may be some important definitional issues in establishing the lines between these three approaches, but in their purest form, they present three distinct approaches.

2. When Do TANF Requirements Apply to State-Funded Assistance?

The PRWORA generally uses one of two formulations in referring to TANF requirements:

- Some requirements (including most prohibitions on assistance) are worded to say "A State to which a grant is made under section 403 shall not use any part of the grant to provide assistance to..." a particular category of individuals or families.
- Other TANF requirements (such as the work and participation rates and the requirement to assign child support and provide the federal share of child support to the federal government) are worded as applying to "families receiving assistance under the State program funded under this part..."

The first formulation, by its terms, explicitly applies, and only applies, to federally-funded assistance. Thus, if a state opts to blend federal and state dollars in each case (i.e., Model 1), the prohibitions would apply to all cases, because every assisted case is receiving assistance funded, at least in part, with federal TANF dollars. However, if a state opts to segregate federally-funded and state-funded cases in a single program (i.e., Model 2), the applicable prohibitions would only apply to the federally-funded cases. Similarly, the federal prohibitions would not apply to wholly-state funded assistance in a wholly-state-funded program. While there may be a question as to whether such state-funded assistance counts toward MOE requirements, there should not be any question, based on the plain language of the statute, that language saying that a state "shall not use any part of the grant" is a restriction on federal, not state funds.

A more difficult question concerns interpreting the requirements which apply to "families receiving assistance under the State program funded under this part." Such requirements clearly apply to any case receiving federally-funded assistance. However, a question has arisen as to whether the requirements also apply to state-funded cases assisted in "the State program funded under this part." While the statutory language is not always consistent, we conclude that the statutory argument is stronger for interpreting this language as applying to both cases that are federally-funded and cases that are state-funded if they are assisted "under the State program funded under this part," i.e., in the state's TANF Program.

The first reason to suggest that "assistance under the State program funded under this part" is broader than "federally-funded assistance" is that it sounds broader. In the prohibitions, where Congress expressly wished to limit a prohibition to federally-funded assistance, Congress knew how to do so. The choice to use broader language than that of the prohibitions creates an implication that a broader scope was intended.

Apart from the general implication, a review of most instances where the phrase "the State program under this part" appears provides little guidance as to whether the phrase does or doesn't apply to state-funded cases in the TANF Program. The three principal places where interpretation of the phrase may have the greatest significance are for work and participation requirements, child

support assignment (and payment of the federal share to the federal government), and TANF data reporting requirements, all of which apply to families receiving assistance "under the State program funded under this part." In each of these instances, nothing in the context suggests how to interpret the phrase.

There are, however, a set of instances in which the context of the phrase does suggest a meaning. In all but one of these instances, the implication from the context is that the "assistance under the State program funded under this part" includes state-funded assistance in the TANF Program.

For example, in order for a state to gain access to the Contingency Fund during periods of economic downturn, the state must maintain 100% of its historic state spending. The law provides that this state spending must occur "under the State program funded under this part..."[1] Hence, one would infer that Congress necessarily envisioned that a state would be expending state as well as federal funds "under the State program funded under this part." Similarly, contingency fund reconciliation requirements are based, in part, on counting state spending "under the State program funded under this part."

In addition, in several instances, the statute refers to "assistance under the State program funded under this part attributable to funds provided by the Federal Government:"

- For example, under Section 402(a)(5), a state plan must include a "certification by the chief executive officer of the State that, during the fiscal year, the State will provide each member of an Indian tribe, who is domiciled in the State and is not eligible for assistance under a tribal family assistance plan approved under section 412, with equitable access to assistance under the State program funded under this part attributable to funds provided by the Federal Government."

- Similarly, the nondisplacement language of the law, Section 407(f), provides, in part, that subject to certain restrictions, "an adult in a family receiving assistance under a State program funded under this part attributable to funds provided by the Federal Government may fill a vacant employment position in order to engage in a work activity described in subsection (d)."

- The requirement that minor parents live at home or in an adult-supervised setting (Section 408(a)(5) provides that the state must provide assistance in locating an appropriate adult-supervised setting unless the state determines the current living arrangement is appropriate, "and thereafter shall require that the individual and the minor child referred to

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[1] The statutory language says: "If, at the end of any fiscal year during which amounts from the Contingency Fund for State Welfare Programs have been paid to a State, the Secretary finds that the expenditures under the State program funded under this part for the fiscal year (excluding any amounts made available by the Federal Government) are less than 100 percent of historic State expenditures (as defined in paragraph (7)(B)(iii) of this subsection), the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by the total of the amounts so paid to the State."

in subparagraph (A)(ii)(II) reside in such living arrangement as a condition of the continued receipt of assistance under the State program funded under this part attributable to funds provided by the Federal Government (or in an alternative appropriate arrangement, should circumstances change and the current arrangement cease to be appropriate)."

- The sixty-month time limit (Section 408(a)(7)) provides, in part, that "A State to which a grant is made under section 403 shall not use any part of the grant to provide assistance to a family that includes an adult who has received assistance under any State program funded under this part attributable to funds provided by the Federal Government, for 60 months (whether or not consecutive) after the date the State program funded under this part commences, subject to this paragraph.

Thus, in each of these instances, the language (by implication) envisions that there could be assistance provided "under the State program funded under this part" that is not attributable to Federal funds, i.e., that is attributable to state funds.[2] This would lead one to conclude that the phrase "assistance under the State program funded under this part" applies to federally-funded or state-funded assistance if provided "under the State program funded under this part."

The only statutory language that suggests a different conclusion may be found in the basic MOE language. Basic MOE is based on counting "qualified State expenditures" for "eligible families" under "all State programs."[3] "Eligible families" for purposes of basic MOE are defined as:

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[2] In addition, two provisions of Section 404, relating to state options to sanction individuals also use language which appears to draw a distinction between federally-funded and state-funded assistance under the state program funded under this part. Those provisions read as follows:

"(i) SANCTION WELFARE RECIPIENTS FOR FAILING TO ENSURE THAT MINOR DEPENDENT CHILDREN ATTEND SCHOOL.-A State to which a grant is made under section 403 shall not be prohibited from sanctioning a family that includes an adult who has received assistance under any State program funded under this part attributable to funds provided by the Federal Government or under the food stamp program, as defined in section 3(h) of the Food Stamp Act of 1977, if such adult fails to ensure that the minor dependent children of such adult attend school as required by the law of the State in which the minor children reside.

(j) REQUIREMENT FOR HIGH SCHOOL DIPLOMA OR EQUIVALENT.-A State to which a grant is made under section 403 shall not be prohibited from sanctioning a family that includes an adult who is older than age 20 and younger than age 51 and who has received assistance under any State program funded under this part attributable to funds provided by the Federal Government or under the food stamp program, as defined in section 3(h) of the Food Stamp Act of 1977, if such adult does not have, or is not working toward attaining, a secondary school diploma or its recognized equivalent unless such adult has been determined in the judgment of medical, psychiatric, or other appropriate professionals to lack the requisite capacity to complete successfully a course of study that would lead to a secondary school diploma or its recognized equivalent."

While these provisions, by their terms, are applicable to adults who have "received assistance under any State program funded under this part attributable to funds provided by the Federal Government," it is not clear that much significance should be provided to the seeming restriction, since it would seem highly doubtful that Congress was seeking to limit a state's authority to impose sanctions on individuals receiving state-funded assistance.

[3] Section 409(a)(7)(A) and (B) provide: "(A) IN GENERAL.-The Secretary shall reduce the grant payable to the State under section 403(a)(1) for fiscal year 1998, 1999, 2000, 2001, 2002, or 2003 by the amount (if any) by which

(III) ELIGIBLE FAMILIES.-As used in subclause (I), the term 'eligible families' means families eligible for assistance under the State program funded under this part, and families that would be eligible for such assistance but for the application of section 408(a)(7) of this Act [i.e., the five-year limit] or section 402 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [i.e., one of the restrictions on assistance to immigrants].

In this context, one might initially assume that the phrase "families eligible for assistance under the State program funded under this part" only applies to families eligible for federally-funded assistance. If the phrase were intended to include families eligible for state-funded assistance under the state's TANF program, there would have been no need to include language providing that expenditures for families reaching the five-year limit and that families made ineligible by an immigrant restriction could count toward MOE.

Thus, the basic MOE language seems to suggest a different meaning for "the State program funded under this part" than the other references noted above. As a matter of statutory construction, though, the phrase needs to have the same meaning in each context where it is used. How can the apparent conflict be resolved? If the phrase "assistance under the State program funded under this part" is construed to only apply to federally-funded cases, then the contingency fund MOE and reconciliation provisions would make no sense, because they are necessarily based on calculating state expenditures under the state program funded under this part. In addition, one would be forced to conclude that in all of those instances where Congress referred to "assistance under the State program funded under this part attributable to funds provided by the Federal Government," the latter phrase was mere surplusage.

The alternative, and sounder, approach, is to conclude that whenever Congress referred to assistance "under the State program funded under this part," Congress was referring to both federally-funded and state-funded assistance within the TANF Program. In one takes that

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qualified State expenditures for the then immediately preceding fiscal year are less than the applicable percentage of historic State expenditures with respect to such preceding fiscal year.

(B) DEFINITIONS.-As used in this paragraph:

(I) QUALIFIED STATE EXPENDITURES.-

(I) IN GENERAL.-The term 'qualified State expenditures' means, with respect to a State and a fiscal year, the total expenditures by the State during the fiscal year, under all State programs, for any of the following 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 expenditures 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), (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)."

construction, one then can construe the basic MOE language as meaning that a case can count toward maintenance of effort if the case is eligible for assistance for assistance under the state's TANF program, even if the case is not eligible for federally-funded assistance. For example, there is a prohibition on using federal TANF funds to assist minor parents who are not attending school. However, a state might wish to use state funds to provide assistance (e.g., when there was good cause for non-attendance, when the assistance was being provided to help a minor parent get back in school) and might provide that assistance under its TANF program with state-only funds. If a state opted to do so, such expenditures could count toward MOE because they are expenditures for families eligible for assistance under the state program funded under TANF, even though they are not expenditures for an individual eligible for federally-funded assistance.

This reconciliation of the language is not entirely satisfactory, because it still leaves the question of why Congress made express reference to two TANF prohibitions (time limits, immigrants) and not others in specifying when expenditures could count toward basic MOE. However, it would seem preferable to adopt a statutory construction resulting in some surplus language in a single statutory provision to one resulting in one provision (contingency fund maintenance and reconciliation) making no sense and a number of other provisions (those that explicitly refer to funds attributable to the federal government under the state program funded under this part) having surplus language.

Thus, on balance, we conclude that if a family's assistance is state-funded but the family is receiving assistance within the state's TANF program, then the family is receiving assistance "under the State program funded under this part", and is subject to TANF work and participation requirements, child support requirements, and data reporting requirements.

Coming to this conclusion leads to one probably reasonable policy result, but one very troubling policy result. The reasonable result likely comports with Congress' expectations: that if a state runs a single TANF program, the calculation of work participation rates will be based on a caseload roughly equivalent to current law, and the collection of child support reimbursements for program participants would be roughly equivalent to current law.

However, one potentially troubling consequence of this interpretation is that it appears that if a state is operating a state-funded program, the provision of a single federal TANF dollar to the program results in the entire program becoming subsumed within "the State program funded under this part." The underlying problem here is that whenever "assistance" is provided under the State program funded under this part, those receiving assistance become subject to TANF work and participation requirements, and become subject to the requirement to assign child support. While this may be the intended result as to the AFDC replacement program, it is by no means clear that Congress intended such a result if, for instance, TANF funding comprised 5% of the funding of a community-based training program or counseling effort. This problem might be resolved if the definition of "assistance" under TANF were clarified or narrowed, but if that does not occur, this presents a potentially troubling result. It does, however, appear an inevitable result under the legislation as drafted.

3. When Do Expenditures for State-Funded Assistance Count Toward TANF Maintenance of Effort Requirements?

It is clear that if a state blends federal and state funds, and only assists families that are federally-eligible, the state's expenditures will count toward a state's basic and contingency fund MOE requirements.[4] Similarly, if the state operates a single program, in which federal and state funding are segregated but all families are federally-eligible, then the expenditures of state funds will count toward both basic and contingency fund MOE.

The two questions needing additional consideration are:

- If a state expends state funds in its TANF Program for families that are not federally-eligible, do those expenditures count toward basic and/or contingency fund MOE?
- If a state expends state funds for needy families in a wholly separate state program, do those expenditures count toward basic and/or contingency fund MOE?

As to the first question, the discussion in the prior section leads to the conclusion that state-funded assistance within the TANF program for families that are not federally-eligible does count toward both basic and contingency fund MOE. Recall that basic MOE expenditures must be for "families eligible for assistance under the State program funded under this part;" that assistance "under the State program funded this part" might be either federally funded or state-funded; and that most TANF prohibitions only restrict federal funds. Accordingly, it follows that such expenditures of state funds are allowable under the state program funded under TANF, and could count toward TANF basic and contingency fund MOE.

That leaves the question of expenditures of state funds for needy families in a wholly separate state program. Here, the answer is different for basic than for contingency fund MOE. To see why, it is necessary to contrast the language of the two MOE sections.

As previously noted, contingency fund MOE is explicitly limited to state expenditures for assistance "under the State program funded under this part." In contrast, basic MOE involves "qualified expenditures" for "eligible families" under "all State programs." Thus, the explicit formulation of the basic MOE language, and the contrast with contingency fund MOE, each lead to the conclusion that basic MOE is not limited to expenditures for assistance "under the State program funded under this part."

Further, if Congress had intended to limit basic MOE expenditures to expenditures "under the

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[4] Note that, for an expenditure to count, it must satisfy all of the required elements of maintenance of effort, i.e., be for a qualified expenditure, and fall within the definition of "expenditure by the state." However, this point will be assumed and not repeatedly made in the following discussion.

State program funded under this part", there would be no need for the extensive language in the basic MOE section that defines a qualified expenditure or that clarifies when expenditures under other state and local programs can count toward MOE, or that expressly excludes an array of spending from meeting the basic MOE requirements.

Similarly, it is explicitly envisioned that certain state expenditures for child care will count toward basic MOE. However, it is clearly not envisioned that a state would make such expenditures under the TANF Program. Rather, it is envisioned that those expenditures (at least up to the historic expenditure level) will be expended in connection with the Child Care and Development Block Grant, and that they would not be subject to TANF rules and requirements.

Apparently, it has been suggested by some that even if expenditures under separate state programs are countable toward TANF basic maintenance of effort, such expenditures can only be countable if they are subject to TANF rules. The direct answer here is that the statute does not say or imply that. There is no language in the statute that creates an explicit or implicit requirement that basic MOE dollars meet all of the rules applicable to TANF dollars. Rather, there are a statutorily-specified set of elements that must be met for such funds to count toward MOE, and HHS has no authority to add additional ones.

The policy implications of this set of conclusions may or may not be troubling, but they directly flow from the plain language of the statute. If they do not reflect Congressional statute, Congress may wish to consider modifying the statute, but at this point, there is no reasonable basis given the statutory language to reach a different construction.

Note that the overall practical effect of this structure is that a state might choose to operate a separate state program and have such expenditures count toward basic MOE, but the expenditures from a separate state program would not count toward contingency fund MOE. Thus, a state concerned about retaining access to the contingency fund might be hesitant to satisfy its basic MOE obligation through a separate state program, because the effect of doing so could be to make it difficult or impossible to qualify for the contingency fund in a year of need.

Conclusion

Based on this analysis of statutory language, we believe it is clear that:

- If a state provides assistance under the TANF Program, even with state-only dollars, that assistance becomes subject to each TANF provision which applies to families receiving assistance "under the State program funded under this part," e.g., the work and participation rates and the child support provisions of TANF.

- If a state provides assistance to a family in the TANF Program with segregated state funding, such a family will not be subject to the prohibitions that only apply to federal TANF assistance, but the family will be subject to the requirements applicable to

assistance "under the State program funded under this part,", e.g., the work and participation rates and the child support provisions of TANF.

- If a family is eligible for assistance "under the State program funded under this part", e.g., eligible for federally-funded or state-funded assistance in the TANF Program, a qualified expenditure of funds for that family in a separate state program can count toward basic, but not contingency fund MOE.

For further discussion of these issues, feel free to contact either Mark Greenberg or Steve Savner at CLASP.