NLWJC - Kagan
DPC - Box 065 - Folder-018

Welfare-Work Regulation [2]

Work Penalties Structure

Assume a state with a block grant of $100 million with a $5 million or 5 percent top penalty for missing the work participation rate, 95% of caseload in single parent families and 5% in two parent families, an overall participation rate of 30 percent, and a two parent rate of 75 percent.

	OVERALL PARTICIPATION RATE		**TWO PARENT PARTICIPATION RATE**	
	HHS Revised Proposal	**Possible Counteroffer**	**HHS Revised Proposal**	**Possible Counteroffer**
Step #1: Establish Penalty based on Degree of Non-Compliance				
Example A: If state did not achieve 90% of the work participation rate (e.g. participation rate was lower than 27% for overall caseload and 67.5% for two parent):	The penalty is $4.5 million. [The smaller of $4.5 million or $4.75 million, i.e., the smaller of ($5 million x .9) or ($5 million x .95, the percent of caseload that is non-two parent families)]	The penalty is $5 million.[1] [Full penalty imposed if state falls below 90% threshold].	The penalty is $.5 million [The larger of $.5 million or $.25 million, i.e. the larger of ($5 million x .1) or ($5 million times .05, the percent of caseload that are two parent families)]	The penalty is $.25 million [Equal to $5 million times .05, the percent of the caseload that are two parent families.][2]
Example B: If state achieved 95% of the work participation rate (e.g. 28.5% for overall and 71.25% for two parent):	The penalty is $2.25 million. [The maximum penalty -- in this case $4.5 million -- is reduced in half because state achieved half the difference between the required rate and the threshold.]	The penalty is $2.5 million. [The maximum penalty -- in this case $5 million -- is reduced in half because state achieved half the difference between the required rate and the threshold.]	The penalty is $.25 million. [The maximum penalty -- in this case $.5 million -- is reduced in half because state achieved half the difference between the required rate and the threshold.]	The penalty is $.125 million. [The maximum penalty -- in this case $.25 million -- is reduced in half because state achieved half the difference between the required rate and the threshold.]

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[1] If state fails overall and two parent rate, the maximum total penalty shall be $5 million.

[2] HHS argues that although this option is simpler and, one could argue, fairer to states with very small two parent caseloads, their minimum 10 percent penalty would be better because it would a) signal that we're serious about two parent work rates, and b) not discourage states from adopting pro-family welfare policies which increase the number of two parent families on the rolls.

	OVERALL PARTICIPATION RATE		TWO PARENT PARTICIPATION RATE	
	HHS Revised Proposal	**Possible Counteroffer**	**HHS Revised Proposal**	**Possible Counteroffer**
Step #2: Consider Reasonable Cause				
The Secretary may waive the penalty if she determines the state had reasonable cause, defined in the regulation as:	Failing because of: 1) Granting of good cause domestic violence waivers; 2) Natural disasters; 3) Formally issued federal guidance that was incorrect 4) "Isolated, non-recurring problems on minimal impact that are not indicative of a systemic problem" 5) Due to provision of assistance to refugees in a federally-approved alternative project.	Same	Same	Same
Step #3: Enter into Corrective Compliance Plan				
A state may accept the penalty or file within two months a corrective compliance plan. The state shall not be penalized while under the plan, which many last no longer than six months. Such plans must include:	1) A complete analysis of why the state did not meet the requirements; 2) A detailed description of how the state will correct or discontinue, as appropriate, the violation in a timely manner; 3) The milestones, including interim process and outcome goals, the State will achieve to assure it comes into compliance within the specified time period; 4) A certification by the Governor that the state is committed to correcting or discontinuing the violation in accordance with the plan.	Same	Same	Same

	OVERALL PARTICIPATION RATE		TWO PARENT PARTICIPATION RATE	
	HHS Revised Proposal	**Possible Counteroffer**	**HHS Revised Proposal**	**Possible Counteroffer**
Step #4: After Corrective Compliance Plan, Secretary Can Reduce Penalty				
To receive a reduced penalty, the state must have:	1) Had a natural disaster or regional recession, to which failure was attributable;	Same.	Same.	Same.

	OVERALL PARTICIPATION RATE		TWO PARENT PARTICIPATION RATE	
	HHS Revised Proposal	**Possible Counteroffer**	**HHS Revised Proposal**	**Possible Counteroffer**
	2) Made substantial progress towards correcting or discontinuing the violation	Option 2a): A state shall have its penalty reduced by the percentage by which it increased its participation rate (e.g., a state that increased its participation rate from 20 to 24 percent shall reduce its penalty by 20 percent (4/20)); Option 2b) A state shall have its penalty reduced by the percentage that it reduced the gap between its participation rate before the plan and the required rate (e.g., a state that increased the overall rate from 20 to 24 percent shall reduce its penalty by 40 percent (4/10)); Option 2c): A state that increased its participation rate by 25 percent or more shall have its penalty reduced at the discretion of the Secretary. Option 2d) A state that did not achieve 90 percent of the participation rate shall receive the full penalty. A state that achieved 90 percent of the participation rate shall have its penalty reduced at the discretion of the Secretary.	2) Made substantial progress towards correcting or discontinuing the violation.	Option 2a): A state shall have its penalty reduced by the percentage by which it increased its participation rate (e.g., a state that increased its participation rate from 20 to 24 percent shall reduce its penalty by 20 percent (4/20)); Option 2b) A state shall have its penalty reduced by the percentage that it reduced the gap between its participation rate before the plan and the required rate (e.g., a state that increased the overall rate from 20 to 24 percent shall reduce its penalty by 40 percent (4/10)); Option 2c): A state that increased its participation rate by 25 percent or more shall have its penalty reduced at the discretion of the Secretary. Option 2d) A state that did not achieve 90 percent of the participation rate shall receive the full penalty. A state that achieved 90 percent of the participation rate shall have its penalty reduced at the discretion of the Secretary.

Wr-work regulations

Diversion to Separate State Programs
to Avoid Work Participation Rates and Child Support Requirements

Issue

States can currently divert cases into separate State programs in order to avoid work participation requirements and Federal child support collections. The proposal under discussion would require a State to prove it had not diverted participants, as a condition of gaining penalty relief. HHS has agreed to condition the reasonable cause penalty exception and degree of non-compliance penalty reductions on States not diverting cases to avoid work participation requirements.

EOP Position:

Under the current proposed rule, states will have an incentive to move hard-to-employ individuals from TANF, which is subject to tough work participation rates, to separate state programs where such work rates don't apply, undermining our efforts to turn welfare into a work-based system. To discourage such diversion, States should not be permitted to enter into a corrective compliance plan or to receive a reduction in penalty after failing to correct a violation unless they prove they have not diverted cases for the purpose of avoiding the work participation rates. These restrictions must apply to all 14 penalties, not simply the work participation rate penalty, because a State that successfully diverts hard-to-employ cases will be able to meet the TANF work participation rates and will have no need for penalty relief in that area. In addition, HHS should withhold all forms of penalty relief from States that divert families in order to prevent the federal child support collections. The net Federal share of child support collections in FY1998 is estimated at $1.047 billion, which States could avoid giving back to the Federal government by diverting cases with child support collections to separate State programs.

HHS Position

As mentioned above, HHS supports the strict enforcement of the TANF penalty mechanisms that are directly related to work participation rates - denying reasonable cause for work penalty, collecting all the data HHS can, and monitoring for abuse to see if additional remedies need to be pursued, consistent with the mutually agreed upon January HHS guidance. In addition, HHS would hold States accountable through the use of the high performance bonus to reward States for getting recipients into work and use of the bully pulpit to publicize State actions if they abuse their flexibility. HHS will also consider future legislative or administrative remedies if abuse is widespread. HHS maintains that any further leveraging of the penalty relief provisions would be viewed by Congress and the Governors as overreaching and unduly prescriptive; is subject to legal and political challenge; and would severely damage their relationship with the States which is critical to the success of welfare reform.

Treatment of State Waivers

Issue

The TANF law allows States to continue to operate waiver provisions that are "inconsistent" with TANF. The issues at hand are 1) what is the scope of waiver policies that can be continued; and 2) whether we can and should deny bonuses and certain penalty relief to states that continue to operate waivers that differ from TANF work requirements and time limits.

EOP Position:

The current proposed rule allows States to continue prior law policies that were not specifically covered under a waiver (e.g., unlimited vocational education and college attendance or more than 6 weeks a year of job search) which stretches the meaning of the statute and undermines the new law's strict work focus. Moreover, the regulation allows states to expand waivers beyond the geographic area in effect (i.e., implemented) on date of enactment.

While the statute requires us to preserve the right for states to continue waivers with less stringent work rules and time limits, we do not need to reward those that do so. Thus, we believe that States that do not comply with TANF rules regarding work requirements or time limits because they continue inconsistent waivers should not be eligible for the bonuses and rewards established under the new law, including the high performance bonus, the caseload reduction credit, a reasonable cause penalty exception, a corrective compliance plan, or a reduced penalty for any of the violations established in the law. States should not be able to continue program features that were not specifically covered under a waiver, such as unlimited vocational education, college attendance, or more than 6 weeks a year of job search. In addition, states should not be able to expand waivers beyond the geographic area in effect (i.e., implemented) on date of enactment.

HHS Position

The current proposed rule provides a tight interpretation of the waiver inconsistency language that protects against widespread avoidance of the TANF provisions. Taken as a whole, the EOP recommended provisions appear to thwart Congressional intent in providing States with the opportunity to continue operating waivers. Such an approach is difficult to explain in light of the Administration's prior support of these waiver projects and claims of success. Denying a high performance bonus also would punish the very States whose waivers are most innovative and effective, undermine our efforts to shift the focus to outcomes, and severely damage a strong working relationship we have developed with the States. Further, denial of caseload reduction credits and the opportunity to enter into corrective compliance plans may not legally sustainable. Given the limited and indirect regulatory authority, we should exercise some restraint in penalizing States that elect an option available to them under the law.

Deny Relief from Penalties to States that Divert Hard-to-Employ Families from TANF to Avoid Work Participation Requirements	**Work Penalty**	**Other Penalties (13)**
1. Set penalty based on "degree of non-compliance" (option exists for two penalties: work and one other).	Agreed	No Agreement
2. Reasonable cause penalty exception	Agreed	No Agreement
3. Corrective compliance plan (penalty postponed during plan)	No Agreement	No Agreement
4. Reduce penalty (impose "some or all") after state fails to correct violation.	No Agreement	No Agreement

Deny Relief from Penalties to States that Divert Families from TANF to Avoid Federal Collection of Child Support	**Work Penalty**	**Other Penalties (13)**
1. Set penalty based on "degree of non-compliance" (option exists for two penalties: work and one other).	No Agreement	No Agreement
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Deny Relief from Penalties to States that Divert Hard-to-Employ Families from TANF to Avoid Work Participation Requirements

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

Deny Relief from Penalties to States that Divert Families from TANF to Avoid Federal Collection of Child Support

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

TANF PENALTY STRUCTURE
14 Penalties in Statute
(Penalties in shaded boxes are not eligible for reasonable cause or corrective compliance plan.)

1. Misuse of TANF funds	6. Failure to Repay Federal Loan	11. Failure to Maintain Assistance to Parents who Can't Get Child Care for Child under Six and Doesn't Work
2. Failure to Submit Report	7. Failure to meet TANF MOE Requirement	12. Failure to Expend Additional State Funds to Replace Grant Reductions
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Steps to Levying Penalty
Step #1: Establish Penalty
- Secretary levies penalty if she determines a violation has occurred.
- For 12 of the 14 penalties, the amount is listed in the statute.
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- The Secretary will not impose the penalty if the state corrects the violation.
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Scope of Waivers

Type of Policy	
1. Can continue specific waiver granted if new law is "inconsistent"	Agreed
2. Can continue prior law policy for which waiver not specifically granted (e.g., unlimited vocational education, college, more than 6 weeks a year job search)	•
3. Can continue to operate waiver in geographic area no larger than originally authorized.	Agreed
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Availability of TANF Bonuses and Rewards to States Continuing "Inconsistent" Waivers

Type of Policy	
1. Eligible for high performance bonus	•
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how many states using 2 as a loophole?

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WR-work regulations

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Deny Relief from Penalties to States that Divert Hard-to-Employ Families from TANF to Avoid Work Participation Requirements	Work Penalty	Other Penalties (13)
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3. Failure to Meet Participation Rates	Agreed	Agreed		
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12. Failure to Expend Additional State Funds to Replace Grant Reductions				
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Steps to Levying Penalty

Step #1: Establish Penalty

- Secretary levies penalty if she determines a violation has occurred.
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Scope of Waivers

Type of Policy	
1. Can continue specific waiver granted if new law is "inconsistent"	Agreed
2. Can continue prior law policy for which waiver not specifically granted (e.g., unlimited vocational education, college, more than 6 weeks a year job search)	
3. Can continue to operate waiver in geographic area no larger than originally authorized.	
4. Can continue to operate waiver in geographic area no larger than "in effect" or implemented on date of enactment.	

Availability of TANF Bonuses and Rewards to States Continuing "Inconsistent" Waivers

Type of Policy	
1. Eligible for high performance bonus	
2. Eligible for caseload reduction credit.	

Availability of Penalty Relief to States Continuing "Inconsistent" Waivers

Penalty	Set Based on Degree of Non-Compliance	Reasonable Cause Exception	Corrective Compliance Plan	Can be Reduced After Plan Does Not Correct Violation
	If shaded, then not applicable to that penalty.			
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WR - work regulation

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

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

stringent income and resource limitations, time limits).

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

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

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

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

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

working

In implementing this provision, therefore, our primary goals were to: (1) reinforce strongly the work participation requirements of the Act; (2) give States full credit for caseload reductions that result from moving people into work; and (3) avoid categorizations of eligibility changes that would create inadvertent incentives for changes in State policy that were unrelated to work and harmful to vulnerable families. **Thus, we propose to give States credit for caseload reductions except when those caseload reductions arise from changes in eligibility rules that directly affect a family's eligibility for benefits (e.g., more stringent income and resource limitations, time limits, grant reductions, changes in requirements based on residency, age or other demographic or categorical factors). A State need not factor out calculable effects of enforcement mechanisms or procedural requirements that are used to enforce existing eligibility criteria (such as**

fingerprinting or other verification techniques) to the extent that such mechanisms or requirements identify or deter families ineligible under existing rules.

In short, we are seeking to achieve the balance identified by Congress: that a State should receive credit for moving families off welfare, but should not be able to avoid its accountability for work as a result of any changes that restrict program eligibility.

WR - work regulation

WAIVERS

① If state does not meet work or time limits using waivers, deny them the following:

Availability of Penalty Relief to States Continuing "Inconsistent" Waivers

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

② Will consider waivers a factor in high performance bonus → later reg

③ Preamble language re: seek legislation if states using waivers to avoid work + time limits

WR - Work regulation

Cynthia A. Rice 11/12/97 11:53:52 AM

Record Type: Record

To: Elena Kagan/OPD/EOP, Diana Fortuna/OPD/EOP

cc: Laura Emmett/WHO/EOP

Subject: HHS Waivers and Fingerprinting Proposals

Here's my Cliff Notes version of the HHS proposals (Elena, I faxed you the pages):

Waivers:

1) A state that wants to continue inconsistent time limit and work requirement waivers must have the Governor certify which ones, why, and what standards the state will use to assign individuals to alternate work assignments or to grant time limit exemptions or extensions;

2) A state that continues inconsistent waiver policies and still fails the work rate or time limits a) will not be eligible for a reasonable cause penalty exception and b) would have to consider changing their policy as part of the corrective action plan.

3) The Secretary will make public ~~what~~ how states performed compared to other states without waivers.

Fingerprinting:

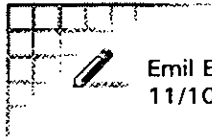
Rule language is as we proposed Monday, but it adds the word "calculable" back in, i.e., "A State need not factor out calculable effects of enforcement mechanisms or procedural requirements....etc.

how would they?
They count everything as work!

#1 #1
I vote for #2,
I vote for maybe
#1 #3
#1 #2 #3

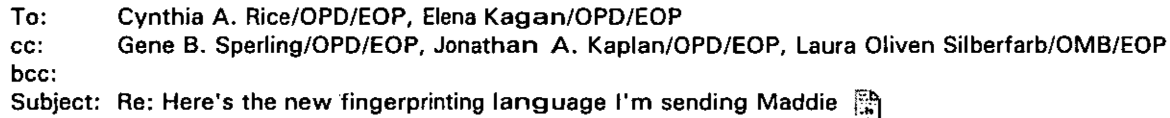
Bang everything -
let it throw out

WR - work regulation



Emil E. Parker
11/10/97 04:32:03 PM

Record Type: Record



To: Cynthia A. Rice/OPD/EOP, Elena Kagan/OPD/EOP
cc: Gene B. Sperling/OPD/EOP, Jonathan A. Kaplan/OPD/EOP, Laura Oliven Silberfarb/OMB/EOP
bcc:
Subject: Re: Here's the new fingerprinting language I'm sending Maddie

While "significant" is gone, the language now no longer reflects my understanding of the agreement reached at last week's meeting.

The regulation now makes no reference to procedural changes that delay or deny eligibility, which is of course the heart of the matter here. The word "calculable" has also been dropped; this was an essential aspect of the agreement.

Perhaps the most distressing change is the omission from the preamble language of the requirement that States, in order to get caseload reduction credit, demonstrate through case studies, sampling or other reliable techniques that the mechanisms resulted in the identification of ineligible families or the deterrence of such families from applying.

This was the agreement. The revised version of the fingerprinting language essentially represents the initial DPC position.

We at NEC do not view this version as acceptable and we do not want it represented as an EXOP position. Please advise me of the status.

Cynthia A. Rice

Cynthia A. Rice 11/10/97 03:39:32 PM

Record Type: Record

To: Laura Oliven Silberfarb/OMB/EOP, Emil E. Parker/OPD/EOP, Anil Kakani/OMB/EOP, Diana Fortuna/OPD/EOP

cc:
Subject: Here's the new fingerprinting language I'm sending Maddie

tanf101b.wp New changes are shadowed (and either struck through or underlined),

"Significantly" is gone, Emil.

WR - work regulation

DIVERSION TO STATE-ONLY PROGRAMS

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

REG LANGUAGE:

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

Here is the language HHS has already agreed to:

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

Possible revision:

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

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

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

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

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

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

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

[Note: same penalties as under reasonable cause.]

PREAMBLE LANGUAGE:

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

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

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

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

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

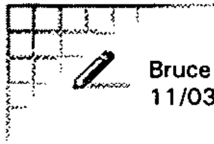
Work Rates: Proposal Would Deny the Following Relief from Penalties to States that Divert Hard-to-Employ Families from TANF to Avoid Work Participation Requirements

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

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

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

wr - work regulation



Bruce N. Reed
11/03/97 09:17:53 AM

Record Type: Record

To: Diana Fortuna/OPD/EOP
cc: Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP, Laura Emmett/WHO/EOP
bcc:
Subject: Re: TANF reg fingerprinting issue

Their arguments make about as much sense as this morning's Post story, which contends that welfare reform won't succeed in moving people from welfare to work because they already work a few hours a week off the books, so why should they work more. Fingerprinting is not an eligibility change -- everybody has fingerprints. Anyone can take a drug test. Drug testing and fingerprinting may or may not be a good idea, but I just don't know how we could say with a straight face to a state that they don't get credit for taking non-discriminatory steps to remove people who weren't legally eligible to begin with.

Diana Fortuna

Not changing eligibility standards - enforcing elig standards.

05:49:35 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP
cc: Cynthia A. Rice/OPD/EOP, Laura Emmett/WHO/EOP
Subject: TANF reg fingerprinting issue

FYI, we have made remarkably little progress on this issue, and it may end up getting elevated. Just to remind you, this is the issue where HHS wants to count fingerprinting, drug testing, and whole grant sanctions as eligibility decreases, and give states that initiate use of these tools a smaller caseload reduction credit.

HHS has several arguments.

- First, the law says that eligibility decreases must be factored out of the credit, and they say fingerprinting was explicitly identified as a condition of eligibility in AFDC. Therefore, they argue that it's hard to say it's not an eligibility change for this purpose. We are working on this question.
- Second, they concede that some of the 10-20% caseload reduction that results from fingerprinting does reflect rooting out fraud, but they argue that much of it is simply an extra administrative hurdle that causes many people to fall by the wayside. Also, Emil Parker argues against us on this, making the argument that many poor people are generally frightened of fingerprinting and other police-like actions.
- Finally, they argue (as we do on other issues) that we are just talking about the caseload reduction credit here. States are still free to fingerprint, and they will benefit in other ways if they do -- with money saved, and with a smaller base of people to whom the work participation rates are applied.

Carry standard into battle?

WR - work regulation

Record Type: Record

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

cc: Cynthia A. Rice/OPD/EOP, Laura Emmett/WHO/EOP
Subject: Issue in TANF reg

We need your call on whether to cave on one of the TANF reg issues. (Elena, it's "6b.") Bruce, you had earlier expressed not much interest in it, but we have a somewhat crisper understanding of it than we once did, so I want to make sure we have our marching orders.

HHS's draft rightly requires states to include both TANF and state-only programs in its caseload reduction credit calculation. However, we have been pushing them to drop language that invites states to exclude from the CRC calculation some or all families in a state-only program "based on the nature of benefits provided."

What HHS is trying to do here is to encourage states to set up programs that support the working poor through state EITC's, or child care or transportation subsidies WITHOUT making them subject to time limits. HHS is worried that states will be discouraged from doing so because any new people added will give them a smaller caseload reduction credit.

I have not been that sympathetic, because states have two pretty good alternatives. They can either classify these as TANF benefits, especially since these folks are actually working, which makes people subject to time limits. Or they can do this in a state-only program free from time limits, and accept a smaller caseload reduction credit. On the other hand, this is a complex issue to elevate. What do you think?

BR - I can go either way

W.R.-work regulations

4b - based on nature of benefits - anything on specificity??

Issues

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

* To elevate

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

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

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

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

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

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

b) Eliminate the option for the Secretary to reduce the penalty on a state that has failed to correct a violation through a corrective compliance plan if a state expended more resources, made substantial progress, or encountered circumstances that could not have been anticipated.

4. **Child Only Cases** -

See new option

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

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

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

6. **Caseload Reduction Factor** -

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

We'll cave

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

Treat fingerprinting differently?

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

* To elevate

7. **Waivers** -

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

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

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

?

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

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

Elevate to Rames

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

10/26/97

Domestic Violence and the Five Year Time Limit

Tentatively Agreed-to Definition:
A "good cause domestic violence waiver" is defined in § 270.30 as one that is: "granted appropriately based on need as determined by an individualized assessment; temporary, for a period not to exceed six months [they can, however, be renewed]; and accompanied by an appropriate services plan designed to provide safety and lead to work."

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

Their Proposal
Adds these new sections regarding domestic violence and time limits:

Insert #1: "States must grant good cause domestic violence waivers appropriately, which, in ~~the~~ this context means there must be a need to exceed the time limit for a given family. We do not expect that many such cases will arise; however, we recognize that there are instances where an extension is necessary. For example, if a recipient suffers a recurrence of domestic violence toward the end of the five-year period, the State must waive the time limit in order to provide the services she now needs."

Insert #2: "A State must grant good cause domestic violence waivers appropriately, in accordance with the criteria specified at §270.30. If a State fails to meet the criteria specified for "good cause domestic violence waivers" specified at §270.30, the Secretary will not grant reasonable cause under this paragraph."

A Possible Counter-Proposal
Option #1: Revise Insert #2 as follows:
"A State must grant good cause domestic violence waivers appropriately, in accordance with the criteria specified at §270.30. The need for the waiver, as defined in §270.30, must specifically apply to the need for a time limit extension; the Secretary will not automatically consider the granting of a good cause domestic violence waiver for work participation to be sufficient grounds for a time limit extension. If a State fails to meet the criteria specified for "good cause domestic violence waivers" specified at §270.30, the Secretary will not grant reasonable cause under this paragraph."

why not?

Option #2: Revise Insert~~-#2-~~as follows:
"A State must grant good cause domestic violence waivers appropriately, in accordance with the criteria specified at §270.30. The need for the waiver, as defined in §270.30, must specifically apply to the need for a time limit extension; the Secretary will not automatically consider the granting of a good cause domestic violence waiver for work participation to be sufficient grounds for a time limit extension. Because the Secretary does not expect many such cases to arise, she will not grant reasonable cause under this paragraph for more than 20 percent of the good cause domestic violence waivers granted by the State for work participation, and she will not grant reasonable cause for waivers ~~I~~if a State fails to meet the criteria specified for "good cause domestic violence waivers" specified at §270.30~~, the Secretary will not grant reasonable cause under this paragraph."~~

rationale?
why 20%?

Make last six months a requirement??

Child Only Cases

Add the following language:

States have flexibility to define the term "families receiving assistance that include an adult or a minor child head of household" as used in Section 407(b)(1)(B)(i) and the term used in Section 408(a)(7)(A) and (B) -- "a family that includes an adult who has received assistance" who is not "a minor child; and not the head of household or married to the head of household."

However, under no circumstances shall states exclude families from these categories for the purpose of avoiding the work participation rates or time limits.

States shall report annually to HHS on the number of families excluded from the calculation in Section 407(b)(1)(B)(i) and Section 408(a)(7)(A) and (B) including an estimate of the number of families excluded because the parent or legal guardian is unable to care for the child, the parent is receiving assistance under SSI, the parent is not eligible for TANF because of the application of other parts of this law, and other causes.

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

GOOD

Work Penalties Structure

Assume a state with a block grant of $100 million with a $5 million or 5 percent top penalty for missing the work participation rate, 95% of caseload in single parent families and 5% in two parent families, an overall participation rate of 30 percent, and a two parent rate of 75 percent.

	OVERALL PARTICIPATION RATE		TWO PARENT PARTICIPATION RATE	
	HHS Revised Proposal	**Possible Counteroffer**	**HHS Revised Proposal**	**Possible Counteroffer**
Step #1: Establish Penalty based on Degree of Non-Compliance				
Example A: If state did not achieve 90% of the work participation rate (e.g. participation rate was lower than 27% for overall caseload and 67.5% for two parent):	The penalty is $4.5 million. [The smaller of $4.5 million or $4.75 million, i.e., the smaller of ($5 million x .9) or ($5 million x .95, the percent of caseload that is non-two parent families)]	The penalty is $5 million.[1] [Full penalty imposed if state falls below 90% threshold].	The penalty is $.5 million [The larger of $.5 million or $.25 million, i.e. the larger of ($5 million x .1) or ($5 million times .05, the percent of caseload that are two parent families)]	The penalty is $.25 million [Equal to $5 million times .05, the percent of the caseload that are two parent families.][2]
Example B: If state achieved 95% of the work participation rate (e.g. 28.5% for overall and 71.25% for two parent):	The penalty is $2.25 million. [The maximum penalty -- in this case $4.5 million -- is reduced in half because state achieved half the difference between the required rate and the threshold.]	The penalty is $2.5 million. [The maximum penalty -- in this case $5 million -- is reduced in half because state achieved half the difference between the required rate and the threshold.]	The penalty is $.25 million. [The maximum penalty -- in this case $.5 million -- is reduced in half because state achieved half the difference between the required rate and the threshold.]	The penalty is $.125 million. [The maximum penalty -- in this case $.25 million -- is reduced in half because state achieved half the difference between the required rate and the threshold.]

where does this come from?

[1] If state fails overall and two parent rate, the maximum total penalty shall be $5 million.

[2] HHS argues that although this option is simpler and, one could argue, fairer to states with very small two parent caseloads, their minimum 10 percent penalty would be better because it would a) signal that we're serious about two parent work rates, and b) not discourage states from adopting pro-family welfare policies which increase the number of two parent families on the rolls.

	OVERALL PARTICIPATION RATE		TWO PARENT PARTICIPATION RATE	
	HHS Revised Proposal	**Possible Counteroffer**	**HHS Revised Proposal**	**Possible Counteroffer**
Step #2: Consider Reasonable Cause				
The Secretary may waive the penalty if she determines the state had reasonable cause, defined in the regulation as:	Failing because of: 1) Granting of good cause domestic violence waivers; 2) Natural disasters; 3) Formally issued federal guidance that was incorrect 4) "Isolated, non-recurring problems of minimal impact that are not indicative of a systemic problem" 5) Due to provision of assistance to refugees in a federally-approved alternative project.	Same What is This?	Same	Same
Step #3: Enter into Corrective Compliance Plan				
A state may accept the penalty or file within two months a corrective compliance plan. The state shall not be penalized while under the plan, which many last no longer than six months. Such plans must include:	1) A complete analysis of why the state did not meet the requirements; 2) A detailed description of how the state will correct or discontinue, as appropriate, the violation in a timely manner; 3) The milestones, including interim process and outcome goals, the State will achieve to assure it comes into compliance within the specified time period; 4) A certification by the Governor that the state is committed to correcting or discontinuing the violation in accordance with the plan.	Same	Same	Same

	OVERALL PARTICIPATION RATE		TWO PARENT PARTICIPATION RATE	
	HHS Revised Proposal	**Possible Counteroffer**	**HHS Revised Proposal**	**Possible Counteroffer**
Step #4: After Corrective Compliance Plan, Secretary Can Reduce Penalty				
To receive a reduced penalty, the state must have:	1) Had a natural disaster or regional recession, to which failure was attributable;	Same.	Same.	Same.
	2) Made substantial progress towards correcting or discontinuing the violation Why 25?	Option 2a): A state shall have its penalty reduced by the percentage by which it increased its participation rate (e.g., a state that increased its participation rate from 20 to 24 percent shall reduce its penalty by 20 percent (4/20)); Option 2b) A state shall have its penalty reduced by the percentage that it reduced the gap between its participation rate before the plan and the required rate (e.g., a state that increased the overall rate from 20 to 24 percent shall reduce its penalty by 40 percent (4/10)); Option 2c): A state that increased its participation rate by 25 percent or more shall have its penalty reduced at the discretion of the Secretary. Option 2d) A state that did not achieve 90 percent of the participation rate shall receive the full penalty. A state that achieved 90 percent of the participation rate shall have its penalty reduced at the discretion of the Secretary.	2) Made substantial progress towards correcting or discontinuing the violation.	Option 2a): A state shall have its penalty reduced by the percentage by which it increased its participation rate (e.g., a state that increased its participation rate from 20 to 24 percent shall reduce its penalty by 20 percent (4/20)); Option 2b) A state shall have its penalty reduced by the percentage that it reduced the gap between its participation rate before the plan and the required rate (e.g., a state that increased the overall rate from 20 to 24 percent shall reduce its penalty by 40 percent (4/10)); Option 2c): A state that increased its participation rate by 25 percent or more shall have its penalty reduced at the discretion of the Secretary. Option 2d) A state that did not achieve 90 percent of the participation rate shall receive the full penalty. A state that achieved 90 percent of the participation rate shall have its penalty reduced at the discretion of the Secretary.

w/r-work regulation

1 wp

ISSUE 1: PENALTY; DIVERSION TO SEPARATE STATE PROGRAM (3 subissues)

Issue 1 a): In order to enter into corrective compliance plan for any violation or to receive a reduction in penalties after failing to correct a violation, a state must prove that it did not divert families to a separate state program for the purpose of avoiding work participation rates.

Why it's important: In order to maintain the law's strong work requirements, states should not receive a break on any of the 14 penalties if it has diverted families to a separate state program to avoid the work participation rates.

Justification for change:

- HHS agreed in January that states shall not receive any mitigation in penalty unless the state showed it has not used its own program to escape the force of the work participation rates (was in memo to the President).

- This proposed regulation has the opposite effect by allowing states that have diverted families to postpone penalties through the corrective compliance plan and to receive reduced penalties for states that fail to correct a violation.

- It is critical that states are prevented from receiving a break on penalties for any type of violation if they have diverted families to state only programs for the purpose of avoiding the work rates. That's because a state that successfully diverted families to state only programs to avoid the work rates will not be subject to a work participation rate penalty.

- What HHS has agreed to so far -- tying proof of non-diversion to granting of reasonable cause and reductions in the work penalty due to degree of non-compliance -- is not enough.

What does diversion mean?
try to define?
Threshold?

Not based on purpose -
or: % cases should lead
to presumption

ISSUE 1 CONTINUED: PENALTY; DIVERSION TO SEPARATE STATE PROGRAM

HHS feels strongly

Issue 1 b): In order for a state to be eligible to receive a reasonable cause penalty exception, to enter into a corrective compliance plan, or to receive reduced penalties or a penalty based on degree of non-compliance, a state must prove that it did not divert families to a separate state program for purposes of preventing the federal collection of child support.

Why it's important: If states move families with child support collections to separate state programs, the federal government will no longer receive its share of those collections, even though the federal government paid for 66 percent of the child support operating costs.

Justification for change:

- Congress never envisioned that the new welfare law would reduce the federal collection of child support, and this regulatory provision is the best way to ensure that this does not happen.
- States want to take a "wait and see" attitude -- however, in the food stamp program, we've found that the federal government is never able to collect funds after the fact that should not have gone to states.

Issue 1 c) Include in the MOE data report information on whether individuals served in the separate state program were on TANF within the last six months and other information to help the Secretary determine if diversion has occurred.

Why it's important: If we do not collect information to determine if a state has diverted families to separate state programs to avoid the federal collection of child support or to avoid the work rates, we will not be able to enforce these provisions.

burden of proof imp — make clear in reg.

Justification for change:

- We must have data in order to enforce these provisions.
- In particular, asking states to report how many families were moved from TANF to separate state programs within a six month period will give us direct evidence of whether diversion is occurring.
- HHS should also specify other data in the regulation that will ensure compliance.

Possible Counter-Arguments:

- HHS says that asking state program participants about past TANF use would violate their privacy.
- We disagree -- the state MOE data report already contains questions asking about food stamp use.
- In addition, we've limited the question to TANF use in the last six months to avoid collecting unnecessary data.

also - need to know elig criteria for the state-only programs

ISSUE 2; PENALTY; THRESHOLD LEVEL

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

Why it's important: To enforce the law's work requirements.

Justification for change:

- Only states that are very close to meeting the work participation rates -- within 10 percent -- should be eligible for a reduced penalty.

Possible counter-arguments:

- A threshold of 90 percent rather than 75 percent will impose the full penalty on nearly every state because they've failed to meet the two parent work participation rate.

- HHS has already come a long way by agreeing that states that fail to achieve a certain level of compliance with the work participation rates shall have the full penalty imposed -- all they're asking for is a 75 rather than 90 percent threshold. (States exceeding the threshold shall receive a reduction based on a sliding penalty scale defined in the regulation, which will impose a smaller penalty on those states that only fail the two parent rate). ok?

Proposed compromise: Set threshold at 90 percent (or somewhere between 75 and 90 percent) but provide a break for states failing the threshold for two parent family work rate as follows: The penalty for failing to reach 75 or 90 percent of the two parent work rate shall be the penalty times the percent of TANF families in the state that are two parent families. States that fail to achieve the threshold for their overall work rate shall be levied the full penalty.

Offer this

not full penalty
(even if it comes into play)

come back to it?

ISSUE 3: PENALTY: CORRECTIVE COMPLIANCE PLAN (2 subissues)

Issue 3 a): Reduce the amount of time that States have to complete corrective actions from 12 to 6 months.

Why it's important: A 12 month corrective compliance plan means that a state would not be subject to penalties for violations in year one of the program until year three of the program.

Justification for change:

- Twelve months is a very long time for states to avoid a penalty for something as easily fixable as having exempting too many families from the five year time limit or for misusing funds.

- It has been very clear to states for a long time what work participation rates they will have to meet. Giving them an additional 12 months after the fact to come into compliance seems excessive.

Possible counter-arguments:

- Since states by statute are given two months to file their corrective compliance plans, they in reality have only 10 months to correct under HHS's proposal. A six month corrective compliance plan would therefore give states only four months under the plan to comply.

Possible compromise: Let them keep the corrective compliance plan at 12 months only if they agree to issue 3 b) limiting the Secretary's ability to reduce penalties for a state that has failed to correct the violation while the corrective compliance plan was in effect. how abt 8 mos?

** **Issue 3 b) Eliminate the option for the Secretary to reduce the penalty on a state that has failed to correct a violation through a corrective compliance plan if a state expended more resources, made substantial progress, or encountered circumstances that could not have been anticipated.** HHS feels strongly

Why it's important: This provision gives the Secretary tremendous flexibility in reducing penalties for states after they've failed to correct the violation through a corrective compliance plan. It is the "weakest link" in the penalty structure.

Justification for change:

- Rewarding states simply for expending more funds without producing results contradicts the outcome-oriented focus of this program.
- It makes no sense to allow the Secretary to reduce work penalties for "substantial compliance" since the penalty was originally set based on "degree on non-compliance."
- "Encountered circumstances that could not have been anticipated" is an enormous loophole.

Possible Counter-Argument: HHS will probably note that they have offered to amend the language so that it says "expended significantly more resources", made "substantial progress" and "encountered overriding circumstances that were beyond its control and could not have been anticipated."

ISSUE 4: CHILD ONLY CASES (2 subissues) **

Issue 4 a): The Secretary will analyze data on a state's child-only cases to determine if the state has reclassified cases as child-only in order to avoid penalty for failure to meet the fiscal year work participation rate or for exceeding the 20% hardship exemption for the five year time limit. If the Secretary finds that the state has reclassified cases for this purpose, she will include the reclassified cases in the calculation of the state's work participation rate and hardship exemption.

Why it's important: Since child only cases are exempt from the work rates and time limits, it's important to ensure states don't reclassify families for the purpose of avoiding work and time limit requirements.

Justification for change:

- The Secretary has the authority through penalties to ensure that states are actually meeting the work participation and time limit rules for families served under TANF.
- If the Secretary allows states to reclassify families as child only in order to escape the work and time limits, then her authority to enforce the entire provisions is meaningless.

Issue 4 b): The regulation will identify which data elements will allow the Secretary to make this determination.

Why it's important: This is necessary to enforce the policy discussed above.

HHS feels strongly

ISSUE 5: DOMESTIC VIOLENCE

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

Why it's important: This policy could result in a majority of the caseload being exempt from the five year time limit (if 30 percent of the caseload were exempted because they were victims of domestic violence, above and beyond the 20 percent now allowed).

Justification for change:

- Our goal should be to help this vulnerable group of welfare recipients achieve self-sufficiency -- that is why we have placed a priority on providing services to help prepare them for the workplace.

- We agree that it may be necessary to grant temporary waivers from the work rates for these women. But allowing states to exempt them from the five year time limit above and beyond the 20 percent cap will simply encourage states to "write off" this vulnerable population and not serve them.

- This policy sends the signal that domestic violence is a permanently debilitating condition.

Possible counter-arguments:

- HHS will argue that it will be particularly difficult for us to win over certain advocates unless we include this policy.

Six-months more?

6a + 6b not imp to BR

ISSUE 6: CASELOAD REDUCTION FACTOR (3 subissues)

Issue 6 a): Remove the provision that would provide states with a choice of applying the two parent caseload reduction or the overall caseload reduction as a credit to the two parent work participation rate.

Why it's important: Unless this provision is removed, states will be able to significantly lower the work rate that applies to two parent families.

Justification for change: There is no reason to allow states to use the overall caseload reduction to reduce the two parent work rates.

Possible counter-arguments: If we make it so difficult for states to meet the two parent work rates, they will have an even greater incentive to bifurcate their caseloads, and move two parent cases to the state only program.

Issue 6 b): Remove the provision that would allow states to exclude "based on nature of benefits provided" some or all families in the separate State program when comparing a given year's caseload to that from FY 1995.

Why it's important: The clause now included in the reg invites states to submit reasons why their caseload credit should be higher, and their work rates lower, because they spent their state-only dollars in innovative ways. To preserve the law's tough work rates and discourage bifurcation, we should include all TANF and state only cases when comparing the caseloads to FY 1995 levels.

Agreed to !!

Justification for change:

- We have already excluded non-cash and one-time assistance from the caseload reduction calculation. exactly
- Allowing states to nominate other categories risks ending up with vastly bloated caseload reduction credits, and much reduced work rates.

what is this?

Issue 6 c): Fingerprinting, drug testing, and whole grant sanctions shall not be considered eligibility changes that must be disregarded for purposes of calculating the caseload reduction factor. This will be accomplished by listing eligibility changes in the regulation without listing these items and making clear on the Caseload Reduction Report form that these policies are not eligibility changes.

Why it's important: We support fingerprinting, drug testing, and sanctions and do not want to discourage states from using them.

Justification for change: These are legitimate reasons for caseloads to have declined, and we should reward states that catch fraud, not punish them.

True — Possible counter-arguments: HHS will argue, correctly, that the end result of this policy will be to make it much easier for states to meet the work participation rates.

** 7a, b, c.

ISSUE 7: WAIVERS (5 subissues)

Issue 7 a): A state that continues a waiver inconsistent with PRWORA's time limits or work requirements shall not be eligible for a high performance bonus or a caseload reduction credit.

Why it's important: This will discourage states from continuing waivers that weaken the work rates and time limits of the new law.

Justification for change:

- States that operate under the old, less stringent rules should not be eligible for rewards for performance or a reduction in the work rates through a caseload reduction credit.
- HHS has already proposed in the reg to deny states a high performance bonus and a caseload reduction credit if they do not submit data on their state only programs -- thus, they clearly believe that the authority exists. ✓

Possible counter-arguments:

- HHS may argue that the statute says the Secretary shall encourage states to continue waivers and that this policy would run counter to that.
- We believe a more accurate reading of the statute is that the Secretary shall encourage states to continue to evaluate waivers that they do continue. (The statute actually says: "The Secretary shall encourage any state operating a waiver described in subsection (a) to continue the waiver and to evaluate, using random sampling and other characteristics of accepted scientific evaluations, the result or effect of the waiver.")
- The Secretary has already encouraged states to continue evaluated waivers by providing federal grants for these evaluations and has thus fulfilled the obligations in the statute.

Issue 7 b): A state that continues a waiver inconsistent with PRWORA's time limits or work requirements shall not be eligible to receive a reasonable cause penalty exception, to enter into a corrective compliance plan, or to receive reduced penalties or a penalty based on degree of non-compliance.

Why it's important: This will discourage states from continuing waivers that weaken the work rates and time limits of the new law.

Justification for change:

- States that operate under the old, less stringent rules should not be eligible to receive reduced penalties if they fail to meet the work participation or other rules.
- HHS has already agreed to require states to prove that they did not divert families to separate state programs in order to receive a reasonable cause penalty exception or a reduced penalty based on degree of non-compliance. Thus, they clearly believe that the authority exists. (i.e., to condition penalty exception)

ISSUE 7: WAIVERS CONTINUED

Issue 7 c): Prior law definitions of work activities may not be continued under waivers.

Why it's important: Without this change, states could continue waivers allowing unlimited job search and vocational education as work.

Justification for change: Because prior law treated vocational education and job search differently, different arguments must be made for each:

Vocational education:

- HHS argues that states should not be able to continue prior law exemptions from the denominators of the participation rates (e.g. should not be able to exclude all disabled from the work participation calculation) because "we have never granted a waiver of a participation rate itself" and "we have never granted a waiver that added new exemptions from the work requirements."

- We think this same argument should apply to vocational education, which was unlimited in prior law and which states therefore never needed waivers to use as part of their programs.

- Our argument is strengthened by the fact that the final report language stated that "program features of the state program not specifically covered by the waiver must conform to this part."

- As a result, the new law's limitation of only counting vocational education for 12 months for any individual should still apply in all states.

Job Search

- Prior law did have a limit on job search (no more than 4 months of job search could count as work participation in a given year).

- States that received waivers specifically exempting them from that requirement can continue them.

- However, states whose waivers do not specifically cite the section of prior law limiting job search should not be allowed to continue the prior law's "4 months in 12 months" job search rule in lieu of the new law's "6 weeks in 12 months" rule.

- HHS argues that states should be able to continue parts of prior law that were integral parts of the demonstration embodied in the waiver "only if their inclusion were necessary to achieve the objective of the approved waiver."

- The objective of states that got welfare reform waivers that did not specifically waive the job search limitations was to put more people to work, not to allow more job search.

- Our argument is strengthened by the fact that the final report language stated that "program features of the state program not specifically covered by the waiver must conform to this part."

ISSUE 7: WAIVERS CONTINUED

Issue 7 d): Waivers that are inconsistent can only be continued in the same geographic areas as they were originally approved in the waiver and were in effect on date of enactment.

Why it's important: This will help limit the influence of the waiver provision by ensuring that states cannot expand sub-state waivers -- or waivers that were implemented only substate in August 1996 -- statewide. For example, Virginia planned to take four years (from June 1995) to phase-in its time limit waiver policy -- which has many more exemptions than current law -- in different regions of the state.

Justification for change:

- The final report language states that "All geographic areas of the States... not specifically covered by the waiver must conform to this part."
- The statute itself refers throughout to waivers "in effect as of date of enactment" of the new law. We interpret "in effect" to mean the waiver as implemented on date of enactment.

Possible counter-arguments: The conference report also says "waivers may only apply to the geographic areas of the State and to the specific program features for which the waiver was granted." HHS could argue that the phrase "was granted" applies to "geographic areas" and thus it is the waiver "as granted" not "in effect" that matters.

Issue 7 e): In order to continue a waiver inconsistent with PRWORA's time limits or work requirements, the state must notify the Secretary in writing in a letter signed by the governor.

Why it's important: Requiring the governor himself to state in writing that he wants to continue the weaker waiver rules will discourage some states from continuing their waivers.

Justification for change: HHS has been willing to do require the same type of letter in order for a state to enter into a corrective action plan, so they should agree to this.

ISSUE 8: ADMINISTRATIVE COSTS

Issue 8: Include case management and eligibility determination in the definition of administrative costs.

Why it's important: OMB will argue that the 15 percent cap on administrative expenses was included in the statute to ensure that TANF funds are used to promote work and self-sufficiency, not increase state bureaucracies.

Justification for change: OMB will argue that eligibility determination and case management as traditionally defined are administrative costs.

Possible counter-arguments: HHS will argue that they've already agreed to include a long list of items in the definition of administrative costs, and that case management and eligibility determination should be excluded in TANF because they are excluded in JTPA and this definition will also be used for the Department of Labor's Welfare to Work grants operated by the JTPA system.

WR - work regulation

ISSUE 1: PENALTY; DIVERSION TO SEPARATE STATE PROGRAM (3 subissues)

Issue 1 a): In order to enter into corrective compliance plan for any violation or to receive a reduction in penalties after failing to correct a violation, a state must prove that it did not divert families to a separate state program for the purpose of avoiding work participation rates.

Why it's important: In order to maintain the law's strong work requirements, states should not receive a break on any of the 14 penalties if it has diverted families to a separate state program to avoid the work participation rates.

Justification for change:

- HHS agreed in January that states shall not receive any mitigation in penalty unless the state showed it has not used its own program to escape the force of the work participation rates (was in memo to the President).
- This proposed regulation has the opposite effect by allowing states that have diverted families to postpone penalties through the corrective compliance plan and to receive reduced penalties for states that fail to correct a violation.
- It is critical that states are prevented from receiving a break on penalties for any type of violation if they have diverted families to state only programs for the purpose of avoiding the work rates. That's because a state that successfully diverted families to state only programs to avoid the work rates will not be subject to a work participation rate penalty.
- What HHS has agreed to so far -- tying proof of non-diversion to granting of reasonable cause and reductions in the work penalty due to degree of non-compliance -- is not enough.

ISSUE 1 CONTINUED: PENALTY: DIVERSION TO SEPARATE STATE PROGRAM

Issue 1 b): In order for a state to be eligible to receive a reasonable cause penalty exception, to enter into a corrective compliance plan, or to receive reduced penalties or a penalty based on degree of non-compliance, a state must prove that it did not divert families to a separate state program for purposes of preventing the federal collection of child support.

Why it's important: If states move families with child support collections to separate state programs, the federal government will no longer receive its share of those collections, even though the federal government paid for 66 percent of the child support operating costs.

Justification for change:

- Congress never envisioned that the new welfare law would reduce the federal collection of child support, and this regulatory provision is the best way to ensure that this does not happen.
- States want to take a "wait and see" attitude -- however, in the food stamp program, we've found that the federal government is never able to collect funds after the fact that should not have gone to states.

Issue 1 c) Include in the MOE data report information on whether individuals served in the separate state program were on TANF within the last six months and other information to help the Secretary determine if diversion has occurred.

Why it's important: If we do not collect information to determine if a state has diverted families to separate state programs to avoid the federal collection of child support or to avoid the work rates, we will not be able to enforce these provisions.

Justification for change:

- We must have data in order to enforce these provisions.
- In particular, asking states to report how many families were moved from TANF to separate state programs within a six month period will give us direct evidence of whether diversion is occurring.
- HHS should also specify other data in the regulation that will ensure compliance.

Possible Counter-Arguments:

- HHS says that asking state program participants about past TANF use would violate their privacy.
- We disagree -- the state MOE data report already contains questions asking about food stamp use.
- In addition, we've limited the question to TANF use in the last six months to avoid collecting unnecessary data.

ISSUE 2: PENALTY; THRESHOLD LEVEL

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

Why it's important: To enforce the law's work requirements.

Justification for change:

- Only states that are very close to meeting the work participation rates -- within 10 percent -- should be eligible for a reduced penalty.

Possible counter-arguments:

- A threshold of 90 percent rather than 75 percent will impose the full penalty on nearly every state because they've failed to meet the two parent work participation rate.

- HHS has already come a long way by agreeing that states that fail to achieve a certain level of compliance with the work participation rates shall have the full penalty imposed -- all they're asking for is a 75 rather than 90 percent threshold. (States exceeding the threshold shall receive a reduction based on a sliding penalty scale defined in the regulation, which will impose a smaller penalty on those states that only fail the two parent rate).

Proposed compromise: Set threshold at 90 percent (or somewhere between 75 and 90 percent) but provide a break for states failing the threshold for two parent family work rate as follows: The penalty for failing to reach 75 or 90 percent of the two parent work rate shall be the penalty times the percent of TANF families in the state that are two parent families. States that fail to achieve the threshold for their overall work rate shall be levied the full penalty.

ISSUE 3: PENALTY: CORRECTIVE COMPLIANCE PLAN (2 subissues)

Issue 3 a): Reduce the amount of time that States have to complete corrective actions from 12 to 6 months.

Why it's important: A 12 month corrective compliance plan means that a state would not be subject to penalties for violations in year one of the program until year three of the program.

Justification for change:

- Twelve months is a very long time for states to avoid a penalty for something as easily fixable as having exempting too many families from the five year time limit or for misusing funds.

- It has been very clear to states for a long time what work participation rates they will have to meet. Giving them an additional 12 months after the fact to come into compliance seems excessive.

Possible counter-arguments:

- Since states by statute are given two months to file their corrective compliance plans, they in reality have only 10 months to correct under HHS's proposal. A six month corrective compliance plan would therefore give states only four months under the plan to comply.

Possible compromise: Let them keep the corrective compliance plan at 12 months only if they agree to issue 3 b) limiting the Secretary's ability to reduce penalties for a state that has failed to correct the violation while the corrective compliance plan was in effect.

Issue 3 b) Eliminate the option for the Secretary to reduce the penalty on a state that has failed to correct a violation through a corrective compliance plan if a state expended more resources, made substantial progress, or encountered circumstances that could not have been anticipated.

Why it's important: This is provision gives the Secretary tremendous flexibility in reducing penalties for states after they've failed to correct the violation through a corrective compliance plan. It is the "weakest link" in the penalty structure.

Justification for change:

- Rewarding states simply for expending more funds without producing results contradicts the outcome-oriented focus of this program.
- It makes no sense to allow the Secretary to reduce work penalties for "substantial compliance" since the penalty was originally set based on "degree on non-compliance."
- "Encountered circumstances that could not have been anticipated" is an enormous loophole.

Possible Counter-Argument: HHS will probably note that they have offered to amend the language so that it says "expended significantly more resources", made "substantial progress" and "encountered overriding circumstances that were beyond its control and could not have been anticipated."

ISSUE 4: CHILD ONLY CASES (2 subissues)

Issue 4 a): The Secretary will analyze data on a state's child-only cases to determine if the state has reclassified cases as child-only in order to avoid penalty for failure to meet the fiscal year work participation rate or for exceeding the 20% hardship exemption for the five year time limit. If the Secretary finds that the state has reclassified cases for this purpose, she will include the reclassified cases in the calculation of the state's work participation rate and hardship exemption.

Why it's important: Since child only cases are exempt from the work rates and time limits, it's important to ensure states don't reclassify families for the purpose of avoiding work and time limit requirements.

Justification for change:

- The Secretary has the authority through penalties to ensure that states are actually meeting the work participation and time limit rules for families served under TANF.

- If the Secretary allows states to reclassify families as child only in order to escape the work and time limits, then her authority to enforce the entire provisions is meaningless.

Issue 4 b): The regulation will identify which data elements will allow the Secretary to make this determination.

Why it's important: This is necessary to enforce the policy discussed above.

ISSUE 5: DOMESTIC VIOLENCE

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

Why it's important: This policy could result in a majority of the caseload being exempt from the five year time limit (if 30 percent of the caseload were exempted because they were victims of domestic violence, above and beyond the 20 percent now allowed).

Justification for change:

- Our goal should be to help this vulnerable group of welfare recipients achieve self-sufficiency -- that is why we have placed a priority on providing services to help prepare them for the workplace.
- We agree that it may be necessary to grant temporary waivers from the work rates for these women. But allowing states to exempt them from the five year time limit above and beyond the 20 percent cap will simply encourage states to "write off" this vulnerable population and not serve them.
- This policy sends the signal that domestic violence is a permanently debilitating condition.

Possible counter-arguments:

- HHS will argue that it will be particularly difficult for us to win over certain advocates unless we include this policy.

ISSUE 6: CASELOAD REDUCTION FACTOR (3 subissues)

Issue 6 a): Remove the provision that would provide states with a choice of applying the two parent caseload reduction or the overall caseload reduction as a credit to the two parent work participation rate.

Why it's important: Unless this provision is removed, states will be able to significantly lower the work rate that applies to two parent families.

Justification for change: There is no reason to allow states to use the overall caseload reduction to reduce the two parent work rates.

Possible counter-arguments: If we make it so difficult for states to meet the two parent work rates, they will have an even greater incentive to bifurcate their caseloads, and move two parent cases to the state only program.

Issue 6 b): Remove the provision that would allow states to exclude "based on nature of benefits provided" some or all families in the separate State program when comparing a given year's caseload to that from FY 1995.

Why it's important: The clause now included in the reg invites states to submit reasons why their caseload credit should be higher, and their work rates lower, because they spent their state-only dollars in innovative ways. To preserve the law's tough work rates and discourage bifurcation, we should include all TANF and state only cases when comparing the caseloads to FY 1995 levels.

Justification for change:

- We have already excluded non-cash and one-time assistance from the caseload reduction calculation.
- Allowing states to nominate other categories risks ending up with vastly bloated caseload reduction credits, and much reduced work rates.

Issue 6 c): Fingerprinting, drug testing, and whole grant sanctions shall not be considered eligibility changes that must be disregarded for purposes of calculating the caseload reduction factor. This will be accomplished by listing eligibility changes in the regulation without listing these items and making clear on the Caseload Reduction Report form that these policies are not eligibility changes.

Why it's important: We support fingerprinting, drug testing, and sanctions and do not want to discourage states from using them.

Justification for change: These are legitimate reasons for caseloads to have declined, and we should reward states that catch fraud, not punish them.

Possible counter-arguments: HHS will argue, correctly, that the end result of this policy will be to make it much easier for states to meet the work participation rates.

ISSUE 7: WAIVERS (5 subissues)

Issue 7 a): A state that continues a waiver inconsistent with PRWORA's time limits or work requirements shall not be eligible for a high performance bonus or a caseload reduction credit.

Why it's important: This will discourage states from continuing waivers that weaken the work rates and time limits of the new law.

Justification for change:

- States that operate under the old, less stringent rules should not be eligible for rewards for performance or a reduction in the work rates through a caseload reduction credit.
- HHS has already proposed in the reg to deny states a high performance bonus and a caseload reduction credit if they do not submit data on their state only programs -- thus, they clearly believe that the authority exists.

Possible counter-arguments:

- HHS may argue that the statute says the Secretary shall encourage states to continue waivers and that this policy would run counter to that.
- We believe a more accurate reading of the statute is that the Secretary shall encourage states to continue to evaluate waivers that they do continue. (The statute actually says: "The Secretary shall encourage any state operating a waiver described in subsection (a) to continue the waiver and to evaluate, using random sampling and other characteristics of accepted scientific evaluations, the result or effect of the waiver.")
- The Secretary has already encouraged states to continue evaluated waivers by providing federal grants for these evaluations and has thus fulfilled the obligations in the statute.

Issue 7 b): A state that continues a waiver inconsistent with PRWORA's time limits or work requirements shall not be eligible to receive a reasonable cause penalty exception, to enter into a corrective compliance plan, or to receive reduced penalties or a penalty based on degree of non-compliance.

Why it's important: This will discourage states from continuing waivers that weaken the work rates and time limits of the new law.

Justification for change:

- States that operate under the old, less stringent rules should not be eligible to receive reduced penalties if they fail to meet the work participation or other rules.
- HHS has already agreed to require states to prove that they did not divert families to separate state programs in order to receive a reasonable cause penalty exception or a reduced penalty based on degree of non-compliance. Thus, they clearly believe that the authority exists.

ISSUE 7: WAIVERS CONTINUED

Issue 7 c): Prior law definitions of work activities may not be continued under waivers.

Why it's important: Without this change, states could continue waivers allowing unlimited job search and vocational education as work.

Justification for change: Because prior law treated vocational education and job search differently, different arguments must be made for each:

Vocational education:/college

- HHS argues that states should not be able to continue prior law exemptions from the denominators of the participation rates (e.g. should not be able to exclude all disabled from the work participation calculation) because "we have never granted a waiver of a participation rate itself" and "we have never granted a waiver that added new exemptions from the work requirements."

- We think this same argument should apply to vocational education, which was unlimited in prior law and which states therefore never needed waivers to use as part of their programs.

- Our argument is strengthened by the fact that the final report language stated that "program features of the state program not specifically covered by the waiver must conform to this part."

- As a result, the new law's limitation of only counting vocational education for 12 months for any individual should still apply in all states.

Job Search

- Prior law did have a limit on job search (no more than 4 months of job search could count as work participation in a given year).

- States that received waivers specifically exempting them from that requirement can continue them.

- However, states whose waivers do not specifically cite the section of prior law limiting job search should not be allowed to continue the prior law's "4 months in 12 months" job search rule in lieu of the new law's "6 weeks in 12 months" rule.

- HHS argues that states should be able to continue parts of prior law that were integral parts of the demonstration embodied in the waiver "only if their inclusion were necessary to achieve the objective of the approved waiver."

- The objective of states that got welfare reform waivers that did not specifically waive the job search limitations was to put more people to work, not to allow more job search.

- Our argument is strengthened by the fact that the final report language stated that "program features of the state program not specifically covered by the waiver must conform to this part."

ISSUE 7: WAIVERS CONTINUED

Issue 7 d): Waivers that are inconsistent can only be continued in the same geographic areas as they were originally approved in the waiver and were in effect on date of enactment.

Why it's important: This will help limit the influence of the waiver provision by ensuring that states cannot expand sub-state waivers -- or waivers that were implemented only substate in August 1996 -- statewide. For example, Virginia planned to take four years (from June 1995) to phase-in its time limit waiver policy -- which has many more exemptions than current law -- in different regions of the state.

Justification for change:

- The final report language states that "All geographic areas of the States... not specifically covered by the waiver must conform to this part."
- The statute itself refers throughout to waivers "in effect as of date of enactment" of the new law. We interpret "in effect" to mean the waiver as implemented on date of enactment.

Possible counter-arguments: The conference report also says "waivers may only apply to the geographic areas of the State and to the specific program features for which the waiver was granted." HHS could argue that the phrase "was granted" applies to "geographic areas" and thus it is the waiver "as granted" not "in effect" that matters.

Issue 7 e): In order to continue a waiver inconsistent with PRWORA's time limits or work requirements, the state must notify the Secretary in writing in a letter signed by the governor.

Why it's important: Requiring the governor himself to state in writing that he wants to continue the weaker waiver rules will discourage some states from continuing their waivers.

Justification for change: HHS has been willing to do require the same type of letter in order for a state to enter into a corrective action plan, so they should agree to this.

ISSUE 8: ADMINISTRATIVE COSTS

Issue 8: Include case management and eligibility determination in the definition of administrative costs.

Why it's important: OMB will argue that the 15 percent cap on administrative expenses was included in the statute to ensure that TANF funds are used to promote work and self-sufficiency, not increase state bureaucracies.

Justification for change: OMB will argue that eligibility determination and case management as traditionally defined are administrative costs.

Possible counter-arguments: HHS will argue that they've already agreed to include a long list of items in the definition of administrative costs, and that case management and eligibility determination should be excluded in TANF because they are excluded in JTPA and this definition will also be used for the Department of Labor's Welfare to Work grants operated by the JTPA system.

TANF Regulation Issues

EOP PROPOSAL	AGENCY RESPONSE (as of 10/30/97)
1. **Penalty; Diversion to Separate State Programs** - To discourage states from diverting families from TANF to state programs in order to avoid work penalties or avoid sharing child support collections with the federal government, add these provisions to the proposed regulation:	
a) In order to enter into corrective compliance plan for any violation or to receive a reduction in penalties after failing to correct a violation, a state must prove that it did not divert families to a separate state program for the purpose of avoiding work participation rates.	No change. (HHS agreed previously to deny reasonable cause and reduction for degree of noncompliance for work penalties only unless a state demonstrates it did not divert.)
b) In order for a state to be eligible to receive a reasonable cause penalty exception, to enter into a corrective compliance plan, or to receive reduced penalties or a penalty based on degree of non-compliance, a state must prove that it did not divert families to a separate state program for purposes of preventing the federal collection of child support.	No change.
c) Include in the MOE data report information on whether individuals served in the separate state program were on TANF within the last six months and other information to help the Secretary determine if diversion has occurred.	Agreed.

WR-work regulation

EOP PROPOSAL	AGENCY RESPONSE (as of 10/30/97)
2. **Penalty; Threshold Level -**	
States that achieve at least 90 percent (rather than 75 percent) of the required work participation rate shall be eligible for a reduced penalty based on degree of non-compliance.	Agreed to 90 percent threshold, but penalty for state that failed threshold for two parent families only would be full penalty times percent of caseload that are two parent families or 10 percent, whichever is greater. States that fail overall rate get penalty times 90 percent or percent comprised of non-two-parent families, whichever is smaller.
3. **Penalty; Corrective Compliance Plan -**	
a) Reduce the amount of time that States have to complete corrective actions from 12 to 6 months.	Agreed. (State would have 6 months to implement plan after HHS agrees to it; setting plan could take 2 months.)
b) Eliminate the option for the Secretary to reduce the penalty on a state that has failed to correct a violation through a corrective compliance plan if a state expended more resources, made substantial progress, or encountered circumstances that could not have been anticipated.	Changed to say that state can reduce penalty only if state made substantial progress or if failure to comply was attributable to natural disasters or regional recession. The reduction based on substantial compliance would also apply to the work penalties.

EOP PROPOSAL	AGENCY RESPONSE (as of 10/30/97)
4. **Child Only Cases -**	
a) The Secretary will analyze data on a state's child-only cases to determine if the state has reclassified cases as child-only in order to avoid penalty for failure to meet the fiscal year work participation rate or for exceeding the 20% hardship exemption for the five year time limit. If the Secretary finds that the state has reclassified cases for this purpose, she will include the reclassified cases in the calculation of the state's work participation rate and hardship exemption.	HHS thinks they do not have authority to do this, and have offered preamble language threatening to watch states on this issue.
b) The regulation will identify which data elements will allow the Secretary to make this determination.	
5. **Domestic Violence -**	
The Secretary shall not grant reasonable cause exceptions to penalties to states that exempt more than 20 percent of their caseload from the five year time limit due to the granting of good cause domestic violence waivers.	Temporary waivers are defined as six months or less, but the reg allows them to be renewed. The revised reg makes no change in the calculation, but does add this language: "States must grant good cause domestic violence waivers appropriately, which, in the context means there must be a need to exceed the time limit for a given family. We do not expect that many such cases will arise; however, we recognize that there are instances where an extension is necessary. For example, if a recipient suffers a recurrence of domestic violence toward the end of the five-year period, the State must waive the time limit in order to provide the services she now needs."

EOP PROPOSAL	AGENCY RESPONSE (as of 10/30/97)
6. **Caseload Reduction Factor** -	
a) Remove the provision that would provide states with a choice of applying the two parent caseload reduction or the overall caseload reduction as a credit to the two parent work participation rate.	Agreed -- but they may change their position based on changes to penalty structure (issue 2).
b) Remove the provision that would allow states to exclude "based on nature of benefits provided" some or all families in the separate State program when comparing a given year's caseload to that from FY 1995.	The revision has the same policy, but requires more substantiation from the states.
c) Fingerprinting, drug testing, and whole grant sanctions shall not be considered eligibility changes that must be disregarded for purposes of calculating the caseload reduction factor. This will be accomplished by listing eligibility changes in the regulation without listing these items and making clear on the Caseload Reduction Report form that these policies are not eligibility changes.	No change; HHS has determined that sampling or other method to determine legitimate versus illegitimate reductions in this area are not feasible.

EOP PROPOSAL	AGENCY RESPONSE (as of 10/30/97)
7. **Waivers -**	
a) A state that continues a waiver inconsistent with PRWORA's time limits or work requirements shall not be eligible for a high performance bonus or a caseload reduction credit.	No change. HHS argues that there's no tie between continuing waivers, which is an option in the law, and the high performance bonus and caseload reduction credit.
b) A state that continues a waiver inconsistent with PRWORA's time limits or work requirements shall not be eligible to receive a reasonable cause penalty exception, to enter into a corrective compliance plan, or to receive reduced penalties or a penalty based on degree of non-compliance.	No change. HHS indicated that they believe they do have the authority to set criteria for penalty reduction, but think there is no rationale to tie penalty level to the state decision to continue waivers. HHS believes that there is absolutely no basis to tie waiver policy to corrective compliance plan or reasonable cause.
c) Prior law definitions of work activities may not be continued under waivers.	No change. HHS concedes this could be done, legally, but they believe the policy result would be undesirable because it would disrupt the waiver programs now being evaluated.
d) Waivers that are inconsistent can only be continued in the same geographic areas as they were originally approved in the waiver <u>and</u> were in effect on date of enactment.	No change. HHS argued that if we believed this were the intent of the statute, than it made no sense for us to grant state waivers in the days before the bill was signed into law.
e) In order to continue a waiver inconsistent with PRWORA's time limits or work requirements, the state must notify the Secretary in writing in a letter signed by the governor.	Agreed.

EOP PROPOSAL	AGENCY RESPONSE (as of 10/30/97)
8. **Administrative Costs -**	
Include case management and eligibility determination in the definition of administrative costs.	No change.
	10/30/97

WR-work regulation

PENALTY STRUCTURE
Types of Penalties

1. Misuse of TANF funds	6. Failure to Repay Federal Loan	11. Failure to Maintain Assistance to Parents who Can't Get Child Care for Child under Six and Doesn't Work
2. Failure to Submit Report	7. Failure to meet TANF MOE Requirement	12. Failure to Expend Additional State Funds to Replace Grant Reductions
3. Failure to Meet Participation Rates	8. Substantial Noncompliance with Child Support Requirements	13. Failure to meet TANF MOE if get DOL Welfare to Work Grant
4. Failure to Participate in Income and Eligibility Verification System	9. Failure to Comply with Time Limit	14. Failure to Sanction Individuals who Refuse to Work.
5. Failure to Require Individuals to Cooperate with Child Support Rules	10. Failure to Maintain 100% MOE if Received Contingency Funds	

Steps to Levying Penalty

Step #1: Establish Penalty
- Secretary levies penalty if she determines a violation has occurred.
- For 12 of the 14 penalties, the amount is listed in the statute.
- For two penalties -- for failure to meet the work participation rates and failure to maintain assistance to parents with children under age six who can't work because they can't find child care -- the statute says that the penalty shall be based on "degree of non-compliance." (In the proposed reg, we are establishing a sliding scale defining "degree of non-compliance" for purposes of the work penalty.)

Step #2: Consider Reasonable Cause
- If the Secretary determines that a state had reasonable cause, she will waive the penalty.
- The reg establishes that having failed the work and time limits due to granting good cause domestic violence waivers is a reasonable cause. Also allowed are natural disasters; incorrect formal federal guidance; and isolated, non-recurring problems of minimal impact.

Step #3: Enter into Corrective Compliance Plan
- The Secretary must allow state opportunity to enter into a corrective compliance plan and will not impose the penalty while such a plan is in effect. By statute, certain types of violations (all financial) are not eligible for a corrective compliance plan.

Step #4: Once Corrective Compliance Plan is Completed, Secretary Can Reduce Penalty
- The Secretary will not impose the penalty if the state corrects the violation.
- If a state does not correct the violation during its corrective compliance plan, then the Secretary shall assess "some or all" of the penalty. Currently the regulation allows the Secretary to not impose a penalty if the state a) expended more resources; b) made substantial progress; or c) encountered circumstances that could not have been anticipated.

WR - work regulation

Penalties for Bifurcation -- Status

Item	Memo to POTUS	Guidance	HHS Regulation	Our Current Position
1. Penalties -- Issue 1(a)	"A state can't receive any good cause consideration -- i.e., mitigation in penalty for failure to meet work participation rates" unless states shows it did not use bifurcation to evade work participation rates	Limited to reasonable cause for work penalty -- No reasonable cause for work penalty to states whose policies work to circumvent the work requirements	Same as guidance, plus no reduction in penalty for degree on non-compliance	We are seeking: (1) to prevent states from getting access to corrective compliance plans and "some or all" penalty reduction if they bifurcate; and (2) to apply these limitations to all penalties, not just the work penalty
2. Child support collections -- Issue 1(b)	Issue regs authorizing data collection; work with Governors and Congress to prevent	Yes -- same as memo	Same as memo and guidance (double check)	None of the 4 breaks on penalties unless states proves it did not divert families to deny feds child support dollars
3. Caseload Reduction Credit -- Issue 3(b)	No credit unless states shows reduction is not the result of bifurcation	Yes -- No credit unless states demonstrate that caseload reduction not an artifact of bifurcation	Yes -- part of calculation (with a limited exception)	OK
4. High Performance Bonus -- Not on list	HHS will look at states overall effort in determining high performance bonus	Identical to memo	Only addresses data -- state can't qualify unless it supplies data on separate state programs	Do we want to insist up-front that a state that bifurcates is not eligible under any circumstances for the bonus, not simply that HHS will look at that factor?

WR - work regulation

October 29, 1997

NOTE TO ELENA

FROM: DIANA AND CYNTHIA

SUBJECT: LAWYERS DISCUSSION ON WAIVERS

Here's an update on the meeting with our lawyer and HHS's lawyers on whether it's legally possible to withhold goodies from states that continue waivers. All in all, it went pretty well. Rob Weiner has been very helpful in developing arguments and he helped us make a persuasive presentation. Some of our cases are weaker than others, so we need to decide whether to continue pushing all of these items, or whether to concede on some.

HHS remains very much opposed to our proposals from a policy perspective. From a legal perspective, they conceded one or two items, but mostly argued with us.

Below are the items we are arguing should be withheld from states that continue waivers. The key questions are whether HHS has enough discretion in each case to make a link between that item and waivers. At the moment, we are treating all elements of waivers in the same way, but it may be that waivers on work have more of a link to some of these goodies than waivers affecting time limits, or vice versa.

On all of these, HHS says that we are defining waivers as something bad, but in fact the statute explicitly permits states to continue them. They say a waiver is simply an option, like setting benefit levels or asset tests, and we don't opine on which of those techniques are better or worse. We argue that waivers are different -- they are explicitly defined as being "inconsistent" with the law, which those other examples are not, and Congress chose not to let states renew them when they expire.

No High Performance Bonus (issue 7a)-- We argued two points 1) The statute gives the Secretary a lot of discretion in defining the bonus -- the formula must simply reward performance to achieve the general goals of the act. The Secretary could decide that continuing waivers does not help achieve the goal to "end dependence of needy parents on government benefits by promoting job preparation, work, and marriage" and therefore states that continue waivers could be ineligible for the bonus; 2) that states with waivers will have an easier time meeting the work participation rates -- the key measure of state performance -- and so we can choose to exclude those states from our definition of high performance up front.

HHS had one bad argument and one good argument against this. The bad argument is that they have already consulted with states a lot on how to construct the high performance bonus, and they don't want to add this to the mix; however, this regulation has not yet come to us for review.

The good argument is that their construct of the high performance bonus will go beyond simply measuring work participation rates to look at who really moves to independence through work. They argue that it is possible, for example, that a state with a waiver counting college attendance as work will ultimately have higher performance/greater success moving such people off welfare permanently than states that have the more restrictive policies permitted by the welfare law. We countered that HHS is already using its discretion to exclude states from the high performance bonus if they bifurcate to evade the work participation rates, and so they must see some link to the work participation rates. They responded by saying that there is a more direct link between bifurcation and performance, since a state could move all the low performers to the state only program.

We may have a stronger argument that this is linked to the work parts of waivers than the time limit portions.

No Caseload Reduction Credit (CRC) (issue 7a)-- This one was a bit tougher, though not impossible. HHS argues (1) that the Secretary has very little discretion on how to award the CRC, and (2) there is no policy link between whether a state has a waiver and whether it deserves the CRC. On (1), we countered that she has very limited discretion in devising the credit calculation, but she does have some (limited) discretion through regs to decide when to actually award it, i.e., the statute does not say every state has to get a credit. Further, HHS is using that discretion to force states to include state-only programs in the CRC. On (2), we countered that there is a link, because having a waiver makes it easier to make the work participation rates, and that the CRC is the device for creating the "net" participation rate, if you will.

We are beginning to wonder internally if it isn't fairer to give states with waivers a reduced CRC, rather than deny them access to it entirely. But that gets a little complicated.

Penalties: No Corrective Compliance Plan (issue 7b)-- This one is tough. Rob has come up with an ingenious argument that being on a corrective compliance plan is like being on probation. The statute says that a corrective compliance plan must correct the violation and "insure continuing compliance." Rob thinks that language allows HHS to require states to meet standards over and above those of the law -- like waivers. HHS argues that the link is tenuous.

Penalties: No Penalty Reduction (issue 7b) -- This is a strong area for us. HHS pretty much concedes that they can do deny reduced penalties to states without waivers, but argues that there is no policy link here and they will be seen as acting arbitrarily. We argue that there is a clear link to the work participation rate penalty.

Penalties: No Reasonable Cause (issue 7b) -- We didn't discuss this one too much, but HHS is already withholding this from states that use bifurcation. The link is better here for the work participation rate penalty than for all penalties.

No Prior Law Definitions of Work Activities in Not in Waiver (issue 7c) -- We are making a somewhat limited argument here, that states that had welfare waivers but did not have a specific waiver regarding vocational education, college attendance, or job search should not be able to operate under prior law rules (unlimited voc ed and college, 4 months a year of job search). HHS argues that we should allow waiver programs to continue in their entirety. We have strong legal grounds, here, which HHS acknowledged.

No Expansion Beyond Geographic Area in Effect on 8/22/97 (issue 7d) -- We argued that not only should the geographic area of the waiver be limited to that granted (HHS concedes this point) but that it should be limited to that "in effect" i.e., where implemented, on the date of enactment. At first they agreed that the language could be read either way, but then they made a somewhat persuasive argument that if this were so, then why did the Administration grant waivers in the several days leading up to the signing of the law?

Wp - work regulation

October 26, 1997

NOTE TO BRUCE AND ELENA

FROM: CYNTHIA

SUBJ: MONDAY'S TANF REGULATION MEETING

I've tried to make it fun...well, easy anyway.... to prepare for Monday's TANF regulation meeting. Attached are:

1) A list of the eight issues that will form the basis of the discussion. We sent this version of the list to HHS today; it is very close to the one you saw on Friday but the order of issues and the description of some issues has changed. In addition, Bruce said Friday he wanted to re-open the issue re: classification of fingerprinting and drug testing, so it's listed as issue 6 c).

2) A one pager on the penalty structure in the current draft regulation -- should be a helpful reference guide to this confusing topic.

3) For each issue, a description of our position, our justification, and, where appropriate, expected counter-arguments and possible compromises. Please look carefully at Issue 7 - waivers, which I believes pushes the envelope as far as it can go.

I believe that it is most important that we hold firm on the following:

1) Issue 1 relating to diversion to separate state programs;

2) Issue 3 b) relating to the Secretary's option to reduce penalties;

3) Issue 4 relating to child only cases;

4) Issue 7 a), b), c), and e) relating to waivers.

Bruce -- you indicated Friday that Issue 6 a) and b) (relating to the caseload reduction credit) weren't important to you and that you wanted to amend Issue 2 to ensure states that fail the two parent work rates won't be penalized so much (the latter I list as a "possible compromise" that you can raise in the meeting to show them good faith).

HHS, as you know, is very opposed to Issue 5 (domestic violence waivers and the time limit). They also seem to feel quite strongly about #3 b) and 1 b).

WR - work regulation

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

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

a) In order to enter into corrective compliance plan or receive a reduction in penalties ("some or all") for not correcting a failure through such a plan, a state must prove that it did not divert families to a separate state program for the purpose of avoiding work participation rates.

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

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

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

4. **Penalty; Compliance Plan** -

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

b) Eliminate the option for the Secretary to reduce the penalty on a state that has failed to correct a violation through a corrective compliance plan if a state expended more resources, made substantial progress, or encountered cirumstances that could not have been anticipated.

5. **Caseload Reduction Factor** - Remove two provisions relating to the caseload reduction factor calculation:

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

b) The second would give HHS the option to allow states to exclude some or all families in any separate State program from the caseload reduction calculation "based on nature of benefits provided."

6. **Child Only Cases** - Upon review of State classification of child only cases, if the Secretary determines that they are not legitimately classified, the Secretary will reclassify the cases to count toward the participation rates and time limits.

7. **Waivers** -

a) Prior law definitions of work activity (e.g., job search and vocational education) may not be continued under waivers;

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

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

d) A state that continues a waiver inconsistent with PRWORA's time limits or work requirements shall not be eligible to receive a reasonable cause penalty exception, to enter into a corrective compliance plan, or receive reduced penalties;

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

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

10/24/97 7:30pm

WR-work regulations

Issues

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

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

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

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

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

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

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

b) Eliminate the option for the Secretary to reduce the penalty on a state that has failed to correct a violation through a corrective compliance plan if a state expended more resources, made substantial progress, or encountered circumstances that could not have been anticipated.

4. **Child Only Cases** -

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

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

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

6. **Caseload Reduction Factor** -

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

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

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

7. **Waivers** -

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

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

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

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

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

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

Cynthia A. Rice 10/24/97 09:16:48 AM

Record Type: Record

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

cc: Diana Fortuna/OPD/EOP, Cathy R. Mays/OPD/EOP, Laura Emmett/WHO/EOP
Subject: Pls review: New Waiver Proposal/Update on Reg Negotiation

tanf1023.wpd As the attached document shows, we've made good progress on our issues in the TANF reg negotiations so far. There are about 8-10 issues that still need to be resolved.

But first, we need as soon as possible to decide our position on waivers. Please review the new option described in the attached, which is designed to try to narrow the scope of the provision without rendering it meaningless (not an easy task, we've found).

Is it possible for us to meet this afternoon to discuss the waiver issue specifically? HHS is awaiting our position on this issue. We'd also be happy to discuss any of the other issues.

OMB's plan for the next step in the negotiation is for Sally Katzen to host an OMB-HHS-DPC meeting to try to settle the unresolved issues.

~~Please review the chart in preparation for a meeting to be scheduled and chaired by Sally Katzen~~

Waiver Policy Proposal

I. STATUTE

"Waivers in Effect on Date of Enactment of Welfare Reform": "... if any waiver granted to a state...is in effect as of the date of enactment...., the amendments made by [PRWORA]...shall not apply with respect to the state before the expiration (determined without regard to any extension) of the waiver to the extent such amendments are inconsistent with the waiver."

"Waivers Approved Subsequently" section says that such a waiver "shall not affect the applicability of section 407 to the state." (Work requirements)

Legislative History: statutory language was narrowed from 'if have a waiver, new law does not apply' to "inconsistent" standard. Final report language added clause re: "program features of state program not specifically covered by the waiver must conform to this part."

II. HHS PROPOSED REG

Legal Theory:

A provision of TANF is inconsistent with a waiver only if the State must change its waiver policy in order to comply. The definition of a waiver can include applicable provisions of prior law if their inclusion was necessary to achieve the objective of the approved waiver. For example, a state whose waiver program counted community college attendance as work did not need a waiver of AFDC law in order to do this. The reg would permit such a practice to continue, because it would require a change in state policy to do otherwise, and it's inconsistent with TANF's definition of work. Legally, the reg defends the decision to consider prior law as part of the waiver on the grounds that doing otherwise would allow very few waiver practices to continue (largely just time limits), rendering that section of the law meaningless.

NO

Policy Effect:

Work Requirements:

Section 407 doesn't apply to waivers to the extent their features are inconsistent with current law. Examples given are looser definitions of work and requiring fewer hours of work per week to be counted as working. However, states may not claim inconsistencies that affect the denominator of the participation rates -- i.e., limit the universe of people to whom the participation rates are applied. The reg defends this decision by noting that HHS never granted a waiver of a participation rate, nor a waiver that granted new exemptions from work requirements. Also never gave a waiver that granted looser defn of wk.

Time Limits:

States whose waivers have time limits may use their waiver's more liberal exemption and extension policies.

- Extensions -- The draft reg says that both the federal and state clocks must start ticking simultaneously but that, once the federal clock expires, the state may grant extensions in accordance with the approved waiver until the waiver expires. The reg also says that a state need not comply with the law's 20% limit on exemptions if its waiver's extension policies cause it to exceed 20%.

- Exemptions -- The draft reg also says that months during which a recipient is exempt from time limits because of waiver policy do not count toward the federal five-year limit.

III. OUR PROPOSAL

The Challenge: To define "inconsistent" in a way that narrows the effect of the provision without rendering the entire provision meaningless.

Work Requirements:

- Argue that definitions of work activity were not necessary to achieve objective of approved waiver (objective was to put more people to work)-- thus no grandfathering of more liberal job search and voc ed criteria.

- Alternative argument with the same result: Only permit specific items waived from compliance with prior law, rather than allowing states to import "provisions of prior law" into the definition of waiver. In this case, the definition of work in any waiver could not be inconsistent with the law, because in no case was the definition of work activities a "program feature...specifically covered by the waiver". Thus more liberal definitions of job search and vocational education could not be continued under the guise of waivers. [This theory may not, however, allow the policy listed in next bullet below; thus it may result in the provision having no effect on work rates, which HHS argues it must since the statute specifically exempts "waivers granted subsequently" from having any effect on work rates.]

- Allow, as the draft reg now does, for waivers to be considered inconsistent if they specified the number of hours of work to be determined according to individual circumstances, but make explicit that these inconsistent waivers can only be continued in the same geographic areas as originally approved in the waiver and in effect at date of enactment [i.e., if a state had approval to expand a waiver statewide but had not done so yet, it could not].

Time Limits:

- Allow, as the draft reg now does, for exemption and extension policies to be considered inconsistent, but make explicit that these waivers can only be continued in the same geographic areas as originally approved in the waiver and in effect at date of enactment [i.e., if a state had approval to expand a waiver statewide but had not done so yet, it could not].

Changes Applying to Both Work Requirements and Time Limits:

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

- A state that continues a waiver inconsistent with PRWORA's time limits or work requirements shall not be eligible to receive a reasonable cause penalty exception, to enter into a corrective action plan, or receive reduced penalties.

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

- The regulation shall place the burden of proof that waivers are inconsistent with the law on the state and must collect information necessary for the Secretary to make that determination.

IV. EFFECT ON STATES

Comparison of Proposals: Effect on Connecticut

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

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

Connecticut
Delaware
Hawaii
Illinois
Massachusetts
Minnesota
Missouri
Nebraska
New Hampshire
South Carolina
South Dakota
Tennessee
Texas
Utah
Virginia
Washington

Also possibly:

Georgia
Iowa
Kansas
Michigan
Montana
North Carolina
North Dakota
Oregon
Vermont
Wisconsin

States with time limit policies that could override the law:

- Connecticut
- Delaware
- Florida
- Hawaii
- Illinois
- Iowa
- Louisiana
- Nebraska
- North Carolina
- Ohio
- Oregon
- South Carolina
- Tennessee
- Virginia
- Wisconsin

Update on TANF Regulation Negotiations

Proposed Change	Change Made	Partial Change Made	To Be Resolved
DOMESTIC VIOLENCE			
1) HHS may grant reasonable cause exemptions from penalties to states that fail to meet the work participation rates due to granting of good cause domestic violence waivers.		X[1]	
2) States will be exempted from penalties only if they fail the work rate by no more than the number of individuals granted good cause waivers multiplied by the participation rate.	X		
3) HHS may grant reasonable cause exemptions from penalties for those good cause domestic violence waivers only for waivers that were granted appropriately. meaning ??	X		
4) HHS may grant reasonable cause exemptions from penalties only for good cause domestic violence waivers that are temporary (less than six months long).	X		
5) HHS shall not grant reasonable cause exceptions to penalties to states for exempting more than 20 percent of the caseload from the five year time limit due to granting of good cause domestic violence waivers.			X

[1] The reg is now changed to say the the Secretary "will determine whether a State has reasonable cause based on its demonstration that its failure to meet the work participation rates is attributable to its provision of good cause domestic violence waivers. If a state fails to meet these standards to the satisfaction of the Secretary, the Secretary will not grant the exemption." Is this enough? NO

Proposed Change	Change Made	Partial Change Made	To Be Resolved
CASELOAD REDUCTION CREDIT			
1) States that have expanded eligibility shall not get credit for caseload reductions that would have happened in the absence of the expansion.	X		
2) States shall not have a choice of applying the two parent caseload reduction or the overall caseload reduction as a credit to the two parent work participation rate.			X
3) HHS shall not have the option to allow states to exclude some or all families in any separate State program from the caseload reduction calculation "based on nature of benefits provided."			X
4) Fingerprinting, drug testing, and whole grant sanctions shall not be defined as eligibility changes that must be factored out of the caseload credit.		X[2]	
5) Individuals receiving one-time, short-term assistance, or services with no monetary value shall not be eliminated from the caseload reduction credit calculation.		X[3]	

have to apply two-parent

? what does this even mean given(?)

All things we favor anti-fraud

ok?

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[2] The reg now refers more generally to excluding "procedural changes that have the effect of delaying or denying eligibility" but HHS policy would be to tell states that caseload changes from fingerprinting, etc., should count in that category. This HHS policy could help prevent states from gutting the work requirements: by not allowing a state to claim a caseload credit for caseload reductions due to fingerprinting (up to 15% in some states) the policy could prevent a state from lowering its work rate from, say, 50% to 35%.

[3] The reg eliminates these cases from both comparison years, thus making more of an "apples to apples" comparison. For purposes of calculating the caseload credit, the TANF + MOE caseload not receiving short-term or non-monetary assistance in a given year is compared to the FY 1995 AFDC caseload without any short-time Emergency Assistance cases. The policy effect of this definition is that states that shift their services from monthly cash grants to either non-monetary services or one-time diversion grants will receive higher caseload credits.

Proposed Change	Change Made	Partial Change Made	To Be Resolved
6) States shall report eligibility changes on a form consistent across states and the regulation shall define a more specific set of criteria upon which the Secretary shall evaluate this information.	X		
PENALTIES			
1) In order for a state to be eligible to receive a reasonable cause penalty exception, to enter into a corrective compliance plan, or receive reduced penalties ("some or all") or penalties based on degree of non-compliance, a state must prove that it did not divert families to a separate state program for purposes of avoiding the work participation rates or preventing the federal collection of child support.	X[4]		X[5]
2) States may not retrospectively reclassify families in TANF as "state only" in order to game the work rates.	X		

[4] HHS has made the following changes: in order to be eligible for a reasonable cause penalty exception or a reduced penalty based on degree of non-compliance, a state must prove that it did not divert families to a separate state program for the purpose of avoiding work participation rates.

[5] HHS has not agreed to make the following changes: 1) in order to enter into corrective compliance plan or receive a reduction in penalties ("some or all") for not correcting a failure through such a plan, a state must prove that it did not divert families to a separate state program for the purpose of avoiding work participation rates; 2) condition a state's eligibility for any of the penalty exceptions/reductions on the state proving that it did not divert families in order to prevent the federal collection of child support; and 3) to collect data that will help determine if states are diverting individuals to separate state programs (include in the MOE data report information on whether individuals served in the separate state program were on TANF within the last six months).

Proposed Change	Change Made	Partial Change Made	To Be Resolved
3) States shall provide quarterly data regarding how many people have been sanctioned for not working. The data reports shall include the information necessary to determine if the state imposed a pro-rata reduction required by law, and whether the state required the individual to perform work within two years.	X[6]		
4) HHS shall enter into a corrective action plan with a state only if such a plan: a) contains monthly process and outcome goals that the state must meet in order to continue to operate under a corrective action plan; b) contains significant new actions the state plans to take to meet the law's requirements; c) contains a letter signed by the governor outlining the need for the corrective action plan; d) shall be no longer than six months.	X (all but six month limit)		X[7]

[6] Need to confirm through change pages.

[7] HHS does not want to limit the compliance plan to six months. They've made the argument that the statute allows states up to two months to complete and file the plan, so in reality the compliance plan is in effect for 10 months. A six month time limit would give states only four months to comply.

Proposed Change	Change Made	Partial Change Made	To Be Resolved
5) The regulations shall detail a sliding penalty scale that will be imposed based on degree of noncompliance with the work participation rates.	X[8]		X[9]
6) Eliminate the option for the Secretary to reduce the penalty on a state that has failed to correct a violation through a corrective compliance plan if a state a) expended more resources; b) made substantial progress; or c) encountered cirumstances that could not have been anticipated.			X[10]
7) OMB has sought to allow the Secretary to include certain child only cases in the work participation rate (denominator and, if applicable, numerator) if the Secretary determines that the state re-classified families as "child only" for purposes of avoiding the work rates (by statute, the work rates don't apply to child only cases).			X

good

[8] HHS has agreed to a sliding scale as follows: only states that met at least 75 percent of the work participation rate (e.g., 75% of 30% or 22.5%) would be eligible for a sliding penalty based on degree of non-compliance. All states falling below that standard will receive the full penalty. If a state failed both the overall and the two parent work rates, then its penalty would be reduced in direct proportion to the level of achievement above the 75 percent threshold (e.g., if a state were halfway between 22.5% and 30%, its penalty would be reduced in half). If a state failed only the two parent rate, its penalty would be first be multiplied by 10 percent and then reduced in direct proportion to the level of achievement above the 75 percent threshold.

seems ok

[9] We proposed that the threshold be raised from 75 percent to 90 percent -- only states meeting a 90 percent of the work participation rate would be eligible for a sliding penalty based on degree of non-compliance. HHS has objected to this change.

80 or 85?

[10] HHS has proposed only minor word changes to this section, such as adding "expended significantly more resouces", made "substantial progress", and "encountered overriding cirumstances that were beyond its control and could not have been anticipated."

even worse!

Proposed Change	Change Made	Partial Change Made	To Be Resolved
ADMINISTRATIVE COSTS			
1) OMB has sought to have a federal, rather than state, definition of adminstrative costs, which the statute limits to 15 percent of the total block grant.		X[11]	X[12]
WAIVERS			HHS is awaiting our proposal.

[11] OMB has succeeded in getting HHS to agree to include several types of spending in a federal definition.

[12] OMB is still seeking to include spending on case management and eligibility determination in the federal definition of administrative costs.