

NLWJC - Kagan

DPC - Box 065 - Folder-019

Welfare-Work Regulation [3]

WP - work participation

what's left is (1) -
depending on how we
come out on (2)
the impact (8) -
issues -
should be 7 leg.

staff work
2
6a
3a/b
4 a/b
5
6a/b
6c - back to Bruce

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: 7-lawyers talk

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.

HHS -
not
OK

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.

HHS -
not OK

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. 2-parent rates most imp - flexible on some stuff

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

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

HHS -
goes
w/ 1

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.

(a) not
double

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.

what about grandparent cases? some users we'd be cum t w/

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.

Secretary most emphatic about this

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.

why in work
was on time
limits?

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.

me: it anything
can craft?
potential
for blowing
up.
penalty - task
some thing that will wh.
At stake - 150% MOE.
child care; immunizations

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.

This really understood
your problem -
write tough on wh.

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.

some
legal
concerns ↓

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.

big worries

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.

fine

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

HHS has agreed

→ No reasonable cause for
work penalties if
divert

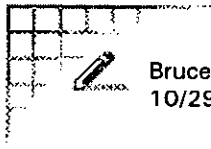
→ or reduction for degree
& non-compliance

HHS has agreed to not give

- high performance bonus;
- caseload reduction credit

if states don't submit data
on separate state programs

Wp-work regulations



Bruce N. Reed
10/29/97 04:18:20 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP

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

Subject: Re: Emily Bromberg on waivers

I don't think we'd get much pressure on bonuses. Caseload credits might be tougher.

WZ-work regulations



Cynthia A. Rice

10/29/97 03:49:36 PM

Record Type: Record

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

cc:

Subject: Emily Bromberg on waivers

Diana and I met with Emily Bromberg yesterday to go over all the issues in dispute in the TANF negotiations. She was very supportive of all our tough on states proposals. However, after thinking about it for a day, she now has serious doubts about whether the President would hold up under the pressure from governors on waivers, particularly the pressure that would come to bear if we denied caseload reduction credits and high performance bonuses to states that continued inconsistent waivers. She is still supportive of our other proposals to impose tough penalties on those that fail work rates, etc.

WR - work regulation



Cynthia A. Rice

10/24/97 11:30:28 AM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Diana Fortuna/OPD/EOP
cc: Cathy R. Mays/OPD/EOP, Laura Emmett/WHO/EOP
Subject: Shalala told Olivia this morning re: TANF Reg

To get over here ASAP -- today or Monday -- to settle the remaining issues with us (see my earlier email with the list).

They are apparently MOST concerned about our proposal to not have reasonable cause apply to time limit penalties for states giving domestic violence waivers.

Waivers

Law says that:

- (1) waivers granted before law passed are grandfathered with the entire law where inconsistent
- (2) waivers submitted before law passed and granted before 7/97 are grandfathered as above except for work requirements (section 407) -- main area affected seems to be time limits

Reg says that:

Work Requirements:

- Section 407 doesn't apply to Type 1 waivers above (to the extent waiver's features are inconsistent with current law)
 - examples given are definition of work and hours of work required per week to be considered "engaged in work"
 - Section 407 includes work participation rates, caseload reduction credit, hours of work required, definition of work activities, the requirement for sanctions for refusal to work, and nondisplacement provisions.
- Question: Why do they single out only Section 407 (source of work requirements)? Probably makes sense because this area and time limits are the only places there could be inconsistencies.
- Question: May a state pick and choose among parts of Section 407 as to which to comply with? Or is it case-by-case only for those parts that are inconsistent?
- Question: Do any states have work participation rates that are less than the law's?

Time Limits:

- Applies to both old waivers and new waivers approved before 7/97 (clarify)
- State waiver must include a time limit (good)
- Federal and state clocks start together, but once the federal clock expires, the state may follow waiver rules until the end of the waiver period
- Instead of 20% exemption, states can use waiver extension policy
- Months that the person is exempt under a state waiver don't count on federal clock
- State can keep inconsistencies related to experimental control group as long as researching

WAIVERS + WORK REQS

provisions at §272.6 of this chapter applies to this penalty.

→? "can't do it?"

Subpart F -- Waivers

§271.60 How do existing welfare waivers affect the participation rate?

(a) If a State is implementing policies in accordance with an approved waiver that meets the provisions of section 415(a) (1) (A) of the Act and the definition of a waiver at §270.30 of this chapter, the provisions of section 407 of the Act do not apply, to the extent that they are inconsistent with the waiver.

thinking of approved

- Work partic. rates
- Case load red. cre.
- hours of work
- def of wk activities
- sanction for refusal to work

(b) We will recognize inconsistencies in the following areas:

diff from def of inconsist above? to work

(1) a waiver specifying work activities, including provisions of prior law, in which an individual may participate in order to be "engaged in work" and count toward the minimum participation rates (as specified at §271.30); and

def of wk

(2) minimum average hours of work per week necessary to be "engaged in work" for a month (as specified at §§ 271.31 and 271.32).

so 5 hrs ok?
Do waivers actually do this?

(i) The waiver must specify that a State is to set an individual's mandated hours of participation in accordance

Are areas listed only parts of 407 that don't apply? No

with his/her particular circumstances, either as specified by criteria described in the waiver or under an individualized plan or similar agreement for achieving self-sufficiency.

(ii) Prior law standards are not part of the waiver where the waiver was approved to increase the mandatory work hours for a class of recipients under the former JOBS program.

*if
old
law
or?*

(c) Except as applicable to research cases in paragraph (d), we will not recognize any prior law exemptions as part of the waiver with respect to the denominator of the participation rates, found at §§ 271.21 and 271.23.

*→ some
des to
denominator?*

(d) If a State is continuing research group policies in order to complete an impact evaluation of a waiver demonstration, the demonstration's control group may be subject to prior law and its experimental treatment group may be also subject to prior law, except as modified by the waiver.

?

Subpart G -- Non-displacement

~~Non-displacement~~
~~line items?~~
~~present?~~

§271.70 What safeguards are there to ensure that participants in work activities do not displace other workers?

(a) An adult taking part in a work activity outlined

WAIVERS + TIME LIMITS

§274.1 What restrictions apply to the length of time Federal TANF assistance may be provided?

(a) No State may use any of its Federal TANF funds to provide assistance (as defined in §270.30 of this chapter) to a family that includes an adult who has received assistance for a total of five years (60 cumulative months, whether or not consecutive).

(b) States ~~must not~~ count towards the five-year limit:

(1) Any month of receipt of assistance by an individual when she was a minor who was not the head of household or married to the head of household;

(2) Any month in which an adult lived in Indian country (as defined in section 1151 of title 18, United States Code) or Native Alaskan Village and at least 50 percent of the adults were not employed; and

(3) Funds provided under section 403(a)(5) of the Act.

(c) States have the option to extend assistance from Federal TANF funds beyond the five-year limit for up to 20 percent of their average monthly number of families receiving assistance during the fiscal year or the immediately preceding fiscal year, whichever the State elects. States are permitted to extend assistance to a family only on the basis of:

(1) Hardship, as defined by the State; or

(2) The fact that the family includes someone who has

been battered, or subject to extreme cruelty based on the fact that the individual has been subjected to:

(i) Physical acts that resulted in, or threatened to result in, physical injury to the individual;

(ii) Sexual abuse;

(iii) Sexual activity involving a dependent child;

(iv) Being forced as the caretaker relative of a dependent child to engage in non-consensual sexual acts or activities;

(v) Threats of, or attempts at, physical or sexual abuse;

(vi) Mental abuse; or

(vii) Neglect or deprivation of medical care.

(d) If a State opts to extend assistance to part of its caseload as permitted under paragraph (c) of this section, it only determines whether or not the extension applies to a specific family once an adult in the family has received 60 cumulative months of assistance.

clock check
& sys.

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(e) If the five-year limit is inconsistent with a State's waiver, which was in effect on August 21, 1996, or ^{should say submitted < 8/96} was approved by July 1, 1997, and was granted under section 1115 of the Act, the State need not comply with the inconsistent provisions of the five-year limit until the waiver expires. The five-year limit is inconsistent with the State's waiver only:

(1) If the State has an approved waiver that provides

for terminating cash assistance to individuals or families because of the receipt of assistance for a period of time, specified by the approved waiver; and

(2) The State would have to change its waiver policy in order to comply with the five-year limit.

(f) Inconsistencies applicable to a case that is in a control group or experimental treatment group will be maintained, but only to the extent a State continues its experimental research design for the purpose of completing an impact evaluation of the waiver policies.

(g) Generally, under an approved waiver, a State will count, toward the five-year limit, all months for which the adult subject to a State waiver time limit receives assistance with Federal TANF funds, just as it would if it did not have an approved waiver. However, the State may continue to provide assistance with Federal TANF funds for more than 60 cumulative months in accordance with the terms of the approved waiver for extending assistance beyond the State's time limit as long as the State's waiver authority has not expired.

(h) In lieu of the provision of paragraph (c) of this section, the State may apply extensions of its time limit, without caseload limits, in accordance with the terms of its approved waiver.

(i) The State need not count, toward the five-year limit, any months for which an adult receives assistance

20% f.l exemption

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with Federal TANF funds while the adult is exempt from the State's time limit because of the terms of the State's approved waiver.

§274.2 What happens if a State does not comply with the five-year limit?

If we determine that a State has not complied with the requirements of §274.1, we will reduce the SFAG payable to the State for the immediately succeeding fiscal year by five percent of the adjusted SFAG unless the State demonstrates to our satisfaction that it had reasonable cause or we approve a corrective compliance plan.

§274.3 How can a State avoid a penalty for failure to comply with the five-year limit?

(a) We will not impose the penalty if the State demonstrates to our satisfaction that it had reasonable cause for failing to meet the five-year limit or it completes a corrective compliance plan pursuant to §§ 272.5 and 272.6 of this chapter.

(b) (1) In addition, we will determine a State has reasonable cause if it demonstrates that it exceeded the 20 percent limitation on exceptions to the time limit because of good cause waivers it provided to victims of domestic

REG-15 DEF. OF WAIVER

at section 408(a)(7)(B)(iii) of the Act.

Waiver refers to a specific action taken by the Secretary under the authority of section 1115 of the Act to allow a State to operate a program that does not follow specific requirements of prior law. For the purpose of these regulations and section 415 of the Act, it consists of provisions necessary to achieve the State's policy objective. It includes the approved revised AFDC requirements, articulated in the State's waiver list. It also includes those provisions of prior law that: (a) did not need to be waived as part of the waiver package; and (b) were integral and necessary to achieve the State's policy objective for the approved waiver.

We (and any other first person plural pronouns) means the Secretary of Health and Human Services or any of the following individuals or organizations acting in an official capacity on the Secretary's behalf: the Assistant Secretary for Children and Families, the Regional Administrators for Children and Families, the Department of Health and Human Services, and the Administration for Children and Families.

Welfare-to-Work means the new program for funding work activities at section 403(a)(5) of the Act.

WTW means Welfare-to-Work.

§270.40 When are these provisions in effect?

- (a) The TANF statutory requirements go into effect no

THE PRESIDENT HAS SEEN

1-30-97

THE WHITE HOUSE
WASHINGTON

January 29, 1997

MR. PRESIDENT:

The attached memo from Bruce Reed and Elena Kagan reflects a joint recommendation from DPC and HHS on how to proceed with implementing the portion of the maintenance-of-effort provision in the welfare law that restricts how states can spend these funds.

Erskine, Sylvia, Rahm and Marcia concur in the approach and OMB has no objections to the memo.

In order for the plan to be rolled-out to various Governors in advance of the NGA meeting, Bruce/Elena and IGA would appreciate your action as soon as possible.

Phil Caplan

*Phil Caplan
to me -*

'97 JAN 29 PM5:48

THE WHITE HOUSE
WASHINGTON

THE PRESIDENT HAS SEEN
1-30-97

January 28, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED *BR*
ELENA KAGAN *EK*

SUBJECT: WELFARE LAW IMPLEMENTATION ISSUE

*Under good-let them
have all money they want
to spend on child support
in welfare states and
HHS*

Before the NGA meeting, we need to give states an answer to the question of whether a state must comply with the welfare law's requirements in order to get maintenance-of-effort credit for a state expenditure. States would like to spend their money in separate, non-TANF programs, free from all federal restrictions, but still counting toward the maintenance-of-effort standard. Allowing them to do so, however, may deprive the federal government of a great deal of money and may undermine the law's work requirements. This memo contains a joint HHS and DPC recommendation as to the proper Administration approach to this issue.

Background and analysis

As you know, the maintenance-of-effort provision of the welfare law requires states to spend each year a set percentage of their FY 1994 welfare expenditures. Each state meeting its work participation rate must spend 75 percent of FY 1994 expenditures; any state failing to meet its rate must spend 80 percent of that sum. If a state fails to spend this amount of money, its next year's block grant is reduced accordingly.

The question here concerns the restrictions that apply to expenditure of these "maintenance-of-effort funds." (All agree that no federal restrictions apply to state monies for which the state is not seeking maintenance-of-effort credit.) The law is clear that certain restrictions -- the limits on benefits to aliens and the five-year time limit -- do not apply to maintenance-of-effort funds. The law is far less clear as to whether other requirements apply. But it is difficult, as a legal matter, to pick and choose among these remaining requirements: HHS cannot, for example, say that work requirements, but not reporting requirements, apply.

The governors have argued vehemently that applying federal restrictions to state maintenance-of-efforts funds would impede state innovation. And because the advocacy groups would like to undermine some of the federal requirements -- particularly regarding work -- they have joined the states in taking this position.

But a completely "hands-off" approach -- which would allow the states to set up wholly independent programs, free of all federal restrictions, with maintenance-of-effort dollars -- poses two significant problems. First, states could place the families most likely to make child support

payments in the state-only program and thereby avoid sharing child support collections with the federal government. OMB estimates that the amount of money at stake could exceed \$1 billion per year.

Second, such an approach could seriously undermine the work provisions of the welfare law. As you know, the law requires states to show, on pain of financial penalty, that a certain percentage of families receiving assistance under TANF are engaged in work. The governors' approach would allow states to get around this requirement by transferring their hardest-to-employ welfare recipients from the TANF program (where they would count as part of the denominator in calculating the percentage) to a separate state program funded by maintenance-of-effort dollars (where they would not so count). Indeed, under one interpretation of the law, such a transfer might count as the kind of "reduction in caseload" that operates to reduce the minimum participation rate applicable to the state. Hence by the simple device of shifting beneficiaries from one program to another, a state could simultaneously make it easier to meet the existing participation rate and lower the participation rate applicable in the future.

Recommendation

To provide the states with needed flexibility, protect the government's share of child support collections, and maintain the integrity of the law's work participation requirements -- and to do all this in a legally defensible way -- HHS and the DPC recommend the following actions:

1. Interpret the law so as to give the states far-reaching discretion and flexibility over maintenance-of-effort funds. Under this interpretation, states can set up programs that are free of any of the welfare law's prohibitions and requirements.
2. Advise states that they should not use their own programs to appropriate child support collections that otherwise would go to the federal government; issue regulations authorizing HHS to collect the data necessary to monitor whether states are using their programs for this purpose; and work with both the governors and Congress to ensure that states do not do so. Conversations with Governors have suggested a willingness to work cooperatively on this issue. We also have every reason to think that Congress -- which in assessing the budgetary impact of the bill, did not envision a reduction in federal child support collections -- would legislate a remedy if that is necessary.
3. Issue a regulation providing that a state cannot receive a reduction in its participation rate for reducing its caseload unless the state shows that the caseload reduction is real and not simply the result of transferring beneficiaries from TANF into a separate state program. Such a regulation, which rejects the interpretation of the law most beneficial to states, will prevent states from decreasing their obligation to put people to work through making purely formal changes in the structure of assistance programs.
4. Issue a regulation providing that a state cannot receive any good-cause consideration --

i.e., any mitigation in penalty for failure to meet work participation rates -- unless the state shows that it has not used its own program to escape the force of work participation rates. This regulation will create a disincentive for states to use their own programs as dumping grounds for hard-to-place beneficiaries.

5. Issue a regulation providing that HHS will look at a state's overall work effort -- i.e., its success in putting to work the beneficiaries of both TANF and separate state programs -- in determining whether the state qualifies for a high-performance bonus. This regulation too will encourage states to make real efforts to place in work activities those individuals who receive assistance from separate state programs.

6. Work with Congress and the Governors to enact a legislative clarification to ensure that states do not use their discretion over maintenance-of-effort funds to evade the participation requirements. Specifically, we will seek language making clear that calculation of whether a state has met the applicable participation rate shall take into account the state's success in placing in work activities the participants in both the TANF program and any separate state program that counts toward the maintenance-of-effort standard.

Together, these steps should give governors broad flexibility to run their own programs without giving them perverse incentives to evade the work requirements. Please let us know if this resolution of the issue meets with your approval. If it does, we would like to roll out this program prior to the NGA meeting.

IX. OVERVIEW OF TANF PROVISIONS IN DIFFERENT PROGRAM CONFIGURATIONS

PROVISION	FEDERAL TANF PROGRAMS ¹	SEGREGATED STATE TANF PROGRAMS ²	SEPARATE STATE PROGRAMS ³
Covered by State plan	Yes	Yes	No
Needy per income stds in State TANF plan	Yes	Yes	Yes ⁴
Restricted disclosure	Applicable	Not applicable	Not applicable
Allowable expenditures	For purposes and as authorized under IV-A or IV-F as of 9/30/95	Count toward both TANF and Contingency Fund yMOEs. Must be for purposes of program or for cash asst, child care, certain education, or admin costs	Count only toward TANF MOE (not Contingency Fund MOE). See State TANF section for allowable purposes.
15 % admin cost cap	Yes; ADP exception	Yes	Yes
Medical services	Only pre-pregnancy family planning	No specific restriction	No specific restriction
24-month work reqt	Yes	Yes	No
2-month work reqt	Yes	Yes	No
407 work reqts	Yes	Yes	No
work sanctions	Yes	Yes	No
non-displacement	Yes	No	No
child reqt	Yes; "minor child"	Yes ⁴	Yes ⁴
child ineligible when absent minimum period	Yes	No	No
child support	Assignment & cooperation req'd. Share of collections to Fed govt.	Assignment & cooperation req'd. Share of collections to Fed govt.	Assignment & cooperation may not be req'd. No share of collections for Fed. govt.
time limit on assistance	Yes	No	No
teen school attendance	Required	No requirement	No requirement
teen parent living arrangements	Must be adult-supervised	No requirement	No requirement
Federal non-discrimination statutes	4 statutes applicable	4 statutes applicable	No specific provision
fraud cases	10-yr exclusion	No exclusion	No exclusion
drug felons	Receive reduced benefits	Receive reduced benefits	No provision
data reporting	Required	Required	Not required
fugitive felons	Barred from assistance	No bar	No bar

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

² Under this scenario, Federal and State funds are not co-mingled. Since State funds are segregated, some -- but not all -- of the Federal TANF rules apply.

³ These programs count towards State MOE. They are not subject to TANF requirements, per se, but are subject to the MOE restrictions at section 409(a)(7).

⁴ Per definition of "eligible families."

STATUTE

1 support order in accordance with such part and who do not
2 qualify for any good cause or other exception established by
3 the State under section 454(29), the Secretary shall reduce
4 the grant payable to the State under section 403(a)(1) for
5 the immediately succeeding fiscal year (without regard to
6 this section) by not more than 5 percent.

7 “(6) FAILURE TO TIMELY REPAY A FEDERAL LOAN
8 FUND FOR STATE WELFARE PROGRAMS.—If the Secretary
9 determines that a State has failed to repay any amount
10 borrowed from the Federal Loan Fund for State Welfare
11 Programs established under section 406 within the period
12 of maturity applicable to the loan, plus any interest owed
13 on the loan, the Secretary shall reduce the grant payable
14 to the State under section 403(a)(1) for the immediately
15 succeeding fiscal year quarter (without regard to this sec-
16 tion) by the outstanding loan amount, plus the interest
17 owed on the outstanding amount. The Secretary shall not
18 forgive any outstanding loan amount or interest owed on
19 the outstanding amount.

20 “(7) FAILURE OF ANY STATE TO MAINTAIN CERTAIN
21 LEVEL OF HISTORIC EFFORT.—

22 “(A) IN GENERAL.—The Secretary shall reduce
23 the grant payable to the State under section 403(a)(1)
24 for fiscal year 1998, 1999, 2000, 2001, 2002, or 2003
25 by the amount (if any) by which qualified State ex-
26 penditures for the then immediately preceding fiscal
27 year are less than the applicable percentage of historic
28 State expenditures with respect to such preceding fiscal
29 year.

30 “(B) DEFINITIONS.—As used in this paragraph:

31 “(i) QUALIFIED STATE EXPENDITURES.—

32 “(I) IN GENERAL.—The term ‘qualified
33 State expenditures’ means, with respect to a
34 State and a fiscal year, the total expenditures
35 by the State during the fiscal year, under all

not under this part' (as under this grant)

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State programs, for any of the following with respect to eligible families:

“(aa) Cash assistance.

“(bb) Child care assistance.

“(cc) Educational activities designed to increase self-sufficiency, job training, and work, excluding any expenditure for public education in the State except expenditures which involve the provision of services or assistance to a member of an eligible family which is not generally available to persons who are not members of an eligible family.

“(dd) Administrative costs in connection with the matters described in items (aa), (bb), (cc), and (ee), but only to the extent that such costs do not exceed 15 percent of the total amount of qualified State expenditures for the fiscal year.

“(ee) Any other use of funds allowable under section 404(a)(1).

“(II) EXCLUSION OF TRANSFERS FROM OTHER STATE AND LOCAL PROGRAMS.—Such term does not include expenditures under any State or local program during a fiscal year, except to the extent that—

“(aa) the expenditures exceed the amount expended under the State or local program in the fiscal year most recently ending before the date of the enactment of this part; or

“(bb) the State is entitled to a payment under former section 403 (as in effect immediately before such date of enactment) with respect to the expenditures.

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gen'l
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HHS discuss - supplemental
acceptance

not part of party

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“(III) ELIGIBLE FAMILIES.—As used in subclause (I), the term ‘eligible families’ means families eligible for assistance under the State program funded under this part, and families that would be eligible for such assistance but for the application of section 408(a)(7) of this Act or section 402 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Text IV

5 yr time limit

“(ii) APPLICABLE PERCENTAGE.—The term ‘applicable percentage’ means for fiscal years 1997 through 2002, 80 percent (or, if the State meets the requirements of section 407(a) for the fiscal year, 75 percent) reduced (if appropriate) in accordance with subparagraph (C)(ii).

“(iii) HISTORIC STATE EXPENDITURES.—The term ‘historic State expenditures’ means, with respect to a State, the lesser of—

“(I) the expenditures by the State under parts A and F (as in effect during fiscal year 1994) for fiscal year 1994; or

“(II) the amount which bears the same ratio to the amount described in subclause (I) as—

“(aa) the State family assistance grant, plus the total amount required to be paid to the State under former section 403 for fiscal year 1994 with respect to amounts expended by the State for child care under subsection (g) or (i) of section 402 (as in effect during fiscal year 1994); bears to

“(bb) the total amount required to be paid to the State under former section 403 (as in effect during fiscal year 1994) for fiscal year 1994.

*HH S CC 2 no
longer relevant
deleted*

throughout which the program is found to be in substantial compliance with such requirements by—

(i) not less than 1 nor more than 2 percent; or
(ii) not less than 2 nor more than 3 percent, if the finding is the 2nd consecutive such finding made as a result of such a review; or

(iii) not less than 3 nor more than 5 percent, if the finding is the 3rd or a subsequent consecutive such finding made as a result of such a review.

(B) DISREGARD OF NONCOMPLIANCE WHICH IS OF A TECHNICAL NATURE.—For purposes of subparagraph (A) and section 452(a)(4), a State which is not in full compliance with the requirements of this part shall be determined to be in substantial compliance with such requirements only if the Secretary determines that any noncompliance with such requirements is of a technical nature which does not adversely affect the performance of the State's program operated under part D.

(9) FAILURE TO COMPLY WITH 5-YEAR LIMIT ON ASSISTANCE.—If the Secretary determines that a State has not complied with section 408(a)(1)(B) during a fiscal year, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by an amount equal to 5 percent of the State family assistance grant.

(10) FAILURE OF STATE RECEIVING AMOUNTS FROM CONTINGENCY FUND TO MAINTAIN 100 PERCENT OF HISTORIC EFFORT.—If at the end of any fiscal year during which amounts from the Contingency Fund for State Welfare Programs have been paid to a State, the Secretary finds that the expenditures under the State program funded under this part for the fiscal year (excluding any amounts made available by the Federal Government) are less than 100 percent of historic State expenditures (as defined in paragraph (7)(B)(iii) of this section), the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by the total of the amounts so paid to the State.

(11) FAILURE TO MAINTAIN ASSISTANCE TO ADULT SINGLE CUSTODIAL PARENT WHO CANNOT OBTAIN CHILD CARE FOR CHILD UNDER AGE 6.—(A) IN GENERAL.—If the Secretary determines that a State to which a grant is made under section 403 for a fiscal year has violated section 407(e)(2) during the fiscal year, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by an amount equal to not more than 5 percent of the State family assistance grant.

(B) PENALTY BASED ON SEVERITY OF FAILURE.—The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of non-compliance.

(12) STATE UNABLE TO REPEND ADDITIONAL STATE FUNDS TO REPLACE GRANT REDUCTIONS.—If the grant payable to a State under section 403(a)(1) for a fiscal year is reduced by reason of this subsection, the State shall, during the immediately succeeding fiscal year, expend under the State program funded under this part an amount equal to the total amount of such reductions.

(b) REASONABLE CAUSE EXCEPTION.—

(1) IN GENERAL.—The Secretary may not impose a penalty on a State under subsection (a) with respect to a requirement if the Secretary determines that the State has reasonable cause for failing to comply with the requirement.

(2) EXCEPTION.—Paragraph (1) of this subsection shall not apply to any penalty under paragraph (7) or (8) of subsection (a).

(c) CORRECTIVE COMPLIANCE PLAN.—

(1) IN GENERAL.—

(A) NOTIFICATION OF VIOLATION.—Before imposing a penalty against a State under subsection (a) with respect to a violation of this part, the Secretary shall notify the State of the violation and allow the State the opportunity to enter into a corrective compliance plan in accordance with this subsection which outlines how the State will correct the violation and how the State will insure continuing compliance with this part.

(B) 60-DAY PERIOD TO PROPOSE A CORRECTIVE COMPLIANCE PLAN.—During the 60-day period that begins on the date the State receives a notice provided under subparagraph (A) with respect to a violation, the State may submit to the Federal Government a corrective compliance plan to correct the violation.

(C) CONSULTATION ABOUT MODIFICATIONS.—During the 60-day period that begins with the date the Secretary receives a corrective compliance plan submitted by a State in accordance with subparagraph (B), the Secretary may consult with the State on modifications to the plan.

(D) ACCEPTANCE OF PLAN.—A corrective compliance plan submitted by a State in accordance with subparagraph (B) is deemed to be accepted by the Secretary if the Secretary does not accept or reject the plan during 60-day period that begins on the date the plan is submitted.

(2) EFFECT OF CORRECTING VIOLATION.—The Secretary may not impose any penalty under subsection (a) with respect to any violation covered by a State corrective compliance plan accepted by the Secretary if the State corrects the violation pursuant to the plan.

(3) EFFECT OF FAILING TO CORRECT VIOLATION.—The Secretary shall assess some or all of a penalty imposed on a State under subsection (a) with respect to a violation if the State does not, in a timely manner, correct the violation pursuant to a State corrective compliance plan accepted by the Secretary.

(4) INAPPLICABILITY TO FAILURE TO TIMELY REPAY A FEDERAL LOAN FUND FOR A STATE WELFARE PROGRAM.—This subsection shall not apply to the imposition of a penalty against a State under subsection (a)(6).

(d) LIMITATION ON AMOUNT OF PENALTIES.—

(1) IN GENERAL.—In imposing the penalties described in subsection (a), the Secretary shall not reduce any quarterly payment to a State by more than 25 percent.

(2) CARRYFORWARD OF UNRECOVERED PENALTIES.—To the extent that paragraph (1) of this subsection prevents the Secretary from recovering during a fiscal year the full amount of penalties imposed on a State under subsection (a) of this

State expenditures additional child care expenditures

6, 7, 7, 10, 12

66

section for a prior fiscal year, the Secretary shall apply any remaining amount of such penalties to the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year.

42 USC 610.

“SEC. 410. APPEAL OF ADVERSE DECISION.

“(a) IN GENERAL.—Within 5 days after the date the Secretary takes any adverse action under this part with respect to a State, the Secretary shall notify the chief executive officer of the State of the adverse action, including any action with respect to the State plan submitted under section 402 or the imposition of a penalty under section 409.

“(b) ADMINISTRATIVE REVIEW.—

“(1) IN GENERAL.—Within 60 days after the date a State receives notice under subsection (a) of an adverse action, the State may appeal the action, in whole or in part, to the Departmental Appeals Board established in the Department of Health and Human Services (in this section referred to as the ‘Board’) by filing an appeal with the Board.

“(2) PROCEDURAL RULES.—The Board shall consider an appeal filed by a State under paragraph (1) on the basis of such documentation as the State may submit and as the Board may require to support the final decision of the Board. In deciding whether to uphold an adverse action or any portion of such an action, the Board shall conduct a thorough review of the issues and take into account all relevant evidence. The Board shall make a final determination with respect to an appeal filed under paragraph (1) not less than 60 days after the date the appeal is filed.

“(c) JUDICIAL REVIEW OF ADVERSE DECISION.—

“(1) IN GENERAL.—Within 90 days after the date of a final decision by the Board under this section with respect to an adverse action taken against a State, the State may obtain judicial review of the final decision (and the findings incorporated into the final decision) by filing an action in—

“(A) the district court of the United States for the judicial district in which the principal or headquarters office of the State agency is located; or

“(B) the United States District Court for the District of Columbia.

“(2) PROCEDURAL RULES.—The district court in which an action is filed under paragraph (1) shall review the final decision of the Board on the record established in the administrative proceeding, in accordance with the standards of review prescribed by subparagraphs (A) through (E) of section 706(2) of title 5, United States Code. The review shall be on the basis of the documents and supporting data submitted to the Board.

42 USC 611.

“SEC. 411. DATA COLLECTION AND REPORTING.

“(a) QUARTERLY REPORTS BY STATES.—

“(1) GENERAL REPORTING REQUIREMENT.—

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

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

rewritten to define 'disabled'

“(ii) Whether a child receiving such assistance or an adult in the family is disabled, as defined in section 408(a)(7);

“(iii) The ages of the members of such families;

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

“(v) The employment status and earnings of the employed adult in the family;

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

“(vii) The race and educational status of each adult in the family;

“(viii) The race and educational status of each child in the family;

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

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

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

“(I) Education;

“(II) Subsidized private sector employment;

“(III) Unsubsidized employment;

“(IV) Public sector employment, work experience, or community service;

“(V) Job search;

“(VI) Job skills training or on-the-job training;

“(VII) Vocational education;

“(xii) Information necessary to calculate participation rates under section 407;

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

“(xiv) Any amount of unearned income received by any member of the family;

“(xv) The citizenship of the members of the family;

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

“(I) employment;

“(II) marriage;

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

“(IV) sanction; or

“(V) State policy.

“(B) USE OF ESTIMATES.—

SAMPLES

“(i) AUTHORITY.—A State may comply with subparagraph (A) by submitting an estimate which is obtained through the use of scientifically acceptable sampling methods approved by the Secretary.

“(ii) SAMPLING AND OTHER METHODS.—The Secretary shall provide the States with such case sampling plans and data collection procedures as the Secretary



20, whether new is parent of child

(3) Isolated, non-recurring problems of minimal impact that are not indicative of a systemic problem.

(b) A State may also use the additional factors for claiming reasonable cause for failure to satisfy the five-year limit at §274.3 of this chapter and to meet the minimum participation rates at §271.52 of this chapter.

§272.6 What if a State does not demonstrate reasonable cause?

(a) A State may accept the penalty or enter into a corrective compliance plan that will correct or discontinue the violation within 12 months in order to avoid the penalty if:

- (1) A State does not claim reasonable cause; or
- (2) We find that the State does not have reasonable

cause.

(b) A State that does not claim reasonable cause will have 60 days from receipt of our notice described in §272.4(a) to submit its corrective compliance plan.

(c) A State that unsuccessfully claimed reasonable cause, will have 60 days from the date it received our second notice, described in §272.4(f), to submit its corrective compliance plan.

(d) The corrective compliance plan must include:

- (1) An analysis of why the State did not meet the

requirements;

(2) A description of how the State will correct or discontinue, as appropriate, the violation in a timely manner; and

(3) The actions, outcomes and time line the State will undertake to assure compliance.

(e) During the 60-day period following our receipt of the State's corrective compliance plan, we may request additional information and consult with the State on modifications to the plan.

(f) A corrective compliance plan is deemed to be accepted if we take no action during the 60-day period following our receipt of the plan.

(g) We will not impose a penalty against a State with respect to any violation covered by a corrective compliance plan that we accept if the State corrects or discontinues, as appropriate, the violation within the period covered by the plan. This period must be no longer than 12 months from the date the State received our notice of the violation.

(h) We will assess some or all of the penalty if the State fails to correct or discontinue the violation pursuant to its corrective compliance plan in a timely manner. If the violation has not been fully corrected or discontinued, we may reduce the amount of the penalty based on one or more of the following situations:

(1) The State expended more resources toward

eliminating the violation than it was committed to expend under the corrective compliance plan;

(2) Although it did not achieve these commitments, the State made considerable progress in meeting the actions and outcomes it identified in its corrective compliance plan; and

(3) The State encountered circumstances that could not have been anticipated at the time the corrective compliance plan was developed.

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

(a) We will formally notify the chief executive officer of the State of an adverse action (i.e., the reduction in the SFAG) within five days after we determine that a State is subject to a penalty under parts 271 - 275 of this chapter.

(b) The State may file an appeal of the action, in whole or in part, to the HHS Departmental Appeals Board (the Board) within 60 days after the date it receives notice of the adverse action. The State must include the brief and all supporting documents with its appeal when it is filed. The State must send a copy of the appeal to the Office of the General Counsel, Children, Families and Aging Division, Room 411-D, 200 Independence Avenue, S.W., Washington, D.C.

(C) **NONDISCRIMINATION PROVISIONS.**—The following provisions of law shall apply to any program or activity which receives funds provided under this part:

(1) The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.).

(2) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(3) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(4) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(d) **ALIENS.**—From special rules relating to the treatment of aliens, see section 402 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

SEC. 408. PENALTIES.

(a) **IN GENERAL.**—Subject to this section:

(1) **USE OF GRANT IN VIOLATION OF THIS PART.**—

(A) **GENERAL PENALTY.**—If an audit conducted under chapter 75 of title 31, United States Code, finds that an amount paid to a State under section 403 for a fiscal year has been used in violation of this part, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year quarter by the amount so used.

(B) **ENHANCED PENALTY FOR INTENTIONAL VIOLATIONS.**—If the State does not prove to the satisfaction of the Secretary that the State did not intend to use the amount in violation of this part, the Secretary shall further reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year quarter by an amount equal to 5 percent of the State family assistance grant.

(2) **FAILURE TO SUBMIT REQUIRED REPORT.**—

(A) **IN GENERAL.**—If the Secretary determines that a State has not, within 1 month after the end of a fiscal quarter, submitted the report required by section 411(a) for the quarter, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by an amount equal to 4 percent of the State family assistance grant.

(B) **RESCISSION OF PENALTY.**—The Secretary shall rescind a penalty imposed on a State under subparagraph (A) with respect to a report if the State submits the report before the end of the fiscal quarter that immediately succeeds the fiscal quarter for which the report was required.

(3) **FAILURE TO SATISFY MINIMUM PARTICIPATION RATES.**—

(A) **IN GENERAL.**—If the Secretary determines that a State to which a grant is made under section 403 for a fiscal year has failed to comply with section 407(a) for the fiscal year, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by an amount equal to not more than the applicable percentage of the State family assistance grant.

(B) **APPLICABLE PERCENTAGE DEFINED.**—As used in subparagraph (A), the term 'applicable percentage' means, with respect to a State—

(i) if a penalty was not imposed on the State under subparagraph (A) for the immediately preceding fiscal year, 5 percent; or

(ii) if a penalty was imposed on the State under subparagraph (A) for the immediately preceding fiscal year, the lesser of—

(I) the percentage by which the grant payable to the State under section 403(a)(1) was reduced for such preceding fiscal year, increased by 2 percentage points; or

(II) 21 percent.

(C) **PENALTY BASED ON SEVERITY OF FAILURE.**—The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of non-compliance, and may reduce the penalty if the non-compliance is due to circumstances that caused the State to become a needy State (as defined in section 403(b)(6)) during the fiscal year.

(4) **FAILURE TO PARTICIPATE IN THE INCOME AND ELIGIBILITY VERIFICATION SYSTEM.**—If the Secretary determines that a State program funded under this part is not participating during a fiscal year in the income and eligibility verification system required by section 1137, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by an amount equal to not more than 2 percent of the State family assistance grant.

(5) **FAILURE TO COMPLY WITH PATERNITY ESTABLISHMENT AND CHILD SUPPORT ENFORCEMENT REQUIREMENTS UNDER PART D.**—Notwithstanding any other provision of this Act, if the Secretary determines that the State agency that administers a program funded under this part does not enforce the penalties requested by the agency administering part D against recipients of assistance under the State program who fail to cooperate in establishing paternity or in establishing, modifying, or enforcing a child support order in accordance with such part and who do not qualify for any good cause or other exception established by the State under section 454(29), the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year (without regard to this section) by not more than 5 percent.

(6) **FAILURE TO TIMELY REPAY A FEDERAL LOAN FUND FOR STATE WELFARE PROGRAMS.**—If the Secretary determines that a State has failed to repay any amount borrowed from the Federal Loan Fund for State Welfare Programs established under section 406 within the period of maturity applicable to the loan, plus any interest owed on the loan, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year quarter (without regard to this section) by the outstanding loan amount, plus the interest owed on the outstanding amount. The Secretary shall not forgive any outstanding loan amount or interest owed on the outstanding amount.

(7) **FAILURE OF ANY STATE TO MAINTAIN CERTAIN LEVEL OF HISTORIC EFFORT.**—

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DHS

February 28.

Subpart E -- State Work Penalties

§271.50 What happens if a State fails to meet the participation rates?

(a) If we determine that a State did not achieve one of the required minimum work participation rates, we must reduce the SFAG payable to the State.

(b) (1) If there was no penalty for the preceding fiscal year, the penalty for the current fiscal year is five percent of the adjusted SFAG.

(2) For each consecutive year that the State is subject to a penalty under this part, we will increase the amount of the penalty by two percentage points over the previous year's penalty. However, the penalty can never exceed 21 percent of the State's adjusted SFAG.

(c) We impose a penalty by reducing the SFAG payable for the fiscal year that immediately follows our final determination that a State is subject to a penalty and our final determination of the penalty amount.

§271.51 Under what circumstances will we reduce the amount of the penalty below the maximum?

(a) We will reduce the amount of the penalty based on the degree of the State's noncompliance.

(b) In determining the size of any reduction, we will consider the objective evidence of the good-faith efforts the State has made to achieve the rates (e.g., its investment of resources, new program development, and staff training).

(1) We will look beyond the participation rates for the TANF caseload to the efforts a State is making to engage recipients of assistance in separate State programs in work activities.

(2) We will take into consideration evidence documenting the severity of the failure, whether the State missed one or both rates, and whether the State has failed to meet the rate in prior years.

(3) We will consider information provided to us through reports filed under part 275 of this chapter.

(c)(1) We may reduce the penalty if the State failed to achieve a participation rate because--

(i) It meets the definition of a needy State, specified at §270.30 of this chapter, or

(ii) Noncompliance is due to extraordinary circumstances such as a natural disaster or regional recession.

(2) In determining noncompliance, we will consider any objective evidence of extraordinary circumstances that the

State chooses to submit.

(d)(1) In accordance with the procedures specified at §272.4 of this chapter, a State may dispute our determination that it is subject to a penalty.

(2) A State may also use the procedures specified at §272.4 of this chapter to provide supplemental information demonstrating that it made a good-faith effort to achieve its work participation rates or faced extraordinary circumstances and should be subject to a smaller penalty.

§271.52 Is there a way to waive the State's penalty for failing to achieve either of the participation rates?

(a) We will not impose a penalty under this part if we determine that the State has reasonable cause for its failure.

(b) In addition to the general reasonable cause criteria specified at §272.5 of this chapter, a State may also submit a request for a reasonable cause exemption from the requirement to meet the minimum participation rate based on the following criteria:

(1) We will determine that a State has reasonable cause if it demonstrates that its failure to meet the work participation rates is attributable to its provision of good cause domestic violence waivers.

(i) A State may demonstrate this reasonable cause by

Issues in TANF Reg

- Waivers -- When does grandfather clause trump welfare law? Time limits? Definition of work?
- State-only programs -- Which federal rules apply to state-only programs as well? Which do not?
- Caseload reduction credit -- How easy/hard does HHS make it?
- Work requirements -- definition of work; job search annual; voc ed now settled?
- Domestic violence
- Data reporting -- enough data to measure success, but not burdensome?
- Penalties -- Generally right balance? Reasonable cause and corrective compliance plans too easy?
- Form/length of the rule
- Definition of assistance
- Definition of administrative costs
- Displacement
- Contingency fund OK?

WR - work regulation

TO: Elena

FR: Diana

cc: Cynthia

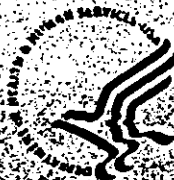
Here's the stuff on grandfathering waivers I can find: the guidance HHS sent to states in September; the relevant section of the law; and a section of a memo we sent the President on this.

See p. 2

DRAFT

"...our nation's answer to this great social challenge will no longer be a never-ending cycle of welfare, it will be the dignity, the power and the ethic of work. Today, we are taking an historic chance to make welfare what it was meant to be: a second chance, not a way of life." President William J. Clinton

**STATE GUIDANCE
FOR THE
TEMPORARY ASSISTANCE
FOR
NEEDY FAMILIES
PROGRAM**



Department of Health and Human Services
Administration for Children and Families
370 L'Enfant Promenade, S.W., Washington, D.C. 20447
September 1996

DRAFT

DRAFT

WAIVERS

Do you intend to continue one or more individual waivers as provided under section 415? If so, please identify each waiver provision and each provision of new law that you believe are inconsistent, and provide the basis for your assessment of inconsistency. (You may wish to consult with the chief law officer of your State in making this assessment.) What is the name of the 1115 demonstration which contains the waiver? What are the beginning and ending dates of the demonstration? Is the waiver incorporated into your TANF plan applicable statewide? If not, how will TANF operate in those areas of the State not covered by the continuing waivers? Note: ~~Future legislative or regulatory action may limit which provisions of the TANF may be considered inconsistent with waivers for purposes of determining penalties.~~ If this happens, States will have an opportunity to submit a new plan in order to come into compliance with the requirements.

Description of Attachments

In additions to this guidance, we are providing three attachments that State policy makers may wish to use in developing their State TANF plans. Attachment A is a copy of the statutory requirements regarding the state plan. Attachment B contains suggested formats for the required certifications that must be submitted with a state plan. Attachment C provides technical information for financial officers of the program regarding funding and a mechanism for States to request TANF funds.

Paperwork Reduction Act

The information in the State TANF plan is collected in accordance with section 402 of the Social Security Act, as amended. Information received in the State plans sets forth how the TANF program will be administered and operated in the States.

The response burden for this collection of information is estimated to be 60 hours per response, including the time for reviewing the statute, this guidance gathering and preparing the information, and reviewing the information.

The information collected is mandatory in accordance with the above-mentioned citations.

This information is not considered confidential; therefore, no additional safeguards are considered necessary beyond that customarily applied to routine government information.

Inquiries

Inquiries should be addressed to the appropriate Regional Administrator, Administration for Children and Families. Information about all State plans will be posted on the ACF home page.

1 1998, 1999, 2000, 2001, and 2002 for payment to the Bureau
2 of the Census to carry out subsection (a).

3 "SEC. 415. WAIVERS.

4 "(a) CONTINUATION OF WAIVERS.—

5 "(1) WAIVERS IN EFFECT ON DATE OF ENACTMENT
6 OF WELFARE REFORM.—

7 "(A) IN GENERAL.—Except as provided in sub-
8 paragraph (B), if any waiver granted to a State under
9 section 1115 of this Act or otherwise which relates to
10 the provision of assistance under a State plan under
11 this part (as in effect on September 30, 1996) is in ef-
12 fect as of the date of the enactment of the Personal
13 Responsibility and Work Opportunity Reconciliation
14 Act of 1996, the amendments made by the Personal
15 Responsibility and Work Opportunity Reconciliation
16 Act of 1996 (other than by section 103(c) of the Per-
17 sonal Responsibility and Work Opportunity Reconcili-
18 ation Act of 1996) shall not apply with respect to the
19 State before the expiration (determined without regard
20 to any extensions) of the waiver to the extent such
21 amendments are inconsistent with the waiver.

22 "(B) FINANCING LIMITATION.—Notwithstanding
23 any other provision of law, beginning with fiscal year
24 1996, a State operating under a waiver described in
25 subparagraph (A) shall be entitled to payment under
26 section 403 for the fiscal year, in lieu of any other pay-
27 ment provided for in the waiver.

28 "(2) WAIVERS GRANTED SUBSEQUENTLY.—

29 "(A) IN GENERAL.—Except as provided in sub-
30 paragraph (B), if any waiver granted to a State under
31 section 1115 of this Act or otherwise which relates to
32 the provision of assistance under a State plan under
33 this part (as in effect on September 30, 1996) is sub-
34 mitted to the Secretary before the date of the enact-
35 ment of the Personal Responsibility and Work Oppor-
36 tunity Reconciliation Act of 1996 and approved by the

Waivers

~~Does this
apply in
12 mos.
extended
handout
list~~

child care??

1 Secretary on or before July 1, 1997, and the State
 2 demonstrates to the satisfaction of the Secretary that
 3 the waiver will not result in Federal expenditures under
 4 title IV of this Act (as in effect without regard to the
 5 amendments made by the Personal Responsibility and
 6 Work Opportunity Reconciliation Act of 1996) that are
 7 greater than would occur in the absence of the waiver,
 8 the amendments made by the Personal Responsibility
 9 and Work Opportunity Reconciliation Act of 1996
 10 (other than by section 103(c) of the Personal Respon-
 11 sibility and Work Opportunity Reconciliation Act of
 12 1996) shall not apply with respect to the State before
 13 the expiration (determined without regard to any exten-
 14 sions) of the waiver to the extent the amendments
 15 made by the Personal Responsibility and Work Oppor-
 16 tunity Reconciliation Act of 1996 are inconsistent with
 17 the waiver.

18 (B) NO EFFECT ON NEW WORK REQUIRE-
 19 MENTS.—Notwithstanding subparagraph (A), a waiver
 20 granted under section 1115 or otherwise which relates
 21 to the provision of assistance under a State program
 22 funded under this part (as in effect on September 30,
 23 1996) shall not affect the applicability of section 407
 24 to the State.

*This only
 applies
 to new
 waivers.*

25 (b) STATE OPTION TO TERMINATE WAIVER.—

26 (1) IN GENERAL.—A State may terminate a waiver
 27 described in subsection (a) before the expiration of the
 28 waiver.

29 (2) REPORT.—A State which terminates a waiver
 30 under paragraph (1) shall submit a report to the Secretary
 31 summarizing the waiver and any available information con-
 32 cerning the result or effect of the waiver.

33 (3) HOLD HARMLESS PROVISION.—

34 (A) IN GENERAL.—Notwithstanding any other
 35 provision of law, a State that, not later than the date
 36 described in subparagraph (B) of this paragraph, sub-

only new!

1 mits a written request to terminate a waiver described
2 in subsection (a) shall be held harmless for accrued
3 cost neutrality liabilities incurred under the waiver.

4 “(B) DATE DESCRIBED.—The date described in
5 this subparagraph is 90 days following the adjourn-
6 ment of the first regular session of the State legislature
7 that begins after the date of the enactment of the Per-
8 sonal Responsibility and Work Opportunity Reconcili-
9 ation Act of 1996.

10 “(c) SECRETARIAL ENCOURAGEMENT OF CURRENT WAIV-
11 ERS.—The Secretary shall encourage any State operating a
12 waiver described in subsection (a) to continue the waiver and
13 to evaluate, using random sampling and other characteristics of
14 accepted scientific evaluations, the result or effect of the waiv-
15 er.

16 “(d) CONTINUATION OF INDIVIDUAL WAIVERS.—A State
17 may elect to continue 1 or more individual waivers described
18 in subsection (a).

19 “SEC. 416. ADMINISTRATION.

20 “The programs under this part and part D shall be ad-
21 ministered by an Assistant Secretary for Family Support with-
22 in the Department of Health and Human Services, who shall
23 be appointed by the President, by and with the advice and con-
24 sent of the Senate, and who shall be in addition to any other
25 Assistant Secretary of Health and Human Services provided
26 for by law, and the Secretary shall reduce the Federal
27 workforce within the Department of Health and Human Serv-
28 ices by an amount equal to the sum of 75 percent of the full-
29 time equivalent positions at such Department that relate to any
30 direct spending program, or any program funded through dis-
31 cretionary spending, that has been converted into a block grant
32 program under the Personal Responsibility and Work Oppor-
33 tunity Act of 1996 and the amendments made by such Act, and
34 by an amount equal to 75 percent of that portion of the total
35 full-time equivalent departmental management positions at
36 such Department that bears the same relationship to the

THE PRESIDENT HAS SEEN
10/9/96

THE WHITE HOUSE
WASHINGTON

~~cc for [unclear]~~
See page 2
① CC - govt memo. See p. 4
for 1 question -

OCT - 9 1996

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October 2, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: to Carol H. Rasco
Frank Raines

② Leon -> you showed
me this if you haven't
already -

SUBJECT: Update on Welfare Reform Implementation

TR

We are continuing to work to coordinate the Administration's efforts to implement the new welfare law. We will be providing periodic updates on key issues for you, as well as answers to questions you raise.

PROCESS

Domestic Policy, OMB, Counsel's office, and Intergovernmental are working closely together on all aspects of implementation. We have the following process in motion:

- o DPC chairs bi-weekly meetings of 11 federal agencies and all White House offices.
- o A subgroup of key agencies and offices meets more regularly on nuts-and-bolts implementation issues.
- o We are meeting weekly with the National Governors' Association, the National Conference of State Legislatures, and the American Public Welfare Association.
- o We met with the League of Cities, the Conference of Mayors, and the counties and promised them ongoing input and consultation.

TANF BLOCK GRANT IMPLEMENTATION

The entitlement to AFDC ended on October 1. States can elect to take advantage of the new TANF block grant as of that date, but they must enter the new program by July 1997. The first states to send in state plans were Michigan and Wisconsin, and their plans were approved by HHS on September 30. As of October 1, about 11 states had filed state plans with HHS.

Determining "Completeness" of Plans - HHS's role in state plans is merely to certify that they are "complete" - a far different role than they have had in the past. We have worked with HHS to pare down their list of what is required for a plan to be complete. As a result, they produced draft guidance for the states at the NGA conference last month that was quite brief - and praised by the states as a result.

Regulations -- The law provides only limited authority to regulate the TANF block grant. You asked in our last memo whether we can require states to use TANF funds as wage subsidies. This is one of the permissible uses of the funds and one way states can provide work. HHS will be working with states to promote this as a model, but it will not be able to require that states adopt any particular approach to meeting the work requirement.

Grandfathering Waivers -- Counsel's office advises that the welfare law allows states to continue to operate waiver programs that have time limits and work requirements that vary from the terms of the new law (unless the waivers were granted after the new law passed). We will, however, be making it clear in our guidance to states that the Administration believes that all state programs should comply with the law's provisions regarding time limits, work participation rates, and exemptions and extensions. We will also indicate that if states do not bring their programs into line with the law, there will almost certainly be Congressional action (which we would support) to limit the grandfathering provision.

Wisconsin Waiver -- We have resolved Wisconsin's welfare and Medicaid waiver request. On September 30, in its letter approving Wisconsin's new TANF state plan, HHS informed the state that it no longer needs waivers to implement the welfare reform portions of its "W-2" program. Wisconsin still plans to impose a 60-day residency requirement before families can begin to collect benefits, which HHS believes is unconstitutional. The law in this area is unsettled, and the provision will definitely be brought to the courts. HHS simply took note of this issue as part of the plan approval.

On Medicaid, HHS informed the state on September 30 that it will not grant that portion of the state's waiver request because it would have eliminated the Medicaid entitlement and run counter to our commitment to the federal Medicaid guarantee. HHS offered to work with the state on an alternative Medicaid proposal.

Performance Bonus Fund and Contingency Fund -- The new law requires the Secretary of HHS to work with NGA and APWA to set up the Performance Bonus Fund, and gives her a year to develop the formula and process. We are setting up a process with these state groups to work out such a proposal in cooperation. We will keep you apprised as these plans develop. The Contingency Fund to protect states from economic downturns is being established by Treasury in consultation with HHS.

New Mexico -- New Mexico is one of the few states that is disadvantaged by the conversion to a block grant, because its caseload is increasing. The state announced it may have to cut welfare benefits by 12% to live within the new law. However, Senator Domenici may secure a legislative fix that would allow the state to tap into the Contingency Fund for this purpose.

IMMIGRANTS

The immigration issues raised by the law are clearly the thorniest and most difficult to implement.

State Reports to HHS on their Waivers and Inconsistencies with Welfare Law			
Clear and important inconsistencies identified by state; state plans to continue waiver policy	State has waiver, but identified no inconsistencies, or says it doesn't know yet what it will do	Small waiver, or no apparent inconsistencies we would care about	No waiver, or state plans to terminate waiver
AZ	CA	AL	DC
CT	FL	MI?	KY
DE	GA	OK (Learnf 2 counties)	MD?
IN (control gp only)	IO		NV
MA	KS (no ref to waiver)		NJ
MO	LA?		NY?
NE	ME?		WY
NH	MS		
OR	MT		
SC	NC		
SD	OH		
TN	PA (no ref to waiver)		
TX	VT		
UT	WV (no ref to waiver)		
VA	WI		
WA			
16	15	3	7

3/92

SUMMARY OF §1115 WAIVER PROVISIONS IN STATE TANF PLANS

Alabama - The state will continue the Avenues to Self-Sufficiency through Employment and Training Services (ASSETS) demonstration in three counties. The state identifies one provision, a waiver of the AFDC requirement that a child live with a specified relative, as inconsistent with the PRWORA.

Arizona - The state will continue to operate the Employing and Moving People Off Welfare and Encouraging Responsibility (EMPOWER) demonstration. The state identifies the following provisions as inconsistent with TANF requirements:

- extension of Transitional Medical Assistance to 24 months;
- cash assistance time limit extensions, based on good cause, for not obtaining employment, or to complete an educational program; and
- not providing, or assisting a teen parent who is required to reside with a parent or other responsible adult in locating, a second-chance home, maternity home, or other appropriate adult-supervised supportive living arrangement;

California - The state's TANF program will include California's existing §1115 demonstration projects, including the California Work Pays Demonstration Project (CWPDP). The TANF plan does not explicitly state whether any waiver provisions are inconsistent with the PRWORA.

Connecticut - The state intends to continue its "Jobs First" demonstration. The TANF plan identifies several inconsistencies in its demonstration with the PRWORA:

- differential treatment of control group cases, to the extent that it constitutes a separate "program," as opposed to a lack of uniformity in the TANF program;
- federal financial participation in the \$100 child support pass-through;
- exemptions from the time limit on assistance and indefinite extensions of the time limit, without a limit on the number of families receiving such exemptions or extensions;
- a broader definition of what activities and hours constitute participation in work activities for purposes of calculating the participation rate;
- different definition and timing of employability assessments;
- different content of individual employability plans;
- broader exemptions from work requirements (inconsistent with both the requirement that all parents participate after 24 months of receipt of assistance and the participation rate calculations);
- different treatment of minor parents with respect to school attendance requirements;

progressive sanctions for failure to comply with child support or work requirements (20 percent reduction for 3 months for first offense, 35 percent reduction for 6 months for second offense, and discontinuance of family's assistance for 3 months for third and subsequent offenses);

different definition of the minor parent to whom the requirement to live with a responsibility applies, different rules regarding the use of adult-supervised settings, and additional responsibilities for the supervising adults; and

24 months of transitional medical assistance for families ineligible due to child support or for families with earnings within 6 months of losing cash assistance.

Delaware - The state intends to continue all waivers which were approved as part the "A Better Chance" demonstration (ABC). In addition to some waivers which are being continued to preserve the linkage between TANF receipt and Medicaid eligibility, the state's TANF plan identifies the following PRWORA provisions as inconsistent with ABC policies:

the time limit [§408(a)(1)(B) and §408(a)(7)(A)-(D) of the Social Security Act (SSA)], which conflicts with ABC regarding the total period for which a family can receive benefits, the definition of families which are exempt from time limits, the exceptions which can be granted to individual families to extend their time limits, and the percent of families receiving benefits that can be exempt from the 60-month time limit;

the work participation policies in §407 of the SSA, which conflict with ABC with respect to the limitations placed on the activities that count as participation in general and with respect to the calculation of participation rates, limitations on the percent of individuals who can be counted as participants who are engaged in vocational educational training or are minor parents in school, limitations on the amount of time participants can be engaged in vocational education, and the inclusion of individuals exempted by ABC in the denominator in calculating the participation rate;

the provision in §408(a)(4) of the SSA that bars assistance to teen parents who do not participate in educational or training activities if they do not have a diploma, which conflicts with ABC regarding both the penalty for failure of a minor parent to participate in an appropriate activity and the appropriate activities (e.g., employment);

the policies in §404(h) of the SSA regarding Individual Development Accounts (IDA's), which conflict with ABC by imposing restrictions on the purposes for accumulation and withdrawal and by requiring that IDA's must be trusts;

the provision in §408(a)(10) prohibiting the use of federal TANF funds to provide assistance for a minor child who has been absent from the home for a particular period of time, which conflicts with ABC by restricting the amount of time that the benefits can be paid, even if the absence is expected to be temporary; and

the rules in §302 of PRWORA regarding payments of child support to families in "gap" states, which conflicts with the state's policy of applying fill-the-gap budgeting only to recipients and not to applicants.

District of Columbia - The District's TANF plan does not mention waivers. It says that in implementing TANF, the District will defer to any existing TANF provisions that may conflict with District law and regulations, implying that no inconsistent provisions will be implemented.

Florida - The state intends to consult further with ACF regarding the usefulness of continuing some of its evaluation activities before deciding whether to continue or terminate its waiver demonstrations. No inconsistencies with the PRWORA are identified in the state's TANF plan.

Georgia - The state's TANF plan says that waiver provisions that are consistent with the PRWORA will continue, and the state will make a decision about the continuation of waivers within 90 days of the end of the 1997 legislative session.

Guam - Guam does not have any §1115 waivers.

Indiana - The state intends to continue to implement its "IMPACT" waiver demonstration, as amended. The TANF plan states that those PRWORA provisions that are inconsistent with the waivers will not apply, but does not specify what those provisions are. In subsequent correspondence, the state identified the continuation of the former AFDC rules for families assigned to the demonstration control group as inconsistent with TANF requirements. The control group will not be subject to any of the federal TANF provisions, including the 5-year time limit, nor will they be considered in determining the state's work participation rate.

Iowa - The state intends, at least initially, to "retain all existing policies and procedures as outlined in the current IV-A State Plan and the waivers" for the Family Investment Program demonstration (FIP). The TANF plan states that "Iowa believes all waivers are consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996."

Kansas - The TANF plan does not mention §1115 waivers.

Kentucky - Kentucky has no §1115 waivers.

Louisiana - The state's TANF plan indicates that no waivers will be applicable.

Maine - The state's TANF plan does not explicitly mention waivers or inconsistencies with the PRWORA. There is an indication that the state intends to maintain its evaluation and control group. Subsequent correspondence from the state expresses the state's belief that none of its waiver provisions are inconsistent with PRWORA, and clarifies that families in the demonstration's control group will be treated differently with respect to TANF from other families in the state.

Maryland - The state's TANF plan indicates that the state is exercising the option to terminate its Primary Prevention demonstration and the cash assistance component of its Family Investment Program demonstration. While there is no explicit mention of what waivers are continuing, presumably these are only Food Stamp and Medicaid program waivers, so there should be no issue of inconsistency with TANF provisions.

Massachusetts - The state's TANF plan lists the following provisions of the "Massachusetts Welfare Reform '95" demonstration which the state intends to continue to implement:

- **Mandatory work requirement:** require a nonexempt recipient (including both parents in a two-parent household) to work and/or perform community service for 20 hours per week.
- **Work program sanctions:** failure to participate will result in the individual's loss of eligibility for cash assistance; failure to participate on more than one occasion will result in the termination of assistance for the entire household.
- **Child support sanctions:** a caretaker relative who fails to cooperate with child support requirements will have his/her grant reduced by an amount equal to the caretaker's portion of the grant.
- **Job search:** job search may be required without limitation on the number of weeks.
- **Transitional benefits:** a recipient whose case closes due to earnings is eligible for an automatic extension of transitional child care and transitional medical assistance from 6 months to 12 months, regardless of whether the individual received benefits 3 out of the 6 months prior to termination.

The TANF plan does not state whether any of these provisions is inconsistent with the PRWORA. In subsequent correspondence, the state clarifies that it believes all the provisions listed above to be inconsistent with the PRWORA. In addition, the correspondence lists the following two waiver provisions that are inconsistent with TANF work requirements:

- **Work participation rate:** the state is counting in its determination of work participation rate all activities formerly counted toward its JOBS participation rate, including job placement, job readiness, job search, education, training, the Full Employment Program, Supported Work, community service, any subsidized or unsubsidized job, and programs that extend beyond the time constraints specified in the PRWORA such as a 2-year community college program.
- **Exempt/Nonexempt status regarding work:** the state will continue to apply the work program exemptions established under its waiver demonstration, which are inconsistent with PRWORA requirements.

Michigan - The state intends to continue its "To Strengthen Michigan Families" (TSMF) demonstration, including pending amendments. The state's TANF plan identifies the following TSMF provisions that are inconsistent with the PRWORA:

- the work participation sanction, which reduces the family's cash assistance grant by 25 percent;
- the pending child support enforcement sanction, which removes the non-cooperating individual's needs from the grant for up to 4 months, and closes the family's grant if non-cooperation continues beyond 4 months; and
- the 10-day period to report changes in family circumstances, including the temporary absence of a child (TANF requires absence of a child to be reported within 5 days).

Mississippi - The state intends to continue all of its approved waivers. The state's TANF plan indicates that the state has not yet determined which provisions are inconsistent with the PRWORA.

Missouri - The state elects to keep the waivers granted for both the statewide "Missouri Families Mutual Responsibility Plan" project (MFMRP) and the single-county "21st Century Communities Demonstration Project." The TANF plan identifies the allowable work activities under MFMRP as inconsistent with the PRWORA. The state will continue to allow all work activities as defined in (old) §482 of the SSA and previously approved under the state's JOBS plan to meet work participation rates.

Montana - The state intends to continue to operate the "Families Achieving Independence in Montana" (FAIM) demonstration, which is the basis of its TANF program. The TANF plan does not explicitly list any inconsistencies with the PRWORA.

Nebraska - The state will continue to operate its Employment First demonstration in five counties. The state's TANF plan says that the state will use the definition in its 1115 waiver (which differs from that in the PRWORA) of the activities that will be accepted as meeting the work requirements and will expand the use of this definition to a statewide basis. Subsequent correspondence from the state indicates that the state will continue to use its waiver authority to determine who is employable and will exempt from the time limit those determined not to be employable, even if they exceed 20 percent of the caseload.

No! (unless
with to
20 S-w)

Nevada - There are no 1115 waivers in Nevada.

New Hampshire - The state's TANF plan identifies the following sections of the PRWORA that are inconsistent with the "New Hampshire Employment Program" waiver demonstration:

- the provisions of §407(c) of the SSA that define when a participant is considered to be engaged in work;
- §407(c)(2)(A) of the SSA, which sets limits on the number of weeks for which job search qualifies as engagement in work;
- §407(c)(2)(D) of the SSA, which sets limits on the number of persons that may be treated as engaged in work by virtue of participation in vocational education activities or being the head of a household who maintains satisfactory school attendance.
- the requirement to engage in work once the state determines the parent or caretaker is ready to engage in work, or once the parent or caretaker has received assistance for 24 months, whichever is earlier;
- the amendments of §114 of the PRWORA specifying pre-welfare-reform eligibility criteria for Medicaid eligibility;
- the requirement that a family receive assistance for 3 of the last 6 months as a condition of eligibility for transitional Medicaid;
- the TANF definition of a minor child; and

§408(a)(6) of the SSA, which prohibits use of any part of the grant to provide medical services.

New Jersey - The state's TANF plan says that New Jersey wishes to discontinue its title IV-A/F waivers.

New York - The state's TANF plan does not mention §1115 waivers. The state's program will implement, with one exception, the New York State AFDC and JOBS plans that existed as of September 30, 1996. Because state plan pages, but not waiver terms and conditions, were attached to the TANF plan, the implication is that the state does not plan to continue its waiver demonstrations.

North Carolina - The state intends to continue to implement both the statewide waivers and the demonstration in Cabarrus County. Specific inconsistencies between the waivers and the PRWORA are not listed in the TANF plan, but the plan does say, "Inconsistencies between this state plan and the requirements of P.L. 104-193, not expressly prohibited by federal law, are supported by approved waivers, as interpreted with reference to the laws in effect at the time."

Ohio - The state intends to continue its AFDC and JOBS waivers granted as of September 30, 1996. The state's TANF plan does not state which provisions are inconsistent with the PRWORA.

Oklahoma - The state currently operates a Learnfare demonstration in two counties, which it intends to continue. The TANF plan does not indicate any inconsistencies with the PRWORA.

Oregon - The state's TANF plan basically mirrors the provisions of the "Oregon Option" demonstration. The plan identifies the TANF provisions allowing unavailability of child care as good cause for noncooperation with employment requirements and the 5-year time limit as inconsistent with the Oregon Option demonstration.

Pennsylvania - The state's TANF plan does not mention §1115 waivers.

South Carolina - The state intends to retain certain waivers granted for the Family Independence Act demonstration and which appear to be in conflict with the TANF legislation. The following provisions are identified as inconsistent with the PRWORA:

- transitional Medicaid for up to a total of 24 months for recipients who lose eligibility because of employment or who become employed after losing eligibility due to the time limit, whose earnings are less than the Federal Poverty Guidelines and whose employment would be jeopardized by medical expenditures;

- requiring court-ordered non-custodial parents to participate in employment and training activities;

- excluding as resources funds up to \$10,000 deposited in an individual development account (IDA), and disregarding from income a lump sum payment of \$10,000 or less that is deposited in an IDA within 30 days of receipt;

- extending Medicaid eligibility to individuals who are participating in an alcohol or drug treatment program for up to 90 days after termination of cash assistance due to the removal of the dependent child(ren) from the home due to abuse or neglect; and

- defining work as involvement in specific components that will lead to employment or improved employability, and counting participation in literacy classes, adult education, GED classes, technical schools, vocational training, work experience, and OJT toward the participation rate.

South Dakota - The state intends to continue its "Strengthening of South Dakota Families Initiative" demonstration. The TANF plan identifies four primary inconsistencies with TANF provisions:

- exempting from work participation and time limits disabled adults and adults needed in the home to care for a disabled family member;

- using a different method to determine the number of months before a parent or caretaker is required to engage in work;

- counting all participation in secondary education towards an individual's first 20 hours of participation regardless of the person's age, and counting job-readiness pre-employment training as a "work activity" for determining participation rates; and

- counting vocational and college education as work activities in determining participation rates.

Tennessee - The state will continue its "Families First Program" demonstration. The TANF plan does not identify any inconsistencies with the PRWORA. In subsequent correspondence, the state described the following variances between Families First and the PRWORA:

- Families First requires the caretaker, any other eligible adult required to work, and a minor parent to sign a personal responsibility plan that sets requirements regarding work or work-related activity, cooperation with child support, school attendance, immunizations, and health checks, whereas PRWORA requires an individual assessment of skills, work experience and employability.

- Families First counts life skills and post-secondary education as work, and does not limit the duration of job search and job readiness.

- Families First requires 20 hours per week in an ABE program for an individual who has a literacy level of 8.9 or less, in lieu of work activity, and exempts the individual from time limits.

- Tennessee does not have a work participation rate.

- Tennessee has categorical exemptions from and good cause extensions to its time limits, which are an 18-month period of eligibility and a 60-month lifetime maximum.

- Families First exempts all participants from work and time limits for the period of time that the state is unable to provide child care while participating in work-related activities.

- Transitional Medicaid is provided for 18 months.
- Assistance will be provided (using state funds) to legal aliens in accordance with the rules that were in place under title IV-A provisions in effect prior to PRWORA.
- IDA's may be used for career development or transportation, as well as home ownership, small business development, or education.
- There is no provision in Families First to deny assistance to individuals convicted of drug-related felonies or to fugitive felons.

Texas - The state's TANF program is based, in part, on the terms and conditions of the state's §1115 waiver demonstration. The state's TANF plan says that work requirements will be based on the terms and conditions of the state's IV-A waiver, rather than the definitions in the PRWORA. This applies with respect to the 24-month work requirement as well as the methodology for calculating participation rates.

Utah - According to the state's TANF plan, because the provisions of the state's Single Parent Employment Demonstration Project (SPED) are referenced in state statute, the state must continue all of the demonstration's waivers until after the next legislative session. The state will notify the Federal government no later than 90 days after the end of that session concerning which waiver they will elect to maintain. In subsequent correspondence, the state cited one of its §1115 waivers in advising the Department that it will continue to define work activities very broadly, including family counseling, parenting counseling, weight reduction classes, drug and alcohol programs and counseling, and other activities as needed to enable a person to participate in employment or employment-related activities.

Vermont - The state has based its TANF plan on its existing Welfare Restructuring Project demonstration, which it will continue to operate. No inconsistencies with the PRWORA are explicitly identified.

Virginia - Virginia's TANF program is based on the state's waiver-based welfare reform initiative. The state intends to continue the Virginia Independence Program (VIP) demonstration. Other approved waiver demonstrations are not mentioned in the state's TANF plan, nor does the plan list provisions of VIP that are inconsistent with TANF. In subsequent correspondence, the state listed inconsistencies between waivers and TANF in the following areas:

- **Job search:** The state does not limit either the duration or the number of job search assignments to which a participant may be assigned; each assignment is calculated in the participation rate for full allowable credit.

- **Sanctions:** The state applies sanctions for minimum periods for failure to participate satisfactorily in an assigned activity. The minimum periods are 1 month for the first offense, 2 months for the second, and 3 months for the third and subsequent offenses; if the individual has not complied by the end of the minimum sanction period, the sanction will continue until the individual complies.

Work program exemptions: The state exempts persons under age 16 or over 59, full-time students, incapacitated or disabled individuals, persons who are the sole caregiver of another household member who is incapacitated, the parent of a child under 18 months of age, caretakers other than parents, and women in their fourth through ninth month of pregnancy. In effect, this exempts about 50 percent of cash assistance recipients.

Time limits: The state allows hardship exceptions to its 24-month time limit in certain circumstances. Also, there is no lifetime limit on benefits. Once a recipient has received cash assistance for 24 months and transitional assistance for 12 months, he or she will be ineligible for 24 months, but there is no restriction on the number of times a person may cycle on and off the program.

Minor parents: Virginia does not grant an exception to the requirement that a minor parent live with a responsible adult because no responsible adults will allow the minor to reside with them.

Washington - The state is dropping its AFDC-UP "100-hour rule" waiver as unnecessary, but is continuing the "length-of-stay grant reduction" provision of its Success Through Employment Program (STEP) demonstration. This provision reduces benefits by ten percent to a family that has been on assistance for 48 out of 60 months, and another 10 percent for each 12 months thereafter. The state's TANF plan identifies the following TANF provisions as "inconsistent with and inoperative under STEP":

- the 5-year lifetime limit;
- the 20 percent hardship exemption cap;
- sanctions for failure to meet work participation requirements;
- the 24-month work requirement;
- the definition of work activities, including the number of hours required; and
- the provisions limiting assistance to legal immigrants.


West Virginia - The state's TANF plan does not mention §1115 waivers.

Wisconsin - The state intends to continue approved demonstrations and to implement the pending "Wisconsin Works" (W-2) demonstration. The state's TANF plan does not list inconsistencies between the state's waivers and the PRWORA.

Wyoming - Wyoming has requested that its approved and submitted waivers be terminated.

To: Cynthia A. Rice/OPD/EOP, Elena Kagan/OPD/EOP, Diana Fortuna/OPD/EOP

cc:

Subject: Re: Analysis of Welfare Regulations 

Diana, your summary is excellent, and you deserve a vacation for suffering through 400 pp of HHSese, not to mention the HHSers themselves.

It sounds like we're in for a good fight. I was concerned about the following:

1. Waivers. I think we need to bend over backwards to make sure the reg sends states a strong signal not to use their existing waivers to get around the time limits and work requirements. We should use the same strategies we have in mind to prevent bifurcation (withholding caseload reduction credits, not reducing penalties, etc.) to discourage states from doing this. We should do everything within reach of our legal authority, and where we lack the authority, we should propose a legislative fix. (And when Andrea starts, we should ask her to figure out what states are up to in this regard.)

2. Caseload reduction. It's absurd and laughable to give caseload reduction credit to states that expand eligibility, on the grounds that their caseloads would otherwise have gone down. Caseloads either go down or they don't. People are either working or they're not. If states want to expand eligibility, they can put those recipients to work.

3. Eligibility changes. I agree with you -- fingerprinting, drug testing, and sanctions are not fundamental eligibility changes -- they're enforcement mechanisms. We're in favor of these things.

4. Penalties. It's ridiculous to give states a break for making a good faith effort based on what they spend ("staff training"!).

5. Other issues.

-- I would like to see some kind of stronger push for states to have in place the 2 yr work requirement. That was the President's whole idea, after all.

-- What does the reg say about penalizing states for not sanctioning people who refuse to work? (Remember the Nickles amendment.)

-- I don't understand the domestic violence time limits options. I thought we weren't going to do that.

Thanks again. Great work! Let's talk next week.



Cynthia A. Rice

10/10/97 12:42:44 PM

Record Type: Record

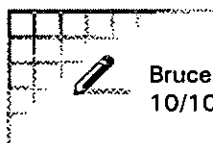
To: Elena Kagan/OPD/EOP, Diana Fortuna/OPD/EOP

cc:

Subject: Re: Analysis of Welfare Regulations

fyi

----- Forwarded by Cynthia A. Rice/OPD/EOP on 10/10/97 12:44 PM -----



Bruce N. Reed


10/10/97 12:39:03 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP

cc:

bcc:

Subject: Re: Analysis of Welfare Regulations 

Yes

Cynthia A. Rice



Cynthia A. Rice


10/10/97 11:12:10 AM

Record Type: Record

To: Bruce N. Reed/OPD/EOP

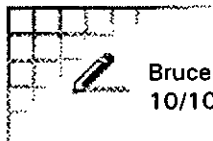
cc: Elena Kagan/OPD/EOP, Diana Fortuna/OPD/EOP

bcc:

Subject: Re: Analysis of Welfare Regulations 

Thanks. Does your domestic violence comment mean you're comfortable with the kind of work participation options but don't want to give states any reasonable cause exemptions from time limit penalties if they exempt more than 20 percent because they are victims of domestic violence?

Bruce N. Reed



Bruce N. Reed

10/10/97 11:05:04 AM

Record Type: Record

10/15/97 -- 1:00

Proposed Changes to Reg**Waivers**

- 1) A state that continues a waiver inconsistent with PRWORA's work participation rates or time limits shall not be eligible for a high performance bonus or a caseload reduction credit.
- 2) A state that continues a waiver inconsistent with PRWORA's work participation rates or time limits shall not be eligible to receive a reasonable cause penalty exception, to enter into a corrective action plan, or receive reduced penalties based on degree of non-compliance.
- 3) A state can continue a waiver inconsistent with PRWORA's work participation rates or time limits only if the waiver when granted explicitly named the policy that the state now wants to continue (i.e., state can continue waivers inconsistent with the new law, not policies operated under waivers inconsistent with the new law).
- 4) A state can continue a waiver inconsistent with PRWORA's work participation rates or time limits only in the geographic area for which the waiver was granted and implemented.
- 5) In order to continue a waiver inconsistent with PRWORA's work participation rates or time limits, the state must notify the Secretary in writing in a letter signed by the governor.
- 6) The burden of proof on proving waivers are inconsistent with the law shall rest with the state and the regulation will require that the information necessary for the Secretary to make that determination will be collected. States operating under waivers will report performance and be monitored like any other state.

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.
- 2) States shall apply the two parent caseload reduction as a credit to the two parent work participation rate and the overall caseload reduction as a credit to the overall work participation rate.
- 3) Fingerprinting, drug testing, and sanctions shall not be defined as eligibility changes that must be factored out of the caseload reduction credit.
- 4) Individuals "receiving services that have no direct monetary value...such as counseling...and employment services" and those "receiving one-time, short-term assistance" for 90 days or less shall not be eliminated from the caseload reduction credit calculation.
- 5) States shall report eligibility changes to the Secretary 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.

Penalties

1) A state that does not 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 shall not be eligible to receive a reasonable cause penalty exception, to enter into a corrective action plan, or receive reduced penalties based on degree of non-compliance. States must decide at the beginning of the quarter which families are in TANF and which families are in the separate state program (no retrospective reclassifying to game the work rates).

2) 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 community service within two months and/or to work within two years. ✓

3) Good cause domestic violence waivers --

a) HHS may (rather than shall) grant reasonable cause exemptions from penalties to states that fail to meet the work participation rates so long as the states do not fail to meet the work rate by more than the number of individuals granted good cause waivers multiplied by the participation rate. ; that the waivers are granted appropriately (we will fact check work)

b) HHS may grant reasonable cause exemptions from penalties for those good cause domestic violence waivers (as now granted in the reg) that HHS determines were granted temporarily appropriately.

c) HHS may grant reasonable cause exemptions from penalties only for good cause domestic violence waivers that are temporary, i.e., less than six months long.

d) 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.

4) Corrective action plans -- [seeking help from OMB on this one]

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.

5) Reductions Based on Degree of Noncompliance --

The regulations shall detail a sliding penalty scale that will be imposed based on degree of noncompliance. (ND)

Waivers

Summary: The reg would permit states to continue features of their waivers that are “inconsistent” with provisions of the law in such areas as the definition of work, hours of work, and time limits, for as long as the waiver is in effect.

Law and Prior Guidance: The statute states that waivers granted before the law passed are grandfathered with the entire law to the extent that the law is “inconsistent with the waiver.” In its original guidance, HHS asked states to identify areas where waivers are inconsistent with the law, but it has taken no action since then.

Draft Reg: The draft reg identifies Section 407 and the time limits as the parts of the law with provisions that may be inconsistent with a waiver. (Section 407 includes the work participation rates, the caseload reduction credit, hours of work required, definition of work activities, the requirement for sanctions for refusal to work, and nondisplacement provisions.) “Inconsistent” means that “complying with a TANF requirement would necessitate that a state change a policy reflected in an approved waiver.”

Section 407/Work Requirement: The draft reg explicitly states that HHS will recognize inconsistencies in two areas: the definition of work and hours of work required per week to be considered “engaged in work.” However, the draft reg states that HHS will not permit inconsistencies that affect the denominator of the participation rates -- i.e., limit the universe of people to whom the participation rates are applied. It is not clear why HHS is able to prohibit this waiver practice and not others.

cl

Time Limits: States whose waivers have time limits may argue that their time limits are inconsistent with the law. No states have time limits greater than five years, but many states have time limits with exemption and extension policies more liberal than current law.

- 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.

who why?

Proposed Strategy: We are still examining whether there is any basis in the law for not permitting these inconsistencies to continue. Failing that, we can press HHS on monitoring and enforcement of these provisions. There is nothing in the draft reg about how HHS will determine which items are inconsistent, monitor state actions, or impose penalties on this issue. We are asking HHS to provide us with a list of inconsistencies and its plans to review them.

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Work Requirements for Separate State Programs

Summary: The draft reg permits state-funded programs outside TANF to count toward the maintenance of effort requirement without being subject to the welfare law's requirements, including time limits and work participation rates.

Law and Prior Guidance: The law is unclear on this point. HHS and the states argued that bifurcation was permissible because the law uses the term "the state program funded under this part" to refer to TANF and its requirements, while the maintenance of effort section defines MOE as spending under "all state programs."

In a memo you wrote to the President in January, you recommended that we allow states to set up programs that are free of the law's requirements, but that we take additional steps outlined below.

1. Issue a regulation to ensure that we can monitor whether states are using state-only programs to avoid sharing child support collections with the federal government, and advise states that they should not do so.
2. Issue a regulation that a state will not qualify for a caseload reduction credit unless it demonstrates that the reduction did not result from transferring people from TANF into a separate state program.
3. Issue a regulation that a state cannot receive any mitigation in penalty for failure to meet work participation rates unless it shows that it has not used a state-only program to "escape the force of work participation rates."

Are we?

(You also recommended that HHS look at a state's overall work effort in its regulation on the high performance bonus, and that we seek a legislative change stating that HHS will consider separate state programs in determining whether a state has met the participation rates.)

Draft Reg: The draft reg does not take the first action. It does a reasonably good job on the second action. On the third, it takes a softer approach. In describing how HHS will implement the statutory requirement that it reduce penalties based on the degree of a state's noncompliance, it states that, "We will look beyond the participation rates for the TANF caseload to the efforts a State is making to engage recipients of assistance in separate State programs in work activities."

No - went over this lang case hilly.

Proposed Strategy: We propose to push for language that, unless a state proves it has not used a separate state program to get around the work participation rates, it is not eligible for a reasonable cause exception to a penalty, a reduction in penalty based on the degree of non-compliance, or a corrective compliance plan. HHS may express concerns about whether they have the legal authority to do this. In fact, HHS argues that it does not have legal authority even to require states to report data on separate state programs. HHS's solution is to say that states will not be eligible for a high performance bonus, a caseload reduction credit, or a reduction in penalty unless it reports on these programs. We are also exploring whether we could prohibit states from moving families to a separate state program retroactively, to limit gaming by states.

Yes

?

interesting

Caseload Reduction Credit

Summary: The draft reg will make it easier for states to obtain the credit and it gives states a lot of latitude in estimating the credit. It requires states to submit data by November 30 of each year, and gives HHS the power to approve or disapprove plans by February 28. It also states that HHS will not consider a caseload reduction factor for approval unless the state reports data on separate state programs.

Law and Prior Guidance: The law permits states to reduce their minimum work participation rate if their current caseload is smaller than their FY95 caseload. The reduction is measured as the number of percentage points by which the current caseload is less than the FY95 caseload. This caseload credit from one fiscal year is applied to the participation rate for the following year -- i.e., a state whose caseload was 10 percent lower in FY 1997 than in FY 1995 would have a minimum participation rate in FY 1998 of 20 percent rather than 30. The credit must not count families dropped due to eligibility changes, although it "places the burden on the Secretary to prove that such families were diverted as a direct result of differences in such eligibility criteria."

Draft Reg:

- The draft reg requires states to compare their TANF + MOE caseloads for a given year with their AFDC caseload from FY 1995. This seems designed to ensure that a state will not qualify for a caseload reduction credit simply by transferring people from TANF into a separate state program. However, for purposes of this calculation, the reg excludes from the caseload people "receiving services that have no direct monetary value...such as counseling...and employment services" and those "receiving one-time, short-term assistance" for 90 days or less. This may make it easier for some states to qualify for the credit:
- States that shift to providing only non-cash or short-time services will receive higher caseload reduction credits.
- At the same time, the draft reg invites a state that does not wish to include some or all families in a separate state program in the calculation to submit reasons for doing so. This may help prevent certain states from losing a caseload credit because they serve in MOE individuals who wouldn't have been eligible for AFDC.
- For two-parent families, the draft reg permits states to use either the overall reduction or the two-parent reduction, whichever will reduce the participation rate the most.
- Another way in which the draft reg makes it easier for states to claim the credit is that it allows states that have expanded eligibility to get credit for caseload reductions that would have occurred if they had not done so (e.g., increases in earned income that is disregarded). Presumably the logic here is not to discourage eligibility expansions, but the legal authority is unclear. Many states say that their difficulty in meeting the two-parent rate is due in part to eligibility expansions they granted.

- The analysis and data that a state must submit are unnecessarily vague. So are the criteria under which HHS will review a state's proposed reduction factor -- "quality of data; adequacy of the documentation; and completeness of the list of changes in eligibility." It's unclear whether HHS will have the information needed to, as the statute requires "prove that such families were diverted as a direct result of differences in such eligibility criteria."
- The draft reg's list of what constitutes an eligibility change to be factored out has some questionable items. In addition to more straightforward items like changes in income and resource limitations, the imposition of time limits, grant reductions, and changes in requirements based on residency, age, or other demographic or categorical factors, it includes:
 - fingerprinting;
 - drug testing;
 - waiting lists for assistance; and
 - sanctions that terminate a family's grant



This broad list of "eligibility changes" will make it harder for states to reduce the participation rate. However, singling out these policies may be HHS's way of discouraging states from adopting them and we may not want to be in that position.

Proposed Strategy: We should ensure that the work rates are not undermined by an excessively generous caseload reduction credit. We should seek to ensure that states submit consistent and objective information to HHS and that they do not use the caseload reduction credit as a way to provide relief for the two parent work rates.

Penalties

Summary: HHS should toughen its rules on imposing penalties significantly. The regulation is our best opportunity to ensure that the penalties have some teeth, since it will always be more difficult to impose penalties when faced with a specific state in a specific situation. 11

Law and Prior Guidance: The attached chart summarizes the penalties in the law. The law permits a state to be excused from most penalties if it had "reasonable cause." It also permits a state to enter into a corrective compliance plan to correct a deficiency for most penalties. For the work participation rates only, the statute allows states a third opportunity for a break: it requires HHS to reduce a penalty "based on the degree of non-compliance." States can appeal any adverse action to the HHS Departmental Appeals Board, which is subject to judicial review.

Draft Reg: The draft reg follows the statute pretty closely for most penalties. It states that its interpretations are not retroactive, and that HHS will enforce the law before the regulation is issued only against a reasonable interpretation of the law.

Reasonable Cause: The reg generally limits reasonable cause to unforeseen events like natural disasters. However, the draft reg describes two specific instances in which HHS will grant reasonable cause -- for certain types of refugees, and for domestic violence waivers.

Refugees: A state will be found to have reasonable cause if it demonstrates that it missed the work participation rates because it provided services to certain types of refugees.

Domestic Violence Waivers: Currently, states can exempt victims of domestic violence from the work rates and time limits, so long as they put 30 percent of their overall caseload to work and enforce the federal five year time limit for 80 percent of the caseload. Under this proposed reg, HHS will grant states reasonable cause exceptions to penalties if they fail to meet the work rates or exempt more than 20 percent of the caseload from the time limit if the failure is attributable to their granting of "good cause domestic violence waivers." To qualify as a "good cause domestic violence waivers," these waivers were temporary and included services to help individuals become self-sufficient.

As currently drafted, the reg would give states reasonable cause for missing the work rates and the time limit exceptions by as many people as they granted good cause domestic violence waiver to (see attached table). We would like to ensure that this calculation does not over-estimate how many of these individuals would have been working if they had not gotten a waiver.

As shown in the attached, we would propose to revise the reg so that the state could receive reasonable cause only for the number of good cause waivers multiplied by the work participation rate. Thus, if a state granted 10,000 good cause waivers, it could get reasonable cause for missing the work rates by only 3,000 (30% x 10,000). OMB has proposed a similar change for the time limit, although the situation is analogous.

Corrective Compliance Plans: The draft reg has vague and loose guidelines on when states may enter into corrective compliance plans.

- States may take up to 12 months to correct violations under corrective compliance plans.
- While the draft reg has a general definition of what a corrective compliance plan should include, it does not offer any insight into how HHS will determine if the plan is acceptable.
- Even if a corrective compliance plan fails, a state may not face the full penalty. The statute says that HHS shall impose “some or all” of a penalty if a state’s corrective compliance plan is unsuccessful. The reg’s interpretation is that a penalty may be reduced if a state:
 - “expended more resources toward eliminating the violation than it was committed to expend under the corrective compliance plan;”
 - “made considerable progress in meeting the actions and outcomes” in its plan; and
 - “encountered circumstances that could not have been anticipated at the time” the plan was developed.

Reductions in Participation Rate Penalties Based on Degree of Non-Compliance: The draft reg is not very strict in interpreting the statutory language requiring HHS to reduce the penalty for failure to meet the participation rate “based on the degree of non-compliance.” (Unfortunately, the statute itself is not very strict here.) To measure the degree of non-compliance and determine if a state is eligible for a reduction in penalty, the reg proposes that HHS should:

- “consider the objective evidence of the good-faith efforts the state has made to achieve the rates (e.g., its investment of resources, new program development, and staff training).”
- “look beyond the participation rates for the TANF caseload to the efforts a state is making to engage recipients of assistance in separate State programs in work activities.”

Rather than emphasize outcomes, this invites states to submit reams of evidence on its process.

Proposed Strategy: The regulation should clearly spell out objective and outcome-oriented criteria for when penalties will be imposed.

Other Issues/Features

Definition of administrative costs: OMB is very concerned that the draft reg does not define administrative costs subject to the statute's 15% cap.

Definition of assistance: This is defined to exclude short-term or one-time assistance, so that people who benefit from diversion programs are not subject to all the law's requirements. However, for MOE purposes, all types of assistance are permitted to count.

Individual work requirements: There is no enforcement of Section 402 work requirements (work after 2 years, community service after 2 months). Also, states may define work in any way they wish for the purposes of Section 402. The statute may support both of these interpretations. ||

Work Activities: As expected, Section 407 work activities are not defined. The six-week job search limit is defined as annual.

Non-Displacement: The draft reg does not take an alternative step that could strengthen the statute. The statute requires states to "establish and maintain a grievance procedure." The draft reg simply repeats this phrase rather than defining what an adequate procedure would be. OK

Data and reporting requirements: We are slogging through the question of whether the regulation requires enough data to measure success, but not so much that it becomes burdensome to states or can be publicly attacked. The requirements appear voluminous, but states are permitted to submit a data sample.

Form and length of the rule: The draft reg is about 100 pages long, with a 300-page preamble and a large appendix. HHS argues that they are unable to drop much in the way of existing regs at this time, since AFDC and EA are still being phased out for bookkeeping purposes. We are working with OIRA to ensure that the reg is as streamlined as possible.

Summary of TANF Penalties

Penalty	Amount	When	Sources of Data	Reas Cause/ Corrective Compl. Plan	Reduce for Degree of Non-Compl
1. Misuse of TANF funds	Amount misused		Single audit	Yes	No
2. Intentional misuse	5%		Single audit	Yes	No
3. Failure to submit an accurate, complete, and timely required report	4%			Yes	No
4. Failure to meet participation rates	5% initially; max. 21%		Data report	Yes	Yes
5. Failure to participate in IEVS	No more than 2%		Single audit	Yes	No
6. Failure to enforce penalties on recipients not cooperating with child support agency	No more than 5%		Single audit	Yes	No
7. Failure to repay a federal loan	Outstdg loan amt, interest			No	No
8. Failure to meet TANF MOE requirement	Amount of shortfall		Fin'l. report	No	No
9. Failure to comply with time limit	5%		Data report	Yes	No
10. Unremitted contingency funds	Amount unremitted		Fin'l. report		No
11. Failure to maintain assistance to single parent who can't get child care for child under 6	No more than 5%		Single audit	Yes	No
12. Failure to spend to compensate for penalty	Up to 2% + amount state didn't spend		Fin'l. report	No	No
13. Failure to meet MOE if you get WTW grant	Amount of grant		Fin'l. report	No	No
14. Failure to sanction recips. refusing work	1-5%			Yes	No

Domestic Violence Waivers

WORK PARTICIPATION RATES Examples assume a caseload of 100,000, a 30 percent work rate, and 10,000 welfare recipients receiving good cause domestic violence waivers, which must be temporary and must include services to ensure safety, promote independence, and prepare recipients for employment.			
	DISCRETION	PARTICIPATION RATE CALCULATION	END RESULT
HHS	Discretion: If HHS determines that the states do not meet the work participation rates because they've granted good cause domestic violence waivers, then HHS will not penalize them.	30% of 100,000 or 30,000 must work.	HHS can allow states to lower the number of people working from 30,000 to 20,000 without penalty, if they find they have granted 10,000 good cause domestic waivers.
OMB	No Discretion: If HHS determines that the states do not meet the work participation rates because they've granted good cause domestic violence waivers, then HHS will not grant them a reasonable cause exception to the penalties.	If a state grants 10,000 domestic violence waivers, then 30% of 90,000 or 27,000 must work.	States have to put 27,000 people to work or be subject to penalties.
IDEAL	Discretion: If HHS determines that the states do not meet the work participation rates because they've granted good cause domestic violence waivers, then HHS will not penalize them.	30% of 100,000 or 30,000 must work.	HHS can allow states to lower the number of people working from 30,000 to 27,000 without penalty, if they find they have granted 10,000 good cause domestic violence waivers.

TIME LIMITS			
Examples assume a caseload of 100,000, a maximum of 20 percent of caseload which can be exempt from the five year time limit, and 10,000 welfare recipients receiving good cause domestic violence waivers, which must be temporary and must include services to ensure safety, promote independence, and prepare recipients for employment.			
	DISCRETION	TIME LIMIT CALCULATION	END RESULT
HHS	Discretion: If HHS determines that the states have exempted more than 20 percent of individuals from the five year time limit because they've granted good cause domestic violence waivers, then HHS will not penalize them.	No more than 20% of 100,000 or 20,000 can be exempt from the time limit.	HHS can allow states to increase the number of people receiving federal assistance from 20,000 to 30,000, if they find they have granted 10,000 good cause domestic waivers.
OMB	Discretion: If HHS determines that the states have exempted more than 20 percent of individuals from the five year time limit because they've granted good cause domestic violence waivers, then HHS will not penalize them.	No more than 20% of 100,000 or 20,000 can be exempt from the time limit.	HHS can allow states to increase the number of people receiving federal assistance from 20,000 to 24,000, if they find they have granted 10,000 good cause domestic waivers. $(5000 * (.20 * 95,000))$
?POSS IDEAL	Discretion: If HHS determines that the states have exempted more than 20 percent of individuals from the five year time limit because they've granted good cause domestic violence waivers, then HHS will not penalize them.	No more than 20% of 100,000 or 20,000 can be exempt from the time limit.	HHS can allow states to increase the number of people receiving federal assistance from 20,000 to 22,000, if they find they have granted 10,000 good cause domestic waivers. $? (10,000 * .2) + (100,000 * .2)$

WR - child support
and
WR - work requirements

Welfare Reform
October 1, 1997

Work Participation Rates

Question: Why are so many states not meeting the work rates? Does that mean welfare reform is a failure?

Answer: It's important to keep in perspective that 93 percent of the welfare caseload is made up of single parent families and nearly all states expect to meet the work rates for those families. The law requires 25 percent of the total welfare caseload to work and 75 percent of two-parent families to work. We think these work rules are tough but fair and states with serious welfare reform efforts should be able to meet them.

Question: How many states do you expect to fail the work rates?

Answer: We are not sure. States have until mid-November to report data. Informally, most states have told us they will meet the overall 25 percent work rate, but many have reported concerns about meeting the 75 percent two parent rate. As you may know, the Associated Press surveyed states and found 19 states expect to fail the two parent work rates and seven states do not know. However, because of the staggered start dates for state TANF plans, only two-thirds of states have to report data and are subject to financial penalties this fiscal year, and none of these states will be reporting more than three months of data (from July 1- September 30th).

Question: Will the Administration penalize states that fail the work rates?

Answer: We will impose penalties on states that do not meet work rates. We believe it is critical that states place a priority on putting welfare families to work. The law does provide states with the opportunity to receive a credit toward the work rates for those who leave the welfare rolls and allows them to propose a corrective compliance plan in lieu of a penalty. We will evaluate these requests on a case by case basis.

Question: Is the Administration going to weaken the two parent work rate through regulations, as The New York Times reported this morning?

Answer: The welfare law explicitly says that states shall receive a "pro rata reduction of the participation rate due to caseload reductions" and provides a formula for reducing the work rates from, for example, 75 to 50 percent, if the state has had a 25 percent caseload reduction. Thus it is the law, not the regulation, which provides the caseload credit.

[Background: the issue raised in The New York Times this morning is whether the regulation will give states the choice of using the percentage reduction in two parent families or the percentage reduction in all families when subtracting the credit from the 75 percent two-parent work rate.]

Question: What will the penalties be?

Answer: States will be penalized 5 percent of their TANF block grant for the period in question (in this case, one to three months). For each consecutive year of failure, the penalty will increase.

Question: What data will be available today?

Answer: Actually, we don't have any data to release today because states have until mid-November to report work participation data to HHS for the fiscal year ending September 30th. Also, because of the staggered start dates for state TANF plans, only 34 states have to report data this fiscal year, and none of these states will be reporting more than three months of data (from July 1- September 30th).

Child Support Computer Systems

Question: Haven't a lot of states failed to meet the October 1st deadline for having state-wide child support computer systems in place? What is the Administration planning to do about this?

Answer: States have had nine years to develop these computer systems, and we don't intend to extend the deadline any further. We do, however, believe that the current law -- which requires us to withhold all federal child support funds -- will undermine efforts to collect child support for need families. Thus, while we proceed with the penalty process, we intend to accept the invitation from members of Congress such as Chairman Shaw to try to work together to devise an additional penalty structure.

Question: Doesn't the states failure to put in place these computer systems show that these computer systems will never work?

Answer: To the contrary -- the increasing computerization of the child support enforcement has been one of the key reasons child support collections have increased by 50 percent over the past four years. Computers enable us to find and withhold child support from paycheck and bank accounts automatically. The National Directory of New Hires, which will go on line today, will enable us to find parents working in another state from their children.

Question: What exactly is the National Directory of New Hires?

Answer: Whenever a new employee is hired, employers will report six types of data -- employee name, address, Social Security number and employer names, address, and federal employer identification number -- to a state new hire database. Each of the fifty states will then report that data to the National Directory of New Hires, where it will be matched against records of parents who owe child support to locate and begin collection procedures against them.

Question: Which states will not have met this computer systems deadline?

Answer: The Department of Health and Human Services believes that 17 states and the District of Columbia will not meet the deadline. These states are: California, Michigan, Illinois, Ohio, Pennsylvania, Nevada, South Carolina, New Mexico, Alaska, Maryland, Indiana, Hawaii, Massachusetts, North Dakota, South Dakota, Oregon, and Missouri.

Date: 09/29/97 Time: 14:48

WClinton says high welfare standards must remain

WASHINGTON (AP) States wanted the power to run their own welfare systems and should be responsible for meeting work targets in the law that granted that wish, President Clinton said Monday.

But, he quickly added, he's unsure whether the federal government should punish the many states that expect to miss Wednesday's deadline for moving 75 percent of two-parent welfare families into work.

A 50-state Associated Press survey found fewer than half the states are confident they will meet that deadline, the first of many in the welfare reform law.

"I want to keep high standards," Clinton said. "They wanted control of that pot of money so they'd have more flexibility to move people from welfare to work. And in return, they agreed to these targets."

But the president added: "I think most states really are working hard and in good faith to try to do this." He said he wanted to consult with officials at the Department of Health and Human Services to determine whether fines should be imposed.

HHS spokesman Michael Kharfen walked a similar line last week. He said the department has little sympathy for states that have known the deadline was coming, but said fines would be considered on a state-by-state basis.

The agency has considerable flexibility to waive penalties, which could amount to 5 percent of a state's welfare money. That would be as much as \$187 million for California, or a few million dollars for small states.

The AP survey found 16 states saying they will not meet the 75 percent target, and two others saying they probably will not. Several other states said they still are unsure if, by the deadline, they can get enough parents working 37 1/2 hours a week between them.

It's the first set of standards that states are supposed to meet under the new welfare rules, and the shaky results worry many who argue that two-parent families are the easiest to put into jobs.

Federal law also requires states to show by Wednesday that they have 25 percent of all welfare families working, and most states do expect to meet that goal.

The percentages of recipients who must be working increase each year until 2002, when 50 percent of all families and 90 percent of two-parent families must be in work activities.

A "work activity" includes a regular job, a subsidized position, community service, a limited job search or, for a small group, education and training.

During a brief question-and-answer session with reporters Monday, Clinton said that states' difficulty putting people to work does not shake his confidence in the success of welfare reform. He noted that a smaller percentage of the U.S. population relies on welfare today than in any year since 1970.

"We have succeeded, I think, beyond anybody's expectations," he said.

APNP-09-29-97 1450EDT

Date: 09/29/97 Time: 13:44

WMany states will miss new welfare law's first deadline

WASHINGTON (AP) Fewer than half the states are confident they will meet a Wednesday deadline requiring them to show they have 75 percent of all two-parent welfare families in jobs or job training, an Associated Press survey finds.

At least 16 states admit they are certain to fall short, while others remain unsure, according to the 50-state tally.

States that miss this week's target potentially stand to lose millions of federal dollars, although it is unclear whether Washington will levy fines. Many states are betting the government will not.

President Clinton said today he will decide what to do after meeting with advisers. At first, he seemed to take a tough stance against states "I want to keep high standards" but later said, "I think most states are really working hard in good faith" to comply.

The apparent failure by many states to comply "doesn't shake my confidence" in the welfare reform law, "because we have succeeded beyond anybody's expectations," Clinton said during a brief question-and-answer session in the White House briefing room.

Regardless, their troubles suggest welfare reform may be more difficult than some had hoped. The two-parent cases rank among the easiest, since having a couple facilitates arranging child care and virtually every other parental task.

"It's an almost impossible goal, not just for us, but for a number of other states," said Linda Logan of South Carolina's welfare department. Some of the largest states, California, Florida and Texas among them, will miss the deadline.

This is just the first deadline. By 2002, states must have 90 percent of two-parent families, and half of all families, in work activities. "Work activity" includes a job, a subsidized position, community service, a limited job search or, for a small group, education and training.

By this week's deadline, states need only have 25 percent of their total welfare caseload working, a goal most states expect to meet.

But they complain it is much tougher to meet the second requirement: getting 75 percent of two-parent families working 37.5 hours a week between the parents.

"Many of those (parents) are the hardest to employ. They have severe barriers, alcohol and drug and other substance abuse problems," said Corinne Chee of California's welfare agency, where 138,000 two-parent families are on welfare.

Alabama has only 52 two-parent families; 11 are working.

"It's virtually impossible ... to consistently meet a level of 60 to 75 percent," said Joel Sanders, director of Alabama's welfare reform program.

The Department of Health and Human Services, the agency that oversees welfare, has little sympathy for states that are already failing to meet requirements, said spokesman Michael Kharfen. States asked for the new power and must now be held accountable, he said.

"Everybody's going to be watching this," he said.

Yet it is unclear whether the agency will actually fine states that fail. The agency has considerable flexibility to waive penalties, which could amount to 5 percent of a state's welfare money. That is about \$187 million for California, \$4.7 million for

Alabama.

The fines climb to a maximum of 21 percent by 2002, and Kharfen said the agency will assess on a "state by state basis."

Many states fully expect penalties to be waived.

"In the first year of welfare reform it's unlikely any sanctions will be imposed," said Nevada welfare director Myla Florence. She noted HHS has issued no rules explaining how the law is to be interpreted.

Most states should meet the requirement once final rules are in place, predicted Elaine Ryan of the American Public Welfare Association.

Those who do not, she said, may avoid penalties by counting working-poor families who get child care but not cash assistance as part of caseloads. That would increase the percentage of working families.

It is just too cruel to cut off families who are not working, Ryan argues. Conservatives respond that threatening to cut off a welfare check motivates people to find jobs or, at minimum, to take training or other options.

"You cannot require people to do anything if you're unwilling to sanction them when they're unwilling to perform," said Robert Rector of the Heritage Foundation.

Fearing fines, some states including Georgia, Hawaii and Maryland say they are considering paying benefits for two-parent families with state-only money. Without federal money, they don't have to follow federal rules. Florida definitely plans to do that until final rules are set.

It is a decision each state will have to make, said Sen. Lauch Faircloth, R-N.C.

"But I would hate to be in the legislature or be the governor of that state, and go to the constituents and say 'We think these people should be continued on welfare,'" Faircloth said.

APNP-09-29-97 1346EDT

wp - work regulation



Cynthia A. Rice

07/30/97 10:12:19 AM

Record Type: Record

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

cc:

Subject: HHS Proposed Work Regs

We will get the detailed copy of HHS's proposed work regs late today or tomorrow.

HHS is sending their proposed regs in draft form to OMB today. They've decided to send the regs in draft form (without the Secretary's signature) because the pending reconciliation bill will require some changes (i.e., voc ed, the additional penalties on states not penalizing individuals for not working). HHS will send a formal copy once they've incorporated their proposed reaction. In the meantime, we can look in detail at the most important parts.

Wp - work regulation

TO: Elena

FR: Diana

cc: Cynthia

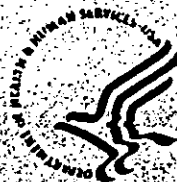
Here's the stuff on grandfathering waivers I can find: the guidance HHS sent to states in September; the relevant section of the law; and a section of a memo we sent the President on this.

See p. 2

DRAFT

"...our nation's answer to this great social challenge will no longer be a never-ending cycle of welfare, it will be the dignity, the power and the ethic of work. Today, we are taking an historic chance to make welfare what it was meant to be: a second chance, not a way of life." President William J. Clinton

**STATE GUIDANCE
FOR THE
TEMPORARY ASSISTANCE
FOR
NEEDY FAMILIES
PROGRAM**



Department of Health and Human Services
Administration for Children and Families
370 L'Enfant Promenade, S.W., Washington, D.C. 20447

September 1996

DRAFT

DRAFT

WAIVERS

Do you intend to continue one or more individual waivers as provided under section 415? If so, please identify each waiver provision and each provision of new law that you believe are inconsistent, and provide the basis for your assessment of inconsistency. (You may wish to consult with the chief law officer of your State in making this assessment.) What is the name of the 1115 demonstration which contains the waiver? What are the beginning and ending dates of the demonstration? Is the waiver incorporated into your TANF plan applicable statewide? If not, how will TANF operate in those areas of the State not covered by the continuing waivers? Note: Future legislative or regulatory action may limit which provisions of the TANF may be considered inconsistent with waivers for purposes of determining penalties. If this happens, States will have an opportunity to submit a new plan in order to come into compliance with the requirements.

Description of Attachments

In additions to this guidance, we are providing three attachments that State policy makers may wish to use in developing their State TANF plans. Attachment A is a copy of the statutory requirements regarding the state plan. Attachment B contains suggested formats for the required certifications that must be submitted with a state plan. Attachment C provides technical information for financial officers of the program regarding funding and a mechanism for States to request TANF funds.

Paperwork Reduction Act

The information in the State TANF plan is collected in accordance with section 402 of the Social Security Act, as amended. Information received in the State plans sets forth how the TANF program will be administered and operated in the States.

The response burden for this collection of information is estimated to be 60 hours per response, including the time for reviewing the statute, this guidance gathering and preparing the information, and reviewing the information.

The information collected is mandatory in accordance with the above-mentioned citations.

This information is not considered confidential; therefore, no additional safeguards are considered necessary beyond that customarily applied to routine government information.

Inquiries

Inquiries should be addressed to the appropriate Regional Administrator, Administration for Children and Families. Information about all State plans will be posted on the ACF home page.

1 1998, 1999, 2000, 2001, and 2002 for payment to the Bureau
2 of the Census to carry out subsection (a).

3 "SEC. 415. WAIVERS.

4 "(a) CONTINUATION OF WAIVERS.—

5 "(1) WAIVERS IN EFFECT ON DATE OF ENACTMENT
6 OF WELFARE REFORM.—

7 "(A) IN GENERAL.—Except as provided in sub-
8 paragraph (B), if any waiver granted to a State under
9 section 1115 of this Act or otherwise which relates to
10 the provision of assistance under a State plan under
11 this part (as in effect on September 30, 1996) is in ef-
12 fect as of the date of the enactment of the Personal
13 Responsibility and Work Opportunity Reconciliation
14 Act of 1996, the amendments made by the Personal
15 Responsibility and Work Opportunity Reconciliation
16 Act of 1996 (other than by section 103(c) of the Per-
17 sonal Responsibility and Work Opportunity Reconcili-
18 ation Act of 1996) shall not apply with respect to the
19 State before the expiration (determined without regard
20 to any extensions) of the waiver to the extent such
21 amendments are inconsistent with the waiver.

22 "(B) FINANCING LIMITATION.—Notwithstanding
23 any other provision of law, beginning with fiscal year
24 1996, a State operating under a waiver described in
25 subparagraph (A) shall be entitled to payment under
26 section 403 for the fiscal year, in lieu of any other pay-
27 ment provided for in the waiver.

28 "(2) WAIVERS GRANTED SUBSEQUENTLY.—

29 "(A) IN GENERAL.—Except as provided in sub-
30 paragraph (B), if any waiver granted to a State under
31 section 1115 of this Act or otherwise which relates to
32 the provision of assistance under a State plan under
33 this part (as in effect on September 30, 1996) is sub-
34 mitted to the Secretary before the date of the enact-
35 ment of the Personal Responsibility and Work Oppor-
36 tunity Reconciliation Act of 1996 and approved by the

Waivers

*Does this
apply in
12 mos.
extended
handbook*

1 Secretary on or before July 1, 1997, and the State
 2 demonstrates to the satisfaction of the Secretary that
 3 the waiver will not result in Federal expenditures under
 4 title IV of this Act (as in effect without regard to the
 5 amendments made by the Personal Responsibility and
 6 Work Opportunity Reconciliation Act of 1996) that are
 7 greater than would occur in the absence of the waiver,
 8 the amendments made by the Personal Responsibility
 9 and Work Opportunity Reconciliation Act of 1996
 10 (other than by section 103(c) of the Personal Respon-
 11 sibility and Work Opportunity Reconciliation Act of
 12 1996) shall not apply with respect to the State before
 13 the expiration (determined without regard to any exten-
 14 sions) of the waiver to the extent the amendments
 15 made by the Personal Responsibility and Work Oppor-
 16 tunity Reconciliation Act of 1996 are inconsistent with
 17 the waiver.

18 **“(B) NO EFFECT ON NEW WORK REQUIRE-**
 19 **MENTS.—**Notwithstanding subparagraph (A), a waiver
 20 granted under section 1115 or otherwise which relates
 21 to the provision of assistance under a State program
 22 funded under this part (as in effect on September 30,
 23 1996) shall not affect the applicability of section 407
 24 to the State.

25 **“(b) STATE OPTION TO TERMINATE WAIVER.—**

26 **“(1) IN GENERAL.—**A State may terminate a waiver
 27 described in subsection (a) before the expiration of the
 28 waiver.

29 **“(2) REPORT.—**A State which terminates a waiver
 30 under paragraph (1) shall submit a report to the Secretary
 31 summarizing the waiver and any available information con-
 32 cerning the result or effect of the waiver.

33 **“(3) HOLD HARMLESS PROVISION.—**

34 **“(A) IN GENERAL.—**Notwithstanding any other
 35 provision of law, a State that, not later than the date
 36 described in subparagraph (B) of this paragraph, sub-

*This only
 applies
 to new
 waivers.*

only new!

1 mits a written request to terminate a waiver described
2 in subsection (a) shall be held harmless for accrued
3 cost neutrality liabilities incurred under the waiver.

4 "(B) DATE DESCRIBED.—The date described in
5 this subparagraph is 90 days following the adjourn-
6 ment of the first regular session of the State legislature
7 that begins after the date of the enactment of the Per-
8 sonal Responsibility and Work Opportunity Reconcili-
9 ation Act of 1996.

10 "(c) SECRETARIAL ENCOURAGEMENT OF CURRENT WAIV-
11 ERS.—The Secretary shall encourage any State operating a
12 waiver described in subsection (a) to continue the waiver and
13 to evaluate, using random sampling and other characteristics of
14 accepted scientific evaluations, the result or effect of the waiv-
15 er.

16 "(d) CONTINUATION OF INDIVIDUAL WAIVERS.—A State
17 may elect to continue 1 or more individual waivers described
18 in subsection (a).

19 "SEC. 416. ADMINISTRATION.

20 "The programs under this part and part D shall be ad-
21 ministered by an Assistant Secretary for Family Support with-
22 in the Department of Health and Human Services, who shall
23 be appointed by the President, by and with the advice and con-
24 sent of the Senate, and who shall be in addition to any other
25 Assistant Secretary of Health and Human Services provided
26 for by law, and the Secretary shall reduce the Federal
27 workforce within the Department of Health and Human Serv-
28 ices by an amount equal to the sum of 75 percent of the full-
29 time equivalent positions at such Department that relate to any
30 direct spending program, or any program funded through dis-
31 cretionary spending, that has been converted into a block grant
32 program under the Personal Responsibility and Work Oppor-
33 tunity Act of 1996 and the amendments made by such Act, and
34 by an amount equal to 75 percent of that portion of the total
35 full-time equivalent departmental management positions at
36 such Department that bears the same relationship to the

THE PRESIDENT HAS SEEN
10/19/96

THE WHITE HOUSE
WASHINGTON

~~cc: [unclear]~~

① CC

See page 2
- govt memo. See p. 4
for 1 question -

OCT - 9 1996

96 OCT 2 P6:14

October 2, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: to Carol H. Rasco
Frank Raines

CHR
[Signature]

②

Leon → you showed
me this if you haven't
already -

SUBJECT: Update on Welfare Reform Implementation

Be

We are continuing to work to coordinate the Administration's efforts to implement the new welfare law. We will be providing periodic updates on key issues for you, as well as answers to questions you raise.

PROCESS

Domestic Policy, OMB, Counsel's office, and Intergovernmental are working closely together on all aspects of implementation. We have the following process in motion:

- o DPC chairs bi-weekly meetings of 11 federal agencies and all White House offices.
- o A subgroup of key agencies and offices meets more regularly on nuts-and-bolts implementation issues.
- o We are meeting weekly with the National Governors' Association, the National Conference of State Legislatures, and the American Public Welfare Association.
- o We met with the League of Cities, the Conference of Mayors, and the counties and promised them ongoing input and consultation.

TANF BLOCK GRANT IMPLEMENTATION

The entitlement to AFDC ended on October 1. States can elect to take advantage of the new TANF block grant as of that date, but they must enter the new program by July 1997. The first states to send in state plans were Michigan and Wisconsin, and their plans were approved by HHS on September 30. As of October 1, about 11 states had filed state plans with HHS.

Determining "Completeness" of Plans -- HHS's role in state plans is merely to certify that they are "complete" -- a far different role than they have had in the past. We have worked with HHS to pare down their list of what is required for a plan to be complete. As a result, they produced draft guidance for the states at the NGA conference last month that was quite brief -- and praised by the states as a result.

[Handwritten initials]

Regulations — The law provides only limited authority to regulate the TANF block grant. You asked in our last memo whether we can require states to use TANF funds as wage subsidies. This is one of the permissible uses of the funds and one way states can provide work. HHS will be working with states to promote this as a model, but it will not be able to require that states adopt any particular approach to meeting the work requirement.

Grandfathering Waivers — Counsel's office advises that the welfare law allows states to continue to operate waiver programs that have time limits and work requirements that vary from the terms of the new law (unless the waivers were granted after the new law passed). We will, however, be making it clear in our guidance to states that the Administration believes that all state programs should comply with the law's provisions regarding time limits, work participation rates, and exemptions and extensions. We will also indicate that if states do not bring their programs into line with the law, there will almost certainly be Congressional action (which we would support) to limit the grandfathering provision.

Wisconsin Waiver — We have resolved Wisconsin's welfare and Medicaid waiver request. On September 30, in its letter approving Wisconsin's new TANF state plan, HHS informed the state that it no longer needs waivers to implement the welfare reform portions of its "W-2" program. Wisconsin still plans to impose a 60-day residency requirement before families can begin to collect benefits, which HHS believes is unconstitutional. The law in this area is unsettled, and the provision will definitely be brought to the courts. HHS simply took note of this issue as part of the plan approval.

On Medicaid, HHS informed the state on September 30 that it will not grant that portion of the state's waiver request because it would have eliminated the Medicaid entitlement and run counter to our commitment to the federal Medicaid guarantee. HHS offered to work with the state on an alternative Medicaid proposal.

Performance Bonus Fund and Contingency Fund — The new law requires the Secretary of HHS to work with NGA and APWA to set up the Performance Bonus Fund, and gives her a year to develop the formula and process. We are setting up a process with these state groups to work out such a proposal in cooperation. We will keep you apprised as these plans develop. The Contingency Fund to protect states from economic downturns is being established by Treasury in consultation with HHS.

New Mexico — New Mexico is one of the few states that is disadvantaged by the conversion to a block grant, because its caseload is increasing. The state announced it may have to cut welfare benefits by 12% to live within the new law. However, Senator Domenici may secure a legislative fix that would allow the state to tap into the Contingency Fund for this purpose.


IMMIGRANTS

The immigration issues raised by the law are clearly the thorniest and most difficult to implement.

wr - work regulation

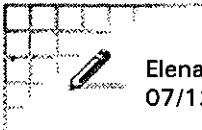
▶ **Diana Fortuna**
07/12/97 06:37:08 PM
.....

Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Cynthia A. Rice/OPD/EOP
bcc:
Subject: Re: work regs 

This was a pre-unveiling, nothing has gone to Katzen yet, and there will be a lot of issues to slog through. I haven't sent you the grandfathering waivers stuff yet; I will today. HHS wants the reg to say that states can use the exemptions and time limits from their waivers instead of the law's; Bruce noted he remembered the resolution very differently in Leon's office. We have a bit of time on this.

Elena Kagan

 Elena Kagan
07/12/97 06:16:12 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP, Diana Fortuna/OPD/EOP
cc:
Subject: work regs

where are we on these? I know i missed a meeting last week. Diana, you asked me after that meeting about grandfathering waivers and said you'd send me some materials to jog my memory. Do I have those somewhere? And are there any other issues? And does Sally Katzen now have this reg, or are we doing a kind of pre-OMB review first?