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Part II

Department of Health and Human Services

Administration for Children and Families

45 CFR Part 270, et al.

Temporary Assistance for Needy Families Program (TANF); Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 270, 271, 272, 273, 274, 275

RIN 0970–AB64, 0970–AB76, and 0970–AB77

Temporary Assistance for Needy Families Program (TANF)

AGENCY: Administration for Children and Families, HHS.

ACTION: Proposed rule.

SUMMARY: The Administration for Children and Families (ACF) proposes to issue regulations governing key provisions of the new welfare block grant program enacted in 1996—the Temporary Assistance for Needy Families, or TANF, program. It replaces the national welfare program known as Aid to Families with Dependent Children (AFDC) and the related programs known as the Job Opportunities and Basic Skills Training Program (JOBS) and the Emergency Assistance (EA) program.

The proposed rules reflect new Federal, State, and Tribal relationships in the administration of welfare programs; a new focus on moving recipients into work; and a new emphasis on program information, measurement, and performance. The proposed rules also reflect the Administration's commitment to regulatory reform.

DATES: You must submit comments by February 18, 1998.

ADDRESSES: You may mail or hand-deliver comments to the Administration for Children and Families, Office of Family Assistance, 5th Floor East, 370 L'Enfant Promenade, SW, Washington, DC 20447. You may also transmit written comments electronically via the Internet. To transmit comments electronically, or download an electronic version of the proposed rule, you should access the ACF Welfare Reform Home Page at http://www.acf.dhhs.gov/news/welfare/ and follow any instructions provided.

We will make all comments available for public inspection on the 5th Floor East, 901 D Street, SW, Washington, DC 20447, from Monday through Friday between the hours of 9 a.m. and 4 p.m. For additional information, see Supplementary Information section of the preamble.

FOR FURTHER INFORMATION CONTACT: Mack Storrs, Director, Division of Self-Sufficiency Programs, Office of Family Assistance, ACF, at 202–401–9289, or Robert Shelbourne, Chief, Program Development Branch, at 202–401–5150.

Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern time.

SUPPLEMENTARY INFORMATION:

Comment Procedures

We will not consider comments received beyond the 90-day comment period in developing the final rule. Because of the large number of comments we anticipate, we will only accept written comments. In addition, all your comments should:

- Be specific;
- Address only issues raised by the proposed rule, not the law itself;
- Where appropriate, propose alternatives;
- Explain reasons for any objections or recommended changes; and
- Reference the specific section of the proposed rule that you are addressing.

We will not acknowledge the comments we receive. However, we will review and consider all that are germane and received during the comment period.

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I. The Personal Responsibility and Work Opportunity Reconciliation Act

On August 22, 1996, President Clinton signed "The Personal Responsibility and Work Opportunity Reconciliation Act of 1996"—or PRWORA—into law. The first title of this new law (Pub. L. 104–193) establishes a comprehensive welfare reform program designed to change the nation's welfare system dramatically. The new program is called Temporary Assistance for Needy Families, or TANF, in recognition of its focus on moving recipients into work and time-limiting assistance. Other key features of TANF include its provisions to reward States for high performance and to encourage continued State expenditures on assistance to needy families.

PRWORA repeals the existing welfare program known as Aid to Families with Dependent Children (AFDC), which provided cash assistance to needy families on an entitlement basis. It also repeals the related programs known as the Job Opportunities and Basic Skills Training program (JOBS) and Emergency Assistance (EA).

The new TANF program went into effect on July 1, 1997, except in States that elected to submit a complete plan and implement the program at an earlier date.

The new law reflects widespread, bipartisan agreement on a number of key principles:

- Welfare reform should help move people from welfare to work.
- Welfare should be a short-term, transitional experience, not a way of life.
- Parents should receive the child care and the health care they need to protect their children as they move from welfare to work.
- Child support programs should become tougher and more effective in securing support from absent parents.
- Because many factors contribute to poverty and dependency, solutions to these problems should not be "one size fits all." The system should allow States, Indian tribes, and localities to develop diverse and creative responses to their own problems.
- The Federal government should focus less attention on payment accuracy and program procedures and place more emphasis on program results.

This landmark welfare reform legislation dramatically affects not only needy families, but also intergovernmental relationships. It challenges Federal, State, Tribal and local governments to foster positive changes in the culture of the welfare system and to take more responsibility for program results and outcomes. It transforms the way agencies do business, requiring that they engage in genuine partnerships with each other, with businesses, community organizations and needy families.

The new law provides an unparalleled opportunity to achieve true welfare reform. It also presents very significant challenges for families and State and Tribal entities in light of the changing program structure, loss of Federal entitlements, creation of time-limited assistance, and new penalty and bonus provisions.

Most of the resources in the AFDC program went to support mothers raising their children alone. In the early years, the expectation was that these mothers would stay home and care for their children; in fact, in a number of ways, program rules discouraged work. Over time, as social and economic conditions changed, and more women entered the work force, the expectations changed. In 1988, Congress enacted the new JOBS program to provide education, training and employment that would help needy families avoid long-term welfare dependence. By 1994, 20 percent of the non-exempt adult AFDC recipients nationwide were participating in the JOBS program.

In spite of these changes, national sentiment supported more drastic change. Policy-makers, agency officials and the public expressed frustration about the slow progress being made in moving welfare recipients into work and the continuing decline in family stability. States were clamoring for more flexibility to reform their programs.

While the Clinton Administration had supported individual reform efforts in almost every State, approving 80 waivers in its first five years, the waiver process was not an ideal way to achieve systemic change. It required separate Federal approval of each individual reform plan, limited the types of reforms that could be implemented, and enabled reforms to take place only one State at a time. Governors joined Congress and the President in declaring that the welfare system was ''broken.''

After more than two years of discussion and negotiation, PRWORA emerged as a bipartisan vehicle for comprehensive welfare reform. On July 31, 1996, President Clinton issued a statement indicating that the pending bill had the potential ''to transform a broken system that traps too many people in a cycle of dependence to one that emphasizes work and independence, to give people on welfare a chance to draw a paycheck, not a welfare check. It gives us a better chance to give those on welfare what we want for all families in America, the opportunity to succeed at home and at work.''

The law that was enacted three weeks later gives States, and federally recognized Indian tribes, the authority to use Federal welfare funds ''in any manner that is reasonably calculated to accomplish the purpose'' of the new program.

It provides them broad flexibility to set eligibility rules and decide what benefits are most appropriate. It also enables States to implement their new programs without getting the ''approval'' of the Federal government. In short, it offers States and Tribes an opportunity to try new, far-reaching changes that can respond more effectively to the needs of families within their own unique environments.

PRWORA redefines the Federal role in administration of the nation's welfare system. It limits Federal regulatory and approval authority, but gives the Federal government new responsibilities for tracking State performance. In a select number of areas, it calls for penalties when States fail to comply with program requirements, and it provides bonuses for States that perform well in meeting new program goals.

Under the new statute, program funding and assistance for families both come with new expectations and responsibilities. Adults receiving assistance are expected to engage in work activities and develop the capability to support themselves before their time-limited assistance runs out. States and Tribes are expected to assist recipients making the transition to employment. They are also expected to meet work participation rates and other critical program requirements in order to maintain their Federal funding and avoid penalties.

Some important indicators of the change in expectations are: time limits; higher participation rates; the elimination of numerous exemptions from participation requirements that existed under prior law; and the addition of a statutory option for States to require individual responsibility plans. Taken together, these provisions signal an expectation that we must broaden participation beyond the ''job-ready.''

In meeting these expectations, States need to examine their caseloads, identify the causes of long-term underemployment and dependency, and work with families, communities, businesses, and other social service agencies in resolving employment barriers. In some cases, States may need to provide intervention services for families in crisis or may need to adapt program models to accommodate individuals with disabilities or other special needs. TANF gives States the flexibility they need to respond to such individual family needs, but, in return, it expects States to move towards a strategy that provides appropriate services for all needy families.

II. Regulatory Framework

A. Consultations

In the spirit of both regulatory reform and PRWORA, we implemented a broad and far-reaching consultation strategy prior to the drafting of this Notice of Proposed Rulemaking (NPRM). In Washington, we set up numerous meetings with outside parties to gain information on the major issues underlying the work, penalty, and data collection provisions of the new law. In our ten regional offices, we used a variety of mechanisms—including meetings, conference calls, and written solicitations—to garner views from ''beyond the Beltway.''

The purpose of these discussions was to gain a variety of informational perspectives about the potential benefits and pitfalls of alternative regulatory approaches. We spoke with a number of different audiences, including: representatives of State, Tribal and local governments; nonprofit and community organizations; business and labor groups; and experts from the academic, foundation, and advocacy communities. We solicited both written and oral comments, and we worked to ensure that information and concerns raised during this process were shared with both the staff working on individual regulatory issues and key policy-makers.

These consultations were very useful in helping us identify key issues and evaluate policy options. However, we would like to emphasize that we are publishing these regulations as a proposed rule. Thus, all interested parties have the opportunity to voice their concerns and react to specific policy proposals. We will review comments we receive during the comment period and take them into consideration before issuing a final rule.

B. Related Regulations Under Development

This NPRM addresses the work, accountability, and data collection and reporting provisions of the new TANF program. Over the next several months, we expect to issue a number of other related proposed rules, covering: child poverty rates; high performance bonuses; illegitimacy reduction bonuses; and Tribal TANF and work programs.

We will also be issuing a number of NPRMs on the child support enforcement provisions found in title III of PRWORA.

This NPRM does not include the provisions for the new Welfare-to-Work (WTW) provisions at section 403(a)(5) of the Act, as created by section 5001(a)(1) of Pub. L. 105–33. The Secretary of Labor is responsible for issuing regulations on these provisions and the provisions at section 5001(c), regarding WTW grants for Tribes. Information about this program is available on the Web at http://wtw.doleta.gov.

This NPRM does include the conforming amendment to the definition of ''qualified State expenditures'' required by section 5001(a)(2) of Pub. L. 105–33, as well as the amendments to the TANF provisions at sections 5001(d), 5001(g)(1), and 5001(h). Section 5001(d) addresses treatment of assistance under WTW under the TANF time limits. Section 5001(g)(1) provides a new penalty that takes away WTW funds when a State fails to meet the TANF MOE requirements. Section 5001(h) addresses the relationship between an individual penalty and work requirements.

This NPRM does not include the provision at section 5001(g)(2), which requires repayment of WTW funds to the Secretary of Labor following a finding by the Secretary of Labor of misuse of funds. Since the Department of Labor is responsible for administering this penalty and receives any repaid funds, it would not be appropriate for us to issue rules on this provision.

Under section 5001(e) of Pub. L. 105–33, we have responsibility for regulating the WTW data reporting requirements, under section 411(a) of the Act, as amended.

We will issue a rulemaking that addresses these requirements at a later date, following consultation with the Department of Labor, State agencies, Private Industry Councils, and other affected parties.

We encourage States and others who are interested in these areas to review and comment on these proposed rules when they are published in the **Federal Register**.

You should be aware of the important relationships between this regulatory package and the other packages that will be following. In particular, we would like to point out that section 412 of the Social Security Act (as amended by PRWORA) provides that federally recognized Tribes may elect to operate their own TANF programs, and Tribes that operated their own JOBS programs may continue to receive those funds to operate Tribal work programs.

The choice Tribes make on TANF will depend on a number of factors, including the nature of services and benefits available under the State program. Thus, Tribes have a direct interest in the regulations governing State programs.

Tribes also have an interest in these regulations because some of the rules we develop for State programs could eventually apply to the Tribal programs. In particular, we urge Tribes to note the data collection and reporting requirements at part 275. While the statute allows Tribes to negotiate certain program requirements, it subjects Tribal programs to the same data collection and reporting requirements as States.

We would also like to direct the Tribes to the maintenance-of-effort (MOE) policies discussed at § 273.1. In that section, we propose that State contributions to a Tribal program could count toward a State's MOE. Tribes should be aware that this proposal could have important implications for the funding of Tribal programs and State-Tribal relations.

In order for welfare reform to succeed in Indian country, it is important for State and Tribal governments to work together on a number of key issues, including data exchange and coordination of services. We remind States that Tribes have a right under law to operate their own programs. States should cooperate in providing the information necessary for Tribes to implement their own programs.

Likewise, Tribes should cooperate with States in identifying Tribal members and tracking receipt of assistance.

We are also issuing separate final rules to make conforming changes to our existing rules in chapter II of title 45.

In the first, we will be repealing the obsolete regulations for the EA, JOBS, and the IV–A child care programs, and some rules covering administrative requirements of the AFDC programs. This rulemaking will be a final rule, effective upon publication. We expect to eliminate about 82 pages from the Code of Federal Regulations.

Later on, we will be issuing a final rule that deletes or replaces obsolete AFDC and title IV–A references throughout chapter II. This second rulemaking will take additional time because the AFDC provisions are intertwined with provisions for other programs that are not repealed. Also, it is not clear that we should repeal all the AFDC provisions because Medicaid, foster care and other programs depend on the AFDC rules in effect under prior law. Because of these complexities and the non-urgent nature of the conforming changes, the second rule is on a slower schedule.

PRWORA also makes changes to other major programs administered by ACF, the Department, and other Federal agencies that may significantly affect a State's success in implementing welfare reform. For example, title VI of PRWORA repeals the child care programs that were previously authorized under title IV–A of the Social Security Act (the Act). In their place, it provides two new sources of child care funding for the Lead Agency that administers the Child Care and Development Block Grant program. A major purpose of the increases in child care funding provided under PRWORA is to assist low-income families in their efforts to be self-sufficient. We issued proposed rules covering this new funding and amendments to the Child Care and Development Block Grant program on July 23, 1997. Comments were due within 60 days of that date.

We encourage you to look in the **Federal Register** for rulemaking actions on related programs and to take the opportunity to comment.

C. Statutory Context

These proposed rules reflect PRWORA, as enacted, and amended by Pub. L. 104–327 and Pub. L. 105–33.

The changes made by Pub. L. 104–237 are fairly limited in scope; we discuss them in the preamble on contingency fund MOE requirements at §§ 274.71, 274.72, and 274.77.

Pub. L. 105–33 created the new Welfare-to-Work (WTW) program, made a few substantive changes to the TANF program, and made numerous technical corrections to the TANF statute. Throughout the preamble discussion and the appendices, you will note references to the amendments made by this legislation. However, as we previously mentioned, this NPRM includes only a limited number of changes related to the new WTW provisions. The Department of Labor has primary responsibility for administering the program and issuing the WTW regulations. We have responsibility for issuing rules on the WTW data collection requirements, but will be doing that at a subsequent date.

D. Regulatory Reform

In its latest *Document Drafting Handbook,* the Office of the Federal Register supports the efforts of the National Performance Review and encourages Federal agencies to produce more reader-friendly regulations. In drafting this proposed rule, we have paid close attention to this guidance. Individuals who are familiar with our existing welfare regulations should notice that this package incorporates a more readable style. This rulemaking effort gave us a unique opportunity to change our approach because we were starting from scratch rather than amending an existing rule.

In the spirit of facilitating understanding, we have included some preamble discussion and regulatory text to give you a broader context for other parts of the rulemaking document. Examples include the provisions in subparts A and G of part 271 (which address work provisions other than participation rates and penalties) and § 270.20 (which includes the statutory goals of the program). These sections are primarily explanatory or restatements of the statutory requirements. The language used and the surrounding discussion should indicate the nature of the provision.

In the same spirit, we have included draft data collection and reporting forms as appendices to the proposed rules even though we do not intend to publish the forms as part of the final rule. We thought that the inclusion of the draft forms would expand public access to this information and make it easier to comment on our data collection and reporting plans.

E. Scope of This Rulemaking

Our initial regulatory plan for TANF included three separate TANF regulations—one each on work, penalties, and data collection and reporting. However, we decided it would be better to incorporate these into a single regulatory package. While this decision resulted in a much larger document, it should facilitate your understanding of the entire regulatory framework of the TANF program, as well as your review and comment.

F. Applicability of the Rules

As we indicated in previous policy guidance to the States, a State may operate its program under a reasonable interpretation of the statute prior to our issuance of final rules. Thus, in determining whether a State is subject to a penalty, we will not apply regulatory interpretations retroactively. You can find a statement of this policy at § 270.40(b) of the proposed rules.

III. Principles Governing Regulatory Development

A. Regulatory Restraint

Under the new section 417 of the Act, the Federal government may not regulate State conduct or enforce any TANF provision except to the extent expressly provided by law. This limitation on Federal authority is consistent with the philosophy of State flexibility and the general State and Congressional interest in shifting more responsibility for program policy and procedures to the States.

We are interpreting this provision to allow us to regulate in two different kinds of situations: (1) where Congress has explicitly directed the Secretary to regulate (for example, under the caseload reduction provisions, described below); and (2) where Congress has charged HHS with enforcing penalties, even if there is no explicit mention of regulation. In this latter case, we believe we have an obligation to States to set out, in regulations, the criteria we will use in carrying out our express authority to enforce certain TANF provisions by assessing penalties.

Throughout the proposed rule, we have endeavored to regulate in a manner that does not impinge on a State's ability to design an effective and responsive program.

You will also note that this rulemaking does not cover the non-discrimination provisions at section 408(c). This subsection specifies that any program or activity receiving TANF funds is subject to the: (1) Age Discrimination Act of 1975; (2) section 504 of the Rehabilitation Act of 1973; (3) the Americans with Disabilities Act of 1990; and (4) title VI of the Civil Rights Act of 1964. Since ACF is not responsible for administering these provisions of law, and they are not TANF provisions, this rulemaking does not include them.

Individuals with questions about the requirements of the non-discrimination laws, or concerns about compliance of individual TANF programs with them, should address their comments or concerns to the Director, Office of Civil Rights, Department of Health and Human Services, 200 Independence Ave, SW, Room 522A, Washington, DC 20201.

B. State Flexibility

In the Conference Report to PRWORA, Congress stated that the best welfare solutions come from those closest to the problems, not from the Federal government. Thus, the legislation creates a broad block grant to each State to reform welfare in ways that work best. It gives States the flexibility to design their own programs, define who will be eligible, establish what benefits and services will be available, and develop their own strategies for achieving program goals, including how to help recipients move into the work force.

Under the law and under these proposed rules, States may implement innovative and creative strategies for supporting the critical goals of work and responsibility. For example, they may choose to expend funds on earned income tax credits or transportation assistance that would help low-wage workers keep their jobs. They could also extend employment services to non-custodial parents, by including them within the definition of "eligible families."

To ensure that our rules support the legislative goals of PRWORA, we are committed to gathering information on how States are responding to the new opportunities available to them. We reserve the right to revisit some issues, either through legislative or regulatory proposals, if we identify situations where State actions are not furthering the objectives of the Act.

C. Accountability for Meeting Program Requirements and Goals

The new law gives States enormous flexibility to design their TANF programs in ways that strengthen families and promote work, responsibility, and self-sufficiency. At the same time, however, it reflects a bipartisan commitment to ensuring that State programs support the goals of welfare reform. To this end, the statutory provisions on data collection, bonuses, and penalties are crucial because they allow us to track what is happening to needy families and children under the new law, measure program outcomes, and promote key program objectives.

Work

We believe the central goal of the new law is to move welfare recipients into work. The law reflects this important goal in a number of ways:

- Work receives prominent mention in the statutory goals at section 401 and the plan provisions in section 402;
- Section 407 establishes specific work participation rates each State must achieve;
- Section 409 provides significant financial penalties against any State that fails to achieve the required participation rates;
- Section 411 provides specific authority for the Secretary to establish data reporting requirements to capture necessary data on work participation rates; and
- Section 413 calls for ranking of States based on the effectiveness of their work programs.

These proposed rules reflect a similar, special focus on promoting the work objectives of the Act. We are proposing specific rules under sections 407, 409, and 411 designed to ensure that States meet the statutory requirements. You should look at the proposed rules in part 271, and the related preamble discussion, for specific details.

This Administration has already shown its commitment to promoting the work objectives of this new law in several ways. Before the legislation was passed, we worked very hard to ensure that Congress passed strong work provisions and provided adequate child care funding and other program supports.

Since enactment, the President has announced a number of additional welfare-to-work initiatives designed to promote work. These include implementation of a new ''Work Opportunity Tax Credit'' that provides incentives for employers to hire welfare recipients and proposals to:

- Extend and expand this credit;
- Increase investments in distressed communities; and
- Provide $3 billion in additional funding to help communities move hard-to-serve recipients into jobs.

As part of budget reconciliation, Congress increased the Work Opportunity Tax Credit, available to employers who hire long-term welfare recipients, and funded a new Welfare-to-Work (WTW) program. States, localities, and Indian Tribes will receive the additional $3 billion in WTW funds in FYs 1998 and 1999.

The President has also challenged America's businesses, its large non-profit sector and the executive branch of the Federal government to make job opportunities available to welfare recipients. On March 8, 1997, he directed all Federal agencies to submit plans describing the efforts they would make to respond to this challenge. In response to this directive, Federal agencies identified more than 10,000 jobs that would be available for welfare recipients over the next four years. (You can find additional information on this initiative on the Web at http://w2w.fed.gov.)

Meeting the Needs of Low-Income Families and Children

In a number of different ways, the new law works to ensure that the needs of low-income children and families are met. First, it provides a guaranteed base level of Federal funding for the TANF programs. Then, in times of special financial need, it makes additional funding available through a $2 billion Contingency Fund and through a Federal loan fund. It also authorizes several studies to monitor changes in the situations of needy children and families that occur after enactment. For example, it requires us to report on how certain children are affected by the provisions of the new law, and to track State child poverty rates, and initiate corrective actions by States when such rates rise.

Domestic Violence

We wish to bring one particular provision—known as the Family Violence Option (FVO)—to your attention. This provision, at section 402(a)(7), gives States the option to waive certain program requirements for certain victims of domestic violence. It thus provides a valuable framework for identifying victims of domestic violence and developing appropriate service strategies for them.

This Administration is strongly committed to reducing domestic violence, and we encourage all States to consider adopting the Family Violence Option. In working with domestic violence cases, we also encourage States to pay special attention to the need for maintaining the confidentiality of case-record information and the victims' own assessments of their safety needs and their abilities to meet program requirements.

During our consultations, we heard numerous questions about the relationship between State policies on domestic violence and the determination of State work and time-limit penalties. Congress considered this issue in its budget resolution, but decided to study the issue further rather than to amend the statute during budget reconciliation. Our regulations seek to implement the statute in a way that is consistent with both the language of the statute and our national interest in fostering appropriate State responses to domestic violence.

The FVO provides States with a specific vehicle for addressing domestic violence among recipients of TANF assistance. The provision envisions that States would screen and identify victims of violence, conduct individual assessments, and develop temporary safety and service plans that would protect victims from any immediate dangers, stabilize their living situations, and explore avenues for overcoming dependency.

The family's individual circumstances or service plans may require that certain program requirements (e.g., regarding time limits and child support cooperation) be temporarily waived in cases where compliance with such requirements would make it difficult for individuals to escape domestic violence, unfairly penalize victims, or put individuals at further risk of domestic violence. In these cases, the FVO allows States to grant such waivers.

Under TANF, States must meet numerical standards for work participation and the percentage of families that may receive federally-funded assistance for more than five years. The statutory language on calculating work participation rates makes no reference to domestic violence cases or to a State's good cause waivers of work requirements under the Family Violence Option. Thus, we think that the clearest reading of this statutory provision includes victims of domestic violence in the calculation of the work participation rates.

The statutory language on time limits refers to victims of domestic violence, but not to the good cause waivers provided under the Family Violence Option. The statutory language suggests that victims of domestic violence would be included in the 20 percent limit on exceptions to the time limit.

However, there is legitimate concern among States and others that election of the FVO might put States at special risk of incurring financial penalties. In granting good cause waivers of program requirements under the FVO, they may make it more difficult for themselves to meet the numerical requirements on time limits and the work participation rates.

Our proposed rules attempt to remain true to the statutory provisions on work and time limits and to ensure that election of the FVO is an authentic choice for States. In deciding to address these waiver cases under ''reasonable cause'' rather than through direct changes in the penalty calculations, we are reflecting the statutory language and maintaining the focus on moving families to self-sufficiency. At the same time, we are giving States some protection from penalties when their failures to meet the standard rates are attributable to the granting of good cause domestic violence waivers that are based on individual assessments, are temporary, and include individualized service and safety plans. We hope our proposal will alleviate concern among States that attention to the needs of victims of domestic violence might place them at special risk of a financial penalty.

Our proposed rules recognize that, through the FVO, Congress gave unique status to victims of domestic violence under the TANF program. Likewise, under our proposed rules, this group of recipients receives special recognition under the ''reasonable cause'' provisions for the work and time-limit penalties.

At § 270.30, the proposed rules reflect our expectation that good cause waivers will be bona fide waivers provided within the framework of the FVO. Under this framework: (1) State policies would provide for individualized responses and service strategies, consistent with the needs of individual victims; (2) waivers of program requirements would be temporary in nature (e.g., would not be granted for longer than six months); and (3) in lieu of program requirements, victims of domestic violence would be served in alternative ways, consistent with their individualized safety and service plans.

In specifying that good cause waivers should not exceed six months in length, we have attempted to balance two distinct objectives: (1) giving States the flexibility they need to respond appropriately to the individual circumstances of domestic violence victims; and (2) assuring that the work objectives of the Act are not undermined.

We do not intend that all good cause waivers should last six months. The length of the waiver should reflect the State's individualized determination of what length of time a client needs. We expect that the length of the waiver could be substantially shorter in some cases. Also, we expect that, in some cases, States might have to renew a waiver or issue a second waiver (i.e., because a victim of domestic violence suffered from continued abuse that required further protection and response).

We welcome comments on whether our proposed approach and language achieve the balance we are seeking.

We want to ensure that our rules work to foster, not undermine, the objectives of the Act. Our goal is to promote the provision of appropriate alternative services for victims of domestic violence that foster both safety and self-sufficiency.

To ensure that these policies have the desired effect, we limit the availability of ''reasonable cause'' to States that have adopted the FVO. In addition, in the definitions section of the proposed rule (at § 270.30), we specify criteria that will apply in deciding whether a good cause domestic violence waiver exists. Also, we reserve the right to audit States claiming ''reasonable cause'' to ensure that good cause domestic violence waivers that States include in their ''reasonable cause'' documentation meet the specified criteria.

In addition, we intend to monitor the number of good cause waivers granted by States and their effect on work and time limits. We want to ensure that States identify victims of domestic violence so that they may be appropriately served, rather than exempted and denied services that lead to independence. We also want to ensure that the provision of good cause waivers does not affect a State's overall effort in moving families towards self-sufficiency. Thus, we will be looking at information on program expenditures and participation levels to see if States granting good cause domestic violence waivers are making commitments to assist all families in moving toward work.

If we find that good cause waivers are not having the desired effects, we may propose regulatory or legislative remedies to address the problems we identify.

For additional discussion of our proposals, see §§ 270.30, 271.52 and 274.3 of the preamble and proposed rule.

Use of Funds

The new law imposes several restrictions on the use of both Federal and State funds to help ensure that program expenditures serve program goals. More specifically, the statute: (1) places a cap on the percentage of funds spent on administrative costs; (2) authorizes audits and penalties to protect against the misuse of funds; (3) establishes a number of limitations on the use of Federal funds; and (4) defines the conditions under which expenditures of State funds may count for MOE purposes. In general, States must expend both their Federal funds and their own State monies on activities that are consistent with the purposes of the TANF program. (For additional information on allowable uses of Federal TANF and State MOE funds, see ACF's guidance, TANF–ACF–PA–97–1, dated January 31, 1997, and the preamble discussion for part 273.)

Maintenance-of-Effort (MOE)

One of the most important provisions in the new law designed to protect needy families and children is the TANF maintenance-of-effort (MOE) requirement. This provision requires States to maintain a certain level of spending on welfare, based on historic (i.e., fiscal year (FY) 1994) expenditure levels. Because this provision is critical to the successful implementation of the law, Congress gave us the authority to enforce State compliance in meeting this requirement, and it receives significant attention in this proposed rule.

Under the data collection, work, and penalty provisions of the proposed rule, at parts 271–275, we took care to propose rules that: (1) ensure that States continue to make the required investments in meeting the needs of low-income children and families; (2) prevent States from either supplanting State funds with Federal funds or using their MOE funds to meet extraneous program or fiscal needs; (3) give us adequate information to meet our statutory responsibility to determine what is happening in State programs; and (4) take a broad view of work effort, caseload reduction, and program performance.

We recognize that States have more flexibility in spending State MOE funds than Federal funds, especially when they expend their MOE funds in separate State programs. However, the proposed rules also recognize and try to protect against actions that might undermine important goals of welfare reform. This is the same concern that we voiced in policy guidance we issued on MOE in January (TANF–ACF–PA–97–1). In particular, we noted that States could design their programs so as to avoid the work requirements of the new law or to avoid returning a share of their child support collections to the Federal government.

To mitigate these potential negative consequences, we indicated our intent to both take administrative actions and seek legislative remedies. As part of our commitment to taking administrative action, we are proposing to require States, under certain circumstances, to report information about the families served by States under separate State programs. Only through this additional reporting will we be able to determine the full nature and scope of State efforts to move needy families into work and the actual caseload reductions States are achieving. (See the preamble discussion and regulation under part 272, subpart D, and part 275.)

In TANF–ACF–PA–97–1, we indicated that States not making a good-faith effort on work in their separate State programs would not be eligible for a reasonable cause exception from the penalty for failing to achieve their work rate. The proposed rule incorporates and expands that proposal.

More specifically, it indicates that States would not be eligible for a reasonable cause exception from the time-limit penalty or any of the three work-related penalties if we detect a significant pattern of diversion of families to separate State programs that has the effect of undermining the work participation requirements of the Act. In general, diverting States would not be eligible for reductions in the work penalty amounts. Finally, they would be ineligible for a penalty reduction under corrective compliance if they did not correct the diversion and meet the other conditions for reduction specified in these proposed rules.

In the January guidance we expressed similar concerns about the effect of separate State programs on the Federal share of child support collections. Therefore, our proposal in this area is similar to our proposal to prevent undermining of the work participation provisions. More specifically, we would deny States reasonable cause for the time-limit, work participation, child support cooperation, and work sanction penalties if we detect a significant pattern of diversion of families into separate State programs that results in the diversion of the Federal share of child support collections to State coffers. States undertaking such diversions would also be ineligible for reductions in the amounts of any of these four penalties under corrective compliance unless they also corrected the diversion during the corrective compliance process.

In making these proposals, we note that the Secretary has considerable discretion in determining whether to reduce penalties or grant a good cause exception.

Getting recipients to work is the most critical component to achieving the purposes of TANF—making welfare a program of temporary assistance for families moving to self-sufficiency. The Secretary has determined that, to prevent circumvention of this purpose, it is appropriate to limit the availability of the reasonable cause exception and penalty reduction if a State attempts to avoid the work participation requirements. Congress has reinforced the importance of appropriate work for recipients in four of the established penalties in section 409 of the Act—work participation rates, continuing assistance when child care is not available, sanctioning families that fail to participate in work, and continuation of assistance beyond 60 months. To carry out the intent of Congress that work be a central part of the TANF program, if we detect that a State is avoiding the work requirements by diverting a significant number of families to separate State programs, we will not grant this State a reasonable cause exception from any of the four penalties most closely tied to the work requirements, either in the form of a reduction in its work penalty based on degree of non-compliance or as a reduction in any of the four penalties as the result of achieving substantial (but not full) compliance.

The other key component to achieving self-sufficiency is implementation of the child support enforcement provisions. The Federal government has a major role to play in such enforcement (particularly with regard to the operation of the New Hire Directory and the Federal Parent Locator Service). It also has a continuing interest in the effectiveness of these programs and, under TANF, maintains its commitment to the funding of needy families whose children have been deprived of parental support and care.

We are concerned that a State's diverting cases to separate State programs would not only have unintended, negative consequences for the Federal budget and the Federal government's ability to ensure an effective child support program; it would also diminish the State's accountability for ensuring that needy families take appropriate steps towards achieving self-sufficiency. The Secretary has determined that, in the interest of protecting the key goals of TANF, it is appropriate to exercise her discretion to set penalty amounts and forgive penalties in a manner that will ensure that States do not divert cases inappropriately. Thus, if we detect a significant pattern of diversion of families to separate State programs that has the effect of diverting the Federal share of child support collections, we will not grant a reasonable cause exception or reduced penalty through corrective compliance for the following four penalties: work participation, time limits, failure to cooperate with paternity establishment and child support enforcement requirements, or failure to impose work sanctions.

We plan to monitor States' actions to determine if they constitute a significant pattern of diversion. For example, if, based on an examination of statistical or other evidence, we came to the conclusion that a State was assigning people to a separate State program in order to divert the Federal share of child support collections, or in order to evade the work requirements, we would conclude that this is a significant pattern of diversion and would deny the State certain types of penalty relief.

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

For the specific regulatory changes associated with these policies, see §§ 271.51, 272.5 (c) and (d), and 272.6(i)(2).

We will also propose to require States seeking to receive high performance bonuses to report on families served by separate State programs. We will address this issue more fully in the coming NPRM on high performance bonuses.

In the policy announcement, we advised States to think carefully about the risks to the long-term viability of their TANF programs if they rely too extensively on separate State MOE programs. In general, States cannot receive contingency funds unless their expenditures within the TANF program are at 100 percent of historic State expenditures. Thus, excessive State reliance on expenditures outside the TANF program to meet MOE requirements could make access to contingency funds difficult during economic downturns.

Child-Only Cases

Since the January guidance came out, we have also become concerned that States might be able to avoid the work participation rates and time limits by excluding adults (particularly parents) from their eligible cases. Given the flexibility available to States under the statute and regulations, it appears possible that States could protect themselves from the requirement and the associated penalty risk by converting regular welfare cases into child-only cases. Such conversions would seriously undermine these critical provisions of welfare reform.

To protect against these negative consequences, in the work and time-limit sections of this proposed rule, we would prohibit States from converting cases to child-only cases for the purpose of avoiding penalties and require annual reporting of any such exclusions (with explanations). We are also proposing to recalculate a State's work participation rates and time limit exemptions if we determine that a State has excluded cases from its calculations for the purpose of avoiding penalties in these areas. See §§ 271.22, 271.24, and 274.1 for the specific proposals.

IV. Discussion of Individual Regulatory Provisions

Following is a discussion of all the regulatory provisions we have included in this package. The discussion follows the order of the regulatory text, addressing each part and section in turn.

A. Part 270—General Temporary Assistance for Needy Families (TANF) Provisions

This part of the proposed rules helps set the framework for the rest of the proposed rule. For the convenience of the reader, it reiterates the goals stated in the new section 401. It also includes a set of definitions that are common to the different parts of the proposed rule.

What does this part cover? (§ 270.10)

This section of the proposed rules indicates that part 270 includes provisions that are applicable across all the TANF regulations in this rulemaking.

What is the purpose of the TANF program? (§ 270.20)

This section of the proposed rules repeats the statutory goals of the TANF program. In brief, they include reducing dependency and out-of-wedlock pregnancies; developing employment opportunities and more effective work programs; and promoting family stability.

While we do not elaborate on the statutory language, we would like to point out that, in a number of ways, the new law speaks to the need to protect needy and vulnerable children. States should keep this implicit goal in mind as they implement their new programs.

What definitions apply under the TANF regulations? (§ 270.30)

This section of the proposed rule includes definitions of the terms used in parts 270 through 275. It does not include definitions that pertain only to individual provisions. You should look to the appropriate individual parts of the proposed rules for definitions that are provision-specific.

In drafting this section of the proposed rule, we defined only a limited number of terms used in the statute and regulations. We understood that excessive definition of terms could unduly and unintentionally limit State flexibility in designing programs that best serve their needs. For example, we did not define ''family'' or ''head-of-household.'' States are thus free to define what types of families would be eligible for TANF assistance. (However, we suggest that you look at the sections of this rule covering work participation rates (§§ 271.22 and 271.24), MOE requirements (subpart A of part 273), time limits (§ 274.1), and data collection definitions (§ 275.2); none of these sections creates a definition of family, but all address the definition of the term ''family'' in describing key requirements on States.)

We also decided not to define the individual work activities that count for the purpose of calculating a State's participation rates. You should look to the preamble discussion for § 273.13 and subpart C of part 271, respectively, for additional discussion of these decisions.

You will note that we use the term ''we'' throughout the regulatory text and preamble. The term ''we'' means the Secretary of the Department of Health and Human Services or any of the following individuals or agencies acting on her 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.

Likewise, you should note that we use the term ''Act'' to refer to the Social Security Act, as amended by the new welfare law. We use the term ''PRWORA'' when we refer to the new law itself. A section reference is a Social Security Act reference if we use neither term.

Some of the definitions in this section incorporate the statutory definitions in PRWORA. We included these definitions largely for the reader's convenience. These statutory definitions include: ''adult,'' ''minor child,'' ''eligible State,'' ''Indian, Indian Tribe and Tribal organization,'' ''State,'' and ''Territories.''

We also propose some clarifying definitions. These include explanations of commonly used acronyms (such as ACF, AFDC, EA, IEVS, JOBS, MOE, PRWORA and TANF, as well as the new WTW) and commonly used terms and phrases (such as the Act and the Secretary). While the meaning of many of these is generally understood, we included them to ensure a common understanding.

We are also proposing a number of definitions that have substantial policy significance, for clarification purposes. For example, the definitions distinguish among several types of expenditures. These distinctions are critical because the applicability of the TANF requirements vary depending on the source of funds for the expenditures. In particular, it is important to distinguish between expenditures from the Federal TANF grant and from the State funds expended to meet MOE requirements (either within the TANF program or in separate State programs).

Federal expenditures. This is short-hand for the State expenditure of Federal TANF funds.

Qualified State Expenditures. This term refers to expenditures that count for TANF MOE purposes (at section 409(a)(7)). By regulation, we are proposing that most of the requirements that apply for countable TANF MOE expenditures also apply for Contingency Fund MOE purposes.

TANF MOE. This term refers to the expenditure of State funds that a State must make in order to meet the MOE requirement at section 409(a)(7).

Contingency Fund MOE. This term refers to expenditures of State funds that a State must make in order to meet the Contingency Fund MOE requirements under sections 403(b) and 409(a)(10). States must meet this MOE level in order to retain contingency funds made available to them for the fiscal year. Note that this term is more limited in scope than the term ''TANF MOE.'' See discussion at subpart B of part 274 for additional details.

State MOE expenditures. This term refers to any expenditure of State funds that may count for TANF MOE or Contingency Fund purposes. It includes both State TANF expenditures and expenditures under separate State programs.

State TANF expenditures. This term encompasses the expenditure of State funds within the State's TANF program. It identifies the only expenditures that can be counted toward the Contingency Fund MOE, except for expenditures made under the Child Care and Development Fund. It includes both commingled and segregated State TANF expenditures.

Commingled State TANF expenditures. This term identifies the expenditure of State funds, within the TANF program, that are commingled with Federal funds. Such expenditures may count toward both the State's TANF MOE and Contingency Fund MOE. To the extent that expended State funds are commingled with Federal funds, they are subject to the Federal rules.

Segregated State TANF expenditures. This term identifies State funds expended within the TANF program that are not commingled with Federal funds. Such expenditures count for both TANF MOE and Contingency Fund MOE purposes. They are not subject to many of the TANF requirements that apply only to Federal funds (including time limits).

Separate State program. This term identifies programs operated outside of TANF in which the expenditure of State funds count toward TANF MOE, but generally does not count for Contingency Fund MOE. With one exception (for CCDF expenditures), expenditure of State funds must be made within the TANF program in order to count as MOE for Contingency Fund purposes.

The definitions also distinguish among different categories and amounts of TANF grant funds. These distinctions are important because they affect the size of grant adjustments and total funding available to the State. In some cases, different spending rules apply to different categories of funds.

State Family Assistance Grant (or SFAG). This term refers to the annual allocation of Federal funds to a State under the formula at section 403(a)(1).

Adjusted State Family Assistance Grant, or ''Adjusted SFAG.'' This term refers to the grant awarded to a State through the formula and annual allocation at section 403(a)(1), minus any reductions due to the implementation of a Tribal TANF program to serve Indians residing in the State. You should note the distinction between this term and the ''SFAG,'' because of their significance in determining spending limitations and the amount of penalties that might be assessed against a State under parts 271–275.

TANF funds. This term includes not just amounts made available to a State through the SFAG, but also other amounts available under section 403, including bonuses, supplemental grants, and contingency funds.

Federal funds. This has the same meaning as ''TANF funds.'' In expending Federal funds, States are subject to more restrictions than they are in expending State MOE as discussed in this NPRM under subpart B of part 273.

You should also note the definition of ''assistance'' proposed in this section.

Assistance. The terms ''assistance'' and ''families receiving assistance'' are used in the PRWORA in many critical places, including: (1) in most of the prohibitions and requirements at section 408, which limit the provision of assistance; (2) in the numerator and denominator of the work participation rates in section 407(b); and (3) the data collection requirements of section 411(a). Largely through reference, the term also affects the scope of the penalty provisions in section 409. Thus, it is important that States have a definition of ''assistance.'' At the same time, because TANF replaces AFDC, EA and JOBS, and provides much greater flexibility than these programs, what constitutes assistance is less clear than it was in the past.

Because PRWORA is a block grant, and it incorporates three different programs, a State may provide some forms of support under TANF that would not commonly be considered public assistance. Some of this support might resemble the types of short-term, crisis-oriented support that was previously provided under the EA program. Other forms might be more directly related to the work objectives of the Act and not have a direct monetary value to the family. We are proposing to exclude some of these forms of support from the definition of assistance.

The general legislative history for this title indicates that Congress meant that this term encompass more than cash assistance; beyond that, it is not very informative (H.R. Rep. No. 725, 104 Cong., 2d Sess (1996)). Our consultations did not produce clear guidance in this area either. However, they did identify some areas where clarification would be helpful. Therefore, this proposed rule contains essentially the same definition as we suggested in our January policy announcement (TANF–ACF–PA–97–1), with some additional clarifications.

In our January proposal, we took the view that the definition of assistance should encompass most forms of support. However, we recognized two basic forms of support that would not be considered welfare and proposed to exclude them from the definition. In brief, the two exclusions were: (1) services that had no direct monetary value and did not involve direct or indirect income support; and (2) one-time, short-term assistance.

In the proposed rule, we are clarifying that child care, work subsidies, and allowances that cover living expenses for individuals in education or training are included within the definition of assistance. For this purpose, child care includes payments or vouchers for direct child care services, as well as the value of direct child care services provided under contract or a similar arrangement. It does not include child care services such as information and referral or counseling, or child care provided on a short-term, ad hoc basis. Work subsidies includes payments to employers to help cover the costs of employment or on-the-job training.

We are also proposing to define one-time, short-term assistance as assistance that is paid no more than once in any twelve-month period, is paid within a 30-day period, and covers needs that do not extend beyond a 90-day period. In response to the policy announcement, we received a number of questions about what the term ''one-time, short-term'' meant. Based on our experience with the EA program, we realized that a wide range of interpretations was possible, and we were concerned that States might try to define as ''short-term'' or ''one-time'' many situations where assistance was of a significant and ongoing nature. We hope our proposal will give States the flexibility to meet short-term and emergency needs (such as an automobile repair), without invoking too many administrative requirements and undermining the objectives of the Act. We welcome comments on whether the proposed policy achieves this end.

Under the policy announcement and proposed rule, we define the minimum types of services and benefits that must be included. Based on comments we received, we considered allowing States to include additional kinds of benefits and services, at their option. However, we were concerned that varying State definitions would create additional comparability problems with respect to data collection and penalty determinations. Also, we were concerned that an expanded definition might have undesirable program effects. For example, it could extend child support assignment to cases where it would not be appropriate.

If States expanded their definitions of assistance, they would have to apply that same definition under all provisions of the regulations. Thus, if something fell within the definition of assistance, the family receiving that type of benefit would be subject to data collection and reporting, child support assignment and cooperation requirements, work requirements, and Federal time limits. In response to the policy announcement, we have also received a number of questions about the treatment of TANF assistance under the child support enforcement program. The Office of Child Support Enforcement will be issuing guidance on the distribution of child collections under PRWORA; this guidance will explain the treatment of TANF assistance under the new distribution rules.

For those concerned about the inclusion of child care in the definition of assistance, we would point out the child care expenditures made under the CCDBG program are not subject to TANF requirements, and States have the authority to transfer up to 30 percent of their TANF grant to the CCDBG program.

We are proposing to collect data on how much of the program expenditures are being spent on different kinds of ''assistance'' and ''non-assistance.'' See the discussion of the TANF Financial Report at part 275 for additional details.

If the data show that large portions of the program resources are being spent on ''non-assistance,'' we would have concerns that the flexibility in our definition of ''assistance'' is undermining the goals of the legislation. We would then look more closely at the ''non-assistance'' being provided and try to assess whether work requirements, time limits, case-record data and child support assignment would be appropriate for those cases. If necessary, we would consider a change to the definition of ''assistance'' or other remedies.

You should also note the definitions of ''waiver'' and ''inconsistency'' in this part.

Waiver and *Inconsistency*. Under the new section 415, States that received approval for welfare reform waivers under section 1115 before July 1, 1997, have the option to operate their cash assistance programs under some or all of these waivers. For States electing this option, provisions of the new law that are inconsistent with the waivers do not take effect until the expiration of the applicable waivers. States have raised numerous questions about how we will interpret this provision, particularly with regard to what is a waiver and an inconsistency.

Since a waiver extension might affect the application of certain of the penalty provisions within a State, we are defining both terms. Part of our responsibility in administering the penalty provisions is to provide notice concerning the rules we will utilize in applying the penalties.

The issue in defining waiver concerns the scope of the provision, specifically how much of the current or underlying law (i.e., the provisions of title IV–A as in effect on August 21, 1996) are properly considered to be part of the waiver. Three possible interpretations were suggested. The first is a very limited definition in which a waiver is only the specific change to the AFDC statute as articulated in the waiver list that was included in the terms and conditions for each demonstration project. The second possible interpretation is that a waiver includes all the underlying law; that, in effect, the AFDC statute, as modified by the waiver terms and conditions, would continue to apply in a State continuing a demonstration project. The third interpretation is that the waiver includes only some parts of the unwaived underlying law.

We believe the third option is the best. It seems most consistent with the Congressional intent to allow States to finish testing the welfare reform policies they had initiated through waivers by allowing sufficient flexibility to continue relevant aspects of those policies. It recognizes that, although some requirements may not have specifically been part of the waiver (as there was no need for a waiver under AFDC), the requirements are an integral part of the demonstration embodied in the waiver.

The first interpretation option is too narrow to allow continuation of many demonstration objectives; thus, it seems inconsistent with the Congressional intent. Similarly, to allow a State to continue the AFDC program in its entirety, even when a particular AFDC provision was not necessary to the demonstration, would seem to frustrate the intent of Congress in enacting TANF. Rather, we believe section 415 was intended to allow States to continue their reform policies, but not the AFDC program in its entirety.

The definition of ''waiver'' we are proposing allows a State the flexibility to include applicable provisions of prior law, but only if their inclusion were necessary to achieve the objective of the approved waiver.

At § 271.60, we provide an example of the application of the definitions of waiver and inconsistent to the work requirements and explain their implications. We also discuss the application of the definitions to control and experimental groups.

After extensive deliberations, we have also defined what makes the new law ''inconsistent'' with a waiver. We propose that a provision of TANF is inconsistent with a waiver only if the State must change its waiver policy in order to comply with the TANF requirement. A TANF provision is not inconsistent if it is possible for the TANF requirement and the waiver policy to operate concurrently.

For example, if the State has a time limit that runs for two years and then has extensions if the recipient is ''playing by the rules,'' that time limit can run in tandem with the Federal time limit until the five-year limit on Federal assistance is reached. At that point, the TANF restriction would be inconsistent with providing further assistance under the demonstration's extension. However, since there is an inconsistency at that point, section 415 would allow a State to continue such assistance until the demonstration ended.

We considered two alternative definitions of inconsistency. The first was that just having a waiver that differs in any respect from the TANF requirement creates an immediate inconsistency. For example, under this definition, the State time limit and the Federal time limit would run sequentially. However, this definition seems to create an artificial inconsistency where one does not exist in fact; thus, it seems contrary to the statute.

The second alternative was to find that a waiver was not inconsistent with the TANF provisions of the law if TANF restrictions related only to the expenditure of Federal funds and did not prohibit States from continuing their waiver policies with their own funds. However, application of this theory could lead to a finding of no inconsistency for all waiver provisions, including those in the major areas of work and time limits. It would thus render section 415 meaningless.

At § 274.1, we provide additional discussion regarding the implications of our definition of inconsistency.

You should also note the definitions of ''Family Violence Option,'' ''good cause domestic violence waiver,'' and ''victim of domestic violence.''

Family Violence Option, Good Cause Domestic Violence Waivers, and *Victims of Domestic Violence.* These definitions are relevant to State claims of ''reasonable cause'' for failing to meet the work participation rate and time-limit requirements of the Act. Under parts 271 and 274, a State's decision to implement the Family Violence Option and its provision of good cause waivers to victims of domestic violence under that provision create a special-case situation that may affect a State's eligibility for a reasonable cause exception from these two penalties.

Finally, we would like you to note that § 273.0(b) contains a definition of ''administrative costs.'' This definition is important because States are subject to 15 percent caps on the amount of Federal TANF and State MOE funds they may spend on administrative activities.

When are these provisions in effect? (§ 270.40)

This section of the proposed rules provides only the general time frames for the effective dates of the TANF provisions. Many of the penalty and funding provisions have delayed effective dates. For example, most penalties would not be assessed against States in the first year of the program, and reductions in grants due to penalties would not occur before FY 1998 because reductions take place in the year following the failure. You should look to the discussion on the individual regulatory sections for specific information on effective dates.

This section also makes the important point that we will not retroactively apply rules against States. With respect to any actions or behavior that occurs before we issue final rules, we will judge State actions and behavior only against a reasonable interpretation of the statute.

B. Part 271—Ensuring That Recipients Work

What does this part cover? (§ 271.1)

This section identifies the scope of part 271: the mandatory work requirements of TANF.

What definitions apply to this part? (§ 271.2)

This section cross-references the general definitions for the TANF regulations established under part 270.

Supart A—Individual Responsibility

During our extensive consultations, a number of groups and individuals asked how the requirements on individuals relate to the State participation requirements and penalties. To help clarify what the law expects of individuals as opposed to the requirements it places on States, we have decided to outline a recipient's statutory responsibilities as part of the proposed rules. In so doing, we only paraphrase the statute, without interpreting these provisions. Inclusion of these provisions in the regulation does not indicate our intent to enforce these statutory provisions, but our expectation is that States will meet these requirements. We have included the requirements in the regulation for informational and contextual reasons.

What work requirements must an individual meet? (§ 271.10)

PRWORA promotes self-sufficiency and independence by expanding work opportunities for welfare recipients while holding individuals to a higher standard of personal responsibility for the support of their children. The legislation expands the concept of mutual responsibility, introduced under the Family Support Act of 1988. It espouses the view that income assistance to families with able-bodied adults should be transitional and conditioned upon their efforts to become self-sufficient. As States and communities assume new responsibilities for helping adults get work and earn paychecks quickly, parents face new, tougher work requirements.

Readers should understand that the law imposes a requirement on each parent or caretaker to work (see section 402(a)(1)(A)(ii)). That requirement applies when the State determines the individual is ready to work, or after (s)he has received assistance for 24 months, whichever happens first. For this requirement, the State defines what work activities meet the requirement.

In addition, there is a requirement that each parent or caretaker participate in community service employment if s(he) has received assistance for two months and is not either engaged in work in accordance with section 407(c) or exempt from work requirements. The State must establish minimum hours of work and the tasks involved. A State may opt out of this provision if it chooses. A State may impose other work requirements on individuals, but there is no further Federal requirement to work.

These individual requirements are different from the work requirements described at section 407. Section 407 applies a requirement on each State to engage a certain percentage of its total caseload and a certain percentage of its two-parent caseload in specified work activities. For the State requirement, the law lists what activities meet the requirement. A State could chose to use this statutory list for the first requirement on individuals, but is not required to do so. Subpart B below explains more fully what the required work participation rates are for States and how they are calculated. Subpart C explains the work activities and when an individual is considered ''engaged in work'' for those rates.

Which recipients must have an assessment under TANF? (§ 271.11)

Each State must make an initial assessment of the skills, prior work experience and employability of each recipient who is at least 18 years old, or has not completed high school (or equivalent) and is not attending secondary school.

With respect to the timing of assessments, within 90 days of the effective date of the State's TANF program (or up to 180 days, at State option), the State may assess an individual who is already receiving benefits as of that date. For any other recipient, the State may make the assessment within 30 days of the date on which the individual is determined to be eligible for assistance, but may increase this period to as much as 90 days. For example, if a State begins operating its TANF program on July 1, 1997, it may assess all individuals in its existing caseload by September 30, 1997 (or, at State option, December 31, 1997). For any individual applying after July 1, 1997, the State may do an assessment within 30 days (or 90 days, at State option).

What is an individual responsibility plan? (§ 271.12)

A State may require individuals to adhere to the requirements of an individual responsibility plan. Developed in consultation with the individual on the basis of the initial assessment described above, the plan should set forth the obligations of both the individual and the State. It should include an employment goal for the individual and a plan to move him/her into private-sector employment as quickly as possible. The proposed regulation includes more detailed suggestions for the content of an individual responsibility plan.

May an individual be penalized for not following an individual responsibility plan? (§ 271.13)

If the individual does not have good cause, (s)he may be penalized for not following the individual responsibility plan that (s)he signed. The State has the flexibility to establish good cause criteria, as well as to determine what is an appropriate penalty to impose on the family. This penalty is in addition to any other penalties the individual may have incurred.

What is the penalty if an individual refuses to engage in work? (§ 271.14)

If an individual refuses to engage in work in accordance with section 407, the State must reduce the amount of assistance otherwise payable to the family pro rata (or more, at State option) for the period during the month in which the individual refused, subject to good cause and other exceptions determined by the State. The State also has the option to terminate the case.

Each State may establish its own criteria for determining when not to impose a penalty on an individual. States may also establish other rules governing penalties as needed.

Under the Family Violence Option, a State may waive work requirements in cases where compliance would make it difficult for an individual to escape domestic violence or would unfairly penalize individuals who are or have been victimized by such violence or individuals who are at risk of further domestic violence. The State must determine that the individual receiving the program waiver has good cause for failing to comply with the standard work requirements.

Can a family be penalized if a parent refuses to work because (s)he cannot find child care? (§ 271.15)

A State may not reduce or terminate assistance to a single custodial parent caring for a child under age six for refusing to engage in required work, if the parent demonstrates an inability (as determined by the State) to obtain needed child care. This exception applies to penalties the State imposes for refusal to engage in work in accordance with either section 407 or section 402(a)(1)(A)(ii) of the Act. The parent's demonstrated inability must be for one of the following reasons:

• Appropriate child care within a reasonable distance from the individual's home or work site is unavailable;

- Informal child care by a relative or under other arrangements is unavailable or unsuitable; or
- Appropriate and affordable formal child care arrangements are unavailable.

This penalty exception underscores the pivotal role of child care in supporting work and also recognizes that the lack of appropriate, affordable child care can create unacceptable hardships on children and families. To keep families moving toward self-sufficiency, and to assess the State's compliance with this penalty exception, we have described in the preamble to § 274.20 our expectation that States will have a process or procedure that: (1) Enables a family to demonstrate its inability to obtain needed child care; (2) informs parents that the family's benefits cannot be reduced or terminated when they demonstrate that they are unable to work due to the lack of child care for a child under the age of six; and (3) advises parents that the time during which they are excepted from the penalty will still count toward the time limit on benefits at section 408(a)(7).

Because the State has the authority to determine whether the individual has demonstrated adequately an inability to obtain needed child care, as the regulations indicate, we expect the State to define the terms ''appropriate child care,'' ''reasonable distance,'' ''unsuitability of informal care,'' and ''affordable child care arrangements.'' The State should also provide families with the criteria, including the definitions, that it will use to implement the exception and the means by which a parent can demonstrate an inability to obtain needed child care.

The proposed regulations for the Child Care and Development Fund (CCDF) reinforce the importance of providing this vital information to parents by requiring the child care Lead Agency, as part of its consumer education efforts, to inform parents about: (1) The penalty exception to the TANF work requirement; (2) the State's process or procedure for determining a family's inability to obtain needed child care; and (3) the fact that the exception does not extend the time limit for receiving assistance. The information must also include the definitions or criteria that the State employs to implement the State's determination process.

Under the proposed CCDF rule, we would require the Lead Agency for child care to coordinate with the TANF agency in order to understand how the TANF agency defines and applies the terms of the statute regarding the penalty exception and to include the definitions (listed above) and criteria in the CCDF plan.

Thus, the proposed CCDF rule requires that the Lead Agency would submit the definitions and criteria used by the State in determining whether child care is available. We took this child care proposal into consideration in drafting our proposed rule. Under § 271.15, we would require that the definitions and criteria be submitted, but would not require that the TANF agency submit them directly. Our goal is to ensure that these items are made available for audit and penalty purposes and that they be part of the public record.

If, based on the child care final rule, we would not expect to receive the criteria and definitions from the Lead Agency, we would add a data element to one of the proposed TANF reporting forms (such as the annual addendum) to incorporate them.

Does the imposition of a penalty affect an individual's work requirement? (§ 271.16)

Section 408(c) of the Act, as amended by section 5001(h) of Pub. L. 105–33, clarifies that sanctions against recipients under TANF ''shall not be construed to be a reduction in any wage paid to the individual.'' This means that imposition of such penalties would not result in a reduction in the number of hours of work required.

Subpart B—State Accountability

How will we hold a State accountable for achieving the work objectives of TANF? (§ 271.20)

Work is the cornerstone of welfare reform. Research has demonstrated that early connection to the labor force helps welfare recipients make important steps toward self-sufficiency. The rigorous work participation requirements embodied in the legislation provide strong incentives to States to concentrate their resources in this crucial area. This summary section makes the legislation's focus on work and the requirements for work clear, while other sections address each of these areas in more detail.

This section of the proposed regulations describes what a State must do to meet the overall and two-parent work participation rates. It explains that a State must submit data to allow us to measure each State's success with the work participation rates. It notes that a State meeting the minimum rates will have a reduced MOE requirement but that a State failing to meet them risks a financial penalty.

What overall work rate must a State meet? (§ 271.21)

Section 407(a) establishes two minimum participation rates that a State must meet for FYs 1997 through 2002 and thereafter. The first, the overall work rate, is the percentage of all families receiving assistance who must participate in work activities by fiscal year. This section lists the statutory overall participation rate by fiscal year. The second is the work rate for two-parent families, addressed below at §§ 271.23 and 271.24.

How will we determine a State's overall work rate? (§ 271.22)

This section of the proposed regulation restates in clear terms the participation rate calculation specified in the statute. In particular, without changing its meaning, we have phrased the denominator in a way that we think is easier to understand than the statutory language.

We received many requests for guidance concerning how, for purposes of the participation rates, a State should treat a family that it exempts from work requirements. A State has the flexibility to establish any exemptions it chooses; however, with two exceptions (discussed below), the legislation offers no room to remove categories of recipients from the denominator. PRWORA embodies the views that: (1) Work is the best way to achieve independence; and (2) each individual should participate to his or her greatest ability. As waiver projects have demonstrated, innovative State programs can often find meaningful ways for nearly every recipient to participate in work-related activities. Therefore, the statute and the proposed regulation require nearly all families to be included in the calculation of the participation rates.

The proposed regulation makes clear that a State may count as a month of participation any partial months of assistance, if an adult in the family is engaged in work for the minimum average number of hours in each full week that the family receives assistance in that month. These families are already included in the denominator since they are recipients of assistance in that month.

This provision ensures that a State receives credit for its efforts in the first and last months that a family receives assistance. Without it, a State would have an inadvertent incentive to start and end assistance as close as possible to the beginning of the month, rather than as families need it. We think that measuring work in full weeks of assistance during a partial month is consistent with the spirit of PRWORA. We have proposed the same policy for partial months of assistance under the two-parent rate at § 271.24.

During the development of the proposed regulation and in consultation with stakeholders, one important topic of discussion was how to treat victims of domestic violence whom the State is helping under the Family Violence Option (FVO), under section 402(a)(7). We recognize that there are circumstances in which a State should and will temporarily waive work requirements for some domestic violence victims. One question we considered was how such waivers would affect the calculation of the participation rates.

Many commenters urged us to remove all victims of domestic violence from the denominator of a State's participation rate so that the State would not be penalized for choosing to develop appropriate responses to their problems. Instead of changing the basic calculation of the work participation rates, we chose to address this situation under the definition of ''reasonable cause'' for States failing to meet their rates. Our approach is targeted, so as not to provide blanket exemptions for those who have ever suffered domestic violence, but instead to provide appropriate protections and supports for TANF recipients who need them.

We believe that keeping recipients who are being assisted under the FVO in the calculation is the better reading of the statute. In the calculation of work participation rates, the statute provides only two exemptions from the denominator: one for a single custodial parent of a child under 12 months old; the other for a recipient who is being sanctioned but has not been so for more than three of the last 12 months. The law is very specific concerning these exemptions and does not provide for others.

We believe victims of domestic violence and the objectives of the Act will be best served if we maintain the integrity of the work requirements and promote appropriate services to the victims of domestic violence. Service providers who work closely with victims of domestic violence attest that work is often a key part of the solution to domestic violence problems; it may provide both emotional support and a path to financial independence. Thus, we do not want to create an incentive for States to waive work requirements routinely for a recipient who does not need such a waiver.

However, we also hear that, in some cases, going to work may aggravate tensions with a batterer and place the victim at risk of further danger. Under our proposed rules, States should feel free to provide temporary waivers of work requirements in such cases.

Given the pressure States are under to meet the work participation rates, and the individualized circumstances that domestic violence victims face, we have concerns that automatically removing victims of domestic violence from the calculations could result in inappropriate exemptions or deferrals of work requirements for victims of domestic violence. We also have concerns that it could result in diversion of resources away from these families to other categories of recipients. We believe our ''reasonable cause'' proposal and our strategy for monitoring the effect of these provisions will protect against these possible negative effects.

You will also note that this section of the regulation addresses our concern that States could use the flexibility inherent in the statute and these regulations to avoid the work participation rates for certain families in the TANF program. Because the participation rates include only those families receiving assistance that include an adult, the possibility exists that States could try to keep cases out of the calculation by converting them to child-only cases. Under our proposal, States would continue to have discretion in defining ''families receiving assistance'' and deciding the circumstances under which adults and children receive assistance in the State. However, we would reserve the right to add cases back into the calculation if we determine that a State was defining families solely for the purpose of avoiding a work penalty. Also, we are proposing to require that States submit annual reports to us specifying how many families were excluded from the overall work participation rate, together with the basis for any exclusions.

Please see § 271.52 of the proposed regulations for further discussion of the reasonable cause criteria.

What two-parent work rate must a State meet? (§ 271.23)

As with § 271.21, this section restates the minimum work participation rates for two-parent families established in the statute.

States should note the sharp increases in the two-parent participation rate. Congress has high expectations that States will help the vast majority of adults in two-parent families find jobs or participate in other work activities. We note that most States had difficulty meeting the less ambitious JOBS participation rates for unemployed parent families (UPs), the primary two-parent cases under AFDC. For several reasons, the new rates under TANF are much more demanding than they were under JOBS. First, the TANF rate is a ''two-parent'' rate, not a rate just for UPs. Secondly, the denominator includes much more of the caseload; it recognizes many fewer exemptions. Finally, PRWORA lifted the restrictions on providing assistance to two-parent families. Thus, in some States, many more two-parent families could be eligible for assistance and subject to the work requirements than under prior law.

We strongly encourage each State to consider carefully what it must do to get two-parent families working. In some cases, States may need to make substantial changes to their program designs over time. In the first few years of operating TANF, the participation rates are at their lowest and pro rata reductions may significantly reduce the minimum required rates. We think it is important for States to capitalize on this initial period to invest in program designs that will allow them to achieve the higher participation rates in effect in later years. We intend to assist States in this endeavor through technical assistance and by sharing promising models as they emerge.

Finally, we would like to make it clear that providing a non-custodial parent with TANF services need not cause a State to consider the family a two-parent family for the purposes of the participation rate. States could define two-parent families as those with two parents living in the same household.

How will we determine a State's two-parent work rate? (§ 271.24)

The proposed regulations express the two-parent work participation rate in terms very similar to those we used for the overall rate. States should note that any family that includes a disabled parent is not considered a two-parent family for purposes of the participation rate and, thus, is not included in the numerator or denominator of the two-parent rate. They should also note the prohibition against defining families receiving assistance for the purpose of excluding cases from two-parent participation rate. (See § 271.22 for additional discussion.)

It is important to note that, in accordance with the statute, we calculate both participation rates in terms of families, not individuals. Whether we include the family in the numerator depends on the actions of individuals, but an entire family either counts toward the rate or does not. In the case of a two-parent family, whether a family counts may depend on the actions of both parents.

Section 408(a)(7) limits the receipt of Federal TANF assistance to 60 months for any family, unless the family qualifies for a hardship exception or disregard of a month of assistance. (In our discussion of § 274.1, we explain that months of receipt are disregarded when the assistance was received either: (1) by a minor child who was not the head of a household or married to the head of a household; or (2) while an adult lived in Indian country or in an Alaska Native Village with 50 percent or greater unemployment.) We have received inquiries concerning the effect of a time-limit exception or disregard on the participation rates. In fact, the time limit does not have a bearing on the calculation of the participation rate. All families must be included in the participation rate, unless they have been removed from the rate for one of the two work-related exemptions (i.e., the family is subject to a penalty but has not been sanctioned for more than three of the last 12 months, or the parent is a single custodial parent of a child under one year of age and the State has opted to remove the family from the rate).

Does a State include Tribal families in calculating these rates? (§ 271.25)

States have the option of including in the participation rates families in the State that are receiving assistance under an approved Tribal family assistance plan or under a tribal work program. If the State opts to include such families, they must be included in the denominator, as well as the numerator where appropriate. We are particularly interested in receiving comments relating to the implementation of this option, such as Tribal reporting of participation information to the State.

Subpart C—Work Activities and How To Count Them

What are ''work activities?'' (§ 271.30)

Section 407(d) specifies the twelve work, training, and education activities in which individuals may participate in order to be ''engaged in work'' for the purpose of counting toward the work participation rate requirements. Congress did not define these activities further. Some have commonly understood meanings from their use over time or from operational definitions adopted by prior employment and training programs. But several of the permissible activities, such as ''vocational educational training'' and ''job readiness assistance,'' do not have commonly understood meanings and are subject to interpretation. Because these terms lack a common definition or understanding, we began receiving questions soon after the enactment of PRWORA about whether we would define them in the rules.

To address this problem, we first examined legislative intent. In enacting TANF, Congress wanted to give States significant flexibility in administering TANF and limit Federal authority to regulate. At the same time, Congress wanted to create a work-focused program of time-limited assistance. In addition, it established significant data reporting requirements for States, including information about the activities in which individuals participate. As discussed below, these three purposes do not clearly point in the direction of more or less definition. Thus, the statute itself did not clearly resolve the matter.

Secondly, we engaged in wide and extensive consultation with a variety of groups to determine what others thought about the definition issue. Most groups, particularly States and their organizational representatives, overwhelmingly urged us not to define the work activities further and recommended that definitions be left to States. They suggested that we could use this preamble to underscore the flexibility and latitude intended by the statute, especially in vocational education. A few individuals asked whether a State would be subject to a penalty if it did not define activities in a way we thought appropriate. They suggested providing illustrative examples or including guidance in the preamble on activities that could not count as work. Several participants thought that we should offer general guidance on the definition of activities to ensure uniform data reporting across States.

Representatives of the education community and some from the labor community expressed concerns about how work-focused activities will affect programs that have been operating under the Job Opportunities and Basic Skills Training (JOBS) program. They emphasized the positive correlation between educational attainment and job acquisition and advancement, as well as the importance of parental education levels and involvement in the education of their children. They also expressed concern that, without additional education and training, many families will find it difficult to hold meaningful employment, much less to advance. They wanted us to take this opportunity to define work activities in ways that fostered education while promoting work.

In this regulation, we are proposing not to define the individual work activities. In making our decision, we considered the following.

Congress did not define the terms and clearly gave States overall flexibility to design their programs. Certainly, one element of that flexibility could be to allow each State to define the work activities in order to address its unique needs and circumstances.

We recognize that definitions of terms could help clarify the parameters of a work-focused program design. For example, without Federal definitions, States could conceivably include a range of activities that may not enhance work skills or might not be considered ''work experience'' by potential employers. However, in light of the five-year time limit, we expect that States will be very careful to establish programs that do not work to prolong a family's use of assistance.

After considering the extensive input we received, we think that the goals and objectives of the legislation will be better served by having each State define the work activities. We believe States will use the flexibility of the statute to formulate a variety of reasonable interpretations leading to greater innovation, experimentation, and success in helping families become self-sufficient quickly.

Because the flexibility could also be used in ways that do not further Congressional intent, we are requiring each State to provide us with its definitions of work activities for both TANF and separate State programs under the data collection requirements at §§ 275.9 and 273.7. We are concerned that different TANF definitions could affect the vulnerability of States to penalties for failure to meet the participation rate. This data collection will help us determine whether this is in fact a serious problem; to the extent possible, we want to ensure an equitable and level playing field for the States. Over the next several years, we will carefully assess the types of programs and activities States develop and will actively publicize and share the results of our findings. If necessary at some time in the future, we will initiate further regulatory action.

Before leaving the subject of work activities and program design, we would like to remind States about some key research findings from prior welfare-to-work programs. According to the Manpower Demonstration Research Corporation's publication, *Work First:*

> The most successful work first programs have shared some characteristics: a mixed

strategy including job search, education and training, and other activities and services; an emphasis on employment in all activities; a strong, consistent message; a commitment of adequate resources to serve the full mandatory population; enforcement of participation requirements; and a cost-conscious management style.

While the most successful programs consistently and strongly emphasize work, the actual program designs recognize and address the critical role education plays in preparing adults for work. As more and more recipients engage in work, State caseloads may reflect higher proportions of the educationally disadvantaged. In combination with other work activities, education may become more important in improving basic communication, analytical and work-readiness skills of recipients. Thus, States may need to integrate adult basic skills, secondary education, and language training within high-quality vocational education programs. Such program designs encourage recipients to continue acquiring necessary educational skills and foster programs that prepare recipients for higher-skill, higher-wage jobs.

In his most recent ''State of the Union'' address, President Clinton identified education as his number one priority. He Issued a call to action for American education based on principles necessary to prepare people for the 21st century. One principle was to make sure that learning is available for a lifetime.

We encourage States to adopt program designs that take advantage of existing educational opportunities. States may use the statutory flexibility to design programs that promote educational principles by:

- Actively encouraging adults and children to finish high school or its equivalent;
- Expecting family members to attain basic levels of literacy and to supplement their education in order to enhance employment opportunities;
- Encouraging family literacy; and
- Promoting community-based work-related vocational education classes, created in collaboration with employers.

States could also make it easier for individuals to combine school and work. For example, they could develop on-campus community work experience program positions, where child care is also available. They could also encourage schools to use work-study funds for students on welfare and then count the hours worked in those programs toward work requirements.

While we have not regulated the definition of work activities, we want to ensure that recipients and children both experience positive outcomes. This is a particularly significant issue when child care is the work activity. For this to happen, child care arrangements should be well developed, implemented and supported.

Research has found that quality child care is critical to the healthy development of children and that providers who choose to care for children create more nurturing environments than those who feel they have no choice and are providing care only out of necessity. Thus, States should assess whether recipients have an interest in providing child care before assigning them to this activity.

In addition, States should provide training, supervision and other supports to enhance caregiving skills if they wish recipients to attain self-sufficiency. Such supports would assist the development of both the caregivers and the children in care.

A State that assesses the individual's commitment to child care and provides opportunities for training in health and safety (*e.g.*, first aid and CPR), nutrition, and child development, should see successful outcomes for both the adults and children in care.

Finally, the stability of child care arrangements affects outcomes for both parents and the children in care. When parents feel comfortable with their child care arrangements, their own participation in the work force becomes more stable. Stability fosters emotional security for children. Thus, stability should be one of the factors States take into account when assigning participants to child care as a work activity.

How many hours must an individual participate to count in the numerator of the overall rate? (§ 271.31)

Section 407(c) specifies the minimum hours an individual must participate to count in the State's participation rate calculation. There are two related requirements. First, there is a minimum average number of hours per week for which a recipient must be engaged in work activities. The average weekly hours are reflected in the following table:

If the fiscal year is:	All families	
	Then the participation rate is: (percent)	and the average weekly hours of work are:
1997	25	20
1998	30	20
1999	35	25
2000	40	30
2001	45	30
2002	50	30

Second, the law requires that at least an average of 20 hours per week of the minimum average must be attributable to certain specific activities. These activities are:

- Unsubsidized employment;
- Subsidized private sector employment;
- Subsidized public sector employment;
- Work experience;
- On-the-job training;
- Job search and job readiness assistance for no more than four consecutive weeks and up to six weeks total in a year;
- Community service programs;
- Vocational educational training not to exceed 12 months;
- Provision of child care services to an individual who is participating in a community service program.

Note: The limitation that at least 20 hours come from certain activities does not apply to teen heads of households; however, there are other limitations related to teen heads of households. Please refer to § 271.33 below.

After an individual meets the basic level of participation, the following activities may count toward the total work requirement hours of work:

- Job skills training directly related to employment;
- Education directly related to employment for those without a high school diploma or equivalent;
- Satisfactory attendance at a secondary school or GED course for those without a high school diploma or equivalent.

In our consultations, several people asked whether a State may average the hours of participation of different recipients to reach the minimum average hours required by the work participation rate, as they could in the JOBS program. PRWORA does not permit combining and averaging the hours of work of different individuals. However, we have clarified in the rules that a State may average an individual's weekly work hours over the month to reach the minimum average number of hours per week that the individual must engage in work.

Our consultations uniformly suggested that we did not need to provide any further regulatory guidance or clarification in this area. Thus, in the regulatory text, we have paraphrased the statute in simple, understandable terms.

How many hours must an individual participate to count in the numerator of the two-parent rate? (§ 271.32)

For two-parent families, section 407(c) specifies that the parents must be participating in work activities for a total of at least 35 hours per week and that a specified number of hours be attributable to specific work activities. A State may have one parent participate for all 35 hours, or both parents may share in the work activities. If the family receives federally-funded child care assistance and an adult in the family is not disabled or caring for a severely disabled child, then the parents must be participating for a total of at least 55 hours per week. As before, a specified number of hours must be attributable to certain activities (listed below). We summarize the requirements for two-parent families in the table below:

If the fiscal year is:	Two-parent families	
	then the participation rate is: (percent)	and the weekly hours of work (without/with federal child care) are:
1997	75	35/55
1998	75	35/55
1999	90	35/55
2000	90	35/55
2001	90	35/55
2002	90	35/55

In the first situation (where the weekly total must be at least 35 hours), at least 30 hours must be attributable to the same specific activities as in the overall rate. In the second situation (where the weekly total must be at least 55 hours), 50 hours must be attributable to these activities. Again, these are:

- Unsubsidized employment;
- Subsidized private sector employment;
- Subsidized public sector employment;
- Work experience;
- On-the-job training;
- Job search and job readiness assistance for no more than four consecutive weeks and up to six weeks total in a year;
- Community service programs;
- Vocational educational training (for not more than 12 months);
- The provision of child care services to an individual who is participating in a community service program.

Therefore, no more than five of the appropriate minimum hours may be attributable to education related to employment, high school (or equivalent), or job skills training activities.

During our consultations, many thought it was unclear whether the 35-hour requirement is a minimum for each week or whether it is a minimum weekly average, as is the case in the overall rate. For example, if a parent participated 40 hours one week and 30 hours the next, the question arises whether (s)he would meet the minimum requirement for both weeks. To provide maximum flexibility for States to meet the program goals, we have clarified in the proposed rule that, as long as the parents' average total hours equal at least 35 hours per week, the individual meets the participation requirement.

Other than this clarification, we have mirrored the statute in simple, understandable terms.

What are the special requirements concerning educational activities in determining monthly participation rates? (§ 271.33)

Section 407(c)(2)(C) provides that a teen who is married or the single head-of-household is deemed to be engaged in work for a month if (s)he maintains satisfactory attendance at a secondary school or the equivalent or participates in education directly related to employment for an average of at least 20 hours per week. Since we have heard few comments about this provision, our proposed rule paraphrases the statutory language.

To reinforce the emphasis on work, section 407 limits educational activities in two ways:

(1) An individual's participation in vocational educational training may count for participation rate purposes for a maximum of 12 months; and

(2) For each participation rate, not more than 30 percent of individuals determined to be engaged in work for a month may count by reason of participation in vocational educational training or, for teens who are married or single heads of households, either by reason of maintaining satisfactory attendance at secondary school (or the equivalent) or participating in education directly related to employment. Teen parents are only included in the 30 percent limitation in fiscal year 2000 and thereafter.

When PRWORA was enacted, there was substantial controversy about precisely how the second limitation would apply. However, Pub. L. 105–33 modified this provision, making the limitation much clearer. The description above and the regulation at § 271.33 reflect the new provision, as amended by Pub. L. 105–33.

Are there any limitations in counting job search and job readiness assistance toward the participation rates? (§ 271.34)

Section 407(c)(2)(A)(i) limits job search and job readiness assistance in several ways.

First, an individual generally may not be counted as engaged in work by virtue of participation in job search and job readiness assistance for more than six weeks. No more than four of these weeks may be consecutive. During our consultations, we were asked whether these limitations apply for the lifetime of the individual, per spell of assistance, or per fiscal year.

Many people recommended treating it as a fiscal-year limit for two policy reasons. First, since the participation rate itself is tied to the fiscal year, it makes sense to have the limitation apply to the same time frame. Second, a different policy could force States to place individuals in other, less appropriate activities just to meet the participation rate. Moreover, research indicates that job search activities are an instrumental component in effective work program designs.

The statutory language supports the fiscal-year interpretation. The job search language at 407(c)(2)(A)(i) limiting the weeks of participation states that the limit is ''notwithstanding paragraph (1).'' Paragraph (1) refers to the determination of whether a recipient is engaged in work for a month ''in a fiscal year.'' Thus the reference to paragraph (1) puts the job search limitation in the context of a calculating whether an individual is engaged in work in the fiscal year. Based on these considerations, we have clarified in the proposed rules that the six-week limitation applies to each fiscal year.

The legislation and our proposed rules allow the six-week limit on job search and job readiness assistance to extend to 12 weeks if the unemployment rate of a State exceeds the national unemployment rate by at least 50 percent, or if the State could qualify as a needy State for the Contingency Fund.

Finally, our rules paraphrase the statute (at section 407(c)(2)(A)(ii)) in allowing a State to count three or four days of job search and job readiness assistance during a week as a full week of participation on one occasion for the individual.

Are there any special work provisions for single custodial parents? (§ 271.35)

Section 407(c)(2)(B) provides a special participation rule for single parents or caretakers with young children. A single parent or caretaker with a child under the age of six will be deemed to be engaged in work for a month if s(he) participates in work activities for an average of at least 20 hours per week.

This provision has little relevance in FYs 1997 and 1998, when, for the overall rate, the required number of hours for all individuals is 20 hours per week. But, when the required number of hours rises to 25 hours per week in FY 1999 and to 30 hours per week thereafter, this provision allows single parents or caretakers to spend time with younger children. It also may enable those with young children to fulfill their work obligations while their children are in preschool activities.

Because our consultations yielded few comments regarding this provision, the proposed regulations paraphrase the statute.

Do welfare reform waivers affect what activities count as engaged in work? (§ 271.36)

This section is simply a cross-reference to § 271.60, which addresses welfare reform demonstration waivers. We thought it would be helpful to include it so that readers would know to refer to this important exception to the work activities and hours specified in subpart C.

Subpart D—Caseload Reduction Factor for Minimum Participation Rates

Is there a way for a State to reduce the work participation rates? (§ 271.40)

Section 407(b)(3) requires us to issue regulations to reduce a State's minimum participation rate based on reductions in its welfare caseload. Under this provision, a State's participation rate for any fiscal year will be reduced by the same number of percentage points as the reduction in the State's average monthly caseload since 1995. The reduction reflects the difference between the State's caseload under the IV–A State plan in effect in FY 1995 and the average number of cases receiving assistance, including assistance under a separate State program, in the prior year.

The statute specifies that the reduction must not reflect any caseload changes that resulted from either Federal requirements or State changes in eligibility between the previous and current IV–A programs.

States have an inherent interest in achieving caseload reductions; this provision increases that interest. If a State were to reduce its caseload, under the caseload reduction provision it could qualify for lower participation rate requirements, reduce the risk of a penalty for failing to meet the work participation rates, and increase its chance of qualifying for a lower TANF MOE requirement. It could also free up resources to serve recipients in alternative ways.

How will we determine the caseload reduction factor? (§ 271.41)

We found it difficult to develop an appropriate methodology that could quantify different types of caseload reductions. In our extensive consultations, we found no straightforward methodology for estimating the reduction factor.

We considered and rejected two alternative approaches for calculating the caseload reduction factor.

The first alternative was to use Medicaid records to estimate the effect of eligibility changes. Initially, we thought this might be a viable solution because, under section 114 of PRWORA, States continue to determine Medicaid eligibility on the basis of the AFDC eligibility rules in effect as of July, 1996. Thus, in theory, this provision might give us a count of how many individuals would have been eligible for benefits in the absence of Title IV–A eligibility changes. However, this option proved not to be feasible because Medicaid data are not collected in a manner that is useful for this purpose. In addition, the statute allows States to modify AFDC rules for Medicaid eligibility purposes; adjusting for such changes would greatly complicate any estimations.

Our second alternative was to estimate the caseload reduction factor for each State based on a computer model. The hope was that we might estimate the caseload effects of State and Federal policy changes using State-reported information on policy changes and Current Population Survey household data. However, this option also was not feasible due to the difficulty of developing computer models that could accurately estimate the effects on State caseloads. In particular, using Census data would make it difficult to estimate the effects of certain policy changes in small States. Finally, we were concerned that this approach would run counter to our intention of creating a simple, understandable methodology.

Because of the difficulty we had in establishing a uniform methodology, we are proposing to determine the appropriate caseload reductions that apply to each State based on information and estimates reported to us by the State. The statute specifies that the responsibility for establishing the caseload reduction factors lies with us. We will analyze the information and estimates provided, determine whether we think they are reasonable (based in part on State-by-State comparisons), and conduct periodic, on-site reviews to validate the accuracy of the information. This approach involves States in the process of assessing the causes of caseload changes. It also tries to ensure program accountability and preserve the focus on work.

As the first step in the process, we will be using the caseload data reported to us by the State. To establish the caseload base for fiscal year 1995, we will use the number of AFDC cases reported on ACF–3697, Statistical Report on Recipients Under Public Assistance. For fiscal years 1996–1998, we will be using data from this same report, supplemented by caseload information from the TANF Data Report and the TANF MOE Data Report, beginning with the fourth quarter of fiscal year 1997, where appropriate. For fiscal years 1999 and beyond, we will only be using caseload information from the TANF Data Report and the TANF MOE Data Report to compare against the fiscal year 1995 base year information. Therefore, in order to qualify for a caseload reduction, a State must have reported information on monthly caseloads for the previous year (including cases in separate State programs), based on the definition of a case receiving assistance, as defined at § 271.43.

Next, to receive a reduction in the participation rates, a State must provide us with sufficient data and information to calculate the reduction. To facilitate such reporting, a State must submit the Caseload Reduction Report to us containing the following information:

(1) A complete listing of and implementation dates for all eligibility changes, including those mandated by Federal law, made by the State since the beginning of FY 1995, and a listing of the reasons (such as found employment) for case closures;

(2) A numerical estimate of the impact on the caseload of each eligibility change or case closure reason;

(3) Descriptions of its estimating methodologies, with supporting documentation; and

(4) A certification from the Governor that it has taken into account all reductions resulting from changes in Federal and State eligibility.

States should note that the information required here to make a determination about the reduction factors is distinct from the case-record information proposed as an optional reporting requirement at § 275.3(d).

We will determine whether the methodology and resulting estimates are reasonable. We will compare each State's methodology, estimates and impact against that of other States. We will also review the quality and completeness of data and the adequacy of the documentation. We may discuss the estimates and methodologies with State staff and may request additional information or documentation to make adjustments in the estimates. We will also conduct periodic, on-site visits and examine case-record information in order to validate the information, data and estimates provided.

The proposed regulation requires States to provide us with any additional information within two weeks of our requesting it. We realize that this is a short time period, but we have proposed this deadline because a State's MOE requirement for the fiscal year may hinge upon the caseload reduction calculations. A State that achieves the participation rates must only reach 75 percent of its historic expenditures for the MOE requirement, rather than 80 percent. The reduction factor may play a significant part in whether States meet the participation rates. We have given ourselves a limited timeframe of 90 days in which to evaluate, make any necessary modifications, and establish caseload reduction factors. We must acquire and evaluate any additional information we need within that period. In light of these constraints, we think that the two-week timeframe is reasonable.

Many of the eligibility changes States have made have a differential effect on two-parent cases (compared to the impact on cases overall). We did a State-by-State comparison of the overall caseload reductions and the two-parent caseload reduction between fiscal years 1995 and 1996 and noted dramatic differences for almost all States. Therefore, we are requiring States to calculate two separate sets of caseload reduction estimates, one for the overall caseload and another for two-parent cases. States must base their overall caseload reduction estimates on decreases in cases receiving assistance in the prior year compared to the AFDC caseload in FY 1995. States must base their caseload reduction estimates for two-parent families on decreases in their two-parent caseload compared to the AFDC Unemployed Parent caseload in FY 1995.

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

In drafting this provision, Congress recognized that some, but not all, caseload reductions in a State should be allowed to reduce work participation rates. Allowing States too much credit could mean that they could avoid accountability for meeting the law's tough new work requirements; they could simply deny families assistance and face much lower requirements. Allowing States too little credit would mean that the States that are most successful in moving families into employment and off their caseloads would not get the intended reward for their efforts.

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

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

Likewise, a State can argue that some or all of the families in separate State programs should not be included in this calculation, based on the type of family served or the nature of benefits provided, but it must substantiate such a claim with specific data on the family. Case-record information on the characteristics of families served in separate State programs and data on the services provided in those programs will contribute to this discussion. Under part 275 and § 271.41(e), we propose that States wishing to claim a caseload reduction factor must report these data.

What is the definition of a ''case receiving assistance'' in calculating the caseload reduction factor? (§ 271.43)

To determine the caseload reduction factor, we will look at caseloads in both TANF and separate State programs. Using the definition of assistance proposed under part 270, we propose to base the calculation on all cases in the State receiving IV–A assistance, except those receiving one-time, short-term assistance or services with no monetary value.

When must a State report the required data on the caseload reduction factor? (§ 271.44)

The caseload reduction factors reflect the caseloads in the previous year compared to FY 1995. For each fiscal year, a State must report its data by November 15th. We will approve or reject a State's proposed reduction within 90 days of that date, or by February 15th.

Subpart E—State Work Penalties

While PRWORA embodies State flexibility in program design and decision-making, it also embodies the principle of accountability. Where a State does not live up to the minimum standards of performance, it faces serious financial penalties. One of the principal areas of accountability is in the State's provision of work and work-related activities that recipients need to leave the system and become self-sufficient. The work participation rates are demanding, but designed to ensure that recipients move as quickly as possible into work and towards independence. This is especially important given the time-limited nature of Federal TANF benefits.

Almost all of the groups with which we consulted were interested in the penalty related to the work participation rates. Most had strong views about what should be a reasonable cause exception to the penalty. They stressed that the criteria should be flexible, leaving room to respond to circumstances in different States. They also urged us to examine a State's good-faith efforts in determining the severity of a penalty.

In structuring this part of the proposed regulations, we have attempted to balance the imperative of State accountability in the work participation rates with the knowledge that each State enters TANF from a different standpoint and with different plans for helping its recipients.

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

In accordance with section 409(a)(3), as amended by Pub. L. 105–33, if we determine that a State has not achieved either or both of the minimum participation rates in a fiscal year, we must reduce the SFAG payable for the following fiscal year. The initial penalty is five percent of the adjusted SFAG and increases by two percentage points for each successive year that the State does not achieve the participation rates. We may reduce the penalty amount based on the degree of noncompliance, as discussed at § 271.51. The total work participation penalty can never exceed 21 percent of the adjusted SFAG. (Please refer to § 272.1(d) for a discussion of the total penalty limit under TANF.)

If a State fails to provide complete and accurate data on work participation, as required under section 411(a) of the Act and part 275 of the proposed rules, we will determine that a State has not achieved its participation rates, and the State will be subject to a penalty under this part. We have the authority to penalize a State that does not report its work participation data for failure to report (under section 409(a)(2)). However, in this case, we thought it would be more appropriate to penalize the State for failure to meet its work rate. First, this policy is consistent with the approach we are taking when States fail to report information related to other penalty determinations. Also, we did not want to create a situation where non-reporting States would face lesser penalties than reporting States, and we did not believe duplicate penalties were warranted.

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

The statute requires us to reduce the amount of the penalty based on the degree to which the State is not in compliance with the required participation rate. However, it specifies neither the measures of noncompliance nor the extent of reduction. The proposed rule uses three criteria to measure the degree of noncompliance. The statute also gives us the discretion to reduce the penalty if the State's noncompliance resulted from certain specific causes; we address this latter issue separately, in the section entitled ''Discretionary Reductions.''

We are proposing that, a State will not receive a penalty reduction based on the severity of the failure or our discretionary authority, if a State has diverted cases to a separate State program for the purpose of avoiding the work participation rates. We want to ensure that each State makes a serious effort to provide work and work-related activities in any State-only funded programs. As we indicated in program announcement TANF–ACF–PA–97–1, we do not believe Congress intended a State to use separate State welfare programs to avoid TANF's focus on work.

Required Reduction

In part, we will measure noncompliance on the basis of whether the State failed one or both rates for the fiscal year and which participation rate it failed, if only one. First, we believe that a State that fails the two-parent rate should be subject to a smaller penalty than a State that fails the overall rate or both. Second, we believe it is appropriate to consider the size of the two-parent caseload in deciding how much weight to give a failure of the two-parent rate only.

In looking at the data for FY 1996, we noted that the two-parent participation rate on average affects a very small percentage of a State's entire caseload; the mean State percentage was about 6.6 percent, but the median was only about 2.4 percent.

Under our proposal, the maximum penalty a State would face for failure to meet the two-parent rate would depend directly on how much of the total caseload in the State was comprised of two-parent families.

The State would not get a similar reduction if it failed the overall rate because all cases, including two-parent cases, are reflected in the overall rate.

We believe a State that failed with respect to only a small percentage of its cases should not face a huge penalty. At the same time, we want to ensure that States make adequate commitments to achieving the two-parent participation rates and that our policies support State efforts to extend benefits to two-parent families. We would like comments as to whether our proposal properly balances these objectives.

Finally, we will measure noncompliance on the basis of the severity of a State's failure to achieve the required rate. We are proposing to reduce the penalty in direct proportion to the State's level of achievement above a threshold of 90 percent. We would compute a ratio whose numerator is the difference between the participation rate a State actually achieved and the applicable threshold rate and whose denominator is the difference between the applicable required participation rate and the applicable threshold rate.

For example, assume a State achieved 95 percent of the required rate, or 5 percentage points above the threshold. These 5 percentage points represent 50 percent of the difference between the required rate and the threshold. Therefore, we would reduce by 50 percent that portion of the penalty (either 90 percent or 10 percent) allocated to the rate the State failed.

In drafting the regulation, we wanted to strike the right balance between the importance of work and the requirement to reduce the penalty based on the degree of noncompliance. Although our first inclination was to make reductions in proportion to the State's achievement toward the required rate, our experience in the JOBS program led us to consider creating a threshold below which we would grant no reduced penalty. We were concerned that, as in the JOBS Unemployed Parent participation rates, there would be States whose level of achievement was negligible, particularly with the two-parent caseload, and thus did not merit a reduced penalty. Given that experience, we thought it was essential to have a threshold.

We considered basing the threshold on the past performance of the States, for example at the 50th or 75th percentile of participation the previous year. However, the data we had from the JOBS program did not prove sufficient to determine where we should set such a State performance threshold. Instead, we chose to establish a threshold as a percentage of the required participation rate. We set the participation threshold at 90 percent because of the emphasis in the statute on making the work penalty meaningful. In particular, Pub. L. 105–33 amended the work penalty provision so that the amount was fixed, removing the discretion we had under PRWORA to set a lesser penalty amount. We think this shows Congressional intent that the work penalty should be meaningful. To avoid undercutting this intent, we believe that a State should make substantial progress in meeting the target rates before we should consider a reduction.

Moreover, the threshold works in conjunction with the penalty allocation we are proposing for failing to meet just one rate. Given their combined effects, we think it is appropriate to set the threshold at 90 percent.

We are particularly interested in any comments readers have concerning the measures of noncompliance we have proposed.

Discretionary Reductions

The proposed regulation also reflects the discretion that we have to reduce the amount of the penalty if the State could qualify as a needy State for the Contingency Fund. The definition of ''needy State'' is based on especially high unemployment or large numbers of Food Stamp recipients in the State. Please see § 270.2 for more discussion of how a State qualifies for the Contingency Fund.

Pub. L. 105–33 gave us the added discretion to reduce the penalty if the State failed to meet the participation rate due to extraordinary circumstances such as a natural disaster or regional recession. To ensure that we take any such circumstances into consideration, States should submit information describing the circumstances and their effects on the ability of the State to meet the participation rates. We must provide a written report to Congress to justify any penalty reductions we provide States on this basis.

Readers will note the similarity between this criterion for reducing the amount of the penalty and the criterion at § 272.5(a)(1) for granting a reasonable cause exception to a penalty due to a natural disaster. We will evaluate any information a State submits concerning the effects of a natural disaster on its ability to achieve the participation rates. If the material does not support granting a reasonable cause exception, we will consider whether it is appropriate to reduce the penalty. For example, if the disaster caused a failure in only one area of the State, we might reduce the penalty in proportion to the TANF caseload in that area. We intend to use a similar approach to evaluating the effects of a regional recession.

Finally, this section of the proposed regulation indicates that States may dispute our findings that they are subject to a penalty.

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

Section 409(b) creates a reasonable cause exception to the requirement for certain penalties, including failure to meet the minimum participation rates. If we determine that a State has reasonable cause for failing to meet one of the rates, we cannot impose a penalty.

We have included general reasonable cause criteria at § 272.5, which may apply to any of the penalties for which there are reasonable cause exceptions. The preamble to § 272.5 discusses how we arrived at these criteria as well as our general thinking about the reasonable cause exception. For the work participation rate penalty, two additional, specific reasonable cause exceptions apply. Under the proposed rule at § 271.52, a State may demonstrate that its failure can be attributed to its granting of good cause domestic violence waivers under the Family Violence Option. In this case, the State must show that it would have achieved the required work rates if cases with good cause waivers were removed from both parts of the calculation (i.e., from the numerators described in §§ 271.22(b)(1) and 271.24(b)(1) and the denominators described in §§ 271.22(b)(2) and 271.24(b)(2)). A State must grant the good cause domestic violence waivers in accordance with criteria in the regulation to be eligible to receive a reasonable cause exemption on these grounds.

The regulation also provides that a State may receive a good cause exemption if it demonstrates that its failure to achieve the work participation rates can be attributed to the provision of assistance to refugees in federally-approved alternative project.

In either of these two situations, as well as in the general reasonable cause criteria, a State must demonstrate that it did not divert cases to a separate State program for the purpose of avoiding the work participation rates before we will grant a reasonable cause exemption.

Can a State correct the problem before incurring a penalty? (§ 271.53)

The process for developing a corrective compliance plan does not differ from one penalty to the next, although the content of the plan naturally would. Thus, the proposed regulation refers to § 272.6, the general section on submittal of a corrective compliance plan for any penalty.

However, in this section, we establish a specific threshold that States must achieve in order to be considered for a reduced work penalty under § 272.6(i)(1). More specifically, we indicate that the State must increase its participation rate during the compliance period enough to reduce the difference between the participation rate it achieved in the year for which it is subject to a penalty and the minimum participation rate it must achieve in the year of the corrective compliance plan by 50 percent. (In other words, if you divided the difference between the rate achieved during the compliance period and the rate achieved during the penalty year by the difference between the target rate during the compliance period and the rate achieved during the penalty year, the result must be 0.50 or greater.)

We believe that showing more progress than not indicates significant compliance. Thus, if the State achieves this amount of progress towards coming into compliance, we may reduce its work penalty under the corrective compliance provision.

This proposal is similar in approach to the approach taken in § 271.51, with respect to potential reductions in work penalties based on degree of noncompliance. In both cases, we are expecting a State to come into significant compliance in order to get a reduced penalty.

Is a State subject to any other penalty relating to its work program? (§ 271.54)

In accordance with section 409(a)(14), as amended by Pub. L. 105–33, if we determine that a State has violated 407(e) of the Act in a fiscal year, which relates to when a State must impose penalties on individuals who refuse to engage in required work, we must reduce the SFAG payable for the following fiscal year by between one and five percent of the adjusted SFAG.

We propose to require each State to provide us with a description of how it will carry out a pro reduction for individuals under both TANF and separate State programs. This requirement appears in the data collection requirements at § 275.9. This data collection will help us determine whether this is in fact a serious problem; to the extent possible, we want to ensure an equitable and level playing field for the States.

Under what circumstances will we reduce the amount of the penalty for not properly imposing penalties on individuals? (§ 271.55)

The statute requires us to reduce the amount of the penalty based on the degree to which the State is not in compliance with the section 407(e) of the Act.

In determining the size of any reduction, we propose to consider two factors. First, we will examine whether the State has established a control mechanism to ensure that the grants of individuals are reduced for refusing to engage in required work. Second, we will consider the percentage of grants that the State has failed to reduce in accordance with the statute. We are particularly interested in any comments readers have concerning what criteria to use in this area. We would like readers' views on the proposal to link the penalty amount to the percentage of cases for which grants have not been appropriately reduced.

Subpart F—Waivers

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

Section 415 permits a State to continue operating any welfare reform demonstration waiver (i.e., section 1115 waiver) affecting work activities granted prior to the date of enactment of PRWORA, to the extent that PRWORA is inconsistent with the waiver.

In considering how this provision affects the work rules applicable in a State, we wanted to draft a regulation that would balance the legislative emphasis on helping recipients find work quickly with the intent to allow States to continue reform activities they had already undertaken. Under prior law, this Administration encouraged States to use the waiver mechanism to its fullest capacity and to act as the ''laboratories of change'' for the nation. Our intent is to help States capitalize on the promising initiatives they began under those waivers, but in a way that is consistent with the overall purpose of PRWORA. We are also cognizant of the importance Congress placed on ensuring that States are accountable for promoting work.

The proposed regulation requires a waiver to meet the definition included in § 270.30. This definition allows a State the flexibility to include applicable provisions of prior law, but only if their inclusion were necessary to achieve the objective of the approved waiver. For example, a State might have had a waiver requiring single parents with children under one year of age and pregnant recipients to participate in JOBS, while maintaining the JOBS exemptions for the disabled and the elderly. In this example, the objective of the waiver, as reflected in the application and terms and conditions, was to expand the group of recipients who were required to participate in work activities. Maintaining the other statutory exemptions would not be necessary to achieve this objective and, in fact, would be inconsistent with the fundamental purpose of the waiver. Therefore, the prior law exemptions would not be included as part of the waiver; the waiver would include only the expanded participation requirements for single parents of young children and pregnant recipients. Moreover, because those two groups can also be required to participate under TANF, there is no inconsistency. Thus, in this example, the prior law exemptions would not be included in the waiver, and the waiver itself would not be inconsistent with TANF.

The proposed definition recognizes two kinds of waiver inconsistencies with respect to the work requirements. The first is in the area of what activities a State may count toward the participation rate. As part of the waiver demonstrations, a number of States expanded the JOBS work activities. Those States believed that a broader range of activities would be most effective in helping the recipients in their States find and retain work and achieve self-sufficiency. In creating this package of activities, States generally kept some of the prior law activities, changed others, and added new ones. While only the changed and new activities required waivers, we would include the prior law activities under the waiver because they are necessary for the State to carry out the objectives of the approved waiver. Some of these activities are inconsistent with the definition of work activities in section 407(d), so States could use the activities defined under the waivers instead of the TANF list of work activities. Thus, States could count participation in a broader range of activities as participation in work.

The other area in which the proposed definition recognizes waiver inconsistencies relates to hours of participation. In approving waivers of required hours of participation, we allowed States to implement two kinds of policies.

First, States expanded the number of required hours of participation for a class or classes of recipients. Because those classes of recipients are already required to participate for a greater number of hours under TANF than under prior law, there is no inconsistency. Those waivers would not continue under this proposed regulation.

Second, we approved waivers that allowed a State to set the number of hours an individual must participate in accordance with an individualized plan for achieving self-sufficiency. This gave States additional freedom to tailor work requirements to the circumstances of the individual. For example, some States removed the JOBS exemption for the disabled. The intent of such a waiver was to find an appropriate level of participation based on the particular circumstances and abilities of the individual. Because continuing these policies could be inconsistent with TANF, due to requiring a lesser number of hours of participation than TANF, we will recognize such waivers as allowable inconsistencies.

The definition does not recognize prior law exemptions from the denominators of the participation rates as part of the waiver, except for research group cases. We believe this is appropriate for two reasons. First, although we have allowed new or modified activities to count for participation, we have never granted a waiver of a participation rate itself. Second, we have never granted a waiver that added new exemptions from the work requirements, which would have reduced the number of recipients counted in the denominator. We think that States need to try to provide work-related services for the entire caseload, because almost all families will be facing the time limit on benefits. By not adjusting the number of families who would otherwise be counted in the denominators, States have a greater incentive to provide work-related services for everyone.

Finally, we would like to explain the policy in the proposed regulations with respect to control and experimental treatment groups. As part of the demonstrations, States divided the AFDC population in the demonstration into three groups. The first, the control group, received benefits under the regular, statutory AFDC program. The second, the experimental treatment group, received benefits under AFDC with the demonstration changes and is used to evaluate the impacts of the new program. The third, the non-experimental treatment group, also received benefits under AFDC with the demonstration changes, but is not used to evaluate the impacts of the new program. The control and experimental treatment groups together comprise the research group and contain a fairly small number of the AFDC recipients. Except in States with small caseloads, the research group represents a very small proportion of the welfare caseload. The non-experimental treatment group includes the vast majority of the welfare population.

Information on the research group is the sole basis for impact and cost-benefit analyses of the effects of the demonstration provisions and is essential to all the major components of the evaluation. Because evaluation is one of the goals of the demonstration, and the maintenance of different requirements for the three groups of recipients is necessary to avoid compromising the evaluation, we believe all of the underlying law for the research group continues to apply in those States continuing demonstration evaluations and is uniquely necessary to achieve that evaluation goal. Thus, the research group—both the control and experimental treatment groups—should not be included in either the numerator or the denominator of the participation rates.

Subpart G—Non-displacement

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

The proposed regulations incorporate the statutory prohibition against allowing an individual participating in TANF work activities from displacing another employee. A participant in a work activity may not fill a vacancy that exists because another individual is on layoff from the same or equivalent job. Also, a participant may not fill a vacancy created by an involuntary reduction in work force or by the termination of another employee for the purpose of filling a vacancy with a participant.

We encourage States to take aggressive steps to ensure that the current work force is not harmed or their employment jeopardized in any way by a State's efforts to place welfare recipients in employment or work-related positions. Our ultimate goal, and that of States, is to increase the ranks of the employed, not to substitute one group of job-seekers for another. Displacing current workers is counter-productive and damages the overall stability of the labor force. We are confident that States will develop procedures for working with employers to protect against displacing other employees.

C. Part 272—Accountability Provisions—General

It is clear that, in enacting the penalties at section 409(a), Congress intended for State flexibility to be balanced with State accountability. To assure that States fulfilled their new responsibilities under the TANF program, Congress established a number of penalties and requirements under section 409(a). The penalty areas indicate the areas of State performance that Congress found most significant and for which it gave us clear enforcement authority.

What definitions apply to this part? (§ 272.0)

This section cross-references the general TANF regulatory definitions established under part 270.

What penalties will apply to States? (§ 272.1)

Section 409 includes 15 penalties that may be imposed on States. This proposed rule covers 14 of the 15. We have not included the specific penalty dealing with substantial noncompliance with requirements under title IV–D (section 409(a)(8)) in this proposed rule. Our Office of Child Support Enforcement will address this penalty in a separate proposed rule to be published at a future time.

The penalties for which we are proposing regulations are:

(1) a penalty for using the grant in violation of title IV–A of the Act, as determined by findings from a single State audit and equal to the amount of the misused funds;

(2) a penalty of five percent of the adjusted SFAG, based on audit findings that show that a State intentionally violated a provision of the Act;

(3) a penalty of four percent of the adjusted SFAG for the failure to submit an accurate, complete and timely required report;

(4) a penalty of up to 21 percent of the adjusted SFAG for the failure to satisfy the minimum participation rates;

(5) a penalty of no more than two percent of the adjusted SFAG for the failure to participate in the Income and Eligibility Verification System (IEVS);

(6) a penalty of no more than five percent of the adjusted SFAG for the failure to enforce penalties on recipients who are not cooperating with the State Child Support Enforcement Agency;

(7) a penalty equal to the outstanding loan amount plus interest for the failure to repay a Federal loan provided for under section 406;

(8) a penalty equal to the amount by which qualified State expenditures fail to meet the appropriate level of historic effort in the operation of the TANF program;

(9) a penalty of five percent of the adjusted SFAG for the failure to comply with the five-year limit on Federal funding of assistance;

(10) a penalty equal to the amount of contingency funds unremitted by a State for a fiscal year;

(11) a penalty of no more than five percent of the adjusted SFAG for the failure to maintain assistance to an adult single custodial parent who cannot obtain child care for a child under age six;

(12) a penalty of no more than two percent of the adjusted SFAG plus the amount a State has failed to expend of its own funds to replace the reduction to its SFAG due to the assessment of penalties in § 272.1 in the year of the reduction;

(13) a penalty equal to the amount of the State's Welfare-to-Work formula grant for failure to maintain the historic effort during a year in which this formula grant is received; and

(14) a penalty of not less than one percent and not more than five percent of the adjusted SFAG for failure to reduce assistance for recipients refusing without good cause to work.

In calculating the amount of the penalty, we will take into consideration the extent to which a State's SFAG has been reduced to fund Tribal TANF grants. This is particularly applicable for penalties based on percentage reductions. These regulations use the term ''adjusted SFAG'' to refer to States whose SFAG allocations are reduced for this purpose. For States without Tribal grantees, ''adjusted SFAG'' will be the same as SFAG.

Except for the penalty at § 272.1(a)(12), all penalties are either a percentage of the adjusted SFAG or a fixed amount. In calculating the amount of these penalties, we will add all applicable penalty percentages together, and we will apply the total percentage reduction to the amount of the adjusted SFAG that would have been payable if no penalties were assessed against the State. As a final step, we will subtract other (fixed) penalty amounts.

The penalty at § 272.1(a)(12) requires that we reduce a State's adjusted SFAG if, after one of the penalties under this section has been taken, a State does not expend its own funds on the State's TANF program in the amount of the penalty, i.e., the amount by which the adjusted SFAG is reduced. Unlike the other penalties, this penalty represents a percentage of the adjusted SFAG (up to two percent) and a fixed amount, i.e., the amount of the reduction a State has failed to expend under the TANF program with its own funds. We believe it is appropriate to calculate the amount of this penalty by including the amount of the penalty based on a percentage with other applicable penalty percentages. The fixed amount of this penalty will be subtracted with other fixed-amount penalties. Then we will add the amount based on the percentage for this penalty and the fixed amount for this penalty to determine the cumulative amount of this penalty.

The total reduction in a State's grant must not exceed 25 percent. If the 25 percent limit prevents the recovery of the full penalty imposed on a State during a fiscal year, we will apply the remaining amount of the penalty to the SFAG payable for the immediately succeeding fiscal year. If it is not possible to take the full penalty in the next succeeding year, we will defer taking the penalty to subsequent years until it is finally taken in full.

When do the TANF penalty provisions apply? (§ 272.2)

States may implement the TANF program at different times, but no later than July 1, 1997. The Territories, i.e., Guam, the Virgin Islands, Puerto Rico, and American Samoa, may not implement until July 1, 1997.

Congress recognized that, in certain circumstances, States should face the consequences for failing to meet the requirements of the penalty provisions from the first day the State operates the TANF program. It also recognized, however, that States needed some lead time in implementing other TANF requirements.

Section 116(a)(2) of PRWORA delays the effective date of some of the penalty provisions in title IV–A. For those provisions where the effective date is not delayed, we believe that Congress intended that a State would be subject to these penalties from the first day it began to operate TANF.

Before we issue final rules, States must implement the TANF provisions in accordance with their own reasonable interpretation of the statute. If we find that a State's actions are inconsistent with the final regulations, but consistent with a reasonable interpretation of the statute, we will not impose a penalty. However, if we find that a State has operated its TANF program in a manner that is not based on a reasonable interpretation of the statute, we may penalize the State.

How will we determine if a State is subject to a penalty? (§ 272.3)

We have concluded that no one method can be used for monitoring State performance. The following discussion explains the different methods we will use to determine State compliance with the requirements with which noncompliance may lead to penalties.

Using the Single Audit to Determine Misuse of Funds and the Applicability of Certain Other Penalties

We will determine whether a State has used funds under section 403 in violation of title IV–A through an audit conducted under the Single Audit Act. (See § 273.10 on Misuse of Funds.) This is the only penalty for which Congress identified a method for determining a penalty.

Under the requirements of the Single Audit Act, States operating Federal grant programs meeting a monetary threshold (currently $100,000, but soon to be $300,000) must conduct an audit under the Act. Most States must audit annually; a few may audit biennially. Because of the substantial funding under TANF, all TANF States meet the audit threshold.

The single audit is an organization-wide audit that reviews State performance in many program areas. We will implement the Single Audit Act through use of Office of Management and Budget (OMB) Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.'' OMB recently revised the Circular, merging former Circulars A–128 and A–133, because of amendments to the Act in 1996. The new Circular was published in the **Federal Register** on June 30, 1997, at 62 FR 35277.

In conducting their audits, auditors use a variety of tools, including the statute and regulations for each program and a compliance supplement issued by OMB that focuses on certain areas of primary concern to that program. Upon issuance of final regulations, we will prepare a TANF program compliance supplement, for OMB to issue, which will focus on those penalties for which the single audit will be our primary compliance instrument.

The Single Audit Act does not preclude us or other Federal offices or agencies, such as the Office of the Inspector General (OIG), from conducting additional audits or reviews. In fact, there is specific authority to conduct such additional audits or reviews. In particular, 31 U.S.C. 7503(b) states:

(b) Notwithstanding subsection (a), a Federal agency may conduct, or arrange for additional audits that are necessary to carry out its responsibilities under Federal law or regulation. The provisions of this chapter do not authorize any non-Federal entity (or sub-recipient thereof) to constrain, in any manner, such agency from carrying out or arranging for such additional audits, except that the Federal agency shall plan such audits to not be duplicative of audits of Federal awards.

States should note, therefore, that the State-conducted single audit will be our primary means for determining if a State has misused funds. We may, however, through our own audits and reviews, or through OIG and its contractors, conduct audits or reviews of the TANF program that will not be duplicative of single organization-wide audit activities. We may identify a need to conduct such audits as the result of complaints from individuals and organizations, requests by the Congress to review particular areas of interest, or other indications of problems in State compliance with TANF program requirements.

We are proposing that the single audit be the primary means for determining certain other penalties as well.

Where we determine that a State is subject to a penalty for the misuse of funds, we may apply a second penalty if we determine that the State intentionally misused Federal TANF funds. The criteria for determining ''intentional misuse'' are found at § 273.12. The single audit will be the primary vehicle for this penalty because of its link to the determination of misuse of funds.

The single audit will also be the primary means that we use to determine State compliance with the following three penalties: (1) failure to participate in the Income and Eligibility Verification System (see § 274.11); (2) failure to comply with paternity establishment and child support enforcement requirements under title IV–D of the Act (see § 274.31); and (3) failure to maintain assistance to an adult single custodial parent who cannot obtain child care for a child under age six (see § 274.20). For these process-focused penalties, we determined that we could make appropriate use of the single audit to monitor State compliance.

The audit compliance supplement will include guidance to auditors on how to monitor these areas. As in the case of the misuse-of-funds penalty, we may conduct other reviews and audits, if necessary. For example, the penalty for a State's failure to maintain assistance to an adult single custodial parent who cannot obtain child care is an area where we anticipate that we could receive complaints from individuals and organizations. A number of substantiated complaints may indicate that an additional review may be warranted.

Use of Data Collection and Reporting for Determining Applicability of Certain Penalties

We will monitor State compliance with the penalties for failure to satisfy minimum participation rates (see § 271.21) and failure to comply with the five-year limit on Federal assistance primarily through the information required to be reported by section 411(a) (i.e., State reporting of disaggregate case record information). (See part 275 of the proposed rule for the proposed data collection and reporting requirements.)

We believe that Congress intended that the data elements in section 411(a) be used to gather information for these two penalty areas. Thus, we concluded that the section 411(a) data collection tools would be our primary means for determining these penalties. We may also need to conduct reviews in the future to verify the data submitted by States, particularly in these two areas where a fiscal penalty is applicable. States should maintain records to adequately support any report in accordance with 45 CFR 92.42. States may not revise the sampling frames or program designations for cases in the quarterly TANF and TANF MOE Data Reports retroactively (i.e., after submission).

Accurate data are essential if we are to apply penalties fairly. If the State submits insufficient data to verify its compliance with the requirements, or if we determine that a State can not adequately document data it has submitted showing that it has met its participation rates or the five-year time limit, we will enforce the participation rate penalty or five-year time limit penalty.

In our consultations, some participants recommended that the single audit be the means for determining all the penalties. However, since States must otherwise report the data that directly speak to their compliance in these two areas, and timely determination of State compliance is necessary, we did not accept that recommendation and have proposed to rely on the quarterly reports required under part 275 of the proposed rule.

TANF MOE and Contingency Fund MOE Penalties, and Failure to Replace Grant Reductions Penalty

All States are subject to the TANF MOE penalty for failure to maintain a certain level (i.e., 75 or 80 percent) of historic effort. Those States that choose to receive contingency funds under section 403(b) are subject to a separate maintenance-of-effort penalty for failure to maintain 100 percent of historic effort.

We have developed a proposed TANF Financial Report (see Appendix D of part 275). We designed this report to gather information required under sections 403(b)(4), 405(c)(1), 409(a)(1), 409(a)(7), 411(a)(2), 411(a)(3), 411(a)(5), including data on administrative costs, types of State expenditures, and transitional services for families no longer receiving assistance. It will also gather financial information to enable us to award grant funds, close out accounts, and manage other financial aspects of the TANF program. In addition, we will be using this report to monitor State compliance with the TANF and Contingency Fund MOE requirements and to aid us in determining if Federal TANF funds have been used properly.

Consistent with section 5506(a) of Pub. L. 105–33, the TANF Financial Report is due 45 days after the end of each quarter. Upon receipt of the report for the fourth quarter, i.e., by November 14, we will have State-reported information indicating whether or not the State met its MOE requirements.

On the TANF Financial Report, States will inform us of the amount of expenditures they have made for TANF and Contingency Fund MOE purposes. For the TANF MOE, States must inform us of the amount of expenditures made in the State TANF program and in separate State programs. (See part 274, subpart B, for more information on the Contingency Fund MOE requirement.)

For the TANF MOE, we are proposing to require a supplemental report that must accompany the fourth quarter TANF Financial Report. The supplemental report (or addendum) will include a description of the TANF MOE expenditures that States have made under separate programs, i.e., not as part of their State TANF programs. (See §§ 273.7 and 275.9(a) for more information on the contents of this supplemental report.)

If we reduce a State's SFAG as the result of a penalty, the State is required to expend an equal amount of its own funds for the fiscal year in which the reduction is made. If the State fails to replace the funds through these State-only expenditures, as required, the State is subject to the penalty at § 272.(1)(a)(12), i.e., an amount of up to two percent of the adjusted SFAG and the amount not expended to replace the reduction to the SFAG due to the penalty.

We will use the TANF Financial Report (or Territorial Financial Report) to determine if a State has complied with these provisions. Instructions to the TANF Financial Report in Appendix D require States to include amounts that they are required to contribute as a result of a penalties taken against the State. (A similar requirement will be included in the Territorial Financial Report.)

As in the case of the penalties for failure to meet the participation rates or comply with the five-year limit on assistance, our program management responsibilities may require us to verify the data submitted by States on the TANF Financial Report, particularly data on MOE expenditures and "replacement funds." States should maintain records in accordance with 45 CFR 92.42. As we have stated, accurate data are essential if we are to determine State compliance. If the State submits insufficient MOE data to verify its compliance or if we determine that the State can not adequately document data it has submitted showing that it has met its MOE requirements, we will apply the penalties for failure to meet the TANF and Contingency Fund MOE requirements. For the TANF MOE, we may have to estimate the actual level of qualifying MOE expenditures. We would then base the amount of the penalty on the degree to which we believe the data are inaccurate.

Federal Loan Repayment

We will penalize States for failing to repay a loan provided under section 406 (see § 274.40). A specific vehicle for determining a State's compliance with this requirements is unnecessary. In our loan agreements with States, we will specify due dates for the repayment of the loans and will know if payments are not made.

Penalty for Reporting Late

We will penalize States for failing to submit a report required under section 411(a) by the established due dates (see §§ 275.4 and 275.7). As noted before, we are requiring that the reports must not only be timely, but they must also be complete and accurate. Thus, we may take actions to review the accuracy of data reporting if appropriate. If we determine that the data required under section 411(a) are incomplete or inaccurate, we may apply the penalty for failing to submit a report. As discussed above, if the data that are inaccurate or incomplete pertain to other penalties (i.e., the participation rate, the five-year time limit on assistance, or the TANF MOE and Contingency Fund MOE requirements), we will apply the penalties associated with these requirements.

Additional Single Audit Discussion

Although we are proposing that the single audit be the primary means to determine certain specific penalties, if a single audit detects the lack of State compliance in other penalty areas, e.g., the five-year limit on Federal assistance, we cannot ignore those findings. Therefore, we will also impose a penalty based on the single audit findings in such other penalty areas.

For most programs, other than TANF, the Single Audit Act procedures provide for disallowance in cases of substantiated monetary findings. However, in accordance with section 409(a), we will be taking penalties, rather than disallowances, under TANF. When the single audit determines a specific penalty, the penalty amount that we will apply is the penalty amount associated with the specific penalty provision or provisions, for example, misuse of funds and failure to end federal assistance after 60 months of receipt. Likewise, where we, or OIG, conduct an audit or review, the penalty amount that will apply is the penalty amount associated with the specific penalty or penalties under section 409.

Regardless of how we determine that a State is subject to a penalty, the determination of whether a State may invoke the reasonable cause exception or enter into a corrective compliance plan depends on the specific penalty provision. States cannot avoid all penalties through the reasonable cause exception or a corrective compliance plan (see § 272.4).

What happens if we determine that a State is subject to a penalty? (§ 272.4)

Notification to the State

If we determine that a State is subject to a penalty, we will send the State a notice that it has failed to meet a requirement under section 409(a). This notice will: (1) specify the penalty provision at issue, including the applicable penalty amount; (2) specify the source and reasons for our decision; (3) explain how and when the State may submit a reasonable cause justification under 409(b) and/or corrective compliance plan under 409(c); and (4) invite the State to present its arguments if it believes that the data or method we used were in error or were insufficient, or that its actions, in the absence of Federal regulations, were based on a reasonable interpretation of the statute.

Process When Both Reasonable Cause and Corrective Compliance Plan Provisions Apply

For penalties where the reasonable cause and the corrective compliance plan provisions both apply, we are proposing that a State submit to us both its justification for reasonable cause and corrective compliance plan within 60 days of receipt of our notice of failure to comply with a requirement. The objective of this proposal is to expedite the resolution of State failure to meet a requirement.

A State may choose to submit a reasonable cause justification without a corrective compliance plan. In this case, we will notify the State if we do not accept the State's justification of reasonable cause. Our notification will also inform the State that it has an opportunity to submit a corrective compliance plan. The State will then have 60 days from the date it receives the notification to submit a corrective compliance plan. (Under this scenario, we will send the State two notices—the first will inform the State that it may be subject to a penalty, and the second will inform the State that we determined that it did not have reasonable cause.)

A State may also choose to submit only a corrective compliance plan if it believes that the reasonable cause factors do not apply in a particular case.

Process When the Reasonable Cause and/or Corrective Compliance Plan Provisions Do Not Apply

The reasonable cause and corrective compliance plan provisions in the statute do not apply to five penalties:

(1) failure to repay a Federal loan on a timely basis; (2) failure to maintain the applicable percentage of historic State expenditures for the TANF MOE requirement; (3) failure to maintain 100 percent of historic State expenditures for States receiving Contingency Funds; (4) failure to expend additional state funds to replace grant reductions due to the imposition of one or more penalties listed in § 272.1; and (5) failure to maintain 80, or 75 percent, as appropriate, of historic State expenditures during a year in which a Welfare-to-Work grant is received.

Due Dates

States must postmark their responses to our notification within 60 days of their receipt of our notification.

If, upon review of the State's submittal(s), we find that we need additional information, the State must provide the information within two weeks of the date of our request. This is to make sure we are able to respond timely.

Under what general circumstances will we determine that a State has reasonable cause? (§ 272.5)

Two provisions in section 409, the reasonable cause and corrective compliance provisions, could result in our decision to excuse or reduce a penalty. After reviewing these provisions, we decided that we should not consider the reasonable cause exception in isolation. Rather, we view it in conjunction with the provision for developing corrective compliance plans. In drafting this proposed regulation, we have acknowledged the new Federal and State roles under TANF and worked to minimize adversarial Federal-State issues. Our primary task is to help each State operate the most effective program it can to meet the needs of its caseload and the goals of the law. Through these rules, we hope to focus States on positive steps that they should take to correct situations that resulted in a determination that they are subject to a penalty rather than let them simply avoid the penalty. As such, we consider it more appropriate to emphasize the use of the corrective compliance plan process over the reasonable cause exception. Consequently, we have drafted a more limited list of reasonable cause criteria than some suggested during our consultations.

PRWORA did not specify any definition of reasonable cause or indicate what factors we should use in deciding whether to grant a reasonable cause exception for a penalty. During our deliberations on reasonable cause factors, we considered the diverse opinions expressed during our consultation process, as well as the need to support the commitment of Congress, the Administration, and States to the work and other objectives of the TANF program. In keeping with these objectives, we are proposing a limited number of reasonable cause factors for circumstances that are beyond a State's control, and placing a greater emphasis on corrective solutions for those circumstances a State can control. We strongly believe that States must correct problems that detract from moving families from welfare to self-sufficiency.

In the discussion that follows, we will describe: (1) the factors that we will consider in deciding whether or not to excuse a penalty based on a State's claim of reasonable cause; (2) the contents of an acceptable corrective compliance plan; and (3) the process for applying these provisions. Our proposal attempts to treat these two provisions as part of an integrated process.

We are proposing factors that would be applicable to all penalties for which the reasonable cause provision applies. We generally limit reasonable cause to the following: (1) natural disasters and other calamities (e.g., hurricanes, tornadoes, earthquakes, fires, floods, etc.) whose disruptive impact was so significant as to cause the State's failure to meet a requirement; (2) formally issued Federal guidance that provided incorrect information resulting in the State's failure; and (3) isolated, non-recurring problems of minimal impact that are not indicative of a systemic problem (e.g., although a State's policies and procedures, including a computerized kick-out system, require that Federal TANF assistance be time-limited to five years, ten families somehow slip through and receive assistance for longer than five years).

We are also proposing a separate factor that would apply in cases when the State fails to satisfy the minimum participation rates, and another specific factor that would apply to cases when the State fails to meet the five-year limit. We discuss specific factors in our preamble discussion of §§ 271.52 and 274.3.

We will not grant a State reasonable cause to avoid the time-limit penalty or any of the three penalties related to work if we detect a significant pattern of diversion of families to separate State programs that achieves the effect of avoiding the work participation rates. As we indicated in program announcement TANF–ACF–PA–97–1, we do not believe Congress intended a State to use separate State welfare programs to avoid TANF's focus on work.

Likewise, as discussed previously, we will not grant a State reasonable cause to avoid the penalty on work participation, failure to enforce child support cooperation, time limits or failure to impose work sanctions if we detect a significant pattern of diversion of families to separate State programs that has the effect of diverting the Federal share of child support collections.

In determining reasonable cause, we will consider the efforts the State made to meet the requirement. We will also take into consideration the duration and severity of the circumstances that led to the State's failure to achieve the requirement.

The burden of proof rests with the State to explain fully what circumstances, events, or other occurrences constitute reasonable cause with reference to its failure to meet a particular requirement. The State must provide us with sufficient relevant information and documentation to substantiate its claim of reasonable cause. If we find that the State has reasonable cause, we will not impose the penalty.

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

As noted, section 409(c), as amended by section 5506 of Pub. L. 105–33, provides that, prior to imposing a penalty against a State, we will notify the State of the violation and allow the State the opportunity to enter into a corrective compliance plan. The State will have 60 days from the date it receives our notice of a violation to submit a corrective compliance plan if it does not claim reasonable cause or if it claims reasonable cause simultaneously with its corrective compliance plan. If, in response to our notice of a violation, the State initially submits only a claim of reasonable cause, and if we deny this claim, the State has 60 days from the date it receives our (second) notice denying the claim to submit a corrective compliance plan. If an acceptable corrective compliance plan is not submitted on time, we will assess the penalty immediately. Outside of the notice(s) we will not remind the State that the corrective compliance plan is due.

The corrective compliance plan must identify the milestones, including interim process and outcome goals, the State will achieve to assure that it will fully correct or discontinue the violation within the time period specified in the plan. In order to highlight the importance of the plan, it must also include a certification by the Governor that the State is committed to correcting or discontinuing the violation in accordance with the plan.

We recognize that each plan will be specific to the violation (or penalty) and that each State operates its TANF program in a unique manner. Thus, we will review each plan on a case-by-case basis. Our determination to accept a plan will be guided by the extent to which the State's plan indicates that it will completely correct or discontinue, as appropriate, the situation leading to the penalty.

The steps a State takes to correct or discontinue a violation may vary. For example, where a State is penalized for misusing Federal TANF funds, we will expect it to remove this expenditure from its TANF accounting records (charging it to State funds, as allowable) and provide steps to assure that such a problem does not recur. Where a State has reduced or denied assistance improperly to a single custodial parent who could not find child care for a child under six, correcting the violation may require that the State reimburse a parent retroactively for the assistance that was improperly denied. The State's corrective compliance plan would also have to describe the steps to be taken to prevent such problems in the future.

Section 409(c)(3) requires that a violation be corrected or discontinued, as appropriate, ''in a timely manner.'' A State's timely correction of the problem or discontinuance of an improper action is critical to assure that the State is not subject to a subsequent penalty. At the same time, we recognize that the causes of violations will vary and we cannot expect all violations to be rectified in the same time frame. Thus, we do not want to unduly restrict the duration of corrective compliance plans. At the same time, we do not want to allow States to prolong the corrective compliance process indefinitely and leave problems unresolved into another fiscal year. Therefore, we are proposing that the period covered by a corrective compliance plan end no later than six months after the date we accept a State's corrective compliance plan.

We believe that, for most violations, States will have some prior indication that a problem exists and will be able to begin addressing its problems during the period before the deadline for submitting its corrective compliance plan. Therefore, we think it fair that the corrective compliance plan period extend no more than six months from the date when we accept the State's plan; this period should provide the State sufficient time in which to correct or discontinue violations.

We would like to hear comments from States and other interested parties on this proposal to restrict the time period for a corrective compliance plan. We will consider all comments and suggestions we receive on this matter.

Corrective Compliance Plan Review

We propose to consult with States on any modifications to the corrective compliance plan and seek mutual agreement on a final plan. Such consultation will occur only during the 60-day period specified in the law. Any modifications to the State's corrective compliance plan resulting from such consultation will constitute the State's final corrective compliance plan and will obligate the State to take such corrective actions as specified in the plan.

We may either accept or reject the State's corrective compliance plan within the 60-day period that begins on the date that we receive the plan. If a State does not agree to modify its plan as we recommend, we may reject the plan. If we reject the plan, we will immediately notify the State that the penalty is imposed. The State may appeal our decision to impose the penalty in accordance with the provisions of section 410 of the Act and the proposed regulations at § 272.7. If we have not taken an action to reject a plan by the end of the 60-day period, the plan is accepted, as required by section 409(c)(1)(D).

If a State corrects or discontinues, as appropriate, the violations in accordance with its corrective compliance plan, we will not impose the penalty. The statute permits us to collect some or all of the penalty if the State has failed to correct or discontinue the violation. Therefore, under limited circumstances, we may reduce the amount of the penalty if the violation has not been fully rectified, based on one or more of the following situations: (1) the State made substantial progress in correcting or discontinuing the violation; or (2) a natural disaster or regional recession prevented the State from coming into full compliance.

As discussed previously, we are proposing that, for certain penalties, we would not grant a State a reduced penalty through corrective compliance if we detect a significant pattern of diversion of cases to separate State programs that result in avoidance of the work requirements or diversion of the Federal share of child support collections unless the State discontinues the diversion during the corrective compliance period. A State wishing to receive one of these reductions should address its plans to discontinue the diversion during the corrective compliance period and provide evidence of the discontinuation.

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

Once we make a final decision to impose a full or partial penalty, we will notify the State that we will reduce the State's SFAG payable for the quarter or the fiscal year and inform the State of its right to appeal to the Departmental Appeals Board (the Board).

Section 410 provides that the Secretary will notify the chief executive officer of the State of the adverse action within five days. This provision covers any adverse actions with respect to the State TANF plan or the imposition of a penalty under section 409.

Within 60 days after the date a State receives this notice, the State may file an appeal of the action, in whole or in part, to the Board. As Congress only allowed 60 days for the Board to reach a decision following the appeal, it is evident they intended a very streamlined procedure. Therefore, the State's appeal must include all briefs and supporting documentation for its case when it files its appeal. A copy of the appeal should be sent to the Office of the General Counsel, Children, Families and Aging Division, Room 411–D, 200 Independence Avenue, S.W., Washington, D.C. 20201. ACF must file its reply brief and supporting documentation within 30 days after a State files its appeal. Further briefing and argument will be at the discretion of the Board. A State's appeal to the Board will also be subject to the following regulations at part 16 of title 45: §§ 16.2, 16.9, 16.10, and 16.13–16.22.

Section 410(b)(2) provides that the Board will consider an appeal on the basis of documentation the State submits, along with any additional information required by the Board to support a final decision. In deciding whether to uphold an adverse action or any portion of such action, the Board will conduct a thorough review of the issues and make a final determination within 60 days after the appeal is filed. The filing date will be the date that materials are received by the Board in a form acceptable to it. The 60 days may be tolled by the Board, for a reasonable period, if it determines it needs additional documentation to reach a decision.

Finally, a State may obtain judicial review of a final decision by the Board by filing an action within 90 days after the date of the final decision. States may file either with the district court of the United States in the judicial district where the State Agency is located or in the United States District Court for the District of Columbia. The district courts will review the final decision of the Board on the record established in the administrative proceeding, to determine if it is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law, or unsupported by substantial evidence. The court's review will be on the basis of the documents and supporting data submitted to the Board.

What is the relationship of continuing waivers on the penalty process for work participation and time limits? (§ 272.8)

States that, in accordance with section 415 of the Act, continue waivers may operate under a different set of requirements in determining the calculation of work participation rates and/or applicability of time limits. Providing this flexibility is an important aspect of encouraging States who have been innovative in implementing welfare reform to continue those endeavors and test their results. However, this flexibility must also be balanced with accountability to the purposes of TANF, particularly those of encouraging work and focusing TANF on the provision of temporary support to families as they move to self-sufficiency. To address this balance, we will: (1) require Governors to certify waiver inconsistencies a State believes apply; (2) treat a State's failure to meet work participation rates or time limit requirements in a modified manner for States continuing waivers that are inconsistent with TANF; and (3) publish information related to a State's success in meeting work participation rates and time-limit restrictions, as measured against both TANF and waiver requirements. Further, if this information indicates that States continuing waivers inconsistent with TANF perform significantly below States operating fully under TANF we will consider seeking legislative changes regarding State authority to continue waivers policies inconsistent with TANF.

Governor's Certification

Because the inconsistent waiver will constitute an alternative requirement, it is important to establish the specific extent of applicability of waiver inconsistencies and their related purpose. Consequently, § 272.8 requires Governors to certify to the Secretary, up-front and in writing, the specific inconsistencies that the State chooses to continue and the reasons for continuing the alternative waiver requirements, including how their continuation is consistent with the purposes of the waiver. As indicated in our definitions of waiver and inconsistency at § 270.30, we will not recognize inconsistencies related to continuation of alternative waiver requirements for the explicit purpose of avoiding penalties for failing to meet the work participation rate or implement the time limit as these were not part of the original purpose of the waiver. The Governor's certification of waiver inconsistencies must, consistent with the approved waivers, describe the standards the State will use in: (1) assigning individuals to alternative waiver work activities or to an alternative number of hours of work; and (2) determining exemptions from or extensions to the time limit.

For additional discussion of what are waiver inconsistencies in work participation and time limits, see §§ 270.30, 271.60 and 274.1(e).

Penalty Process for States Continuing Waivers

States operating under alternative waiver requirements are at an advantage compared to other States in being able to meet participation rates and comply with time limit requirements. For example, a State with a waiver allowing unlimited job search has more options in how it can assign work and training activities to meet work participation requirements. Similarly, a State continuing waiver policies that exempt a portion of its cases which include an adult recipient from the time limit will have a lower percentage of families reaching the 60-month time limit and therefore less difficult decisions in granting applicable hardship extensions.

We have taken this advantage into consideration and determined that States continuing waivers in either of these areas will not be eligible for a reasonable cause exception from a related work participation or time-limit penalty. Nor will they be eligible for a work participation rate penalty reduction based on severity of the failure or under our discretionary authority, as otherwise allowed in accordance with § 271.51(b)(3) or (c). Given the State's advantage compared to States operating fully under TANF rules, neither a reasonable cause exception nor a reduction in the penalty is warranted.

Further, in developing a corrective compliance plan to address failure to meet work participation requirements or adhere to the restriction on the percentage of families receiving TANF benefits in excess of 60 months, we will require that States consider modification of its alternative waiver requirements as part of the plan. In making this consideration, we will expect States to assess whether continuing any of their waiver policies hinders their ability to achieve compliance. If the State continues waivers related to the failure to achieve compliance with the work requirements described in subparts B and C of part 271 or the time limits described in §§ 274.1 and 274.2 and still fails to correct the violation, it will not be eligible for a reduced penalty for such related noncompliance regardless of whether the State made substantial progress towards achieving compliance or if the State's failure to comply was attributable to natural disaster or regional recession.

Calculating/Publishing Results

In publishing information concerning State performance related to work participation rates, it is necessary to measure compliance based on waiver rules. Similarly, reports on the percentage of cases with an adult recipient receiving Federal TANF benefits in excess of 60 months should reflect the percentage of cases receiving benefits in excess of 60 months under alternative waiver rules, an amount which may exceed the TANF 20 percent limit. However, these differential rules do not provide a comparable basis for reporting on State performance related to work, nor an accurate picture of the extent to which Federal TANF benefits are provided for more than 60 months. Therefore, we will publish reports which provide information, where applicable, concerning the percentage of cases meeting work participation requirements under both TANF and waiver rules. Similarly, we will provide information indicating the percentages of cases with an adult recipient that receive more than 60 months of Federal TANF benefits in accordance with TANF hardship exemptions and in accordance with alternative rules under waivers. The requirements specified under the TANF data collection regulations will facilitate reporting results under both sets of rules.

D. Part 273—State TANF Expenditures

Subpart A—What Rules Apply to a State's Maintenance of Effort?

What definitions apply to this part? (§ 273.0)

This section cross-references the general TANF regulatory definitions established under part 270. It also adds a definition of ''administrative costs'' that is applicable in determining whether States have exceeded the caps on ''administrative costs'' that apply separately to their Federal TANF funds and State MOE funds.

We consulted with State and local representatives and other parties and organizations on whether and how we should define the types of costs that should be considered administrative costs.

We considered not proposing a Federal definition (but requiring States to develop their own definitions and provide them to us as part of the annual addendum). That option had appeal because: (1) it is consistent with the philosophy of a block grant; (2) we took a similar approach in some other areas (i.e., in not defining individual work activities); (3) we support the idea that we should focus on outcomes, rather than process; and (4) the same definition might not work for each State. Also, we were concerned we could exacerbate consistency problems if we created a Federal definition. Because of the wide variety of definitions in other related Federal programs, adoption of a single national definition could create new inconsistencies in operational procedures within State agencies and add to the complexities administrators would face in operating these programs.

At the same time, we were hesitant to defer totally to State definitions. The philosophy underlying this provision is very important; in the interest of protecting needy families and children, it is critical that the substantial majority of Federal TANF funds and State MOE funds go towards helping needy families. If we did not provide some definition, it would be impossible to assure that the cap had meaning. Also, we felt that it would be better to give general guidance to States than to get into disputes with individual States about whether their definitions represented a ''reasonable interpretation of the statute.''

We thought that it was very important that any definition be flexible enough not to unnecessarily constrain State choices on how they deliver services. As numerous commenters have pointed out, a traditional definition of administrative costs would be inappropriate because the TANF program is unique, and we expect TANF to evolve into something significantly different from its predecessors and from other welfare-related programs. Specifically, we expect TANF to be a more service-oriented program, with substantially more resources devoted to case management and fewer distinctions between administrative activities and services provided to recipients.

You will note that the definition we have proposed does not directly address case management or eligibility determination. We understand that, in many instances, the same individuals may be performing both activities. In such cases, to the extent that a worker's activities are essentially administrative in nature (e.g., traditional eligibility determinations or verifications), the portion of the worker's time spent on such activities will be treated as administrative costs, along with any associated indirect (or overhead) costs. However, to the extent that a worker's time is essentially spent on case-management functions or delivering services to clients, that portion of the worker's time can be charged as program costs, along with associated indirect (or overhead) costs.

We believe that the definition we have proposed will not create a significant new administrative burden on States. We hope that it is flexible enough to facilitate effective case management, accommodate evolving TANF program designs, and support innovation and diversity among State TANF programs. It also has the significant advantage of being closely related to the definition in effect under the Job Training Partnership Act (JTPA). Thus, it should facilitate the coordination of Welfare-to-Work and TANF activities and support the transition of hard-to-employ TANF recipients into the work force.

We have not included specific language in the proposed rule about treatment of costs incurred by subgrantees, contractors, community service providers, and other third parties. Neither the statute nor the proposed regulations make any provision for special treatment of such costs. Thus, the expectation is that administrative costs incurred by these entities would be part of the total administrative cost cap. In other words, it is irrelevant whether costs are incurred by the TANF agency directly or by other parties.

We realize this policy may create additional administrative burdens for the TANF agency and do not want to unnecessarily divert resources to administrative activities. At the same time, we do not want to distort agency incentives to contract for administrative or program services. In seeking possible solutions for this problem, we looked at the JTPA approach (which allows expenditures on services that are available ''off-the-shelf'' to be treated entirely as program costs), but did not think that it provided an adequate solution. We thought that too few of the service contracts under TANF would qualify for simplified treatment on that basis.

We welcome comments on how to deal with this latter dilemma, as well as comments on our overall approach to the definition of administrative costs. We discussed this issue thoroughly during our consultations, but this is a policy area where no single, clear solution emerged.

How much State money must a State expend annually to meet the TANF MOE requirement? (§ 273.1)

To ensure that States would continue to contribute their own money towards meeting the needs of low-income families, the new section 409(a)(7) requires States to maintain a certain level of spending on programs on behalf of eligible families. If a State does not meet the ''TANF MOE'' requirements in any fiscal year, then it faces a penalty for a following fiscal year. The penalty consists of a dollar-for-dollar reduction in a State's adjusted SFAG.

In order for States to know their specific TANF MOE requirements, they must understand the terms used in amended section 409(a)(7). Therefore, we address each of these terms in this proposed rule.

Historic State Expenditures

Each State's TANF MOE requirement reflects its historic spending on welfare programs. Section 409(a)(7)(B)(iii) provides two ways to calculate a State's FY 1994 expenditures. It then establishes that the lesser amount be used for determining a State's MOE requirement.

The first calculation, at section 409(a)(7)(B)(iii)(I), defines historic State expenditures as the State's FY 1994 share of expenditures for the AFDC, EA, AFDC-related child care, transitional child care, at-risk child care and JOBS programs (including expenditures for administration and systems operations). An alternative calculation appears in section 409(a)(7)(B)(iii)(II).

After examining the formula for the alternative method, we determined that the amounts resulting from this calculation would always equal or exceed the amount calculated under the first, simpler method. Therefore, we calculated the historic State expenditures based on the first method.

Adjusting A State's TANF MOE Level

The statute authorizes an adjustment to a State's TANF MOE level. If a Tribe or a consortium of Tribes residing in the State submits a plan to operate its own TANF program, and we approve this plan, then that State's MOE requirement will be reduced beginning with the effective date of the approved Tribal plan. Section 409(a)(7)(B)(iii) excludes from the TANF MOE calculation any IV–A expenditures made by the State for FY 1994 on behalf of individuals covered by an approved Tribal TANF plan. Because TANF funding for Tribes may also reflect a State's IV–F (JOBS) expenditures, we believe that it is appropriate that State TANF MOE levels be reduced for IV–A and IV–F expenditures.

Under our proposed rules, we will determine the percentage reduction in the SFAG due to Tribal programs and apply the same percentage reduction to the State's TANF MOE requirement. The State's revised TANF MOE level applies for each fiscal year covered by the approved Tribal TANF plan(s).

For example, if the amount of the Tribal Family Assistance Grant represents ten percent of the State's SFAG, then the State's MOE requirement will be reduced by ten percent. This approach provides a consistent method for determining both the reduction in the State's SFAG and required MOE level.

Applicable Percentage

The TANF MOE rules do not require that a State spend the same annual amount as it did in FY 1994. (States must spend 100 percent of the amount spent in FY 1994 to access the Contingency Fund under section 403(b). See part 274, subpart B, for a discussion of the Contingency Fund requirements.) Rather, States must maintain the ''applicable percentage'' of their FY 1994 expenditures.

Under section 409(a)(7)(B)(ii), if any State fails to meet the minimum work program participation rate requirements in the fiscal year, then it must spend at least 80 percent of its FY 1994 spending level. If a State meets the minimum work participation rate requirements, then the ''applicable percentage'' is 75 percent of its FY 1994 spending level for the year. The dollar amount representing 75 and 80 percent of the FY 1994 State expenditures is known as the TANF MOE level.

States must know the amount of their FY 1994 total expenditures and calculate the figures that represent 75 and 80 percent of those expenditures.

Data

Section 5506(f) of Pub. L. 105–33 clarifies the source and date of data to use to calculate FY 1994 State expenditures. We used the same data sources. We calculated each State's total FY 1994 expenditures and TANF MOE levels by using data on the State share of expenditures for AFDC benefits and administration, EA, FAMIS, AFDC/JOBS Child Care, and Transitional and At-Risk Child Care programs reported by States on form ACF–231 as of April 28, 1995, as well as the State share of JOBS expenditures reported by each State on form ACF–331 as of April 28, 1995. These are the same State expenditure data sources that we used to calculate the SFAGs under TANF.

We transmitted tables showing FY 1994 spending amounts and MOE levels to the States via Program Instruction Number TANF–ACF–PI–96–2, dated December 6, 1996. This Program Instruction, as well as a separate MOE table listing FY 1994 State expenditures and MOE levels for each of the 50 States and the District of Columbia, are available on the world wide web at http://www.acf.dhhs.gov/.

We also determined FY 1994 spending and MOE levels for each of the Territories. We transmitted this information to the Territories via our Regional Administrators in San Francisco and New York.

For IV–A expenditures for Puerto Rico, we used the Financial Report Form ACF–231 as of April 28, 995. However, for Guam and the Virgin Islands, we did not use the Territories' share of expenditures as submitted on the ACF–231 because their share of expenditures exceeded the amounts for which Federal reimbursement was available (due to the statutory ceiling on funding for each, under section 1108). If we used the expenditures reported on form ACF–231, then the MOE levels for both Guam and the Virgin Islands would be inordinately high. We believe that Congress' intent in establishing the historic spending level was to assure that States and Territories contribute to the specified programs at least 80 percent (or 75 percent) of the amounts they were required to expend to match Federal funds in FY 1994. Thus, for Guam and the Virgin Islands, we used the share of expenditures that corresponded to the amount on the Federal grant awards for FY 1994, i.e., the Territories' share of AFDC benefit payments (25 percent), EA (50 percent), administration (50 percent), and Child Care (25 percent).

The Territories' funds for the JOBS program were not subject to the ceiling amounts given in section 1108. They are subject to an appropriation limit, but the Territorial expenditures did not exceed this amount. Therefore, for JOBS, the Territories' MOE levels reflect expenditures reported on the ACF–331 as of April 28, 1995.

In addition, for both IV–A (AFDC, EA, and child care) and JOBS, Guam and the Virgin Islands (but not Puerto Rico) benefit from Pub. L. 96–205, as amended (48 U.S.C. 1469a). This law permits waiver of the first $200,000 of the Territories' share of expenditures. Therefore, for Guam and the Virgin Islands, we reduced the share they were required to contribute, and thus their MOE amount, by $200,000.

FY 1997 MOE Level

Finally, we considered whether to require all States to meet the full MOE level in FY 1997, the first year for the requirement. Because States have until July 1, 1997, to implement the TANF program, many States are not operating a TANF program for all of FY 1997.

We examined two alternative adjustments to FY 1997 TANF requirements. First, we could require that all States meet 80 percent (or 75 percent) of their full FY 1994 spending level, but count the State portion of expenditures from AFDC, EA, and JOBS made in FY 1997 toward the State's MOE expenditures. Alternatively, we could prorate a State's FY 1997 MOE level based on the date of TANF implementation. Under this latter option, none of the expenditures from AFDC, EA, and JOBS made in FY 1997 prior to implementation of the State's TANF program count toward meeting the State's prorated MOE level. We determined that the former option is less acceptable because it fails to recognize the distinction between TANF and the AFDC and JOBS programs. Therefore, we decided that proration of the FY 1997 MOE level presented the most consistent and equitable approach.

Under the proposed rules, the State may prorate its TANF MOE level for FY 1997 by taking the total FY 1994 State expenditures provided to the State in Program Instruction Number TANF–ACF–PI–96–2, multiplying that number by the number of days during FY 1997 that the State operated a TANF program and dividing by 365. The State's TANF implementation date is the date given in the Department's completion letter to the State. The State must meet 80 percent (or 75 percent) of the resulting amount.

What kinds of State expenditures count toward meeting a State's annual MOE expenditure requirement? (§ 273.2)

Qualified State Expenditures

Section 409(a)(7)(B)(i) establishes the criteria for the expenditure of State funds to count toward a State's TANF MOE level. This critical provision has already engendered a number of inquiries as States and organizations strive to meet the challenge of welfare reform. While we are unable to discuss every potential use of State funds, we do discuss the specific requirements that must be met and address some of the examples that have come to our attention.

Congress wanted States to be active partners in the welfare reform process. Thus, States must spend a substantial amount of their own money on aid to needy families. While Congress gave States significant flexibility in this area, it did establish a number of important statutory restrictions on which State expenditures qualify as MOE.

Section 409(a)(7)(B)(i) defines ''qualified State expenditures'' to include certain expenditures by the State under all State programs. We interpret ''all State programs'' to mean the State's family assistance (TANF) program plus any other separate State program that assists ''eligible families'' and provides appropriate services or benefits.

Thus, States could structure the use of State expenditures for MOE purposes in three ways. The first would be a TANF program funded by expenditures of commingled State funds and Federal grant funds. The second would be a TANF program in which a State segregates its Federal grant from its State funds.

A State might choose to operate a ''segregated'' TANF program because certain limitations apply to the program funded with Federal funds that would not apply to a TANF program funded wholly with State funds, e.g., time limitations and certain alien restrictions.

Third, States could use State funds in a State program, separate from TANF, but for the types of activities listed in the statute, e.g., cash assistance, child care assistance and education activities.

In order for the expenditure of State funds under State programs to count toward meeting the State's TANF MOE, the expenditures must: (1) be made to or on behalf of an eligible family; (2) provide assistance to eligible families in one or more of the forms listed in the statute under section 409(a)(7)(B)(i)(I); and (3) comply with all other requirements and limitations set forth in this part of the proposed regulations, including those set forth in §§ 273.5 and 273.6.

Eligible Families

Section 409(a)(7)(B)(i)(I) provides that State funds under all State programs must be spent on behalf of eligible families to count toward the State's MOE. Section 409(a)(7)(B)(i)(IV) further clarifies that an eligible family means a family eligible for assistance ''under the State program funded under this part.'' We have interpreted ''under the State program funded under this part'' to mean the State's TANF program.

Thus, we propose that, in order to be considered an ''eligible family'' for MOE purposes, a family must have a child living with a custodial parent or other adult caretaker relative (or consist of a pregnant individual) and be financially needy under the TANF income and resource standards established by the State under its TANF plan. This definition would include all families funded under TANF, including certain alien families or time-limited families who cannot be served with Federal funds, but who are being served in a segregated State TANF program. (We discuss this alien limitation in detail further on in this section.)

If a family meets these criteria, then the family may be considered an ''eligible family'' for purpose of counting State-funded assistance for any of the forms listed in section 409(a)(7)(B)(i)(I) as MOE. The family does not have to be receiving TANF, but instead could be receiving assistance from a non-TANF State program. The expenditures to provide these services under all State programs may count toward the MOE requirement, provided the expenditures also meet all other requirements and limitations set forth in part 273.

A State is free to define who is a member of the family for TANF purposes and may use this same definition for MOE purposes. For example, it could choose to assist other family members, such as non-custodial parents, who might significantly enhance the family's ability to achieve economic self-support and self-sufficiency. By including such individuals within its definitions of ''eligible family,'' a State could provide them with services through TANF or a separate State program. Non-custodial parents could then engage in activities such as work or educational activities, counseling, or parenting and money management classes.

We expect States to define ''child'' consistent either with the ''minor child'' definition given in section 419 or some other definition applicable under State law.

The definition of ''eligible family'' expressly includes families that ''would be eligible for such assistance but for the application of section 408(a)(7) of this Act and families of aliens lawfully present in the U.S. that would be eligible for such assistance but for the application of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.''

Under section 408(a)(7), States may not use Federal funds to provide TANF assistance to a family that includes an adult who has received federally-funded assistance for a total of 60 months. Therefore, if a family becomes ineligible for Federal assistance under the TANF program due to this time limit, but still meets the definition of eligible family, then this family may be considered an eligible family for MOE purposes.

Title IV of PRWORA prohibits certain aliens from receiving certain Federal assistance. Section 401 of PRWORA prohibits all aliens who are not qualified aliens from receiving Federal public benefits, with exceptions. The definition of ''qualified aliens,'' at § 270.30, refers to section 431 of PRWORA, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Pub. L. 104–208). It includes, among other alien categories, permanent residents, refugees and asylees. Section 403 of PRWORA prohibits qualified aliens (with exceptions) who arrive on or after August 22, 1996, i.e., ''newly-arrived aliens,'' from receiving, for five years after entry, Federal means-tested public benefits, which would include the federally-funded TANF program benefits, during their first five years in the country. Section 402(b) of PRWORA allows States to determine whether to provide TANF assistance at all to certain qualified aliens, while other categories of qualified aliens cannot be denied benefits on the basis of their immigration status. Given these limitations, a State could choose to provide Federal TANF assistance to qualified aliens who enter before August 22, 1996, and, for those who enter on or after enactment, after the expiration of the five-year time-bar. The State, however, would still be precluded from providing Federal TANF assistance to non-qualified aliens and to newly-arrived qualified aliens who have been in the country less than five years, except for those who are exempted from the limitations.

Under certain circumstances, however, State expenditures for aliens who are precluded from receiving Federal TANF assistance may count towards the State's TANF MOE. The family must have a child living with a parent or other adult relative (or must be a pregnant individual), and the family must be financially needy under the State's TANF income and resource standards. The expenditures must be made on one of the statutorily permitted activities enumerated in section 409(a)(7)(B)(i)(I) and meet all other requirements and limitations set forth in subpart A of this part.

Section 5506(d) of Pub. L. 105–33 clarifies that an eligible family, for TANF MOE purposes, includes legal aliens who are no longer eligible for Federal assistance due to title IV of PRWORA. The alien restrictions that apply to State-funded programs are found at title IV, section 411 of PRWORA.

Section 411(d) addresses the treatment of illegal aliens. It permits a State to provide State or local benefits to illegal aliens if the State enacted a law after August 22, 1996, which affirmatively provides for such eligibility. Thus, we conclude that if a State decides to provide assistance to illegal aliens ''in a State program funded under this Part,'' per title IV, section 411(d), such assistance may count toward the State's TANF MOE.

There is another complication in this policy area. Section 411(a) of PRWORA prohibits States from providing State or local public benefits, with exceptions, to aliens who are not qualified aliens, non-immigrants, or aliens who are paroled into the U.S. for less than one year. There are a handful of categories of legal aliens, e.g., temporary residents under the Immigration Reform and Control Act (IRCA), aliens with temporary protected status, and aliens in deferred action status, who are prohibited from receiving State or local public benefits under this provision. Thus, expenditures on assistance for legal aliens who are not qualified aliens, non-immigrants, or aliens paroled in for less than one year may not count towards a State's TANF MOE.

In addition, States may transfer funds to Tribal grantees to assist families eligible under an approved Tribal TANF plan. However, if the eligibility criteria under the Tribal TANF program are broader than under the State's TANF plan, then all expenditures of State funds within the Tribal TANF program might not be countable as MOE. Only expenditures used to assist an ''eligible family'' under the State program count. States must ensure that State funds are expended on behalf of families eligible under the State's income and resource standards.

Types of Activities

Section 409(a)(7)(B)(i)(I)(aa)–(ee) specifies that State expenditures on eligible families for the following types of assistance are ''qualified expenditures'' for MOE purposes:

- Cash assistance (see subsequent discussion on this);
- Child care assistance (see the discussion at § 273.3);
- Education activities designed to increase self-sufficiency, job training, and work (note the specific exception at § 273.4);
- Any other use of funds allowable under section 404(a)(1) (see subsequent discussion on this); and
- Associated administrative costs (subject to a 15 percent cap, as discussed subsequently).

For MOE purposes, ''assistance'' may take the form of cash, certificates, vouchers or other forms of disbursement, as determined by the State. Assistance may also be ongoing, short-term, or one-time only. The definition of assistance at § 270.30 does not limit the nature of State-funded aid provided to eligible families under TANF or separate State programs. We proposed that definition of ''assistance'' for the sole purpose of establishing when critical provisions in the statute using this term apply to States providing support to families under TANF.

Thus, State expenditures for activities such as pre-pregnancy family planning services, teen parenting programs, youth and family counseling or support services, job training or employment services, or forms of crisis assistance that meet the purposes of the program may also count toward meeting a State's MOE requirement. However, we remind States that such expenditures are subject to other limitations and restrictions under §§ 273.5 and 273.6.

We address the additional limitations and restrictions in the discussion that follows. We also discuss some specific case situations that have come to our attention. We invite comment on these and other examples of aid for eligible families that States believe could qualify.

Cash Assistance

This category includes cash payments, including electronic benefit transfers, to meet basic needs; assistance with work-related transportation costs; clothing allowances; and any child support collected on behalf of an eligible child that the State passes through to the eligible family. Section 5506(b) of Pub. L. 105–33 amended section 409(a)(7)(B)(i)(I)(aa) to expressly allow assigned child support collected by the State and distributed to the family to count toward a State's TANF MOE so long as the amount sent to the family is disregarded in determining the family's eligibility and amount of assistance.

Cash assistance also includes State expenditures on behalf of eligible families as part of a State's Earned Income Tax Credit (EITC) program. Under a State EITC program, we have determined that only the EITC cash payments actually sent to eligible families are countable as MOE. Also, in a fiscal year, States that had EITC programs in FY 1995 may count total cash payments sent to eligible families only to the extent that these payments exceed the cash payments sent in FY 1995 (see § 273.5).

Any Other Use Of Funds Allowable Under Section 404(a)(1)

Section 404(a)(1) provides that TANF funds may be used ''in any manner that is reasonably calculated to accomplish the purpose of the TANF program, including to provide low income households with assistance in meeting home heating and cooling costs.'' Section 270.20 of these proposed rules lists the purposes of the TANF program.

Medical and Substance Abuse Services

The statute does not prohibit the expenditure of State MOE funds on medical expenditures. Therefore, States may use their own funds to provide treatment services to individuals seeking to overcome drug and/or alcohol abuse when these services assist in accomplishing the purposes of the program. This policy would also comport with both the Administration's support for drug rehabilitation services and the Congressional call for State flexibility in the operation of welfare programs.

We remind States that such expenditures must be consistent with the purposes of the program and made to or on behalf of eligible families. We also remind States that section 408(a)(6) bars the use of Federal TANF funds for medical services. Therefore, States using MOE funds to provide medical treatment services may not commingle State and Federal funds. In addition, any State expenditures on medical services that are used to obtain Federal matching funds under the Medicaid program would not count as MOE. (Refer to the discussion under § 273.6.) Finally, State expenditures on medical and substance abuse services may only count as MOE subject to the limitations set forth in § 273.5.

Juvenile Justice

State funds used to pay the costs of benefits or services provided to children in the juvenile justice system and previously matched under the EA program do not count toward MOE. More specifically, as juvenile justice services do not meet any of the purposes of the TANF program, they are not an allowable use of funds under section 404(a)(1).

While some States may expend their Federal TANF funds for this purpose, under section 404(a)(2), the definition of ''qualified State expenditures,'' for MOE purposes, does not include the reference to section 404(a)(2). Therefore, we conclude that Congress did not intend to automatically qualify all previously authorized IV–A expenditures to count as MOE. States that expend Federal funds for this purpose, under section 404(a)(2), must not commingle State funds with Federal funds if they wish the State funds to count as MOE.

State ''Rainy Day'' Funds

Finally, some States have inquired whether State funds allocated or set aside during a fiscal year as a ''rainy day'' fund, to act as a hedge against any economic downturn, could count as MOE. While we understand State intent, these allocations or set-asides do not qualify as expenditures. States must actually expend funds on behalf of eligible families during the fiscal year for expenditures to count toward the State's MOE for that fiscal year. (However, under section 404(e), States may reserve Federal TANF funds from any fiscal year for use in any other fiscal year.)

Administrative Costs

Administrative expenditures may count toward a State's MOE, but only to the extent that they do not exceed 15 percent of the total amount of qualified State expenditures for the fiscal year. This limitation is the same as the limit for TANF administrative expenditures. Therefore, we propose that the State apply the same definition of administrative costs for MOE purposes as for TANF. Section 404(b)(2) states that expenditures of Federal funds with respect to information technology and computerization needed for tracking or monitoring activities are not subject to the 15 percent TANF limit. We are providing the same flexibility with respect to the administrative cost cap on MOE expenditures. Thus, the proposed rules do not count information technology and computerization expenditures under the administrative cost cap and allows such expenditures to count toward meeting a State's MOE requirement without being limited by the 15 percent cap on administrative expenditures.

When do child care expenditures count? (§ 273.3)

There are certain restrictions on the child care expenditures that may count for TANF MOE purposes. First, only child care expenditures used to assist eligible families under the State's TANF criteria count toward the State's TANF MOE. As explained earlier, eligible families means families that have a child living with a parent or other adult caretaker relative (or consisting of a pregnant woman) and that are financially needy per the TANF income and resource standards established by the state under its TANF plan. Thus, not all State expenditures to provide child care services would necessarily qualify for TANF MOE purposes, particularly if the eligibility criteria for the child care services are broader than the State's TANF criteria, e.g., under the Child Care Development Fund (CCDF).

Second, section 409(a)(7)(B)(iv) establishes four general restrictions on State expenditures. (These restrictions are listed in § 273.6.) Two of the restrictions apply to child care expenditures: subsections 409(a)(7)(B)(iv)(IV) and 409(a)(7)(B)(iv)(I).

Subsection 409(a)(7)(B)(iv)(IV) excludes any State funds expended as a condition of receiving Federal funds under other Federal programs from counting toward a State's TANF MOE. However, this subsection also provides an exception to this restriction. The exception applies to the CCDF Matching Fund (i.e., the State's CCDF MOE and the State's share of matching funds). State child care expenditures used to meet the child care MOE requirement or to receive Federal matching funds may also count toward meeting the State's TANF MOE requirement if the expenditures were made on behalf of members of an eligible family.

But, subsection IV limits the amount of the above-mentioned State child care expenditures that may count for TANF MOE purposes to the State's share of expenditures in FY 1994 or FY 1995, whichever is greater, for the programs described in section 418(a)(1)(A). These are the former title IV-A child care programs, i.e., the AFDC/JOBS child care, transitional child care, and at-risk child care programs. A State's child care MOE amount (for purposes of qualifying for child care matching funds) is also based on its expenditures for title IV-A child care in FY 1994 or FY 1995, whichever is greater. Hence, the amount of State child care expenditures used to meet the child care MOE requirement and to receive Federal Matching Funds that may count for TANF MOE purposes is limited to the amount of the child care MOE requirement for the State under section 418(a)(2)(C).

If a State has additional State child care expenditures, i.e., expenditures which have not been used toward meeting the child care MOE requirement or to receive Federal matching funds, these expenditures may count toward the State's TANF MOE provided the expenditures meet all other requirements and limitations set forth in subpart A of this part. We concluded that subsection IV does not limit the amount of such additional child care expenditures which may count for TANF MOE purposes.

Subsection 409(a)(7)(B)(iv)(I) excludes any expenditures that come from amounts made available by the Federal government. Therefore, Federal funds transferred from the TANF program to the Child Care and Development Block Grant (also known as the Discretionary Fund) would not count toward MOE, nor would Federal funds received under CCDF.

When do educational expenditures count? (§ 273.4)

Only expenditures on educational services or activities that are targeted to eligible families to increase self-sufficiency, job training, and work may count toward a State's MOE. The statute excludes educational services or activities that are generally available, including through the public education system. The conference report confirms this exclusion. In H. Rept. 104–725, page 277, the conferees agreed to exclude ''any expenditure for public education in the State other than expenditures for services or assistance to a member of an eligible family that is not generally available to other persons.''

Expenditures on special services that are targeted to an ''eligible family'' and are not generally available to other residents of the State may count. These could include contracted educational services or activities, such as special classes for teen parents in high schools or other settings; special classes in English as a second language for legal immigrants; special classes in remedial education to achieve basic literacy; special classes that lead to a certificate of high school equivalency (GED); or pre-employment or job-readiness activities.

We also note that expenditures on supportive services, such as transportation, to assist a member of an eligible family in accessing educational activities may also count toward a State's MOE, either as cash assistance or another type of aid consistent with the purposes of the Act. (See §§ 273.5 and 273.6 for other general restrictions on these expenditures.)

When do expenditures in separate State programs count? (§ 273.5)

Section 409(a)(7)(B)(i)(II) establishes limits on the amount of expenditures that may count when the MOE expenditures are for activities under separate State or local programs. The heading for the provisions under this section indicates that ''transfers from other State and local programs'' must be excluded from consideration toward a State's MOE. We received numerous questions about this language. We do not believe that the language intended to convey merely a literal or physical transfer of funds. Instead, we believe that Congress wanted to prevent States from substituting existing expenditures in these outside programs for cash welfare and related assistance to needy families and claiming them as expenditures for MOE purposes. Therefore, section 409(a)(7)(B)(i)(II)(aa) provides that the money spent under State or local programs may count as MOE only to the extent that the expenditures exceed the amount expended under such programs in the fiscal year most recently ending before the date of enactment (August 22, 1996). Thus, States may count only additional or new expenditures, i.e., expenditures above FY 1995 levels.

Section 409(a)(7)(B)(i)(II)(bb) provides what may appear to be an alternative limitation. We believe that this provision was intended as an exception to the limitation under (aa). Under provision (bb), State expenditures under any State or local program during a fiscal year may count toward a State's MOE to the extent that the State is entitled to a payment under former section 403 as in effect before the date of enactment with respect to the expenditures. We interpret this to mean that State funds expended under separate State/local programs that had been previously authorized and allowable under the former AFDC/EA/JOBS programs in effect as of August 21, 1996, may have all such expenditures count toward the State's MOE. In other words, the limit under (aa) does not apply; there is no requirement that these expenditures be additional or new expenditures, above FY 1995 levels.

What kinds of expenditures do not count? (§ 273.6)

As previously discussed, expenditures under State programs (TANF and separate State programs) do not count if they are not made on behalf of eligible families.

There are also specific statutory requirements that affect the use of State funds under a State's TANF program. The specific requirements that apply depend on whether the expenditures meet the definition of assistance under § 270.30; the language used in each TANF provision or in a related provision elsewhere in the statute; and the manner in which a State structures its TANF program and accounts. (None of the TANF program requirements directly apply to eligible families served in separate State programs.)

Provisions in the statute that use the terms ''under the program,'' ''under the program funded under this part,'' and ''under the State program funded under this part'' apply to the State's TANF program, regardless of the funding source. That is, they apply to segregated Federal programs, commingled State/Federal programs, and segregated State programs. Thus, all families receiving TANF assistance (whether funded with State or Federal funds) must meet work participation and child support requirements.

Provisions pertaining solely to the use of Federal funds would not apply to families assisted under TANF with State-only funds. Consequently, if State funds are segregated from Federal funds, State expenditures on ''assistance'' must comply with all the rules pertaining generally to the State's TANF program, e.g., work and child support requirements. However, they are not subject to requirements that pertain only to the use of Federal funds.

These requirements are found in the provisions in the statute using the term ''grant,'' or ''amounts attributable to funds provided by the Federal government.'' This language refers to the Federal funds provided to the State under section 403. Therefore, those provisions affect only the use of Federal TANF funds, unless the State commingles its money with Federal TANF funds. If commingled, Federal and State funds become subject to the same rules. Thus, commingling of State and Federal funds can reduce the total amount of flexibility available to the State in its use of both Federal and State funds.

The provisions governing the use of Federal TANF funds are generally found in sections 404 and 408 of the Act and section 115 of PRWORA. The proposed regulations at § 273.11 provide additional requirements regarding allowable uses of Federal TANF funds.

The statute also provides several general restrictions on MOE expenditures. Pursuant to section 409(a)(7)(B)(iv), the following types of expenditures do not count: (1) expenditures of funds that originated with the Federal government; (2) State funds expended for the Medicaid program under title XIX of the Act; (3) any State funds used to match Federal Welfare-to-Work funds provided under section 403(a)(5) of the Act, as amended by sections 5001(a) (1) and (2) of Pub. L. 105–33; or (4) expenditures that States make as a condition of receiving Federal funds under other programs. See discussion of § 273.3 for additional information.

Section 5506(c) of Pub. L. 105–33 amends section 409(a)(7)(B)(i) by adding another restriction under section 409(a)(7)(B)(i)(III). Pursuant to section 409(a)(12), States must expend State funds equal to the total reduction in the State's SFAG due to any penalties incurred. Section 409(a)(7)(B)(i)(III) provides that such expenditures may not count toward a State's TANF MOE. (See § 274.50.)

TANF funds transferred to the Social Service Block Grant Program under title XX of the Act or transferred to the Child Care and Development Block Grant program (also known as the Discretionary Fund within the Child Care and Development Fund) do not count toward meeting a State's MOE requirement because of the first restriction under 409(a)(7)(b)(iv) that prohibits funds that originated from the Federal government from being used for MOE purposes.

Finally, it is important to note that only State expenditures made in the fiscal year for which TANF funds are awarded count toward meeting the MOE requirement for that year. Therefore, expenditures made in prior fiscal years or, in the case of FY 1997, expenditures made prior to the date the State starts its TANF program do not count as TANF MOE.

How will we determine the level of State expenditures? (§ 273.7)

Congress recognized that State contributions would play an important role in making welfare reform a success. We are interested in learning about the ways in which States help families move toward economic self-support and self-sufficiency. We are particularly interested in the types of services eligible families are receiving through separate State programs or activities. We propose to use the administrative avenues available to us to learn about expenditures under separate State programs.

To help determine if States are meeting MOE requirements, we have created a TANF Financial Report. The report will require the State to specify expenditures under its TANF program and other separate State programs that serve eligible families. Please refer to the description of the TANF Financial Report under part 275 for additional information.

We are also proposing an annual addendum to the report for the fourth quarter. The addendum will supplement information on separate State programs that is captured only in a general fashion in the quarterly report.

Thus, we propose that the annual addendum contain: (1) a description of the specific State-funded program activities provided to eligible families; (2) the program's statement of purpose (how the program serves eligible families); (3) the definitions of each work activity in which families in the program are participating; (4) a statement whether the program/activity had been previously authorized and allowable as of August 21, 1996 under former section 403; (5) the FY 1995 State expenditures for each program/activity not so authorized; (6) the total number of eligible families served by each program/activity as of the end of the fiscal year; (7) the eligibility criteria for families served under each program or activity; and (8) a certification that each of the families served met the State's criteria for "eligible family." This information will enable us to understand how separate State programs are serving needy families outside of the TANF program and to report on those services to Congress.

What happens if a State fails to meet the TANF MOE requirement? (§ 273.8)

Under section 409(a)(7)(A), if a State does not meet the TANF MOE requirement, we will reduce the amount of the SFAG payable for the following fiscal year on a dollar-for-dollar basis.

Section 5001(g) of Pub. L. 105–33 adds another penalty to section 409(a) for a State that receives a Welfare-to-Work formula grant pursuant to section 403(a)(5)(A), as amended by section 5001(a)(1), but fails to meet the TANF MOE requirement for the fiscal year. Under section 409(a)(13), the amount of the State's SFAG will be reduced for the following fiscal year by the amount of the Welfare-to-Work formula grant paid to the State.

May a State avoid a TANF MOE penalty because of reasonable cause or through corrective compliance? (§ 273.9)

Under section 409(b)(2), a State may not avoid a penalty for failure to meet its TANF MOE requirement based on reasonable cause. In addition, section 5506(m) of Pub. L. 105–33 amended section 409(c)(4) to provide that a State may not avoid the penalty through a corrective compliance plan.

Congress' decision not to provide for a reasonable cause exception or corrective compliance in TANF MOE penalty cases indicates that Congress viewed this requirement as critical. In short, the MOE requirement is crucial to meeting the work and other objectives of the Act.

Subpart B—What rules apply to the use of Federal funds?

What actions are to be taken against a State if it uses Federal TANF funds in violation of the Act? (§ 273.10)

Section 409(a)(1) contains two penalties related to use of Federal TANF funds (i.e., all Federal funds under section 403) in violation of TANF program requirements. The first is a penalty in the amount of funds that are used improperly, as found under the Single Audit Act. We would reduce the SFAG payable to the State for the immediately succeeding fiscal year quarter by the amount misused.

In addition, we would take a second penalty, equal to five percent of the adjusted SFAG, if we find that a State has intentionally misused funds. The criteria for "intentional misuse" is found at § 273.12.

For both of these penalties, States may request that we consider reasonable causes for not taking the penalty and may submit a corrective compliance plan for correcting the violation.

What uses of Federal TANF funds are improper? (§ 273.11)

The statute contains many prohibitions and restrictions on the use of Federal TANF funds. In determining if funds have been used "in violation of this part," States should particularly note the prohibitions in section 408 of the Act and section 115 of PRWORA. These sections provide that States must not use Federal TANF funds to provide assistance to:

- A family with an adult who has received assistance funded with Federal TANF funds for 60 months (except for a family included in the 20 percent hardship exemption);
- A family without a minor child (or pregnant individual);
- A family not assigning support rights;
- An unmarried parent under 18, without a high school diploma, who does not attend high school or equivalent training;
- An unmarried parent under 18 not living in an adult-supervised setting;
- A fugitive felon and probation and parole violator;
- A minor child absent from the home 45 days (or at State option, 30–180 days);
- For ten years, a person found to have fraudulently misrepresented residence to obtain assistance; and
- An individual convicted of certain drug-related offenses unless the State has enacted a law to exempt such individuals from the prohibition (refer to section 115 of PRWORA).

Also, States must not use Federal TANF funds for medical services, except for pre-pregnancy family planning services. This prohibition raised a number of concerns among States and advocates that are discussed below as one of the clarifications on the use of Federal TANF funds.

Section 404 also limits the use of Federal TANF funds. More specifically, section 404(a)(1) provides that TANF funds may be used ''. . . in any manner that is reasonably calculated to accomplish the purpose of this part, including to provide low income households with assistance in meeting home heating and cooling costs. . . .'' Conversely, TANF funds cannot be used in a manner not reasonably calculated to serve the purposes of the program.

In determining if an activity may be funded with TANF funds under this provision, you should refer to the purposes described in section 401 and reiterated at § 270.20. Also, you should be aware that the specific prohibitions or restrictions in the statute (e.g., the prohibitions in section 408) apply even if an activity seems otherwise consistent with the purposes in section 404(a)(1).

In addition, section 404(a)(2), as amended by section 5503 of Pub. L. 105–33, permits Federal TANF funds to be used ''in any manner that the State was authorized to use amounts received under part A or F, as such parts were in effect on September 30, 1995 or (at the option of the State) August 21, 1996.'' We interpret this provision to cover activities that are not permissible under section 404(a)(1), but were included in a State's approved State AFDC plan, JOBS plan, or Supportive Services Plan as of September 30, 1995, or, at State option, August 21, 1996. An example of such an activity is Emergency Assistance juvenile justice activities that were included in many State plans. Under this provision, only those States whose approved AFDC State plans included juvenile justice activities as of September 30, 1995, or, at State option, August 21, 1996, may use Federal TANF funds for those activities. Further, as with section 404(a)(1), this provision does not permit Federal TANF funds to be used for any activity that is otherwise prohibited or restricted under the statute.

States should also note that if they exceed the 15 percent limit on administrative costs under section 404(b), we will consider any amount of funds exceeding the limit to be misused funds. Likewise, we would consider unauthorized or inappropriate transfers of TANF funds to be a misuse of funds. We would consider any of the following transfers to be inappropriate or unauthorized: transfers to any program except the Child Care and Development Block Grant (also known as the Discretionary Fund within the Child Care and Development Fund) or the Social Services and Block Grant Program under title XX of the Social Security Act; transfers to those two programs in excess of the 30 percent cap; and transfers to SSBG in excess of the 10 percent cap.

OMB Circulars A–102 and A–87 also include restrictions and prohibitions that limit the use of Federal TANF funds. The Department previously promulgated A–102 (the common rule) in its regulations at part 92 of title 45, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.''

All provisions in part 92 are applicable to the TANF program. TANF is not one of the Block Grant programs exempt from the requirements of part 92, as OMB has not taken action to exempt it. Rather, OMB has determined that TANF should be subject to part 92. Section 417 does not prevent us from applying the part 92 regulations to TANF because the referenced requirements are not developed to enforce substantive provisions under this part. We believe that Congress understood that TANF, like other Federal grant programs, was subject to existing appropriations, statutory and regulatory requirements regarding the general administration of grants, notwithstanding section 417. Section 417 was not meant to invalidate other requirements that Congress and Federal agencies, primarily OMB, have put in place to assure that Federal grant funds are properly administered or to inhibit Federal agencies from fulfilling their financial management responsibilities in managing their programs.

By reference, part 92 also includes A–87, the ''Cost Principles for State, Local and Indian Tribal Governments,'' the basic guidelines for Federal awards. These guidelines provide, in part, that an allowable cost must be necessary and reasonable for the proper and efficient administration of a Federal grant program, and authorized or not prohibited under State or local laws or regulations.

A–87 also includes some specific prohibitions on the use of Federal funds generally that apply to Federal TANF funds. For example, A–87 prohibits the use of Federal funds for alcoholic beverages, bad debts, and the salaries and expenses of the Office of the Governor.

Clarifications of Use of Federal TANF Funds—Substance Abuse Services

In our consultations, we received several inquiries regarding the use of Federal TANF funds for substance abuse treatment, i.e., treatment for alcohol and drug abuse. In light of the prohibition on the use of Federal TANF funds for ''medical services, except for pre-pregnancy family planning activities,'' we held discussions with other Federal agencies and learned that in many, but not all instances, the treatment of alcohol and drug abuse involves not just ''medical services,'' but other kinds of social and support services as well.

Allowing States to use Federal TANF funds for substance abuse treatment is programmatically sound since it may help clients make successful transitions to work and provide for a stable home environment for TANF children. Accordingly, we are proposing a policy that permits States to use Federal TANF funds for drug and alcohol abuse treatment services to the extent that such services are not medical. States will have to look at the range of services offered and differentiate between those that are medical and those that are not. In short, States cannot use Federal TANF funds for services that the State identifies as medical; they may only use Federal funds used for services that are non-medical.

Clarification of the Use of Federal TANF Funds for Construction and Purchase of Facilities

The Comptroller General of the United States has prohibited the use of Federal funds for the construction or purchase of facilities or buildings unless there is explicit statutory authority permitting Federal grant funds to be used for this purpose. Since the statute is silent on this, States must not use Federal TANF funds for construction or the purchase of facilities or buildings.

Clarification of the Use of Federal TANF Funds as State Match for Other Federal Grant Programs

Federal TANF funds under section 403(a) may be used to match other Federal grant programs if authorized under the statute of the grant program. However, these funds are still subject to the TANF program requirements and must be used in accordance with the purposes of the TANF program and with these proposed regulations.

Clarification of the Use of Federal TANF Funds to Add to Program Income

We have received a number of inquiries about whether or not TANF funds may be used to generate program income. An example of program income is the income a State earns if it sells another State a training curricula that it has developed, in whole or mostly, with Federal TANF funds.

States may generate program income to defray costs of the program. Under 45 CFR 92.25, there are several options for how this program income may be treated. For the TANF program, in order to give States flexibility in their use of TANF funds, we are proposing to permit States to add to their TANF grant program income that has been earned by the State. States must use such program income for the purposes of the TANF program and for allowable TANF activities. We will not require States to report on the amount of program income earned, but they must keep on file financial records on program income earned and the purposes for which it is used in the event of an audit or review.

How will we determine if a State intentionally misused Federal TANF funds? (§ 273.12)

To determine if funds have been intentionally misused, we will require the State to demonstrate to our satisfaction that TANF funds were spent for purposes that a reasonable person would consider to be within the purposes of the TANF program. Funds will also be considered intentionally misused if there is documentation, such as Federal guidance or policy instructions, that provides that funds must not be used for such purposes, or if the State misuses the funds after receiving notification from us that such use is not allowable.

What types of activities are subject to the administrative cost limit on Federal TANF grants? (§ 273.13)

Section 404 of the Act sets forth the various ways in which a State may expend its Federal TANF grant under section 403. As a general rule, under section 404(b)(1), only 15 percent of a State's Federal fiscal year grant may consist of administrative expenditures. This limit is reached in the quarter in which a State's administrative expenditures, which may be made over one or more fiscal years for each fiscal year grant, equal 15 percent of the fiscal year grant.

For the purpose of the 15 percent limit, State expenditures on information technology and computerization necessary for tracking or monitoring cases covered by the TANF program do not count. But remaining of particular interest to our State partners and other interested parties is the definition of the costs that are included as administrative costs. This information is critical to State planning for welfare reform.

In this proposed rule, the term ''administrative costs'' will include only those expenditures that are subject to the 15 percent limit in section 404(b). Expenditures for information technology and computerization necessary for tracking and monitoring and other expenditures, that have traditionally been considered ''administrative costs'' but that are outside of the 15 percent limit, are referred to as ''administrative costs outside of the 15 percent limit.''

We include our proposed definition of ''administrative costs'' at § 273.0(b). In the preamble for § 273.0, we include a detailed explanation of the proposal.

Pursuant to section 404(d), States may transfer up to 30 percent of each fiscal year's SFAG to the Child Care and Development Block Grant Program (also known as the Discretionary Fund of the Child Care and Development Fund) and the Social Services Block Grant Program under title XX of the Act. All 30 percent may be transferred to CCDBG, but no more than ten percent can be transferred to SSBG. As transferred funds must then be treated as if they were funds appropriated to CCDBG and title XX, and not as TANF funds, we will reduce the total amount of TANF funds available for administrative costs by the total amount of any such transfers. The 15 percent ceiling applies to each fiscal year's adjusted SFAG.

If a State's administrative costs exceed the 15 percent limit, the penalty for misuse of funds will apply. The penalty will be in the amount spent on administrative costs in excess of 15 percent. We will take an additional penalty in the amount of five percent of the adjusted SFAG if we find that a State has intentionally exceeded the 15 percent limit.

States must allocate costs to proper programs. Under the Federal Appropriations Law, grantees must use funds in accordance with the purpose for which they were appropriated. In addition, as stated previously, the grants administration regulations at part 92, and OMB Circular A–87, ''Cost Principles for State, Local, and Indian Tribal Governments'' apply to the TANF program. A–87, in particular, establishes the procedures and rules applicable to the allocation of costs among programs and the allowability of costs under Federal grant programs such as TANF.

Subpart C—What Rules Apply to Individual Development Accounts?

What definitions apply to Individual Development Accounts (IDAs)? (§ 273.20)

An IDA is defined as an account established by or for an individual who is eligible for TANF assistance to allow the individual to accumulate funds for specific purposes. A number of other terms used in discussing IDAs are also defined.

May a State use the TANF grant to fund IDAs? (§ 273.21)

Section 404(h) of PRWORA gives States the option to fund IDAs with TANF funds for individuals who are eligible for TANF assistance.

Are there any restrictions on IDA funds? (§ 273.22)

IDAs are similar to savings accounts and enable recipients to save earned income for certain, specified, significant items. Individuals may spend IDA funds only to purchase a home, pay for a college education, or start a business.

How does a State prevent a recipient from using the IDA account for unqualified purposes? (§ 273.23)

Money in an IDA account will not affect a recipient's eligibility for assistance. Withdrawals from the IDA should be paid directly to a college or university, to a bank, savings and loan institution, or to an individual selling a home or to a special account if the recipient is starting a business. Thus, IDAs may provide an incentive for recipients to find jobs and use their earned income to save for the future.

Section 404(h) authorizes the Secretary to establish regulations to ensure that individuals do not withdraw funds held in an IDA except for one or more of the above qualified purposes.

In our research, we found several States had established Individual Development Accounts under their Welfare Reform Demonstration Projects and subsequently transferred those provisions to their TANF programs. Each State had designed its own procedures for preventing withdrawals or penalizing recipients who withdrew funds from their IDAs for unauthorized purposes. For example, several States count a withdrawal for a non-qualified purpose as earned income in the month of withdrawal unless the funds were already counted as earned income. Other States treat such withdrawals against a family's resource limit. Still another State calculates a period of ineligibility using a complex formula.

With this in mind, we did not feel that it was necessary to be overly prescriptive in mandating how States ensure that individuals do not make unauthorized withdrawals from IDA accounts. In keeping with the intent of PRWORA, we have tried to give States maximum flexibility to establish procedures that ensure that only qualified withdrawals are made.

In addition, section 404(h)(5)(D) gives the Secretary the authority to determine whether or not a business contravenes law or public policy. We have decided that we should base our determination on the business's compliance with State law or policies. Our proposal will allow States maximum flexibility in setting up these programs, while assuring that a business established by a needy family meets State requirements.

We have incorporated statutory provisions in the regulations for the reader's convenience.

E. Part 274—Other Accountability Provisions

Subpart A—What Specific Rules Apply for Other Program Penalties?

What definitions apply to this part? (§ 274.0)

This section cross-references the general TANF regulatory definitions established under part 270.

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

Under the former AFDC program, families could receive assistance as long as necessary, if they continued to meet program eligibility rules. Under the TANF program, Congress established a maximum length of time in which a family may receive assistance funded by Federal funds.

Sections 408(a)(1)(B) and 408(a)(7) stipulate that States may not use Federal funds to provide assistance to a family that includes an adult who has received assistance for more than five years. Therefore, when a parent or other adult caretaker relative of a minor child applies for and receives federally-funded assistance under the State's TANF program on behalf of him/herself and his/her family, Federal funding of that assistance may not last longer than five years. (Certain exceptions are covered later in the discussion of this section.)

As discussed earlier in this preamble (e.g., at § 271.22), we are concerned that States might define eligibility in such a way as to avoid the time limits (i.e., by converting cases to be child-only cases). Thus, under this section, we would prohibit States from excluding adults from their definition of families for the purpose of avoiding this penalty, and we would require annual reporting of the number of such families excluded (along with the basis for excluding them). Further, if we determine that States were defining ''families that include an adult'' so as to avoid a time-limit penalty, we would add the child-only cases back and recalculate the number of cases over the limit. We would determine whether a State was subject to a penalty based on this recalculation.

The five-year limit on Federal funding is calculated as a cumulative total of 60 months. Section 408(a)(7)(B) clarifies that the State must disregard any month for which assistance has been provided to an individual who is a minor child who is not the head of a household or married to the head of a household. However, any month when a pregnant minor or minor parent is the head-of-household or married to the head-of-household does count toward the five-year limit. The five-year limitation on Federal funding also disregards any months that an adult received assistance while living in Indian country (as defined by section 1151 of title 18, United States Code) or in an Alaska Native Village where at least 50 percent of the adults are not employed (see § 274.1(b)(2)).

Section 5001(d) of Pub. L. 105–33 added subsection (G) to section 408(a)(7). This subsection provides for special treatment of assistance provided to a family with Welfare-to-Work grant funds (formula or competitive) under the time-limit provision. First, months in which a family receives cash assistance funded with Welfare-to-Work grant funds (under section 403(a)(5) of the Act) do count towards the five-year limit; however, months in which a family receives only non-cash assistance under WTW do not count towards the five-year limit. Secondly, families may receive assistance funded with Welfare-to-Work grant funds even though they are precluded from receiving other TANF assistance because of the five-year limit.

Some families may receive assistance from Federal funds for more than five years based on hardship or if the family includes an individual who has been battered or subjected to extreme cruelty as defined in section 408(a)(7)(C)(iii). Under section 408(a)(7)(C), the average monthly number of such families may not exceed 20 percent of the State's average monthly caseload during either the fiscal year or the immediately preceding fiscal year, whichever the State elects.

The Act does not specifically prescribe whether a family can be excepted from the time limit before they have received 60 cumulative months of Federal assistance or whether it can only be applied after the limit is reached. As the purpose of the provision is to provide an extension to the 60-month limit, we propose that it would only apply after that limit is reached. No determination of whether a State has exceeded the cap will be made until some families in the TANF program have received at least 60 cumulative months of federally-funded assistance. We believe that this approach is the most straightforward and comports with Congressional intent that TANF assistance be provided on a temporary basis while a family becomes self-sufficient. Thus, unless the minor child or Native American statutory disregard applies, Federal support would cease once any adult in the family has been assisted for 60 total months with Federal funds unless the State chooses at that time to include the family in its 20 percent exception. However, the State may elect to use State funds to continue to pay eligible families.

The provision is a time limit on Federal funding, and does not set an upper or lower bound on the amount of time a State could provide assistance to an individual family with State funds. States are free to impose shorter time limits on the receipt of assistance under their programs. They are also free to allow receipt for longer periods if the assistance is paid from State funds or if the family meets the criteria the State has chosen for extension and fits with the 20 percent limit.

We are very interested in comments on our approach to clarifying the time limit on assistance. We will also be paying close attention to learn what is happening to families as they begin to reach time limits under waiver and TANF rules. In this regard, tracking the number of months that each family has received TANF assistance is very important, both to the State and to the family. We urge States to regularly provide families with information on how close they are to reaching the time limit. This information should help strengthen the family's focus on achieving self-sufficiency.

We have received numerous inquiries regarding the relationship between good cause waivers of the time limit permitted under the Family Violence Option at section 402(a)(7) and the limit on the exceptions to the Federal time limit at section 408(a)(7)(C)(ii). The key issue is whether the 20 percent limit on hardship exceptions includes families of domestic violence victims.

Section 402(a)(7)(B) expressly refers to section 408(a)(7)(C)(iii) in applying the meaning of the term ''domestic violence'' to the Family Violence Option at section 402(a)(7)(A). Section 408(a)(7)(C)(iii) defines ''battered'' or ''subjected to extreme cruelty'' for purposes of describing families who may qualify for a hardship exemption at section 408(a)(7)(C)(i), and section 408(a)(7)(C)(ii) specifies a 20 percent limit on the exceptions to the time limit due to hardship. Consequently, we conclude that the statutory language includes the number of families waived from the five-year time limit per section 402(a)(7) within the 20 percent ceiling established under section 408(a)(7)(C)(ii).

We further note that Congress chose not to amend the statute as part of budget reconciliation. Thus, our proposed policy includes these cases within the 20 percent limitation. However, our policy would enable a State to claim ''reasonable cause'' when its failure to meet the five-year limit could be attributed to its provision of bona fide good cause domestic violence waivers. See § 274.3 for additional information.

As previously discussed, section 408(a)(7)(D) provides an exemption to the time limit on receipt of federally-funded TANF assistance for families living in Indian country or in an Alaskan Native village. The months a family, that includes an adult, lives in Indian country or in an Alaskan Native village, where at least 50 percent of the adults are not employed, do not count when determining whether the adult has received federally-funded assistance for 60 cumulative months. In accordance with section 408(a)(7)(D), as amended by section 5505(d)(2) of Pub. L. 105–33, the percentage of adults who are not employed in a month will be determined by the State using the most reliable data available for the month, or for a period including the month.

This exception does not include families receiving assistance under an approved Tribal family assistance plan because these families are covered by the requirements at section 412.

In our consultations on the regulations, questions were raised about the relationship of section 415, the application of waivers inconsistent with PRWORA, and the time limit on Federal assistance. Some waivers include provisions for time limiting assistance.

As discussed in the preamble to § 270.30, we define what it means for a provision of the Act to be inconsistent with provision(s) in a waiver. We believe it is crucial to define what ''inconsistent'' means because: (1) the Act does not define it; (2) States need to know whether any time-limit policies in their waivers are inconsistent with the provisions in sections 408(a)(1)(B) and 408(a)(7); and (3) if there is an inconsistency, States need to know how the time-limit restrictions under 408(a)(1)(B) and 408(a)(7) apply in relation to the State's policy. We must define the term to implement the time limit penalty provision at section 409(a)(9), and States must understand what it means when it is applied to the five-year limit, in order to avoid that penalty.

Under our proposed definition of inconsistency, the five-year limit on Federal assistance is inconsistent with a State's waiver only: (1) if the State has an approved waiver (a) 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(s), and (b) under which the State would have to change its waiver policies (including policies regarding exemptions and extensions) in order to comply with the five-year limit on Federal assistance; or (2) for a control or experimental treatment group where a State chooses to maintain prior law policies applicable to research group cases for the purpose of completing an impact evaluation using an experimental design.

We believe that this proposed regulation is consistent with the language in the conference report, H. Rept. 104–725 at 311, indicating agreement by the conferees that:

> * * * such waivers may only apply * * * to the specific program features for which the waiver was granted. All * * * program features of the State program not specifically covered by the waiver must conform to this part (i.e., to TANF).

Except for control and experimental treatment group cases maintained for the purpose of completing an impact evaluation of the waiver policies, a State that does not have an approved time-limit provision in its waiver that meets the above criteria must adhere to the provisions set forth in sections 408(a)(1)(B) and 408(a)(7). A State that does have an approved time-limit provision in its waiver that meets the above criteria does not have to follow the provisions of the five-year limit, to the extent they are inconsistent, until the waiver expires. Several examples of the application of the proposed policy follow.

A State has an approved seven-year waiver that terminates a family's cash benefits after 18 months of benefits if the adult fails to participate in a work program. Assistance does not end because of the passage of time, but because of the adult's failure to participate in a required work activity. The waiver policy does not meet the first prong of the test for time limit inconsistency, as it is a work policy. Therefore, it is not inconsistent with the Federal time-limit provision. The State will have to adhere to the five-year limit under sections 408(a)(1)(B) and 408(a)(7).

Even if a State has an approved time-limit waiver policy, we believe that the waiver policy and the Federal five-year limit can operate concurrently. In most cases, the State would not have to change waiver policy because of the Federal limit, and, thus, there would not be an inconsistency. As a general rule, individuals subject to a State time limit under an approved waiver will concurrently be subject to the Federal time limit.

For example, a State has been granted an eleven-year waiver to operate a demonstration that limits the receipt of assistance by a family to two years (with extensions under certain circumstances). Because the Federal time limit can run concurrently, a family receiving assistance for two years under the State's time limit is also receiving two years of assistance under the Federal five-year limit. Once the demonstration ends, if the family has received just two years of TANF assistance, then the family can receive three more years of federally-funded assistance under the five-year limit (assuming all other eligibility criteria are met per the State's TANF plan). Alternatively, should the family move to another State, that State can provide three more years of federally-funded assistance (assuming the State provides five years of TANF assistance).

Under this policy, there will be circumstances under which the State may use Federal funds for longer than five years to provide assistance to a family that includes an adult. For example, under the terms of the waiver, assistance is extended so long as the eligible adult in the family complies with his/her personal responsibility plan. In such situations, we propose that a State may apply extensions of its time limit in accordance with the terms of the approved waiver in lieu of the provision under section 408(a)(7)(C)(ii).

We believe that this approach comports with the intent of section 415. Section 408(a)(7)(C) permits Federal funds to be used to continue to assist families beyond the five-year limit based on hardship. Under section 408(a)(7)(C)(ii), a State may apply this extension for up to only 20 percent of its average monthly caseload during the fiscal year or the immediately preceding fiscal year, whichever the State elects. A State's approved waiver may very well include a provision for extending assistance as needed to cases meeting the waiver requirements, without limit. Under the above proposal, a State may apply extensions of its time limit, without caseload limits, in accordance with the terms of its approved waiver.

Another State might have waivers approved for a nine-year period that apply a three-year time limit on receipt of assistance to adults in the family (with extensions under certain circumstances). The children in the family continue to receive assistance even after assistance ends for the adults. If the adults receive no extension, there is no inconsistency and the children may continue to receive benefits. If the adults receive extensions under the demonstration, and thus more than five years of assistance, there would be an inconsistency because the State would need to change its waiver policy and terminate assistance. Therefore, the family can continue to receive assistance as long as the adults have an extension and the children can receive assistance even if the adult is terminated. (Note that once the adults are removed from the State-defined family, the Federal time limit clock does not advance.) When the waiver authority ends, the State will need to determine if the adults in demonstration families received five years of federally-funded TANF assistance. If not, the families will be eligible to receive assistance with Federal TANF funds for up to a total of 60 cumulative months (assuming all other eligibility criteria are met per the State's TANF plan).

We recognize that there will be situations, although limited, in which, as a result of a waiver policy, a family will not accrue months towards the Federal time limit even though it receives assistance with Federal (or commingled) funds. For months when a family is exempt from the State time limit (e.g., when the adult in the family is aged or disabled), the family is also exempt from the Federal time limit during the duration of the waiver authority. To subject such families to a time limit would be inconsistent with the State's approved waiver policy. Therefore, for the period of the waiver authority, the number of months the family receives assistance do not accrue against the Federal five-year time limit as long as the family remains exempt under the State time limit. These exemptions cease once the waiver authority ends or if the family moves to another State.

A family that is in the control or experimental treatment group maintained for the purpose of completing an impact evaluation of a waiver demonstration program would not be subject to a time limit. Therefore, it would not begin to accrue months towards the Federal time limit until the end of the waiver demonstration (or sooner if the evaluation is discontinued) and would not count towards the 20 percent limit on extensions.

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

Congress created a penalty under section 409(a)(9) to ensure that States comply with the five-year restriction on the receipt of federally-funded TANF assistance. If we determine that a State has not complied with the five-year time limit during a fiscal year, then we will reduce the SFAG payable for the immediately succeeding fiscal year by five percent of the adjusted SFAG.

Five years is the maximum period of time permitted under the statute for families to receive federally-funded TANF assistance. Therefore, the penalty under this section does not apply if the State exceeds any shorter time limits on the receipt of federally-funded assistance that it may choose to impose. It also does not apply to any time limits on receipt of State-funded assistance or the receipt of non-cash assistance through participation in an allowable activity financed through Federal Welfare-to-Work grant funds.

In defining the requirement, section 409(a)(9) refers to section 408(a)(7). This section provides the circumstances under which assistance may be extended. It provides exceptions to the time limit requirement for minors, hardship, or families living in Indian country or in an Alaskan Native village. Therefore, we will take into account the exceptions described under paragraphs (B), (C), or (D) of section 408(a)(7) when deciding whether the State complied with the five-year time limitation.

We do not intend to hold States immediately accountable for knowing about and verifying all months of assistance received in other States, since we are aware that, in general, States' data processing systems generally are not currently capable of accomplishing interstate tracking of the number of months an individual has received TANF assistance. We will use the information required to be reported by the proposed rules in part 275 to learn whether a State is complying with the five-year time restriction on the receipt of federally-funded assistance.

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

In § 272.5, we have proposed general circumstances under which we would find reasonable cause to waive potential penalties. We also propose to consider an additional factor in determining whether there is reasonable cause for failure to meet the five-year limit. The additional factor relates to a State's implementation of the Family Violence Option (FVO) and its provision of temporary waivers of time limits, when necessary, for victims of domestic violence.

We want to encourage States to adopt this amendment and to provide appropriate assistance that reflects the safety and employment-related needs of these families. In adding this reasonable cause factor, we recognize that some of these individuals may need special assistance, at least over the short term. However, we also want to ensure that States make timely, good-faith efforts to help victims of domestic violence become independent. To ensure that States make such efforts, we would limit this reasonable cause provision to States that have implemented the FVO; we reference the criteria we included at § 270.30 to define what qualifies as a good cause domestic violence waiver; and we have set forth a strategy for monitoring the implementation of these provisions.

Under our proposal, as under the work participation penalty, States would have to grant good cause domestic violence waivers appropriately. In the case of time limits, we would only allow States to exclude from their calculations families that had good cause domestic violence waivers and service plans in effect at the time of, or after, the family had reached the 60-month limit on federally-funded assistance. We would not stop the Federal clock for families that receive good cause domestic violence waivers during the five-year period, and we would only recognize waivers that reflected a State assessment that the individual's or family's situation was temporarily preventing them from work.

There are several reasons why we have taken a restrictive approach on this reasonable cause provision.

The most important is that the 20 percent hardship exemption already provides considerable flexibility for States—for example, it only applies to federally-funded assistance, and it excludes certain types of families.

A related reason is that we think the time-limit provision gives States added incentive to work vigorously with families in making the transition from welfare to work. We want States to have similar motivation to assist victims of domestic violence in becoming independent. If we are too generous in granting reasonable cause for domestic violence cases, we believe there will be a risk that States will divert resources and attention from these cases and unnecessarily prolong their dependence.

We tie the availability of reasonable cause to the family's ability to work because that factor is the most critical in determining whether a family could support itself or would continue to need assistance. Families facing the most serious domestic violence situations are likely to have waivers of work requirements because their lives will be too unstable to expect ongoing work. These same families will be the ones whose situations may take more time to resolve and will have the most trouble becoming self-sufficient within the time limits. Thus, it makes sense to address these cases through reasonable cause. Other cases can be served under the 20 percent hardship exemption or a State-funded program, if they fail to become self-sufficient within five years.

We do not expect that victims of domestic violence will routinely need more than five years of assistance before becoming self-sufficient. However, our proposal recognizes that there may be special circumstances when that is not possible. For example, a woman could suffer recurrent episodes of domestic violence, including one at the end of the five-year period, that prevent her from securing or maintaining a stable work situation. The reasonable cause provision in this section of the proposed rule would give special consideration to States if such situations arose.

Under our proposed rules, a State must substantiate its case for all claims of reasonable cause. We will examine each situation on its own merits and determine whether to assess a penalty on a case-by-case basis.

Must States do computer matching of data records under IEVS to verify recipient information? (§ 274.10)

The Income and Eligibility Verification System (IEVS) was originally established on July 18, 1984 under section 1137. PRWORA created a penalty at section 409(a)(4) requiring the reduction of a State's SFAG for the immediately succeeding fiscal year by up to two percent if the State is not participating in IEVS.

This IEVS provision was intended to improve the accuracy of eligibility determinations and grant computations for the public assistance (AFDC, Medicaid, Food Stamp and SSI) programs. It achieves this goal by expanding access to, and exchanges of, available computer files to verify client-reported earned and unearned income. Specifically, it makes the following files available to the State public assistance agencies: (1) IRS unearned income; (2) State Wage Information Collection Agencies (SWICA) employer quarterly reports of income and unemployment insurance benefit payments; (3) IRS earned income maintained by the Social Security Administration (SSA); and (4) with the passage of the Immigration Control and Reform Act of 1986, immigration status information maintained by the Immigration and Naturalization Service (INS).

Currently, regulations at §§ 205.51 through 205.62 and section 1137(d) describe what is meant by ''participating * * * in the income and eligibility verification system required by section 1137.'' The regulation at § 205.60(a) requires each State to maintain statistics on its use of IEVS. In general, ''participation'' means that a State agency submits electronic requests to IRS, SWICA, SSA and INS for information listed in the preceding paragraph, for all TANF applicants and recipients. IRS, SWICA, SSA and INS provide the State agencies with an electronic response regarding the information requested. The frequency of the request and the timeliness of the response is a function of the agency (IRS, SWICA, SSA and INS) data processing systems design. The State agency worker compares the information provided by IRS, SWICA, SSA and INS to determine the accuracy of client reporting of case circumstances.

How much is the penalty for not participating in IEVS? (§ 274.11)

We are proposing to use an audit pursuant to the Single Audit Act as the primary means of monitoring a State's IEVS participation. Statistics maintained by the State, as required by § 205.60(a), will be one of the sources of information that will be reviewed during the audit. However, we may conduct additional Federal reviews or audits as needed.

Since IEVS has been in existence for more than 12 years, we believe that States have had significant time to become full participants in IEVS. Therefore, we believe it is appropriate to impose the maximum two-percent penalty upon all findings that a State is not participating in IEVS.

What happens if a State sanctions a single parent of a child under six who cannot get needed child care? (§ 274.20)

To support the intent of the statute to move people to work, section 407(e) requires that States reduce or terminate assistance to individuals who refuse to engage in work as required by section 402(a)(1)(A)(ii), as amended by section 5501(b) of Pub. L. 105–33, and section 407. However, section 407(e)(2) gives an exception for single custodial parents with a child under six if the State determines they have a demonstrated inability to obtain needed child care. Parents refusing to participate in work must demonstrate that they could not obtain child care for one or more of the following three reasons: (1) appropriate child care was not available within a reasonable distance from the parent's home or work site; (2) informal child care, by a relative or under other arrangements, was unavailable or unsuitable; and (3) appropriate and affordable formal child care arrangements were unavailable.

Section 409(a)(11)(A) directs the Secretary to reduce by no more than five percent of the adjusted SFAG, the SFAG payable to the State that reduces or terminates assistance to parents who refuse to work because they cannot obtain needed child care for a child under six years of age. The determination that a State is liable for a penalty would be dependent on a finding that the State reduced or terminated assistance to a parent who qualified for an exception under the definitions or criteria that the State developed regarding a parent's ''demonstrated inability'' to obtain needed child care.

We expect that, because of the interrelationship between TANF and CCDF, the TANF staff would work in close coordination with the Lead Agency for child care. Our expectation is that the TANF staff will provide families information about the penalty exception. Under the CCDF proposed rule, ACF would also require that the Lead Agency for the CCDF program inform parents in the CCDF system about the penalty exception to the TANF work requirement and the process or procedures developed by the State by which they can demonstrate their inability to obtain needed child care. ACF would also require the Lead Agency for child care to include the TANF agency's definitions in the CCDF plan for ''appropriate child care,'' ''reasonable distance,'' ''unsuitability of informal care,'' ''affordable,'' and ''child care arrangements.'' Thus, we would expect the TANF agency to share its definitions of these items with the child care agency. Both agencies would then be able to share them with families whom they may be assisting with child care arrangements.

Following are the factors that ACF would consider in determining if a State violated the exception to the penalty provided at section 407(e)(2):

• Whether the State informs families about the exception to the penalty for refusing to work, including the fact that the exception does not extend the time limit on benefits;

• Whether the State informs families about the process or procedures by which they can demonstrate an inability to obtain needed child care;

• Whether the State has defined and informed parents of its definitions of ''appropriate child care,'' ''reasonable distance,'' ''unsuitability of informal care,'' and ''affordable child care arrangements'';

• Whether the State notifies the parent of its decision to accept or reject the parent's demonstration in a timely manner;

• Whether the State has developed alternative strategies to minimize the amount of time parents are excepted from work requirements due to their inability to obtain needed child care.

For example, a State that uses the services of a child care resource and referral (CCR&R) office might accept a statement from that office noting the unavailability of appropriate or affordable child care. Or, if the refusal to work is due to difficulty in arranging transportation, the State could refer to bus and rail rates and schedules to determine if the appropriateness and/or reasonable distance criteria had been met.

We are not specifying the process or procedures that States should develop, or the documents, if any, States should require. However, we suggest that if States plan to require documents, they select ones that are readily available to families. We recommend that the process or procedures be simple and straight forward. In addition, we recommend frequent contact with parents since the penalty exception does not stay the time limits and there may be fluctuations in the availability of child care services.

We propose to impose the maximum penalty if States do not have a process or procedure in place that enables families, who refuse to work because they are unable to find needed child care, to demonstrate that they have met the guidelines provided by the State. Additionally, we will impose the maximum penalty if there is a pattern of substantiated complaints from parents or organizations verifying that a State has reduced or terminated assistance in violation of the requirement at section 409(a)(11). We will impose a reduced penalty if the State demonstrates that the incidents were isolated or that a minimal number of families were affected. States faced with a penalty under this requirement can claim reasonable cause and/or submit a corrective compliance plan as described in part 272.

What procedures exist to ensure cooperation with child support enforcement requirements? (§ 274.30)

One of TANF's purposes is to provide assistance to needy families so that children may be cared for in their own homes or the homes of relatives. Another is to end the dependence of needy parents on government benefits by promoting job preparation, work, marriage, and parental responsibility. A third is to prevent and reduce the incidence of out-of-wedlock pregnancies and to encourage the formation and maintenance of two-parent families. Child support enforcement provides an important means of achieving all of these goals.

The law has long recognized that paternity establishment is an important first step toward self-sufficiency in cases where a child is born out of wedlock. The earlier paternity is established, the sooner the child may have a relationship with the father and access to child support, the father's medical benefits, information on his medical history, and other benefits resulting from paternity establishment.

Establishment of paternity may also help establish entitlement to other financial benefits, including Social Security benefits, pension benefits, veterans' benefits, and rights of inheritance. Accordingly, establishing paternity and obtaining child support from the non-custodial parent are critical components of achieving independence.

To ensure that a legal relationship protecting the interests of the children is established quickly and in accordance with State law, the State agency (the IV–A agency) must refer all appropriate individuals in the family of a child, for whom paternity has not been established or for whom a child support order needs to be established, modified or enforced, to the Child Support Enforcement Agency (the IV–D agency). Those individuals must cooperate in establishing paternity and in establishing, modifying or enforcing a support order with respect to the child.

The IV–D agency will determine whether the individual is cooperating with the State as required. If the IV–D agency determines that an individual has not cooperated, and the individual does not qualify for any good cause or other exception established by the State, the IV–D agency will notify the IV–A agency promptly. The IV–A agency must then take appropriate action. The IV–A agency may either reduce the family's assistance by an amount equal to not less than 25 percent of the amount that the family would otherwise receive or deny the family assistance under TANF.

What happens if a State does not comply with the IV–D sanction requirement? (§ 274.31)

As stated in section 409(a)(5) of the Act and § 272.1 of these proposed rules, we will impose a penalty of up to five percent of the adjusted SFAG if the IV–A agency fails to enforce penalties requested by the IV–D agency against individuals who fail to cooperate without good cause. We propose to monitor State adherence to this requirement primarily through the single audit process. We further propose that the amount of the penalty will be equal to one percent of the adjusted SFAG for the first year there is such a finding. For the second year, the amount of the penalty will equal two percent of the adjusted SFAG. We will apply the maximum penalty of five percent only if there is such a finding in a third, or subsequent year.

In determining the appropriate penalty for this provision, we took into account the comments made during our consultations with States and other organizations. Although States have been required to establish paternity and enforce other child support provisions for several years, and States already have systems and procedures in place for dealing with these requirements, the division of responsibility between the IV–A and IV–D agencies is now slightly different. Accordingly, the proposal that we gradually increase the amount of the penalty was made to give States the opportunity to make procedural adjustments before they are subject to the full impact of the penalty. We believe that the suggestion has merit and, therefore, are proposing an incremental approach, with reduced penalties for the first two violations, i.e., one percent for the first and two percent for the second. However, since this is not an entirely new requirement, we are proposing to apply the full five percent penalty beginning with the third violation of the provision.

What happens if a State does not repay a Federal loan? (§ 274.40)

Section 406 permits States to borrow funds to operate their TANF programs. States must use these loan funds for the same purposes as apply to other Federal TANF funds. In addition, the statute also specifically provides that States may use such loans for welfare anti-fraud activities and for the provision of assistance to Indian families that have moved from the service area of an Indian Tribe operating a Tribal TANF program. States have three years to repay loans and must pay interest on any loans received. We will be issuing a program instruction notifying States of the application process and the information needed for the application.

Section 409(a)(6) establishes a penalty for States that do not repay loans provided under section 406. If the State fails to repay its loan in accordance with its agreement with ACF, we will reduce the adjusted SFAG for the immediately succeeding fiscal year by the outstanding loan amount, plus any interest owed.

Sections 409(b)(2) and 409(c)(3) provide that States cannot avoid this penalty either through reasonable cause or corrective compliance.

What happens if, in a fiscal year, a State does not expend, with its own funds, an amount equal to the reduction to the adjusted SFAG resulting from a penalty? (§ 274.50)

Section 409(a)(12), as amended by PRWORA, requires States to expend under the TANF program an amount equal to the reduction made to its adjusted SFAG as a result of one or more of the TANF penalties. States are thus required to maintain a level of TANF spending that is equivalent to the funding provided through the SFAG even though Federal funding was reduced as a result of penalties. However, PRWORA did not establish a penalty for a State's failure to meet this requirement. Section 5506(j) of Pub. L. 105–33 further amended section 409(a)(12) to create such a penalty. If a State fails to expend its own funds to pay for State TANF expenditures in an amount equal to the reduction made to its adjusted SFAG for a penalty under § 272.1, the State's SFAG for the next fiscal year will be reduced by an amount equal to not more than two percent of its adjusted SFAG plus the amount that should have been expended (reduced for any portion of the required amount actually expended by the State in the fiscal year).

As discussed in § 272.3, we will monitor closely a State's efforts to replace the reduced SFAG with its own expenditures. A State's investment in its TANF program must not be diminished as a result of actions violative of the TANF requirements. Therefore, if a State fails to make any expenditures in the TANF program to compensate for penalty reductions, we will penalize the State in the maximum amount, i.e., two percent of the adjusted SFAG plus the amount it was required to expend. The penalty will be reduced based on the percentage of any expenditures that are made by the State. For example, if a State were required to replace an SFAG reduction by $1,000,000, but its increase in expenditures equalled only $500,000, its penalty would be equal to two percent of the adjusted SFAG times 50 percent (because $500,000 is 50 percent of $1,000,000), plus the $500,000 it failed to expend as required.

States should note that if they do not expend State-only funds as required, the effect will be that the amounts to be deducted from the SFAG will compound yearly, as the penalty for failure to replace SFAG funds with State expenditures also applies to the penalty at § 272.1(a)(12). We believe that this is appropriate because full resources must be available to ensure that the goals of the TANF program are met.

State expenditures that are used to replace reductions to the SFAG as the result of TANF penalties must be expenditures made under the State TANF program, not under ''separate State programs.'' This requirement is stated in section 409(a)(12). However, as noted in § 273.6, regarding the limits on MOE expenditures, State expenditures made to replace reductions to the SFAG as a result of penalties cannot be counted as TANF MOE expenditures.

In addition, sections 5508(k) and (m) of Pub. L. 105–33 provide that the reasonable cause and corrective compliance plan provisions at §§ 272.4, 272.5, and 272.6 do not apply to the penalty for failure to replace SFAG reductions due to penalties with State expenditures.

Subpart B—What are the Funding Requirements for the Contingency Fund?

Optional Use of the Contingency Fund

In addition to the funding they receive under section 403(a), States may receive funding from the Contingency Fund under section 403(b). The purpose of the Fund is to make additional funds available to States, at their request, for periods when unfavorable economic conditions threaten their ability to operate their TANF programs. For each month of the fiscal year that they meet the eligibility criteria, States may receive up to 1/12th of 20 percent of their SFAG annual allocation. The actual amount of funds a State may realize from the Contingency Fund will vary depending on the level of State expenditures and the number of months that a State is eligible. States eligible in one month may automatically receive a payment for the following month. We have issued a program instruction to States on the Contingency Fund, which provides guidance on the requirements of the Fund as well as the associated MOE requirement.

As noted in the definitions at § 270.30, the term ''Contingency Funds,'' when used in these proposed rules, refers to the Federal funds a State may receive under section 403(b). It does not refer to any required State expenditures.

Unless otherwise indicated, the terms ''MOE requirement'' and ''MOE level,'' when used in this Subpart, refer to the Contingency Fund MOE requirement.

For funding from the Contingency Fund, a State must: (1) be a ''needy State,'' i.e., meet one of two eligibility triggers—unemployment or Food Stamp caseload; (2) submit a request for these funds; (3) meet a maintenance-of-effort level based on 100 percent of historic State expenditures for FY 1994; (4) complete an annual reconciliation after the end of the fiscal year to ensure that contingency funds are matched by the expenditure of State funds above a certain level; and (5) provide State matching funds.

To be eligible for contingency funds under the unemployment trigger, the State's unemployment rate for the most recent three-month period must be at least 6.5 percent and at least equal to 110 percent of the State's rate for the corresponding three-month period in either of the two preceding calendar years. To be eligible for contingency funds under the Food Stamp trigger, a State's monthly average of individuals (as of the last day of each month) participating in the Food Stamp program for the most recent three-month period must exceed by at least ten percent its monthly average of individuals in the corresponding three-month period in the Food Stamp caseload for FY 1994 or FY 1995 had the immigrant provisions under title IV and the Food Stamp provisions under title VIII of PRWORA been in effect in those years.

In general, contingency funds may be used for the same purposes as other Federal TANF funds. However, the Contingency Fund provisions contain several unique requirements that are discussed below.

Unlike the TANF funds provided under section 403(a), contingency funds (provided under section 403(b)) cannot be transferred to the Child Care and Development Block Grant Program (also known as the Discretionary Fund of the Child Care and Development Fund) and/or the Social Services Block Grant Program under title XX of the Act. Section 404(d) permits the transfer of funds received pursuant to section 403(a) only.

Territories and Tribal TANF grantees are not eligible to participate in the Contingency Fund. Section 403(a)(7) provides that only the 50 States and the District of Columbia are eligible.

The TANF MOE requirement is 80 percent (or 75 percent if a State meets its participation rate) of historic State expenditures. The Contingency Fund MOE requirement is 100 percent of historic State expenditures. However, meeting the Contingency Fund MOE requirement is not accomplished by increasing State expenditures by 20 (or 25) percent. The calculation is more complicated because the MOE is calculated differently for purposes of determining compliance with the TANF MOE requirements and determining eligibility for the Contingency Fund. For example, Contingency Fund MOE expenditures must be the expenditure of State funds within TANF and not expenditures made under ''separate State programs.'' Therefore, TANF MOE ''separate program'' expenditures under separate State programs cannot count toward the Contingency Fund MOE requirement. However, TANF MOE expenditures may also count as Contingency Fund MOE expenditures.

Contingency funds are available only for expenditures made in the fiscal year for which the funds were received. Unlike TANF funds under section 403(a), contingency funds are not available until expended.

Section 403(b)(4) provides that the funds are to be used to match State funds for expenditures above a specified MOE level and requires an annual reconciliation to determine if the State is entitled to the amount of funds it has received for the fiscal year. We will use the term ''matching expenditures'' to mean State and Contingency Fund expenditures that exceed the MOE level specified in this section.

''Qualifying State expenditures'' refers to matching expenditures, excluding Contingency Fund expenditures, and the expenditure of State funds made to meet the Contingency Fund MOE requirement.

In this part of the proposed rule, we explain the reconciliation and MOE requirements and the actions that we will take if the State does not remit its contingency funds under the annual reconciliation requirement.

What funding restrictions apply to the use of contingency funds? (§ 274.70)

Annual Reconciliation

Annual reconciliation involves first computing the amount, if any, by which countable State expenditures, in a fiscal year, exceed the State's section 403(b)(6) MOE requirement. If the countable expenditures exceed 100 percent of that level, then the State is entitled to all or a portion of the contingency funds paid to it.

If the State has met its requirement, the amount of contingency funds it may retain is the lesser of two amounts. The first amount is the amount of contingency funds paid to it for the fiscal year. The second amount is its expenditures above its MOE level, multiplied by (1) the State's Federal Medical Assistance Percentage (FMAP) applicable for the fiscal year for which funds were awarded and (2) $1/12$ times the number of months during the fiscal year that the State received contingency funds. (Note that if the State was eligible for, and received contingency funds for fewer than 12 months during the fiscal year, the effective rate for contingency funds will be less than its FY FMAP.)

The annual reconciliation provision of section 403(b)(6) is clear that contingency funds are available only to match expenditures that exceed a State's MOE level.

How will we determine 100 percent of historic State expenditures, the MOE level, for the annual reconciliation? (§ 274.71)

Pub. L. 105–33 amended section 403(b), by deleting an alternative MOE requirement.

For the Contingency Fund, historic State expenditures, or MOE level, (i.e., expenditures for FY 1994) include the State share of AFDC benefit payments, administration, FAMIS, EA, and JOBS expenditures. They do not include the State share of AFDC/JOBS, Transitional and At-Risk child care expenditures.

We will use the same data sources and date, i.e., pril 28, 1995, to determine each State's historic State expenditures as we used to determine the TANF MOE requirement. However, we will exclude the State share of child care expenditures for FY 1994. States must meet 100 percent of this MOE level.

Reduction to MOE Level

States should note that we will reduce the MOE level for the Contingency Fund if a Tribe within the State receives a Tribal Family Assistance Grant under section 412. This reduction is provided for in the last paragraph of section 409(a)(7)(B)(iii). For the TANF MOE requirement, we have provided that we will reduce the State's TANF MOE level by the same percentage as a State's SFAG annual allocation is reduced for Tribal Family Assistance Grants in the State for a fiscal year. For example, if a State's SFAG amount is $1,000 and Tribes receive $100 of that amount, the State's TANF MOE requirement is reduced by ten percent. If the same State also receives contingency funds in the same fiscal year, the Contingency Fund MOE level will also be reduced by ten percent.

For the annual reconciliation requirement, what restrictions apply in determining qualifying State expenditures? (§ 274.72)

Section 403(b)(6)(B)(ii)(I) provides that the expenditure of State funds counted toward the Contingency Fund MOE must only be expenditures made under the State program funded under this part. Thus, the State expenditures that the State makes to meet this Contingency Fund MOE level and its ''matching expenditures'' include the expenditure of State funds within TANF only; they do not include expenditures made under ''separate State programs.'' In addition, the provision specifies that the State's expenditures for child care cannot be used to meet the requirement.

What other requirements apply to qualifying State expenditures? (§ 274.73)

Section 403(b)(6)(B)(ii) defines the amounts required to meet the MOE level and ''matching expenditures'' as ''countable'' expenditures under the TANF program. Since these expenditures are covered under title IV-A and are supplemental to the TANF MOE, we believe the same requirements that apply to the TANF MOE should also apply to these expenditures. Therefore, except where they conflict with section 403(b)(6)(B)(ii), we propose that the TANF MOE provisions at section 409(a)(4)(7)(B) apply to State expenditures under the Contingency Fund provision. Thus, to be qualifying State expenditures for Contingency Fund purposes, expenditures would be subject to the following proposed regulations: (1) § 273.2, which discusses types of expenditures (except for paragraph 273.2(a)(2), which pertains to child care); (2) § 273.4, which discusses educational expenditures; and (3) § 273.6, which describes the kinds of expenditures that cannot count as MOE.

When must a State remit contingency funds under the annual reconciliation? (§ 274.74)

After reconciliation, if a State fails to meet the section 403(a)(6) MOE level, it must remit all the contingency funds we paid to it for the fiscal year. If the State does not have sufficient matching expenditures above its MOE level to retain all the funds paid to it, then it must remit a portion of the funds paid to it. The amount the State must remit in this instance is the difference between the amount it received and the amount determined by multiplying: (1) the matching expenditures it made above the MOE level; by (2) the State's FMAP rate for the fiscal year; and (3) 1/12 times the number of months during the fiscal year that the State received contingency funds.

Below we provide an example requiring the remittance of funds.

Assume State expenditures are $103 million (which includes $2.5 million in contingency funds for the six months that the State met the Unemployment or Food Stamp trigger and excludes $2 million in child care expenditures). The required expenditure of State funds to meet the 100 percent MOE level would be $95 million, i.e., $100 million minus $5 million for child care expenditures. Assume the State's FMAP is 50 percent.

In determining if any funds must be remitted, we must subtract from the expenditures made by the State, the MOE level, i.e., $103 million minus $95 million. This difference of $8 million must then be multiplied by the State's FMAP rate for FY 1997. In this example, the FMAP is 50 percent. Thus, $8 million multiplied by 50 percent is $4 million. Next, we must multiply the $4 million by 1/12 times the number of months the State received funding for the Contingency Fund, in this case, six months. The result is $2 million, i.e., the amount of contingency funds the State is entitled to for the fiscal year. However, if a State has received $2.5 million, then it must remit $500,000. A simplified formula is presented below:

$103M − 95M = $8M
$8M x 50% = $4M
$4M x 1/12 x 6 mos. = $2M
$2.5M (Received)—$2M = $500,000 (Amount that must be remitted.)

Under section 5502(e) of Pub. L. 105–33, a State is not required to remit contingency funds until one year after it has failed to meet either the Food Stamp trigger or the unemployment trigger for three consecutive months. Thus, States may retain these funds for at least 14 months after the fiscal year has ended.

For example, FY 1997 ends September 30, 1997. The State fails to meet either trigger for the months of October, November, and December, 1997. The State has until December 31, 1998, to remit the funds.

It is possible that a State will have used the contingency funds it received for expenditures meeting the requirements included in this proposed rule, but still have to return a part of the funds used to make these expenditures because of the formula that determines how much a State may retain. This is evident in the example above where the State had to remit $500,000 of the $2.5 million received even though it had made expenditures above the MOE level. We will not consider use of funds which later must be returned under the reconciliation formula as an improper use of contingency funds since the statute specifies a separate consequence in this situation.

Contingency funds are for use in the fiscal year only; States may not use funds for a fiscal year for expenditures made in either the subsequent fiscal year or a prior fiscal year.

What action will we take if a State fails to remit funds as required? (§ 274.75)

PRWORA established a penalty at section 409(a)(10) for this failure. As amended by Pub. L. 105–33, section 409(a)(10) provides that if a State does not remit funds as required, then the State's SFAG payable for the next fiscal year will be reduced by the amount of funds not remitted. Other amendments in Pub. L. 105–33 eliminated the Secretary's ability to waive this penalty for reasonable cause or corrective compliance. However, the State may appeal our decision to reduce the State's SFAG pursuant to the proposed regulations at § 272.7.

How will we determine if a State has met its Contingency Fund reconciliation MOE level requirement and made expenditures that exceed its MOE requirement? (§ 274.76)

ACF has created a TANF Financial Report, the ACF-196. States will use the ACF–196 to report on their use of Federal TANF funds, including the contingency funds. For the Contingency Fund, States will report ''matching expenditures'' and expenditures also required to meet their MOE level. We will use this report to complete the annual reconciliation after the end of the fiscal year. We will review it to ensure that expenditures reported are consistent with the statute and these proposed rules. Please see the discussion of part 275 for additional information.

Are contingency funds subject to the same restrictions that apply to other Federal TANF Funds? (§ 274.77)

In general, as Federal TANF funds, the same requirements that apply to other Federal TANF funds apply to the Contingency Fund. For example, Federal assistance cannot be paid to a family with contingency funds if the family has already received Federal assistance for 60 months. (See the discussion in § 273.21 on ''Misuse of Federal TANF Funds'' for additional information.) However, contingency funds may not be transferred to the Social Services Block Grant or the Discretionary Fund of the Child Care Development Fund, as section 404(d) authorizes these transfers only for those Federal funds provided under section 403(a).

Meeting FY 1997 MOE Requirements

Unlike the TANF MOE level, the Contingency Fund MOE level for FY 1997 will not be prorated based on the fraction of the year the State was under TANF. Pub. L. 104–327 amended section 116(b)(1)(B)(ii)(II)(aa) and (b) of PRWORA to provide that we will increase the SFAG of any State for FY 1997 in an amount ''that the State would have been eligible to be paid under the Contingency Fund . . . during the period beginning October 1, 1996, and ending on the date the Secretary of Health and Human Services'' deems that the State plan is complete, if the State otherwise would have been eligible for contingency funds but for the fact that it was not under TANF. That is, for all States regardless of the TANF implementation date, the SFAG for FY 1997 may be increased in any month by the amount of contingency funds for which a State would qualify had it been under TANF requirements. The Program Instruction mentioned previously provides additional guidance to States on how their SFAG amounts can be increased for FY 1997. As the increase to the FY 1997 SFAG is a one-time occurrence, we are not regulating on this matter.

In order to compute the amount of this increase for a State meeting this criteria, and to ensure equity among all States, regardless of the dates they elected to come under TANF, we must use the MOE level for all of FY 1997. (For this limited purpose, amounts expended by a State in FY 1997 prior to the date the State came under TANF, i.e., to fulfill a State's matching requirement for AFDC, EA and JOBS, will count toward meeting the State's FY 1997 Contingency Fund MOE requirement.)

Subpart C—What Rules Pertain Specifically to the Spending Levels of the Territories?

Section 103(b) of PRWORA amended section 1108. Section 1108 establishes a funding ceiling for Guam, the Virgin Islands, American Samoa and Puerto Rico. Prior to PRWORA, the following programs authorized in the Act were subject to this ceiling: AFDC and EA under title IV–A; Transitional and At-Risk Child Care programs under title IV–A; the adult assistance programs under titles I, X, XIV, and XVI; and the Foster Care, Adoption Assistance, and Independent Living programs under title IV–E. Funding for the JOBS program, which covered AFDC/JOBS child care, was excluded from the ceiling.

Under the amendments in PRWORA, the funding ceiling at section 1108 applies to the TANF program under title IV–A, the adult programs, and title IV–E programs. Section 1108(b) provides a separate appropriation for a Matching Grant, which is also subject to a ceiling. The Matching Grant is not a new program; rather it is a funding mechanism that Territories can use to fund expenditures under the TANF and title IV–E programs.

We had not previously regulated the provisions of section 1108. However, in light of this new MOE requirement within section 1108, as discussed later, we believe that we need to regulate to clarify the requirements and the consequences if a Territory fails to meet the new section 1108 requirements. We have authority to issue rules on this provision under section 1102, which permits us to regulate where necessary for the proper and efficient administration of the program, but not inconsistent with the Act. (The limit at section 417 does not apply.) In addition, we have prepared a program instruction for the Territories to provide additional guidance on receiving funds under section 1108.

In February 1997, we provided to the Territories: (1) their FAG annual allocations; (2) their TANF MOE levels under section 409(a)(7); (3) their Matching Grant MOE levels; (4) their section 1108(e) MOE levels (which were created by PRWORA, and were subsequently eliminated by Pub. L. 105–33); and (5) a detailed explanation of the methodology and expenditures we used to determine each of these amounts.

If a Territory receives a Matching Grant, what funds must it expend? (§ 274.80)

Section 1108(b) provides that Matching Grant funds are available: (1) to cover 75 percent of expenditures for the TANF program and the Foster Care, Adoption Assistance and Independent Living programs under title IV–E of the Act; and (2) for transfer to the Social Services block Grant program under title XX of the Act or the Child Care and Development Grant (CCDBG) program (also known as the Discretionary Fund) pursuant to section 404(d), as amended by PRWORA and Pub. L. 105–33. However, Matching Grant funds used for these purposes must exceed the sum of: (a) the amount of the FAG without regard to the penalties at section 409; and (b) the total amount expended by the Territories during FY 1995 pursuant to parts A and F of title IV (as so in effect), other than for child care.

Under the first requirement, the Territory must spend an amount up to its Family Assistance Grant annual allocation using Federal TANF or Federal title IV–E funds or funds of its own for TANF or title IV–E programs.

The second requirement establishes an MOE requirement at 100 percent of historic expenditures, based on FY 1995, separate from the TANF MOE requirement, and applicable only if a Territory requests and receives a Matching Grant. Historic expenditures include 100 percent of State expenditures made for the AFDC program (including administrative costs and FAMIS), EA, and the JOBS program. Territorial expenditures made to meet this requirement include Territorial, not Federal, expenditures made under the TANF program or title IV–E programs.

Territorial expenditures used to meet the FAG amount requirement, the MOE requirement and the matching requirement, can only be used for one of these purposes. We believe this is appropriate because our interpretation of the statute is that Congress intended that the provisions on spending up to the FAG amount, meeting the MOE requirement, and meeting the matching requirement be separate requirements.

What expenditures qualify for Territories to meet the Matching Grant MOE requirement? (§ 274.81)

For the TANF MOE, section 409(a)(7) includes specific provisions on what States and Territories may count as ‘‘qualifying State expenditures’’ (i.e., expenditures that may count towards the TANF MOE requirement).

However, the statute provides little guidance on what expenditures a Territory may count toward the Matching Grant MOE for IV–A expenditures. Because the Matching Grant is intended to be used for the TANF program, we will apply many of the TANF MOE requirements in part 273, subpart A, to the Matching Grant MOE. These sections are: 273.2 (What kinds of State expenditures count toward meeting a State's annual spending requirement?); 273.3 (When do child care expenditures count?); 273.4 (When do educational expenditures count?); and, 273.6 (What kinds of expenditures do not count?). Section 273.5 (When do expenditures in separate State programs count?) does not apply because section 1108(b)(1)(B)(ii) requires that these MOE expenditures must be expenditures made under the TANF program. Thus, TANF expenditures that are made to meet the Matching Grant MOE requirement must be expenditures made under TANF, not expenditures made under separate State programs. (Because Territories do not receive Matching Child Care funds, the limit on child care expenditures in § 273.3 does not apply.)

Also, Territorial expenditures made in accordance with Federal IV–E program requirements may count toward this MOE requirement. These include the State share of IV–E expenditures and expenditures funded with the State's own funds that meet Federal title IV–E program requirements.

Territories may also count toward their Matching Grant MOE requirement expenditures made under the TANF program that meet the TANF MOE requirement.

What expenditures qualify for meeting the Matching Grant FAG amount requirement? (§ 274.82)

The statute intends that expenditures made to meet this requirement must be TANF or title IV–E expenditures. For TANF expenditures, allowable expenditures made with Federal TANF funds may be used to meet this requirement. These include amounts that have been transferred from TANF to title XX and the Discretionary Fund in accordance with section 404(d). (See § 273.11, which describes the proper uses of Federal TANF funds.) Also, the Territory's own funds, when used for the TANF program, may be used for this purpose. Because IV–A expenditures made with the Territories' own funds must be for the TANF program, it is reasonable that we apply to these TANF expenditures the MOE requirements applicable for the Matching Grant to this FAG amount requirement.

For IV–E expenditures, as with the Matching Grant MOE, expenditures made in accordance with Federal IV–E program requirements may count toward this MOE requirement. These include the Federal share and the Territories' share of IV–E expenditures and expenditures funded with the

Territories' own funds that meet Federal IV–E program requirements.

How will we know if a Territory failed to meet the Matching Grant funding requirements at § 274.80? (§ 274.83)

We are currently developing a separate Territorial Financial Report for the Territories. We will require this report to be filed quarterly; it will apply to all programs subject to section 1108. This report will cover TANF MOE and Matching Grant MOE requirements. For the Matching Grant, Territories will report expenditures claimed under title IV–E and IV–A and the total expenditures (including Federal) made to meet the requirement that they spend up to their Family Assistance Grant annual allocations.

We would not require Territories to file the TANF Financial Report; however, they must report comparable information on the Territorial Financial Report. Furthermore, if one of the Territories fails to file the Territorial Financial Report or to include certain information in that report, it would be treated like a State that fails to file its TANF Financial Report and subject to the penalty for failure to report at § 272.1(a)(3).

What will we do if a Territory fails to meet the Matching Grant funding requirements at § 274.80? (§ 274.84)

The statute does not address the consequences for a Territory if it fails to meet the Matching Grant MOE and the FAG amount requirements. The proposed rule provides that we disallow the entire amount of a fiscal year's Matching Grant if the Territory fails to meet either requirement. This is because the statute provides that the Matching Grant funds are only allowable if both requirements are met. Thus, if the Territory does not meet either one or both of the requirements, it must return the funds to us. We will get the funds back by taking a disallowance action.

A disallowance represents a debt to the Federal government. Therefore, we will apply our existing regulations at 45 CFR part 30. Once we issue a disallowance notice, we can require a Territory to pay interest on the unpaid amount.

What rights of appeal are available to the Territories? (§ 274.85)

The Territory may appeal a disallowance decision in accordance with 45 CFR part 16. As these are not penalties, the reasonable cause and corrective compliance provisions of section 409 do not apply. Section 410, covering the appeals process in TANF, also does not apply.

F. Part 275—Data Collection and Reporting Requirements

General Approach

There are a substantial number of specific data reporting requirements on States under the TANF program. Some of these reporting requirements are explicit, primarily in section 411(a); others are implicit, e.g., States represent the source of information for reports that the Secretary must submit to Congress and for the determination of penalties.

These data requirements support two complementary purposes: (1) they enable determinations about the success of TANF programs in meeting the purposes described in section 401; and (2) they assure State accountability for key programmatic requirements. In particular, they ensure accurate measurement of State performance in achieving the work participation rates in section 407 and other objectives of the Act.

These purposes can only be achieved if data are comparable across States and over time. At section 411(a)(6), the TANF statute provides that, to the extent necessary, the Secretary shall provide definitions of the data elements required in the reports mandated by section 411(a). That this is one of the few places in which the law authorizes regulation by the Secretary reflects the importance of collecting comparable data.

With respect to the first purpose, measuring the success of TANF programs, the data requirements of section 411(a) reflect particular features of the TANF program. States have collected and reported similar data on the characteristics, financial circumstances, and assistance received by families served by the AFDC and JOBS programs for many years. By requiring the collection of similar data under TANF, the statute enables the Congress, the public, and States to observe how welfare reform changes the demographic characteristics and the financial circumstances of, and the self-sufficiency services received by, needy families. In so doing, it facilitates comparisons across States and over time and promotes better understanding of what is happening nationwide—how States are assisting needy families; how they are promoting job preparation, work, and marriage; what is happening to the number of out-of-wedlock births among assisted families; and what kinds of support two-parent families are receiving.

With respect to ensuring accurate measurement of work participation, section 411(a)(1)(A)(xii) specifically requires States to report on the ''information necessary to calculate participation rates under section 407.'' Given the significance of the work rates for achieving the objectives of TANF and for determining whether States face penalties, this is an area where accurate and timely measurement is particularly important.

Our goal in implementing the data collection and reporting requirements of the Act is to collect the data required and necessary to monitor program performance. A secondary goal is to give States clear guidance about what these requirements entail and the consequences of failing to meet the requirements.

At the same time, however, we are sensitive to the issue of paperwork burden and committed to minimizing the reporting burden on States, consistent with the TANF statutory framework. In this context, where applicable, we have considered the comments we received when we proposed the draft Emergency TANF Data Report. (OMB subsequently approved this reporting form, and we issued it on September 30 as TANF–ACF–PI–97–6, Form ACF–198.) However, we welcome additional comments on whether these proposed rules, and appendices, are consistent with our interest in both minimizing reporting burdens and meeting TANF requirements.

External Consultation

Data collection and reporting issues were a critical part of the agenda for the external consultations ACF held during the past fall and winter. We also engaged in consultations when we issued a draft Emergency TANF Data Report for public comment this past summer.

In general, States expressed the view that the statutory provisions on data collection are too onerous. They recommended that ACF limit the burden on States and issue minimum regulatory requirements. However, some State officials acknowledged that they were currently collecting and reporting most of the case-specific data required by the Act as a part of the previous AFDC/JOBS program and the Quality Control reporting system.

Advocates and researchers generally recommended more data collection in order to track program effects on employment and child and family well-being.

Other Federal agencies (e.g., Census Bureau, Bureau of Economic Analysis of the Department of Commerce, Congressional Research Service) have been major users of our past program data and strongly recommended the continuation of a number of current data elements or collection instruments, e.g., the monthly Caseload Data (or FLASH) Report.

Overview of Part 275

Under this NPRM, States must submit two quarterly reports (the TANF Data Report and the TANF Financial Report) and two annual reports (a program and performance report for the annual report to Congress and, as an addendum to the fourth quarter Financial Report, State definitions and other information).

Most of the information we propose to collect is required by section 411(a). We do not have the authority to permit States to report only some of the data required in section 411(a), and our authority to require expanded data reporting is limited. We are, however, proposing to require some additional data elements necessary to: ensure accountability under section 409(a) (penalties); meet other statutory requirements, e.g., under section 403 (grants to States) and section 405 (administrative provisions); and assess State achievement of program goals, e.g., rankings of State programs under section 413(e).

Before we discuss each of the quarterly and annual reports in detail, we present an overview of the major provisions of this part.

1. We are proposing that each State, in the TANF Data Report—

- Collect and report the case record information on individuals and families and other data, as required in section 411(a).
- Collect and report information to monitor State compliance with the work requirements in section 407, as authorized by section 411(a)(1)(A)(xii).
- Collect and report information to implement the penalty provisions in section 409(a)(9). This penalty applies to time limits on receipt of assistance.
- Collect and report a minimum number of items as break-outs of the data elements specified in section 411(a), such as citizenship status, educational level, and earned and unearned income; and a few additional items necessary to the operation of a data collection system, including Social Security Numbers.
- Collect and report a minimum number of data elements related to child care.

2. We are proposing that each State, in the TANF Financial Report (or, as applicable, the Territorial Financial Report)—

- Collect and report information necessary to estimate the amounts to be paid to a State each quarter pursuant to section 405(c)(1).
- Collect and report information on Federal, State, and MOE expenditures under sections 411 (a)(2), (a)(3), and (a)(5); information for the purpose of implementing section 409(a)(1) (penalty for misuse of funds), section 409(a)(7) (maintenance of effort), section 409(a)(10) (Contingency Fund MOE requirements), section 409(a)(12) (replacement of funds requirement), section 403(b)(4) (Contingency Fund reconciliation); and data to carry out our financial management responsibilities for Federal grant programs under 45 CFR part 92.

3. We are proposing that each State—

- At State option, collect and report data on individuals and families served by separate State MOE programs if a State wishes to receive a high performance bonus, qualify for work participation caseload reduction credit, or be considered for a reduction in the amount of the penalty for failing to meet the work participation requirements.

4. We also propose to—

- Define ''TANF family'' for data collection and reporting purposes only.
- Define ''a complete and accurate report.'' This definition will serve as a compliance standard for implementing the penalty in section 409(a)(2) for failure to submit quarterly reports required under section 411(a).
- Define ''scientifically acceptable sampling method'' as a basis for State sampling systems and reporting disaggregated data in the TANF Data Report.
- Require States to file quarterly reports electronically.

5. We propose to minimize reporting burden by—

- Limiting required reports to a quarterly TANF Data Report, a quarterly TANF Financial Report (or Territorial Financial Report), an annual program and performance report, and an annual addendum to the fourth quarter Financial Report.
- Requiring States to report information only on the demographic and financial characteristics of families applying for assistance whose applications are approved. We will conduct special studies to obtain information on families who apply but are not approved, e.g., families denied, diverted, or otherwise referred. These data are required for purposes of section 411(b).
- Consolidating all aggregate financial and expenditure data into a single financial report. States had to submit three separate financial reports for the prior programs.
- Using the data collected under section 411(a) to conduct annual reviews and rankings of successful State work programs under section 413(d) and adding two data elements in order to conduct rankings of State efforts to reduce out-of-wedlock births, as required under section 413(e).
- Clarifying how States may use sampling to collect and report data as specified in section 411(a)(1)(B).

As an additional aid to States, we will develop a pc-based software package. This package will facilitate data entry and create transmission files for each report. We also plan to provide some edits in the system to ensure data consistency, and we invite States to comment on what sort of edit capability they would like to see in the system. The transmission files created by the system will use a standard file format for electronic submission to ACF.

Finally, in order to provide an opportunity for maximum review and public comment on the reporting requirements, we have attached the proposed quarterly reports (including the specific data elements and instructions) as Appendices A through G to part 275. We will revise these instruments following the comment period on the NPRM and will issue them to States through the ACF policy issuance system. We will not re-publish these appendices as a part of the final rule. However, we will make appropriate changes in the data collection instruments in the Appendices as a result of comments received.

We have submitted copies of this proposed rule and the proposed data reporting requirements to OMB for its review of the information collection requirements. We encourage States, organizations, individuals, and others to submit comments regarding the information collection requirements to ACF (at the address above) and to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, Washington, DC 20503, ATTN: Desk Officer for ACF.

Section-by-Section Discussion of this Part

The following discussion provides additional background information on, and a discussion of, each section in part 275. We discuss the specific data elements we are proposing, the statutory authority and other bases for their inclusion, the issues and options considered in developing the proposals in this part, and our rationale for taking a particular approach.

What does this part cover? (§ 275.1)

This section provides an overview of the scope and content of part 275. Paragraph (a) specifies the statutory provisions on which our data collection proposals are based. We will reference these statutory citations throughout our discussion of the specific reports, data collection instruments, and data elements in subsequent sections of this preamble.

Paragraph (b) describes the two quarterly reports and the two annual reports we propose to require. We discuss each of these reports and the specific data elements in the reports more fully in § 275.3 and § 275.9 below.

Paragraph (c) describes the optional reporting of case-record data for separate State MOE programs. We discuss our rationale for this proposal more fully in the discussion on § 275.3(d) below so that States may understand how we will evaluate certain benefits and options in deciding whether to report MOE case-record data.

Paragraph (d) describes the other provisions we propose to cover in part 275. These are the use of sampling to meet the data collection and reporting requirements, electronic submission of reports, due dates, and our plan to implement the penalty for failure to submit a timely report, as required by section 409(a)(2). You can find a more complete discussion of these matters in §§ 275.4–10.

Paragraph (e) calls attention to the eleven Appendices at the end of part 275. These Appendices contain the proposed data collection instruments and instructions for all of the quarterly reports. The Appendices also contain a summary of sampling specifications and three reference charts that link each data element in the three sections of the TANF Data Report to its specific statutory authority and our rationale for collecting these data. We have included these materials in order to obtain more informed comment on the proposed reporting requirements.

Although the Act requires that the reporting requirements for States under section 411 also apply to Indian tribal grantees, we will address data collection and reporting by Tribes in a separate NPRM that will deal with the full range of Tribal issues.

We will also address additional data collection requirements, if any, to implement the high performance bonus in a separate NPRM scheduled to be published later this year.

What definitions apply to this part? (§ 275.2)

The data collection and reporting regulations rely on the general TANF definitions at part 270.

In this part, we are proposing one additional definition—for data collection and reporting purposes only—a definition of ''TANF family.'' This definition will apply to data collection for both the TANF program and any separate State programs.

The law uses various terms to describe persons being served under the TANF program, e.g., eligible families, families receiving assistance, and recipients. Unlike the AFDC program, there are no persons who must be served under the TANF program. Therefore, each State will develop its own definition of ''eligible family,'' to meet its unique program design and circumstances; similarly, each State will have its own definition of ''eligible family'' for State MOE programs.

We do not expect coverage and family eligibility definitions to be comparable across States. Therefore, we have proposed a definition that will enable us to better understand the different State programs and their effects. We are proposing that the definition of ''TANF family'' start with the persons in the family who are actually receiving assistance under the State program. (Any non-custodial parents participating in work activities will be included as a person receiving assistance in an ''eligible family'' since States may only serve non-custodial parents on that basis.) We, then, would include three additional categories of persons living in the household, if they are not already receiving assistance. These three additional categories are:

(1) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(2) Minor siblings of any child receiving assistance; and

(3) Any person whose income and resources would be counted in determining the family's eligibility for or amount of assistance.

We believe information on these additional individuals is critical to understanding the effects of TANF on families and the variability among State caseloads, e.g., to what extent are differences due to, or artifacts of, State eligibility rules.

- We need information on the parent(s) or caretaker relative(s) (i.e., an adult relative, living in the household but not receiving assistance, and caring for a minor child) to understand the circumstances that exist in no-parent (e.g., child-only) cases not covered by key program requirements, such as time limits and work requirements.
- We need information on minor siblings in order to understand the impact of ''family cap'' provisions.
- We also need information on other persons whose income or resources are considered in order to understand the paths by which families avoid dependence.

We considered alternative terms on which to base TANF data collection such as the ''TANF assistance unit'' or ''TANF reporting unit.'' However, as participants in the external consultation process pointed out, these terms no longer have a commonly understood meaning, particularly as States re-design their assistance and service programs.

For research and other purposes, there was interest in collecting data on a broader range of persons in the household, e.g., any other person living in the household such a grandmother or a non-marital partner of the mother.

We determined that we should limit reporting to those categories of persons on whom the States will gather data for their own purposes and for which information will be directly relevant to administration of the TANF program.

In the interest of greater comparability of data, we also considered defining terms such as ''parent,'' ''caretaker relative,'' and ''sibling.'' We chose not to define these terms because we were concerned that our data collection policies could inadvertently constrain State flexibility in designing their programs. We believe that variation among State definitions in these areas will not be significant and will not decrease the usefulness of the data.

We believe this definition of family will not create an undue burden on States since these additional persons are either all individuals who are a part of an aided child's immediate family or whose income or resources the State already considers in determining eligibility.

We offer one clarifying note regarding data collection in relation to non-custodial parents. As we indicated in the discussion of part 271, the provision of work activities to a non-custodial parent need not cause a State to consider the family a two-parent family for the purposes of the work participation rate. States could define two-parent families as those with two parents living in the same household.

Finally, we want to emphasize that we have proposed this definition of ''TANF family'' for reporting purposes only. Our aim is to obtain data that will be as comparable as possible under the statute, and, to the extent possible, over time. Some comparability in data collection is necessary for assessing program performance; understanding the impact of program changes on families and children; and informing the States, the Congress, and the public of the progress of welfare reform.

What reports must the State file on a quarterly basis? (§ 275.3)

We are proposing in paragraph (a) to require that each State must file two reports on a quarterly basis—the TANF Data Report and the TANF Financial Report (or, as applicable, the Territorial Financial Report). We are also establishing the circumstances under which a State may opt to submit a quarterly TANF–MOE Data Report.

The TANF Data Report consists of three sections whose contents are discussed below. You will find these proposed sections in their entirety in Appendices A–C to this part. You will find the proposed TANF Financial Report in Appendix D and the three sections of the proposed TANF–MOE Report in Appendices E–G. (The Territorial Financial Report is under development.)

By publishing these data collection instruments in the NPRM, we are providing the public with an opportunity for a thorough review of the specific data elements proposed to be collected. We anticipate that this opportunity for an in-depth public review of these instruments will result in more useful and informed suggestions and recommendations.

Section 411(a)(1)(A)(i)–(xvii) authorizes monthly collection and quarterly reporting of a specified list of more than 30 data elements. Sections 411(a)(2)–(5) also authorize quarterly reports on administrative costs, program expenditures for needy families, non-custodial parents' participation in work activities, and transitional services to families who no longer receive assistance due to employment.

The data elements specified in section 411(a) represent the overwhelming majority of the data elements we are proposing to collect in the TANF Data Report and the TANF–MOE Report. Some section 411(a) data elements are also included in the TANF Financial Report in addition to information required by section 403(b)(4) (Contingency Fund reconciliation requirements), section 405(c)(1) (computation of payments to States), section 409(a)(10) (Contingency Fund MOE requirements), section 409(a)(12) (failure to expend additional State funds to replace grant reductions), and information to carry out our financial management and oversight responsibilities.

Where we have added data elements beyond those explicitly stated in section 411(a), we explain our rationale for their inclusion.

As a further aid to public analysis and comment, we have attached three statutory reference tables that correspond to the three sections in the TANF Data Report. These tables list each data element we are proposing to collect and the applicable statutory citation or other rationale for its collection. See Appendices I–K.

TANF Data Report: Disaggregated Data—Sections One and Two (§ 275.3(b)(1))

Paragraph (b)(1) of this section proposes to require that each State must file the disaggregated case record information, as specified in section 411(a), on: (1) families receiving TANF assistance (Section One); and (2) families no longer receiving TANF assistance (Section Two). (See Appendices A and B respectively for the specific data elements.)

The information we propose to be collected includes identifying and demographic information; data on the types and amount of assistance received under the TANF program; the reasons for and amount of any reductions in assistance; data on adults, including the Social Security Number, educational level, citizenship status, work participation activities, employment status, and earned and unearned income; and data on children, including the Social Security Number, educational level, and child care information.

The statute requires that, in her Annual Report to Congress, the Secretary must report on the financial and demographic characteristics of families leaving assistance. However, it does not directly specify the data elements that States must submit. In specifying the data elements in Section Two of the TANF Data Report (for families no longer eligible), we borrowed heavily from the data elements specified for families receiving TANF assistance. We have assumed that States will not have a great deal of difficulty collecting these data because: (1) they are reporting similar data for TANF cases; (2) we only expect States to collect these data at the time the families are leaving the rolls; and (3) we substantially reduced the total number of elements States must report. However, we invite comments on whether the value of the data required in this section (e.g., in terms of preparing the Annual Report, conducting research, and tracking the impacts of State policies) justifies the burden on States. We encourage commenters to be specific about the value and burden of individual data elements.

Appendix A contains 99 data elements, most of which are required to be reported by section 411(a)(1)(A). As indicated above, we have prepared, at Appendix I, a list of each data element in section one of the TANF Data Report (Appendix A) and its statutory basis or other rationale for its inclusion. The data elements not specified in section 411(a) are discussed more fully below.

a. *Administration of a data collection system*. The following items are not required by statute, but they are necessary to, and implicit in, the administration of a data collection system:

1. State FIPS Code
2. Reporting Month
3. Sampling Stratum
4. Family Case Number
5. Sample Case Disposition

Other proposed data elements necessary for the administration of the data collection system and our rationale for their inclusion are as follows:

6. *ZIP Code*—This information is readily available and is needed for geographic coding and rural/urban analyses.

7. *Family Affiliation*—We need this information to identify which persons in the family are receiving assistance in order to monitor work participation, receipt of assistance, and time limits. We also need this information to understand the relationship between the members of the household.

8. *Social Security Number*—This information is also readily available. States use Social Security Numbers to carry out the requirements of IEVS. (See sections 409(a)(4) and 1137.) This element will enable us to track recipients who move or become part of a different family. We also need this information for research on the circumstances of children and families as required in section 413(g).

9. *Gender*—This is a standard demographic data element. The information could be collected under a relationship element (e.g., father, mother, brother). However, by using this single element, the coding is simpler; it is easier to report; and, thus, is less burdensome.

b. *Break-outs.* We are proposing to collect additional information as break-outs of certain single data elements in section 411(a). Some break-outs are required by section 411(a). See ''Amount and Type of Assistance'' (10 items), ''Reason for and Amount of Reduction in Assistance'' (11 items), ''Adult Work Participation Activities'' (14 items), and ''Educational Level'' (two items).