

# **The Final TANF Regulations: A Preliminary Analysis**

**Mark Greenberg  
Steve Savner**

Center for Law and Social Policy  
1616 P Street, NW  
Suite 150  
Washington, DC 20036

Phone: (202) 328-5140  
Fax: (202) 328-5195  
[www.clasp.org](http://www.clasp.org)

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**CLASP**

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## The Final TANF Regulations: A Preliminary Analysis

### Executive Summary

The final TANF regulations, 64 Fed. Reg. 17720-19931 (April 12, 1999) make many changes affecting state choices in implementing TANF. The regulations have an effective date of October 1, 1999. This document summarizes how a number of the key issues were resolved.

**1. A standard of “reasonableness” will apply when an issue is not addressed in regulations.**

Final regulations address many, but not all questions that have arisen concerning allowable uses of TANF funds. HHS indicates that to the extent HHS has not addressed a provision in the final regulations, states may expend their federal TANF funds under their own reasonable interpretations of the statutory language, and that is the standard that will be used in determining penalty liability. In addition, actions that occur before the effective date of the final regulations and expenditure of funds received before the effective date of the final regulations will be judged against a reasonable interpretation of the statutory language.

**2. The definition of “assistance” has been narrowed. This change will make it easier for states to use TANF funds for initiatives to help low-income employed families; for flexible, short-term benefits; for refundable earned income credits and Individual Development Accounts; and for wage subsidy programs and job creation initiatives.**

A number of key TANF requirements, such as time limits, work and participation requirements, and child support assignment requirements all depend on whether a family is receiving TANF “assistance.” Proposed rules defined assistance broadly. As a result, states often found it difficult to use TANF funds for initiatives in which some or all “assistance” requirements seemed inappropriate. Under final regulations, “assistance” is defined to include cash or noncash benefits designed to meet a family’s ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses). Assistance also includes supportive services such as transportation and child care provided to nonemployed families, unless the service falls into an exclusion. Key exclusions from assistance are:

- Nonrecurrent short-term benefits that are designed to deal with a specific crisis situation or episode of need; are not intended to meet recurrent or ongoing needs; and will not extend beyond four months;
- Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);
- Support services such as child care and transportation provided to families who are employed;
- Refundable earned income tax credits;
- Contributions to and distributions from Individual Development Accounts;
- Services that do not provide basic income support.

The new definition of assistance makes it substantially easier for a state to use TANF funds to help needy families outside of the welfare system. For example, a state can now use TANF funds for an initiative to provide child care and transportation benefits, a reasonable work expense allowance, and job retention and career advancement services for employed families who have left or never received TANF cash assistance. Financial eligibility levels for nonassistance can be higher than eligibility levels for TANF cash assistance. Note, however, that a family receiving only nonassistance will not be part of a state's TANF assistance caseload, which has implications for TANF participation rates and child support collections, and also note that the distinctions affecting child care (since child care for nonemployed persons is still considered assistance) will present some issues of administrative complexity for states.

**3. States implementing separate state programs will not face a higher risk of TANF penalties:** Proposed rules provided that states using MOE funds to operate separate state programs could be at greater risk of having TANF penalties imposed. Final rules eliminate this elevated risk of penalties. HHS will collect information about separate state programs and will use the information for specific purposes (caseload reduction credit, high performance bonus, ranking state work programs), but the risk of penalties is now gone. As a result, it now becomes much easier for states to use MOE funds to design such programs in instances where TANF requirements are inappropriate for accomplishing the state's policy goals, e.g., expanding access to education, addressing special needs of families with severe barriers to employment, advancing a child support assurance initiative.

**4. Allowable uses of TANF funds are clarified:** One purpose of TANF is to provide assistance to needy families so that children may be raised in their homes or homes of relatives. HHS clarifies that such families must be financially needy (based on income, and, at state option, resources), but states have very broad discretion in determining "need" and may set different eligibility standards for different benefits and services. Moreover, a state's spending under this purpose is not limited by the regulatory definition of assistance: a state may also fund services and nonassistance reasonably calculated to accomplish the purpose.

**5. Allowable uses of MOE funds are clarified:** Under final regulations, MOE expenditures are limited to those for "needy families;" however, a state may set its financial eligibility levels for MOE-funded benefits above the eligibility level for TANF cash assistance. As with TANF expenditures, MOE expenditures may be for needy families who are receiving TANF assistance, who have left TANF assistance, or who have never received TANF assistance. The state's financial eligibility levels for MOE-funded benefits must be specified in the state's TANF plan.

MOE expenditures for programs that existed in FY 95 are subject to a "new spending test." HHS indicates that in applying this new spending test:

- If expenditures in the program would have been previously authorized and allowable under the former AFDC, JOBS, Emergency Assistance, Child Care for AFDC recipients,

At-Risk Child Care, or Transitional Child Care Programs, then all otherwise countable expenditures can count in their entirety.

- If expenditures in the program would not have been previously authorized and allowable under the former AFDC, JOBS, Emergency Assistance, Child Care for AFDC recipients, At-Risk Child Care, or Transitional Child Care Programs, then countable expenditures are limited to the amount by which countable current fiscal year expenditures for eligible families exceed total state expenditures in the program in FY 95.

**6. A state may spend federal TANF funds for a refundable earned income tax credit (EITC) for needy families. If the state spends state funds for a refundable EITC for needy families, such expenditures can count toward MOE.** Only the portion of the tax credit that is refundable can count, i.e., the part of a tax credit that provides a payment to a family in excess of the family's tax liability. In addition, only those expenditures for "needy families" are countable, but a state has broad discretion in setting its definition of needy families. A refundable earned income tax credit does not fall within the regulatory definition of assistance.

**7. States are provided broader ability to continue a previous waiver and not be subject to inconsistent TANF requirements, but only if the state has continuously applied its waiver provisions in their original or "modified" form.** TANF specifies that if a state had an approved waiver in effect on August 22, 1996 and the state elects to continue the waiver, any TANF requirements that are inconsistent with the waiver will not apply to the state until the expiration of its waiver. The final regulations create a framework in which if one or more "technical waivers" were granted relating to work participation or time limits, HHS will view that entire component of the state's program as potentially inconsistent with TANF, including the unwaived AFDC elements that were part of that component. To the extent that any of the policies included in the component (whether waived or unwaived) have continued in their original form or a modified form making them more consistent with TANF policy, they can form the basis for the component that will be certified under the final rule. If any of the policies have been dropped in favor of TANF policy, the rules do not allow the state to go back to the original waiver policy. If all of the specific AFDC waiver provisions - "technical waivers" - have been dropped, then no claim of inconsistency can now be made.

**8. Procedures for claiming the caseload reduction credit are established.** A state's TANF participation rates may be adjusted downward to the extent a state's caseload has fallen for reasons other than eligibility rules changes. A state wishing to claim the caseload reduction credit will be required to submit a report identifying eligibility rules changes since 1995, including more stringent income and resource limits, time limits, full-family sanctions and other new requirements that deny assistance for failure to comply with work child support or behavioral requirements. The public must have an opportunity to comment, but HHS will accept the state's analysis unless it is implausible. For purposes of calculating a state's two-parent participation rate, a state may

make use of a caseload reduction credit based on either the two-parent or overall caseload decline.

**9. A state may be penalized both for failing to impose sanctions on families that refuse to engage in work and for erroneously imposing such sanctions.** Final regulations also clarify that in determining whether to reduce a penalty, HHS will consider whether the a state has established a control mechanism, and that an essential element of a control mechanism is a recipient's right to a fair hearing to contest the imposition of a sanction.

**10. Final regulations establish that state TANF agencies must inform families of the TANF child care protection, but also appear to permit states to impose sanctions when a family's preferred form of care is unavailable.** Final regulations establish that state TANF agencies must inform families of the applicable TANF protections for families who cannot comply with TANF work requirements due to lack of available child care, including the criteria and applicable definitions for determining whether an individual has demonstrated an inability to obtain needed child care. The regulations also add a new provision stating that "refusal to work when an acceptable form of child care is available is not protected from sanctioning." It is not entirely clear what this new language is intended to mean, and a broad reading of this new provision could be inconsistent with the protections of the TANF statute.

**11. A state will be eligible for penalty relief if the state is unable to meet TANF participation or time limit requirements because the state is providing screening and services for victims of domestic violence.** The final regulations provide significant relief from work participation and time limit penalties when a state's failure to comply is a result of federally recognized good cause domestic violence waivers. In order to get the benefit of this protection, however, states must have adopted the Family Violence Option under the Act, and satisfied requirements that every individual to whom a good cause domestic violence waiver is granted must have a service plan developed by an individual trained in domestic violence, and each plan must be reassessed every six months.

**12. States may structure their TANF programs to provide assistance to "child-only" cases without facing an elevated risk of penalties.** Under proposed regulations, HHS had indicated that if a state was providing child-only assistance, HHS would review those cases and might add those cases when calculating TANF participation rates and time limit compliance. Final regulations drop this proposal, and give states broad discretion to define the circumstances in which children, but not the adult caretaker relatives with whom they live, may receive assistance and be categorized as "child-only" cases.

**For more information:** CLASP's preliminary analysis does not address all issues in the final TANF regulations, and, while detailed, does not address every aspect of regulatory guidance in

the areas covered. Persons wanting additional information may wish to refer to the CLASP web page, [www.clasp.org](http://www.clasp.org), or contact CLASP for further discussion.



## The Final TANF Regulations: A Preliminary Analysis

The final TANF regulations, 64 Fed. Reg. 17720-19931 (April 12, 1999) make many changes affecting state choices in implementing TANF. The regulations have an effective date of October 1, 1999. In the coming weeks, CLASP will be developing more detailed analyses of many aspects of the regulations. This document summarizes how a number of the key areas of concern were resolved.

The final regulations result in some significant new policies. Among the most notable developments:

- The definition of “assistance” for most purposes in TANF is modified to provide that non-recurrent, short-term benefits and many supports for low-income employed families are not assistance. The effect of this change is to make it much easier for states to spend TANF funds for initiatives to help low-income working families and to address emergency and other short-term needs of low-income families.
- The regulations drop a previous proposal that would have restricted the penalty relief available to states that use their maintenance of effort (MOE) funds to implement “separate state programs.” The effect is to make it substantially easier for states to develop and implement separate state programs.
- The regulations clarify that a state can spend both TANF and MOE funds for a broad range of benefits and services, can set different income eligibility levels for different benefits, and can extend those benefits to needy families that have left welfare or never received welfare.
- The regulations drop a previous proposal that would have placed states at greater risk of TANF penalties when states elected to continue their prior waiver programs. The regulations also broaden the circumstances under which HHS will allow states to continue waiver-based policies by considering their waiver policies inconsistent with TANF requirements.
- The regulations drop a previous proposal that would have placed a state at greater risk of TANF penalties if the state made use of “child-only” cases, i.e., cases in which assistance is provided only to children in the home.
- The regulations provide new clarification, and in some cases, new policies concerning sanctions affecting TANF families, the child care protections affecting TANF families, implementation of good cause waivers for victims of domestic violence, and the process of determining TANF participation rates.

The following pages summarize the new or clarified approaches taken in each of the above areas, and discuss some of the key questions and issues raised by the new approaches. In each area, we summarize the background and regulatory approach, and then consider implications of the new regulation. Readers are encouraged to contact CLASP for further discussion of these or other issues raised by the final regulations.

## **1. The Role of Reasonableness**

The final TANF regulations address many, but no means all, questions that have arisen concerning when it is permissible to spend TANF funds, when spending can count toward MOE requirements, and what requirements attach to TANF and MOE spending. The regulations also provide a framework for how to address those questions which are not directly answered. Specifically, in addressing when an expenditure of TANF funds will be considered an intentional misexpenditure, HHS says that a state must be able to demonstrate that it used the funds for purposes that a reasonable person would consider to be within the purposes of the TANF program. 45 C.F.R. §263.12. In determining whether a state will be subject to a penalty, a state is asked to demonstrate that its actions were based on a reasonable interpretation of the statute in those instances where there are not federal regulations. 45 C.F.R. §262.4. Moreover, preamble language expressly states:

To the extent that we have not addressed a provision in this final regulation, States may expend their Federal TANF funds under their own reasonable interpretations of the statutory language, and that is the standard that will apply in determining penalty liability.

64 Fed. Reg. 17841. In instances of uncertainty, then, either because the final regulations are silent or because they are ambiguous, states should keep in mind that there should not be risk of a TANF penalty when an expenditure of TANF funds is based on a reasonable interpretation of the TANF statute. (Note, however, that HHS may intend this same principle to apply to questions regarding MOE spending, but does not say so explicitly. Moreover, a misexpenditure of TANF funds is subject to a reasonable cause exception, while a misexpenditure of MOE funds is not. Accordingly, in areas of uncertainty where it appears equally permissible to expend either TANF or MOE funds, a state may be able to reduce its risk of liability by expending TANF rather than MOE funds.)

Finally, because the regulations have an effective date of October 1, 1999, HHS indicates that state actions that occur before the effective date and expenditure of funds received before the effective date will be judged against a reasonable interpretation of the statutory requirements. 45 C.F.R. §260.40.

## 2. The Definition of Assistance

**In Brief:** When an expenditure falls within the definition of “assistance,” numerous TANF requirements apply, including TANF time limits, work and participation requirements, and child support assignment requirements. The final regulations enunciate some key exclusions from the definition of assistance, including many work supports for employed families (such as child care, transportation subsidies) and expenditures for nonrecurrent, short-term needs. The narrowing of the definition of assistance creates significant opportunities to expand the use of TANF funds, but one should note that the definition of assistance applies to some, but not all TANF requirements, and that special issues arise concerning child care, since direct TANF expenditures for child care for nonemployed persons are treated as “assistance.”

**Background and Regulatory Approach:** The definition of “assistance” matters under TANF because many TANF provisions apply to the receipt of “TANF assistance.” For example, the rules relating to time limits, work and participation requirements, assignment of child support, and data collection all depend on whether “assistance” is received, and a number of prohibitions are worded as prohibitions on providing “assistance.”<sup>1</sup> Under the proposed regulations, “assistance” was broadly defined as essentially including every form of support provided to families under TANF except for “services” and “one-time, short-term assistance.” This approach was criticized, in part, because it meant that an array of supports for employed families (e.g., child care, transportation assistance, refundable earned income credits) were deemed to fall within the definition of assistance, meaning that anyone receiving such supports was considered part of the state’s TANF caseload, had the month of receipt count against time limits, and became subject to the law’s child support assignment requirements. Many people raised concerns that the proposed regulations sharply restricted the ability of states to use the TANF block grant as a vehicle to help employed families who had left or were seeking to avoid receiving welfare. In addition, concerns

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<sup>1</sup> More specifically:

- The state may not use federal TANF funds to provide assistance to a family in which the adult head of household or spouse of the head of household has received federal TANF assistance for sixty months (subject to limited exceptions);
- If a family including an adult or minor parent head of household receives TANF assistance (whether federally funded or state funded), the family is considered part of the state’s caseload for purposes of TANF participation rate requirements;
- The TANF 24-month work requirement is a requirement that a parent or caretaker receiving TANF assistance (whether federally funded or state funded) be engaged in work (as defined by the state) by the time that he or she has received TANF assistance for 24 months;
- A family receiving TANF assistance (whether federally funded or state funded) is required to assign its child support to the state;
- A set of prohibitions bar the state from providing TANF assistance (or in some cases, federally-funded TANF assistance) to certain groups of families and individuals; and
- A set of data reporting requirements apply to those receiving TANF assistance (whether federally funded or state funded).

were expressed that the HHS regulatory definition restricted state flexibility in providing short-term, nonrecurring help to families, i.e., diversion initiatives to help families avoid receiving welfare.

The final regulations substantially change the definition of assistance. Under final regulations, “assistance” is defined to include: “Cash, payments, vouchers and other forms of benefits designed to meet a family’s ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).” 45 C.F.R. §260.31(a). “Assistance” also includes:

- stipends and allowances for participation in education and training (64 Fed. Reg. 17757);
- needs-based payments to individuals in any work activity whose purpose is to supplement the money they receive for participating in the activity (64 Fed. Reg. 17758); and
- supportive services such as transportation and child care provided to non-employed families, unless within one of the exclusions from assistance listed below. 45 C.F.R. §260.31(a)(3).

If a benefit falls within the definition of assistance, the benefit counts as assistance even when receipt of the benefit is conditioned on participation in work experience, community service, or other work activities. 45 C.F.R. §260.31(a)(2)(ii).

Under final regulations, “assistance” does not include:

- Nonrecurrent short-term benefits that:
  - are designed to deal with a specific crisis situation or episode of need;
  - are not intended to meet recurrent or ongoing needs; and
  - will not extend beyond four months;
- Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);
- Support services such as child care and transportation provided to families who are employed;
- Refundable earned income tax credits;
- Contributions to and distributions from Individual Development Accounts;
- Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and
- Transportation benefits provided under a Job Access or Reverse Commute project to an individual who is not otherwise receiving assistance.

45 C.F.R. §260.30(b).

For individuals in work activities, HHS expressly draws a distinction between the situation where a work subsidy is paid to the employer (which is not assistance) and the situation where an individual receives payment for participation in a community service or work experience slot (which is assistance.) 64 Fed. Reg. 17758. HHS notes that the exclusion from assistance will

generally cover on-the-job training and subsidized employment and “would also cover payments to employers and third parties for supervision and training and payments under performance-based contracts for success in achieving job placements and job retention. 64 Fed. Reg. 17758.

Under the final regulations, the assistance/nonassistance distinction applies to many, but not all, aspects of TANF. If the only benefits being received by a family are nonassistance, then the family is not receiving TANF assistance for purposes of TANF time limits, work and participation requirements, child support assignment requirements, and TANF data collection requirements. A state may provide TANF nonassistance to a family even if the family is barred from receiving TANF assistance, with one major exception: the prohibitions against providing TANF benefits to a number of categories of immigrants are not worded as prohibitions on assistance; rather, these prohibitions apply because TANF is labeled as federal public benefit or a federal means-tested public benefit, so it appears that the prohibitions affecting immigrants are not affected by whether the particular TANF benefit falls within the definition of assistance.

For some purposes under TANF, HHS says that a state is not bound by the regulatory definition of “assistance.”

- **Allowable TANF Spending:** One purpose of TANF is to “provide assistance” to needy families so that children may be raised in their own homes or homes of relatives. HHS indicates that in determining whether an expenditure is reasonably calculated to accomplish this purpose, a state is not limited to those expenditures that fall within the definition of assistance. 45 C.F.R. §260.31(c)(2). For example, expenditures for family preservation services could be reasonably calculated to accomplish this purpose, even though they would be considered nonassistance.
- **Maintenance of Effort:** The regulatory definition of assistance does not limit when an otherwise-countable expenditure counts in determining whether a state is satisfying maintenance of effort requirements. 45 C.F.R. §260.31(c)(1). For example, one allowable use of MOE is for “child care assistance” but this does not mean that a state can only count toward MOE those child care expenditures that fall within the definition of “assistance.” (However, as discussed, infra, at pp. 11-12, if an MOE expenditure falls within the TANF definition of assistance, the state must treat the family as one receiving “assistance” for purposes of the TANF caseload reduction credit, high performance bonus, and data reporting requirements.)
- **Contingency Fund Eligibility:** The regulatory definition of assistance does not apply when determining whether a state has sufficient expenditures to qualify to receive funds from the federal contingency fund, i.e., a state can count both assistance and non-assistance expenditures in demonstrating that it has made sufficient expenditures of state funds to qualify for funds from the contingency fund, although to count for contingency fund purposes, all state expenditures must be expenditures in the TANF Program. 45 C.F.R. §260.31(c)(1).

Although the regulatory definition of assistance does not apply in the above situations, HHS states that the regulatory definition of assistance does apply for purposes of use of a state's "carryover" money. Under TANF, a state is not required to draw down its full block grant each year, and funds that are not spent remain available for use in future years. However, HHS has concluded that a state may only expend its carryover funds for assistance, as defined above, and for the administrative costs directly associated with providing such assistance. 64 Fed. Reg. 17840-41. This interpretation becomes binding on states as of the effective date of the final regulations, October 1, 1999.

Finally, the change in the definition of assistance also has implications for use of Welfare to Work grants. Under the WtW Program, the provision of "cash assistance" counts against TANF time limits, but provision of non-cash assistance does not.<sup>2</sup> HHS explains that a benefit will not be considered cash assistance for WtW purposes unless the benefit also falls within the TANF definition of "assistance." For WtW purposes, cash assistance includes payments and benefits in other forms that can be legally converted to currency, e.g., electronic benefit transfers, checks. However, expenditures for supportive services such as transportation and child care, even when provided to those who are not employed, will not be considered cash assistance for WtW purposes. 45 C.F.R. §260.32. And, as with the use of TANF grants, the use of a WtW grant for purposes of fully or partly subsidized employment is not considered assistance, so it does not count as cash assistance.

**Analysis:** The change in the definition of assistance could turn TANF into a far more flexible funding stream that can be used for a broad array of state efforts to address needs of low income families. The modification does not change the allowable uses of TANF money, but states can now use TANF funds for a number of initiatives that were seen as infeasible under the proposed regulations.

In particular, it now becomes much easier to use TANF funds to develop and expand programs to support low-income employed families. Under the proposed rules, it was permissible to use TANF funds for activities such as transportation subsidies, refundable earned income tax credits, Individual Development Accounts, and direct spending for child care (in addition to transferring TANF funds to the child care block grant). However, states often viewed such expenditures as infeasible, because such expenditures would be considered assistance and would result in an array of TANF requirements being imposed in contexts where they seemed wholly inappropriate. Under the revised definition of assistance, it becomes feasible for states to view their basic cash assistance for poor families as one component of TANF spending, while another component

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<sup>2</sup> However, states may use WtW funds to provide cash and noncash WtW assistance even after a family has reached the TANF 60-month limit and without regard to the 20% limit on allowable exceptions to the TANF time limit. 64 Fed. Reg. 17764; 45 C.F.R. 264.1(a)(3).

becomes the provision of supports and help to low-income employed families who have left TANF or who have never received TANF assistance.

Under the proposed rules, it was difficult to use TANF for transition benefits for families who entered employment, because if the benefits fell within the definition of assistance, the family was still considered to be receiving TANF assistance. Now, a state can provide appropriate nonassistance to families leaving TANF assistance. For example, a state can ensure that child care and transportation subsidies are provided to families leaving TANF due to employment. It also appears that a state could structure a work expense allowance for TANF exiters, and so long as that allowance is reasonably related to work expenses and not intended to meet basic needs, the allowance would not fall within the definition of assistance.<sup>3</sup>

States may now want to explore the development of new policies to offer nonassistance for those families that only qualify for small amounts of TANF assistance under state earnings disregard rules. For example, if under a state's earnings rules, a group of families are receiving small TANF payments, those families might be better off by being given an opportunity to leave TANF assistance and receive nonassistance work supports, including a reasonable work expense allowance. Once a family leaves TANF assistance, the family is no longer receiving benefits that count against TANF time limits, and the family is able to retain its current child support instead of being required to turn its child support over to the state.

In many instances, the state will also gain by giving employed families an opportunity to leave TANF and receive nonassistance work supports instead. From the state's standpoint, if the benefits to be provided are comparable in or outside of TANF, the principal considerations become:

- **Time Limits:** A family receiving nonassistance does not have the month of assistance count against the federal five-year limit, although the state is free to design any policy of its choice to limit the length of availability of transition benefits or other nonassistance work supports.
- **TANF Work Participation Rates:** Once a family is receiving only nonassistance, the family is no longer part of the state's TANF caseload. Thus, the family is not part of the "numerator" or the "denominator" for purposes of TANF participation rates. On first impression, a state might view this as a disadvantage, because the state may be relying on employed families to help the state meet its participation rate. However, in any year in which the state is confident that the state will meet the required participation rate, it will be more helpful to the state for an employed family to leave TANF than to continue receiving assistance. This is because there is no advantage in a state over-attaining the

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<sup>3</sup> In the AFDC Program, a \$75/month work expense deduction was established in 1981, and was increased to \$90/month in the Family Support Act of 1988, effective October 1, 1989.

- required participation rate, while caseload reduction that is not attributable to changes in TANF eligibility rules will lower the state's required participation rate for the next year.<sup>4</sup>
- **Child Support:** Under current law, when a family receives TANF assistance, the family must assign its child support to the state; when support is collected for a family receiving assistance, the state must provide half or more of those funds to the federal government, and may choose whether to provide the state's share to the family. In recent years, there has been much criticism of child support policies which prevent a family from receiving and benefitting from child support paid on the family's behalf. If a state now structures its policies so that a family entering employment is able to leave TANF assistance, the family will be able to keep and benefit from its child support. Under child support distribution rules, the family will be treated as a former-assistance family. In effect, the federal government will bear half (or in states with more favorable match rates, more than half) of the costs of assuring that such families receive the current child support paid on their behalf. For example, in a state with a 50% matching rate, when a noncustodial parent makes a current child support payment of \$100 for a family receiving TANF assistance, the state must send \$50 to the federal government and may decide whether to keep or give to the family the other \$50. However, if the state structures policies under which an employed parent can leave TANF assistance and begin receiving nonassistance, the family will receive the \$100 paid by the noncustodial parent (although the state can choose whether to count that \$100 as income for purposes of child care eligibility and other nonassistance supports).

Note that the issue of whether a family is receiving assistance or nonassistance does not need to have any effect on the family's eligibility for child care under state rules, and the eligibility of family members for Medicaid under the Section 1931 eligibility category is based on family income and resources, not whether the family is receiving TANF assistance. Therefore, there need be no adverse effects on access to child care or health care if the state seeks to expand the availability of nonassistance for employed families.

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<sup>4</sup> For example, consider a state that (due to caseload reduction) had a required participation rate of 20% in FY 99, and anticipates having a 25% rate in FY 2000 unless there is additional caseload reduction (because the required participation rate goes up 5 percentage points from FY 99 to FY 2000). Suppose the state has 100 TANF recipients, of which 15 are employed and counting toward participation rates, and another 25 are unemployed but counting toward participation rates based on being engaged in other countable activities. If the caseload remains constant through the year, the state will face a TANF participation rate of 25% the next year. If, however, the state makes TANF nonassistance available to working families, and ten of the employed families leave assistance, then the state will still comfortably meet its FY 99 participation rate with 30 countable participants, but its TANF caseload will have fallen to 90 families, so its required participation rate in FY 2000 will be lower. Note that in order to qualify for the caseload reduction credit for this further reduction, the state would need to ensure that it had not restricted eligibility for working families, but instead had simply broadened the availability of work supports outside TANF.



The modified definition of assistance should also make it easier for states to implement programs of partially or fully-subsidized employment, and should make it easier for states to make payments to employers as wage subsidies or as reimbursements for training costs. Under proposed rules, such expenditures were considered assistance, and under final rules they are not. For those states that are operating or considering operating workfare programs, there are now unequivocal advantages for the families in designing such programs as wage-based employment programs. Designing such a program as a wage-based program will allow the family to qualify for the Earned Income Tax Credit, avoid difficult issues around compliance with the Fair Labor Standards Act, and ensure that the family benefits from child support. Federal time limits will not apply, though the state can develop its own policies concerning the length of a subsidy and how it is treated for purposes of the state time limit. And, as noted above, in any year when the state will meet its required participation rate, the state will benefit from the caseload reduction.

The modified definition also makes it more feasible for states to use TANF funds for addressing short-term needs outside of welfare. Most directly, a state may make use of the nonrecurrent, short-term exclusion to expand the availability of diversion initiatives, in which more extensive help is given to new initial applicants or families in crisis situations in an effort to prevent the need for long-term assistance. It also becomes more practical for a state to provide TANF funds to other community agencies so that short-term help can be provided outside of the welfare system. For example, a state might consider providing flexible funding for addressing emergency needs in entities like domestic violence shelters, and can also consider the role of TANF funds to address short-term needs in the context of state implementation of one-stop career centers under the Workforce Investment Act.

Concerning child care, the final regulations draw a distinction that may needlessly complicate the administration of state child care programs, because some expenditures of TANF funds for child care fall within the definition of assistance and other expenditures of TANF funds will be treated as nonassistance. Keep in mind that a state may transfer up to 30% of its TANF block grant to the Child Care and Development Block Grant (CCDBG), in which case all transferred funds will be subject to CCDBG, not TANF, rules. However, if a state wishes to spend TANF funds directly for child care, then the funds may or may fall within the definition of assistance:

- **Nonassistance:** Child care provided to employed persons (whether for unsubsidized employment, subsidized employment or so that an employed individual can participate in education and training activities) is nonassistance. In addition, child care that falls within the exclusion for nonrecurrent, short-term assistance, e.g., child care during applicant job search, may be treated as nonassistance.
- **Assistance:** Child care provided to nonemployed persons, i.e., for ongoing participation in education, training, or other work activities that are not considered “employment” is considered assistance, even if the family is not receiving any other form of TANF assistance.

As a practical matter, when child care “assistance” is provided to a family receiving other federally-funded TANF assistance, treating the child care as assistance does not impact time limits, work requirements or data collection requirements since the family is already subject to such requirements. However, the receipt of TANF-funded child care assistance does have significance for purposes of child support assignment and distribution rules. The family is already required to cooperate with child support and make an assignment of its TANF assistance. However, when a family receiving TANF assistance also receives TANF-funded child care assistance:

- The TANF-funded child care assistance impacts the amount of the family’s child support assignment, since under the TANF statute, the child support assignment is up to the amount of assistance provided to the family each month.
- The TANF-funded child care assistance may or may not affect the distribution of current support. HHS has determined that the state must pay to the family the amount of current support which exceeds the amount of assistance paid to the family. If the family receives its child care assistance in the form of a voucher or contracted slot, the child care would not be considered paid to the family, but if the family receives the child care through direct cash payment or reimbursement, the child care would be considered paid to the family. For example, suppose Ms. Smith receives a \$300 TANF grant, and also receives TANF-funded child care assistance valued at \$300. If the child care is in the form of voucher or contracted slot, any current support paid in excess of \$300 must be paid to Ms. Smith. If the child care is provided in the form of direct payment to Ms. Smith or reimbursement, then the amount of TANF assistance paid to the family is considered to be \$600, and any current support falling below \$600 is retained by the state and shared with the federal government (though the state is free to choose to provide to the family the state share of retained support).

If the state provides child care assistance through vouchers or contracted slots, the increase in the amount of assignment will likely have little practical significance to the family while the family receives TANF assistance. It could matter when the state collects support through intercepting an income tax refund, in which case the state can retain the refund up to the amount of the assigned support. After the family leaves TANF assistance, under the applicable distribution rules as of October 1, 2000, child support collected must first be used to provide current support to the family, then to satisfy any post-assistance arrears to the family, then to satisfy any pre-assistance arrears owed to the family, and only then to satisfy unreimbursed assistance to the state. Thus, as a practical matter, in many instances, the increase in the amount of assignment will have little or no direct effect on the family, but it will be impossible to know which families this is the case for at the time of assignment. The principal effect, then, will be to increase administrative complexity.

Note that a state might also consider using TANF funds to provide child care assistance to nonemployed persons who are not receiving other TANF assistance, but this is likely be an unattractive option, because it would mean that the family would become a part of the TANF

caseload for purposes of time limits, work and participation requirements, data collection requirements, and child support assignment requirements.

Given these considerations affecting child care, it is unfortunate that HHS has drawn these assistance/nonassistance distinctions. It would have been far simpler to treat child care as nonassistance, and that approach would have been fully consistent with saying that assistance is that which is intended to meet basic needs. A state may be able to reduce the situations where the complexity arises by treating short-term child care for TANF recipients as falling within the nonrecurrent, short-term exclusion. Otherwise, it will be best for the family if the state transfers, rather than directly spends TANF funds when seeking to provide child care assistance to the nonemployed.

In some states, there has been interest in using TANF funds to pay for part of the cost of a state pre-Kindergarten or Head Start-like program. The regulations do not define “child care,” but if such a program is considered child care, it is probably not feasible to use TANF funds directly for such expenditures, since it would be necessary to determine the employment status of each family, and to impose TANF requirements (time limits, work requirements, child support assignment, data collection) on each non-employed family. A state might consider whether it would be reasonable to treat a program of early education in which a child’s participation did not turn on the parent’s employment status or need for child care as an “early education program” rather than as child care; it would appear that like other education programs, an early education program would not fall within the definition of assistance.

### 3. Separate State Programs

**In Brief:** Proposed rules had provided that states using MOE funds to operate separate state programs could be at greater risk of having TANF penalties imposed. Final rules eliminate this elevated risk of penalties. HHS will collect information about such programs, and will use it for specific purposes (caseload reduction credit, high performance bonus, ranking state work programs), but the risk of penalties is now gone. As a result, it now becomes much easier for states to use MOE funds to design such programs in instances where TANF requirements are inappropriate for accomplishing the state’s policy goals, e.g., expanding access to education, addressing special needs of families with severe barriers to employment, advancing a child support assurance initiative.

**Background and Regulatory Approach:** Under the TANF statute, each state is required to meet a maintenance of effort (MOE) obligation each year in order to qualify for its full block grant. The MOE obligation is not a requirement to spend state money in the TANF Program; rather, it is a requirement that the state must spend a specified amount of money on a range of low-income family assistance and services in order to avoid receiving a TANF penalty. The state may choose to satisfy its MOE obligation by spending state funds in the TANF Program, but can

also choose to make some or all of its MOE expenditures in a “separate state program,” i.e., a state program that does not receive TANF funds. If families are “assisted” in a separate state program, that assistance is not subject to TANF time limits, work participation requirements, and child support assignment requirements, though a state is, of course, free to impose appropriate state policies.

HHS had been fearful that states would use separate state programs to undercut TANF goals and requirements. Under proposed regulations, HHS would have (among other things) restricted penalty relief available to a state if HHS concluded that the state had implemented a separate state program with the intent (or in some instances, the effect) of circumventing TANF work participation requirements or requirements to share child support collections with the federal government. The proposed rules would have also imposed detailed reporting requirements on separate state programs and provided that HHS would examine a state’s use of separate state programs in determining whether the state qualified for a high-performance bonus, and in determining the extent of a caseload’s decline when calculating the state’s required participation rate. The HHS approach to separate state programs was sharply criticized by numerous commentators, who had emphasized both that states were intended to have broad flexibility in use of MOE funds, and that there was not evidence that states were not taking seriously the goals of TANF.

In final regulations, HHS has taken a substantially modified approach to the issue of separate state programs:

- **No elevated risk of penalties:** HHS has dropped the proposed policies that would have restricted the availability of penalty relief for states that operate separate state programs. The existence of a separate state program will not be a factor in determining the availability of penalty relief. 64 Fed. Reg. 17729. As a result, a state will not increase its risk of having a TANF penalty imposed by implementing a separate state program.
- **Required and Optional State Reporting:** HHS has retained the requirement that a state wishing to qualify for the caseload reduction credit<sup>5</sup> or the high performance bonus will be required to report disaggregated case data on families receiving assistance in separate state programs. 45 C.F.R. §265.3(d). However, this requirement will only be applicable in those instances where the benefits or services in the separate state program fall within the TANF definition of assistance, and (as noted above) the scope of that definition has been substantially narrowed. In addition, states will be required to report descriptive information about their separate state programs (i.e., who is eligible, what are the services

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<sup>5</sup> The caseload reduction credit can result in reduction of a state’s required TANF participation rates, with the reduction based on the extent to which the state’s caseload has fallen since FY 95 for reasons other than changes in eligibility rules. For more detail, see pp. 30-32.

and activities) and to report information on aggregate spending in the programs. 45 C.F.R. §265.9(c).

- **Use of information for caseload reduction credit, high performance bonus, ranking of states:** HHS indicates that it will review state-reported and other data to monitor the nature of the programs, determine the extent to which cases are being shifted to separate state programs, and to determine whether such efforts have an adverse effect on work participation rates or the federal share of child support collections. With this information, HHS indicates that it will be better able to assess state claims for the caseload reduction credit and the high performance bonus, and to decide whether a state's policies should affect its ranking among states in success of their work efforts. 64 Fed. Reg. 17729.
- **No significant policy change without notice:** HHS characterizes its strategy as gathering information, monitoring developments and keeping options open regarding future actions, but HHS indicates it will not put any significant policy change into effect without appropriate prior consultation with States, Congress and other interested parties. 64 Fed. Reg. 17730.

**Analysis:** The revised HHS policy should reduce or eliminate the chilling effect that has discouraged many states from exercising the flexibility to design and implement separate state programs with MOE funds. The elevated risk of penalties has now been eliminated. In our view, it is not unreasonable for HHS to collect information to determine how separate state programs are being designed and implemented and to use that information for the specified purposes and to determine whether a further policy response is needed, but it is important for states to recognize that HHS expresses that there will not be a significant change in policy without prior notice and opportunity for consultation.

Given the change in the definition of assistance, when would a state still have reason for designing a separate state program? The principal areas will involve situations where the state wishes to provide a benefit that falls within the TANF definition of "assistance" but for which one or more of the TANF "assistance" requirements are inappropriate. For example, food assistance still falls within the definition of assistance, so a state wishing to design a food program for immigrant families ineligible for food stamps would still wish to use a separate state program design. A state wishing to design a program of access to postsecondary education for poor families (such as Maine's Parents as Scholars Program) may find it helpful to structure that program as a separate state program not subject to TANF participation rate requirements. A state wishing to design a child support assurance program, in which families with child support orders are guaranteed that a child support payment each month will not fall below a state-determined minimum, may find it easier to design such a program outside of TANF "assistance" requirements.

Also, for immigrant families, even in those cases where a TANF benefit does not fall within the definition of “assistance,” a state may still wish to implement a separate state program for those immigrants who are ineligible for federally-funded non-assistance. It appears possible that, just as a state may segregate state from federal funds when providing assistance, e.g., the state might take the same approach in providing segregated state funds to provide a particular nonassistance benefit to immigrants ineligible for such assistance. Alternatively, a state could create a separate state program for immigrants who are ineligible for federal nonassistance.

#### 4. Allowable TANF Spending

**In Brief:** Final rules clarify that some TANF spending is limited to “needy” families and parents, and other TANF spending is not; that for spending limited to the “needy,” a state must use income eligibility guidelines but may use different guidelines for different services and activities; and that states have broad discretion in setting the guidelines for determining need.

**Background and Regulatory Approach:** Under the TANF statute, there are three ways in which a state may permissibly spend TANF funds.

- First, the state may transfer a limited amount of funds to the Child Care and Development Block Grant and/or Title XX.<sup>6</sup>
- Second, unless prohibited, a state may spend TANF funds in any manner “reasonably calculated” to accomplish the statutory purposes of TANF. The four purposes are to:
  - (1) provide assistance to needy families so that the children may be cared for in their homes or in the homes of relatives;
  - (2) end the dependency of needy parents on government benefits by promoting job preparation, work, and marriage;
  - (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
  - (4) encourage the formation and maintenance of two-parent families. 42 U.S.C. §601(a); 45 C.F.R. §260.20.
- Third, unless prohibited, a state may spend TANF funds in any manner that was authorized under AFDC, the JOBS Program, the Emergency Assistance Program, or the IV-A Child Care Programs on September 30, 1995, or at state option, August 21, 1996.

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<sup>6</sup> The maximum amount transferrable is 30% of the state’s TANF grant. Not more than 10% of the state’s grant may be transferred to Title XX, and as of FY 2001, not more than 4.25% may be transferred to Title XX.

As states have implemented TANF, numerous questions about allowable spending have arisen. Key guidance that emerges from final regulations and the regulatory preamble includes the following:

- **Penalties amounts and administrative cap calculated after transfers:** If a state transfers funds to CCDBG and/or Title XX, any TANF penalties, and the 15% TANF administration cap, apply against the remaining adjusted state TANF grant after transfer. 45 C.F.R. §260.20, 64 Fed. Reg. 17814.
- **Restriction on use of carryover funds for transfers:** Since carryover funds may only be used to provide “assistance” and its attendant administrative costs, a state may not transfer carryover funds from previous years to CCDBG or Title XX on or after the effective date of the final regulations, October 1, 1999. 64 Fed. Reg. 17840-41.
- **Allowable spending under first purpose of TANF not limited by definition of assistance:** The first purpose of TANF is to “provide assistance” to needy families. However, allowable spending under this purpose is not limited to spending that falls within the TANF definition of assistance. 45 C.F.R. §260.31(c)(2). For example, HHS expressly notes that “family preservation services, such as parenting training or counseling, and some forms of transitional assistance, could help ensure that parents may care for their children in their own home (purpose 1).” 64 Fed. Reg. 17822.
- **Determining “need”:** Spending under the first purpose of TANF must be for needy families with children. HHS indicates that “needy” must be defined based on financial eligibility, i.e., an income limit, and may but is not required to also use a resource limit. 64 Fed. Reg. 17825. States have broad discretion in establishing a definition of “needy” and HHS declines to impose a limit, but notes that the maximum income level for those funds transferred to Title XX is for families with children with incomes below 200% of poverty, and then expresses the hope that “States will target their resources in ways that help needy families and support the goals of the program.” 64 Fed. Reg. 17826.
- **Different eligibility standards permitted:** In determining financial eligibility, a state may have different TANF income (and if applicable, resource) guidelines for different services and activities. This point is made more explicitly in the context of MOE spending, but is also applicable to TANF spending. See, e.g., 64 Fed. Reg. 17762 (recognizing that a state might use different need standards for transitional payments than for other forms of TANF assistance).
- **Requirement that child live with relative:** Spending under the first purpose of TANF must be for families with children. A child must reside in the home or be temporarily absent, and must be residing with a parent or caretaker relative. 64 Fed. Reg. 17822. So

long as the child-relative requirement is met, a state is free to include other persons in the home as members of the family for TANF purposes. 64 Fed. Reg. 17817. The state may not include other persons who do not reside in the home, except for noncustodial parents, whom the state may choose to include as members of the child's family. 64 Fed. Reg. 17823.<sup>7</sup>

- **Noncustodial parents:** HHS indicates that a state may choose to include noncustodial parents in the TANF eligibility unit, and to provide assistance and nonassistance to such noncustodial parents. 64 Fed. Reg. 17823. The preamble also indicates that a state electing to do so may, though is not required to, treat a family in which a noncustodial parent is receiving TANF assistance as a two-parent family for purposes of TANF participation rates. 64 Fed. Reg. 17774.<sup>8</sup>
- **Foster care/juvenile justice:** A state may spend TANF funds on foster care or juvenile justice costs only if such costs were authorized in the state's Emergency Assistance plan on September 30, 1995, or at state option, August 21, 1996. 64 Fed. Reg. 17839-40. A state cannot spend TANF funds for foster care or juvenile justice costs by asserting that such expenditures are reasonably calculated to accomplish the first purpose of TANF, i.e., providing assistance to needy families so that children may be cared for in their own homes or homes of relatives. 64 Fed. Reg. 17762.
- **Expenditures for non-needy persons:** The first and second purposes of TANF refer to "needy families" or "needy parents." Expenditures under the third and fourth purposes -- reducing out of wedlock pregnancies and encouraging the formation and maintenance of two-parent families - are not limited to expenditures for needy families. An ambiguously worded sentence in the preamble says that the state need not determine financial eligibility (need) for services or benefits that do not meet the definition of assistance. 64 Fed. Reg. 17825. Read in context, this language appears to mean that when services or benefits are justified based on the third or fourth purposes of TANF, the determination of eligibility must be based on objective criteria but not necessarily financial criteria.<sup>9</sup>

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<sup>7</sup> The restriction on including persons not in the home is worded as applicable to MOE spending, but the reasoning would seem to make it equally applicable to TANF spending.

<sup>8</sup> The preamble contains much confusing language concerning the circumstances under which a state may extend TANF services to noncustodial parents, and the consequences of doing so. CLASP intends to issue a more detailed analysis of these issues in the near future.

<sup>9</sup> We believe that any other reading of this language would be inconsistent with the TANF statute. Expenditures under the first and second purposes of TANF are clearly limited to "needy" families and parents, whether for assistance or nonassistance.



- **Medical services:** States are prohibited from spending federal TANF funds for medical services, except pre-pregnancy family planning services. 64 Fed. Reg. 17830, 17840. (A state may spend segregated state funds within TANF, or state funds in a separate state program for medical services for eligible families, and have such expenditures count toward MOE if otherwise allowable. 64 Fed. Reg. 17820.) HHS discusses the medical services prohibition, but declines to provide a definition of medical services “in order to give States the maximum flexibility to provide services needed by recipients – within the constraints of the statute.” 64 Fed. Reg. 17841.

**Analysis:** The regulatory and preamble language addresses many, but not all, questions that have arisen concerning allowable TANF spending. For example, it is now clear that a state’s allowable spending under the first purpose of TANF is not limited to spending that falls within the TANF definition of assistance. However, it is not clear what definition does apply in determining allowable spending under the first purpose. Absent a federal definition, it appears that the permissibility of a state’s expenditures under the first purpose will be based on a standard of what a reasonable person would consider to fall within the first purpose.

Another question that has arisen is whether a state can use TANF funds for education and training activities for needy children or for other youth development activities. Absent a definition of “assistance” for the first purpose, it would seem reasonable for a state to consider such activities permissible under several alternative bases. First, the state might consider such services to be assistance because they help needy families with children. Second, a state might conclude that under the second purpose of TANF (i.e., ending the dependence of needy parents on government benefits by promoting job preparation, work and marriage), those expenditures which are designed to prevent needy children from becoming needy parents are reasonable. Third, in at least some circumstances, such expenditures might be considered reasonable as a means of pregnancy prevention, thus meeting the third purpose of TANF.

Under final rules, a state may spend TANF funds to provide assistance to needy noncustodial parents by treating those parents as part of an eligible family. It would also appear reasonable for a state to provide “nonassistance” to a needy noncustodial parent, by treating such expenditures as reasonably calculated to accomplish the second purpose of TANF, i.e., ending the dependence of needy parents by promoting job preparation and work. Such expenditures would be limited to “needy” noncustodial parents, but would seem to offer a means of providing such services without needing to include the noncustodial parent in the TANF assistance unit. Note, however, that HHS has apparently concluded that a state may only provide “assistance” to a noncustodial parent by including the noncustodial parent as part of an eligible family.

## 5. Maintenance of Effort

**In Brief:** Under final regulations, states have broad flexibility to count expenditures for a range of low income services and assistance toward MOE. While MOE expenditures are limited to those for “needy families,” a state may set its eligibility levels above the eligibility level for TANF cash assistance. MOE expenditures for programs that existed in FY 95 are subject to a “new spending test,” and we believe that HHS has implemented that test in a manner inconsistent with the TANF statute.

**Background and Regulatory Approach:** In the TANF structure, a state must meet a maintenance of effort (MOE) obligation each year to avoid a TANF penalty. Broadly, the MOE provisions of the law require that a state must meet the required spending level by spending for certain allowable purposes; expenditures must be for “eligible families,” and spending must satisfy the “new spending test” and not be otherwise excludable. Proposed rules had not addressed many questions about how to interpret the statutory requirements, and in a number of instances, final regulations or preamble language address these questions. The regulations or preamble indicate that:

- **Eligibility for 75% level:** A state must meet an 80% MOE level unless the state satisfies TANF participation rates, in which case the required spending drops to 75%. The regulations clarify that the determination of whether the state has met TANF participation rates is based on the adjusted rates, taking into consideration the caseload reduction credit. The regulations also confirm that a state must affirmatively meet the rates to qualify for the 75% spending level; the mere fact that a state avoids a penalty (based on reasonable cause or corrective compliance) is not sufficient. 45 C.F.R. §263.1(a)(2),(3).
- **“Eligible families:”** MOE expenditures must be for “eligible families.” The regulations provide that such a family must be “eligible for TANF assistance” (or be a family that would be eligible but for time limits or restrictions on immigrant eligibility) and that a family must “be financially eligible according to the appropriate income and resource (when applicable) standards established by the state and contained in its TANF plan. 45 C.F.R. §263.2(b)(1),(3). As discussed, *infra*, at pp. 21-22, it is not entirely clear what is meant by this language, though it appears that HHS envisions that a family that satisfies the financial eligibility criteria for MOE contained in the state’s TANF plan may be considered “eligible for TANF assistance” for MOE purposes.
- **Determining Need:** While some TANF spending may be for non-needy families, all MOE spending must be for needy families (including needy pregnant women). 64 Fed. Reg. 17825. In determining need, preamble language clarifies that a state may choose whether to impose a resource test, but that the determination of need must involve an income test. States have broad flexibility in setting the income level, and HHS expressly rejects

imposing a federal maximum income level at this time. 64 Fed. Reg. 17825-26. The state's eligibility levels must be specified in the TANF Plan. 45 C.F.R. §263.2(b)(3).

- **Defining “family” and “child:”** Preamble language states that a state may use its TANF definition of “family” for MOE purposes, and may either use the TANF definition of “child” or some other definition applicable under state law. 64 Fed. Reg. 17817.
- **Allowable Purposes:** The preamble says that for an expenditure to count toward MOE, the expenditure must be reasonably calculated to accomplish a purpose of TANF. 64 Fed. Reg. 17819-20.<sup>10</sup>
- **Expenditures for public education:** Expenditures for education can count toward MOE, but the TANF statute provides that such expenses may not be for educational activities generally available to other residents of the state. The regulations specify that this means that in order to count, such expenditures may not be generally available to other residents of the State without cost and without regard to income. 45 C.F.R. §263.4(a)(2).
- **Some allowable TANF expenditures do not count toward MOE:** The final regulations clarify two points that flow directly from the TANF statute, but which have sometimes not been understood. First, the category of TANF expenditures which are only permissible because previously authorized under a state's former AFDC, Supportive Services, or Emergency Assistance Plans are not countable toward MOE; for example, even if a state can spend TANF funds for juvenile justice because previously authorized, that authorization does not extend to MOE. 64 Fed. Reg. 17820-21. Second, since MOE expenditures must be for needy families, an expenditure for the non-needy cannot count toward MOE even if it is an allowable TANF expenditure; for example, services to reduce out of wedlock pregnancies may be provided to the non-needy with TANF funds, but only those services for needy families could count toward MOE. 64 Fed. Reg. 17825.
- **New Spending Test:** To count toward MOE, expenditures must meet a “new spending test.” As discussed, *infra*, at pp. 22-23, we believe HHS has misstated the new spending

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<sup>10</sup> We believe this requirement is not authorized by the TANF statute, though it is unclear whether it will have much practical significance. Under the statute, there are a set of specified allowable MOE purposes (cash assistance; child care assistance; education, job training and work, and attendant administrative costs), and then a residual category of any other expenditures reasonably calculated to accomplish a purpose of TANF. Thus, the “reasonably calculated” provision is an additional category of allowable expenditure, rather than an element that must be satisfied in every case. As a practical matter, there may be few if any instances where this issue arises, but in instances where a question arises concerning whether an MOE expense is reasonably calculated to accomplish a TANF purpose, states should keep this issue in mind.

test, but under the regulations, HHS states that if a current State or local program also operated in FY 95, then:

- If expenditures in the program would have been previously authorized and allowable under the former AFDC, JOBS, Emergency Assistance, Child Care for AFDC recipients, At-Risk Child Care, or Transitional Child Care Programs, then all otherwise countable expenditures can count in their entirety. 45 C.F.R. §263.5(a). A working poor families child care program which was funded in part with At-Risk funds might be an example of such a program.
- If expenditures in the program would not have been previously authorized and allowable under the former AFDC, JOBS, Emergency Assistance, Child Care for AFDC recipients, At-Risk Child Care, or Transitional Child Care Programs, then countable expenditures are limited to the amount by which countable current fiscal year expenditures for eligible families exceed total state expenditures in the program in FY 95. 45 C.F.R. §263.5(b). A refundable state earned income tax credit might be an example of such a program.

**Analysis:** The MOE provisions of the TANF statute can sometimes be confusing, because allowable MOE spending can be broader than allowable TANF spending in some ways and narrower in other ways. It can be broader because TANF prohibitions do not apply to MOE spending and because a state can structure MOE spending (through separate state programs) in a manner in which rules affecting “TANF assistance” do not apply to MOE-funded assistance. At the same time, MOE spending can be more restrictive than TANF spending because all MOE expenditures must be for needy families, and because those TANF expenditures allowable as “previously authorized” do not count toward MOE unless they can be justified on some other basis.

A key aspect of MOE flexibility flows from the fact that a state may use income eligibility standards for MOE purposes which are higher than those which apply to TANF cash income eligibility. For example, consider a state in which the income eligibility level for TANF cash assistance is 75% of the poverty line. That state might still structure its eligibility rules for MOE-funded assistance to count a set of expenditures for programs such as child care, or incumbent worker training, or a child support assurance program for families with incomes below 150% or 200% of poverty.

A number of questions have arisen about how a state determines when a family is “financially eligible” for MOE purposes. Under final regulations, in order to count expenditures for a family toward MOE, the family must “be financially eligible according to the appropriate income and resource (when applicable) standards established by the State and contained in its TANF plan.”

45 C.F.R. §263.2(b)(3).<sup>11</sup> The family must also be “eligible for TANF assistance.” The requirement that families be eligible for TANF assistance (or would be eligible but for time limits and immigrant restrictions) has a non-financial component, i.e., the family must include a child residing with a parent or caretaker relative (or a pregnant woman) and must be a family to which the state could provide federally-funded or state-funded TANF assistance. However, the requirement that families be “eligible for TANF assistance” does not require that the families actually receive TANF assistance, and does not appear to add an additional financial requirement beyond the requirement that the state specify in its TANF plan the income and resource (when applicable) standards used for MOE purposes. The preamble explains:

Section 409(a)(7)(B)(IV) of the Act indicates that an eligible family is a family who is or would be eligible (as provided in this section) for assistance under the State program funded under this part. The State's TANF program is the State program funded under this part. Thus, there is a statutory link between MOE and the State's TANF program. However, that link merely requires that an eligible family is or would be eligible for TANF assistance. It does not require that eligible family members must necessarily receive TANF cash assistance or any other benefit or services through the TANF program....

[T]he statute defines MOE expenditures as those made “with respect to eligible families.” Thus, it clearly links MOE expenditures to eligible families. An eligible family is a family who is or would be eligible for assistance under the State's TANF program. A family may not receive “assistance” under the State's TANF program unless the family is needy. We interpreted the term “needy” for TANF and MOE purposes to mean financial deprivation, i.e., lacking adequate income and resources. We continue to believe this is the most appropriate interpretation and decline to expand the scope of the definition of needy. Hence, for basic MOE purposes, eligible families are those who are financially eligible according to the State's applicable income and resource criteria.

64 Fed. Reg. 17825. The HHS interpretation appears to mean that a state can, for example, specify in its TANF plan that for TANF and MOE purposes, eligibility for a refundable earned income tax credit is limited to families under 200% of poverty. Then, even if no family receives a refundable earned income tax credit under the TANF Program, the state may still count toward MOE the state's expenditures for refundable earned income tax credits for families with incomes below 200% of poverty. Under the HHS interpretation, the key point is that a state specifies the financial eligibility criteria that the state will use for MOE purposes by articulating those criteria in the state's TANF plan.

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<sup>11</sup> Note that this language is different from the language in proposed regulations, which had said that to be an eligible family, the family must “[b]e financially eligible according to the TANF income and resource standards established by the State under its TANF plan.” [Proposed] 45 C.F.R. §273.2(b)(3), 62 Fed. Reg. 62193 (November 20, 1997).

Therefore, even if cash assistance eligibility is limited in a state, the state can still satisfy its MOE obligation through creation of broader-based programs of support for low income families. There is also a risk, however, that states could manipulate this provision as a means of shifting resources from the poorest families to families with substantially higher incomes, and it will be important for states to ensure that MOE remains focused on addressing needs of low-income families.

In calculating a state's MOE obligations, the final regulations purport to implement the "new spending test" for programs that were operating in FY 95 in a manner that seems inconsistent with the statutory language and intent of the TANF statute. There is a two-part test under the new spending regulation, and we believe that both parts are stated erroneously. One of the errors makes it easier for states to meet MOE obligations, and one makes it harder, but both appear wrong.

The new spending test was intended to deal with those situations where states had existing state programs at the time TANF was enacted. For example, a state might have been operating a General Assistance for Families program or a state-funded job training program that provided services for low-income families. MOE obligations were set based on state spending for IV-A matching programs, not overall state spending for low-income assistance. While the drafters of TANF wanted states to have flexibility in satisfying MOE requirements, there was also a concern that states should not be permitted to simply search through the state budget to find existing programs, count those programs toward MOE, and withdraw other funding from low-income assistance. Thus, the general principle established was that if a state program existed in FY 95, a state should be allowed to count toward MOE only those expenditures in the program in excess of the FY 95 level. The exception, however, was in those cases where a state program involved state funds matching federal IV-A funds in FY 95. Those state funds were part of the base for determining state MOE obligations, so it was recognized that state expenditures up to the level matching federal funds in FY 95 should be countable toward MOE. Based on these principles, the new spending test, with admittedly difficult language, was enacted, providing an exclusion from MOE as follows:

**EXCLUSION OF TRANSFERS FROM OTHER STATE AND LOCAL PROGRAMS-**

Such term does not include expenditures under any State or local program during a fiscal year, except to the extent that--

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

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

Section 409(a)(7)(B)(i)(II).

In the above statutory language, the (bb) language expressly limits the counting of expenditures from the FY 95 level to the extent to which the state “is entitled to a payment” with respect to the expenditures, i.e., the extent to which the state qualified for state match. In contrast, HHS says that if expenditures in the program “would have been previously authorized and allowable” then all expenditures in the program may count.

An example can illustrate the difference between the statute and HHS regulations. Suppose a state was operating a working poor child care program in FY 95, with \$2 million of state funds matching \$2 million of federal funds, and an additional \$5 million of state funds, i.e., a total of \$7 million in state funds. Now suppose that in FY 99, the state has \$4 million of state funds in the program. Under the statute (in our view) the state could count the first \$2 million of state funds, because that amount represented the amount matching federal funds in FY 95. Then, the state could not count the remaining state funds, because they are not at a level exceeding FY 95 spending. However, under the final regulations, since some expenditures in the program would have been allowable and authorized, the state would be permitted to count the entire \$4 million in state funds toward MOE, and (potentially) withdraw other funds from low income assistance, even though state spending in the program has actually fallen since FY 95. We believe this is inconsistent with the language and intent of the new spending test.

In addition, we believe HHS also misapplies the new spending test in relation to programs in which expenditures were not previously authorized and allowable in FY 95. For such programs, HHS says that a state must compare current year expenditures for eligible families to total expenditures in the program (rather than expenditures for eligible families) in FY 95. For example, suppose the state has a state-funded job training program, which spent \$5 million in FY 95, of which \$2 million was for low income families. Now suppose that in FY 2000, the state is still spending \$5 million, but \$4 million is for eligible families. Though spending for eligible families has increased by \$2 million, HHS would not allow that spending to count toward MOE, because spending for eligible families in FY 2000 does not exceed total spending in FY 95. We believe this is a misreading of the statute and difficult to justify on policy grounds.

Since HHS’ application of the new spending test appears inconsistent with the TANF statute, we hope HHS will correct its regulations before their effective date. If HHS does not do so, then a state adversely affected by the regulatory construction may consider challenging it in the context of an MOE penalty; it is unclear whether a group outside of state government would have the legal standing to challenge the part of the regulation which inappropriately makes it easier for states to meet MOE obligations.

## 6. TANF, MOE and Taxes

**In Brief:** Final regulations provide that a state may spend TANF funds, and may count toward MOE, its expenditures for a refundable Earned Income Tax Credit or other refundable tax credit,

i.e., the portion of a tax credit that provides a payment to a family in excess of the family's tax liability. Only the portion for "needy families" is countable, but a state has broad discretion in setting its definition of needy families.

**Background and Regulatory Approach:** Proposed regulations had indicated that a state could count state expenditures on a state earned income tax credit toward MOE, and specified that only those cash payments actually sent to eligible families were countable. Numerous questions arose as to when expenditures for a state EITC or for other state tax-related costs were and were not allowable.

Final regulations clarify that a state may count expenditures for the refundable component of a state earned income tax credit toward MOE. 64 Fed. Reg. 17828. In addition, a state may choose to use TANF funds to pay for the refundable component of a state EITC. 45 C.F.R. §260.33. The refundable component of an EITC is not necessarily the amount that a family receives in a tax refund. Rather, it is the amount provided to the family in excess of the family's tax liability before application of the EITC. 45 C.F.R. §260.33(b)(2). For example, suppose Ms. Smith had paid \$1000 in state income taxes, and receives a \$1500 refund. The refundable component of her refund would be \$500.

Similarly, a state may treat the refundable component of other state or local tax credits as a TANF expense or count it toward MOE, applying the same principle: the state may count the amount of the credit that exceeds the taxpayer's liability before application of the credit. 45 C.F.R. §260.33(b)(3).

Note that the part of a refundable EITC (or other tax credit) that may be countable for TANF purposes is limited to that provided to families eligible for TANF assistance, i.e., needy families with children. Similarly, the part of the refundable EITC (or other tax credit) countable toward MOE is the part that is for "eligible families." In addition, for MOE purposes, a state may only count those expenditures in excess of FY 95 expenditures for the refundable EITC, i.e., the state must compare current year expenditures for the refundable EITC for eligible families to total expenditures for the refundable EITC in FY 95, and only count the difference. 45 C.F.R. §263.5(b).

Final regulations explicitly state that a refundable EITC is excluded from the definition of assistance. 45 C.F.R. 260.31(b)(4). It is unclear whether the same exclusion would apply to other refundable tax credits, and unclear whether it depends on the nature of the tax credit. In discussing the EITC exclusion, HHS expressly notes that: "We provide an exclusion for refundable earned income tax credits because we consider them a work support rather than basic income support. They normally serve to compensate low-income working families for some of the tax-related costs of employment. Thus, they more closely resemble work supports than traditional welfare payments." 64 Fed. Reg. 17763. At the same time, when provided, the EITC clearly



need not be used for work expenses, and can be used for a family's basic needs, but is still excluded from the definition of assistance. There are practical administrative reasons why an exclusion of other refundable tax credit would seem sensible, but a state considering this question should review the preamble language at 64 Fed. Reg. 17763.

**Analysis:** Some states had wanted to count tax credits or tax reductions toward MOE obligations even when such credits or reductions only reduced a family's tax liability. We believe that the HHS result is consistent with the statutory requirement that MOE involve "expenditures." In addition, the result reflects a reasonable policy balancing, in allowing states to count toward TANF and MOE spending those efforts that use the tax system to transfer income to needy families, while not allowing states to simply treat tax reductions as TANF or MOE spending.

## 7. Waivers

**In Brief:** The law specifies that if a state had an approved waiver in effect on August 22, 1996 and the state elects to continue the waiver, any TANF requirements that are inconsistent with the waiver will not apply to the state until the expiration of its waiver. The final regulations create a framework in which if one or more "technical waivers" were granted relating to work participation or time limits, HHS will view that entire component of the state's program as potentially inconsistent with TANF, including the unwaived AFDC elements that were part of that component. To the extent that any of the policies included in the component (whether waived or unwaived) have continued in their original form or a modified form making them more consistent with TANF policy, they can form the basis for the component that will be certified under the final rule. If any of the policies have been dropped in favor of TANF policy, the rules do not allow the state to go back to the original waiver policy. If all of the specific AFDC waiver provisions - "technical waivers" - have been dropped, then no claim of inconsistency can now be made.

**Background and Regulatory Approach:** At the time the 1996 welfare law was enacted, many states were in the midst of implementing state-based welfare reform initiatives through the waiver process under Section 1115 of the Social Security Act. Section 415 of the 1996 law provides that if a state had an approved waiver under Section 1115 in effect on August 22, 1996 and the state elects to continue the waiver, any TANF requirements that are inconsistent with the waiver will not apply to the state until the expiration of its waiver. This was intended to provide an opportunity for states to continue waiver projects that had begun prior to enactment of the PRWORA and to encourage continuation of the evaluations of those projects to develop a knowledge base concerning the impact of various state-designed reform initiatives. The provisions of the proposed regulations concerning waivers were viewed by many as discouraging rather than encouraging states to continue waivers because the proposal would have restricted the circumstances under which a waiver provision would be determined to be inconsistent with a TANF requirement, e.g., waivers regarding exemptions from JOBS participation would not under any circumstances be considered inconsistent with the TANF work participation exemption

policy, restricted the extent to which unwaived but related AFDC provisions that were part of the waiver project would be considered to be part of the waiver for inconsistency purposes, and restricted access to penalty relief when states chose to continue inconsistent waivers.

Final regulations take a significantly different approach to waivers, addressing some but not all concerns that had been raised by the proposed regulations.

Two definitional questions are addressed by the regulations: 1) what constitutes a “waiver”? and 2) what is included within the term “inconsistent”? The term waiver is defined to mean the work participation or time limit component of a state’s waiver, including both the provisions of the component that are inconsistent with the AFDC provisions and for which the waiver was needed, referred to as “technical waivers,” as well as the associated, unwaived AFDC provisions that were part of the work participation or time limit component. 45 C.F.R. §260.71(b). This is a significant change from the definition included in the proposed regulation that would have allowed unwaived AFDC provisions to be considered part of the waiver only if HHS determined that such provisions were necessary and integral to achieve the policy goal of the state’s waiver.

The term inconsistent is defined to mean that complying with TANF work participation, sanction, or time limit requirements would “necessitate that a State change a policy reflected in an approved waiver.” 45 C.F.R. §260.71(a). Although this definition is identical to the provision included in the proposed regulations, HHS has substantially modified the specific examples of the types of waiver policies that may be considered inconsistent. (These examples are discussed below.)

In order for a state to take advantage of the opportunity afforded by Section 415, the regulations specify that:

- the waiver policy must be consistent with the originally approved waiver with regard to both the geographic coverage and the types of families or cases to which the waiver policies were applied;
- the waiver policies must have been applied on a continuous basis, except that the state may have modified the policies, provided the modifications had the effect of making the policies more consistent with the relevant TANF requirement; and
- an inconsistency will not apply beyond the earlier of the expiration of the waiver, or the date the state discontinued the particular waiver policy in question.

45 C.F.R. §260.72.

The final regulations thus create a framework in which if one or more technical waivers were granted relating to work participation or time limits, HHS will view that entire component of the state’s program as potentially inconsistent with TANF, including the unwaived AFDC elements that were part of that component. To the extent that any of the policies included in the component (whether waived or unwaived) have continued in their original form or a modified form making them more consistent with TANF policy, they can form the basis for the component

that will be certified under the final rule. If any of the policies have been dropped in favor of TANF policy, the state will not be allowed to go back to the original waiver policy. Finally, if all of the specific AFDC waiver provisions - "technical waivers" - have been dropped, then no claim of inconsistency can now be made.

**Work Participation:** In the area of work participation requirements, in order to qualify for consideration as inconsistent, a waiver must include one or more technical waivers concerning:

- allowable activities;
- required hours of participation;
- exemptions from participation; or
- sanctions.

45 C.F.R. §260.73

If a state's waiver program included a technical waiver of provisions regarding allowable activities, for example to include participation in substance or alcohol abuse treatment as an allowable activity, or to modify exemption or sanction policies, then all of the other policies included in the state's work participation component, including other allowable activities, exemptions from participation, minimum required hours of participation, and sanction policies will be considered to be part of the work participation component, even though these other policies were the AFDC and JOBS policies for which no waiver was needed. From this base of policies that formed the original waiver component, the state will need to determine the extent to which those policies may have been retained in their original form, modified to bring them more closely in line with TANF policies, or dropped in favor of the relevant TANF policy. For example, in the example noted above, the state may have dropped some of the various JOBS exemptions that were originally part of the policy, but continued others, perhaps the exemption for individuals needed in the home to care for a disabled child. That exemption would continue to be part of the state's work component under the waiver. Alternatively, the state may have modified a policy, for example by changing the exemption based on the age of the family's youngest child from 3 years, the standard under JOBS, to two years. The latter policy is different from the original, but is not consistent with TANF policy on the issue, so that modified policy could be continued as part of the work component for waiver inconsistency purposes. So long as the state has retained in either the original or a modified form at least one policy for which a technical waiver was originally required, all of the policies that relate to the work participation component and have been continuously applied in their original or a modified form as described above can be included. In addition, after the waiver component has been certified to HHS, further future modifications are allowable consistent with the principles outlined above.

A state asserting an inconsistency with regard to its work participation component will still be required to meet the applicable participation rate. However, the rate the state has achieved will be calculated using the rules for countable activities, hours of participation and exemptions as in effect under the state's waiver component.

Finally, the provisions of the proposed regulations that would have restricted access to penalty relief if a state chose to continue an inconsistent waiver have been dropped.

**Time Limits:** In the area of time limits, the regulations limit the types of time limits for which an inconsistency can be found to those which result in the termination or reduction of cash assistance to the family due solely to the passage of time. Thus, no inconsistency will be recognized for those states that had waivers requiring a family member to participate in work after a time limit, and no inconsistency will be recognized for states that had developed state-based waiver initiatives without any time limit. The regulations specify that potential areas of inconsistency include:

- exemption policies;
- extension policies;
- whether the policy terminated assistance to the entire family, or to certain family members, e.g. a parent.

45 C.F.R. §260.74.

If a state has a time limit waiver inconsistent with TANF, then until the waiver expires, the state's performance will be measured against the time limit component of its waiver rather than the time limit provisions of the Act in determining whether a state is subject to a penalty for failing to comply with the Act's time limit policy. In addition, the provisions that would have restricted access to penalty relief if a state chose to continue an inconsistent waiver have been dropped.

**Post-Waiver TANF Clock:** Once the state's waiver has expired, 45 C.F.R. §260.74 provides that the following rules apply for calculating the time that a family has accrued while the waiver is in effect for purposes of the 60-month TANF time limit:

**Months that will count:**

- If a state's time limit policy terminates assistance to the entire family when it reaches the time limit, all months in which a family that is not exempt under the waiver policy receives assistance paid for in whole or in part with federal TANF funds will count against the 60-month time limit.

**Months that will not count:**

- Months during which the family is exempt from a full-family time limit will not count against the 60-month TANF time limit;
- If a state's time limit policy terminates assistance after the time limit only to the adult(s) in the family, none of the months will count, whether the adult(s) were exempt or not (since the state's policy was never to deny assistance to the entire family based on the time limit.)

**States With Ongoing Evaluations:** Although states are not required to continue evaluations, in a state which has continued an impact evaluation of its waiver project, members of both the experimental and control groups may continue to be subject to all of the AFDC rules in effect when the waiver was implemented, except as those rules have been modified by the waiver.

**Analysis:** A number of the waivers in effect of August 1996 have expired, and among the states with waivers that have not yet expired, the extent to which waivers have continued, either in their original or modified form is unclear. Thus, while the practical value of HHS guidance at this late date may be limited, the final regulations provide a fairly expansive interpretation of Section 415 that may allow a number of states to continue inconsistent policies without fear of penalty for failing to satisfy TANF requirements. However, there are a few areas in which HHS has inappropriately restricted states' ability to pursue waiver policies. HHS has unnecessarily restricted the definition of time limits for inconsistency purposes to those time limit policies that eliminate or reduce assistance, while failing to acknowledge that waiver projects that rejected time limits altogether, or structured work program time limits, (individual required to participate in some type of work program when time limit is reached) are also inconsistent with the TANF time limit policy. HHS' rationale, that it cannot recognize work program time limits as affecting its implementation of the time limit penalty (64 Fed. Reg. 17738) is a technical rationale for what amounts to a policy decision, e.g. that states with waivers that rejected termination or reduction time limits must now comply with the TANF time limit policies, even though they are clearly inconsistent with those states' waiver policy concerning time limits.

The final regulations' requirement that a state's waiver policy must have been in effect continuously, in either its original or modified form, unfairly penalizes states that may have dropped waiver provisions because of the more restrictive policies described in the proposed regulations. There seems to be little policy basis for refusing to allow states to reinstate waiver policies for the remaining duration of the original waiver approval.

Finally, the final regulations appear to overlook the fact that there are other policy areas in which approved waivers and TANF policies are inconsistent, and it is uncertain how such waivers will be treated. For example, at least one state had implemented a waiver to provide cash assistance under AFDC to families that consisted of a non-relative legal guardian rather than a relative caretaker. However, the TANF definition of a "family" requires that a family consist of a relative caring for a child. The omission of this and perhaps other waiver policies may flow from the fact that the regulations are designed around specific penalties that are included in the Act, while the federal sanction that would apply to a state that provided assistance to a family that included a legal guardian rather than a relative would presumably be the penalty for the misexpenditure of TANF funds. Nonetheless, the purpose of Section 415 should not be viewed through the narrow lens of specific TANF penalties. Rather, the issue to consider is whether any TANF restriction is inconsistent with a waiver policy, without regard to whether or not there is a specifically applicable penalty.

## 8. The Caseload Reduction Credit

**In Brief:** A state's TANF participation rates may be adjusted downward to the extent a state's caseload has fallen for reasons other than eligibility rules changes. A state wishing to claim the caseload reduction credit will be required to submit a report identifying eligibility rules changes since 1995, including more stringent income and resource limits, time limits, full-family sanctions and other new requirements that deny assistance for failure to comply with work, child support or behavioral requirements. The public must have an opportunity to comment, but HHS will accept the state's analysis unless it is implausible. For purposes of calculating a state's two-parent participation rate, a state may make use of a caseload reduction credit based on either the two-parent or overall caseload decline.

**Background and Regulatory Approach:** Under the TANF Caseload Reduction Credit (CRC), a state's required participation rates each year can be adjusted downward if the state's caseload has fallen below FY 95 levels. More specifically, the law sets maximum required participation rates, and then provides that a state's required participation rate for a year shall be adjusted downward, subtracting from the required maximum rate the number of percentage points representing the percentage decline in state caseload between FY 95 and the prior year; however, the law also provides that a state will not be credited with caseload decline attributable to changes in state or federal eligibility rules. For example, if a state had no relevant changes in eligibility rules, the maximum FY 99 required all-families participation is 35%, but if a state's caseload had fallen by 30% from FY 95 to FY 98, the required participation rate would be adjusted downward to 5%.

Key decisions under the final regulations include:

- For purposes of determining a state's required two-parent participation rate, the state may claim the benefit of either the credit available based on the decline in the state's two-parent caseload, or the credit available based on the decline in the state's overall caseload. 45 C.F.R. §261.40(a)(2).
- A state wishing to claim the credit must submit a report to HHS including a listing of eligibility rules changes, an estimate of the positive or negative effect of each change, an overall estimate of the net impact on caseload, and an estimated caseload reduction credit. The report must include a certification that the state has provided the public an appropriate opportunity to comment on the estimates and methodology, and must include a summary of public comments. HHS will accept the information and estimates provided by the State unless they are "implausible." 45 C.F.R. §261.41.

- Changes in eligibility rules include more stringent income and resource limitations, time limits, full family sanctions, and other new requirements that deny families assistance when an individual does not comply with work requirements, cooperate with child support, or fulfill other behavioral requirements. Changes in eligibility rules do not include enforcement mechanisms or procedural requirements that are used to enforce existing eligibility criteria (e.g., fingerprinting or other verification techniques) to the extent that such mechanisms or requirements identify or deter families otherwise ineligible under existing rules. 45 C.F.R. §261.42.
- In calculating a state's caseload, the state must include cases receiving assistance in separate State programs (using the TANF regulatory definition of assistance) except for those cases which: (1) overlap with, or duplicate, cases in the TANF caseload; or (2) are cases made ineligible for Federal benefits by the 1996 welfare law that are receiving only State-funded cash assistance, nutrition assistance, or other benefits. 45 C.F.R. §261.42(b).
- The caseload reduction credit will be calculated based on net decreases in caseload, so that states that have implemented eligibility rules that expand eligibility are not disadvantaged. 45 C.F.R. §261.42(a)(1). HHS offers the following example: Suppose a state's time-limit policies resulted in 1000 families losing eligibility each year, but expansions in two-parent family eligibility resulted in 300 families gaining eligibility. Only the net reduction of 700 families would be excluded in calculating the state's caseload reduction credit. 64 Fed. Reg. 17786.

**Analysis:** The caseload reduction credit has been viewed by many people as a provision that has had mixed effects on TANF implementation: on the one hand, it has probably intensified the emphasis by many states on caseload reduction, in which caseload reduction itself is considered a virtue, even if it may result in needy families losing or being denied assistance. On the other hand, the ability of states to lower their effective participation rates has meant (or could mean) that states need not narrowly focus on which activities could toward federal participation rates, and could result in more flexibility in linking families with needed employment services.

The new rules will make it easier for some states to meet (or come closer to meeting) two-parent participation requirements. As to the all-families rate, the authority to measure the credit based on "net" decreases will assist those states that have implemented expansions of program eligibility. More generally, though, it is otherwise difficult to know whether the overall effect will be to make it "easier" or "harder" for states to meet the all-families rate. Under proposed rules, it had been unclear how HHS would treat such factors as implementation of full-family sanctions or imposition of new applicant job search mandates. In our view, these are surely eligibility rules changes, and it was appropriate to treat them as such. It will undoubtedly be difficult for states to develop methodologies to calculate the effects of the array of eligibility changes, but given the

wording of the federal statute, there was no straightforward way to develop a methodology. The approach taken by HHS -- asking states to estimate the effects and describe their methodology, assuring an opportunity for public comment, and then deferring to state estimates unless they are implausible -- would seem a reasonable balance. The estimates of the effects of eligibility changes may also provide a valuable public policy tool within states in efforts to consider the relative impacts of new policies.

## 9. Sanctions for Refusing to Engage in Work

**In Brief:** Final regulations clarify that a state may be penalized both for failing to impose sanctions on families who refuse to engage in work and for erroneously imposing sanctions on families. The final regulations also clarify that in determining whether to reduce a penalty, HHS will consider whether the state has established a control mechanism, and that an essential element of a control mechanism is a recipient's right to a fair hearing to contest the imposition of a sanction.

**Background and Regulatory Approach:** Under Section 407(e) of the 1996 welfare law, a state is required to reduce the assistance otherwise payable to a family "pro rata," or more if the state wishes - including termination of all assistance to the family - if an individual in the family refuses to engage in work as required under Section 407. States have the discretion to define good cause criteria under which an individual can be excused from a participation or work requirement without penalty. The only specific protection mandated by the statute concerns situations where an individual refuses to work because of the unavailability of child care for a child under the age of 6. (See pp. 34-37, *infra*.) The Act also provides (Section 408(c)) that any penalty against a recipient under the preceding provision "...shall not be construed to be a reduction in any wage paid to the individual." Finally, states are subject to a penalty if they fail to properly implement the penalty requirement of Section 407(e). (Section 409(a)(14)). Regulations in this area are significant because there has been much uncertainty about the meaning of "pro rata" as used in Section 407(e), and because of concerns that in order to avoid a penalty for failing to properly implement the penalty provision, states might attempt to err on the side of "over-sanctioning."

The final regulations make it clear that there will be no federally mandated definition of the term pro rata, but rather states are free to implement the provision in any reasonable manner. 64 Fed. Reg. 17768, 45 C.F.R. §261.14. The final regulations also make clear, as did the proposed regulations, that states are free to impose penalties greater than a pro rata reduction, including termination of the grant; and that states have complete discretion in establishing good cause criteria that will excuse a failure or refusal to participate. In maintaining this latter position, HHS rejected requests to require that at a minimum good cause would include the violation of a participants' rights under other applicable employment or civil rights law protections.



45 C.F.R. §261.16, principally designed to restate the provision of Section 408(c) of the Act, specifies that when a family's grant is reduced because of a family member's failure or refusal to comply with any program requirement, such a reduction "shall not be construed to be a reduction in any wage paid to the individual." These statutory and regulatory provisions are designed in light of the applicability of the Fair Labor Standards Act to certain work program participants. In situations where the federal minimum wage must be paid, and the benefits to a family are reduced because of a penalty, the benefit reduction would likely require a reduction in the individual's hours of work to avoid a minimum wage violation. This provision is intended to override such a result by stipulating that the reduced benefits not be viewed as reduced wages. The ultimate validity of this effort remains to be seen. One clarification that was made from the proposed regulation was deletion of a provision that seemed to suggest that a state could not reduce required hours of work to a sanctioned individual even if it wished to, either because it believes that such a reduction is an appropriate response under applicable minimum wage requirements, or for any other reason. The final regulation contains no language suggesting that states are not free to reduce hours if they wish to do so.

Two points that are made in the preamble, but not explicitly set forth in the regulation concerning the penalty against states for failing to comply with the sanction requirement of Section 407(e), (45 C.F.R. §§261.54 and 261.55) are especially important. In response to commentors who were concerned about the possibility that a state might "over-sanction" to avoid a penalty, HHS indicates that:

"...it is important to understand that this penalty applies both to a state's failure to sanction when it should have and to its imposition of a sanction when it should not have imposed one."

64 Fed.Reg. 17793, see also 64 Fed. Reg. 17794.

45 C.F.R. §261.55 is designed to articulate the criteria HHS will consider in determining to what extent the penalty for a violation will be reduced. The two specified criteria include whether the state has established a control mechanism to ensure that grants are appropriately reduced consistent with Section 407(e), and the percentage of cases for which grants have not been appropriately reduced. In response to comments requesting clarification of what should be included in a "control mechanism" HHS indicates in the Preamble that a control mechanism:

"...should ensure that recipients are informed of their rights to fair hearings and advised of the process for invoking that right. In addition, we encourage states to consider adding procedures to advise recipients of their rights to pursue other remedies that might be available under state and local laws."

64 Fed. Reg. 17794.

**Analysis:** The most noteworthy aspect of this set of regulations is HHS' clarification that it will consider the improper imposition of sanctions, as well as improper failure to impose sanctions, as grounds for penalizing a state and in determining a state's eligibility for a penalty reduction. How effective this step will be in reducing or eliminating improper sanctions is uncertain, particularly given the states' broad discretion in establishing good cause criteria. Nonetheless, insofar as the avoidance of federal penalties provides one of the principal incentives for state conduct in the current environment, consideration of improperly imposed sanctions can reasonably be expected to lead to more careful implementation of state sanction policies to the benefit of individual recipients.

In addition, the preamble discussion of the term "control mechanism" signals that HHS intends to use the lever of penalty reduction to attempt to ensure that states implement meaningful procedural protections to ensure that penalties against families are imposed only after a fair opportunity to contest the basis for the penalty. The Preamble discussion of control mechanisms also encourages states to advise recipients as to the full range of legal rights they may have if they believe that their treatment in a work activity has been improper or unfair. Hopefully, states will respond positively.

## 10. The Child Care Protection

**In Brief:** Final regulations establish that states must inform families of the applicable TANF protections for families who cannot comply with TANF work requirements due to lack of available child care. The regulations also add a new provision stating that "refusal to work when an acceptable form of child care is available is not protected from sanctioning." A broad reading of this new provision could be inconsistent with the protections of the TANF statute.

**Background and Regulatory Approach:** The child care protection is the TANF requirement that a state may not reduce or terminate TANF assistance when a single parent of a child under age six fails to meet TANF work requirements due to an inability to obtain needed child care for one or more of the following reasons:

- Appropriate child care within a reasonable distance from the 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.

A state may be penalized in an amount up to 5% of the state's TANF grant if the state violates this requirement. A state risking the penalty may assert "reasonable cause" for its violation and may also avoid the penalty by submitting and complying with a "corrective compliance" plan. Under proposed rules, key areas of controversy included whether HHS would require state TANF agencies to inform families of the child care protection (which was not required under the proposed regulations); and whether a family could assert the unavailability of care based on any of

the above reasons (i.e., could a family assert the protection when informal care was available, but formal care was not, or vice versa) which was not directly addressed under proposed rules.

Final regulations establish a requirement that the TANF agency must inform parents about:

- the penalty exception to the TANF work requirement, including the criteria and applicable definitions for determining whether an individual has demonstrated an inability to obtain needed child care;
- the State's process or procedures (including definitions) for determining a family's inability to obtain needed child care, and any other requirements or procedures, such as fair hearings, associated with this provision; and
- the fact that the exception does not extend the time limit for receiving Federal assistance.

45 C.F.R. §261.56(c). In addition, the regulations now provide that HHS will impose the maximum 5% penalty if a state has failed to inform families of the protection.<sup>12</sup> 45 C.F.R. §261.57(b).

The requirement that the TANF agency provide information is in addition to the requirements already applicable to the state agency that is the lead agency for purposes of implementing the Child Care and Development Block Grant. The TANF agency may or may not be the same as the CCDBG lead agency. Under CCDBG regulations, the lead CCDBG agency must certify that the CCDBG agency, either directly or through entities, will inform parents receiving TANF of the child care protection, the procedures used by the TANF agency, the applicable criteria and definitions, and the effect on TANF time limits. 45 C.F.R. §98.33(b), 63 Fed. Reg. 39987 (July 24, 1998). In addition, a state's biennial CCDBG plan must include the definitions or criteria used by the TANF agency in implementing the child care protection. 45 C.F.R. §98.33(c).

The preamble indicates that HHS will consider the following factors in determining whether a State has violated the child care protection:

- 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 "appropriate child care," "reasonable distance," "unsuitability of informal care," and "affordable child care arrangements," and informed parents of these definitions;

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<sup>12</sup> Final regulations make two additional changes affecting penalties. The final language clarifies that to avoid a penalty, the state must achieve compliance with a corrective action plan (as opposed to just having the plan approved). And, the penalty provisions are modified to provide that HHS "may" impose a reduced penalty if the State demonstrates that violations were isolated or affected a minimal number of families. (Proposed regulations had provided that HHS "will" impose a reduced penalty in that situation).

- 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 excused from work requirements due to their inability to obtain needed child care.

64 Fed. Reg. 17796.

The regulations now add a statement indicating that “refusal to work when an acceptable form of child care is available is not protected from sanctioning.” 45 C.F.R. §261.56(a)(2). It is not entirely clear what this phrase is intended to mean, but preamble language explains the basis for it:

Comment: Some commentors were concerned that the NPRM left room for a parent who wishes to use a particular type of child care that is not available to refuse appropriate available child care arrangements, without risk of a penalty. For example, they feared that a parent who wants only informal relative care, but has no relative available to provide care, could refuse affordable, suitable center-based care. States argue that this result would be contrary to Congressional intent and the goals of the Act. They urged us to make clear that refusing work under such circumstances is not protected under the child care exception to a sanction.

Response: This issue stems from an interpretation of the wording of the statute, which uses the phrase “one or more” in describing the reasons for a parent's demonstrated inability to obtain needed child care. However, we agree with the commentors that such a result would be contrary to Congressional intent, which was to protect individuals from sanction when there was no appropriate child care, not to give families a loophole to avoid work requirements. Further, such an interpretation would be contrary to the best interest of the family, because the TANF clock continues to run during such a period. Therefore, we have revised the regulatory language at Sec. 261.56 to clarify that refusing to work when an acceptable form of child care is available is not protected from sanctioning.

64 Fed. Reg. 17795-96. Note that this example suggests that a parent could not rely on the lack of informal relative care when there was “affordable, suitable center-based care.” As such, it does not address the situation where informal care is available but formal care is not, and does not address how one determines that there is “affordable, suitable center-based care.”

Final regulations do not require states to inform families about available providers, but the preamble notes that “[g]iven that child care is widely recognized as a fundamental supportive service, necessary for recipients to obtain and maintain employment, we are confident that States will adopt practices that inform recipients about available child care providers.” 64 Fed. Reg. 17795.

**Analysis:** In our view, the requirement that the TANF agency inform families about the child care protection is appropriate and important, since even though the CCDBG agency has informing responsibilities, a family that does not know about the protection might never have occasion to interact with the CCDBG agency.

The regulatory language saying that “refusal to work when an acceptable form of child care is available is not protected from sanctioning” could result in a troubling undercutting of the child care protection, though it remains unclear how this language will be interpreted by states and HHS. There may be circumstances where a particular form of child care is acceptable to the state but not to the family, and it is not appropriate to assume that when that situation arises, the family is simply looking for a loophole to evade work requirements. In preamble language, HHS says that “[t]he statute, as reflected in the NPRM, intended to give parents some choice in child care arrangements.” 64 Fed. Reg. 17796. However, the regulations and preamble now fail to explain what “some choice” is supposed to mean.

While we understand the policy concern being expressed by HHS, the approach taken to parental choice in the regulations now appears inconsistent with the plain language of the TANF statute. The TANF statute expressly states that the protection applies if a parent demonstrates an inability to obtain needed child care for “one or more” of a set of reasons, including the unavailability or unsuitability of informal child care and the unavailability of appropriate and affordable formal care. Under the plain language, if either is unavailable, the protection applies. In light of the statutory language, and repeated Congressional expression of commitment to parental choice, states should not read the new language as authorizing them to impose a mandate for informal care when a parent prefers formal care, and should not view the language as allowing them to override a parent’s choice for informal care absent some evidence that the family is seeking a loophole to avoid work requirements.

The final regulations do not indicate that HHS will review the adequacy of state procedures or definitions. This is potentially troubling, in light of preamble language indicating that the determination of whether the state has violated the protection will be based on whether the state has imposed grant reductions or terminations in violation of the definitions or criteria that the State developed regarding a parent’s “demonstrated inability” to obtain needed child care.

## 11. Family Violence Option

**In Brief:** The final regulations provide significant relief from work participation and time limit penalties when a state’s failure to comply is a result of “federally recognized” good cause domestic violence waivers. In order to get the benefit of this protection, however, states must have adopted the Family Violence Option under the Act, and satisfied requirements that every individual to whom a good cause domestic violence waiver is granted must have a service plan

developed by an individual trained in domestic violence, and each plan must be reassessed every six months.

**Background and Regulatory Approach:** Under Section 402(a)(7) of the Act, a state may include in its state plan a certification that it has adopted the Family Violence Option, which means that the state has established and is enforcing standards to:

- screen and identify individuals who are receiving assistance under TANF and who have a history of domestic violence;
- make referrals for counseling and services, while maintaining an individual's confidentiality; and
- waive any program requirement if complying with the requirements would make it more difficult to escape from domestic violence or unfairly penalize the individual in light of her past or current experience with domestic violence.

The regulatory framework developed by HHS is intended to prevent states from facing an increased risk of having a penalty imposed by virtue of having excused victims of domestic violence from various program requirements. By removing this potential disincentive, HHS intends to encourage states to take the maximum advantage offered by the FVO to protect the safety of recipients, and to provide recipients with appropriate services to address any harm they have suffered.

The proposed regulations were criticized by many commenters because: good cause waivers would have been limited to six months (although on a renewable basis), service plans were required to include work-related activities, a time limit extension under the FVO could only be granted if the individual was unable to work when the time limit was reached, and penalty relief was available to waive a participation rate penalty, but not to reduce such a penalty. Many of these and other concerns have been addressed in the final regulations.

The regulations cover three discrete areas:

- how states are to implement the FVO provisions in order to be eligible for penalty relief;
- relief from a penalty for failure to comply with work participation rates; and
- relief from a penalty for failure to comply with federal time limits.

In order to qualify for penalty relief based on waivers to the victims of domestic violence, in addition to screening, making referrals for services, and maintaining the confidentiality of individuals, all as set forth in the Act, states must, when granting a waiver:

- identify the specific program requirement(s) being waived;
- base the waiver on an individualized assessment performed by one who has been trained in domestic violence;
- redetermine the waiver no less than once every six months;

- accompany the waiver with an individual service plan developed by a person trained in domestic violence and reflecting the individualized assessment;
- design the service plan to lead to work if that is consistent with the underlying purpose of the waiver, e.g., the protection of the individual.

45 C.F.R. §260.55

Finally, to qualify for penalty relief, a state must include in its annual report to HHS information on strategies and procedures for serving victims of domestic violence, and the number of waivers granted during the year. (45 C.F.R. §265.9(b)(5))

HHS terms waivers that comply with all of these provisions “federally recognized good cause domestic violence” waivers, to distinguish them from other good cause domestic violence waivers which states are free to provide but which will not qualify a state for any of the penalty relief that is made available based on the provision of “federally recognized good cause domestic violence” waivers. Even in the absence of a certification that the state has adopted the FVO, a state is free to waive any requirement it otherwise imposes to one who is the victim of domestic violence, and may do so on any terms that it chooses. However, in order to qualify for the specified penalty relief, a state must have adopted the FVO and meet all of the other requirements noted above. In addition, states that have adopted the FVO may waive cooperation with child support enforcement by using either FVO procedures or separate child support good cause procedures.

- **Work Participation rates:** 45 C.F.R. §260.58 specifies that a state will be determined to have reasonable cause for not complying with the work participation rate for a year, and therefore have the otherwise applicable penalty waived, if the state met the applicable rate after removing cases with federally recognized good cause domestic violence waivers from the calculation. In a change from the proposed regulations, a state will also qualify for a reduction in such penalty if it met the 50% compliance threshold for a reduction after removing federally recognized good cause domestic violence waivers from the calculation. Further, HHS may take federally recognized good cause domestic violence waivers into consideration when determining if a state has achieved compliance with a corrective compliance plan regarding participation rates, or if it is making substantial progress toward achieving compliance.
- **Time Limits:** 45 C.F.R. §260.59 specifies that federally recognized good cause domestic violence waivers granted to provide assistance beyond 60 months to a family due to current or past domestic violence or a risk of future domestic violence will be considered when determining if a state qualifies for penalty relief under the time limit provision. In the proposed regulation, consideration would have been limited to individuals suffering from the effects of domestic violence at the time they reach the 60 month time limit, but not if the situation had been successfully resolved before the time limit was reached. A state will be determined to have reasonable cause for not complying with the federal time

limit requirement, and therefore have the otherwise applicable penalty waived, if, after removing families in which a member had a federally recognized good cause domestic violence waiver, the number of families receiving assistance for more than 60 months does not exceed 20%. In another change from the proposed regulation, this provision specifies that families with federally recognized good cause domestic violence waivers will not count toward the 20% cap on hardship waivers that are allowed under Section 408(a)(7). Further, HHS may take federally recognized good cause domestic violence waivers into consideration when determining if a state has achieved compliance with a corrective compliance plan, or if it is making substantial progress toward achieving compliance.

**Analysis:** The final regulations include a number of changes that could improve the availability of appropriate services and waivers from potentially dangerous activities and requirements for the victims of domestic violence, primarily by minimizing state concerns that granting waivers will increase the risk of federal penalties. If properly implemented, the waiver procedure requiring trained staff to assist in the development and implementation of appropriate service plans should prove helpful to many victims of domestic violence.

## 12. Child-Only Cases

**In Brief:** Final regulations give states broad discretion to define the circumstances in which children, but not the adult caretaker relatives with whom they live, may receive assistance and be categorized as “child-only” cases. Proposed rules that would have allowed HHS to recategorize such cases and treat them as if an adult in the family were receiving assistance have been removed.

**Background and Regulatory Approach:** Several key TANF requirements, including the work participation rates and time limits, apply to families that include an adult, or minor parent head of household, receiving assistance. Conversely, families that do not include an adult, or minor parent head of household, receiving assistance - child-only cases - are not included in the state’s TANF caseload when calculating its work participation rate, nor do the months a child-only case receives assistance partly or wholly paid for with federal TANF funds count as months for purposes of the TANF time limit. Historically, several kinds of child-only cases were common in the AFDC program. For example, non-parent caretakers had the option of being excluded from the assistance unit and receiving benefits only for the child in their care. Individuals who received SSI (whether parents or non-parent relatives) were excluded from the children’s grant. Individuals who were ineligible for some other reason such as immigration status could nonetheless receive benefits for their own, or a relative’s child. In addition, through waivers, several states implemented time limit policies which limited the amount of time an adult, but not the children, in a family could receive benefits. The effect of such time limits is that if an adult reaches the time limit and does not qualify for an extension, the adult will be removed from the grant and the case will be converted to a child-only case. Thus, in a number of instances, former state and federal



welfare rules authorized the payment of benefits for the children in a family but not the adult(s), and those rules were supported by a range of public policy goals.

In enacting TANF, Congress did not define the term “family” or give any indication of limitations on how each state might choose to define the term, or the circumstances under which assistance would be provided to the children in a family, but not the parent or caretaker relative. At the time HHS promulgated proposed regulations, the Department acknowledged that this was an area of state discretion, but indicated concerns that states might use their discretion to design policies to expand the number of child-only cases in order to reduce the number of families subject to work participation, to federal time limits, or to both. Based on these concerns, the proposed regulations specified that if HHS determined that a state had created child-only cases to avoid penalties for failing to comply with work participation or time limit policies, HHS would add the number of child-only cases back into the caseload for the purposes of determining state compliance with work participation, time limits, or both.

The final regulations drop the provisions that would authorize HHS to inquire into a state’s intent or purpose in creating categories of child-only cases. The regulations drop the proposal to add child-only cases back into a state’s caseload count for purposes of participation rates and time limits. Instead, under the final regulations, HHS will collect data on the types of cases that are converted to child-only cases. Based on this new data as well as other available data concerning child-only cases, HHS will monitor trends regarding child-only cases.<sup>13</sup>

**Analysis:** The policy toward child-only cases included in the final regulations should allow states to develop whatever policies they determine to be appropriate in this area without undue concerns about how HHS may interpret the motives for such rules, and the consequences of HHS determinations about those motives. A state will now have two options. The state can make use of child-only assistance units within its TANF Program in appropriate cases. Alternatively, the state can create a separate state program, as discussed above, to provide flexible alternatives for assisting poor children in families when states deem it to be inappropriate to impose work requirements, time limits, or both, on the adults in the family.

## Conclusion

CLASP’s preliminary analysis does not address all issues in the final TANF regulations, and, while detailed, does not address every aspect of regulatory guidance in the areas covered. Persons

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<sup>13</sup> A discussion of the term “eligible family” in the preamble, 64 Fed. Reg. 17824, suggests that if a noncustodial parent is receiving assistance, that individual would be considered part of the eligible family for purposes of the work participation rate. In a situation where the children were receiving assistance as a child-only case, and their noncustodial parent was receiving assistance as well, then the family would lose its status as a child-only case for purposes of the work participation rates.

wanting additional information may wish to refer to the CLASP web page, [www.clasp.org](http://www.clasp.org), or contact CLASP for further discussion.