

**A Detailed Summary of Key Provisions of the
Temporary Assistance for Needy Families
Block Grant of H.R. 3734**

**The Personal Responsibility and Work Opportunity
Reconciliation Act of 1996**

Mark Greenberg and Steve Savner

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INTRODUCTION

This text summarizes key provisions of the Temporary Assistance for Needy Families (TANF) Block Grant of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“the Act”). The TANF Block Grant will replace the AFDC Program. The Act makes many other changes not discussed here, affecting a range of other federal programs, including the Food Stamp Program, other nutrition programs, the Supplemental Security Income (SSI) Program, child support enforcement, and child care.

This is a detailed summary of key TANF provisions, though it still does not describe every TANF and TANF-related provision of the Act. Readers wanting less detail may wish to refer to CLASP’s **“A Brief Summary of Key Provisions of the Temporary Assistance for Needy Families Block Grant.”**

This detailed summary will be revised and expanded in the coming weeks to encompass additional issues and questions, but is being made available at this time in the hope that it can be helpful to those involved or seeking to be involved in the early decisions concerning the directions of State TANF efforts. Because we have attempted to complete this document as rapidly as possible, it is very possible that it contains errors. Any readers identifying potential errors are urged to contact us as soon as possible so that we can make appropriate corrections.

Readers should be aware of one important note concerning language. As States design their TANF Programs, it will be important to know whether particular TANF requirements and prohibitions apply only to assistance provided with federal funds, or also extend to assistance provided with state funds. The answer is frequently unclear, because the Act’s provisions often have slightly different wording, and it is not clear whether the difference in wording is supposed to imply differences in meaning. Some provisions are explicit, stating, e.g., that “a State shall not use any part of the grant” for specified purposes, but the legislation also includes references to:

- assistance under the program;
- assistance under the State program funded under this part;
- assistance under the program attributable to funds provided by the Federal Government;
- assistance under the State program funded under this part attributable to funds provided by the Federal Government.

It is unclear whether “assistance under the program” means something different from “assistance under the State program funded under this part”. It is unclear whether “assistance under the State program funded under this part” includes an individual receiving state-funded assistance whenever the phrase “attributable to funds provided by the Federal Government” is not also included. In addition, the legislation sometimes refers to “the program”, sometimes to “a program”, and sometimes to “any program;” it is unclear whether different meanings are intended. Because of this unclarity, this outline tracks the legislative language when it uses one of the above phrases (though the phrase “under this part” is treated as meaning “under the block grant.”) The issue of whether federal rules bind state funds is a significant issue under the legislation, but the unclarity in language makes it difficult to analyze how the legislation addresses the issue.

GENERAL OVERVIEW

No later than July 1, 1997, each State must begin operating a program of assistance to needy families funded under the Temporary Assistance for Needy Families (TANF) Block Grant. The legislation that enacted TANF repeals the AFDC Program, the JOBS Program and the Emergency Assistance Program.

State Plan: In order to receive its TANF grant, a State must submit a State Plan to the federal Department of Health and Human Services, and HHS must determine that the plan contains the information required by law. Generally, the plan requirements are very limited, and much of the operational detail for a State program may not be included in the State plan.

Federal Funding: Each State will receive a family assistance grant, approximately representing recent federal spending (generally, the higher of 1992-94 spending, 1994 spending, or 1995 spending) for that State for the AFDC Program, the JOBS Program, and the Emergency Assistance Program. A minority of states will receive annual 2.5% adjustments in the form of supplemental grants, but for most states, the TANF block grant amount will be frozen through FY 2002, except for any adjustments due to bonuses or penalties. Under limited circumstances, a State experiencing an economic downturn may qualify for additional federal funding through a contingency fund. A State may also be eligible for a loan, which must be repaid with interest within three years.

Maintenance of Effort: In order to receive a full family assistance grant, the State must meet a basic maintenance of effort requirement. This requires the State to continue to spend non-federal funds at no less than 80% of a "historic spending level," based on FY 94 spending; the maintenance of effort requirement is reduced to 75% for a State that meets the Act's work participation rate requirements. If the State does not maintain the required spending level, the State will risk a dollar-for-dollar reduction in its block grant funding. In order to be eligible to draw down funds from the contingency fund in an economic downturn, the State needs to maintain 100% of its historic spending level.

Permissible Expenditures: Under TANF rules, the State can spend its block grant on cash assistance, non-cash assistance, services, and administrative costs in connection with assistance to needy families with children. The State may also choose to use up to 30% of its TANF funds to operate State programs under the Child Care and Development Block Grant and the Title XX Social Services Block Grant (though not more than 1/3 of the amount so used can be used for programs under Title XX, and the funds must be spent for programs for children or their families with incomes below 200% of poverty).

No Entitlement: A key feature of the TANF structure is that individuals and families have no entitlement to assistance under the federal statute. This means that each State is free to determine which families receive assistance, and under what circumstances. While federal law prohibits states from using TANF funds to provide assistance to certain families, federal law does not require states to provide aid to any family for any period of time.

Prohibitions: The State is prohibited from using federal TANF funds to assist certain categories of

families and individuals. The most significant prohibition over time is likely to be a prohibition on using TANF funds to assist families who have received assistance for sixty months (though a State may provide exceptions for up to 20% of its caseload.) Other restrictions include a prohibition on assisting families unless the family includes a child or pregnant individual; a prohibition on assisting minor parents unless they are attending school and living at home or in an adult-supervised living arrangement (subject to limited exceptions); and a requirement to reduce or eliminate assistance to a family if an individual in the family does not cooperate with child support-related requirements without good cause.

Work Requirements: There are four distinct work requirements in relation to the TANF Block Grant. First, unless the State opts out, the State must require parents or caretakers receiving assistance who are not exempt and not engaged in work to participate in community service after having received assistance for two months. It is unclear whether there is a penalty for a State's failure to comply with this requirement. Second, the State is required to outline how it will require a parent or caretaker receiving assistance under the program to engage in work (as defined by the State) not later than the point at which the parent or caretaker has received assistance for 24 months. Again, it is unclear whether there is a penalty for a State's failure to comply with this requirement.

Two additional work requirements do have penalties if a State fails to comply without good cause. First, to avoid a penalty, the State must meet a work participation rate for all families, beginning at 25% in FY 97 and increasing to 50% in FY 2002; second, the State must meet a different work participation rate for two-parent families, with the rate set at 75% in FY 97 and 98, and 90% rate in FY 1999 and thereafter. The rules governing which activities count toward these work participation rates are detailed and complex, but have the effect of sharply limiting the circumstances in which adults can count toward the participation rate by participating in education or training program, or job search.

Child Care for Program Participants: When parents participate in required work activities, the State may, but is not required, to provide child care assistance. However, a State may not reduce or terminate a family's assistance if a single parent of a child under age six refuses to comply with work requirements based on a demonstrated inability to obtain needed child care.

Penalties: The Act contains a number of potential penalties for states. States may be penalized for misexpenditure of funds, and for failure to:

- submit a required report;
- satisfy work participation rates;
- participate in the Income and Eligibility Verification System (IEVS);
- ensure compliance with paternity establishments and child support enforcement requirements;
- timely repay a loan;
- comply with basic maintenance of effort requirements;
- substantially comply with Child Support Enforcement requirements of Part IV-D;
- comply with the five-year limit on assistance;
- comply with maintenance of effort requirements applicable to a State receiving funds from the contingency fund;
- maintain assistance to a family in which the single adult caretaker of a child under age 6 has not

- complied with work requirements due to an inability to obtain needed child care;
- expend additional state funds to replace a grant reduction resulting from a penalty.

Medicaid: In contrast with AFDC, recipients of assistance under TANF are not automatically eligible for Medicaid. However, States are required to provide Medicaid coverage for single-parent families and qualifying two-parent families with children if the families meet the income and resource eligibility guidelines that were applicable in the State's AFDC Program on July 16, 1996; the States may modify these guidelines to a limited extent.

Waivers: At the time of enactment of the Act, many states were in the midst of state-based welfare reform activities through the AFDC waiver process. The Act provides that if a State had a waiver in effect as of the date of enactment, the State can continue its waiver and will not be required to comply with provisions of the Act inconsistent with the waiver. If a State had a pending waiver as of the date of enactment, and the waiver is approved on or before July 1, 1997, that State may also not be required to comply with provisions of the Act inconsistent with the waiver, though the State will be subject to the Act's work participation rate requirements.

Effective Dates: The Act generally has an effective date of July 1, 1997. However, some states may elect early implementation. Some states may be interested in early implementation because their block grant amounts will be based on a historic spending level (i.e., the higher of the 1992-94 average, 1994, or 1995), and a number of states have had significant caseload declines since that time. Accordingly, at least initially, a number of States may receive more funding through TANF than they would qualify for based on their current AFDC caseloads. A State can elect early implementation by submitting to HHS a State plan complying with the requirements of the law.

Key Choices: Many of the most important choices facing States under TANF are not listed as formal options in the law. States must now make basic decisions about which families should be eligible to receive assistance, what should the families be expected to do in return for assistance, what should the State do to assist parents in entering or reentering the labor force, and what should be the nature of assistance for families in which parents are absent, unable to work, or unable to find employment sufficient to support a family. Each State must also make basic decisions about the nature and extent of the safety net that will be available now that States no longer have a federal responsibility to assist poor children and their families.

I. STATE PLANS

A. **In General:** To receive a block grant, a State must be an “eligible State.” An eligible State is one that has submitted a State plan within the two-year period immediately before the fiscal year that the Secretary of HHS has found includes the information required by law.¹ The role of State plans under TANF will be different from their role in the AFDC Program, because 1) the State plan provisions of the Act seek very little information from the State; 2) HHS must determine that a State’s plan is complete, but does not otherwise have authority to approve or disapprove a plan; and 3) it is not clear whether there is any consequence if a State fails to follow its State plan. The Secretary may not add State plan requirements beyond those contained in the Act, because of new limits on the Secretary’s authority (discussed in PART VIII.). Under the Act, a State plan will be comprised of an **outline** of certain information, a set of **special provisions**, and a set of **certifications**.

B. **Outline:** A State plan must include the following:

1. An outline of how the State intends to conduct a program designed to serve all political subdivisions in the State (not necessarily in a uniform manner), that provides assistance to needy families with (or expecting) children and provide parents with job preparation, work, and support services to enable them to leave the program and become self-sufficient²;
2. An outline of how the State intends to require a parent or caretaker receiving assistance under the program to engage in work (as defined by the State) once the State determines the parent or caretaker is ready to engage in work, or once the parent or caretaker has received assistance under the program for 24 months (whether or not consecutive), whichever is earlier³;
3. An outline of how the State intends to require parents and caretaker receiving assistance under the program to engage in work activities as required by the Act’s work participation rate provisions (described below)⁴;
4. An outline of how the State intends to take such reasonable steps as the State deems

¹ Most TANF provisions are contained in Sec. 103(a) of the Act, which creates a set of new provisions of the Social Security Act. Rather than repeatedly citing to Sec. 103(a), citations will be to the newly created Social Security Act sections except when indicated otherwise. The definition of “eligible State” is contained in the new Section 402(a) of the Social Security Act.

² Sec. 402(a)(1)(A)(I).

³ Sec. 402(a)(1)(A)(ii).

⁴ Sec. 402(a)(1)(A)(iii).

necessary to restrict the use and disclosure of information about individuals and families receiving assistance under the program attributable to funds provided by the Federal Government, provided that if the State establishes safeguards against use or disclosure of information about applicants or recipients, the safeguards shall not prevent the State agency administering the program from furnishing to law enforcement officers, on request, with the current address of any recipient if the officer:

- a. provides the agency with the recipient's name;
 - b. notifies the agency that the recipient is fleeing to avoid prosecution, custody or confinement for a felony, or is violating a condition of probation or parole; or has information necessary for the officer to conduct the official duties of the officer; and
 - c. The location or apprehension of the recipient is within such official duties⁵;
5. An outline of how the State intends to establish goals and take action to prevent and reduce the incidence of out-of-wedlock pregnancies, with special emphasis on teen pregnancies, and establish numerical goals for reducing the illegitimacy ratio of the State for calendar years 1996 through 2005⁶;
 6. An outline of how the State intends to conduct a program, designed to reach State and local law enforcement officials, the education system, and relevant counseling services, that provides education and training on the problem of statutory rape so that teenage pregnancy prevention programs may be expanded in scope to include men⁷.

C. Special Provisions: In addition to the outline, the State plan must include the following:

1. An indication of whether the State intends to treat families moving into the State from another State differently from other families, and if so, how the State will treat such families under the program. The Act expressly provides that a State may elect to apply to a family the rules (including benefit amounts) of the family's prior State during the first 12 months in which a family resides in the State⁸; and
2. An indication of whether the State intends to provide assistance under the program to individuals who are not citizens of the United States, and if so, include an overview of such

⁵ Sec. 402(a)(1)(A)(iv); Sec. 408(a)(9)(B).

⁶ Sec. 402(a)(1)(A)(v).

⁷ Sec. 402(a)(1)(A)(vi).

⁸ Sec. 402(a)(1)(B)(I); Sec. 404(c).

assistance.⁹

3. The document must set forth objective criteria for the delivery of benefits and the determination of eligibility and for fair and equitable treatment, including an explanation of how the State will provide opportunities for recipients who have been adversely affected to be heard in a State administrative or appeal process.¹⁰
4. No later than one year after the date of enactment of the Act, unless the State's Chief Executive Officer opts out, the State shall require a parent or caretaker receiving assistance under the program, who after receiving such assistance for two months is not exempt from work requirements and is not engaged in work, to participate in community service employment, with minimum hours per week and tasks to be determined by the State. The Act explicitly provides that this provision must be read consistent with the provision of the Act that provides that a State may not impose a penalty on a single parent of a child under age six based on failure to comply with work requirements if the parent was unable to comply due to the unavailability of child care.¹¹

D. Certifications: In the State plan, the Chief Executive Officer of the State is required to certify:

1. That the State will operate a child support enforcement program under Title IV-D of the Social Security Act;¹²
2. That the State will operate a foster care and adoption assistance program under Title IV-E of the Social Security Act, and will take such actions as are necessary to ensure that children receiving assistance under such part are eligible for Medicaid;¹³
3. Which State agency or agencies will administer and supervise the program;¹⁴
4. That local governments and private sector organizations have been consulted regarding the plan and design of welfare services in the State so that services are provided in a manner

⁹ Sec. 402(a)(1)(B)(ii); provisions relating to restrictions on assistance to immigrants are contained in Title IV of the Act.

¹⁰ Sec. 402(a)(1)(B)(iii).

¹¹ Sec. 402(a)(1)(B)(iv); Sec. 407(e)(2).

¹² Sec. 402(a)(2).

¹³ Sec. 402(a)(3).

¹⁴ Sec. 402(a)(4).

appropriate to local populations; and that local governments and private sector organizations have had at least 45 days to submit comment on the plan and design of such services;¹⁵

5. That the State will provide equitable access to assistance “under the State program funded under this part attributable to funds provided by the Federal government” for Indians who are members of tribes not operating under a tribal family assistance plan;¹⁶ and
 6. That the State has established and is enforcing standards and procedures to ensure against program fraud and abuse, including standards and procedures concerning nepotism, conflicts of interest among individual responsible for the administration and supervision of the State program, kickbacks and the use of political patronage.¹⁷
- E. Optional Certification Relating to Domestic Violence:** At State option, the Chief Executive Officer of the State may certify that the State has established and is enforcing standards and procedures to screen and identify individuals with a history of domestic violence, refer such individuals to counseling and supportive services, and waive other requirements such as time limits, residency requirements, child support cooperation requirements, and family cap provisions in cases where compliance with such requirements would make it more difficult for individuals receiving assistance to escape domestic violence or unfairly penalize such individuals who are or have been or are at risk of domestic violence.¹⁸
- F. Specification of Policy on Aid When Child Absent:** The Act provides that a State may not use any part of its grant to provide assistance for a minor child who has been, or is expected by a parent or other caretaker relative to be, absent from the home for 45 days, or at state option a period of no less than 30 days and no more than 180 days. The State may establish good cause exceptions. The State must specify the period of time elected and any good cause exceptions in its State plan.¹⁹
- G. Process If HHS Determines State Plan Is Not Complete:** It is clear that HHS does not have the authority to “approve” or “disapprove” a State plan, but HHS does have the responsibility to determine that the plan provides the information required by law. Presumably, if a State plan fails to provide information required by law, e.g., it does not set forth objective criteria for the delivery of benefits and the determination of eligibility and for fair and equitable treatment, the

¹⁵ Sec. 402(a)(4).

¹⁶ Sec. 402(a)(5).

¹⁷ Sec. 402(a)(6).

¹⁸ Sec. 402(a)(7).

¹⁹ Sec. 408(a)(10).

plan will be legally insufficient. However, it is not yet clear what process will be followed if the federal and state governments disagree about the legal sufficiency of the plan or what time frames apply. It appears that it is envisioned that the Secretary will notify the State of an adverse action, and that the State can appeal initially to HHS' Departmental Appeals Board, and ultimately to the courts.²⁰

It is not yet clear whether the federal government can take any action if a State fails to comply with its State plan.

The Act does not explicitly provide for a State to file amendments to its State plan. However, since the Act defines an "eligible State" as one that submitted a State plan during the 2-year period immediately prior to the fiscal year, the Act appears to envision that State plans will be updated, or new plans submitted, on a biennial basis.

- H. **Effect of Submitting State Plan:** While the TANF provisions The submission of a plan by a State that accelerates the effective date of implementation is deemed to constitute the State's acceptance of the grant amount and formula for calculating it, and is deemed to constitute the termination of any entitlement of any individual or family to benefits or services under the State AFDC program.²¹
- I. **Summary of Plan Available to Public:** The State must make available to the public a summary of any plan submitted.²²

²⁰ While the Act makes no explicit reference to appealing from a decision that a State plan is not complete, the newly-created Section 410 of the Social Security Act provides for proceedings before the Departmental Appeals Board in cases where the Secretary takes "adverse action, including any action with respect to the State plan submitted under Section 402...."

²¹ Sec. 116(b)(1)(C).

²² Sec. 402(b).

II. FUNDING

- A. **In General:** Each eligible State will receive a **family assistance grant**, in an amount intended to reflect recent federal spending for AFDC and a set of AFDC-related programs. A minority of states will qualify for annual adjustments of up to 2.5% each year from FY 98 through FY 2001 (referred to as **supplemental grants**). To receive its full family assistance grant, a State will be required to meet a basic **maintenance of effort** requirement. Otherwise, state shares will be frozen through FY 2002, except for adjustments due to other **penalties, bonuses for “high performance states,” bonuses for reducing out-of-wedlock births**, or to qualifying for additional funding through the **contingency fund**. A State may also, under limited circumstances, qualify for a **loan**. Penalties are discussed in PART V.; the remaining provisions affecting the amount of a State’s funding are all discussed in this section.
- B. **Family Assistance Grant:** Each State’s family assistance grant will be based on the State’s recent federal spending for AFDC, AFDC Administration, JOBS, and Emergency Assistance. A State will receive the higher of:
1. the State’s average annual federal spending for the affected programs for FY 92-94;
 2. FY 94 federal spending, plus 85% of the amount (if any) by which amounts paid to the State for Emergency Assistance for FY 95 exceeded the amounts paid to the State for Emergency Assistance for FY 94, if the Secretary approved an Emergency Assistance State plan amendment during FY 94 or FY 95; or
 3. FY 95 spending, calculated as the year’s JOBS spending, plus 4/3 of the amount from the first three quarters of FY 95 for AFDC, AFDC Administration, and Emergency Assistance.²³
- C. **Supplemental Grants:** A minority of states will qualify for supplemental grants from FY 98 through FY 2001.²⁴ Generally, qualifying states will be those whose welfare spending per poor person (as calculated under the Act’s formula) was very low in relation to the national average; those whose welfare spending per poor person was low and who also had population growth in excess of the national average; and those whose population growth from April 1990 to July 1994 exceeded 10%. If funds are sufficient, qualifying states will receive annual adjustments of 2.5%; however, a total of \$800 million is made available for such adjustments, and supplemental grants will be adjusted downward if necessary to fit within the available funding.
1. **States Projected to Receive Supplemental Grants:** According to Congressional Research Service estimates, the following 20 States will be eligible for supplemental grants: Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Louisiana, Mississippi,

²³ The process for determining the amount of a State’s family assistance grant is contained in Sec. 403(a)(1).

²⁴ Sec. 403(a)(3).

Montana, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, Utah, Virginia, and Wyoming.

- D. **Bonuses for “High Performance” States:** A total of \$1 billion (averaging \$200 million per year) is authorized for bonuses to “high performance” states for fiscal years 1999 through 2003. The Act does not specify how the high performance states will be determined. Instead, the Act directs the Secretary of HHS, within one year of enactment of the legislation, to develop a formula in consultation with the National Governors’ Association and American Public Welfare Association which will measure State performance in achieving the goals of TANF (described in PART III.). A State’s bonus cannot exceed 5% of its family assistance grant.²⁵
- E. **Out-of-Wedlock Reduction Bonus:** In each of the years FY 99 through FY 2002, up to five states may qualify for increased funding based on having demonstrated a net decrease in out-of-wedlock births. To be an eligible State, the State must demonstrate that:
1. The number of out-of-wedlock births that occurred in the State in the most recent 2-year period for which information is available decreased compared to the number of such births that occurred during the previous 2-year period;
 2. The magnitude of the decrease for the State for the period is not exceeded by the magnitude of the corresponding decrease for 5 or more other states for the period (i.e., that if more than five States have had a decline in out-of-wedlock births, the State is one of the five with the largest decreases); and
 3. The rate of induced pregnancy terminations in the State for the fiscal year is less than the rate of induced pregnancy terminations in the State for fiscal year 1995.

If there are five eligible States for a bonus year, the amount of the grant will be \$20 million; if there are fewer than five eligible States, the amount of the grant will be \$25 million.²⁶

- F. **Basic Maintenance of Effort Requirement:** A State’s grant will be reduced on a dollar-for-dollar basis if the State fails to spend 80% of its “historic State expenditures” for “qualified State expenditures;” the required maintenance of effort amount is reduced to 75% if the State satisfies the Act’s work participation rate requirements.²⁷ The reduction (if any) will occur for FY 1998, 1999, 2000, 2001, 2002, or 2003 for failure to maintain historic State expenditures in the prior fiscal year. Note that this is not a prohibition on dropping below the 80% (or 75%) spending level; it is only a reduction in block grant funds to the extent a State does so.

²⁵ Sec. 403(a)(4).

²⁶ Sec. 403(a)(2).

²⁷ Sec. 409(a)(7).

Maintenance of effort requirements are somewhat complex because 1) the definitions of “historic State expenditures” and “qualified State expenditures” are important and detailed; 2) the basic maintenance of effort requirement for purposes of avoiding a penalty is different from the maintenance of effort requirement for purposes of qualifying for contingency funds under the Act; and 3) a different maintenance of effort requirement applies to the Act’s child care funding. This section explains the Act’s “basic” maintenance of effort requirement, and then briefly explains how it differs from contingency fund and child care maintenance of effort requirements.

1. **Historic State Expenditures:** To avoid a penalty, a State must spend at least 80% (or if the State satisfies the work participation rate requirements, 75%) of its historic State expenditure level. A State’s level of “historic State expenditures” is defined²⁸ as the lesser of two amounts:

- a. **Non-federal FY 94 Expenditures:** The State’s non-federal FY 94 expenditures under Titles IV-A (AFDC benefits, AFDC Administration, Emergency Assistance, AFDC Child Care, Transitional Child Care, At-Risk Child Care) and IV-F (JOBS); or
- b. **Lesser Amount:** The amount that bears the same ratio to the non-federal FY 94 expenditure level as the combination of the State’s family assistance grant plus the amount of federal funding to the State for IV-A Child Care in FY 94 bears to the total federal payments to the State for FY 94 under Section 403 of the Social Security Act. This might occur if the State’s family assistance grant is reduced due to penalties or if Congress subsequently decides to reduce the amounts of State family assistance grants.

Example: Suppose total federal payments to the State for FY 94 under Section 403 (i.e., for AFDC, AFDC Administration, JOBS, Emergency Assistance, and IV-A Child Care) equaled \$50 million, and the combination of the State’s family assistance grant plus FY 94 federal IV-A child care spending for a year equals \$45 million. The State’s historic expenditure level is then defined as 90% of the non-federal FY 94 expenditure level (i.e., the ratio of \$45 million to \$50 million).

- c. **Reduction for Individuals Covered by Tribal Family Assistance Plan:** The amount determined for a State’s historic State expenditures will be reduced by the amount of expenditures on behalf of individuals covered by an approved tribal family assistance plan, as determined by the Secretary.

2. **Qualified State Expenditures:** To avoid a reduction in the State’s family assistance grant, a State must spend non-federal funds at a level not less than 80% (or 75%, if the State meets the Act’s work participation rate requirements) of a State’s historic State expenditures for

²⁸ Sec. 409(a)(7)(B)(iii).

“qualified State expenditures.” “Qualified State expenditures” are defined as the total “expenditures by the State” during a fiscal year, under all State programs, with respect to “eligible families” for any or all of the following:

- Cash assistance;
- Child care assistance;
- Educational activities designed to increase self-sufficiency, job training, and work, excluding any expenditure for public education in the State except expenditures which involve the provision of services or assistance to a member of an eligible family which is not generally available to persons who are not members of an eligible family;
- Administrative costs in connection with the above expenditures, but only to the extent that such costs do not exceed 15% of the total amount of qualified State expenditures for the fiscal year; and
- Any other use of funds not prohibited by the block grant and reasonably calculated to accomplish the purposes of the block grant.²⁹

a. **Eligible Families:** “Eligible families” are defined as families eligible for assistance under the State program funded under the block grant, and families who would be eligible for such assistance but for the sixty-month time limit provision and a federal restriction on assistance to immigrants.³⁰

(1) **Status of Spending on Immigrants Unclear:** As to immigrants, the Act says that eligible families including those who would be eligible for assistance but for the application of Section 402 of the Act. This may be a technical drafting error, because Section 402 gives States an option to provide assistance to qualified aliens in their TANF programs; in contrast, Section 403 imposes a five-year ineligibility period for qualified aliens who enter the United States on or after the date of enactment. Thus, Section 403, not Section 402, imposes a bar on TANF assistance for immigrants. If Congress intended that a State’s expenditure of its own funds on qualified aliens could count toward maintenance of effort purposes, the maintenance provision of the Act should have referred to Section 403 rather than Section 402. At present, the issue needs clarification.

b. **“Expenditures by the State”:** To satisfy the basic maintenance of effort requirement, a State must make “expenditures by the State” at the applicable level (75% or 80% of historic State expenditures) for qualified State expenditures for eligible families. However, certain spending, even if for a qualified purpose for an eligible family, will not count as an “expenditure by the State.”

(1) **Expenditures that are Not “Expenditures by the State”:** The term “expenditures

²⁹ Sec. 409(a)(7)(B)(I).

³⁰ Sec. 409(a)(7)(B)(I)(III).

by the State” does not include, and the State may not count:

- (a) Expenditures of federal funds;
- (b) Expenditures of State funds under the Medicaid program;
- (c) Any State funds used to match federal funds;
- (d) Any State Funds expended as a condition of receiving federal funds under federal programs other than under Part IV-A. However, “expenditures by the State” do include expenditures by a State for child care in a fiscal year up to the amount of State expenditures in FY 94 or FY 95 (whichever is greater) that equal the non-Federal share for the previously-existing IV-A child care programs (i.e., AFDC Child Care, Transitional Child Care, At-Risk Child Care).³¹

(2) **Transfers from Other State and Local Programs Not Included:** Qualified State expenditures also do not include expenditures under any State or local program during a fiscal year, except to the extent that:

- (a) the expenditures exceed the amount expended under the State or local program in the fiscal year most recently ending before the date of enactment of the Act, i.e., FY 95; or
- (b) the State is entitled to a payment under former Section 403 (as in effect before enactment of the Act) with respect to such expenditures, i.e., they qualified as non-federal funds that matched federal funds under the prior programs (i.e., AFDC, JOBS, Emergency Assistance and IV-A Child Care Programs).³²

The apparent intent of this provision is to clarify that a State may count those State and local expenditures up to the level that was used to match federal funds in FY 94, and may count new levels of effort under other State and local programs. The State cannot, however, simply seek to identify other pre-existing State or local programs for the allowable purposes (e.g., cash assistance, child care assistance, etc.) and claim those expenses as part of maintenance of effort. For example, if the State was operating a General Assistance for Families Program, the State could count the level of expenditure only to the extent that the level exceeded the expenditure level in the fiscal year before date of enactment of this Act. The Act defines a “fiscal year” as any 12 month period ending on September 30 of a calendar year.³³

3. **Relationship of Basic Maintenance of Effort Requirement to Contingency Fund**

Maintenance of Effort Requirement: The basic maintenance of effort requirement is that a State must maintain spending for “qualified State expenditures” at or above 80% of the level of the State’s historic State expenditure level, i.e., typically the FY 94 non-federal expenditure level for the aggregate of AFDC, AFDC Administration, the JOBS Program,

³¹ Sec. 409(a)(7)(B)(iv).

³² Sec. 409(a)(7)(B)(I)(II).

³³ Sec. 419(3).

Emergency Assistance, and the IV-A Child Care Programs (AFDC Child Care, Transitional Child Care, At-Risk Child Care). The State may maintain this aggregate level under “all State programs”, i.e., the State is not required to only count spending for its programs under the block grant. In contrast, a State wishing to access the contingency fund (discussed below) will need to ensure that its expenditures “under the State program funded under this part” are not less than 100% of the State’s historic State expenditure level.³⁴ For example, spending under a General Assistance for Families Program can count toward the basic maintenance of effort requirement (if it is spending in excess of the expenditure level in the fiscal year before enactment of the Act), but may not count toward contingency fund maintenance unless it is somehow construed to be an expenditure “under the State program funded under this part.”

4. **Relationship of Basic Maintenance of Effort Requirement to Child Care Maintenance of Effort Requirements:** Under the child care provisions of the Act, a State can receive its basic Child Care and Development Block Grant allocation, and receive funding representing the State’s historic level of IV-A child care funding (the higher of the FY 92-94 average, FY 94 or FY 95 federal spending) without any State maintenance of effort requirement. However, if the State wishes to draw down additional federal funds above its historic level of federal spending, the State must maintain 100% of its FY 94 or FY 95 level of non-federal spending (whichever is higher) for child care that the State had used to match its historic level of federal spending.³⁵ In contrast, the basic maintenance of effort requirement is an aggregate total for a range of programs. Accordingly, a State could satisfy the basic maintenance of effort requirement even though it was spending less than its historic non-federal spending level for child care, so long as the State satisfied the 80% aggregate requirement. If the State elects this approach, however, it will be unable to draw down the additional federal child care funding that is available above the State’s historic level.

G. **Contingency Fund:** A total of \$2 billion will be available for the period from FY 97 through FY 2001 in a “Contingency Fund for State Welfare Programs.”³⁶ Generally, a State can qualify for the fund by meeting either an unemployment trigger or a food stamp trigger, and by having maintained 100% of its historic State expenditures during the fiscal year in which contingency funds are sought. A qualifying State can receive matching funds of up to 20% of its family assistance grant if sufficient funds are available, though the State can receive no more than 1/12 of 20% of its family assistance grant in any month.

1. **Eligible State:** A State will be eligible to draw on available funds from the Contingency Fund if the State meets the definition of “needy State” and has maintained at least 100% of

³⁴ Sec. 403(b)(4); Sec. 409(a)(10).

³⁵ Sec. 603(a) of the Act creates a new Sec. 418 of the Social Security Act.

³⁶ Sec. 403(b).

its historic State expenditures:

- a. **Needy State:** To be a needy State, the State must satisfy either an unemployment trigger or a food stamp trigger³⁷:
 - (1) **Unemployment Trigger:** The average rate of total unemployment in the State for the most recent 3 months equals or exceeds 6.5% and equals or exceeds 110% of the average rate for the corresponding period in either or both of the preceding two years;
 - (2) **Food Stamp Trigger:** As determined by the Secretary of Agriculture, the monthly average number of individuals participating in the Food Stamp Program in the State for the most recently concluded 3 month period for which data are available exceeds by at least 10% the monthly average number of individuals in the State that would have participated in the Food Stamp Program in the corresponding 3 month period in FY 94 (or if lower, FY 95) but for enactment of the Food Stamp and immigration provisions of the Act.
 - (3) **Qualification in Subsequent Month:** A State will continue to be an eligible State for the month after it ceases to meet the definition of a needy State.³⁸
- b. **Historic State Expenditures; Penalty for Failure to Maintain Effort:** If the Secretary of HHS subsequently determines that a State has not made expenditures for the fiscal year of at least 100% of the State's historic State expenditures under the State program funded under the block grant (excluding any amounts made available by the Federal Government), the Secretary is directed to reduce a State's grant for the next fiscal year by the total amount provided to the State from the contingency fund. This penalty may be waived if the Secretary of HHS determines that the State had reasonable cause for failure to comply with the requirement.³⁹
- c. **Reconciliation:** Apart from the maintenance of effort penalty, a State receiving contingency funds is also subject to an annual reconciliation. The rules governing this annual reconciliation depend on whether the State has also drawn down additional federal funding for child care by providing State match.⁴⁰

³⁷ Sec. 403(b)(6).

³⁸ Sec. 403(b)(5).

³⁹ Sec. 409(a)(10); Sec. 409(b).

⁴⁰ Generally, under the child care provisions of the Act, a State will qualify to receive federal funding representing its recent federal child care spending without any required State maintenance of effort for child care.

(1) **States That Have Not Drawn down Additional Federal Funding for Child**

Care: Such a State must repay the amount (if any) by which the total paid to the State in contingency funds during the fiscal year exceeds:

- (a) the State's Medicaid match rate percentage (as in effect on September 30, 1995) times the amount (if any) by which:
 - i) expenditures under the State program funded under Part IV-A, excluding any amounts made available by the Federal Government (other than contingency funds paid to and expended by the State); exceeds
 - ii) historic State expenditures (as defined for maintenance of effort purposes); multiplied by
- (b) one-twelfth times the number of months during the fiscal year for which the Secretary makes a payment to the State under this provision.⁴¹

Example: Suppose that a State had a 50-50 match rate in FY 95, and the State's historic expenditure level is \$100 million. Now suppose that in a year, the State qualifies in all months, and draws down \$5 million in contingency funds, and that the combination of the State's expenditures under the program (excluding all federal funds except the \$5 million in contingency funding) now reach \$110 million. Since 50% of (\$110 minus \$100) is \$5 million, the State owes nothing in its reconciliation.

Example: As before, the FY 95 match rate was 50%, the State's historic expenditure level is \$100 million, the State qualifies in all months, and draws down \$5 million. However, the combination of the State's expenditures under the program (excluding all federal funds except the \$5 million in contingency funding) now reaches \$108 million. Since 50% of \$108 minus \$100 is \$4 million, and the State had received \$5 million in contingency funding, the State owes \$1 million.

Example: As before, the FY 95 match rate was 50%, the State's historic expenditure level is \$100 million, the State draws down \$5 million, but only qualifies in nine months of the year. As in the first example, suppose the combination of the State's expenditures under the program (excluding all federal funds except the \$5 million in contingency funding) now reaches \$110 million. Although 50% of \$110 minus \$100 is \$5 million, this amount must be multiplied by 1/12 times the number of months the

However, additional funding for child care is available above this recent spending level; to access the additional funding, the State must both maintain effort and provide State match to access the additional funds.

⁴¹ Sec. 403(b)(4)(A)(ii).

State drew down funds (i.e., nine months), and the result is \$3.75 million. Therefore, the State now owes the federal government \$1.25 million. Note that the practical effect is that in any year where the State qualifies for less than all twelve months, the State's access to federal matching funds is at a match rate less favorable than its FY 95 Medicaid match rate.

(2) States That Have Drawn down Additional Federal Funding for Child Care:

Such a State must repay the amount (if any) by which the total paid to the State in contingency funds during the fiscal year exceeds:

- (a) the State's Medicaid match rate percentage (as in effect on September 30, 1995) times the amount (if any) by which:
 - i) expenditures under the State program funded under Part IV-A, excluding any amounts made available by the Federal Government (other than contingency funds paid to and expended by the State) and excluding any amounts expended by the State during the fiscal year for child care; exceeds
 - ii) historic State expenditures (as defined for maintenance of effort purposes), excluding expenditures by the State for IV-A child care for FY 94;⁴² multiplied by
- (b) one-twelfth times the number of months during the fiscal year for which the Secretary makes a payment to the State under this provision.⁴³

It appears that the intent of this provision is to ensure that if a State is making use of State funds to generate non-federal match for child care, those State funds cannot count toward satisfying the requirement to meet a 100% maintenance of effort.

Example: Suppose that a State had a 50-50 match rate in FY 95, and the State's historic expenditure level is \$100 million, of which \$10 million was for child care. The State is now accessing an additional \$3 million in federal child care funding by providing an additional \$3 million in State match. Now suppose that in a year, the State qualifies in all months, draws down \$5 million in contingency funds, and the total of the State's

⁴² The description presented here reflects the apparent intent of this provision, though there appears to be a technical drafting error in the Act itself. The Act refers to "historic State expenditures (as defined in section 409(a)(7)(B)(iii)), excluding the expenditures by the State for child care under subsection (g) or (I) of section 402 (as in effect during fiscal year 1994) for fiscal year 1994 minus any Federal payment with respect to such child care expenditures..." However, since "historic State expenditures" are defined in the Act as non-federal expenditures, it would not seem to make sense to further subtract any Federal payment with respect to such expenditures, because it was not counted in the first place.

⁴³ Sec. 403(b)(4)(A)(I).

expenditures under the program (excluding all federal funds except the \$5 million in contingency funding) now reach \$100 million. Since \$100 million exceeds the State's historic expenditure level (excluding expenditures for child care) by \$10 million, and 50% of \$10 million is \$5 million, the State owes nothing in its annual reconciliation.

Example: In the above fact situation, suppose that the State's historic spending level was \$100 million, of which \$10 million was for child care, and the State has now shifted an addition \$3 million from the \$100 million toward generating non-federal match for child care. Though these funds are being spent on an allowable purpose (i.e., child care), they would not be countable in determining whether and by how much the State was exceeding its historic expenditure level (excluding child care).

2. **Amount Available:** In any fiscal year in which funds are available, a State can draw down an amount up to 20% of the State's family assistance grant, at the State's Medicaid match rate (as defined under the law in effect on September 30, 1995).⁴⁴ The total amount available for a month cannot exceed 1/12 of 20% of the State's family assistance grant.⁴⁵ Since funding is limited under this provision, the Secretary is directed to make payments in the order for which claims for payments are received.⁴⁶ The total amount paid to all States under the Contingency Fund cannot exceed \$2 billion during fiscal years 1997 through 2001.⁴⁷

H. **Federal Loan Fund:** The federal government will operate a federal loan fund whose dollar amount of outstanding loans shall not exceed \$1.7 billion. The cumulative amount of all loans made to a State from FY 97 through FY 2002 shall not exceed 10% of the State's family assistance grant. A State will be ineligible for a loan if it had ever had a penalty imposed on it based on an audit having found that block grant funds had been spent in violation of TANF requirements. Amounts borrowed will need to be repaid within three years, with interest. If a State fails to repay its loan with required interest, within the applicable period of maturity, the Secretary is directed to reduce the State's grant for the next quarter by the outstanding loan amount plus interest owed. The Secretary does not have authority to forego any outstanding loan amount or interest owed on the outstanding amount.⁴⁸

⁴⁴ Sec. 403(b)(4)(A). The Conference Report indicates States must share in costs at their FY 95 Medicaid match rates. H. Rept. 104-725, at. P. 271.

⁴⁵ Sec. 403(b)(3)(C)(I).

⁴⁶ Sec. 403(b)(3)(B).

⁴⁷ Sec. 403(b)(2).

⁴⁸ Sec. 406, Sec. 409(a)(6).

III. PERMISSIBLE EXPENDITURES AND ACTIVITIES

- A. **In General:** Unless subject to a **prohibition**, States have broad discretion to spend TANF funds in a manner reasonably calculated to accomplish the purposes of the block grant or in any manner that was permissible under the programs being replaced by the block grant. Prohibitions are discussed in detail in PART IV. No individual or family is **entitled** to assistance under the Act. State spending of TANF funds is subject to a 15% limit on administrative purposes (which are not defined in the Act). Up to 30% of TANF funding may be used to carry out State programs under the Child Care and Development Block Grant and the Title XX Social Services Block Grant, but no more than 1/3 of the amount so used may be used to carry out State programs under Title XX, and the amounts used to carry out State programs under Title XX must be for low-income children and families.
- B. **Allowable Expenditures:** Except where prohibited, the State may use TANF funds:
1. In any manner reasonably calculated to accomplish the purposes of the block grant (including providing low income households with assistance in meeting home heating and cooling costs); or
 2. In any manner that the State was authorized to use amounts received under Title IV-A (AFDC, AFDC Administration, Emergency Assistance, AFDC Child Care, Transitional Child Care, and At-Risk Child Care) or Title IV-F (JOBS) as such parts were in effect on September 30, 1995.⁴⁹
- C. **Purpose:** The legislation provides that “[t]he purpose of this part is to increase the flexibility of States in operating a program designed 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.”⁵⁰
- D. **No Entitlement to Assistance:** The legislation expressly provides that “[t]his part shall not be

⁴⁹ Sec. 404(a).

⁵⁰ Sec. 401(a).

interpreted to entitle any individual or family to assistance under any State program funded under this part.⁵¹” Note that this does not preclude a State from establishing an entitlement to assistance as a matter of State law, because it does not say that no individual or family shall be entitled to assistance; it only says that “[t]his part shall not be interpreted” to create such an entitlement.

1. **Options to Impose Sanctions:** The Act expressly provides that a State may sanction a family if the adult fails to ensure that minor dependent children of the adult attend school as required by State law.⁵² The Act also expressly provides that a State shall not be prohibited from sanctioning a family that includes an adult older than age 20 and younger than age 51 if the adult does not have or is not working toward attaining a secondary school diploma or its equivalent, unless the adult has been determined in the judgment of medical, psychiatric or other appropriate professional to lack the requisite capacity to complete such a course of study successfully.⁵³ Note that since there are no entitlements to assistance under the law and no federal obligation to assist needy families, States would have already had the authority to impose such sanctions without an explicit legislative statement.

- E. **Funds Must Be Spent in Accordance with Law Governing Expenditure of State Funds:** Any TANF funds received by a State must be expended in accordance with the laws and procedures applicable to expenditure of the State’s own revenues, including appropriation by the State legislature, consistent with the terms and conditions of State law.⁵⁴
- F. **Restriction on Administrative Spending:** A State may not expend more than 15% of its grant on administrative purposes. However, the 15% cap does not include expenditures for information technology and computerization needed for tracking or monitoring required by or under the block grant.⁵⁵ The Act does not define “administrative purposes.”
- G. **Authority to Use Funds for Other Purposes:** A State may use up to 30% of its grant (i.e., its family assistance grant, plus any supplemental grant, high performance and out-of-wedlock bonuses) to carry out State programs under Title XX (the social services block grant), and the Child Care and Development Block Grant.⁵⁶ However, not more than 1/3 of the total amount

⁵¹ Sec. 401(b).

⁵² Sec. 404(I).

⁵³ Sec. 404(j).

⁵⁴ Sec. 901 of the Act.

⁵⁵ Sec. 404(b).

⁵⁶ Sec. 404(d).

that is used to carry out State programs under this provision may be used to carry out State programs under Title XX. In addition, all amounts used to carry out State programs pursuant to Title XX must be used only for programs and services to children or their families whose income is less than 200% of poverty. Any amounts used to carry out a State program under this provision are subject to the requirements of the applicable program (Title XX, CCDBG) and shall not be considered a TANF expenditure.

Note that while some accounts describe this provision as allowing a State to transfer 10% of its funds to Title XX, the Act actually says that not more than 1/3 of the amount used under this provision can be for Title XX. This appears to mean, for example, that a State could only transfer 10% to Title XX if it was also transferring 20% to CCDBG.

Also note that this provision is often referred to as one allowing transfer of TANF funds to other programs, but its language provides authority to use funds to carry out other programs, rather than authority to transfer funds; it is not clear whether the difference in language is intended to have significance.

- H. **State Reserve:** The State may choose not to spend all of its TANF Funds, and save some for the purpose of providing assistance under the program in a subsequent year.⁵⁷ The Act does not indicate if there is any limit on the amount that can be placed in reserve.
- I. **Use of Funds for Employment Placement Programs, Electronic Benefits Transfer Systems:** The Act explicitly provides that States have authority to use TANF funds for employment placement programs and electronic benefits transfer systems.⁵⁸ Given the breadth of the block grant language, it seems clear that States would have had such authority without these specific provisions.
- J. **Use of Funds for Individual Development Accounts:** Individual development accounts may be established under a State program by or on behalf of eligible individuals for the purpose of enabling the individual to accumulate funds for a “qualified purpose.”⁵⁹ An individual may only contribute to an IDA account from earned income. Funds may only be withdrawn for a qualified purpose. An IDA shall be organized as a trust and funded through contributions by the individual and matched by or through a qualified entity for a qualified purpose. Funds in an IDA shall be disregarded for purposes of determining eligibility or amount of assistance under any provision of federal law (other than the tax code) that requires consideration of financial circumstances, for the period during which the individual maintains or makes contributions to the account.

⁵⁷ Sec. 404(e).

⁵⁸ Sec. 404(f),(g).

⁵⁹ Sec. 404(h).

1. **Qualified Entity:** A “qualified entity” means either a not-for-profit organization or a State or local government agency acting in cooperation with a not-for-profit organization.
 2. **Qualified Purpose:** A qualified purpose is one or more of the following, as provided by the “qualified entity” providing IDA assistance to the individual. Each of these is defined in greater detail in the Act:
 - a. Postsecondary education expenses paid from an IDA account directly to an eligible educational institution;
 - b. Qualified acquisition costs with respect to a qualified principal residence for a qualified first-time home buyer, if paid directly from an IDA account to the persons to whom the accounts are due;
 - c. Amounts paid from an IDA account directly to a business capitalization account which is established in a federally insured financial institution and is restricted to use solely for qualified business capitalization expenses.
 3. **Consequence if IDA does not meet statutory requirements:** A State might choose to structure an IDA effort using different rules from the ones set forth in the Act. However, in order for the funds in the IDA to be disregarded for purposes of determining eligibility or amount of assistance under other federal laws, it will be necessary for a State’s IDA structure to meet the above guidelines.
- K. **Bar on Medical Services:** A State may not use TANF funds to provide medical services, with an exception allowed for pre-pregnancy family planning services.⁶⁰
- L. **Required Assessments; Option for Individual Responsibility Plans:** The State agency responsible for administering the State program funded under TANF is required to make an initial assessment of the skills, prior work experience, and employability of each recipient of assistance under the program who has attained 18 years of age, or has not completed high school or obtained a certificate of high school equivalency, and is not attending secondary school.⁶¹ On the basis of the assessment, the State agency may, in consultation with the individual, develop an individual responsibility plan. The State may reduce, by the amount the State considers appropriate, the amount of assistance otherwise payable to a family that includes an individual who fails without good cause to comply with an individual responsibility plan.⁶²

⁶⁰ Sec. 408(a)(6).

⁶¹ Sec. 408(b).

⁶² Sec. 408(b)(2),(3).

The Act expressly states that the exercise of authority in relation to individual responsibility plans shall be within the sole discretion of the State.⁶³ Note that in light of the State's broad discretion under TANF, the State would have the option to develop individual responsibility plans whether or not they were described in the Act.

⁶³ Sec. 408(b)(4).

IV. PROHIBITIONS

A. **In General:** The Act prohibits spending TANF funds under certain circumstances. It is sometimes difficult to determine whether the prohibition also extends to usage of State funds for assistance under the program. The principal prohibitions bar provision of aid for **families without a minor child**; families in which an **individual is not cooperating in establishing paternity or obtaining child support** (for which the State must reduce or terminate aid); **families who have not assigned certain support rights to the State**; **teen parents not living in adult-supervised settings**, **teen parents not attending school**; **families that have reached a 60-month limit** (subject to exceptions for 20%). The Act also permits States to determine, as of January 1, 1997 whether to assist **legal immigrants** already residing in the country ; new legal immigrant entrants will be ineligible for TANF assistance for at least their first five years in the United States. In addition, a State is prohibited from providing assistance under the State program to individuals convicted of certain **drug-related felonies**, unless the State opts out of this requirement. The following text describes these and several other prohibitions:

1. **No Aid to Family Without a Child (Unless Expectant):** A State is prohibited from using TANF funds to provide assistance to a family unless the family includes a minor child residing with a custodial parent or other adult caretaker relative, or the family includes a pregnant individual.⁶⁴ The Act defines a “minor child” as an individual under 18, or under age 19 but a full-time student in a secondary school or in the equivalent level of vocational or technical training.⁶⁵ An “adult” is an individual who is not a minor child.⁶⁶ The Act does not define “caretaker relative.”
 - a. **Restriction if Child is Absent From Home:** A State may not use TANF funds to provide assistance if a child has been, or is expected by the parent or other caretaker relative to be, absent from the home for 45 consecutive days (or at State option, a period of not less than 30 or more than 180 days), subject to such good cause exceptions as the State may determine. In addition, the State is prohibited from using TANF funds to provide assistance to a parent (or other caretaker relative) who fails to notify the agency administering the program within five days about the absence of a minor child (if the child is or is expected to be absent for the period of time noted above).⁶⁷
2. **Sixty-Month Time Limit:** A State may not use TANF funds to provide assistance to a family that includes an adult who received “assistance under any State program funded under

⁶⁴ Sec. 408(a)(1)(A).

⁶⁵ Sec. 419(2).

⁶⁶ Sec. 419(1).

⁶⁷ Sec. 408(a)(10).

this part attributable to funds provided by the Federal Government” for 60 months (whether or not consecutive) after the date the State program funded under the block grant begins.⁶⁸ States can exempt families from the time limit for hardships or if the family includes an individual who has been battered or subjected to extreme cruelty, but the total number of exemptions in effect for a fiscal year shall not exceed 20% of the average monthly number of families to which the State is providing assistance “under the State program funded under this part.” In determining whether a pregnant person or parent has reached the time limit, the State is not to count months of receiving assistance when the individual was a minor child and not the head of a household or married to the head of a household. The State must also disregard any month for which lived on an Indian reservation or in an Alaskan Native village if during the month at least 1000 individuals were living on the reservation or in the village and at least 50% of the adults living on the reservation or in the village were unemployed.

- a. **Additional Prohibition May or May Not Mean Something Different:** In addition to the above prohibition, language added to the Act also provides that the State may not use any part of its grant to provide assistance to a family if the family includes an adult who has received assistance under any State program funded under this part attributable to funds provided by the Federal Government for 60 months (whether or not consecutive) after the date the State program funded under this part commences, subject to the exceptions described above. A State is subject to a 5% penalty for having violated this provision. However, it is not clear how, if at all, it is intended to mean anything different from the provision described above.⁶⁹
- b. **Sixty-Month Limit Does Not Affect State-Funded Assistance:** Months count against the sixty-month limit only when they are attributable to funds provided by the Federal Government. Thus, any months of receipt of solely State-funded assistance do not count against the sixty-month limit. In addition States are not prohibited from spending State funds not originating with the Federal Government on benefits for children or families that have become ineligible for assistance under the State program as a result of the sixty-month limit. Any such expenditure of State funds can be countable toward satisfying the State’s maintenance of effort requirements.
- c. **Counting of Months and Prohibition Both Apply to “Assistance”:** For purposes of counting whether a family has reached the sixty-month limit, any month in which “assistance” is provided under the block grant counts. This is clearly not limited to cash assistance, and may be interpreted as applying to any form of assistance under the block grant, e.g., child care, vouchers, emergency assistance, counseling, etc. Also, the prohibition on using TANF funds after a family reaches the sixty-month limit also applies

⁶⁸ Sec. 408(a)(7).

⁶⁹ Concerned or puzzled readers may wish to compare Sec. 408(a)(7) with Sec. 408(a)(1)(B).

to “assistance,” rather than just cash assistance.

- d. **Months Do Not Count Toward Sixty-month Limit When No Adult Is Receiving Assistance:** In some instances, e.g., when a grandparent is caring for grandchildren, no aid is sought for the adult in the home. The sixty-month limit is a prohibition on using TANF funds “to provide assistance to a family that includes an adult who has received assistance under any State program funded under this part attributable to funds provided by the Federal government, for sixty months...” Based on this language, the sixty-month clock does not run during months when no adult in the family is receiving assistance under the program. Note, however, that once an adult in the family has reached the sixty-month limit, the family is ineligible for assistance even if no assistance is being sought for the adult.
 - e. **Use of Title XX Funds for Vouchers Permissible:** The Act expressly provides that a State may use its Title XX Social Services Block Grant funds to provide vouchers for services to families including those who have become ineligible for assistance under a State program funded under TANF by reason of a durational limit on assistance (or by reason of a State family cap provision).⁷⁰ It seemed clear that a State could have used Title XX funds for such vouchers in the absence of express language here.
3. **Child Support Noncooperation:** If the State child support enforcement agency determines that an individual is not cooperating in establishing, modifying, or enforcing a support order with respect to a child of the individual, and the individual does not qualify for any good cause or other exception established by the State, the State is required to either:
 - a. Deduct from the assistance that would otherwise be provided to the family under the State program funded under the block grant an amount equal to not less than 25% of the amount of such assistance; or
 - b. Deny the family any assistance under the State program.⁷¹
 4. **Failure to Assign Support Rights:** A State receiving a TANF block grant must require, as a condition of providing assistance to a family under the State program funded under the block grant, that a member of the family assign any rights that the individual may have to support from any other person, subject to certain limits.⁷²
 5. **Minor Parent Not in School:** The State is prohibited from using TANF funds to provide

⁷⁰ Sec. 908(b) of the Act.

⁷¹ Sec. 408(a)(2).

⁷² Sec. 408(a)(3).

assistance to an individual who is under age 18, is unmarried, has a minor child at least 12 weeks old, and has not successfully completed high school or its equivalent, unless the individual either participates in education activities directed toward attainment of a high school diploma or its equivalent, or participates in an alternative education or training program approved by the State.⁷³

6. **Minor Parent Not in Adult-Supervised Setting:** The State is prohibited from using TANF funds to provide assistance to an unmarried individual under 18 caring for a child, if the minor parent and child are not residing with a parent, legal guardian, or other adult relative, subject to limited exceptions.⁷⁴

a. **Limited Exceptions:** The exceptions to a requirement to live with a parent, legal guardian, or other relative are in circumstances in which:

- (1) the individual has no parent, legal guardian or other appropriate adult relatives who is living or whose whereabouts are known;
- (2) no living parent, legal guardian or other appropriate relative allows the individual to live in their home;
- (3) the State agency determines that the individual or her minor child is being or has been subjected to serious physical or emotional harm, sexual abuse, or exploitation in the residence of the individual's own parent or legal guardian;
- (4) substantial evidence exists of an act or failure to act that presents an imminent or serious harm if the individual and her child lived in the same residence with the individual's own parent or legal guardian; or
- (5) the State agency otherwise determines that it is in the best interests of the minor child to waive the requirement to live with a parent, legal guardian, or other adult relative.

b. **State Duty to Provide Assistance in Locating Appropriate Living Arrangement:** If the individual falls within one of the exceptions, the State is required to provide or assist the individual in locating a second chance home, maternity home or other appropriate adult-supervised supportive living arrangement (unless the State determines that the individual's current living arrangement is appropriate); once the teen parent is in an approved living arrangement, the State must require the individual and her minor child to reside in the living arrangement as a condition of receiving assistance under the State program funded the block grant attributable to funds provided by the Federal

⁷³ Sec. 408(a)(4).

⁷⁴ Sec. 408(a)(5).

Government (or in an alternative appropriate arrangement, if circumstances change and the current arrangement ceases to be appropriate).

7. **Multiple Benefit Receipt:** A State is prohibited from using TANF funds to provide cash assistance for ten years to an individual found to have fraudulently misrepresented residence in order to obtain benefits or assistance from two or more States' programs funded under TANF, Medicaid, the Food Stamp Program, or under the SSI Program. The prohibition does not apply if the President grants a pardon to the individual.⁷⁵
8. **Fugitive Felons and Probation/Parole Violators:** A State is prohibited from using TANF funds to provide assistance to any individual fleeing to avoid prosecution, or custody or confinement after conviction of a felony, or violating a condition of probation or parole imposed under federal or State law. The prohibition does not apply if the President grants a pardon to the individual.⁷⁶
9. **Restrictions on Assistance for Legal Immigrants:** With limited exceptions, the Act permits States to determine whether to provide assistance in their TANF programs to legal immigrants already residing in the United States as of the date of enactment of the legislation.⁷⁷ If the State elects to restrict eligibility, the State must continue assistance until January 1, 1997 for affected aliens who are lawfully residing in the State and receiving benefits on the date of enactment. As to immigrants entering the United States after the date of enactment, the Act imposes a five-year bar on eligibility for a range of federal means-tested public benefits, including TANF assistance.⁷⁸
10. **Drug-Related Felonies:** Unless the State passes a law opting out of the provision, an individual convicted (under Federal or State law) of a felony which has as an element the possession, use, or distribution of a controlled substance shall not be eligible for assistance under any State program funded under part A of title IV of the Social Security Act, or of benefits under the food stamp program or any State program carried out under the Food Stamp Act of 1977.⁷⁹ The amount of assistance otherwise required to be provided under a State program funded under part A of title IV of the Social Security Act to the family members of the individual shall be reduced by the amount which would have otherwise been made available to the individual. Unless the State opts out, the

⁷⁵ Sec. 408(a)(8).

⁷⁶ Sec. 408(a)(9).

⁷⁷ Sec. 402 of the Act.

⁷⁸ Sec. 403 of the Act.

⁷⁹ Sec. 115 of the Act.

State shall require each individual applying for assistance or benefits, during the application process, to state, in writing, whether the individual, or any member of the household of the individual, has been convicted of a crime that would result in denial of assistance. The State may elect to opt out of this provisions in its entirety, or for categories of individuals, and may also elect to limit the period of prohibition of assistance. The prohibition does not apply to convictions occurring on or before the date of the enactment of this Act.

- a. **Scope of provision unclear:** While the provision appears to bar assistance under any State program funded under Title IV-A, the provision also says that it shall not be construed to deny the following Federal benefits: (1) Emergency medical services under title XIX of the Social Security Act; (2) Short-term, noncash, in-kind emergency disaster relief; (3)(A) Public health assistance for immunizations; (B) Public health assistance for testing and treatment of communicable diseases if the Secretary of Health and Human Services determines that it is necessary to prevent the spread of such disease; (4) Prenatal care; (5) Job training programs; and (6) Drug treatment programs. Therefore, it seems unclear whether the intent is to deny any TANF-related assistance, or a narrower category of TANF-related assistance.

V. POTENTIAL PENALTIES FOR STATES

A. **In General:** The Act sets forth twelve instances in which a State's grant may be reduced for failure to comply with specified requirements:

- misexpenditure of TANF funds;
- failure to submit a required report;
- failure to satisfy work participation rates;
- failure to participate in the Income and Eligibility Verification System (IEVS);
- failure to comply with paternity establishments and child support enforcement requirements;
- failure to timely repay a loan;
- failure to comply with basic maintenance of effort requirements;
- failure to substantially comply with Child Support Enforcement requirements of Part IV-D;
- failure to comply with the five-year limit on assistance;
- failure to comply with maintenance of effort requirements applicable to a State receiving funds from the contingency fund;
- failure to maintain assistance to a family in which the single adult caretaker of a child under age 6 has not complied with work requirements due to an inability to obtain needed child care;
- failure to expend additional State funds to replace a grant reduction resulting from a penalty.

For most of the above penalties, the Secretary may waive the penalty based on a finding that the State had reasonable cause for failure to comply (discussed below). The Secretary may reduce a State's grant by up to 25% each quarter to recover penalties.

1. **Misexpenditures of TANF Funds:** If an audit conducted under the Single Audit Act finds that an amount paid to the State for a fiscal year has been used in violation of the law governing the block grant, the Secretary shall reduce the State's grant for the immediately succeeding fiscal year quarter by the amount so used. In addition, if the State does not provide to the satisfaction of the Secretary that the State did not intend to use the amount in violation of the law governing the block grant, the Secretary shall further reduce the grant payable to the State by 5% of the State's family assistance grant.⁸⁰
2. **Failure to Submit Required Report:** If the Secretary determines that a State has failed to submit its required data reporting within 1 month after the end of a fiscal quarter; the Secretary shall reduce the State's grant for the immediately succeeding fiscal year by 4% of the State's family assistance grant; provided that the penalty shall be rescinded if the State submits the report before the end of the fiscal quarter immediately following the fiscal quarter for which the report was required.⁸¹
3. **Work Participation Rates:** If the Secretary determines that a State has failed to comply

⁸⁰ Sec. 409(a)(1).

⁸¹ Sec. 409(a)(2).

with either the all-family or the two-parent work participation rate for a fiscal year, the Secretary shall reduce the State's grant for the immediately succeeding fiscal year. If the State had not been penalized in the prior year, the penalty can be up to 5% of the State's family assistance grant. If the State had been penalized in the prior year, the penalty can be up to the amount of the previous year's penalty, increased by two percentage points, subject to a maximum penalty of 21%. The Secretary is directed to impose reductions based on the degree of noncompliance, and may reduce the penalty if the noncompliance is due to circumstances that caused the State to become a "needy State" (i.e., increased unemployment, increased food stamp utilization, as defined in the provisions relating to contingency fund eligibility) during the fiscal year.⁸²

4. **IEVS Participation:** The Secretary is directed to impose a penalty of not more than 2% of the State's family assistance grant in the immediately succeeding fiscal year if the State is not participating during the fiscal year in the Income and Eligibility Verification System (IEVS) designed to reduce fraud.⁸³
5. **Failure to Enforce Paternity Establishment and Child Support Cooperation Requirements:** If the Secretary determines that the State agency administering a TANF-funded program does not enforce penalties requested by the State child support enforcement agency against recipients of assistance under the State program who fail to cooperate in establishing paternity or on establishing, modifying, or enforcing child support orders (subject to the good cause and other exceptions established by the State), the Secretary shall reduce the State's family assistance grant for the immediately succeeding fiscal year by not more than 5%.⁸⁴
6. **Failure to Repay a Loan:** If a State fails to timely repay a loan, the State's grant will be reduced by the amount of the outstanding loan principal and interest.⁸⁵ See PART II(H).
7. **Failure to Comply with Basic Maintenance of Effort Requirements:** Generally, a State's grant will be reduced dollar-for-dollar by the amount by which it fails to comply with maintenance of effort requirements.⁸⁶ See PART II(F).
8. **Failure of State to Substantially Comply with Child Support Enforcement**

⁸² Sec. 409(a)(3).

⁸³ Sec. 409(a)(4).

⁸⁴ Sec. 409(a)(5).

⁸⁵ Sec. 409(a)(6).

⁸⁶ Sec. 409(a)(7).

Requirements: If a State program under Title IV-D (relating to child support enforcement) is found to have failed to substantially comply with non-technical requirements relating to child support enforcement, and continues to be not substantially complying at the time the find is made, the Secretary is directed to impose penalties for the quarter and each subsequent quarter that ends before the first quarter throughout which the program is found to be in substantial compliance. The penalties are to escalate if non-compliance is found in a subsequent review:

- a. The first penalty is to be set at not less than one percent or more than two percent;
 - b. For the second consecutive such finding made as a result of a review, the penalty is be set at not less than two or more than three percent;
 - c. For the third or a subsequent consecutive such finding made as a result of a review, the penalty is be set at not less than three or more than five percent.⁸⁷
9. **Failure to Comply with Five-Year Limit:** If the Secretary determines that a State has not complied with the prohibition on using federal TANF funds to provide aid in excess of sixty months (described in PART VIII.) during a fiscal year, the Secretary is directed to reduce the State's grant for the immediately succeeding fiscal year by an amount equal to 5% of the State's family assistance grant.⁸⁸
10. **Failure of State Receiving Contingency Funds to Maintain 100% of Historic Effort:** A State that has received contingency funds and has not maintained 100% of its historic State expenditure level will have its grant reduced in the next year by the total amount received from the contingency fund.⁸⁹ See PART II(G).
11. **Failure to Maintain Assistance When Single Parent of Child Under Six Cannot Comply with Work Requirements Due to Lack of Child Care:** If the Secretary determines that a State has violated the prohibition against reducing or terminating aid to a single parent of a child under six who has refused to comply with work requirements due to lack of child care, the Secretary is directed to reduce the grant payable to the State for the immediately succeeding fiscal year by not more than 5% of the State's family assistance grant. The Secretary is directed to set the amount of the penalty based on the degree of noncompliance.⁹⁰

⁸⁷ Sec. 409(a)(8).

⁸⁸ Sec. 409(a)(9).

⁸⁹ Sec. 409(a)(10).

⁹⁰ Sec. 409(a)(11).

12. **Requirement to Expend Additional State Funds to Replace Grant Reductions:** If a State's grant is reduced as a result of any of the above penalties, the State is required, during the immediately succeeding fiscal year, to expend under the State program funded under this part an amount equal to the total amount of such reductions.⁹¹

B. Opportunities to Avoid Penalties: While a State would be potentially subject to penalties in the above situations, it is also possible that such penalties would not be imposed, for the following reasons:

1. **Reasonable Cause:** The Secretary can choose not to impose a penalty on a State if the Secretary determines that the State had reasonable cause for failure to comply with the requirement.⁹² The "reasonable cause" exception does not apply to penalties for failure to comply with the basic maintenance of effort requirement. It is apparently Congress' intent that it not apply in at least one other situation, but it is not clear which situation. As drafted, the Act says that the "reasonable cause" exception does not apply to a State's failure to substantially comply with child support enforcement program requirements.⁹³ However, according to the Conference Report, both the House and Senate bills had intended that there be no reasonable cause exception for failure to timely repay a loan, and the House had also had no reasonable cause exception for the requirement to replace grant reductions caused by penalties. The Conference Report says that the Conference Agreement was to follow the House bill on this point.⁹⁴ At this time, the resolution is not clear.
2. **Corrective Compliance Plan:** Before imposing a penalty (other than a penalty for failure to repay a loan), the Secretary is required to notify the State of the violation, and allow the State sixty days in which to propose a corrective compliance plan which outlines how the State will correct the violation and how the State will insure continuing compliance with the law governing the block grant. In the sixty days beginning with the date the Secretary receives a corrective compliance plan, the Secretary may consult with the State on modifications of the plan. The plan is deemed to have been accepted if the Secretary does not accept or reject the plan during this sixty-day period. The Secretary may not impose any penalty for a violation covered by an accepted corrective compliance plan if the State corrects the violation pursuant to the plan. If the State does not correct the violation in a

⁹¹ Sec. 409(a)(12).

⁹² Sec. 409(b).

⁹³ Sec. 409(b)(2).

⁹⁴ H. Rept. 104-725, p.300.

timely manner, the Secretary is directed to assess some or all of the penalty on the State.⁹⁵

3. **State Appeal Rights:** Within five days of taking any adverse action against the State, the Secretary shall notify the Chief Executive Officer of the State of the adverse action. Within sixty days of receiving notice of an adverse action, the State can appeal the action to HHS's Departmental Appeals Board; the Board is directed to make a final determination not less than sixty days after the date of the appeal, and the State can seek judicial review within 90 days of an adverse decision by the Board.⁹⁶

⁹⁵ Sec. 409(c).

⁹⁶ Sec. 410.

VI. WORK REQUIREMENTS

- A. In General:** The Act has four work requirements, but only specifies penalties for a State violating two of them. First, the State plan provisions indicate that States must require **work after two years** and, unless the State opts out, **participating in community service after two months**. However, States have broad discretion in defining these requirements, and there is no apparent penalty for failure to satisfy them. States do risk fiscal penalties for failure to meet an **all-families participation rate** or a **two-parent families participation rate**. The Act includes considerable detail about the countable activities, required hours, and increasing participation rates for the all-families rate and the two-parent family rate.
- B. JOBS Program and Child Care Guarantee Repealed:** The Act repeals the JOBS Program, and also repeals the guarantee of child care assistance for participants in JOBS and other approved education and training activities. The Act also repeals the child care guarantee for individuals who need child care to accept or retain employment, and the Transitional Child Care program. While there is no duty to guarantee child care, a State is barred from imposing grant reductions or terminations on a single parent of a child under age six when the adult proves that needed child care was unavailable (discussed below).
- C. Two-Year Work Requirement:** A State's plan must require a parent or caretaker receiving assistance under the program to engage in work (as defined by the State) once the State determines the parent or caretaker is ready to engage in work, or once the parent or caretaker has received assistance under the program for 24 months (whether or not consecutive), whichever is earlier.⁹⁷ Since it is up to the State to define "work," States appear to have broad flexibility in determining what constitutes work, how many hours per week or month, etc. There is no explicit penalty for a State's violation of the two-year work requirement, but it is unclear whether the expenditure of funds to provide assistance to an individual who had reached the two-year point and was not engaged in work would constitute an expenditure of funds in violation of the law. See Part V(A)(1).
- D. Community Service After Two Months:** No later than one year after the date of enactment of the Act, unless the State's Chief Executive Officer opts out, the State shall require a parent or caretaker receiving assistance under the program, who after receiving such assistance for two months is not exempt from work requirements and is not engaged in work, to participate in community service employment, with minimum hours per week and tasks to be determined by the State. The Act provides that this provision must be read consistent with the provision of the Act that provides that a State may not impose a penalty on a single parent of a child under age six based on failure to comply with work requirements if the parent was unable to comply due to the unavailability of child care.⁹⁸ There is no explicit penalty for a State's violation of the two-

⁹⁷ Sec. 402(a)(1)(A)(ii).

⁹⁸ Sec. 402(a)(1)(B)(iv).

month community service requirement, but it is unclear whether the expenditure of funds to provide assistance to an individual who had reached the two-month point and was not engaged in community service would constitute an expenditure of funds in violation of the law. See Part V(A)(1).

E. **Participation Rates:** A State does risk a fiscal penalty if the State fails to meet either an **all-families participation rate** or a **two-parent families participation rate**. To understand what these requirements involve, it is necessary to understand how the “numerator” and “denominator” are calculated, i.e., how is it determined when an individual counts for purposes of these participation rates.

1. For the **All-Families Rate**, in calculating a State’s monthly participation rate:

a. The numerator is the number of families “receiving assistance under the State program funded under this part” that include an adult or a minor child head of household who is “engaged in work” for the month.

b. The denominator is:

(1) The number of families receiving assistance under the State program funded under the block grant during the month that include an adult or minor child head of household receiving such assistance, reduced by

(2) The number of families receiving such assistance during the month whose assistance is being reduced due to a penalty for refusal to engage in required work, provided that such a family can only count toward reducing the State’s denominator for three months in a twelve month period.⁹⁹

2. For the **Two-Parent Families Rate**, the numerator and denominator rates are calculated in the same way, but based on the numbers of two-parent families receiving assistance and in which an individual is participating in work activities.¹⁰⁰ Note, that, as described below, the definition of “participation” is more restrictive for two-parent families.

3. **Option to Exclude Single Parents of Children Under Age One:** A State may opt to not require engagement in work by a single custodial parent of a child under age one; if the State so opts, the State may exclude such an individual from the denominator in the All-Families participation rate calculation for not more than twelve months.¹⁰¹

⁹⁹ Sec. 407(b)(1)(B).

¹⁰⁰ Sec. 407(b)(2).

¹⁰¹ Sec. 407(b)(5).

4. **Option to Include Individuals Receiving Assistance Under Tribal Family Assistance Plan:** A State may opt to include individuals receiving assistance under a Tribal Family Assistance Plan in both the numerator and denominator for participation rate purposes.¹⁰²
5. **Annual Participation Rates:** For both the all-families and two-parent families rates, a State risks a penalty if it fails to meet an annual rate which is the average of monthly rates for the year. The applicable rates and hourly thresholds are as follows:¹⁰³

All-Families and Two-Parent Families Participation Requirements Under TANF Block Grant				
Fiscal Year	All-Families Participation Rate	Hours Required to Count as Participant Toward All-Families Rate	Two-Parent Families Participation Rate	Hours Required to Count as Participant Toward Two-Parent Families Rate
1997	25%	20	75%	35
1998	30%	20	75%	35
1999	35%	25	90%	35
2000	40%	30	90%	35
2001	45%	30	90%	35
2002 and after	50%	30	90%	35

6. **Single Parent of Child Under 6:** For purposes of satisfying the all-families participation rate, a recipient in a one-parent family who is the parent of child under age 6 will be deemed to be engaged in work for a month if the recipient is engaged in work for an average of at least 20 hours per week during the month.¹⁰⁴ This will be relevant in and after FY 99, when the general standard for meeting the all-families rate begins to exceed 20 hours a week.
7. **When an Individual Counts Toward Rate:** To count toward a participation rate, i.e., be included in the participation rate numerator, the individual must be “engaged in work” for at least the minimum average number of hours per week during the month as required for the particular year. The rules concerning when an individual is “engaged in work” are complex. In general, certain activities always count toward being “engaged in work”. Other activities only count toward hours after the first 20 hours for all-families rate (and toward hours after

¹⁰² Sec. 407(b)(4).

¹⁰³ Sec. 407(a), (c)(1).

¹⁰⁴ Sec. 407(c)(2)(B).

the first 30 hours for the two-parent rate). Other activities always count, but only for a limited number of people.¹⁰⁵

To count toward the all-families rate, at least 20 hours per week (and to count toward the two-parent rate, at least 30 hours a week) must be attributable to:

- Unsubsidized employment;
- Subsidized private sector employment;
- Subsidized public sector employment;
- Work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;
- On-the-job training;
- Community service programs;
- Provision of child care services to an individual who is participating in a community service program;
- Vocational educational training, not to exceed 12 months for any individual, and provided that not more than a total of 20% of persons counting toward the participation rate for a month can satisfy the requirements either by participating in vocational educational training or by being a teen parent head of household attending school;
- Job search and job readiness assistance, but only for 6 weeks, and not for a week after four consecutive weeks; provided that job search will be countable for 12 weeks if the State's unemployment rate is at least 50% greater than the unemployment rate of the United States. On not more than one occasion, the State may count an individual as having participated in job search for a week if the individual participated for three or four days.
- A special rule affecting teen parent household heads is described below.

For the all-families rate, hours in excess of 20 (and for the two-parent rate, hours in excess of 30) may be counted when an individual participates in:

- Job search and job readiness assistance in excess of the above-specified limits;
- Job skills training directly related to employment;
- Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency; or
- Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate.

8. **Teen Parent Household Heads:** For purposes of meeting the all-families rate, a single head of household under age 20 will be deemed to count toward the rate if the recipient:
- maintains satisfactory attendance at secondary school or the equivalent during the month; or
 - participates in education directly related to employment for at least the number of hours

¹⁰⁵ See Sec. 407(c),(d).

required for the applicable year, e.g., 20 hours a week (on average) in years before FY 99, 25 hours a week in FY 99, and 30 hour a week in FY 2000 and thereafter.

No more than a total of 20% of persons counting toward the participation rate for a month can satisfy the requirements either by participating in vocational educational training or by being a teen parent head of household attending school.¹⁰⁶

9. **Special Rule for Two-Parent Families Receiving Federally-Funded Child Care:** If an individual in a two-parent family is participating at the required level, but the family receives federally-funded child care assistance and an adult in the family is not disabled or caring for a severely disabled child, then the individual's spouse must participate in one of a listed set of activities (unsubsidized employment, subsidized private sector employment, subsidized public sector employment, work experience, on-the-job training, or community service programs) for at least 20 hours per week throughout the month in order for the first individual to count toward the two-parent participation rate.¹⁰⁷
10. **Caseload Reduction Credit:** HHS is required to prescribe regulations for reducing a State's participation rate based on the State's caseload reduction. The participation rate reduction for a year will be the number of percentage points equal to the number of percentage points by which the number of families receiving assistance under the State program funded under the block grant during the immediately preceding fiscal year is less than the number of families that received aid in FY 95.¹⁰⁸ However, the rate shall not be reduced to the extent that:
- a. The Secretary determines that the reduction in the number of families receiving assistance had been required by federal law; or
 - b. The Secretary proves that the families were diverted from receiving assistance under a State program funded under the block grant as a direct result of differences in State eligibility criteria from the criteria in effect on September 30, 1995.

Example: In FY 98, the required participation rate is 30%. Suppose the number of families receiving assistance under the State program funded under the block grant in State A is 20% below the number who received AFDC in FY 95. State A's participation rate would be adjusted downward to 10%.

11. **Penalties for Individuals; Limited Protection if Child Care Unavailable:** If an adult

¹⁰⁶ Sec. 407(c)(2)(C),(D).

¹⁰⁷ Sec. 407(c)(1)(B).

¹⁰⁸ More precisely, the reduction is by the number of percentage points by which "the average monthly number of families receiving assistance during the immediately preceding fiscal year under the State program funded under this part" is less than "the average monthly number of families that received aid under the State plan approved under Part A (as in effect on September 30, 1995) during fiscal year 1995." Sec. 407(b)(3).

in a family receiving assistance under the State program funded under the block grant refuses to engage in work, the State is required to either reduce the amount of assistance otherwise payable to the family pro rata (or more, at State option) for any period during a month in which the adult so refuses, or terminate aid, subject to such good cause and other exceptions as may be established by the State.¹⁰⁹ However, the State may not reduce or terminate assistance (under the State program funded under the block grant) to a single custodial parent caring for a child under six if the individual proves that the individual has a demonstrated inability (as determined by the State) to obtain needed child care for one or more of the following reasons:

- a. Unavailability of appropriate child care within a reasonable distance from the individual's home or work site;
- b. Unavailability or unsuitability of informal child care by a relative or under other arrangements; or
- c. Unavailability of appropriate and affordable formal child care arrangements.¹¹⁰

12. **Participation in Activities Not Counting Toward Participation Rates Permissible:**

The TANF participation rate rules significantly limit the circumstances in which participation in education, training, job readiness, and job search activities count toward participation rates. However, this does not restrict a State's authority to spend TANF funds on such activities, and does not restrict a State's authority to permit or require participation in such activities.

13. **Nondisplacement:** No adult in a work activity "under a State program funded under this part attributable to funds provided by the Federal Government" may fill a vacant employment position to engage in a work activity, subject to the following provision.¹¹¹ No adult in a work activity funded, in whole or in part, by funds provided by the Federal Government shall be employed or assigned:

- a. When any other individual is on layoff from the same or any substantially equivalent job; or
- b. If the employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction of its workforce in order to fill the vacancy so created with an adult whose work activity is funded in whole or in part with funds provided by the Federal Government.

¹⁰⁹ Sec. 407(e)(1).

¹¹⁰ Sec. 407(e)(2).

¹¹¹ Sec. 407(f).

A State with a program funded under the block grant shall establish and maintain a grievance procedure for resolving complaints of alleged violations. In addition, nothing in the provision preempts or supersedes any provision of State or local law that provides greater protection for employees from displacement.

VII. DATA COLLECTION/REPORTING/EVALUATION

- A. **Quarterly Reporting:** Each State is required to collect monthly and report quarterly the following disaggregated case record information on families receiving assistance under the State program funded under the block grant:¹¹²
1. The county of residence of the family;
 2. Whether a child receiving such assistance or an adult in the family is disabled;
 3. The ages of the members of such families;
 4. The numbers of individuals in the family, and the relation of each family member to the youngest child in the family;
 5. The employment status and earnings of the employed adult in the family;
 6. The marital status of the adults in the family, including whether such adults have never married, are widowed, or are divorced;
 7. The race and educational status of each adult in the family;
 8. The race and educational status of each child in the family;
 9. Whether the family received subsidized housing, Medicaid, food stamps, or subsidized child care (and the amount of food stamps and subsidized child care);
 10. The number of months that the family has received each type of assistance under the program;
 11. If the adults participated in, and the number of hours per week of participation in, specific program work activities (education; subsidized private sector employment; unsubsidized employment; public sector employment, work experience, or community service; job search; job skills training or on-the-job training; or vocational education);
 12. Information necessary to calculate work participation rates;
 13. The type and amount of assistance received under the program, including the amount of and reason for any reduction of assistance, including sanctions;
 14. Any amount of unearned income received by any member of the family;
 15. The citizenship of the members of the family; and
 16. From a sample of closed cases, whether the family left the program, and if so, whether the family left due to employment, marriage, the federal five-year limit, a sanction, or State policy.
- B. **Estimates Permitted:** A State may comply with the above data-reporting requirements through submitting an estimate obtained through use of scientifically acceptable sampling methods approved by the Secretary.¹¹³
- C. **Additional Reporting:** States are also required to report quarterly concerning the percentage of funds paid to the State under the block grant that were used to cover administrative costs or

¹¹² Sec. 411(a).

¹¹³ Sec. 411(a)(1)(B).

overhead, a statement of the total amount expended by the State during the quarter on programs for needy families, the number of noncustodial parents who participated in work activities during the quarter, the total amount expended by the State during the quarter to provide transitional services to a family that has ceased to receive assistance under the block grant due to employment, along with a description of such services. The Secretary is authorized to prescribe such regulations as may be necessary to define the data elements with respect to the required reports.¹¹⁴

- D. **Annual Report to Congress:** Not later than six months after the end of FY 97, the Secretary is required to begin submitting annual reports to Congress.¹¹⁵
- E. **Annual Ranking and Review:** The Secretary is required to annually rank States in the order of their success in moving recipients into long-term private sector jobs, reducing the overall welfare caseload, and (when a practical method of calculation becomes available) diverting individuals from applying for and receiving assistance. The Secretary is directed to review the programs of the three highest and lowest ranked States. The Secretary is not authorized to take any action based on these reviews. The Secretary is also directed to conduct an annual ranking of States as to their out-of-wedlock birth ratios and to review the programs of the five highest and lowest-ranked States.¹¹⁶
- F. **Studies:** The Act directs the Secretary to conduct research in a range of areas,¹¹⁷ but authorizes funding for research as follows:
1. Funding of \$10 million a year is to be provided to the Census Bureau to expand the Survey of Income and Program Participation (SIPP) to allow for evaluation of the impact of TANF on a random sample of families, paying particular attention to the issues of out-of-wedlock birth, welfare dependency, beginning and end of welfare spells, causes of repeat welfare spells, and information about the status of children.¹¹⁸
 2. Funding of \$15 million annually from FY 97 through FY 2002 is to be provided to HHS of which half is to be allocated for federally-initiated and half would be allocated for State-initiated research. The federal half may be used for purposes including developing and evaluating innovative approaches for reducing welfare dependency and increasing the well-

¹¹⁴ Sec. 411(a)(2),(3),(4),(5),(6).

¹¹⁵ Sec. 411(b).

¹¹⁶ Sec. 413(d),(e).

¹¹⁷ See generally Sec. 413.

¹¹⁸ Sec. 414.

being of minor children, and research on the benefits, effects, and costs of operating different State programs funded under the TANF, including time limits. The State half may be used for federally-approved State proposals for evaluation and for continuing evaluations of waiver projects that are continued after implementation of the TANF.¹¹⁹

- G. Annual State Reporting on Child Poverty:** No later than ninety days after the date of enactment, and annually thereafter, the chief executive officer of each State must submit to the Secretary a statement of the child poverty rate of the State. If the annual statement indicates that, as a result of the “amendments made by Section 103”, i.e., implementation of the TANF block grant, the child poverty rate of the State has increased by 5% or more since the last statement, the State is directed to submit and implement a corrective action plan.¹²⁰
- H. Automatic Data Processing Study:** The Act directs the Secretary of HHS to report to Congress within six months on the status of automatic data processing systems in the States, and on what would be required to establish a system capable of tracking participants in public programs over time and checking cash records of States to determine whether individuals are participating in public programs of two or more States. It is preferred that the report include a plan for establishing such a system, along with estimates of the cost and time involved in developing such a system.¹²¹

¹¹⁹ Sec. 413(h).

¹²⁰ Sec. 413(I).

¹²¹ Sec. 106 of the Act.

VIII. FEDERAL AUTHORITY

- A. **In General:** Federal authority to regulate State conduct or enforce federal law is restricted under the TANF structure, because the Act prohibits the federal government from regulating State conduct or enforcing the law except when expressly authorized to do so.
- B. **Statutory Restriction:** One of the key provisions of the Act creates a new Section 417 of the Social Security Act, which says “No officer or employee of the Federal Government may regulate the conduct of States under this part or enforce any provision of this part, except to the extent expressly provided in this part.” There are likely to be many controversies about what Section 417 means. It appears to mean that in any instance where the Act does not explicitly provide authority for HHS, the agency cannot issue regulations that are binding on State conduct, and in any case where the Act does not provide for a penalty, the federal government cannot impose one.
- C. **Uncertainties in Interpreting the Law:** Like any piece of legislation, there are a number of instances in which the language of this Act is subject to more than one interpretation. Usually, when a bill is passed, many of the uncertainties are resolved when the relevant federal agency issues regulations interpreting and clarifying the law. However, this case will be different because of Section 417. Section 417 does not prevent HHS from saying what the agency thinks the law means, but HHS’ interpretation will not be binding on a State except where expressly authorized, and it is unclear how much a court would defer to HHS’ interpretation. For example, in instances where HHS is authorized to impose penalties, HHS presumably has the authority to interpret the law in order to specify what conduct will result in the penalty. However, in instances where HHS is not granted authority, a State will not be bound by HHS’ interpretation, and if the State and HHS disagree, it is not clear to what extent a court will defer to HHS’ interpretation.
- D. **TANF-Funded Programs Subject to Laws Relating to Nondiscrimination:** Any program or activity receiving funds under TANF is subject to the Age Discrimination Act of 1975; Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; and Title VI of the Civil Rights Act of 1964.¹²²

¹²² Sec. 408(c).

IX. WAIVERS

- A. **In General:** Many questions exist concerning the status of waivers under TANF. Generally, waivers will fall into three categories. If a State has a waiver in effect prior to the effective date of the legislation, the State may elect to continue its waiver (subject to TANF funding limitations) and the State will not be required to comply with the provisions of the Act that are inconsistent with the waiver. If a State has a pending waiver on the date of enactment, and the waiver is approved on or before July 1, 1997, the State may elect to continue it and will not be required to comply with provisions of the Act that are inconsistent with the waiver but will be required to comply with the Act's work participation rate requirements. After a State begins to implement its block grant, the State can still seek federal waivers, but many of the most significant provisions of the Act will be nonwaivable.
- B. **Waivers in Effect as of the Date of Enactment:** A State may elect to continue a waiver that is in effect as of the date of enactment of the Act. If the State has a waiver in effect as of the date of enactment of the Act, the amendments made by the Act will not apply to the State before the expiration (determined without regard to any extensions) of the waiver "to the extent such amendments are inconsistent with the waiver." A State electing to continue its waiver will still receive the same amount of federal funding it was entitled to receive under the legislation.¹²³
- C. **Waivers Pending on Date of Enactment, Granted Subsequently (but on or before July 1, 1997):** If a waiver is submitted to the Secretary before the date of the enactment of the Act and approved by the Secretary after the date of enactment but on or before July 1, 1997, the State will not be able to elect not to comply with the work participation rate requirements of the Act. However, if the State demonstrates to the satisfaction of the Secretary that the waiver will not result in increased federal expenditures under title IV of the Social Security Act (as in effect without regard to the amendments made by the Act), then the amendments made by the amendments made by the Act will not apply to the State before the expiration (determined without regard to any extensions) of the waiver "to the extent such amendments are inconsistent with the waiver."¹²⁴
1. **Waivers Pending At Point State Implements Block Grant:** A State may wish to begin implementing its TANF Program prior to July 1, 1997. A State might have had a waiver application pending prior to the date of enactment of the Act, but the waiver application may still not be acted on at the point that the State submits its State Plan to begin operating under the block grant. It is unclear whether HHS could grant a waiver of prior provisions of the Social Security Act after the State begins to operate its program under the block grant.
- D. **State Option to Terminate Waiver** A State may terminate a waiver before its expiration. If

¹²³ Sec. 415(a)(1).

¹²⁴ Sec. 415(a)(2).

the State elects to terminate its waiver no later than 90 days following adjournment of the first regular session of the State legislature that begins after the date of the enactment of the Act, the State will be held harmless for any accrued cost neutrality liabilities. The State can elect to terminate or continue one or more individual waivers.¹²⁵

- E. **Uncertainties About the Effect of Continuing a Waiver:** A State might wish to continue a waiver for two reasons. First, federal funds may be available to support the evaluation. (A total of \$7.5 million is authorized for HHS for each year from FY 97 through FY 2002 for the federal share of State-initiated studies and for evaluation of demonstration projects that are in effect or approved under Section 1115 as of September 30, 1995 and are continued after that date.) Second, the State may wish to continue a State-initiated approach to welfare reform and not be subject to requirements of this Act that the State considers inconsistent with the State-based approach. To decide whether to continue a waiver, it may be important to know which, if any, provisions of the Act are considered to be inconsistent with the State's waiver. Unfortunately, there is no available clarification as to how to determine whether a provision of the Act is inconsistent with a State's waiver.
- a. **Example:** Suppose a State has a two-year time limit, but with a set of permissible exemptions and extensions. The State's time limit is clearly different from the federal time limit, which bars use of federal TANF funds to provide assistance in excess of 60 months, subject to allowable exceptions for 20% of the caseload. The State might argue that the federal time limit is inconsistent with the State's time limit. Alternatively, it might be argued that the State could apply both time limits, allowing for exemptions and extensions to the State's two-year limit while terminating aid to those who subsequently reached the five-year limit.
 - b. **Example:** Suppose the State has extensive but highly individualized participation requirements. The State could argue that the federal work participation rate requirements are inconsistent with the State approach, because the State counts a broader range of activities and does not calculate compliance based on measuring hours of activities. Alternatively, it might be argued that it could still be possible for the State to allow its broader range of activities, so long as the State also satisfied the federal work participation requirements.

In a large number of instances, it is possible to argue that a requirement of the Act is or is not inconsistent with a State's waiver. Accordingly, if a State believes a requirement is inconsistent, and HHS believes the requirement is not inconsistent, the dispute may not be resolved without the involvement of the courts. Accordingly, at this point, it is possible to say that a State with a waiver in effect as of the date of enactment may not have to comply with certain provisions of the Act, but it is not possible to know with certainty which (if any) provisions will be affected.

¹²⁵ Sec. 415(b),(d).

F. **Waivers Granted After July 1, 1997:** After a State begins operating its program under TANF, the State might still wish to seek a waiver of program requirements under Section 1115. HHS authority to grant waivers under Section 1115 will continue, but the scope of waivers will be restricted in practice. This is because Section 1115 allows waivers of Section 402 of the Social Security Act. In the AFDC Program, Section 402 contains the AFDC State Plan requirements, which are typically the provisions States wish to have waived. Under TANF, the State plan provisions are also in Section 402, but most of the requirements that may concern States under TANF (i.e., the work participation rates, prohibitions, and penalties) are not in Section 402, and accordingly will not be waivable.

X. INTERACTIONS WITH MEDICAID

- A. In General:** Under the Act, recipients of assistance under TANF are not automatically eligible for Medicaid. However, the Act creates a new category of Medicaid eligibility, based on State “pre-welfare reform eligibility criteria.” Generally, individuals can qualify for Medicaid under this new category if they meet the income and resource levels that were applicable to AFDC in the State as of July 16, 1996 (or a modified standard allowed by the Act), and if they meet the AFDC definitions (in effect on July 16, 1996) for “dependent children” or for being a relative residing with a dependent child.
- B. New Category of Medicaid Eligibility:** The Act creates a new category of Medicaid eligibility, based on “pre-welfare-reform eligibility criteria.” An individual will be eligible for Medicaid if:
1. The individual meets the income and resource standards for determining eligibility under the State AFDC Plan in effect on July 16, 1996, using the income and resource methodologies under that plan; and
 2. Based on the AFDC State plan in effect on July 16, 1996, the individual:
 - a. meets the AFDC definition of “dependent child” (i.e., meets AFDC age requirements, is a needy child, is living with one of the list of specified relatives and is “deprived of parental support or care” due to the death, absence, incapacity or unemployment of a parent);
 - b. is a relative of and living with a dependent child; or
 - c. Is pregnant and expects to give birth in the month or the following three months, and the child (when born) would qualify as an AFDC dependent child.¹²⁶
- C. State Option to Modify Standards:** The State may elect to:
1. Lower its income standards, but not below the income standards applicable under its AFDC State plan on May 1, 1988;
 2. Increase its income or resource standards over a period by a percentage that does not exceed the percentage increase in the consumer price index for all urban consumers;
 3. Use income and resource methodologies that are less restrictive than those used under the plan as of July 16, 1996.¹²⁷
- D. State Option to Continue Waivers:** If a State has a waiver of a provision of part IV-A (i.e.,

¹²⁶ Sec. 114 of the Act creates a new Social Security Act Sec. 1931. The pre-welfare-reform eligibility criteria are in Sec. 1931(b)(1).

¹²⁷ Sec. 1931(b)(2).

AFDC) which affects eligibility of individuals for Medicaid in effect as of July 16, 1996, or pending on the date of enactment and approved by the Secretary on or before July 1, 1997, then the State may continue to apply the waiver after the date the waiver would otherwise expire.¹²⁸

E. **Option to Terminate Medical Assistance for Failure to Meet Work Requirement:** The State may elect to terminate Medicaid eligibility for an individual, but not for the children of the individual, if the individual:

1. is receiving “cash assistance under a State program funded under part A of Title IV”, i.e., TANF;
2. is not otherwise entitled to Medicaid coverage as a pregnant woman, infant, child under age 6, or child born after September 30, 1983 meeting the applicable State income level;
3. has cash assistance under the program terminated based on a refusal to work.

The termination may continue until such time as there is no longer a basis for the termination because of the refusal to work. The authority to terminate an individual’s Medicaid eligibility based on a refusal to work under a State TANF program does not permit a State to terminate medical assistance for a minor child who is not the head of a household receiving assistance under a State program funded under part A of Title IV. This provision appears to implicitly provide authority to terminate Medicaid for a minor parent who is the head of a household, but not for other children.¹²⁹

4. **Transitional Medicaid for Persons Receiving Child Support Collections:** If an family has qualified for Medicaid for at least three of the last six months based on the “pre-welfare reform eligibility criteria”, and then ceases to qualify as a result (wholly or in part) of increased collection of child or spousal support, the family will continue to qualify for Medicaid for an additional four months.¹³⁰
5. **Transitional Medicaid for Persons With Earnings from Employment:** If an individual has qualified for Medicaid for at least three of the last six months based on the “pre-welfare reform eligibility criteria”, and then ceases to qualify as a result of hours or income from employment of the caretaker relative, or because of expiration of the applicable earnings disregards, then the individual’s family will continue to qualify for up to one year of transitional Medicaid. For qualifying families, the rules governing the length of and

¹²⁸ Sec. 1931(d).

¹²⁹ Sec. 1931(b)(3).

¹³⁰ Sec. 1931(c)(1); Sec. 408(a)(11)(B).

requirements for transitional Medicaid are not otherwise affected.¹³¹

Example: Ms. Smith qualified for Medicaid under the State’s “pre-welfare reform criteria, because she had a dependent child and no income. The State’s applicable level (Unchanged from July 16,1996) for a family of her size was \$400. She now attains employment in which her countable earnings are \$500. She will now qualify for Transitional Medicaid. This is the case whether or not she has been receiving TANF assistance, and whether or not the income from employment does or would result in eligibility for TANF assistance.

F. Relationship of Medicaid to TANF:

1. **No Categorical Linkage:** In contrast with AFDC, individuals receiving TANF assistance will not automatically be eligible for Medicaid.
2. **State May Elect to Use Single Application Form:** The State may elect to use a single application form for TANF and Medicaid.¹³²
3. **State May Not Require Application for TANF as Condition of Medicaid Application:** The State may not require pregnant women, infants, children under age 6, or other children born after September 30, 1983, who qualify under applicable income guidelines to apply for TANF as a condition of receiving Medicaid.¹³³ While the Act is not explicit, it does not appear that a State would have the authority to require any individual to apply for TANF as a condition of receiving Medicaid.
4. **No Medicaid Penalty for Reducing TANF Payment Levels:** Under the law in effect before the Act, a State risked a penalty in its Medicaid program if the State reduced AFDC payment levels below their level in effect on May 1, 1988. This penalty is now eliminated.¹³⁴
5. **Entity Determining Medicaid Eligibility:** The State may elect to have Medicaid eligibility determined by the agency or agencies administering TANF.¹³⁵

G. Increased Federal Funding for Administrative Costs: The Secretary of HHS is directed to

¹³¹ Sec. 1931(c)(2); Sec. 408(a)(11)(A).

¹³² Sec. 1931(e).

¹³³ Sec. 114(d) of the Act.

¹³⁴ Sec. 114(d) of the Act.

¹³⁵ Sec. 1931(f)(1).

increase the federal matching percentage “to such percentage as the Secretary specifies” for administrative costs of eligibility determinations that a State demonstrates (to the satisfaction of the Secretary) would not have been incurred but for enactment of these modified Medicaid rules. Not more than \$500 million shall be available to States from FY 97 to FY 2000 under this provision, and the funds will only be available for expenditures incurred during the first 12 calendar quarters in which the State’s TANF program is in effect.¹³⁶

- H. **Effective Date:** Generally, States are required to implement TANF by July 1, 1997, but may elect to implement earlier by filing a complete State plan with the Secretary of HHS. If a State implements TANF on July 1, 1997, the Medicaid provisions will also be effective on July 1, 1997. If the State elects to implement earlier, the Medicaid provisions become effective on the date of implementation of TANF.

¹³⁶ Sec. 1931(h).

XI. FUNDING AND ADMINISTRATION BY INDIAN TRIBES

- A. **Option to Receive Direct Funding:** Beginning with FY 97 (and continuing through FY 2002) an Indian tribe with an approved Tribal Family Assistance Plan will be eligible for direct funding. The amount of a Tribal family assistance grant will be the amount of Federal payments to a State or States during FY 94 for Indian families residing in the service area or areas identified by the tribe in the plan, and the family assistance grant for the affected State or States will be reduced accordingly. In addition, each eligible Indian tribe will receive the amount that it received in JOBS funding for FY 94, in each year from FY 97 through FY 2002. The Secretary of HHS is directed to establish minimum work participation requirements, appropriate time limits, and penalties against individuals for tribes operating under a Tribal Family Assistance Plan.¹³⁷

¹³⁷ Sec. 412.

XII. SERVICES PROVIDED BY CHARITABLE, RELIGIOUS OR PRIVATE ORGANIZATIONS

- A. **In General:** The Act authorizes States to contract with religious and other private providers, and to operate certificate/voucher programs in which religious/private providers could participate. A State is not be required to use contracts or certificates/vouchers. However, if a State chooses to make use of contracts or certificates/vouchers, a number of provisions apply to the State.¹³⁸
- B. **Scope:** A State may administer and provide services under the block grant and certain other programs through contracts with charitable, religious or private organizations, and could provide program beneficiaries under the affected programs with certificates, vouchers, or other forms of disbursement [hereafter “certificates/vouchers”] which are redeemable with such organizations. The affected programs are programs receiving TANF funds, and “any other program established or modified under Title I or II of this Act” that permits contracts with organizations or permits certificates, vouchers, or other forms of disbursement to be provided to beneficiaries, as a means of providing assistance. Affected programs clearly include TANF and Supplemental Security Income. It is unclear whether any other programs are subsumed in the description.
- C. **Non-Discrimination Against Religious Providers:** Religious organizations are eligible, on the same basis as any other private organization, to be a contractor to provide assistance or to accept certificates/vouchers under any affected program, so long as the programs are implemented consistent with the Establishment Clause of the U.S. Constitution. Neither the federal government nor a State receiving funds under an affected program shall discriminate against an organization which is or applies to be a contractor to provide assistance, or which accepts certificates/vouchers on the basis that the organization has a religious character, provided that this shall not be construed to preempt any provision of a State constitution or State statute that prohibits or restricts the expenditure of State funds in or by religious organizations.
- D. **Religious Independence:** Any religious organization with a contract or which accepts certificates/vouchers shall retain its independence from government, including control over the definition, development, practice and expression of its religious beliefs. Neither the Federal Government nor a State shall require a religious organization to alter its form of internal governance or remove religious art, icons, scripture, or other symbols in order to be eligible to contract to provide assistance or accept certificates/vouchers from an affected program.
- E. **Employment by Religious Organization:** A religious organization’s participation in, or receipt of funds from, affected programs does not affect the religious organization’s status under the

¹³⁸ Sec. 104 of the Act.

Civil Rights Act of 1964.

- F. **Nondiscrimination Against Beneficiaries:** Except where otherwise provided in law, a religious organization shall not discriminate against an individual in regard to rendering assistance funded under an affected program on the basis of religion, a religious belief, or refusal to actively participate in a religious practice.
- G. **Alternative Choice for Beneficiaries:** If an individual has an objection to the religious character of an organization or institution from which the individual receives, or would receive assistance under an affected program, the State must provide the individual (if otherwise eligible for assistance) within a reasonable period of time from the date of such objection with assistance from an alternative provider that is accessible to the individual and the value of which is not less than the value of the assistance which the individual would have received from the religious organization or institution.
- H. **Fiscal Accountability:** Any religious organization contracting to provide assistance under an affected program shall be subject to the same regulations as other contractors to account in accord with generally accepted auditing principles for use of the funds provided under the programs; however, if such organization segregates federal funds provided under such programs into separate accounts, then only the assistance provided with such funds shall be subject to audit.
- I. **Compliance:** Any party seeking to enforce its rights under these provisions may assert a civil action for injunctive relief exclusively (i.e., not for damages) in an appropriate State court against the entity or agency that allegedly commits such violation.
- J. **Sectarian Worship or Instruction:** No funds provided directly to institutions or organizations through contracts to provide services and administer programs under the affected programs shall be expended for sectarian worship, instruction, or proselytization.
- K. **No Preemption:** The provisions of this section are not intended to be construed to preempt any provision of a State constitution or statute that prohibits or restricts expenditure of State funds in or by religious organizations.

XIII. EFFECTIVE DATES AND TRANSITION RULES

A. **In General:** TANF provisions generally have an effective date of July 1, 1997. However, States can opt to begin implementation earlier and some States may conclude that they have a fiscal incentive to do so. Some of the Act's penalties do not take effect until the latter of July 1, 1997 or the date that is six months after the date the Secretary receives the State's plan. Even if a State does not opt for early implementation, all entitlements to assistance under Titles IV-A and IV-F would terminate effective October 1, 1996.

1. **Basic Effective Date:** Unless otherwise provided, the TANF provisions have an effective date of July 1, 1997.¹³⁹ Provisions relating to the repeal of IV-A child care programs have an effective date of October 1, 1996; the child care title of the Act also has an effective date of October 1, 1996.¹⁴⁰ Entitlements to assistance under Title IV-A (AFDC, Child Care) or IV-F (JOBS) terminate as of October 1, 1996.¹⁴¹
2. **State Option to Begin Earlier Implementation:** Some States may conclude that there is a fiscal advantage in beginning implementation of TANF earlier than July 1, because many States have experienced caseload declines in the last few years, and the amount of funding that the State qualifies for under the TANF formula may be higher than the amount the State would receive to match its expenses based on the State's current AFDC caseload. The Act provides that if the Secretary of Health and Human Services receives from a State a legally sufficient State plan¹⁴², then on and after the date of the Secretary's receipt, the State will be considered an eligible State for purposes of qualifying for receiving its grant funds under the Act. All amendments relating to TANF become effective except for certain penalties (described below). The child care provisions noted above still have an effective date of October 1, 1996 even if the State elects to begin implementation of TANF at a time other than July 1, 1997. Through June 30, 1996, the State will continue to be subject to the current-law reporting requirements of parts A and F (i.e., AFDC, Emergency Assistance, and JOBS, but presumably not child care, which becomes subject to new reporting requirements as of October 1, 1996), modified by the Secretary as appropriate, to take into account the State program under the block grant.¹⁴³

¹³⁹ Sec. 116(a)(1) of the Act.

¹⁴⁰ Sec. 116(a)(4), Sec. 615 of the Act.

¹⁴¹ Sec. 116© of the Act.

¹⁴² The Act refers to the Secretary receiving a plan "described in section 402(a) of the Social Security Act (as added by the amendment made by section 103(a)(1) of this Act)," which seems to apply that the relevant date is the date of submission of a legally sufficient Plan. Presumably, a plan not in compliance with the statutory requirements is not sufficient to make a State an "eligible State."

¹⁴³ Sec. 115(b)(1).

3. **Delayed Effective Date for Certain Penalties:** A set of penalties will not take effect with respect to a State until, and shall apply only with respect to conduct that occurs on or after, the later of July 1, 1997; or the date that is 6 months after the date the Secretary of Health and Human Services “receives from the State a plan described in section 402(a) of the Social Security Act (as added by such amendment.)”¹⁴⁴ Note that in some cases, there may be an initial dispute as to whether a submitted State plan is legally sufficient, and the State may need to subsequently revise its plan to be legally sufficient. It is not entirely clear whether the six months runs from the date the Secretary receives a State plan, or from the point that the Secretary receives a legally sufficient State plan.
- a. **Delayed Penalties:** The penalties that will be delayed are the penalties for failure to submit a required report, failure to satisfy work participation rates, failure to participate in the IEVS system, failure to comply with paternity establishment and child support enforcement requirements of Title IV-D, substantial noncompliance with child support enforcement program requirements, and failure to maintain 100% of historic State spending for contingency fund purposes. Note, however, that if a State implements TANF provisions early, current-law AFDC penalties relating to substantial noncompliance with child support enforcement requirements will continue to be in effect through June 30, 1997.
- b. **Penalties Not Delayed:** The penalties that will not be delayed are the penalties for misexpenditure of TANF funds, failure to timely replay a loan, failure to maintain effort, failure to comply with the five-year limit, failure to maintain assistance for a single parent of a child under six who refuses to comply with work requirements due to lack of child care; and failure to expend additional State funds to replace grant reductions.
- c. **Example:** Suppose a State submits a legally sufficient State plan on October 1, 1996. The State will be subject to penalties for failure to comply with the work participation rate requirements for conduct on or after July 1, 1997. Alternatively, if the State submits a legally sufficient plan on May 1, 1997, the State will be subject to penalties for failure to comply with the work participation rate requirements as of November 1, 1997, i.e., six months later.
4. **Impact on Funding for States Not Electing Early Implementation:** Whether or not the State elects early implementation, a State’s federal funding for its AFDC Program for FY 97 shall not exceed the amount equal to its family assistance grant.¹⁴⁵
5. **Impact on Funding for States Electing Early Implementation:** A State electing early

¹⁴⁴ Sec. 116(a)(2).

¹⁴⁵ Sec. 116(b)(1)(B).

implementation may submit its plan in FY 97, or could conceivably submit its plan while some time still remains in FY 96.

- a. **Implementation within FY 96:** It appears that a State could submit a State plan immediately after the effective date of the Act. However, the State plan requirements provide that the State must provide assurances that local governments and private sector organizations have been consulted regarding the plan and design of services and have had at least 45 days to submit comments on the plan and design of services. In addition, the Act also provides that any funds received by the State under TANF shall be subject to appropriation by the State legislature, which raises the question of whether a State has the legal authority to submit a State plan prior to receiving State legislative authorization. In any case, if a State submits a legally sufficient plan while some time still remains in FY 96, the State can receive a partial family assistance grant for the remainder of the fiscal year, calculated as the FY 96 family assistance grant, multiplied by 1/366 of the number of days remaining in the fiscal year beginning with the date the Secretary of Health and Human Services first receives a legally sufficient plan.¹⁴⁶
- b. **Implementation in FY 97:** If a State elects early implementation in FY 97, then the State may not receive, in AFDC and TANF funds, an amount greater than its family assistance grant for FY 97. The amount that the State will receive in TANF funds will be the lesser of:
 - (1) the amount (if any) by which the State family assistance grant exceeds total federal obligations to the State under Part IV-A (as in effect on September 30, 1995 and not including child care obligations) for FY 97; or
 - (2) The State family assistance grant, multiplied by 1/365 for each day in the fiscal year beginning with the date the Secretary of HHS first receives a legally sufficient State plan.¹⁴⁷
- c. **Submission of State Plan Deemed Acceptance of Grant Amount and Termination of Entitlement:** The submission of a plan by a State that accelerates the effective date of implementation is deemed to constitute the State's acceptance of the grant amount and formula for calculating it, and is deemed to constitute the termination of any entitlement of any individual or family to benefits or services under the State AFDC program.¹⁴⁸
- d. **Termination of Entitlement Under AFDC Program:** Effective October 1, 1996, no

¹⁴⁶ Sec. 116(b)(1)(B)(ii)(I).

¹⁴⁷ Sec. 116(b)(1)(B)(ii)(II).

¹⁴⁸ Sec. 116(b)(1)(C).

individual or family shall be entitled to any benefits or services under any State plan approved under part A or F of title IV of the Social Security Act (as in effect on September 30, 1995).¹⁴⁹

¹⁴⁹ Sec. 116(c).