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Waivers

**Waivers and the New Welfare Law:
Initial Approaches in State Plans**
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The Personal Responsibility and Work Opportunities Reconciliation Act (PRWORA) imposes a set of requirements on States receiving Temporary Assistance for Needy Families (TANF) block grants. However, the PRWORA also provides that if a State opts to continue a waiver that was in effect on the date of enactment of the new law (i.e., August 22, 1996), the State need not comply with PRWORA provisions that are inconsistent with the waiver until the expiration of the waiver. There are many unresolved questions about how to determine whether a State's waiver should be considered "inconsistent" with a PRWORA provision. The federal Department of Health and Human Services (HHS) has not yet provided an interpretation of when it believes a waiver is "inconsistent" with a PRWORA provision. Instead, HHS has suggested that when a State submits a State Plan, the State should describe the areas in which the State believes that its waiver is inconsistent with one or more provisions of the PRWORA.

CLASP has reviewed the State Plans submitted by thirty-two States. This document summarizes the areas in which those States have identified inconsistencies between requirements of the PRWORA and their waivers. In their submissions, at least half of the States are indicating an intent to continue one or more waivers, but States are taking a range of approaches: some States have been quite explicit and specific in identifying areas of inconsistencies, some States have worded their plans in more ambiguous ways, some have made no reference whatsoever to their current waivers; and some have expressly indicated that they have no applicable waivers or wish to terminate their existing waivers.

A State's silence or ambiguity (or assertion that it has no applicable waivers) should not preclude the State from arguing the existence of inconsistency at a later point, because HHS has requested States to identify inconsistencies in their State Plan submissions, but there is no legal requirement that States do so. At the same time, if a State that believes it is not subject to particular requirements of the PRWORA because they appear inconsistent with the State's waiver, the State may conclude it is advantageous to explicitly describe the inconsistencies in its State Plan. This is because most penalties that States risk in relation to their TANF block grants are subject to a "reasonable cause" exception. A State that has expressly articulated the basis for believing a provision of the law is inconsistent with the waiver may be in a better position to assert that the State had reasonable cause for its conduct or non-conduct.¹

¹ For example, Arizona's State Plan expressly notes: "Arizona expects DHHS to advise the State of any Federal statutes which conflict with this State Plan and to notify the State of any potential penalties."

The following text first briefly summarizes the law concerning the relation between waivers and inconsistent PRWORA requirements,² and then specifically outlines the approach of each State whose plan CLASP has had the opportunity to review.³

Provisions of the Law

The PRWORA creates a new Section 415 of the Social Security Act, which relates to both waivers that were in effect as of the date of enactment of the PRWORA (i.e., August 22, 1996), and to waivers that were pending as of the date of enactment and approved on or before July 1, 1997.

First, Section 415 provides that if a State has a waiver which relates to the provision of assistance under a State plan (as in effect on September 30, 1996) and which is in effect as of the date of enactment of the PRWORA (i.e., August 22, 1996), then the amendments made by the PRWORA (other than those relating to the repeal of certain child care programs) shall not apply to the State before the expiration of the waiver "to the extent such amendments are inconsistent with the waiver."

Second, the PRWORA provides that if a waiver application was filed before the date of enactment, but is granted subsequent to the date of enactment (but on or before July 1, 1997), then such a waiver is to be treated in the same manner as waivers in effect as of the date of enactment, subject to two key differences:

- The state will only be freed from the obligation to comply with inconsistent provisions of the Act if the State demonstrates to the satisfaction of the Secretary that the waiver will not result in Federal expenditures under Title IV of the Social Security Act (as in effect without regard to the amendments made by the Act) that are greater than would occur in the absence of the waiver; and
- Receiving approval after the date of enactment for a waiver application pending on the date of enactment "shall not affect the applicability of section 407 to the State." Section 407 is the provision of TANF that establishes the all-family and two-parent-family participation rates, the requirements for sanctioning in connection with non-compliance

² This text only discusses the law relating to the effect of a provision of the PRWORA being inconsistent with a State waiver. There may also be other factors that could affect whether a State retains a waiver, e.g., cost-neutrality and evaluation considerations. A more detailed discussion of Section 415 may be found in CLASP's **WAIVERS AND BLOCK GRANT IMPLEMENTATION: INITIAL QUESTIONS** (August 12, 1996).

³ The States whose plans are covered in this report include: Alabama, Arizona, California, Connecticut, Florida, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Wisconsin, and Wyoming.

with work requirements, and the limited protection for single parents of children under age 6 who are unable to comply with work requirements due to the unavailability of needed child care.

The wording of Section 415 provides little guidance to a State seeking to decide whether it considers the requirements of the new law inconsistent with an existing waiver. To date, HHS' only written discussion has been a suggestion, in draft State Plan Guidance, that a State's Plan should include a discussion of whether the State intends to continue one or more individual waivers, along with an identification of each waiver provision and provision of the new law that the State believes is inconsistent, and the basis for the assessment of inconsistency. HHS' draft guidance also notes that: "Future legislative or regulatory action may limit which provisions of the TANF may be considered inconsistent with waivers for purposes of determining penalties. If this happens, States will have an opportunity to submit a new plan in order to come into compliance with the requirements."⁴

State Approaches, In General

To date, State approaches can generally be categorized in the following ways:

- Twelve States have expressly identified one or more inconsistencies in their State Plans. (Alabama, Arizona, Connecticut, Massachusetts, Michigan, Missouri, Nebraska, New Hampshire, Oregon, South Carolina, South Dakota, Texas).
- Five States generally assert their intention to continue a waiver, without specifically identifying areas of inconsistencies. (Indiana, Oklahoma⁵, North Carolina, Tennessee, Vermont).
- Two States appear to be awaiting State legislative sessions. California appears to be expressing an intent to assert inconsistencies until State law is changed and Utah indicates that because its waivers are referenced in State law, the waivers must be retained until after the next legislative session.
- Two States (Florida and Mississippi) expressly assert their interest in engaging in further consultation with federal officials before deciding whether to terminate their waivers.
- Two States (Kentucky and Nevada) indicate that they do not have any Section 1115 waivers.

⁴ Department of Health and Human Services, DRAFT State Guidance for the Temporary Assistance for Needy Families Program (September 1996), p.4.

⁵ Oklahoma's waiver is a two-county learnfare waiver; the State indicates its intention to continue it until completion but does not indicate which, if any, TANF provisions the waiver is inconsistent with.

- Four States express an intent to terminate waivers or indicate that no waivers are applicable (Louisiana, Maryland, New Jersey, Wyoming).
- Three States are silent on the question of waivers (Kansas, Maine, New York).
- Two States have language in their State plans which is difficult to classify (Ohio, Wisconsin).

Note that in some cases, a State originally sought a waiver in order to implement specific State legislation. If a waiver is based on the requirements of State legislation, the State agency may lack the authority under State law to act to terminate the waiver without authorization from the State legislature. (California and Utah expressly note that they intend to continue under their waivers until there is a change in State law.) Once a waiver is terminated, it may not be possible to reinstate it even if the legislature subsequently decides that it was inappropriate for the agency to have acted to terminate it. Accordingly, in any State in which the agency is seeking to terminate the State's waiver, it is appropriate to ensure that the agency has the authority to do so under State law.

Areas of Inconsistencies

States have asserted inconsistencies with a range of PRWORA provisions, including (but not limited to) those relating to teen parent school attendance, teen parent living arrangement requirements, child support cooperation penalties, work and participation requirements, penalties for non-compliance with work requirements, transitional assistance, and time limit policies.⁶ The approaches taken by each individual State are described in the subsequent section of this document.

There has been considerable discussion about the relationship between Section 415 and the PRWORA work and participation and time limit requirements. Some States are specifically asserting inconsistencies relating to the work and participation requirements and/or the time limit provisions of the PRWORA. No State has asserted that it believes it is not subject to any participation rate, but some States are asserting that they believe that participation or participation rate requirements should be modified to reflect exemption, hourly requirements, or countable activities under their waivers. Similarly, no State has asserted that it believes it is not subject to any time limit, but some States are asserting that time-limit policies under their waivers should apply.

⁶ In the following discussion, it is possible -- and in some instances likely -- that additional States are intending to assert inconsistencies, but we have limited our listing to those instances where the identification of an inconsistency is expressly noted in the State Plan.

Work and Participation Requirements: The single most common area in which States have identified inconsistencies concerns the law's work and participation requirements. Under the PRWORA, a State's Plan must outline how the State will comply with three distinct work and participation requirements:

- the requirement that individuals must be engaged in work (as defined by the State) within 24 months;
- the PRWORA's all-families participation rate; and
- the two-parent families participation rate.⁷

In discussing these State plan provisions, a State might assert an inconsistency relating to one or more of these three provisions. As a practical matter, however, States asserting inconsistencies relating to the all-families participation rate have either been silent about the two-parent rate, or have worded their assertions of inconsistencies in such a way that the assertion may also apply to the two-parent rate, but it is difficult to be certain.

As to the 24-month work requirement, the statutory provision does not expressly provide for any exemptions. Connecticut, Massachusetts and New Hampshire each indicate that they will use the exemption policies operating under their waivers for purposes of the 24-month requirement. Texas may be envisioning a similar approach: in addressing the 24-month requirement, Texas notes it will "require parents or caretakers to engage in work at least 20 hours per week in accordance with the terms and conditions of the State's Title IV-A waiver."

As to the all-families participation rates, a State might assert that the PRWORA's exemption provisions, the Act's hourly participation requirements, or the Act's definitions of countable activities are inconsistent with its waiver. Each of these has been expressly asserted by one or more States.

- Connecticut, New Hampshire and South Dakota are asserting that the Act's exemption provisions are inconsistent with their waivers.⁸
- Connecticut and Massachusetts assert that the Act's hourly participation requirements are inconsistent with their waivers.

⁷ A fourth requirement, that non-exempt parents or caretakers participate in community service employment after two months of receiving assistance, applies to the State within one year from the date of enactment of the new law unless the State opts out.

⁸ Other States may be envisioning a similar approach, but do not explicitly assert the inconsistency. For example, Nebraska indicates that the State will use its existing exemption policies, without expressly noting that they are inconsistent with PRWORA requirements. Texas indicates that it will use "the participation rate methodologies previously approved for JOBS under the waiver."

- Seven States (Connecticut, Missouri, Nebraska, New Hampshire, South Carolina, South Dakota and Texas) assert that they will apply a definition of countable activities different from the definition generally applicable to participation rates under the PRWORA.

In some instances, a State is asserting that there is a direct conflict between a specific provision of the PRWORA and a specific provision of the State's waiver. However, when a State asserts an inconsistency with the exemption, required hours, or countable activities provisions of the TANF participation rates, the State may instead be asserting an inconsistency in a broader sense: the State may be asserting, in effect, that the details of the participation rate requirements would force the State to operate its program in a manner inconsistent with the approach the State was taking under its waiver-based welfare reform initiative. For example, many States had used the waiver process to broaden the number of families who were subject to program participation requirements, but States often operated with flexible and individualized determinations of the activities in which individuals were required to participate, or the levels of required participation. The PRWORA does not prohibit States from making extensive use of activities such as job search or education and training, but sharply limits when they are countable toward the Act's participation rates. A State may conclude that an inconsistency exists because the redesign of allowable activities that would be necessary to meet the TANF participation rates using the TANF definition of countable activities would require a fundamental alteration of the approach taken under the State's waiver.

Note that under a narrow reading of Section 415, one might suggest that no State was operating a waiver inconsistent with the Act's new participation rates.⁹ However, the plain language of Section 415 creates a strong implication that it was envisioned that States with waivers in effect on the date of enactment could assert inconsistencies with the participation rate requirements of Section 407.¹⁰

Time Limits: As to time limits, three States (Arizona, Connecticut, and South Dakota) expressly identify inconsistencies, and several others describe seemingly inconsistent time limits without expressly asserting an inconsistency.

⁹ Under prior law, no State had ever received a waiver to narrow who was subject to JOBS participation rates, or to reduce countable hours requirements for JOBS participation rates, or to change which activities counted toward JOBS participation rates. This was because HHS' waiver authority under Section 1115 of the Social Security Act authorized waivers of Section 402 of the Social Security Act, and the requirements relating to JOBS participation rates were contained in Section 403.

¹⁰ We reach this conclusion because Section 415 draws an explicit distinction between waivers in effect on the date of enactment, and waivers pending on the date of enactment and granted subsequently. As to the latter group, the Act says that the granting of the waiver "shall not affect the applicability of Section 407 to the State." The existence of this language in relation to pending waivers and its absence in the discussion of waivers in effect on the date of enactment creates a strong implication that Congress did envision that States with waivers in effect on the date of enactment would be able to assert inconsistencies that would affect the applicability of Section 407.

A State might be asserting that its time limit is inconsistent either because it wishes to use its waiver exemption and extension policies rather than the PRWORA's 20% hardship exceptions, or because the State wishes to take an approach other than terminating family assistance (e.g., reducing assistance, requiring participation in a work program) after a family reaches a time limit. Even if a State envisions making use of a time limit shorter than five years, the State still may assert an inconsistency if, for example, the State anticipates that the percentage of cases subject to exemptions or extensions could exceed the federal 20% cap.¹¹ For example, Connecticut is making use of a 21-month limit for non-exempt families, but asserts that its exemption and extension policies create an inconsistency with the 60-month-limit/20% exceptions provisions of the PRWORA.

Specific State Approaches

The following text specifically summarizes the approach to inconsistencies taken in each State Plan we have reviewed. This listing of identified inconsistencies is not intended to suggest that HHS will necessarily agree with each identified inconsistency (or that CLASP necessarily agrees with each identified inconsistency); rather, we have simply sought to list the approaches taken by States to date.

Alabama: The State Plan indicates that the State intends to continue implementation of its ASSETS waiver in three counties designated in the waiver as pilot sites. In those three counties, waiver provisions concerning income, assets, and assistance unit composition will be followed. The State expressly notes that it intends to continue a provision inconsistent with TANF concerning the eligibility of a child living with a non-relative caretaker.

Arizona: The State indicates that it intends to continue operating under the terms and conditions of its EMPOWER waiver. While a number of the terms and conditions are consistent with TANF, the State identifies the following specific inconsistencies:

Time Limits: The State indicates that time limits "will follow the welfare reform waiver initiative implemented November 1, 1995" and that adult household members can only receive cash assistance for 24 months during a five year period, and will only receive 60 months of assistance during their lifetime. Exemptions from the time limit may be due to being physically or mentally unable to go to work or training; being the only member of the assistance unit who can stay home to care for another physically or mentally disabled household member; or being a participant in the JOBSTART demonstration project. Up to two four-month extensions can be allowed for completing education or training, and an extension of up to six months can be allowed for good cause.

¹¹ For example, in CLASP's review of State time-limit approaches in the waiver process, a number of States seeking to implement time-limits shorter than five years were making use of exemption policies under which more than 20% of the caseload was projected to be exempt from the time limit. See Greenberg, Savner, and Swartz, *Limits on Limits: State and Federal Policies on Welfare Time Limits* (Center for Law and Social Policy, June 1996).

Transitional Benefits: Under the EMPOWER waiver, Transitional Child Care and Transitional Medicaid are each extended to 24 months. The State notes that while the length of Transitional Child Care is left to State option under the new law, Transitional Medicaid remains a 12-month program, and so the continuation of the waiver is required.

Teen Parents: Under the State's waiver, teen parents are required to live with a parent or other responsible relative in order to receive cash assistance. While this is also required under TANF, the State notes that it will not provide or assist the teen parent in locating a second-chance home, maternity home, or other appropriate adult-supervised living arrangement (as required under TANF).

California: The State Plan indicates that California's Program "will include California's existing Section 1115 demonstration projects, including the California Work Pays Demonstration Project (CWDP)." The State indicates that it intends to seek a change in state law to require work in accordance with the TANF 24-month requirement; however, until State law changes, the State will continue to operate its GAIN program under its federally approved waiver and the State statute. Under the waiver, GAIN participants who have received aid for 22 of the last 24 months and meet other specified criteria are required to participate in at least 100 hours a month in preemployment preparation or work experience activities.

It is unclear whether the State is also asserting that its waiver is inconsistent with the participation requirements of Section 407. The text describes operations of the State's GAIN Program and work requirements applicable to certain families "consistent with the CWDP."

Connecticut: The State Plan expressly notes that the Terms and Conditions for the State's Reach for Jobs First Waiver are to be considered part of the State Plan, and the following inconsistencies are expressly identified:

Statewideness: The State notes that its waiver provides for different treatment of control group cases in the research sites, and that "[t]o the extent this different treatment would be considered to be a separate 'program', as opposed to a lack of uniformity permissible under the new law, this waiver provision is inconsistent with the law, and therefore supersedes it."

Child Support Distribution: The State's waiver provides for passing-through to a family the first \$100 of child support received, with federal participation in the cost of the pass-through. Under prior law, the federal government participated in the cost of a \$50 pass-through, but the PRWORA eliminates this federal participation. The State indicates that "[s]ince federal financial participation in this pass-through is inconsistent with Title IV-D distribution provisions, as amended by PRWORA, the waiver provision takes precedence. Federal financial participation should continue for the pass-through."¹²

¹² The PRWORA provides that a State electing to continue its waiver will only qualify for its TANF block grant amount, as opposed to funding under prior AFDC rules. Connecticut appears to be asserting, however, that this provision does not prevent federal participation in additional costs through the IV-D system (rather than through TANF). Note, however, that the waiver must still maintain overall federal cost-neutrality.

Time Limits: The State's waiver includes a 21-month time limit for non-exempt families and provides for extensions for qualified families who reach the time limit. The State notes that the waiver provisions are inconsistent with the 60 month time limit in the PRWORA with regard to both extensions and exemptions provided for in the waiver.

Extensions: The waiver provides for extensions for six months at a time, and the number of six month extensions is not limited so long as the family qualifies. A family that reaches the time limit will qualify for an extension if the adult in the family has made a good faith effort to find employment, but has income less than the state's payment standard. In addition, families suffering from domestic violence or other circumstances beyond their control which prevent the adult from working may qualify for extensions. As the overall duration of the extensions for which a family may qualify is not limited, and the number of families who may qualify is not limited to a specific percentage. "Federal financial participation is available for all those qualifying for an extension, regardless of the length of the time receiving assistance."

Exemptions: The waiver specifies that the following families will be exempt from the state's time limit: a family with an adult relative who is incapacitated or of advanced age; a family with an adult relative needed in the home to care for an incapacitated household member; a family with an adult relative caring for a child under the age of one who is not covered under the waiver's family cap provision; a family with a pregnant or postpartum adult relative who is unable to work; and a family with an adult relative who is determined to be unemployable.

Families that meet any of these criteria and do not include another adult who is non-exempt are not subject to the time limit during any period in which they qualify for an exemption. There is no limit to the number of families that may be exempt at any point in time. "Federal financial participation is available for those exempt from the time limit for the duration of their assistance."

Definition of Work Activities: The State's waiver requires non-exempt individuals to participate in job search and job readiness activities for up to 12 months prior to an employability assessment, and may provide for additional periods of job search thereafter. This State asserts that this provision is inconsistent with provisions of the PRWORA that limit the extent to which job search may be treated as a countable activity in calculating a state's participation rate. Therefore, "[i]ndividuals participating in job search and job readiness activities should be considered to be "engaged in work" for the purposes of calculating the participation rate for as long as they are satisfactorily participating in such activities."

Hours of Participation: Under the State's waiver, required hours of participation will vary based on the specific activity to which an individual is assigned, and full participation may be less than 20 hours per week. The State asserts that this provision is inconsistent with the provisions of the PRWORA that mandate minimum hours of participation in calculating a State's participation rate. Therefore, an individual who is participating in a work activity to the extent required in the individual's employability plan should be considered to be "engaged in work" for purposes of determining the state's participation rate.

Assessment/Employability plan: The State's waiver includes a two step assessment process. The first step requires participation in self-directed job search for six to 12 months. If an individual satisfactorily completes the job search component but fails to secure unsubsidized employment, an employability assessment is undertaken to develop an individualized employability plan. The State asserts that these provisions of the waiver are inconsistent with timing and substance of the

employability plan provisions of Section 408(b)(2)(B), and therefore the waiver provisions take precedence.

Exemptions from Work Requirements: The State's waiver exempts several categories of individuals from work requirements, including: children under 18, except for minor parents who are not in school; individuals who are incapacitated or of advanced age; individuals needed in the home to care for an incapacitated household member; individuals caring for a child under the age of one who is not covered under the waiver's family cap provision; pregnant or postpartum women who are unable to work; and individuals who are determined to be unemployable.

The State asserts that these exemption policies are inconsistent with the requirement that all adults must engage in work by the 24-month point, and are also inconsistent with the all-families participation rate, which only allows an optional exemption for parents of children under age one when calculating a state's participation rate. The PRWORA does "...not recognize additional exemptions by considering them in the calculation of the participation rates." "Individuals exempt under these waiver provisions should not be required to participate in work activities and should not be considered in calculating the state's participation rate."

Minor Parents and School Attendance: Under the State's waiver, a minor parent who does not have a diploma or GED, and who is not in school, loses her exempt status from JOBS participation. If the minor parent then fails to participate in JOBS without good cause, she is subject to the JOBS sanction (as modified by the waiver), which is a percentage reduction of the grant that increases with each violation and upon the third or subsequent violation results in ineligibility for the entire family. The State asserts that this provision is inconsistent with the provision of the PRWORA which specifies that if the minor parent fails to attend school she is ineligible for assistance. The "...waiver provision prevails."

Penalties for Failure to Comply: In the event an individual fails without good cause to comply with child support cooperation or work requirements, the State's waiver provides a specific progression of penalty amounts based on the number of prior violations, and minimum durations for each penalty, without regard to whether the individual begins or resumes compliance prior to the end of the specified period. The PRWORA penalty for non-cooperation with child support is a 25% reduction in the assistance payment -or complete denial -at the state's option. The penalty for failure to comply with work requirements is a pro rata reduction in benefits during the period of refusal. The State asserts that "...this is an area of inconsistency and the waiver prevails."

Minor parents Living with Adults: The State's waiver includes a provision requiring certain minor parents to live with a parent or legal guardian.

- The waiver, unlike the PRWORA, requires married teen parents who are not living with their spouses to live with an adult or in an adult supervised setting.
- The waiver specifies that a minor parent who is not living with her parent or legal guardian must live in adult supervised setting regardless of whether the current living arrangement would be considered appropriate. The minor parent is only allowed to live in the current arrangement if no adult supervised setting is available. The PRWORA specifies that if a parent or legal guardian is unavailable or inappropriate, the minor must live in an adult supervised setting unless her current arrangement is determined to be appropriate.
- The waiver requires the supervising adult with whom the minor is living to act as representative payee for the minor. The PRWORA does not include such a requirement.

The State asserts that because of these inconsistencies, "...the waiver provisions take precedence."

Medicaid Extension: The State's waiver provides for a 24-month extension of Medicaid for families who become ineligible because of increased earnings, loss of earned income disregards, or an increase in child support. Families are also eligible for the extension if an individual becomes employed within six months after leaving AFDC, even if no one in the family was employed at the time their case closed. There are no quarterly reports required, nor income tests during the period of the extension. The State asserts that since these provisions are inconsistent with the Medicaid extension provided for under the PRWORA, "...the waiver provisions take precedence."

Florida: The State Plan does not identify specific inconsistencies, but notes that the State has three currently approved waiver packages and does not opt to terminate these waivers at this time. Rather, the State wishes to consult further with the Administration for Children and Families regarding the usefulness of continuation of some of the evaluation activities before making this decision.

Indiana: The State Plan indicates that Indiana intends to continue to operate the IMPACT waiver, as modified in August 1996. The State Plan does not expressly indicate which provisions of the PRWORA are inconsistent with the State's waiver package, but does state that "those provisions which are inconsistent with the waivers received by the State of Indiana prior to enactment of the Act shall not apply."

Kansas: The State Plan makes no reference to the State's currently approved waiver.

Kentucky: The State has no current waivers, and accordingly indicates that the issue of relation of waivers to the PRWORA is "not applicable."

Louisiana: The State Plan expressly states that "No Waivers will be applicable."

Maine: It is unclear whether the State is asserting any inconsistencies. The State Plan makes no reference to existing waivers, but in describing its Plan in relation to the 24-month-work requirement and the participation requirements of Section 407, the State attaches its manual pages describing JOBS exemptions and also notes that "recipients of AFDC based on unemployment and single parents with skills necessary to work who have no children under age 5 will be referred immediately to ASPIRE for Job Search activities. These activities will continue throughout receipt of AFDC."

Maryland: It is unclear whether the State is asserting any inconsistencies. In its Plan, the State makes no direct assertion of inconsistencies, but does describe a 20-hour-a-week work activity

requirement and states that exemptions from this requirement will include adults and children who are severely disabled. The State does indicate that it is opting to terminate its Primary Prevention Waiver and the cash assistance component of its Family Investment Waiver.

Massachusetts: The State Plan indicates that the State will comply with requirements of the PRWORA with the exception of those provisions identified in a section of the State Plan entitled 'Provisions which Massachusetts will Continue to Implement under its 1115 Waiver Authority.'" In that section, the State identifies the following areas:

Work Requirements: Under the State's waiver, a recipient who is nonexempt and whose youngest child is of school age must work and/or perform community service for 20 hours a week. In two-parent households, both parents are subject to the work program requirement unless exempt. The State has its own definition of "nonexempt." The State indicates it will retain this work requirement. The State expressly notes that it is applying its work requirement rather than the community service requirements of TANF, that it is applying its own definition of "nonexempt" for purposes of the 24-month-work requirement, and that it will apply its own standard for number of required hours (20 hours a week) and its own penalties (described below) for purposes of the TANF participation rate requirements. (The State does not expressly say that it is applying its own definitions of who is exempt for purposes of the TANF participation rates.)

Sanctions: Under the State's waiver, a mandated parent or caretaker who fails to comply with work requirements without good cause will be ineligible for cash assistance. Failure to do so on more than one occasion will result in termination of assistance for the entire household. For two-parent households, both parents may be sanctioned for failure to comply. The State indicates it will continue this waiver approach.

Job Search: Under its waiver, the State may require job search without a limit on the number of weeks. The State indicates it will continue this waiver. It is not clear if the State envisions that such extended participation in job search would be countable toward participation rate requirements.

Child Support Cooperation: Under the State's waiver, a caretaker relative who fails to cooperate with child support requirements without good cause will have his or her grant reduced by an amount equal to the caretaker's portion of the grant. Massachusetts indicates that it will retain this sanction for failure to comply with child support requirements.

Transitional Child Care: Under its waiver, a family may be eligible for Transitional Child Care without having met the requirement to have received assistance in at least three of the prior six months. The State indicates it will continue to provide Transitional Child Care assistance to such recipients under its waiver authority.

Transitional Medical Assistance: Under its waiver, a family may be eligible for Transitional Medical Assistance without satisfying quarterly reporting requirements and without meeting the requirement to have received assistance in at least three of the prior six months. The State indicates it will continue to provide Transitional Medical Assistance to such recipients under its waiver authority.

Michigan: Michigan's Plan includes a copy of the State's "To Strengthen Michigan Families 1992-1994-1996 Waiver package booklet" to describe the policies that Michigan intends to implement in the future. In addition, the State Plan identifies three specific inconsistencies:

Sanction policy: The State will maintain its policy, approved by federal waiver, of reducing the cash assistance grant by 25% for persons who fail to cooperate with work requirements without good cause. This is in lieu of the TANF provisions which provide for reducing assistance on a pro rata basis for failure to comply with work requirements.

Child Support Cooperation: Michigan will, if its pending waiver is approved, remove the needs of the non-cooperating person from the grant until cooperation occurs; if cooperation has not occurred by the end of a four-month-period, the family's grant will be terminated. Michigan's policy would be in lieu of the TANF policy, which requires a minimum 25% grant reduction for failure to cooperate with child support enforcement requirements.

Reporting Absence of a Child: Michigan will allow 10 days for clients to report changes in family circumstances, rather than the TANF requirement that a child's absence affecting eligibility must be reported within five days.

Mississippi: The State Plan does not expressly identify any areas of inconsistency, but does state: "Mississippi wishes to continue all approved waivers at this time. Based on our conversation with federal, APWA, and NGA staff we do not believe that it has been definitively determined what provisions are inconsistent with TANF and with other aspects of the Personal Responsibility and Work Opportunity Reconciliation Act. For example, the Medicaid linkage implications of terminating a waiver in TANF have not yet been decided. Continuing all of our waivers until all appropriate federal decisions are made will ensure that Mississippi will have the ability to continue all aspects of its current program."

Missouri: The State Plan states that Missouri will retain its Missouri Families Mutual Responsibility Plan (MF-MRP) which is statewide, and its 21st Century Communities Demonstration Project, which operates in specific zip codes of Jackson County. The State indicates that: "Allowable work activities in the Missouri Families Mutual Responsibility Plan are inconsistent with the new law. MFMRP counts all components under the previous Title IV-F JOBS Program. The state intends to continue allowing all work activities as defined in the Social Security Act Section 482, and previously approved under the State's Title IV-F JOBS State Plan, to meet work participation rates as required under PRWORA."

Nebraska: The State expressly indicates an inconsistency in the context of countable activities for work requirements: the State Plan indicates that the State will use its existing policies and procedures to define the activities that will be accepted as meeting work requirements, and will use the definition as outlined in the State's waiver which differs from the Act. The State also indicates (without expressly noting an inconsistency between State waiver policies and the Act) that the State will use existing policies and procedures to define those individuals who are temporarily exempt

from work requirement; use existing sanction procedures; and limit services to families with an employable adult to no more than two years without earned income and no more than 60 months regardless of source of income.

Nevada: The State Plan indicates: "There are no 1115 waivers in Nevada."

New Hampshire: The contents of New Hampshire's State Plan describe the program in effect on October 1, 1996. The Plan indicates that on January 1, 1997, the State will begin implementation of the "New Hampshire Employment Program/Family Assistance Program," as approved in New Hampshire's prior waiver application. HHS approved the waiver in June 1996. The Plan indicates that amendments will be made as implementation occurs. The Plan indicates that inconsistent provisions of the waiver will supersede the provisions of the Act, and that additions or changes to the list of inconsistencies described below may be made in the future.

Definition of Work Activities: The State notes that the definition of the activities that count toward participation for purposes of the work and participation requirements of the PRWORA are more restrictive than the work activities that may be required under the State program. Under the State program, activities that qualify as work include: job search, unsubsidized work, a subsidized job, on-the-job training, community service, alternative work experience programs, work supplementation, adult basic education services, job readiness programs, community services and resources, training programs and post secondary education activities, work for benefits programs, and any other employment related activity as determined by the state agency. The Plan indicates that the State will use its own definition of work instead of the definition included in the Act.

Limitation on Job Search: The Act limits the duration of job search activities that will count toward the work and participation rates. As these activities are not time-limited under New Hampshire's program, the State asserts that its provisions supersede the limitations included in the Act.

Limitation on Vocational Educational Training: The state's waiver does not limit the number of individuals who may be treated as being engaged in work as a result of participation in vocational education activities or being the head of a household with satisfactory school attendance. Under the waiver, participation in all approved activities are treated equally. The State asserts that its waiver provisions supersede the Act's limitation on the number of individuals who may be counted as being engaged in work as a result of participation in vocational educational activities or being the head of household with satisfactory school attendance.

Exemptions from Work Requirements: The State's waiver provides exemptions from participation consistent with prior JOBS exemptions and provides for an additional exemption based on an agency determination that an individual has "...significant employment related barriers." The State asserts that its waiver provisions supersede inconsistent provisions of the Act which specify both for purposes of calculating the state's work participation rate, and for purposes of the "24 month work requirement," that the only exemption available is for those caring for a child under the age of 12 months.

Medicaid: The State's waiver allows it to use the income and resources methodologies of the waiver demonstration in place of those contained in the state's AFDC State Plan. The State asserts that its provisions supersede inconsistent provisions of the Act which specify that States must continue to use pre-Act eligibility criteria for determining Medicaid eligibility.

Transitional Medicaid: The state's waiver provides that a family need not have received cash assistance during three of the last six months in order to be eligible for transitional Medicaid. The State asserts that these provisions supersede the Act's requirement that eligibility for transitional Medicaid be conditioned on having received aid in three of the last six months.

Definition of Dependent Child: The State's waiver defines a dependent child as including a child up to age 20 provided the child is a full-time student in a secondary school or in an equivalent level of vocational or technical training. The State asserts that its provision supersedes the Act's provision defining a minor child as an individual under the age of 18, or under the age of 19 and a full-time secondary school student or in an equivalent level of vocational or technical training.

Use of TANF Funds for Medical Services: The state's waiver authorizes payment for medical and dental services if the agency determines that such services are needed to help an individual obtain or retain employment. The State asserts that its provision supersedes the provision of the Act that bars the use of TANF funds to pay for medical services.

New Jersey: The State Plan states that "New Jersey wishes to discontinue its Title IV-A/F waivers since the law allows states the flexibility to implement provisions without the need for waivers."

New York: The State Plan makes no reference to existing waivers. The Plan, in outlining how the State will conduct a program that provides assistance to needy families, indicates that the State will "fulfill this goal for the immediate future by implementing a program which to the extent practicable conforms with the program policy provisions" of the State AFDC and JOBS plans that existed as of September 30, 1996, (subject to new penalty policies when an adult applying for assistance fails to perform assigned job search activities or fails to submit to required finger imaging. Instead of outlining how the State will satisfy the participation rate requirements of Section 407, the Plan states that New York will "ensure that parents and caretakers receiving assistance under the program engage in work activities in accordance with the aforementioned JOBS State Plan."

North Carolina: The State Plan notes that a waiver package was approved in February 1996 and took effect on July 1, 1996. The State Plan asserts: "This state plan is based on North Carolina's existing state plan for Title IV-A of the Social Security Act and waivers that were approved in February, 1996. Inconsistencies between this state plan and the requirements of P.L. 104-193 [i.e., the PRWORA], not expressly prohibited by federal law, are supported by approved waivers, as interpreted with reference to the laws in effect at the time."

The State Plan does not expressly identify any inconsistencies, although the narrative does describe the State's sanction policy (\$50 for three months, then \$75 for three months, then \$75 for

six months, then \$75 for twelve months) and notes that these sanctions were included in the approved waiver package.

Ohio: The State Plan indicates that for the immediate future the State will implement a program which to the extent practicable conforms with the program policy provisions of the Ohio State AFDC and JOBS plans, and the Terms and Conditions to Waivers of the AFDC and JOBS programs as of September 30, 1996. However, the plan also states that in implementing TANF “the State will defer to any existing TANF provisions or subsequent changes in federal law which may be in conflict with its AFDC and JOBS state plans.” The State does not specify whether it will also defer to TANF provisions which may be in conflict with its waivers.

Oklahoma: The State indicates that it will continue a two-county learnfare waiver until its completion (although the plan does not indicate what, if any, provision of TANF the waiver might be inconsistent with.)

Oregon: The State Plan repeatedly makes references to features of the Oregon Option Waiver Project which appear inconsistent with PRWORA requirements, but the State Plan only expressly notes one inconsistency:

Child Care: Parents of infants under 90 days are exempt under the Oregon Option Waiver, and the State Plan says that “[t]he State will continue to use the Oregon Option exemption for infants less than 90 days old, rather than the new federal exemption for parents of children under age 6 who claim that suitable child care is not available.”¹³

In addition, the State describes a set of exemptions from required participation under the Oregon Option. These exemptions are not provided under the PRWORA. The State also describes its time limit (24 months in an 84 month period), and describes exemptions and extensions for its time limit, without expressly noting whether the State is asserting inconsistency with the federal sixty-month limit.

The State may also be asserting inconsistency with the participation rate requirements of Section 407. In Section (1)(A)(I) of its State Plan, the State describes its approach under its JOBS Program. Then, in describing its approach to Section 407, the State Plan says “The State will ensure that parents and caretakers receiving assistance under the program engage in work activities through the JOBS Program as described in Section (1)(A)(I) of this document.”

¹³ Note, however, that federal law does not provide for an exemption for parents with children under age 6 when child care is unavailable. Rather, the federal law provides that a State may not reduce or terminate assistance to a single parent of a child under age 6 if the parent is unable to comply with work requirements due to the unavailability of needed child care.

South Carolina: The State indicates that it intends to retain certain waivers which “appear to be in conflict with the TANF legislation.” Five specific areas are identified:

Transitional Medicaid: The State indicates that it will provide up to 24 months of transitional Medicaid for AFDC recipients who lose eligibility because of employment or who become unemployed after losing eligibility due to the AFDC time limit, whose earnings are less than the Federal Poverty Guidelines and whose employment would be jeopardized by medical expenditures.

Non-Custodial Parent Participation: The State Plan indicates that the State will require court-ordered non-custodial parents of children receiving AFDC to participate in the Family Independence Employment and Training Program.

Individual Development Accounts (IDA): The State indicates that under its waiver, the State will exclude as a resource for applicants and recipients funds up to \$10,000 deposited in an IDA and will disregard from income a lump sum payment of \$10,000 or less that is deposited in an IDA within 30 days of receipt. (The State will count any amount toward the family’s resource limit that is transferred to a non-exempt account or withdrawn for other than allowable purposes.)¹⁴

Ninety-Day Medicaid Extension: The State indicates that it will extend Medicaid eligibility to individuals who are participating in an alcohol or drug treatment program for up to 90 days after termination of AFDC benefits due to the removal of the dependent child(ren) from the home due to abuse or neglect.

Definition of Work: The State indicates that “[u]nder the Terms and Conditions agreed to in the Section 1115 Waiver, [the State] will continue to define work as involvement in specific components that will lead to employment or improved employability as specified in the legislation. Components which will continue to count toward participation are (1) the Family Life Skills requirements mandated by the Family Independence Act and (2) the various Job Club curricula. Included within Job Club is the mandatory 60-day job search. In addition, [the State] intends to define as work participation various components required under the Family Independence Act of 1995. Participation in Literacy Classes, Adult Education, GED classes, technical schools, vocational training, Work Experience and On-the-Job Training will all count toward the participation rate, all of which were countable components as of the date waiver terms and conditions were granted to South Carolina.”

South Dakota: The State’s Plan identifies four “primary inconsistencies” with TANF provisions:

Treatment of Disabled: The State Plan notes that under the State’s currently approved waiver, disabled adults and adults needed in the home to care for a disabled family member are exempt from work requirements and time limits. Accordingly, the State indicates an intent to

¹⁴ The State does not specify how its IDA provision is inconsistent with the PRWORA. Under the PRWORA, a State would be free to develop its own rules for treatment of resources and lump sums. The PRWORA does contain its own IDA provision, which generally provides that if an IDA is designed in accordance with the statutory provisions, a State may elect to provide that the funds deposited in the IDA will not affect eligibility for federal means-tested programs. It is not clear whether the State is seeking to combine its own IDA design rules with those in the statute.

exclude such individuals from the numerator and denominator for purposes of calculating participation rates, and that the State will not count these individuals against the 20% hardship exceptions to the 60-month time limit.

Twenty-Four Month Work Requirement: The State notes that TANF allows for up to 24 months of benefits prior to requiring a parent or caretaker to engage in a work activity, but that South Dakota plans to count months of benefits received under the State's waiver when determining if the parent or caretaker is ready to engage in work or has received 24 months of countable benefits, whichever is earlier.

Secondary Education and Job Readiness: The State Plan notes that TANF is more restrictive about when secondary education and job readiness components count as participation than is true under the State's waiver, so the State will continue current provisions regarding both activities. "All participation in secondary education, (high school, alternative high school, GED, basic/remedial education, or English as a second language instruction), will count towards an individual's first 20 hours of participation regardless of the person's age for both 'all families' and 'two-parent families.' Likewise job readiness pre-employment training will be defined as a work activity for determining participation rates."

Postsecondary Education and Vocational Training: The State indicates that college education and vocational training will be considered as acceptable work activities and counted when determining South Dakota's work participation rates for both "all families" and "two-parent families."

Tennessee: The State expresses its intent to continue operating its statewide waiver. The State does not explicitly identify inconsistencies with TANF, but at least the following areas of inconsistency appear to exist from the State's Plan: 1) Exemptions: The State allows a set of exemptions from its work requirements (i.e., disabled, age 60 or greater, providing in-home care for a disabled relative, not included in the assistance group, incapacitated, parent of a newborn who is four months of age or less). TANF does not allow all of these exemptions. 2) Countable Activities: The State's Plan provides that nonexempt parents and caretakers must engage in work plan activities, but the list of countable activities is broader than the list counting toward TANF participation rates. 3) The State has a 60-month lifetime time limit but provides for an express set of exemptions.

Texas: Texas initially states that "Texas operates a TANF block grant assistance program on a statewide basis in accordance with state law, the terms and conditions of its 1115 waiver, and state policy to the extent that they are inconsistent with federal law." The two areas of inconsistency specifically noted are:

24-Month Work Requirement: In describing the State's approach to the 24-month work requirement, the State Plan states: "Texas requires parents or caretakers to engage in work at least 20 hours per week in accordance with the terms and conditions of the State's Title IV-A waiver."

Participation Rates: In describing the State's approach to the participation rates of Section 407, the State Plan states: "Texas requires parents or caretakers to engage in work activities in

accordance with the terms and conditions of the State's Title IV-A waiver. This includes the use of participation rate methodologies previously approved for JOBS under the waiver."

Utah: The State Plan notes: "Because all Single Parent Employment Demonstration Project waivers are currently referenced in the Employment Assistance for Utah Families State Statute, the State must keep all waivers until after the next legislative session. The State fully intends to comply with the TANF requirement that the Federal Government must be notified no later than 90 days after the end of the State's legislative session concerning which waivers the State will elect to maintain."¹⁵

Vermont: The State Plan does not expressly identify inconsistencies, but notes that Vermont implemented a 7-year welfare restructuring demonstration project on July 1, 1994, and that the Welfare Restructuring Project provides transitional assistance through Vermont's AFDC program, Aid to Needy Families with Children (ANFC), and its welfare-to-work component, Reach-Up. The State Plan further states that "Submission of this State Plan commits the State of Vermont to operating TANF in accordance with current state policies and procedures applicable to Vermont's AFDC program, Aid to Needy Families with Children, and JOBS program, Reach Up." The State further notes that "the State will continue to require a parent or caretaker receiving assistance to engage in work according to the provisions of the WRP waiver terms and conditions, Act 106, and applicable regulations in Vermont's Welfare Assistance Manual."

Wisconsin: The State Plan does not identify any areas of inconsistencies, but references, among other documents "as policy for phase-in of the TANF block grant" the State's currently approved waivers and the W-2 (pending waiver) program narrative.

Wyoming: The State Plan indicates that "Wyoming has requested the approved and submitted waivers be terminated."

Future Updates

CLASP will update this listing of identified inconsistencies as other State Plans are submitted in the coming months.

¹⁵ Note that Section 415 does not require that a State provide such a notice within ninety days of the end of the next regular State legislative session, but does provide that if the State has accrued any federal cost-neutrality liability, the State will be held harmless if the waiver is terminated by that date.

Proposal for Administration's Policy on Existing Welfare Reform Waivers

Currently, 43 States have approved welfare reform waivers. Under these waivers States have been permitted to vary the statutory requirements of the former AFDC program, Medicaid and Food Stamps for the purposes of research and evaluation. Many States have felt that they can better increase self-sufficiency among welfare recipients by changing the rules and conditions under which individuals are allowed to receive benefits. All waivers have been granted with the condition that the States conduct an evaluation and that federal costs not increase above baseline.

Cost neutrality as an Administration policy has meant that States which elect waivers are held liable for any increase in federal costs measured across all programs included in the waiver. This allowed the federal government to be much more flexible in waivers that would otherwise increase costs in one program alone. Generally, States have opted to tighten AFDC rules in order to offset Medicaid and Food Stamp expansions. Since AFDC has been replaced by the TANF block grant, federal spending on AFDC/TANF cannot go down and therefore cannot offset Food Stamp and Medicaid increases. *In theory most welfare waivers will increase federal costs as soon as States put their TANF program into place.*

As States adopt their new TANF rules, they are also assessing their welfare waivers in other programs. States will need guidance on what the Administration's expectations are with regards to their existing waiver and for future waivers. *The following should be included in a guidance letter to States.*

- *The welfare bill forgives increases in federal costs for those components of AFDC and Medicaid waivers which States elect to terminate – and almost all States will terminate parts of their waivers.* Practically, HHS and USDA cannot separate out costs due to waivers which are terminated vs. those that are continued. In addition, the world as we know it ended when the welfare reform bill passed. It seems reasonable to forgive all past increases in federal costs due to the welfare reform waivers.
- *States will be held harmless for any federal costs already incurred as a part their existing welfare reform waivers (AFDC, Medicaid or Food Stamps) as of January 1, 1997 or the date that HHS determines that the State's TANF plan is complete - whichever is later.* Thereafter, cost neutrality will apply to any waiver which a State wishes to continue.
- *As a part of their TANF plan, States are already expected to inform HHS of which component of their AFDC waivers they intend to maintain under TANF. USDA and HHS would have to work with States to renegotiate separately any existing Medicaid or Food Stamp waiver packages which States wish to continue.* Some may choose not to continue the waivers or to elect other options available to them. Many Food Stamp waivers are no longer needed due to the 20 State options now allowed under the program and the Simplified Food Stamp program which allows AFDC and Food Stamp rules to be

October 17, 1996.

aligned. Some States with a waiver to extend transitional Medicaid benefits might elect to terminate the welfare reform waiver and apply for an amendment to their current Medicaid-only waiver.

- ***HCFA and USDA would review each existing and new waiver requests according to their program's statutory requirements and apply a cost neutrality requirement within each program for future activities.*** Cross program cost neutrality worked when AFDC was included because AFDC waivers had a direct impact on Food Stamp and Medicaid costs. However, there never was an inherent link between Medicaid and Food Stamps. Changes in Food Stamps do not affect Medicaid and changes in Medicaid do not affect Food Stamps. Similarly there is no link that would warrant cutting one program to expand the other.

October 17, 1996

DRAFT

Draft Talking Points

State Welfare Waivers and the New Welfare Reform Legislation

- o We are moving ahead rapidly with the Congress and our state partners to implement the new welfare reform legislation and achieve our goals of moving families from welfare to work, promoting parental responsibility, and protecting children.
- o The new legislation provides states with broad new flexibility to design their own programs. It allows them to decide how they can best move families to work -- while containing clear requirements that they must move families from welfare to work.
- o We are working with the Congress to clarify statutory provisions which allow states to continue existing waivers that are "inconsistent" with the new statute. Because there is some ambiguity in the statutory language, the Administration and the Congress have agreed to a process under which states will include in their state plans a list of any waiver provisions that they believe are "inconsistent" with the statute and that they would like to continue.
- o This approach will allow the Administration, the Congress, and the states to make thoughtful decisions about how to interpret the ambiguous language, based on real examples of the policies that states would like to put in place.
- o We do not expect states to use this provision to gut the commitments to work requirements and time limits that are at the core of this legislation. We believe that these commitments are central to true welfare reform and will work with Congress to ensure their integrity.

HH's suggested
talking pts

EXECUTIVE OFFICE OF THE PRESIDENT

24-Sep-1996 03:00pm

TO: (See Below)

FROM: Melinda D. Haskins
Office of Mgmt and Budget, LRD

SUBJECT: WH Bulletin on Possible Welfare Reform Waiver Provision

24-Sep-1996 02:56pm

IN THE WHITE HOUSE AND AROUND TOWN:

- o Nickles seeks to enforce five-year limit on welfare benefits. Senate Majority Whip Don Nickles reportedly plans to push a measure aimed at keeping states from exceeding a five-year lifetime limit on welfare benefits -- a component of the new welfare law. After a fast-track waiver was approved by the Clinton Administration -- allowing the District of Columbia to extend benefits past the five-year limit -- Nickles drafted legislation to codify the time limit, and the GOP leadership made plans to bring it to the floor before the close of the 104th Congress. However, before floor action occurred, the DC waiver was rescinded. According to a Senate GOP leadership source, "HHS had a technical reason for doing that. But basically, they got caught trying to have their cake and eat it, too."
- Although the DC waiver has already been revoked, Nickles still wants to pass a bill to set in stone the five-year limit, an aide said. "We want to clarify that the Secretary of HHS does not have waiver authority on time limit provisions," the aide said, adding: "Generally, the time limits on welfare benefits were a non-controversial idea, accepted as being necessary for reforming the welfare system." The aide said that out of 8 fast track waivers approved by the Administration between the time the bill was passed and the time it was signed by Clinton, "only the waiver sought by DC had virtually no limits. The way it was constructed and the loose definitions that were given for work requirements, et cetera -- really, there were no time limits in the DC waiver. The waiver provided at least a ten-year exemption from the time limits in the welfare reform bill. We felt that, because it was a provision everyone felt was important and necessary, it should not be something that should be subject to change."
- The aide said Nickles and other GOP leaders are still deciding whether to move the time-limit provision before the close of the

104th Congress. "We're not sure what form it'll take and what vehicle will be used," the aide said, "But Senator Nickles does intend to move that...bill."

Distribution:

TO: Kenneth S. Apfel
TO: Barry White
TO: Keith J. Fontenot
TO: Lester D. Cash
TO: Bruce N. Reed
TO: Diana M. Fortuna
TO: Charles Konigsberg
TO: Lisa M. Kountoupes
TO: Cynthia M. Smith

CC: James C. Murr
CC: Janet R. Forsgren

education and training. But the state will have to reduce hours or raise benefits once an increase in the minimum wage goes into effect.

One constitutional issue will require a White House decision. The state asked for a 60-day residency requirement before applying for assistance. HHS has refused to grant even 30-day requirements in the past, based on a 1969 Supreme Court decision, *Shapiro v. Thompson* (no relation) that a one-year residency requirement violated the constitutional right to travel. HHS is now willing to go along with a 30-day requirement for Wisconsin (and Minnesota, which has had a waiver pending for several months), on the grounds that 30 days represents a reasonable administrative period but 60 days does not. White House Counsel believes that although this argument is substantial, the constitutional issue is not crystal clear. The current Court may wish to confine *Shapiro* to its facts, and Wisconsin (like many other states) has residency requirements of 60 days or longer for other benefits -- requiring, for example, that university students live in the state for a full year before they can qualify for resident tuition. The Counsel's office thus suggests that we grant the state a residency requirement for "the period up to 60 days for which the state can demonstrate an interest satisfying constitutional standards." That would allow us to grant the state's request, but put the burden on Wisconsin to defend its provision in court. 

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

25-Sep-1996 01:29pm

TO: Jacob J. Lew

FROM: Diana M. Fortuna
 Domestic Policy Council

CC: Kenneth S. Apfel
CC: Emily Bromberg
CC: Mark E. Miller
CC: Christopher C. Jennings

SUBJECT: Wisconsin Medicaid Waiver request

It looks like the welfare parts of the Wisconsin waiver will be settled for better or worse by Monday -- probably on Monday. This leaves open Medicaid and food stamps. I THINK everyone is comfortable with HCFA sending Thompson a letter saying we don't plan to grant his Medicaid request because it runs counter to our policy on Medicaid but we would love to work with him on a budget neutral alternative. HCFA had such a draft a few weeks ago. I have asked John Monahan to send me the latest version, and I will then get it around to all of you, to make sure we are all on board.

We will have to make sure we coordinate the timing with whatever we are telling the state on the welfare side -- which will probably be a bit chaotic.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

26-Sep-1996 11:20am

TO: (See Below)

FROM: Diana M. Fortuna
 Domestic Policy Council

SUBJECT: Wisconsin waiver and food stamps

If we are really to wrap up the Wisconsin waiver on Monday, we have to say something intelligible to say on food stamps as well. I would assume the ideal choreography would be to have them speak Monday as well (although I guess Tuesday wouldn't be a tragedy).

I have a call in USDA to get the latest version of the letter they wanted to send the state. As I recall, they wanted to send him a mixed bag letter saying they would grant parts of it, have to reject some parts on legal grounds, and the state didn't need a waiver for many parts anymore because of the new law.

I will circulate it to you all for your reaction. Ken and Elena, if USDA pleads no legal authority to grant part of the waiver, we will be looking to you to verify that that is the case.

Distribution:

TO: Kenneth S. Apfel
TO: Keith J. Fontenot

CC: Jeremy D. Benami
CC: Bruce N. Reed
CC: Emily Bromberg
CC: Elena Kagan

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

26-Sep-1996 06:54pm

TO: KAGAN_E
FROM: Keith J. Fontenot

SUBJECT: Language

Message Creation Date was at 26-SEP-1996 18:53:00

----- Forwarded by Keith J. Fontenot/OMB/EOP on 09/26/96 06:42
PM -----

Keith J. Fontenot
09/26/96 04:54:52 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Language

Ken shared with me your draft language on the HHS waiver issue. I wouldn't fomulate it quite that way, I'd suggest something along the following lines:

The Administration believes that waivers should not exempt people from work requirements and time limits. We hope that States (and the Congress?) will share this view, but if it becomes apparent that is not the case, the Administration will seek legislation to clarify the issue.

Message Sent To: _____
FORTUNA_D @ A1 @ CD @ LNGTWY
KAGAN_E @ A1 @ CD @ LNGTWY
Barry White/OMB/EOP
Deborah F. Kramer/OMB/EOP
Cynthia M. Smith/OMB/EOP
Kenneth S. Apfel/OMB/EOP

Winc waiver

Draft, Draft, Draft

Dear Jean Rogers:

It was a pleasure to meet with you and your staff during the welfare reform implementation conference sponsored by the National Governors' Association, National Conference of State Legislatures, and American Public Welfare Association.

As we discussed, the provisions of Wisconsin Works (W-2) pertaining to income assistance, child support, and child care have been overtaken by the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) on August 22, 1996. The mechanism for implementing a W-2 program based on moving recipients from welfare to work is best addressed through the Temporary Assistance to Needy Families (TANF) state plan process we discussed. When Wisconsin has a complete TANF state plan, it will begin to implement a welfare reform program consistent with the broad flexibility afforded to states under PRWORA. We are pleased to have received your TANF state plan submittal on _____ and look forward to working closely with you and your staff to certify a complete TANF plan for Wisconsin as quickly as possible.

You raised the possibility that a couple of issues may remain relating to child support enforcement and kinship care. Once our staffs have jointly clarified the specific nature of your request in these two areas, we will be able to inform you whether to proceed on these matters pursuant to authority available under PRWORA or to explore other avenues for achieving mutually agreed upon goals. In addition, we will clarify the use of certain waiver savings under PRWORA.

Finally, we appreciated your comments regarding the value of a coordinated evaluation strategy for W-2 and will work closely with our colleague agencies to ensure such an approach for Wisconsin. Bruce Vladeck will be communicating with you about your medicaid waiver requests under separate cover.

Thank you very much for your consideration.

E X E C U T I V E O F F I C E O F T H E P R E S I D E

20-Sep-1996 02:46pm

TO: (See Below)

FROM: Jeremy D. Benami
Domestic Policy Council

SUBJECT: welfare decisions

Please let me know as soon as possible if you feel the following accurately summarizes our positions on the first four issues.

On Wisconsin, should I just say our proposal is to issue the waiver asap?

It looks dicey for a meeting this afternoon. Carol cannot do it, and it may be impossible for Emily and for Ken.

I am out on Monday, as I assume is Kevin and Elena.

One possibility is for Bruce, Diana, Elena and I to go over this on the phone with John and company and see where we are.

We will be briefing John Angell on this as well this afternoon. He will keep Leon apprised and is satisfied that as long as our group of WH folks are united, Leon will be where we are.

Please advise.

ISSUES

1. Waivers

Guidance to states would require that states identify in their plans specific provisions of their demonstration that they believe are inconsistent with PRWORA. States would be told that they would not be allowed to operate programs that did not comply with the lifetime time limit or from the work participation

rates. States would be alerted that subsequent legislative or regulatory action regarding TANF penalties might limit their flexibility in the future, but such action would be effective only prospectively.

Note: This would allow states to continue experiments with definitions of work that vary from Section 407(d) provided those differences are flagged in the plan. While this approach does not rule out subsequently determining that the demonstration is out of compliance with the spirit of the new law, it does mean that there would be no retrospective financial penalty.

2. 45 day Notice

States would be required to provide the 45 day comment period required by the PRWORA following enactment of the new statute.

If permissible, funding should flow on a finding that the plan is otherwise complete. At a minimum, funding would be retroactive once the comment period is complete.

3. Guidance

Guidance to states would include a one page, ten item list of questions that must be answered for the plan to be complete. There would be no lengthy mandatory checklist, but the guidance could indicate that an optional checklist is available on request by a state to help in the preparation of the state plan.

4. Domestic Violence

The President would issue a memorandum to the Secretary of HHS and the Attorney General that would direct them to (1) work with states to inform them of the options available to them in the treatment of battered women and to encourage states to take advantage of those options; (2) provide technical assistance to states in designing their programs and services for this population; and (3) provide funding for research into the linkage between domestic violence and welfare dependence.

Note: This would not provide a waiver of the 20 percent exemption.

5. Wisconsin Waiver

Mtg w/ HHS

Any ap:
waivers as a whole?
specific provisions?

On the limits. The cut language -
w/ w/ Anna
we will not accept and if
necessary
we ~~will~~ will go to
Congress.

2.

45-day notice

can't do it immediately.

Why not?? Ch w/ Anna we could care
"may" be able to do retroactive funding.

3.

Guidance

They'll huddle

4.

Domestic Violence

Options memo -

(1) is OK - direction to HHS/DOJ

5.

Wisconsin

a. Waiver - ??

DRAFT

DRAFT

MEMORANDUM TO LEON PANETTA

FROM:

Following is the current thinking of HHS and _____ regarding three key issues that have emerged in our implementation of the welfare reform law: how the 45 day comment period requirement should be handled for states that have submitted plans within 45 days of enactment; interpretation of the Section 415 waiver authority; and certifying "completeness" of TANF state plans. There is a need for quick resolution of these issues.

45-Day Comment-Period Requirement

Section 402(a)(4) of the Act, as amended by the PRWORA, contains a requirement that a state include in its state plan a certification that local governments and private sector organizations have been given at least 45 days to comment on the plan. In order for this comment-period requirement to be meaningful, the comment period must occur at a time when the plan has been formulated and the law under which the plan will operate is known.

Maintaining the integrity of the comment-period requirement is of prime importance, since there may be no other forum for the citizens of a state to learn about and influence the structure of the state TANF program. While the PRWORA was being considered in Congress, the Administration advocated vigorously for an opportunity for public input in each state's plan development process.

In that light, the Department proposes that with respect to any state that submits its plan after October 1, 1996, the following procedure be followed: The state will be notified of the Department's receipt of its plan and that the 45-day comment period must have occurred at a time when the plan had been formulated and the law under which the plan will operate (the Social Security Act, as amended by the PRWORA) is known. We will suggest that the state, if it has not done so already, begin the comment period. We will assure the state that once the comment period has expired, the state has informed us of any amendments the state wishes to make to the plan as a result of comments received, and the state's plan has otherwise been determined by the Department to be complete, the state will be declared to be an eligible state and will receive TANF block grant funding calculated from the day the plan was first received by the Department.

For TANF state plans submitted prior to October 1, 1996, a

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different rationale is necessary.

The PRWORA stipulates that a state cannot receive block grant funds for any fiscal year unless it was an "eligible state" (i.e., had submitted a TANF state plan that the Department had found contained all of the elements listed in section 402 of the Social Security Act, as amended by the PRWORA) during that fiscal year. Thus, in order to receive any TANF funds for fiscal year 1996, a state must be an eligible state before October 1, 1996.

Wisconsin submitted its TANF plan on August 22 and Michigan submitted its TANF plan on August 26. Both states are eager to start receiving funding under the block grant as soon as possible.

Michigan has notified the Department that it began a comment period with respect to its state plan submission on August 15, 1996. Thus, it will be possible for the Department to find that Michigan met the comment-period requirement before the end of fiscal 1996 and provide Michigan with TANF block grant funding as of August 26, 1996 (assuming the plan it has submitted otherwise meets the requirements of section 402).

While Wisconsin has not conducted a comment period formally so styled, the Department believes that Wisconsin has had in effect an informal comment period since at least August 15, 1996. Wisconsin's plan is based quite extensively on its waiver application, which was the subject of a formal federal comment period. Additionally, during the Wisconsin legislative process and thereafter, there was opportunity for public comment. The W2 plan continues to be publicly available. Thus, the Department is able to find that Wisconsin met the comment-period requirement before the end of fiscal 1996 and provide Wisconsin with TANF block grant funding as of August 22, 1996 (assuming the plan it has submitted otherwise meets the requirements of section 402).

Section 415 Waiver Authority

With very limited exceptions, new section 415 of the Social Security Act allows states to delay the application of any provision of the new legislation (not just title I, the Temporary Assistance for Needy Families Block Grant) to the extent that such provision is inconsistent with one or more approved waivers that were applied for before enactment and approved before July 1, 1997. The delay is effective to the expiration date of the waiver, determined without extension, and the exceptions are that all states are subject to the repeal of title IV-A child care, and all states approved after enactment and before July 1, 1997 are subject to the section 407 work requirements.

Because they have penalties associated with them, two of the significant areas of potential inconsistency with the PRWORA that states are most concerned with are whether section 415 allows

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states to have alternative, and presumably more achievable, work requirements, and to have alternative time limits.

With respect to work requirements, although it has not been suggested that the participation rates not apply to all states, probably about one-half of all states would be able to count more activities as work than would be allowed under TANF if section 415 were read to permit that flexibility.

With respect to time limits, a large number of states would provide for more generous extension policies than the 20% TANF exemption policy would allow, and there is the open question of whether a waiver demonstration with no time limit could be determined under section 415 as allowing a state to not impose the 5-year time limit.

The Statement of Managers suggests a narrower reading of the statute that would not permit states to continue some of these waiver policies under section 415. However, some members of Congress, including Charles Stenholm who has written the Department, believe that the floor debate supports providing a broad interpretation. Any approach will involve a trade-off between, on the one hand, broader state flexibility and a large number of states that would advocate for it both with their members of Congress and with the Executive Branch, and, on the other, a tighter view of state accountability for enforcing a narrower interpretation of work requirements and time limits under TANF. A decision based on a narrower interpretation is likely to be criticized as undermining state flexibility and disrupting the progress of the states that have been most in the forefront of welfare reform. A decision grounded on a broader view is likely to be criticized as undermining work requirements and time limits. These potential criticisms could be directed at either the Congress or the Executive Branch to the extent that either takes action to advance an interpretation.

HHS favors an approach that would initially request that states identify in their state plans specific provisions of their demonstrations that they believed were inconsistent with the PRWORA. We would also alert them that subsequent legislative or regulatory action regarding TANF penalties might limit their flexibility in the future, although such action would be effective only prospectively. Seeing how states view this issue through the state plan process could lead to better informed decisions on an interpretation of section 415. The Department has recently received a joint letter from Chairman Archer and Chairman Roth strongly supporting this approach.

TANF state plan guidance

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104-193) replaces the AFDC, JOBS and EA programs with a new block grant -- the Temporary Assistance to Needy Families program. To be eligible to receive its block grant funds, the law requires a State to submit a State plan to the Secretary no later than July 1, 1997, which the Secretary has found meets the statutory requirements.

But then, who makes decision whether incentives are ok (as most are) or not? Are you asking states "how they view" that is real?

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Section 402 of the Social Security Act (as revised by the legislation) provides, in general terms, the statutory framework of the State plan and requires States to outline the program of job preparation, work, support services and benefits which will enable clients to become self-sufficient.

Because of the enormous flexibility that states have under the PRWORA, it is extremely important that the plan lay out in some detail the benefits and services that the state will provide, the eligibility criteria for benefits and services, the requirements that the states will impose on recipients and other features of their program. The plan will be the basic document through which citizens and potential recipients will understand program rules. There are many constituencies that have an interest in this information. Clients, advocacy groups, state officials, Congress and the administration all have an interest in a clear understanding of the state's program. Moreover, the plan will be the basic document from which the federal government obtains information about what states are doing, to compare with their reports of how well they are doing.

To help states develop complete plans, ACF has prepared a draft guide for States to use in preparing their plan submissions (draft attached) consisting of an overview, the statutory text, State plan certifications and funding instructions. Rather than the current uniform preprint state plans, we envision a very descriptive plan that clearly outlines for the public the expectations, services and benefits available.

To assist states in preparing a "complete" program description that is understandable to the public and addresses all statutory requirements, ACF is planning to supplement the state plan guidance with a more detailed checklist that states can use to make sure they have covered the required elements of the plan. This checklist will also be used by ACF in determining whether or not the plan is complete for purposes of funding. (See attached)

ATTACHMENT

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

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STATE GUIDANCE
FOR THE
TEMPORARY ASSISTANCE
FOR
NEEDY FAMILIES
PROGRAM



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

A New Beginning...

The Temporary Assistance for Needy Families (TANF) Program

On August 22, President Clinton signed into law the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996," a comprehensive bipartisan welfare reform bill that establishes the Temporary Assistance for Needy Families (TANF) program. This legislation will dramatically change the nation's welfare system into one that requires work in exchange for time-limited assistance. It contains strong work requirements, a performance bonus to reward States for moving welfare recipients into jobs, State maintenance of effort requirements, comprehensive child support enforcement, and supports for families moving from welfare to work.

In signing the bill, President Clinton said, "This is not the end of welfare reform, this is the beginning." He went on to say:

Today, we are ending welfare as we know it. But I hope this day will be remembered not for what it ended, but for what it began -- a new day that offers hope, honors responsibility, rewards work, and changes the terms of the debate....

The new legislation gives States the opportunity to create a new system that promotes work and responsibility, and strengthens families. It challenges us all to remedy what is wrong with the old system, and to provide opportunities that will help needy families under a framework of new expectations.

Starting the Program

The new TANF program replaces the AFDC, JOBS and EA programs with a new block grant program. A State is eligible to participate in the new program no earlier than the submittal of its State TANF plan. A State will receive its block grant funds once the Secretary has found the State's plan to be complete.

States must submit their TANF plans no later than July 1, 1997, but can submit them earlier if they choose. States should consider several factors in deciding whether to implement the TANF program prior to July 1, 1997. In States with reduced caseloads, funding for the AFDC, EA and JOBS programs may be less than the amounts the States would receive under the new block grant. Thus, it may be financially advantageous for some States to accelerate their effective date.

In addition to the financial implications, States should also weigh other considerations in determining when to implement the new program. Given the complexity of the new legislation and the

tremendous range of options available, designing and implementing a new program will require a significant effort on the part of States. They must consult and coordinate with numerous parties, undertake staff training and modify computer systems. Inadequate attention to these activities could undermine the long-term effectiveness of the State's program. Further, once States submit their plans, the work requirements and the 5-year time limit begin. Penalty and data collection requirements begin July 1, 1997, or 6 months after the plan has been submitted, whichever is later.

Suggested State Plan Outline

The statute requires States to outline how they intend to conduct a program that provides assistance to needy families with children and provide parents with job preparation, work and support services to enable them to leave the program and become self-sufficient.

We recommend that States use the State plan process to consider and address a set of important questions, and to outline to the citizens of the State, other interested parties, and the Federal government how those questions will be addressed in the operation of the State's program. Toward that end, we suggest that a State plan include discussion of the issues outlined below as well as addressing all other requirements specified in the law. Attachment A provides a copy of the statutory text.

A possible format is a 15-20 page document that describes the State's program goals, approach, and program features. Some States may emphasize some areas more than others depending on the circumstances in the State. States must submit plans every two years. They may submit amendments to keep the plan current whenever they wish to make changes in the administration or operation of the program. A State plan will be considered complete as long as it includes the information required by the Act.

GOALS, RESULTS AND PUBLIC INVOLVEMENT

What are the overarching goals for your program? How were local governments and private sector organizations involved in designing the TANF plan? How has the public been involved in program design and has the public had the opportunity to provide input? How will you judge and measure progress toward goals? What results will be measured and how will accountability be ensured?

NEEDY FAMILIES

Who will be assisted under this program? How will "needy families" be defined? Will all families in the State have access

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to the same program or will it vary? Will the same services be offered to families who have moved from another State? How will eligible non-citizens be treated within the program? How will the privacy of families be protected? What rights will applicants and beneficiaries have to challenge decisions?

WORK AND SELF-SUFFICIENCY

What are your overall goals for work and self-sufficiency? How will the program move families to work and ultimately to self-sufficiency? What services will be available to move clients to work? How will you identify and provide additional, targeted support to victims of domestic violence and others who may have particular difficulty successfully making the transition from welfare to work? How will current workers be protected from displacement? How will various community, education, business, religious, local governments, and non-profit organizations be involved in the effort to provide work for clients? How will the delivery of services vary across the State?

BENEFITS

What benefits will be given to needy families? Will benefits be delivered through cash, in-kind, vouchers, or electronic benefits transfer (EBT)? How will time limits and sanctions be incorporated into the program? What supportive services will be available to clients? How will child care be provided to allow parents to go to work?

CULTURE CHANGE

What measures will be taken to change the culture of the welfare office to support work and self-sufficiency? What kind of training will take place for staff who will be involved in administering the program?

PARENTAL RESPONSIBILITY

How will parental responsibility be encouraged? How will child support enforcement interact with the TANF program? Will non-custodial parent be involved in any work programs? What efforts will be made to reduce the incidence of out-of-wedlock births? How will problems of domestic violence and statutory rape be addressed?

TRIBES

How will you ensure equitable access to your program for members of Indian tribes who are not eligible for assistance under a tribal family assistance plan? How will you assist tribes in implementing their programs? What kind of assistance will be available to tribes in implementing their programs?

ADMINISTRATION

What is the structure of the agency administering the program? What will be the role of public or private contractors in the delivery of services? How will elements of the program be

phased-in? Will the implementation date differ from the plan
submittal date?

WAIVERS

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

Description of Attachments

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

Paperwork Reduction Act

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

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

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

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

Inquiries

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

ATTACHMENT A

◆ Statutory Text Relating to State Plans ◆

STATUTORY TEXT

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193) was signed by the President August 22. The following is the statutory language relative to the State TANF plan.

SECTION 402 -- STATE PLAN REQUIREMENTS

(a) (1) OUTLINE OF FAMILY ASSISTANCE PROGRAM.-

(A) General Provisions.-A written document that outlines how the State intends to:

(i) 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 provides parents with job preparation, work, and support services to enable them to leave the program and become self-sufficient.

(ii) Require a parent or caretaker receiving assistance under the program to engage in work once the State determines the parent or caretaker is ready to engage in work, or once the parent or caretaker has received assistance under the program for 24 months, whichever is earlier.

(iii) Ensure that parents and caretakers receiving assistance under the program engage in work activities in accordance with section 407.

(iv) Take steps to restrict the use and disclosure of information about individuals and families receiving assistance.

(v) Establish goals and take action to prevent and reduce the incidence of out-of-wedlock pregnancies, with special emphasis on teenage pregnancies, and establish numerical goals for reducing the illegitimacy ratio of the State for calendar years 1996 through 2005.

(vi) Conduct a program that provides education and training on the problem of statutory rape so that teenage pregnancy prevention programs may be expanded in scope to include men.

(B) Special Provisions.-

(i) The document shall indicate whether the State intends to treat families moving into the State from

another State differently than other families under the program, and if so, how the State intends to treat such families under the program.

(ii) The document shall indicate whether the State intends to provide assistance under the program to individuals who are not citizens of the United States, and if so, shall include an overview of such assistance.

(iii) The document shall 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.

(iv) Not later than 1 year after the date of enactment of this Act, unless the chief executive officer of the State opts out of this provision by notifying the Secretary, a State shall, consistent with the exception provided in section 407(e)(2), require a parent or caretaker receiving assistance under the program who, after receiving such assistance for 2 months is not exempt from work requirements and is not engaged in work, as determined under section 407(c), to participate in community service employment, with minimum hours per week and tasks to be determined by the State.

(2) CERTIFICATION THAT THE STATE WILL OPERATE A CHILD SUPPORT ENFORCEMENT PROGRAM.-A certification by the chief executive officer of the State that, during the fiscal year, the State will operate a child support enforcement program under the State plan approved under part D.

(3) CERTIFICATION THAT THE STATE WILL OPERATE A FOSTER CARE AND ADOPTION ASSISTANCE PROGRAM.-A certification by the chief executive officer of the State that, during the fiscal year, the State will operate a foster care and adoption assistance program under the State plan approved under part E, and that the State will take such actions as are necessary to ensure that children receiving assistance under such part are eligible for medical assistance under the State plan under title XIX.

(4) CERTIFICATION OF THE ADMINISTRATION OF THE PROGRAM.-A certification by the chief executive officer of the State specifying which State agency or agencies will administer and supervise the program referred to in paragraph (1) for the fiscal year, which shall include assurances that local governments and private sector organizations-

(A) have been consulted regarding the plan and design of welfare services in the State so that services are provided in a manner appropriate to local populations; and

(B) have had at least 45 days to submit comments on the plan and the design of such services.

(5) CERTIFICATION THAT THE STATE WILL PROVIDE INDIANS WITH EQUITABLE ACCESS TO ASSISTANCE.-A certification by the chief executive officer of the State that, during the fiscal year, the State will provide each member of an Indian tribe, who is domiciled in the State and is not eligible for assistance under a tribal family assistance plan approved under section 412, with equitable access to assistance under the State program funded under this part attributable to funds provided by the Federal Government.

(6) CERTIFICATION OF STANDARDS AND PROCEDURES TO ENSURE AGAINST PROGRAM FRAUD AND ABUSE.-A certification by the chief executive officer of the State 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 individuals responsible for the administration and supervision of the State program, kickbacks, and the use of political patronage.

(7) OPTIONAL CERTIFICATION OF STANDARDS AND PROCEDURES TO ENSURE THAT THE STATE WILL SCREEN FOR AND IDENTIFY DOMESTIC VIOLENCE.-

(A) In General.-At the option of the State, a certification by the chief executive officer of the State that the State has established and is enforcing standards and procedures to-

(i) screen and identify individuals receiving assistance under this part with a history of domestic violence while maintaining the confidentiality of such individuals;

(ii) refer such individuals to counseling and supportive services; and

(iii) waive, pursuant to a determination of good cause, other program requirements such as time limits (for so long as necessary) for individuals receiving assistance, 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 under this part to escape domestic violence or unfairly penalize such individuals who are or have

been victimized by such violence, or individuals who are at risk of further domestic violence.

(b) PUBLIC AVAILABILITY OF STATE PLAN SUMMARY.-The State shall make available to the public a summary of any plan submitted by the State under this section.

ATTACHMENT B**◆ State Plan Certifications ◆**

This has been designed to enable the Chief Executive Officer of a State to certify that the State will operate its Temporary Assistance to Needy Families (TANF) program in accordance with the statutory requirements in section 402(a)(2) through (7).

CERTIFICATIONS

The State will operate a program to provide Temporary Assistance to Needy Families (TANF) so that the children may be cared for in their own homes or in the homes of relatives; to end dependence of needy parents on government benefits by promoting job preparation, work, and marriage; to 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 encourage the formation and maintenance of two-parent families.

This program is known as _____

Executive Officer of the State (Name) _____

In administering and operating a program which provides Temporary Assistance for Needy Families with minor children under title IV-A of the Social Security Act, the State will:

1. Specify which State agency or agencies will administer and supervise the program under part A in all political subdivisions of the State:

_____ is (are) the agency(ies) responsible for administering the program;

_____ is (are) the agency(ies) responsible for supervising the program;
2. Assure that local governments and private sector organizations:
 - (a) Have been consulted regarding the plan and design of welfare services in the State so that services are provided in a manner appropriate to local populations; and
 - (b) Have had at least 45 days to submit comments on the plan and the design of such services.
3. Operate a Child Support Enforcement program under the State plan approved under part D;
4. Operate a Foster Care and Adoption Assistance program in accordance with part E, and certify that the State will take all necessary actions to ensure that children receiving assistance are eligible for medical assistance;

Certifications

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5. Provide each member of an Indian tribe, who is domiciled in the State and is not eligible for assistance under a Tribal Family Assistance plan approved under Section 412, with equitable access to assistance under the State program funded under this part attributable to funds provided by the Federal Government.
6. Establish and enforce standards and procedures to ensure against program fraud and abuse, including standards and procedures concerning nepotism, conflicts of interest among individuals responsible for the administration and supervision of the State program, kickbacks, and the use of political patronage.
7. Make available to the public a summary of the State plan; and

OPTIONAL CERTIFICATION

- [] The State has established and is enforcing standards and procedures to:
- (1) Screen and identify individuals receiving assistance under this part with a history of domestic violence while maintaining the confidentiality of such individuals;
 - (2) Refer such individuals to counseling and supportive services; and
 - (3) Waive, pursuant to a determination of good cause, other program requirements such as time limits (for as long as necessary) for individuals receiving assistance, residency requirements, child support cooperation requirements, and family cap provisions, in case where compliance with such requirements would make it more difficult for individuals receiving assistance under this part to escape domestic violence or unfairly penalize such individuals who are or have been victimized by such violence, or individuals who are at risk of further domestic violence.

CERTIFIED BY THE CHIEF EXECUTIVE OFFICER OF THE STATE:

Date

Signature and Title

ATTACHMENT C

◆ Funding ◆

FUNDING

Section 403(a)(1)(A) provides that each eligible State shall be entitled to receive for each of the fiscal years 1996 through 2002, a grant in an amount equal to the State family assistance grant as defined in section 403(a)(1)(B).

I. Payments to Agency Administering the TANF Program

- ▶ Payments for the TANF program will be made to the organization managing the AFDC/JOBS programs as of August 22, 1996, unless the State indicates that the TANF administering agency is changed. If a change is made, describe the name, address and EIN number of the new organization.

II. State Payments for TANF Program

- ▶ Section 405 requires that grants be paid to States in quarterly installments, based on State estimates. The State's estimate for each quarter of the fiscal year by percentage is:

For FY 1998 and Future Years-

<u>1st</u> <u>quarter</u>	<u>2nd</u> <u>quarter</u>	<u>3rd</u> <u>quarter</u>	<u>4th</u> <u>quarter</u>
_____	_____	_____	_____

- ▶ For FY 1997, States should indicate below the percentage of TANF funds requested for only those quarters in which they plan to operate the program.

For FY 1997

<u>1st</u> <u>quarter</u>	<u>2nd</u> <u>quarter</u>	<u>3rd</u> <u>quarter</u>	<u>4th</u> <u>quarter</u>
_____	_____	_____	_____

III. Changes and Inquiries

- ▶ If a State determines that these estimates require changes, a letter indicating the change in percentages should be sent to your ACF Regional Office and to ACF's Central Office. The Central Office address is:

The Administration for Children and Families
The Office of Program Support
The Division of Grants Management
6th Floor, Aerospace Building
370 L'Enfant Promenade
Washington, D.C. 20447

CHECKLIST
FOR STATE PLANS FOR THE
TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)
PROGRAM

This checklist is intended to serve as a planning aid when developing the TANF plan. It includes the stated statutory requirements, as well as optional areas which are important to cover in describing the State's program for assisting needy families and encouraging self-sufficiency. Specific statutory plan requirements are identified with an arrow (→) for your convenience.

During your planning for the TANF program and the preparation of the plan document, you may find it helpful to consult the following checklist to ensure that your program description is complete and understandable to your constituents.

ASSISTANCE

I. Benefits

- [] What benefits and services will be provided to needy families? [Section 402(a)(1)(B)(iii)]
- [] What standard(s) will you use to determine eligibility? [Section 402(a)(1)(B)(iii)]
- [] How often will you issue benefits? [Section 402(a)(1)(B)(iii)]
- [] How will you treat families moving into the State from another State? [Section 402(a)(1)(B)(i)]
- [] Will benefits be issued as direct cash assistance, vouchers, services, wages, certificates, or other? Will an electronic benefits transfer system be utilized? [Sections 402(a)(1)(B)(iii)], 404(g), and 104(a)(1)(B)]
- [] What are the methods and processes for recovering overpayments (e.g. use of IRS tax intercept) and correcting underpayments to beneficiaries of the program?

II. Application Process

- [] How will needy families gain access to benefits and services? [Section 402(a)(1)(A)(i)]
- [] Have you established time frames for processing the application for assistance?
- [] For what period will benefits be authorized, before eligibility must be reestablished? [Section 402(a)(1)(B)(iii)]
- [] How will the initial assessment of the skills, work experience and employability of each adult recipient be completed? [Sections 402(a)(1)(A) and 408(b)(2)(B)(i)]

- Will you require Individual Responsibility Plans? (If yes, please describe the process and include a copy?)
[Sections 402(a)(1)(A) and 408(b)(2)(A)]
- Will you exempt single custodial parents with a child under 12 months of age from work requirements?

III. Assistance Unit

- How will the State define the assistance unit for benefits and services? [Section 402(a)(1)(A)(i)]
- How do you define the term "caretaker relative"?
[Sections 402(a)(1)(A) and 408(a)(1)(A)(i)]
- What is your definition of a family? Which individuals in the home will be included as part of the family for the purposes of eligibility and determining the amount of benefits? [Section 402(a)(1)(A)(i)]
- For purposes of receiving assistance, how many days may a child be absent from home? What are the good cause exceptions? [Sections 402(a)(1)(B)(iii) and 408(a)(10)]

IV. Eligibility, Income and Resources

- What income levels will you use in determining need? What resource levels if any, will you use in determining need? [Section 402(a)(1)(B)(iii)]
- How will you budget income? [Section 402(a)(1)(B)(iii)]
- What are the disregards that will apply to income and resources [Section 402(a)(1)(B)(iii)]
- Do you have deprivation factors for determining eligibility?
- Do you have any other conditions of eligibility in addition to income or resource limits?
- What are your criteria for covering pregnant women with no other minor children? [Sections 402(a)(1)(A)(i) and 408(a)(1)(A)(ii)]
- Do you have legislation that allows benefits to be given to an individual who is convicted of possession, use, or distribution of a controlled substance? [Sections 402(a)(1)(B)(iii) and 115(d)]
- Will you provide benefits to individuals who are not citizens of the United States? Have you included an overview of such assistance? [Sections 402(a)(1)(B)(ii) and Section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996]

V. Time Limits

- Will you impose any time limits of less than 60 months for receipt of benefits? [Sections 402(a)(1)(A)(i) and 408(a)(7)]
- What are the criteria for exempting families from the time limit due to hardship or domestic violence? [Sections 402(a)(1)(A) and 408(a)(7)(C)]
- What criteria will you use to determine which families, if any will be exempted for the time limits?
- How will you ensure that the number of exemptions does not exceed 20 percent?
- What benefits and services, if any, will be provided to non-exempt families that reach the time limit?

EMPLOYMENT SERVICES

I. Goals and Strategies

- What are your overall goals for work and self-sufficiency and your strategy for ensuring that the program will promote work and enable families to become self-sufficient?
- What models or other effective programs or practices did you use in developing your goals and strategy for promoting work and self-sufficiency?
- Have you established State numerical goals for participation in work activities and for placements? What are your goals?

II. Work Activities

- What work activities does the State include in its definition of work? [Sections 402(a)(1)(A)(ii) and (iii) and 407(d)]
 - unsubsidized employment;
 - subsidized private sector employment;
 - subsidized public sector employment;
 - work experience;
 - on-the-job training
 - job search and job readiness assistance;
 - community service programs;
 - vocational education training;
 - job skills training directly related to employment;
 - education directly related to employment;
 - satisfactory attendance at secondary school or equivalent;
 - provision of child care services to an individual who is participating in a community service program.

III. Work and Participation Requirements

- [] What are your criteria will be used to determine whether a parent or caretaker relative is ready to engage in work before 24 months? [Section 402(a)(1)(A)(ii)]
- [] Will you require community service employment for parents or caretaker relatives who are not exempt and not engaged in work and who have received assistance for two months? If not, have your Governor notified the Secretary? [Section 402(a)(1)(B)(iv)]
- [] How have you defined "satisfactory attendance" for teen heads of households who attend secondary school or education directly related to employment? [Sections 402(a)(1)(A)(iii) and 407(c)(2)(C)]
- [] Do you exempt single custodial parents who care for children under 12 months of age? [Sections 402(a)(1)(A)(iii) and 407(b)(5)]
- [] What criteria have you established relative to a single custodial parent's "demonstrated inability" to obtain needed child care? [Sections 402(a)(1)(A)(iii) and 407(e)(2)]

IV. Employment Placement Program

- [] Will you use the grant to operate an employment placement program? Will this program make payments (or provide vouchers) to public and private job placement agencies to provide employment placement services? [Section 402(a)(1)(A)(i) and 404(f)]

V. Penalties on Individuals

- [] What are your sanction criteria and methodology for calculating penalties for individuals who refuse to engage in work or who fail to comply with the Individual Responsibility Plan? [Sections 402(a)(1)(A)(iii), 407(e)(1), 408(b)(2)(A) and 408(b)(3)]
- [] What are your good cause and other exceptions from the work requirements? [Sections 402(a)(1)(A)(iii), 407(e)(1) and 408(b)(3)]
- [] Will you impose a sanction on a family that includes an adult if such adult fails to ensure that the minor dependent children attend school? If yes, what are your criteria and methodology for imposing a sanction on the family? [Sections 402(a)(1)(A)(i) and 404(i)]
- [] Will you impose a sanction on a family that includes an adult who is older than 20 and younger than 51, if the adult does not have and is not working toward a high school diploma or equivalency diploma unless exempt? [Sections 402(a)(1)(A)(i) and 404(j)]

VI. Grievance Procedures and Worker Protection

- [] What is your grievance procedure for resolving complaints by regular employees regarding alleged violations of the requirement regarding filling vacancies? [Sections 402(a)(1)(B)(iii) and 407(f)(3)]
- [] How will you prevent displacement of regular employees?
- [] How will your program ensure that all regular workers continue to receive the full range wage and hours and other labor protections?

VII. Special Populations

- [] Will you require noncustodial, non-supporting minor parents to fulfill community work obligations and attend appropriate parenting or money management classes after school under the TANF program? [Sections 402(a)(1)(A)(i) and 407(h)]

VIII. Supportive Services

- [] Which supportive services do you intend to provide while individuals are receiving TANF services and after they become independent of TANF due to work? Will you impose

any limits on the length, amount, or type of supportive services?

IX. Incentives

- What bonuses or stipends do you intend to offer to individuals engaging in work activities?
- What criteria will you use for awarding the bonuses or stipends?
- Will you allow beneficiaries to establish individual development accounts (IDAs)? [Sections 402(a)(1)(B)(iii) and 404(h)(2)(A)]
- Which "qualified purposes" for IDAs will you permit? [Sections 402(a)(1)(B)(iii) and 404(h)(2)(B)]

WAIVERS

I. Continuation of Waivers

- Does your TANF plan basically mirror the welfare reform policies approved for the State under one or more 1115 waiver demonstrations, and the underlying AFDC and JOBS provisions that were not waived? Which demonstration(s)? What are the name(s) of the demo(s). [Sections 402(a)(1)(A)(i) and 415(a)(1)(A)]
- Are there any policy differences between your TANF plan and the approved demonstration or demonstrations? [Sections 402(a)(1)(A)(i) and 415(a)(1)(A)]
- What are the beginning and ending dates of the demonstration? Is the demonstration(s) incorporated into your TANF plan applicable statewide? If not, how will TANF operate in those areas of the State not covered by the demonstration(s)? [Sections 402(a)(1)(A)(i) and 415(a)(1)(A)]

II. Inconsistent Waiver Provisions

- Are there any provisions of TANF that the State considers to be inconsistent with the approved waiver demonstration(s) incorporated into this plan? What is the basis for your assessment of inconsistency? (You may wish to consult with the chief law officer of your State in making this assessment.) [Sections 402(a)(1)(A)(i) and 415(a)(1)(A)]

Note: If any inconsistent provisions have been identified, then the State is assumed to be operating a welfare reform demonstration for the period of the demonstration in lieu of a program under the block grant. If this is the case, then cost neutrality and evaluation requirements apply.

Limitations on which provisions of the TANF may be considered inconsistent with waivers for purposes of determining

penalties may be established through future legislative or regulatory action. If this happens, States will have a period of no more than one year to submit a new plan coming into compliance with the requirements.

STRENGTHENING FAMILIES

- [] Have you certified that the State will operate a child support enforcement program? [Section 402(a)(2)]
- [] Have you certified that the State will operate a foster care and adoption assistance program? [Section 402(a)(3)]
- [] What goals, programs, and initiatives have you developed to prevent or reduce the incidence of out-of-wedlock pregnancies, with special emphasis on teenage pregnancies? What collaborative activities do you have with State and local law enforcement officials, the education system, and relevant counseling services? [Sections 402(a)(1)(A)(v) and (vi)].
- [] How will you 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? How will your teenage pregnancy prevention programs be expanded in scope to include men? [Section 402(a)(1)(A)(vi)]
- [] Have you exercised the option to certify that the State will establish standards and procedures to ensure that it will screen for and identify domestic violence? [Section 402(a)(7)]
- [] If you exercised the option above, how will you screen and identify individuals with a history of domestic violence, and refer them to counseling and supportive services? Which TANF program requirements will be waived pursuant to a good cause determination? What constitutes good cause?
- [] What programs do you have that encourage non-custodial parents to participate in the rearing of their children?
- [] What family preservation services will be available to TANF families? Will TANF funds be used to cover such services?

ADMINISTRATION

I. Organizational Structure

- [] Which State agency or agencies will administer and supervise the program? [Section 402(a)(4)]

Have you included a description or an organizational chart which reflects the involvement and relationship of other organizations, community agencies or private entities? [Section 402(a)(4)]

Which program unit(s) or individual(s) will be responsible for responding to issues and questions regarding TANF?

II. Program Uniformity

Which agency(ies) will be responsible for the supervision of the program and describe the role of the supervising agency, if the program is county (or otherwise) administered?

→ Have you instituted uniform program policies in all political subdivisions? If not, what and where are the variations? [Section 402(a)(1)(A)(i)]

What procedures and agreements have been established to coordinate contracts and agreements between the State agency(ies) and other entities?

III. Client Protections

→ How will case information be safeguarded? What information will be disclosed? [Section 402(a)(1)(A)(iv)]

→ What is your notice and hearing process and the criteria for appeal? [Section 402(a)(1)(B)(iii)]

How will you ensure fair and equitable treatment?

How will you ensure that affordable, suitable child care is available for single custodial parents with a child under the age of 6?

How will you ensure that tribal families will have equal access to TANF assistance?

IV. Program Integrity

What procedures have you established to prevent fraud and abuse?

How will you assure effective services and accurate benefits?

V. Consultations

What process did you use to consult with local governments and private sector organizations regarding the plan and design of welfare services? Did you consider and incorporate their comments?

VI. Data System

[] What are your plans to develop a data system needed to track the provisions of the legislation?

ISSUES

1. Waivers

Policy: Waivers may not be inconsistent with time limits and work requirements in the bill

Issue: What flexibility as to what counts as "work"

2. 45 day Notice

- Options:
1. Governor can simply certify it's happened.
 2. State must have new 45 day public comment period after PRWORA but funds flow
 3. State may count comment periods prior to PRWORA if no substantive elements of plan have changed

3. Checklist

- Options:
1. No checklist; no definition of complete
 2. 88 item checklist; nine pages of requirements
 3. 1 page – dozen key items

4. Domestic Violence

Review Options

Mtg - WH folks - to discuss msg to HHS

1. Waivers

Check legal rationale for ~~allowing~~ allowing states to use
waiver provisions as to definition of work.

2. MS-days

option (2) OK ~~OK~~ ^{- 5h} # in family.

How can # flow before The certification?

Oh This

way to do ~~later~~
at time of
submission??

3. Checklist

Do small list.

4. Battered women.

Nothing on wh reqs.

5. Wisconsin waiver -

wh reg partic. rate - mentioned in 415
but not time limits or exemptions.

ISSUES

extension -
also exemption policy (e.g. 20%
handicap)

1. Waivers

Guidance to states would require that states identify in their plans specific provisions of their demonstration that they believe are inconsistent with PRWORA. States would be told that they would not be allowed to operate programs that did not comply with the five year lifetime time limit or the work participation rates. States would be alerted that subsequent legislative or regulatory action might limit their flexibility in the future.

never waived.

Note: This approach does not rule out subsequently determining that the demonstration is out of compliance with the spirit of the new law, but we would rule out applying penalties retroactively.

2. 45 day Notice

States would be required to provide the 45 day comment period required by the PRWORA following enactment of the new statute.

If permissible, funding should flow on a finding that the plan is otherwise complete. At a minimum, funding would be retroactive once the comment period is complete.

3. Guidance

Guidance to states would include a one page list of questions that must be answered for the plan to be complete. There would be no lengthy mandatory checklist, but additional guidance could be available on request by a state to help in the preparation of the state plan.

4. Domestic Violence

The President would issue a memorandum to the Secretary of HHS and the Attorney General that would direct them to (1) work with states to inform them of the options available to them in the treatment of battered women and to encourage states to take advantage of those options; (2) provide technical assistance to states in designing their programs and services for this population; and (3) provide funding for research into the linkage between domestic violence and welfare dependence.

Note: This would not provide a waiver of the 20 percent exemption.

5. Wisconsin Waiver

EXECUTIVE OFFICE OF THE PRESIDENT

20-Sep-1996 06:33pm

TO: (See Below)

FROM: Jeremy D. Benami
Domestic Policy Council

SUBJECT: Meeting with HHS

We spent an unproductive and very frustrating two hours with HHS this afternoon.

Essentially they simply accept to refuse any decision with which they do not agree. It is truly unbelievable.

On waivers, they do not accept that we need to be clear at this time that the states cannot use existing waivers to get around the time limit or the 20% hardship cap. They did agree to have their lawyers try to work with Elena on potential language but they reserved right to say no to this.

We are set on 45 days but only because we took their position.

On the guidance/checklist, they will go back and caucus and come back to us with a decision.

On the domestic violence question, they do not accept that it is not an option to have the Secretary say that her regs will allow an exemption from work requirements and time limits.

On Wisconsin, they request a memo to the President, which I take it will be drafted by someone (who?) early next week.

Since I am out on Monday, Diana will ensure that Angell is briefed for the inevitable Shalala to Panetta call.

Please correct me if I got any of this wrong.

I have an enormous headache and am going home.

See you Tuesday.

Distribution:

TO: Carol H. Rasco
TO: Kenneth S. Apfel

EXECUTIVE OFFICE OF THE PRESIDENT

08-Sep-1996 11:42am

TO: Bruce N. Reed

FROM: Elena Kagan
Office of the Counsel

SUBJECT: residency requirement -- fyi

1. Just to clarify: the two provisions relating to new residents are at 402(a)(1)(B)(i) and 404(c). The former, if taken alone, would suggest that Wisconsin does not need a waiver to implement its proposed 60-day waiting period; the latter, if taken alone, would suggest that Wisconsin does need a waiver to take this action. It is unclear what the answer should be given that both these provisions -- 402 seeming to countenance any differential treatment of new residents, 404 seeming to countenance only one kind (and not Wisconsin's kind) of differential treatment -- are in the statute. HHS of course takes the position that 404 is the controlling provision -- hence that Wisconsin needs a waiver. I am proceeding on the assumption that you don't want to contest this interpretation.

2. Anna Durand and I spoke late Friday afternoon. She told me that Mary Jo didn't want to agree to the language she (Anna) had proposed on the residency requirement. I told her that Jack has always had strong feelings on this issue, and there is no reason to think he will change them: he wants HHS to approve the waiver on this issue in exactly the way we proposed months ago. I also noted that we should just do the thing rather than write a letter saying we would be doing it sometime. She didn't disagree, but she's clearly not calling the shots here: she was going to go back to Mary Jo and call me on Monday.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

06-Sep-1996 06:12pm

TO: Jeremy D. Benami

FROM: Elena Kagan
 Office of the Counsel

SUBJECT: suggestion

In the waiver section, the "Note" seems quite unclear to me.

Isn't what they mean the following?:

"Future legislative or regulatory action may establish limits on the ability of states to operate under waivers that are inconsistent with the new law."

Or do I have this wrong?

Done

Removal provision
wellman

-Wisc. Waiver

- certification dates

EXECUTIVE OFFICE OF THE PRESIDENT

03-Sep-1996 07:53pm

TO: Jacob J. Lew
TO: Kenneth S. Apfel
TO: Elena Kagan

FROM: Diana M. Fortuna
Domestic Policy Council

SUBJECT: Wisconsin waiver

Emily Bromberg threw together an impromptu meeting today on the Wisconsin waiver, with Carol, Bruce Reed, and HHS (Monahan, Rosewater, Sally Richardson of HCFA). I thought I should let you know what happened.

The impetus for the meeting was the fact that HHS had a plan to send Wisconsin 3 letters: one from ACF saying that the outstanding waivers were either moot because of the new law, were under continuing review, or were questionable (the residency issue).

There were also draft letters from HCFA and food stamps. We didn't see the food stamp letter, but the HCFA letter said we had big policy problems with what they want to do, but we'd be happy to continue to work with them on a plan to expand coverage. The overall intent of the 3 letters was to say we are "done" with W-2, except for a few minor items.

However, Bruce and Carol pushed strongly for resolving all resolvable welfare issues before sending any letters, including perhaps the conditional approval we had been arguing about on the residency issue. Bruce argued it would be much cleaner to fight on Medicaid if we had done all we could on welfare.

HHS is going to look at what it would take to resolve this (there are also some remaining child support issues that should be resolvable). Elena, I assume they will call you on residency. Then the plan was to reconvene perhaps by conference call this Friday (not yet scheduled). And no letters will go out till this is resolved.

Food stamps is still a mystery; I have to call them to get their story.

No one thinks this is a big rush, but people would like to get it out of the way although not before the big NGA meeting at the

CLINTON LIBRARY PHOTOCOPY

PHOTOCOPY
PRESERVATION

beginning of next week.

Bruce Reed Telecon 9/3/96

Wisconsin

3 letters

Medicaid

Food stamps

Welfare - re child support
residency req.

Manaha / Renwata / Melissa

Just do it the
way we said before

Domestic Violence

- the Jean Pines - do Wellstone thing
- some funds - technical assistance

Told Betsy this.

EO - Child Support - Treasury -
chance lost wh.

D R A F T - 8/21/96
MJB

August 23, 1996

J. Jean Rogers, Administrator
Division of Economic Support
Wisconsin Department of
Workforce Development
1 West Wilson Street
P.O. Box 7935
Madison, Wisconsin 53707-7935

Dear Ms. Rogers:

I am writing in response to your letter of August 8, 1996 to Howard Rolston, and to acknowledge receipt on August 22, 1996 of Wisconsin's state plan submission under the TANF block grant.

Under the landmark legislation signed yesterday by President Clinton, states, including Wisconsin, have unprecedented new flexibility to design their own welfare reform plans without seeking waivers from the federal government. You must be pleased that the PRWORA allows states to shape their plans without the strictures of strict cost neutrality, random assignment evaluations, and the policy restrictions required under the old law--a change in approach that your governor, among others, argued articulately and forcefully in favor of. In general, we agree with the assessment in your August 8 letter that the AFDC waiver requests sought by Wisconsin for the W2 demonstration are no longer necessary under the new legislation. Since you clearly have greater flexibility under the new legislation than under the old waiver process, we are ceasing our comprehensive review of the W-2 welfare provisions.

However, we would be pleased to honor your request that we continue consideration of several smaller matters within W2. You ask that we continue to consider several W-2 child support waiver requests and to determine whether past waiver demonstration savings would continue to be available to the state. We are currently reviewing your requests in the context of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to determine whether your requests are approvable and will provide you with the results of our analysis as soon as it is complete.

In addition, we will also review the other title IV-A and IV-D, and child care proposals to determine whether the areas you

Insert

We believe that Wisconsin could not deny W2 eligibility to applicants during their first 60 days of residence in Wisconsin absent a waiver. In Shapiro v. Thompson, 394 U.S. 618 (1969), the Supreme Court held unconstitutional a state's denial of eligibility for welfare benefits to new residents; the denial in that case was based on the state's interests in deterring indigents from migrating to the state and in limiting welfare benefits to those regarded as contributing to the state. Your application for a waiver is approved in contemplation of Wisconsin's identification of a justifying state interest that meets constitutional standards.

would be

*as set forth in the preceding
case of Shapiro*

Ms. Jean Rogers - page 2

identify are permissible under the new legislation. Although our preliminary review generally supports your assessments, some legal and other issues may remain. As we have noted during our numerous discussions concerning W2, we believe that your authority to deny W-2 eligibility to applicants during their first 60 days of residence in Wisconsin is unclear. As you are aware, in the context of waivers of the AFDC program, HHS was advised by its General Counsel's office and the Department of Justice that such a policy raises issues of constitutionality.

*Replace
w/
Insert*

You will receive separate letters from the Health Care Financing Administration and the Food and Consumer Service of the Department of Agriculture regarding the status of your request for waivers of the Medicaid Program and the Food Stamp Program, respectively.

Our Chicago regional office will be in touch with you regarding your new state plan submission.

Thank you for your continuing interest in welfare reform.

Sincerely,

Mary Jo Bane
Assistant Secretary

cc: Richard Wegner
Marion Steffy

What is waiver?

Demo project - p lgy
each section of law on waiver
list?

PART D - use a more narrow
(restricts narrow)
P R E S I D E

EXECUTIVE OFFICE OF THE PRESIDENT

05-Sep-1996 11:05am

Section 415

TO: (See Below)
FROM: Diana M. Fortuna
Domestic Policy Council
SUBJECT: Decision on HHS Proposal on welfare waivers

(c) (b)
(1)
(2)

HHS now has a proposal on what to tell states about how existing waivers will fit within welfare reform. We still have no paper from them on this (although we are allegedly about to get some). However, John Monahan and Ann Rosewater just laid out their proposed approach to Emily and me. Here is a quick description with some pro's and con's. With Monday's conference coming up, we need to decide quickly whether to go with this approach, bring HHS in immediately for further discussion, or tell them we need more time to decide.

As you know, the law is unclear about how to accommodate existing waivers. The 3 key issues are:

- o whether states can continue to use the looser definition of work that many waivers include, in meeting the law's work participation rates;
- o whether states can enforce time limits as their waivers allow, rather than meet stricter requirements in the bill; and
- o how waivers' cost neutrality requirements will be enforced.

HHS's preferred approach is surprisingly non-prescriptive. They propose to ask states, via the state plan guidance, to identify areas where their waivers are inconsistent with the law and they would like to continue to operate them. This would be part of a state's plan submission. HHS would then allow the waiver practice to continue, unless it was incredibly egregious (the example they gave was if a state didn't want to run a child support enforcement system).

Eventually HHS would expect to issue regulations that might affect state waivers, but any changes would only be applied prospectively so states wouldn't be disadvantaged for past behavior, and there would be opportunity for public comment on any regulations.

Rich Tarplin of HHS has been working with congressional staff both to clarify their intent and try to move them toward at least a grudging acceptance of HHS's preferred approach. They are seeing some progress there.

Potential problems with this approach: States may react to HHS's presentation of this on Monday with mistrust, or with a desire for more guidance. Also, relying solely on states' representations may hurt states that fail to flag certain issues. For example, if a state failed to list in its state plan that its waiver allows for a looser definition of work, then HHS would consider the law's tougher requirements to be in place, and the state would potentially be subject to sanction. Also, it is possible that Congress would criticize HHS for not drawing lines if Rich Tarplin's efforts are unsuccessful.

Alternatives: Despite problems, it is not clear that the alternatives are better. If HHS were to try to draw some kind of line as to which waiver practices were OK and which were not, some states would be angry at them. If they explicitly draw the line so broadly that "anything goes", the Congress can say we are thwarting the law. So their concept is to let the states decide.

That is "anything goes"

Let me know your recommendation on how to proceed. It may be that we have enough outstanding issues with HHS prior to Monday's conference that we need a meeting today or tomorrow. We are still waiting for the latest draft of their guidance to states, and there is the unsettled issue of whether to require a 45-day comment period de novo for all states.

Distribution:

TO: Carol H. Rasco
TO: Bruce N. Reed
TO: Jacob J. Lew
TO: Kenneth S. Apfel
TO: Elena Kagan
TO: Jeremy D. Benami

CC: Emily Bromberg
CC: Keith J. Fontenot

*Seems a bit crazy.
HHS respect the administrative
regs of law
Don't abdicate this to states.*

EXECUTIVE OFFICE OF THE PRESIDENT

05-Sep-1996 11:52am

TO: (See Below)
FROM: Diana M. Fortuna
Domestic Policy Council
SUBJECT: Bruce R. on waivers

FYI, Bruce's inclination on the waiver question is that HHS should not present any of this as a final policy, but more ask the states what they think. This has the strength of letting Governors of both parties ask for this flexibility before we give it to them.

Related to this, he feels strongly that the guidance HHS presents on Monday should be a draft, with a short window for states to comment, rather than a final.

Distribution:

TO: Carol H. Rasco
TO: Jacob J. Lew
TO: Kenneth S. Apfel
TO: Elena Kagan
TO: Jeremy D. Benami
CC: Emily Bromberg
CC: Keith J. Fontenot

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

05-Sep-1996 02:42pm

TO: (See Below)
FROM: Kenneth S. Apfel

SUBJECT: Re: Bruce R. on waivers

Message Creation Date was at 5-SEP-1996 14:39:00

I think hhs is on the right track. And Bruce's notion to have hhs float it next week for comment also makes good sense.

Distribution:

TO: FORTUNA_D
CC: rasco_c
CC: kagan_e
CC: benami_j
CC: bromberg_e
CC: Jacob J. Lew
CC: Keith J. Fontenot

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

05-Sep-1996 04:57pm

TO: (See Below)

FROM: Carol H. Rasco
Domestic Policy Council

SUBJECT: RE: Bruce R. on waivers

As you know, Diana, the idea of draft proposals has been my strong preference all along.

Distribution:

TO: Diana M. Fortuna

CC: Jacob J. Lew
CC: Kenneth S. Apfel
CC: Elena Kagan
CC: Jeremy D. Benami
CC: Emily Bromberg
CC: Keith J. Fontenot

EXECUTIVE OFFICE OF THE PRESIDENT

02-Jun-1996 08:42pm

TO: Elena Kagan

FROM: Bruce N. Reed
Domestic Policy Council

SUBJECT: Child support & welfare

I need your help this week on two things:

1. Child support: Todd Stern wants to make sure we draw up Presidential directives or MOUs for the paternity and child support enforcement initiatives we discussed at that mtg in Ken's office the other day. We talked about 2 or 3: 1) directing HHS to strengthen the cooperation requirements for establishing paternity; 2) directing HHS & Labor to develop the deadbeat data bank (new-hire matching); and possibly 3) directing HHS & Treasury to carry out the new authority under the debt collection bill to run matches against federal benefits. Todd says Steve Neuwirth did a one-page directive when we required minor mothers to stay in school that could serve as a model for these. Give me a call or send me a note and we'll figure out how best to get this done (perhaps HHS & OMB can do most of the work).

2. Waivers: I've now read the Wisconsin waiver, and Ken and I are meeting with Mary Jo tomorrow to get her read on what the tough issues will be. I don't want to drag you into this any earlier than necessary, but at some point I will need your constitutional and legal wisdom on a couple of questions about what's waivable and what's not. Let's talk it over.

Thanks! Sorry to trap you in our broken welfare system.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

31-May-1996 12:31pm

TO: Elena Kagan

FROM: Bruce N. Reed
 Domestic Policy Council

SUBJECT: RE: welfare

First, you should become head of OLC. Or White House Counsel if Jack goes up river.

Second, we should focus our attention on the Wisconsin waiver and make HHS identify the legal issues (as opposed to the policy ones) so we can review and second-guess their legal analysis.

Third, we should figure out whether we could put together a team of WH/DOJ/OMB lawyers who could help on the executive actions, so HHS can't use that as an excuse not to do everything else.

Thanks.

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

May 10, 1996

May 10, 1996

MEMORANDUM FOR THE SECRETARY OF HEALTH AND HUMAN SERVICES

SUBJECT: Welfare Initiative Regarding Teen Parents

This memorandum will confirm my directive to you to implement the plan I announced on Saturday, May 4, 1996, to help teen parents break free of the cycle of welfare dependency by living at home, staying in school, and getting the education they need to get good jobs.

I direct you to exercise your legal authority to take the following steps to implement that plan:

- (1) require States to submit plans describing how they will ensure that teen parents stay in school and prepare for employment;
- (2) require teen parents who have dropped out of school to sign personal responsibility plans that spell out how such teens are going to move towards supporting and caring for themselves and their children, including attendance at school;
- (3) allow States to reward with cash allowances teen parents who stay in school and graduate, as well as require States to sanction teens who do not;
- (4) challenge States to use the authority they have to require minor mothers to live at home; and
- (5) monitor State performance in the foregoing areas.

You have advised me that you have legal authority to take these actions under titles IV-A and IV-F of the Social Security Act.

The plan I have outlined will help assure that the welfare system requires teen parents to follow responsible paths to independence. Its swift implementation is vital to achieving our goal of further instilling the American values of work, family, and personal responsibility into our welfare system.

WILLIAM J. CLINTON

#

WHITE HOUSE STAFFING MEMORANDUM

DATE: 5/17/96 ACTION/CONCURRENCE/COMMENT DUE BY: 5/17 - IMMEDIATE

SUBJECT: Radio address

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input checked="" type="checkbox"/>	<input type="checkbox"/>	McCURRY	<input type="checkbox"/>	<input checked="" type="checkbox"/>
PANETTA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	McGINTY	<input type="checkbox"/>	<input type="checkbox"/>
McLARTY	<input type="checkbox"/>	<input type="checkbox"/>	NASH	<input type="checkbox"/>	<input type="checkbox"/>
ICKES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	QUINN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
LIEBERMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	RASCO	<input checked="" type="checkbox"/>	<input type="checkbox"/>
RIVLIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	REED	<input type="checkbox"/>	<input type="checkbox"/>
BAER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SOSNIK	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CURRY	<input type="checkbox"/>	<input type="checkbox"/>	STEPHANOPOULOS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
EMANUEL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	STIGLITZ	<input type="checkbox"/>	<input type="checkbox"/>
GIBBONS	<input type="checkbox"/>	<input type="checkbox"/>	STREETT	<input type="checkbox"/>	<input type="checkbox"/>
HALE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	TYSON	<input type="checkbox"/>	<input type="checkbox"/>
HERMAN	<input type="checkbox"/>	<input type="checkbox"/>	WALLEY	<input type="checkbox"/>	<input type="checkbox"/>
HIGGINS	<input type="checkbox"/>	<input type="checkbox"/>	WILLIAMS	<input type="checkbox"/>	<input type="checkbox"/>
HILLEY	<input type="checkbox"/>	<input type="checkbox"/>	<u>Toiv</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
KLAIN	<input type="checkbox"/>	<input type="checkbox"/>	<u>Haas</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
LAKE	<input type="checkbox"/>	<input type="checkbox"/>	<u>Eagan</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
LINDSEY	<input type="checkbox"/>	<input type="checkbox"/>	<u>Spurling</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			<u>Waldman</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

REMARKS: Comments to Bruce Reed or David Shipley ASAP

RESPONSE: _____

Draft 5/17 -- 12 noon
800 words

**The President's Radio Address
Welfare Reform
May 18, 1996
[taped May 17, 1996]**

96 MAY 17 P12:17

Good morning.

Four years ago, I challenged America to end welfare as we know it. A few days after I took office, I met with the nation's 50 governors and urged every one of them to send me a welfare reform plan that would help meet that challenge.

Many of them have. In the last 3 years, my administration has granted welfare waivers to a record 38 states -- more states than all previous administrations combined. We have cleared away federal rules and regulations to permit states to build effective welfare reforms of their own. The state-based reform we have encouraged has brought work and responsibility back to the lives of 75 percent of the people on welfare.

We're doing a lot more than signing waivers. We've also pressed ahead on fundamental reforms to make the welfare system reflect the basic values that have stood us so well for so long: That if you bring a child into this world, you must take responsibility for that child ... That government will not subsidize irresponsible or reckless behavior ... That welfare is a second chance, not a way of life.

That is why I signed an executive order to require federal employees to pay child support ... toughened sanctions on welfare and food stamp recipients who refuse to work ... took action to require teenage mothers to stay in school and sign personal responsibility contracts, if they are to receive welfare benefits. And that is why I sent Congress a sweeping welfare reform plan that would do all this and more.

Our hard work is paying off. America is witnessing what The New York Times calls a "quiet revolution" in welfare reform. The number of Americans on welfare has dropped by 1.3 million since January 1993. Food stamp rolls are down. So are teen pregnancy rates. What numbers are up? Child support collections, which have jumped 40% ... and the number of people who are required to work as a condition for receiving welfare.

Today, I am pleased to report that two more states -- Wisconsin and Maryland -- are adding momentum to this "quiet revolution". Last week, Wisconsin submitted to me for my approval the outlines of a bold welfare reform plan -- and I am encouraged by what I have seen so far. The Wisconsin plan is a serious effort to replace a welfare system that is based on dependency with a system that is based on work.

Under the Wisconsin plan, people on welfare who can work must work -- immediately. The state says it will see to it that families have health care and child care so parents can devote their energies to getting off welfare and going to a job. They will learn that if you don't go to work, you won't get paid. And if you do, you will have the dignity of earning a paycheck, not a welfare check. The plan will send a clear message to teen parents as well: you will receive benefits only if you stay in school, live at home, and turn your lives around.

All in all, it's a solid plan, and I look forward to working with the state to realize a new vision of welfare based on work, that protects children and does right by working families.

And Wisconsin is not alone. Maryland just came up with its own innovative reform plan. The Maryland plan cracks down on welfare fraud. It comes down hard on parents who turn their backs on child support enforcement. And like Wisconsin, it helps working parents with child care so they won't be driven onto the welfare rolls in the first place.

The reforms in Wisconsin, Maryland, and other states are heartening for two reasons. First, because they give us hope that we can break the vicious cycle of welfare dependency. And second, because they make clear that there is a widespread national consensus, shared by both Republicans and Democrats, on what welfare reform should look like.

So the states can keep sending me strong welfare reform proposals -- and I'll keep signing them, happily. I will keep doing everything in my power to reform welfare, state by state, if that's what it takes. But there's a faster way to bring this welfare reform revolution to the entire nation. There's a bipartisan welfare reform bill sitting in the House and Senate right now. This bill would do what Americans agree welfare reform must do: require welfare recipients to work, limit the time people can stay on welfare, toughen child support enforcement, and protect our children.

So I say to Congress: Send me that bill. I'll sign it. Let's get the job done, and bring welfare reform to all 50 states. And then we'll move on to the other challenges we face as we stand at the dawn of a new century.

Thanks for listening.

Welfare meeting - Leon - May 8, 1986 - Waivers

Shalala - Phone call to you

Follow letter - here's what's OK

here's what we need to work on.

More flexib: a) evaluations - don't hold up w on this basis.

b) budget neutrality - push envelope

No flexib - have to protect kids.

Base - 8 states.

1. CA - subit. benefit cut
May get another applic.

4.5% across bd

4.5% in counties
low cost of living

Dems supported as part
of budget deal

Law - can't cut bene below what paid
in 88.

2. HI - subit. benefit cut

3. MA - uncertain

another way of constructing
time limit?

4. MI - uncertain

2 applications in ~~small~~ pieces

large thing coming -

try to work then cut

we will raise eval. issue

5. NJ. Don't have applic. yet

Budget neutrality top issue

6. NY. No applic or leg yet.

Policy issues similar to ones in other states

They'll push hard on eval.

7. PA. Applic in June

Diff. benefits for migrants - in cost?

8. WI. Leg, but no applic - in June

Some interesting; some tricky.

Guaranteed job - flat wage - instead
of AFDC system.

Raises min wage / hr issues. work displacement

3 tiers of jobs - we may have to be exempted from MW.
Also - complex day care issues -
want to contribute sthng for DC services.

Druce - MI, WI, NJ - good plans
spend \$ on what we want
hard to explain why we
wouldn't be for them

Rahm - Especially WI.
IF we're here, the press
would say - it's all bullshit

13 other states - ?

Shalala -

24 mo. / prob. not tough out week.
but can do rhetoric
1) Put reg out mandating states to have shary wh reg
2) Child support enf.

Stress these 2 issues, to show commitment to welfare
reform.

Rahm - Have to send letter now - supportive / optimistic
Especially MI, WI, NJ - believe applicative
legislative

Leah - Approve parts that are OK.

Rahm - Get Mich done - on minor issues -
follow upon last weekend's story.