

NLWJC - Kagan

DPC - Box 065 - Folder-008

Welfare-Waivers



Cynthia A. Rice

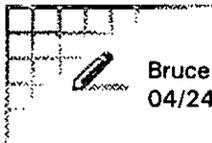
04/24/97 02:08:37 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP
cc: Elena Kagan/OPD/EOP, Diana Fortuna/OPD/EOP
bcc:
Subject: Re: Evaluation Grants

That's a good idea. HHS has started to verbally notify Congressional delegations and may have begun to do the same with states (I've left a message with Monahan to check.) We should be able to get them to hold the official notification for May 8th or 9th for a briefing with reporters on the caseload study. What do you think?

Bruce N. Reed



Bruce N. Reed
04/24/97 01:19:59 PM

Record Type: Record

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

Couldn't we combine that with release of CEA report?

Wp - waivers



Cynthia A. Rice

04/24/97 03:48:54 PM

Record Type: Record

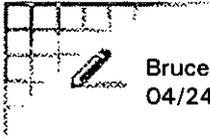
To: Bruce N. Reed/OPD/EOP
cc: Elena Kagan/OPD/EOP
bcc:
Subject: Re: Evaluation Grants 

I will talk to Howard Rolston. Here's what I know now:

Under TANF, states no longer need to continue to evaluate the welfare reform programs they operated through Clinton Administration waivers and they no longer receive 50/50 match to help pay for evaluations. These funds were offered as an incentive for states to continue to evaluate the various policy options which were begun through the waiver process. Not every state applied, nor did every state that applied get money.

I spoke to Monahan. Since Congressional offices have been notified, it's too late to stop the official notifications, but we could have them prepare a fact sheet we could use in conjunction with the CEA report.

Bruce N. Reed



Bruce N. Reed
04/24/97 03:01:50 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP
cc:
Subject: Re: Evaluation Grants 

Is there anything else we should know about these grants? What are they going to study?

WP-waivers



Cynthia A. Rice

04/24/97 09:48:01 AM

Record Type: Record

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

cc:
Subject:

FYI:

Mary Bourdette called me earlier this week to tell me HHS is about to award grants to states to continue or enhance the evaluations of waivers granted under the Clinton Administration. Apparently HHS announced in November that \$7.5 million would be available for this purpose; applications were due January 15, and they are now ready to grant the funds. I see no news for us in this, but I have some paper if you want to see it.

E-mail back
we've held
this, yes?

File -
welfare -
waivers

Cynthia -
FYI
BR

Bruce:

I don't know if you've seen this report, but it's an interesting compendium of what state plans reveal about inconsistencies between waivers and the law. See pages 4-7, for example.

It raises the question of whether it is time to revisit the question of these inconsistencies. HHS's strategy is to ignore this issue, as you know, and hope it doesn't become public.

Diana

**Waivers and the New Welfare Law:
Initial Approaches in State Plans**
by Mark Greenberg and Steve Savner

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:

Statewide: 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.