

NATIONAL GOVERNORS' ASSOCIATION

Bob Miller
Governor of Nevada
Chairman

Raymond C. Scheppath
Executive Director

George V. Volnovich
Governor of Ohio
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Facsimile Cover Sheet

NATIONAL GOVERNORS' ASSOCIATION

From:	Susan Golonka
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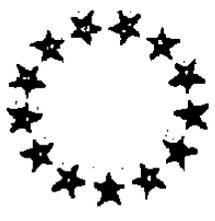
MAY 12 '97
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May 12, 1997

WR - Bifurcation

The Honorable William V. Roth, Jr.
Chair
Senate Finance Committee
219 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Roth:

The nation's Governors want to express our strong opposition to the Clinton administration's proposal to impose federal Temporary Assistance for Needy Families (TANF) requirements on separate state maintenance-of-effort (MOE) programs. We understand the administration will be submitting to you for your consideration a legislative proposal that would severely limit state flexibility in welfare reform. This proposal would dismantle the careful agreement worked out among Governors, Congress, and the administration during last year's welfare reform deliberations. We ask for your continued support of the framework for welfare reform enacted last year and urge you to oppose the administration's efforts to enact such a proposal, whether it be in the context of a welfare reform technical corrections bill or part of another legislative vehicle.

The National Governors' Association (NGA) is strongly opposed to the administration's proposal to limit state flexibility in the use of state MOE funds beyond those limitations currently in the law. Governors supported a welfare block grant because we believed it would provide the flexibility states need to create successful programs that will reduce welfare dependency and increase self-sufficiency. The understanding that states would have greater flexibility in the use of their own state MOE dollars than in the use of federal TANF dollars was integral to Governors' support of welfare reform. This flexibility will enable states to design programs to serve the particular needs of their populations and to ensure that the most vulnerable families are protected. A maintenance-of-effort requirement was included to guarantee a minimum level of state spending on needy families, not to impose prescriptive federal requirements on the use of those dollars.

The policy guidance from the U.S. Department of Health and Human Services dated January 31, 1997, provided what we believed to be a reasonable and accurate interpretation of the statute. The guidance recognized that state maintenance-of-effort dollars used to serve eligible families in separate state programs are not to be encumbered by federal requirements and restrictions. However, the administration would like to reverse that interpretation with a legislative proposal to require that all state MOE spending—even if in a separate state program—be subject to federal work, child support, and data reporting requirements. Governors believe that limiting state flexibility in separate state MOE programs would break the agreement that Congress and the administration made with Governors on welfare reform.

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Governors should be given a chance to implement welfare reform within the current parameters of the law. It is grossly premature to restrict state flexibility and innovation when states have only just begun to implement the law. If, down the road, Congress or the administration find that states have adopted programs or policies that appear contrary to the intent of the law, then Governors would be happy to work with all parties to address the problem.

We are unaware of any states creating separate state programs to "game" the work requirement or siphon off the federal share of child support collections. In fact, states appear to be moving very cautiously in the creation of separate programs. However, Governors are interested in preserving the option to create separate state MOE programs, if future circumstances and needs suggest that it would be the best way to serve particular clients or provide particular services.

Those states that are considering creating separate state programs are doing so for very legitimate and appropriate reasons. States are considering these programs as a way to serve the most vulnerable families and individuals for whom a twenty-five, thirty or thirty-five hour per week work requirement might not be a realistic or even desirable goal. This might include families with elderly or disabled caretakers or disabled children, victims of domestic violence, and individuals needing substance abuse treatment before going to work. States may also decide to serve individuals who are ineligible for federal TANF assistance, such as legal immigrants, in separate state programs. It would be a broad stretch of federal authority to require states to impose the federal work requirements on individuals who are not even eligible to receive federal dollars.

The flexibility currently in the law will enable states to consider a variety of innovative approaches with their MOE spending. For example, states may want to create a state earned income credit (EIC). However, requiring the assignment of child support rights and tracking hours of work for families receiving an EIC would be burdensome and costly to states. Imposing federal requirements will have the very unfortunate result of curbing innovative and creative state solutions.

We would also like to raise a related issue concerning the contingency fund. The administration's unwarranted concern around separate state programs has led it to oppose NGA's recommendation for fixing the contingency fund. The inclusion of a \$2 billion contingency fund was an important element in Governors' support for welfare reform. Congress and the administration also gave strong support to the contingency fund, reflecting bipartisan agreement that both the federal and state governments should share the cost of meeting increased needs during periods of economic downturn.

NGA, however, is very concerned that certain provisions in the welfare law will make it difficult for states to access the contingency fund during periods of economic hardship, thereby defeating the purpose of the fund. Specifically, there is a problem with the definition of what state spending counts toward the 100 percent maintenance-of-effort requirement that states must meet in order to draw down the additional matching dollars. Even if a state's spending equaled 100 percent MOE for the basic TANF block grant, that state might not be eligible for the contingency fund because the definition of MOE under the contingency fund is much narrower than the definition under TANF. As a result, it will be very difficult for states to meet the criteria—even while investing high levels of spending on welfare programs—if they have any MOE spending in separate programs, as is permitted under TANF.

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Governors are recommending that the contingency fund MOE requirement be changed to mirror the TANF MOE with respect to qualified state spending. The administration erroneously believes that the current, more restrictive MOE requirement for the contingency fund will be a disincentive to states to create state-only funded programs and is opposing our recommendation. In structuring their welfare programs, however, most states are not weighing access to the contingency fund very heavily but rather are giving priority to designing programs that will enable them to meet the varying needs of their clients in the most appropriate manner. If the MOE language for the contingency fund is not modified, the result will not be fewer separate state programs but rather fewer states that are able to access the contingency fund in order to help needy families during periods of economic downturn. We urge you to include our proposed modification to the contingency fund in any welfare reform technical corrections bill that the Finance Committee considers.

The nation's Governors are deeply committed to welfare reform and have been at the forefront in developing innovative and successful strategies to move individuals from welfare to work. We look forward to continuing to work with Congress and hope you will oppose any proposals that would undermine states' ability to make welfare reform a success.

Sincerely,

Governor Bob Miller
State of Nevada
Chairman

Governor George V. Voinovich
State of Ohio
Vice Chairman

Governor Tom Carper
State of Delaware
Co-Lead Governor on Welfare Reform

Governor John Engler
State of Michigan
Co-Lead Governor on Welfare Reform

cc: The Honorable Donna Shalala, Secretary, Department of Health and Human Services
Bruce Reed, Domestic Policy Advisor to the President

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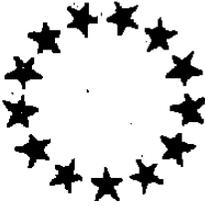
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May 12, 1997

The President
The White House
Washington, DC 20500

Dear Mr. President:

The nation's Governors want to express our strong opposition to a proposal that is being advanced by your administration to impose federal Temporary Assistance to Needy Families (TANF) requirements on separate state maintenance-of-effort (MOE) welfare programs. We believe this proposal dismantles the careful agreement worked out among Governors, Congress, and your administration during last year's welfare reform deliberations. It will limit state innovation and creativity and imperil successful welfare reform. **We urge you to withdraw the proposal.**

The National Governors' Association (NGA) is strongly opposed to your administration's proposal to limit state flexibility in the use of state MOE funds beyond those limitations currently in the law. Governors supported a welfare block grant because we believed it would provide the flexibility states need to create successful programs that will reduce welfare dependency and increase self-sufficiency. The understanding that states would have greater flexibility in the use of their own state MOE dollars than in the use of the federal TANF dollars was integral to Governors' support of welfare reform. This flexibility will enable states to design programs to serve the particular needs of their populations and to ensure that the most vulnerable families are protected. A maintenance-of-effort requirement was included to guarantee a minimum level of state spending on needy families, not to impose prescriptive federal requirements on the use of those dollars.

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Governors should be given a chance to implement welfare reform within the current parameters of the law. We believe it is grossly premature to restrict state flexibility and innovation when states have only just begun to implement the law. If, down the road, the administration or Congress finds that states have adopted programs or policies that appear contrary to the intent of the law, then Governors would be happy to work with all parties to address the problem.

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Those states that are considering creating separate state programs are doing so for very legitimate and appropriate reasons. States are considering these programs as a way to serve the most vulnerable families and individuals for whom a twenty-five, thirty, or thirty-five hour per week work requirement might not be a realistic or even desirable goal. This might include families with elderly or disabled caretakers or disabled children, victims of domestic violence, and individuals needing substance abuse treatment before going to work. States may also decide to serve individuals who are ineligible for federal TANF assistance, such as legal immigrants, in separate state programs. It would be a broad stretch of federal authority to require states to impose the federal work requirements on individuals who are not even eligible to receive federal dollars.

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We would also like to raise a related issue concerning the contingency fund. Your administration's unwarranted concern around separate state programs has led administration officials to oppose NGA's recommendation for fixing the contingency fund. The inclusion of a \$2 billion contingency fund was an important element in Governors' support for welfare reform. Congress and your administration also gave strong support to the contingency fund, reflecting bipartisan agreement that both the federal and state governments should share the cost of meeting increased needs during periods of economic downturn.

NGA, however, is very concerned that certain provisions in the welfare law will make it difficult for states to access the contingency fund during periods of economic hardship, thereby defeating the purpose of the fund. Specifically, there is a problem with the definition of what state spending counts toward the 100 percent maintenance-of-effort requirement that states must meet in order to draw down the additional matching dollars. Even if a state's spending equaled 100 percent MOE for the basic TANF block grant, that state might not be eligible for the contingency fund because the definition of MOE under the contingency fund is much narrower than the definition under TANF. As a result, it will be very difficult for states to meet the criteria—even while investing in high levels of spending on welfare programs—if they have any MOE spending in separate programs, as is permitted under TANF.

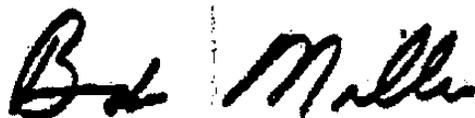
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varying needs of their clients in the most appropriate manner. If the MOE language for the contingency fund is not modified, the result will not be fewer separate state programs but rather fewer states that are able to access the contingency fund to help assist needy families during periods of economic downturn. We urge you to withdraw your opposition to our proposed modification to the contingency fund so that it may be included in the welfare reform technical corrections bill.

We are concerned that the nation's Governors were not adequately consulted prior to the announcement of the administration's proposal concerning maintenance-of-effort and separate state programs. This proposal was not put forward in the spirit of partnership or with the goal of making welfare reform a success. As a former Governor, you know that states have been at the forefront in developing innovative and successful strategies to move individuals from welfare to work. Governors are deeply committed to welfare reform and we urge you to work with us to make it a success.

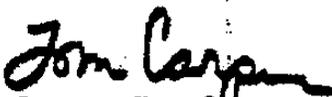
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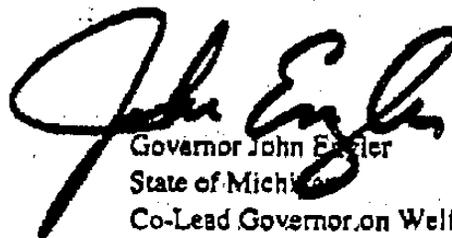
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State of Michigan
Co-Lead Governor on Welfare Reform

cc: Donna Shalala, Secretary, Department of Health and Human Services
Bruce Reed, Domestic Policy Advisor

DRAFT

WR - Bifurcation

QUESTIONS AND ANSWERS ON GUIDANCE

Q What message are you sending states?

A We are giving states the flexibility and creativity they need to develop programs. At the same time we are telling states that we ~~hope and will hold them to expect them to uphold~~ the central goal of welfare reform: moving people from welfare to work.

Q What is the legal basis for your telling the states how to spend their dollars?

A Over the past months, Federal and state agencies have been engaged in the massive process of implementing the new welfare law. We have resolved many issues and answered many questions that the states have had, and many are still being resolved. The question here is how to implement the law's requirement that states must continue to spend some of their own dollars to help families

Under the statute, states must maintain either 75% or 80% of their 1994 state spending level under the old AFDC and related programs. The guidance clarifies for the states the legal interpretations as to whom the states provide support or "eligible families," what types of support they provide or "assistance" and what state dollars count to meet the statute's requirement for that maintenance-of-effort. The legal reading intends that states use their dollars for needy families as they define them and that assistance whether in direct cash or other non-cash supports keep the statute's aim to move people from welfare to work. ~~Within that general direction~~ states have the flexibility in the use of their dollars which will count toward their maintenance-of-effort requirement.

generally

The guidance ~~defines~~ ^{also} "assistance" with federal dollars more strictly. The administration wants to insure that federal support is being used to further more specific work and work related activities.

overall work effort

If states exceed their federal block grant allocations, they can obtain additional federal funds from the contingency fund in the statute. However, the administration reads the Congressional intent for this provision as for states to draw those funds, they will have to spend 100% of their 1994 spending level dollars on families that meet the federal TANF requirements.

Q Why are you drawing the definition of assistance so tight?

A We are committed to the fundamental goal of this historic welfare reform which is to require people to work. And, the statute gives us the authority to do so.

Q Will states be allowed to spend their funds for services like transportation subsidies, one-time grants to families to avoid receiving welfare, subsidized child care or parenting classes toward fulfilling their maintenance of effort requirements?

A Yes, states may use their funds those and a variety of other services, as long as the family has a child and is needy according to the state income standards in its TANF program. These funds will count toward the 75% or 80% maintenance-of-effort requirement. They will not be able to use state funds for those purposes to meet the contingency fund maintenance-of-effort requirement.

calculating whether the state has met its work participation requirements

But we ~~expect states~~ ^{by} will do all we can to prevent ~~states~~ states from using this flexibility to get around work requirements - both by issuing regulations and seeking legislation. We will insist that the states' overall work effort - not just its effort within the TANF program - is taken into account in applying the work requirements.

participation rates. We also will seek legislation making clear that the work participation rates apply to ~~the states~~ ^{any program counting toward} ~~the states~~ ^{the MOE requirement}, and not just to the ~~states~~ ^{TANF program}.

Q Under your guidance, will states have to force grandmothers to work in order to receive assistance?

A No. States will have the option to place grandparents in a state-funded program and not subject them to federal work requirements. Assistance provided to them will count toward the state's 75/80% maintenance-of-effort requirement, but not the 100%.

Q What about the time limit? Will states be able to provide assistance with state dollars after five years?

A Yes. In the statute, Congress prohibited only the expenditure of federal funds for families beyond the five year limit. The Clinton administration is also serious about time limiting assistance so that welfare truly becomes a transitional program.

Q Will states be able to provide assistance to legal immigrants who are in the country after August 22, 1996?

A Yes. States will be able to use state funds for legal immigrant families who arrive in the country after August 22nd. HHS submitted a technical correction to the statute, based on Congressional intent, that fixes an error which goes along with the interpretation in the guidance of the use of state dollars. The combination of these two efforts will enable states to use their dollars for legal immigrants which will count toward the 75/80% maintenance-of-effort requirement.

Q How will you make sure that states that states are upholding the central goal of welfare reform: moving people from welfare to work?

A We are confident that the states will use the flexibility in this new law and this guidance to strengthen the focus on work, not evade it. However, we will use all the means at our disposable and ~~now once if we need them~~ to insure that states make welfare reform real by requiring work and moving families to self-sufficiency. We will do this in several ways: ~~by the stricter definitions of federal assistance and requirements for states to access the contingency fund; by imposing fair but tough penalties by denying good cause to states who fail to require work participation rates; by thoroughly and carefully collecting data on how states are using their dollars to insure that they don't undermine the mission of work and to deny bonuses for successes. As we closely monitor the state's implementation, we will share the good and the bad with Congress and the American people to judge how state's are faithfully reforming welfare.~~

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Q How will you make sure states don't retain what would be federal share of child support collections?

A We will closely monitor the actions states take with regard to child support collections through the data information we gather. If states act irresponsibly, we will inform the Congress and work to solve the problem.

Q Are you going beyond your authority with this guidance?

A No.

Q Aren't you stifling state creativity?

A No. We are assuring the balance of state flexibility and accountability to the fundamental objection of welfare reform to move people into work.

Q Is this the final word on this issue?

issue

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We will ^{state's} regulations that ~~will~~ create disincentives for states to evade their work requirements through the use of separate programs. If ~~the~~ ^{states} try to get around the work requirements they will not receive ~~the~~ ^{performance} ~~bonuses~~ ^{bonuses} or good cause consideration for failing to meet

Bruce -

I talked with
Melissa + also gave
her this.

Eileen

File:
WEL - Biberstein

THE WHITE HOUSE

WASHINGTON

January 28, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED
ELENA KAGAN

SUBJECT: WELFARE LAW IMPLEMENTATION ISSUE

Before the NGA meeting, we need to give states an answer to the question of whether a state must comply with the welfare law's requirements in order to get maintenance-of-effort credit for a state expenditure. States would like to spend their money in separate, non-TANF programs, free from all federal restrictions, but still counting toward the maintenance-of-effort standard. Allowing them to do so, however, may deprive the federal government of a great deal of money and may undermine the law's work requirements. This memo contains a joint HHS and DPC recommendation as to the proper Administration approach to this issue.

Background and analysis

As you know, the maintenance-of-effort provision of the welfare law requires states to spend each year a set percentage of their FY 1994 welfare expenditures. Each state meeting its work participation rate must spend 75 percent of FY 1994 expenditures; any state failing to meet its rate must spend 80 percent of that sum. If a state fails to spend this amount of money, its next year's block grant is reduced accordingly.

The question here concerns the restrictions that apply to expenditure of these "maintenance-of-effort funds." (All agree that no federal restrictions apply to state monies for which the state is not seeking maintenance-of-effort credit.) The law is clear that certain restrictions -- the limits on benefits to aliens and the five-year time limit -- do not apply to maintenance-of-effort funds. The law is far less clear as to whether other requirements apply. But it is difficult, as a legal matter, to pick and choose among these remaining requirements: HHS cannot, for example, say that work requirements, but not reporting requirements, apply.

The governors have argued vehemently that applying federal restrictions to state maintenance-of-efforts funds would impede state innovation. And because the advocacy groups would like to undermine some of the federal requirements -- particularly regarding work -- they have joined the states in taking this position.

But a completely "hands-off" approach -- which would allow the states to set up wholly independent programs, free of all federal restrictions, with maintenance-of-effort dollars -- poses two significant problems. First, states could place the families most likely to make child support

payments in the state-only program and thereby avoid sharing child support collections with the federal government. OMB estimates that the amount of money at stake could exceed \$1 billion per year.

Second, such an approach could seriously undermine the work provisions of the welfare law. As you know, the law requires states to show, on pain of financial penalty, that a certain percentage of families receiving assistance under TANF are engaged in work. The governors' approach would allow states to get around this requirement by transferring their hardest-to-employ welfare recipients from the TANF program (where they would count as part of the denominator in calculating the percentage) to a separate state program funded by maintenance-of-effort dollars (where they would not so count). Indeed, under one interpretation of the law, such a transfer might count as the kind of "reduction in caseload" that operates to reduce the minimum participation rate applicable to the state. Hence by the simple device of shifting beneficiaries from one program to another, a state could simultaneously make it easier to meet the existing participation rate and lower the participation rate applicable in the future.

Recommendation

To provide the states with needed flexibility, protect the government's share of child support collections, and maintain the integrity of the law's work participation requirements -- and to do all this in a legally defensible way -- HHS and the DPC recommend the following actions:

1. Interpret the law so as to give the states far-reaching discretion and flexibility over maintenance-of-effort funds. Under this interpretation, states can set up programs that are free of any of the welfare law's prohibitions and requirements.

2. Advise states that they should not use their own programs to appropriate child support collections that otherwise would go to the federal government; issue regulations authorizing HHS to collect the data necessary to monitor whether states are using their programs for this purpose; and work with both the governors and Congress to ensure that states do not do so. Conversations with Governors have suggested a willingness to work cooperatively on this issue. We also have every reason to think that Congress -- which in assessing the budgetary impact of the bill, did not envision a reduction in federal child support collections -- would legislate a remedy if that is necessary.

3. Issue a regulation providing that a state cannot receive a reduction in its participation rate for reducing its caseload unless the state shows that the caseload reduction is real and not simply the result of transferring beneficiaries from TANF into a separate state program. Such a regulation, which rejects the interpretation of the law most beneficial to states, will prevent states from decreasing their obligation to put people to work through making purely formal changes in the structure of assistance programs.

4. Issue a regulation providing that a state cannot receive any good cause consideration --

i.e., any mitigation in penalty for failure to meet work participation rates -- unless the state shows that it has not used its own program to escape the force of work participation rates. This regulation will create a disincentive for states to use their own programs as dumping grounds for hard-to-place beneficiaries.

5. Issue a regulation providing that HHS will look at a state's overall work effort -- i.e., its success in putting to work the beneficiaries of both TANF and separate state programs -- in determining whether the state qualifies for a high-performance bonus. This regulation too will encourage states to make real efforts to place in work activities those individuals who receive assistance from separate state programs.

6. Work with Congress and the Governors to enact a legislative clarification to ensure that states do not use their discretion over maintenance-of-effort funds to evade the participation requirements. Specifically, we will seek language making clear that calculation of whether a state has met the applicable participation rate shall take into account the state's success in placing in work activities the participants in both the TANF program and any separate state program that counts toward the maintenance-of-effort standard.

Together, these steps should give governors broad flexibility to run their own programs without giving them perverse incentives to evade the work requirements. Please let us know if this resolution of the issue meets with your approval. If it does, we would like to roll out this program prior to the NGA meeting.

and the Govs.

Finally, we intend to work with Congress in a bipartisan fashion to enact a legislative clarification to ensure that each state's overall work effort meets the statute's work participation requirements. Specifically, we will seek language making clear that calculation of whether a state has met the applicable participation rate shall take into account the state's success in placing participants in both TANF and MOE programs in work activities.

-- i.e., the state's success in putting to work participants in both MOE + TANF programs --

**OFFICE OF INTERGOVERNMENTAL AFFAIRS
DEPARTMENT OF HEALTH AND HUMAN SERVICES**
200 Independence Avenue, SW
Room 630F
Washington, DC 20201



F A X C O V E R S H E E T

DATE: 1/28/97

TO: Bruce Reed
Liliana Fortuna

PHONE:
FAX:

FROM: John Monahan
Director

PHONE: (202) 690-8060
FAX: (202) 690-5672

RE:
CC:

Number of pages including cover sheet: 21

Message:

Page 2 - Bruce Reed

I believe that these actions significantly strengthen the guidance and meet our mutual concerns that welfare reform succeed. Because of our shared sense of urgency, I have asked John Monahan to follow up with you soon to discuss this latest draft and our plans to disseminate the final version.



Donna E. Shalala

Enclosure

I. Nature and Purpose of this Guidance

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) gives States enormous flexibility to design their Temporary Assistance for Needy Family (TANF) programs in ways that promote work, responsibility, and self-sufficiency and strengthen families. Except as expressly provided under the statute, the Federal government may not regulate the conduct of States.

Within this context, we are planning to focus our proposed TANF regulations on areas where Congress has expressly provided for the Secretary to take action -- i.e., with respect to data collection, penalties and bonuses. We have also been undertaking extensive outreach to ensure consultation with a wide range of persons and organizations holding perspectives on children and families. To date, we have asked State executive and legislative officials and their national representatives, advocates, non-profit organizations and foundations, labor, and business organizations to participate in this consultation process.

Because State legislative sessions are starting and the TANF statute is so far-reaching, we have frequently heard of the need for early guidance on certain issues of immediate importance to the development of State programs. Among these issues are Federal requirements related to the expenditure of Federal grant funds, including the definition of "assistance" which triggers these requirements; the scope of State flexibility in using State funds which qualify as expenditures for maintenance-of-effort (MOE) purposes; and State flexibility in using State MOE funds in State programs operated apart from TANF.

Consequently, we are providing informal guidance on these important issues. However, because of the scope of the TANF statute, and the interrelationships among its many pieces, it is important to note that many other questions will be answered through the regulatory process. We believe the guidance reflects Congressional intent on TANF policies, and that it will promote program accountability, support substantial innovation in program design and provide States the flexibility they need to serve needy families effectively.

Key Points

Among the key points made in this paper are the following:

- 1) States have the flexibility to count, towards their general TANF MOE requirement, expenditures of State funds under separate State programs. These expenditures must meet the statutory requirements for "qualified State expenditures," including the requirement that they are made on behalf of "eligible families," but are not subject to requirements which apply to the TANF program. (see section V discussion and chart).

Because the statutory language for contingency fund MOE is different, States do NOT have the flexibility to count expenditures under separate State programs for the purpose of meeting the Contingency Fund MOE. All expenditures counted towards the 100% Contingency Fund MOE requirement must be made under the TANF program and therefore must meet TANF requirements.

2) In order to ensure that State decisions to establish separate programs do not undermine the work provisions of the new law, undercut Congressional intent to share child support collections between Federal and State government, or have other negative consequences, we will be taking steps to obtain additional information on state practices and exercising the administrative authority available under the statute to support the legislative goals of PRWORA (see discussion in section II. below).

3) Under the definition of "assistance" included in section VI, all but two forms of assistance provided to families under the TANF program would be considered "assistance." Thus, TANF requirements such as time limits, work requirements, assignment of child support, and data collection are applicable (depending on the nature of funding involved).

4) During the interim period before final rules are available, any penalty decisions will be based solely on whether violations of the statute occurred. Further, statutory interpretations forthcoming in final rules will apply prospectively only; they will not be a basis for penalties during this interim period. States will be asked to conform their programs, if necessary, after the final rules are promulgated.

II. Ensuring Positive Impacts

Program Accountability. At this point, we cannot say what States will do with the flexibility they have to set up separate programs which qualify for MOE purposes, but are not subject to many of the TANF rules (see section IV). This flexibility gives States the opportunity to try out some innovative and creative strategies for supporting the critical goals of work and responsibility. For example, states might choose to use state funds to support a state EITC or transportation assistance that would help low-wage workers keep their jobs.

At the same time, States could use this new flexibility in ways that might undermine important goals of welfare reform. In particular, we are concerned that States could design their programs so as to avoid the work requirements in section 407 or to avoid returning a share of their child support collections to the Federal government.

We believe it is our responsibility to use the administrative avenues available to us to mitigate against these potential negative consequences.

Work

We intend to take administrative action to collect information about the families served by states under their MOE programs, so that we can: 1) better identify which states are truly more successful in serving their needy families; and 2) promote work and the other legislative goals. For example, in the proposed regulations we are developing on work requirements, penalties, and high performance bonuses, we intend to require that information be provided on families served by separate State programs and, to the maximum extent possible, consider the effects of state policies in setting up separate programs. More specifically, we are looking at regulatory proposals:

- o to deny States any reduction in the work participation requirements applicable to them (i.e., we would not give them credit for caseload reductions) unless they provide us with caseload information for the state-only as well as TANF programs in order to demonstrate that TANF caseload reductions are not artifacts of the way they structured their programs;
- o to consider whether a state's MOE policies work to support or circumvent the work requirements of the Act; if a State fails to meet the participation rates, the Secretary would not entertain good cause considerations unless the state provided information about its MOE program and demonstrated it was making a good faith effort in the work area with respect both to its TANF and MOE programs; and
- o to look at a State's overall work effort in deciding whether they qualify for a high performance bonus, i.e., a State's success with its TANF program cannot be adequately judged without knowing how the State's TANF and MOE programs are configured and what is happening to needy families in the affiliated MOE programs.

With the additional information we collect on participants in State-only programs, we can evaluate whether work goals are being undermined, and publicly report our findings.

To ensure that we have critical information which will enable us to determine whether the work and other legislative goals are being achieved, we will propose a legislative change on the data collection provisions which will provide for collection of information on the universe of recipients served by State-funded programs.

While this guidance sets forth our best interpretation of the statute at this point, we would consider a different interpretation in the final TANF regulation if we learn that the work provisions are being undermined during this interim period.

Also, we strongly advise States to think carefully about the risks to the long term viability of their TANF program if they rely too extensively on separate state programs. Because states cannot receive Contingency Funds unless their expenditures within the TANF program are at 100 percent of historical State expenditures, excessive State reliance on outside expenditures for their TANF MOE may make access to Contingency Funds much more difficult during economic downturns.

Child Support

In assessing the potential budgetary impact of this bill, Congress apparently did not envision major losses in the Federal share of child support collections. We are advising States not to set up separate State programs with the intent of retaining what would otherwise be the appropriate Federal share of child support collections. We are prepared to work with the Governors and the Congress on remedies to identify approaches that will ensure that states do not use the flexibility provided to retain federal dollars in State coffers.

We recognize that the ability of States to set up separate State programs can result in much more responsive and effective programs, and we do not intend to stifle creative State thinking about how best to serve their needy families and children. We will monitor the overall implementation of this legislation and to assess whether the goals of welfare reform are being achieved. We will work with the Congress and the Governors on legislative remedies should that become necessary.

III. Overview of Guidance.

This section summarizes the remaining sections of the guidance, provides some additional context, and sets forth our policies on penalties in the interim period before final rules are available.

IV. Basic State Options in Program Design (p.) -- a conceptual framework for the TANF program and its Federal and State components.

V. Use of Federal Funds (p.) -- the flexibility available to States and the limits on use of Federal funds, including restrictions on the assistance payable with Federal funds.

VI. Basic Requirements Governing State MOE Expenditures (p.) -- the requirements governing State expenditures that qualify for TANF MOE purposes and the expanded flexibility

available to States to expend State funds on certain needy families, including certain immigrants, individuals who exceed the time limits and teen parents. [NOTE: The immigrant policy on p. 10 gives States broader flexibility to spend State MOE funds on immigrant families than was previously indicated in a Q and A issued by ACF. The new interpretation reflects the additional work done on interpreting "State program under this part" and on trying to give meaning to the many pieces of the statute which directly and indirectly speak to this issue.]

VII. Definition of Assistance (p.) -- guidance needed to assess the scope of key TANF provisions, including time limits, work requirements, child support assignment, and data collection.

VIII. Overview of TANF Provisions (p.) -- a chart depicting the applicability of key provisions in the TANF statute, depending on whether Federal or State funds -- and whether a State TANF program or a separate State program -- are involved.

IX. Conclusion

We recognize that this guidance does not provide answers to all the major issues and does not answer many specific questions. Through the regulatory process, we will provide broader and more specific guidance. The rulemaking process will also permit us to take into consideration ongoing input we receive from various interested parties.

Interim Penalty Policies. In spite of these concerns, we want to strongly encourage State efforts to implement effective and innovative program designs or to develop targeted service strategies which will produce the best outcomes for families (including those with special needs, such as those headed by grandparent caretakers). Thus, during this interim period, we do not want States to be unduly fearful of incurring penalties under section 409. Before Federal regulations are in effect, States will not be subject to penalties under the new law as long as they implement programs which are related to the intent of the statute and operate within a reasonable interpretation of the statutory language.¹ Also, before we would impose penalties, we will look at other factors that might provide "reasonable cause" such as: the need/timing for planning and implementation activities, the degree of compliance, demographic and economic

¹ This would include the requirement that both Federal and State "maintenance-of-effort" expenditures must generally support the statutory purposes outlined in section 401 of the Social Security Act, as amended.

situations, and other State-specific variables. In assessing corrective compliance plans, we will consider the divergent goals a State is trying to achieve, a State's efforts to balance and satisfy the different TANF requirements, and the efforts made to utilize community resources.

IV. Basic State Options on Program Design

To understand the basic options available to States under the new title IV-A, it is important to make note of some of the key terminology used in the statute.

The term "grant" refers to Federal funds provided to the State under the new section 403 of the Social Security Act². References to amounts "attributable to funds provided by the Federal government" have a similar meaning.

The terms "under the program funded under this part" and "under the State program funded under this part" refer to the State's TANF program. Unlike "grant" references, they encompass programs funded both with Federal funds and with State expenditures made under the TANF plan and program.

What counts as a State expenditure for TANF maintenance-of-effort (MOE) purposes is governed by the language in the new section 409(a)(7) of the Social Security Act. The statutory language in this section allows expenditures "in all State programs" to count as TANF MOE when spent on "eligible families" and meeting other requirements.

When the statutory provisions are read with these terms in mind, it is possible to distinguish three different types of program configuration under the new title IV-A: TANF programs funded by expenditures of Federal grant funds or by co-mingling of State funds and Federal grant funds; TANF programs where Federal grant and State funds are segregated; and programs funded by expenditures of State funds in outside programs (i.e., outside TANF, but counting towards meeting the State's MOE requirements). The language used in a specific TANF provision (or in a related provision elsewhere in the statute) will determine its applicability to these three types of programs.

In order to tailor programs to meet the specific needs of families moving from welfare to work, States may find some advantage to segregating Federal and State TANF dollars or spending State MOE funds in outside programs, rather than TANF. We encourage States to take great care in making such decisions

² References to a grant under section 403(a) would exclude the Contingency Fund, but would include other TANF funds in section 403.

and to ensure that any such decisions are consistent with meeting the goals of the program.³

The definition of "assistance" is also a critical factor in determining the applicability of key TANF provisions. This paper includes a separate discussion of that definition.

V. Use of Federal TANF Funds

Compared to prior law, the TANF statute provides States with enormous flexibility to decide how to spend the Federal funds available under section 403. In repealing the IV-A and IV-F statutes, Congress freed the States from very detailed rules about the types of families that could be served, the benefits that could be provided, administrative procedures that needed to be followed, etc. However, to ensure that programs would achieve key program goals, the new statute imposes certain requirements and limitations on how States can use Federal funds to provide assistance. To a lesser extent, it also limits State flexibility on how to use State funds that count towards MOE. Among the key provisions applicable only to the use of Federal funds are time limits, restrictions on expenditures for medical services and prohibitions on assistance to certain individuals and families, including certain aliens⁴ and teen parents. Also, when Federal TANF funds are spent, all provisions applicable to the TANF program apply. Most importantly, work requirements, data collection, and requirements for child support assignment and cooperation apply. Additional information on the rules applicable to the use of Federal funds is included in the following discussion and the attached table.

Provisions governing the use of Federal TANF funds are found in three sections of the statute.

The new section 404 of the Social Security Act sets forth the basic rules for expenditure of Federal TANF funds.

- o They must be: (a) reasonably calculated to accomplish the purposes of the TANF program; or (b) an authorized expenditure for the State under title IV-A or IV-F as

³ Later in the paper, we provide a chart summarizing the applicability of key provisions of the statute to the different program configurations. We also summarize the rules governing allowable uses of Federal and State MOE funds. Because of the complexity of the TANF statute, States should review all of these sections in concert, together with the underlying statutory language, in deciding what program design to pursue.

⁴ Other restrictions on the use of State funds for aliens are contained in title IV of the PRWORA.

of September 30, 1995.

--The statute specifies that assistance to low-income families for home heating and cooling costs falls within the purview of category (a) above.

--To fall under category (b), the expenditure would need to be recognized as an allowable expenditure under the State's approved IV-A or IV-F plan in effect as of September 30, 1995.

- o Administrative expenditures may not exceed 15 percent of the total grant amount. The statute specifically excludes expenditures on "information technology and computerization needed for tracking or monitoring" required by or under TANF.
- o States may transfer up to 30 percent of the total grant to either the Child Care and Development Block Grant or the Social Services Block grant program.

--No more than 1/3 of the total amount transferred may go to the Social Services Block grant.⁵

--Once transferred, funds are no longer subject to the requirements of TANF, but are subject instead to the requirements of the program to which they are transferred. However, funds transferred to the Social Services Block grant may only be spent on children or families with income below 200 percent of poverty.

- o States may reserve their Federal TANF funds for future TANF expenditures without fiscal year limitation.
- o States may also use their Federal TANF funds for employment placement programs and for programs to fund individual development accounts.

The new section 408 imposes some restrictions on the use of Federal grant funds. Under this section, Federal funds may not be used to:

- 1) provide assistance to families that do not include a minor child residing with a custodial parent or other adult caretaker relative (or a pregnant individual);
- 2) provide assistance to a family that includes an adult who

⁵ In other words, States must transfer \$2 to the Child Care and Development Block Grant in order to transfer \$1 to the Social Services Block Grant.

has received 60 months of countable assistance, unless the family qualifies for a hardship exception;

3) provide assistance to families which have not assigned rights to support or to individuals who do not cooperate in establishing paternity or obtaining child support⁶;

4) provide assistance to unmarried parents under age 18 who have a child at least 12 weeks old and are not attending high school or an equivalent training program;

5) provide assistance to unmarried parents under age 18 who do not live in appropriate adult-supervised settings (unless exempt);

6) pay for medical services, except pre-pregnancy family planning services;

7) provide cash assistance for a 10-year period following conviction of fraud in order to receive benefits in more than one State;

8) provide assistance to fugitive felons, individuals fleeing felony prosecution or violating conditions of probation and parole violators; or

9) provide assistance for a minor child who is absent (or expected to be absent) from the home, without good cause, for a specified minimum period of time.

Finally, section 115 of PRWORA calls for denial of TANF assistance to any individual convicted of a drug-related felony after August 22, 1996. However, the State may opt out of this provision or reduce its applicability, and certain kinds of Federal benefits are excepted.

VI. Basic Requirements Governing State MOE Expenditures

TANF⁷ MOE Requirements--General. States may expend their MOE funds on a broad range of activities without necessarily triggering Federal TANF requirements (such as time limits).

⁶ Section 408(a)(2) provides that there must be a deduction of not less than 25 percent and the State may deny the family any assistance.

⁷ For Contingency Fund MOE purposes, State expenditures outside the TANF program do not count. See discussion in the following subsection for a further explanation. NOTE: This footnote was added because the contingency MOE discussion was moved down.

Although States have significant discretion, especially with respect to State expenditures they make under separate State programs, there are statutory requirements which define the State expenditures which can be counted as TANF MOE. These are found at the new section 409(a)(7) of the Social Security Act.

Section 409(a)(7)(A) provides for a dollar-for-dollar reduction in a State's State Family Assistance Grant (SFAG) to the extent that "qualified State expenditures" in the immediately preceding fiscal year are less than an applicable percentage of "historic State expenditures." "Historic State expenditures" are subsequently defined to include expenditures by the State for FY 1994 under title IV-A (AFDC, EA, and child care) and IV-F (JOBS), as in effect during FY 1994.⁸

If a State fails to meet the work program participation requirements for a fiscal year, its MOE requirement is set at 80 percent of "historic State expenditures." If a State meets these requirements, its MOE requirement is set at 75 percent of historic State expenditures.

Also, in determining a State's MOE requirement, any IV-A expenditures made by the State in 1994 on behalf of individuals now covered by a Tribal TANF program are excluded from "historic State expenditures."⁹

Contingency Fund MOE Requirements. MOE requirements governing State access to the Contingency Fund are found at section 403(b) and 409(a)(10). In general, this paper does not address special requirements pertaining to the Contingency Fund MOE. However, for the purpose of program planning, it is important for States to note that only State expenditures made within the TANF program count towards the Contingency Fund MOE. State expenditures in outside programs may count towards the TANF MOE, but they do not qualify for Contingency Fund MOE purposes¹⁰.

⁸ See section 409(a)(7)(B)(iii) for the statutory provisions governing the definition of historic State expenditures.

⁹ In section 409(a)(7)(B)(iii)(II), the statute suggests an alternative calculation of historic expenditures. This language is apparently left over from a time when the bill included a fixed appropriation for State Family Assistance grants. We believe it is no longer viable, based on the final appropriation language.

¹⁰ The statutory language in both sections dealing with Contingency Fund MOE refers to State expenditures "under the State program funded under this part." The TANF MOE counts expenditures "under all State programs," if otherwise qualified.

Qualified State Expenditures. In order for State expenditures to be considered "qualified State expenditures" for TANF MOE purposes, they must: (1) be made to or on behalf of a family that is eligible under TANF or that would be eligible for TANF except for the fact that the family had exceeded its 5-year limit on assistance or has been excluded from receiving assistance under TANF by PRWORA's immigration provisions (see discussion elsewhere in this paper for guidance on definition of "eligible families" and allowable immigrant expenditures); (2) be for one of the types of assistance listed in section 409(a)(7)(B)(i)(I); and (3) comply with all other requirements and limitations in section 409(a)(7).

Section 409(a)(7)(B)(i) defines "qualified State expenditures" as total expenditures by the State in a fiscal year under all State programs for the following activities with respect to "eligible families":

- o (aa) - Cash assistance;
- o (bb) - Child care assistance;
- o (cc) - Educational activities designed to increase self-sufficiency, job training, and work, excluding any expenditure for public education in the State except which involve the provision of services or assistance to a member of an eligible family which is not generally available to persons who are not members of an eligible family;
- o (dd) - administrative costs in connection with the matters described in items (aa), (bb) and (cc) and (ee), but only to the extent that such costs do not exceed 15 percent of the total amount of qualified State expenditures for the fiscal year;
- o (ee) - any other use of funds allowable under section 404(a)(1).

Meaning of "Eligible Families." Under the new section 409(a)(7)(B)(i)(I) of the Social Security Act, in order to count as qualified State expenditures for MOE purposes, State expenditures must be made with respect to "eligible families." Subclause (III) defines "eligible families" for this purpose to mean families eligible for assistance under the State TANF program and families who would be eligible for assistance except for the time-limit provision and the alien restrictions at section 402 of PRWORA.

We interpret this language to mean that State expenditures count as MOE only if made to or on behalf of families which:

- o have a child living with a parent or other adult relative (or to individuals which are expecting a child); and

- o are needy under the TANF income standards established by the State under its TANF plan.¹¹

Finally, many of the restrictions at section 408 -- including the teen parent provisions and the provisions on denial of assistance in fraud and fugitive felon cases -- do not apply to State MOE expenditures because they are written as restrictions on the use of the Federal grant. Additional information on these restrictions can be found in the chart and the discussion on use of Federal funds.

Allowable Immigrant Expenditures.¹² States have the flexibility to use State MOE funds to serve "qualified"¹³ aliens. They also have the flexibility to use Federal TANF funds to serve "qualified" aliens who arrived prior to the enactment of the PRWORA (August 22, 1996). For "qualified" aliens arriving after enactment, there is a bar on the use of Federal TANF funds which extends five years from the date of entry¹⁴.

States also have the flexibility to use State MOE funds to serve legal aliens who are not "qualified".¹⁵

¹¹ We are not suggesting a definition of "child" for this purpose, but would expect States to use a definition consistent either with the "minor child" definition in section 419 or some other definition of child applicable under State law.

We are also not proposing Federal guidelines for what income standards would be used to determine if a family is needy, but will defer to State standards, for both TANF and MOE purposes.

¹² As noted on p. 2, the following immigrant policy gives States broader flexibility to spend State MOE funds on immigrant families than was previously indicated in a Q and A issued by ACF. The new interpretation reflects the additional work done on interpreting "State program under this part" and on trying to find the appropriate meaning for the many pieces of the statute which directly and indirectly speak to this issue.

¹³ As defined under section 431 of PRWORA.

¹⁴ Pursuant to section 403(b) of PRWORA, the five-year bar does not apply to refugees, asylees, aliens whose deportation is being withheld under section 243(h) of the Immigration and Nationality Act, and U.S. veterans and their spouses and unmarried dependent children.

¹⁵ There is a technical problem in section 411 of PRWORA that prevents States from providing State or local public benefits to a handful of categories of legal aliens, e.g.,

Finally, under section 411(d) of PRWORA, States have the flexibility to use State MOE funds to serve aliens who are not lawfully present in the U.S., but only through enactment of a State law, after the date of PRWORA enactment, which "affirmatively provides" for such benefits.

Restrictions on Educational Expenditures. We believe the intent of the language in section 409(a)(7)(B)(i)(I)(cc) is to exclude general educational expenditures by State or local governments for services or activities at the elementary, secondary, or postsecondary level which serve general educational purposes. Expenditures on services targeted on "eligible families", but not available to the general public, may be included. For example, MOE could include special classes for teen parents (that are TANF eligible) at high schools or other educational settings. Services to "eligible families" designed to accomplish the purposes specified in section 401 may also be included, pursuant to section 409(a)(7)(B)(i)(I)(ee).

General restrictions. Pursuant to section 409(a)(7)(B)(iv), the following types of expenditures may NOT be included as part of a State's MOE:

- 1) expenditures of funds which originated with the Federal government;
- 2) State Medicaid expenditures;
- 3) State funds which match Federal funds (or State expenditures which support claims for Federal matching funds); and
- 4) expenditures which States make as a condition of receiving Federal funds under other programs¹⁶.

Special Child Care Rules. Notwithstanding this last restriction, when the following requirements are met, expenditures by a State for child care may satisfy both the TANF MOE requirement and the MOE requirement related to accessing child care matching funds at the new section 418(a)(2)(C) of the Social Security Act. First, the amount of child care expenditures countable for TANF MOE

temporary residents under IRCA, aliens with temporary protected status, and aliens in deferred action status. The structure of section 411 indicates Congress' belief that section 411(a) included all groups of aliens lawfully present in the U.S. Therefore, the Administration has proposed a technical amendment that would allow States to provide State or local public benefits to all aliens lawfully present in the U.S.

¹⁶ Note the child care exception below.

purposes may not exceed the child care MOE requirement for the State. Secondly, to count as TANF MOE, the expenditures must meet all the other requirements of section 409(a)(7); to count as child care MOE, expenditures must be allowable under the requirements of the Child Care and Development Fund. Before claiming child care expenditures under both MOE provisions, States need to check that the expenditures in fact meet the requirements of both programs. (E.g., there may be different families eligible for child care assistance under the two programs which prevent all expenditures from counting as MOE in both.)

Because of the general restrictions cited above, child care expenditures by the State which are matched with Federal funds (pursuant to section 418(a)(2)(C)) do not qualify as expenditures for TANF MOE¹⁷.

Interpretation of MOE Exclusion Language. Numerous questions have arisen about the language at section 409(a)(7)(B)(i)(II), entitled "Exclusion of Transfers from Other State and Local Programs."

We believe part of the confusion derives from the caption; it refers to transfers, but the actual statutory language does not. Our view is that the provision should be read as a provision applicable only to State MOE expenditures made under separate State programs. Such expenditures may not involve a literal transfer of funds, but in a figurative sense, they would involve taking funds that are outside the program and bringing them into the program's purview (for MOE purposes).

In general, our view is that this provision is designed to prevent supplantation. We believe Congress wanted to prevent States from substituting expenditures they had been making in outside programs for expenditures on cash welfare and related benefits to needy families. The language in (aa) specifically addresses this point. It provides that States may get credit for MOE purposes only for additional or new expenditures from State and local programs. The standard for determining this is whether their expenditures in the preceding fiscal year were above the levels expended in the 12 months preceding October 1, 1995.

Section 409(a)(7)(B)(i)(II)(bb) can be read as an exception to the general rule in (aa). It would allow States to make expenditures in outside programs which were previously allowable under section 403 (and allowable at the time of enactment) and get full credit for such expenditures. In other words, there is not a requirement that these expenditures be additional or new

¹⁷ Likewise, State expenditures which receive Federal child care matching funds do not qualify for child care MOE.

expenditures (above FY 95 levels).

Ultimately, we do expect to require that States be able to document that any outside expenditures they claim for MOE purposes meet the requirements of (aa).¹⁸ At a minimum, States would have to identify the outside programs whose expenditures will be reflected as State MOE, establish what the State contributions to such programs were in the 12 months preceding October 1, 1995, and document the total State expenditures in such programs for the preceding fiscal year. States would also have to provide evidence that expenditures in outside programs which they want credited as MOE be expenditures on behalf of "eligible families". This evidence may be in the form of documentation of eligibility rules and procedures, or in other forms established by the State.¹⁹

VII. Definition of Assistance

The terms "assistance" and "families receiving assistance" are used in the PRWORA in many critical places, including: 1) in most of the prohibitions and requirements of section 408, which limit the provision of assistance; 2) the denominator of the work participation rates in section 407(b); and 3) the data collection requirements of section 411(a). Because TANF replaces AFDC, EA and JOBS, and provides much greater flexibility than any of these programs, what constitutes assistance is less clear than it was previously. Furthermore, because many of the above-referenced sections are addressed in the penalty provisions of section 409, it is very important that States have some idea of our views of what constitutes assistance so that they can meet Federal requirements and avoid penalties.²⁰

The complexities involved in formulating a definition of "assistance" suggest that it is an area which could be greatly illuminated by both State practice under TANF and by the

¹⁸ Pursuant to the Paperwork Reduction Act of 1995, States will not be subject to specific documentation or reporting requirements prior to OMB approval.

¹⁹ States would also have to be able to document that MOE expenditures on educational assistance and administrative costs meet the special limitations at sections 409(a)(7)(B)(i)(I)(cc) and (dd), respectively.

²⁰ In the absence of any statutory language or legislative history to indicate the contrary, we are viewing the term "assistance" as having the same meaning wherever it occurs in the statute in phrases such as "families receiving assistance" and "no assistance for..."

rulemaking process. Thus, we welcome suggestions from States and other parties as to what an appropriate definition would be. However, in the meantime, because States are looking for guidance which they can use in designing their programs, we are offering an initial perspective on the matter. Our general view is that, because of the combining of the funding streams for AFDC, EA and JOBS, some forms of support that a State is permitted to carry out under TANF are not what would be considered to be welfare. Thus, our initial perspective is to exclude some of those forms of support as assistance. More specifically, we would define "assistance" as every form of support provided to families under TANF except for the following:

- 1) services that have no direct monetary value to an individual family and that do not involve implicit or explicit income support, such as counseling, case management, peer support and employment services that do not involve subsidies or other forms of income support; and
- 2) one-time, short-term assistance (e.g., automobile repair to retain employment and avoid welfare receipt and appliance repair to maintain living arrangements).

We believe that these exclusions are consistent with Congressional intent to provide States with flexibility to design programs that will focus their resources on enhancing parental responsibility and self-sufficiency. At the same time, it will enable them, for example, to exclude families who receive no financial support from participation rate calculations and individuals who only receive one-time help in avoiding welfare dependency from requirements such as assignment of child support rights.

VIII. Conclusion

As we continue to work on the development of proposed -- and then final -- TANF rules, we welcome comments and suggestions on major issues like those discussed in this paper. In particular, we welcome suggestions about policy positions and administrative actions which we could adopt which would help to ensure that we further the work objectives and other goals of welfare reform.

IX. OVERVIEW OF TANF PROVISIONS IN DIFFERENT PROGRAM CONFIGURATIONS

PROVISION	FEDERAL TANF PROGRAMS ¹	SEGREGATED STATE TANF PROGRAMS ²	SEPARATE STATE PROGRAMS ³
Covered by State plan	Yes	Yes	No
Needy per income stds in State TANF plan	Yes	Yes	Yes ⁴
Restricted disclosure	Applicable	Not applicable	Not applicable
Allowable expenditures	For purposes and as authorized under IV-A or IV-F as of 9/30/95	Count towards both TANF and contingency fund MOEs. Must be for purposes of program or for cash asst, child care, certain education, or admin costs	Count only towards TANF MOE (not contingency fund MOE). See State TANF section for allowable purposes.
15 % admin cost cap	Yes; ADP exception	Yes	Yes
Medical services	Only pre-pregnancy family planning	No specific restriction	No specific restriction
24-month work reqt	Yes	Yes	No
2-month work reqt	Yes	Yes	No
407 work reqts	Yes	Yes	No
work sanctions	Yes	Yes	No
non-displacement	Yes	No	No
child reqt	Yes; "minor child"	Yes ⁴	Yes ⁴
child ineligible when absent minimum period	Yes	No	No
child support	Assignment & cooperation req'd. Share of collections to Fed govt.	Assignment & cooperation req'd. Share of collections to Fed govt.	Assignment & cooperation may not be req'd. No share of collections for Fed. govt.
time limit on assistance	Yes	No	No
teen school attendance	Required	No requirement	No requirement
teen parent living arrangements	Must be adult-supervised	No requirement	No requirement
Federal non-discrimination statutes	4 statutes applicable	4 statutes applicable	No specific provision
fraud cases	10-yr exclusion	No exclusion	No exclusion
drug felons	Receive reduced benefits	Receive reduced benefits	No provision
data reporting	Applicable	Applicable	Not applicable
fugitive felons	Barred from assistance	No bar	No bar

¹ This column would also apply to programs where State MOE funds are co-mingled with Federal TANF funds.

² Under this scenario, Federal and State funds are not commingled. Since State funds are segregated, some -- but not all -- of the Federal TANF rules apply.

³ These programs count towards State MOE. They are not subject to TANF requirements, per se, but are subject to the MOE restrictions at section 409(a)(7).

⁴ Per definition of "eligible families."

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WR-Bifurcation 001

MEMORANDUM FOR THE PRESIDENT

PURPOSE

The purpose of this memo is to provide the Department's perspective on a major welfare reform implementation issue that the Administration is facing - i.e., what amount of flexibility does the welfare reform statute provide to the states in spending their own money to meet the statute's general maintenance-of-effort (MOE) requirements? It is urgent that we give states an immediate and clear answer on this issue (sometimes called "bifurcation") because state legislatures are currently making key programmatic and financing decisions that will enable them to make welfare reform work. Governors, legislators, and administrators are strongly pushing for a quick response, and the issue is currently under consideration.

The Department's view is that the statute provides states with flexibility in spending their own money for benefits and services that count towards general maintenance of effort, without having to apply the requirements that apply to the TANF program. This view is shared by the key members of Congress, the National Governors Association, the American Public Welfare Association, the National Conference of State Legislatures, and numerous other commentators who have analyzed the legislation.

The statute is clear that states must spend their own money on needy families and for the purposes of the Act, but our view is that qualifying expenditures outside the TANF program are not bound by the other requirements of the Act. That is, the statute allows states to count expenditures in "any other state program," in addition to the TANF program, towards the maintenance-of-effort requirement. Our position thus gives states a wide range of flexibility in spending their money, whether they choose to spend that money for innovative post-employment services, a state EITC, family support services for needy families, or welfare benefits for families who have not met Federal requirements.

NEED FOR DECISION

This issue requires interpretation by HHS because PRWORA is such a large and complex piece of legislation, and there is no single clause in the statute which lays out how much flexibility States have with respect to expenditures of their own funds. The statute does make clear that a number of the TANF requirements apply only when Federal funds are used, and that States also have more flexibility to spend State funds on immigrants and families reaching the time limit. For other requirements, including work requirements and participation rates, data collection, child support assignment and cooperation, and distribution of child support collections, it is less clear whether these requirements apply to the state maintenance-of-effort funds.

The DPC and HHS have different views on this question of interpretation. The DPC believes that the best choice is to exclude from MOE state expenditures that fail to meet these requirements, because of a great concern that such flexibility might undercut the work and participation requirements; they thus oppose bifurcation. HHS shares the DPC's commitment to the work requirements and the legitimate concern that some states may use flexibility to reduce inappropriately the population subject to work participation rates. HHS has a different view of how to promote work and believes that bifurcation is the only option sustainable in working with states.

This decision is urgent because state legislatures are convening right now and making decisions on the scope, nature, and funding of their new programs. In addition, the National Governors Association is meeting beginning next weekend. If an answer is not provided this week, we can expect deep concern from all fifty Governors about Administration silence on this issue. We can also expect to lose valuable time in getting welfare reform up and running.

HHS VIEWS

HHS and the DPC share the common goals of making welfare reform succeed and moving families from welfare to employment. We believe that the best way to meet these goals is to adopt the position that States have the authority under the new welfare law to set up separate State programs -- funded entirely by State funds -- which are not subject to the requirements of the TANF program, but are included in the calculation of MOE. We believe that this position will enable states to get moving on welfare reform, will be consistent with the intentions of the sponsors and the words of the statute, and will avoid losing months or even years in battles with all fifty states over what they will see as Federal bureaucracy attempting to hold on to its power. While we do not believe that all the consequences of bifurcation are desirable, we believe it is the best choice we have. As noted later, we are prepared to take all administrative actions possible to mitigate against negative results and to consider a range of additional next steps if states should abuse this flexibility.

Our principal reasons for taking this position follow.

- 1 Key Congressional members indicate that this is the interpretation they intended in drafting the bill. As noted in the attached letter from Chairmen Archer and Shaw, the Congress understood that there were potential negative consequences to this State flexibility but nonetheless believed it to be the best available choice. In the letter, Chairmen Archer and Shaw commit themselves to working with us to resolve any problems that might occur if states misuse the flexibility.

2. The States, as represented by the National Governors' Association, American Public Welfare Association, and National Conference of State Legislatures have strongly supported this view. (See attached letter co-signed by the three organizations.) All fifty Governors and state legislatures can be expected to hold this view as a matter of principle: in their view, the Federal government should not be dictating requirements for the expenditure of state money.
3. State flexibility will make possible state creativity and innovation that can support the critical goals of work and responsibility. While not all states will use this flexibility in effective ways, the most creative states could well use it to build models that we all could learn from, and to try out a range of ways to support families in their move from welfare to work. For example, states might choose to use state funds to support a state EITC, or transportation assistance that would help low-wage workers keep their jobs. These uses of funds would be discouraged if we required all these cases to assign child support to the state, provide all the data elements required by the statute, and meet other requirements.
4. Making welfare reform work requires a partnership between the Federal government, the States, community leaders, and private employers. If we take the position envisioned by the drafters of the legislation and proposed by HHS, we will be taking a step that is viewed by States and others as consistent with that partnership. That will put us in the position to hold them accountable for meeting programmatic goals, provide technical assistance, shine a spotlight on success and failure, and do everything else we can in partnership to move families from welfare to work.
5. By contrast, if we take the position that states do not have flexibility with their own funds, we will lose precious months and years in an ongoing battle over Federal micromanagement of state programs. We risk undermining our relationships with the States (and the Hill) at the very beginning of implementation; creating an atmosphere of anger and distrust through our first major policy statement; and shifting the focus from the real issues of work and responsibility to the question of whether the Federal bureaucracy still doesn't understand the Congressional directive for Washington to give up detailed control. No matter how we describe our decision, States, and others, will view a narrow reading on State flexibility as an attempt by the Federal government to overstep its authority and to micromanage State decisions on the expenditure of their own monies. They may accuse us of attempting to transform the new block grant program back into a matching program. They could well argue that, through our policy interpretations, we are actually reducing the flexibility they had under prior law (i.e., the state share of Emergency Assistance expenditures, which were folded into the TANF block grant, supported a wide range of non-welfare activities, including family support, social services, etc.).

5. While we share the concerns of the DPC that the state flexibility approach risks some state "gaming" of key requirements -- and we propose strategies to address these risks below -- we do not believe that state actions under the flexible approach are likely to "cut" the work requirements of the PRWORA.
- o First, State MOE funds make up well under half (about 40 percent on average) of the combined Federal/State funding of these programs, and there is no question the work requirements apply to assistance provided by Federal funds.
 - o Secondly, based on what we have heard so far, States have many different purposes in mind for using their MOE funds and will therefore have many competing demands for scarce resources. Most importantly, MOE monies provide the safety valve available to States to provide benefits to families who need some support but are not necessarily appropriate subjects for time limits and TANF work, child support, and data collection requirements -- such as grandparent caretakers; working families needing work-support services such as wage supplements/tax credits; and victims of domestic violence. In short, States have limited MOE money to serve a lot of very important needs; they will need to think twice about giving short shrift to such needs in order to avoid work requirements.
 - o Third, the statute requires that states seeking to gain access to the contingency fund spend their maintenance of effort money solely on TANF. Therefore, states that believe they are at risk of needing to use contingency fund resources will have an incentive to avoid making large commitments to state-only programs that would not meet the TANF requirements.
 - o Within states and their legislatures, supporters of work-based welfare reform are likely to criticize extreme efforts by state administrators to undermine work requirements.
7. Both because of our own commitment to the goal of work and in response to the DPC's concerns, we have identified several steps we would be willing to take in the guidance to discourage state misuse of this flexibility to "game" the work requirements:
- i. We would take every administrative action in our power to collect information about the families served by states under their MOE programs, so that we could highlight successful approaches and punish gaming. For example:

- o We could propose in regulation to deny States any reduction in the work participation requirements applicable to them (based on caseload reductions) unless they provide us with information on the families receiving State-funded assistance;
- o We could propose in regulation to look at a state's bifurcation policy in deciding whether it is subject to one of the TANF fiscal penalties (i.e., in deciding whether it has reasonable cause for noncompliance); and
- o We could propose in regulation to consider a State's overall work effort in deciding whether they qualify for a high performance bonus.
- o We could publicize the data collected regarding families receiving state-only assistance and thereby put a spotlight on states engaging in inappropriate practices.

ii. In addition to taking every administrative action possible, we would go to Congress with a legislative fix on the data collection provisions to ensure that we have all basic information on the universe of recipients served by State-funded programs and a better ability to determine whether the legislative goals are being achieved.

iii. We could indicate in this initial guidance that even though this is our best interpretation of the statute at this point, we would consider a different interpretation in the final TANF regulation relating to appropriate uses of state and federal funds if we learn that the work provisions are being undermined during this interim period.

iv. We could advise States to think carefully about the risks of bifurcation because such a practice will greatly complicate a State's ability to access contingency funds if and when it faces an economic downturn.

URGENCY

It is important to resolve this issue immediately in light of the upcoming NGA meeting, the continuing press coverage of this issue, and the urgent desire of states to make the key funding decisions and get moving on welfare reform.

Donna P. Shalala

January 27, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED

SUBJECT: WELFARE LAW IMPLEMENTATION ISSUE

An important issue involving implementation of the welfare law will come up at the NGA Conference next week. The issue concerns the conditions (or lack thereof) that attach to the expenditure of state monies counting toward the welfare law's maintenance-of-effort standard. More specifically, the question is: which, if any of the welfare law's requirements and prohibitions (involving work, child support, and the like) must a state comply with in order to get maintenance-of-effort credit for an expenditure?

Both the governors and the advocacy groups, in an unusual alliance, have urged the Administration to adopt an interpretation of the law that would place very few conditions on state expenditures counting toward the maintenance-of-effort requirement. The governors favor this interpretation because it would provide them with maximum spending flexibility -- and also with the ability to avoid financial penalties and collect additional monies. The advocacy groups favor this position because it would weaken provisions in the law that they believe too harsh -- particularly, the work requirements.

The drawbacks of adopting this approach, from the Administration's perspective, are twofold. First, this approach could transfer from the federal government to the states an enormous amount of money in child support collections -- perhaps in excess of \$1 billion annually. Second and even more important, the approach could undermine substantially the law's work and participation requirements and the message of responsibility embodied in them.

The two options presented in this memorandum attempt, in varying degrees, to mitigate these concerns while still providing the states with needed flexibility. As detailed later, HHS favors the first option, which is the one closer to the governors' and advocacy groups' position. DPC favors the second option, which would apply work and participation requirements (but essentially no others) to the states when they use money that counts as maintenance of effort.

Background and analysis

As you know, the maintenance-of-effort provision of the welfare law requires states to spend each year a set percentage of their FY 1994 welfare expenditures. Specifically, each state that meets the statute's work participation rates must spend 75 percent of FY 1994 expenditures; any state that fails to meet such rates must spend 80 percent of that sum. If a state fails to spend

this amount of money, its next year's block grant is reduced accordingly.

The question here concerns the restrictions applicable to expenditure of these "maintenance-of-effort funds." It is important to understand that no federal restrictions apply to state monies exceeding the maintenance-of-effort threshold. The question addressed in this memo arises only when the state seeks "credit" under the welfare law for its expenditures.

It is also important to understand that certain requirements of the welfare law clearly do not apply to any state funds, including those counting toward maintenance-of-effort. In particular, the provisions of the law limiting benefits to aliens and imposing a five-year time limit on benefits do not apply to maintenance-of-effort funds. A state can use its monies to assist aliens or long-term welfare beneficiaries and still receive maintenance-of-effort credit.

The law is far less clear as to whether other requirements apply to the expenditure of maintenance-of-effort funds, leaving HHS with a substantial amount of discretion. There is no language in the statute specifically addressing this question, nor is there any legislative history. A recent letter by Chairmen Archer and Shaw indicates that Congress meant to provide flexibility to the states, but does not say exactly how far that flexibility extends -- and in particular, does not say whether states must satisfy work and participation requirements.

The governors have argued vehemently that applying the mass of federal restrictions to state maintenance-of-effort funds would impede state innovation. If the Administration went this far -- effectively imposing most federal requirements on the expenditure of these funds -- the governors would resist mightily. And given the strange confluence of interests noted above, the advocacy groups and many media outlets would join them.

But an approach that fails to apply any federal restrictions to the states -- essentially allowing them to set up a wholly independent program with maintenance-of-effort dollars -- poses two significant problems. First, states could place families most likely to make child support payments in the state-only program and thereby avoid sharing child support collections with the federal government. OMB estimates that the amount of money at stake could exceed \$1 billion per year. Initial inquiries have suggested, however, that the states might agree to (and if not, Congress would impose) an arrangement preventing such diversion of child support funds.

Second and more critically, adopting a complete "hands-off" approach would weaken substantially the work provisions of the welfare law. As you know, the welfare law requires the states to show, on pain of a financial penalty, that a certain percentage of families receiving assistance under the TANF program are engaged in work. If the Administration adopts the position of the Governors, states could avoid the full strength of this requirement (which is not very strong to begin with) by transferring their hardest-to-employ welfare recipients from the TANF program (where they would count in calculating the percentage) to a separate state program funded by maintenance-of-effort dollars (where they would not). Indeed, such a transfer might count as the kind of reduction in caseload sufficient under the law to reduce the minimum participation rate. Hence by the simple device of shifting beneficiaries from one program into another, a state simultaneously could make it easier to meet the preexisting participation rate and

lower the participation rate applicable in the future.

Options

The two options presented here are attempts to provide states with needed flexibility while keeping the pressure on states to move beneficiaries from welfare to employment. HHS favors the first approach, believing that the second would stand in the way of a constructive federal-state partnership. The DPC favors the second approach, believing that the first would fail to protect sufficiently the law's work and participation requirements.

1. The first option is to give states total flexibility over maintenance-of-effort funds, but to discourage them from using those funds so as to evade work and participation requirements. More specifically, under this approach, HHS would (1) collect the data necessary to determine whether states are using their flexibility for this purpose; (2) jawbone states that are doing so; and (3) refuse to give such states the high-performance bonuses that the statute makes available.

HHS believes that such an approach stands a reasonable chance of preventing states from using their control over maintenance-of-effort funds to evade work and participation requirements. At the same time, HHS believes that this approach will help to build the kind of constructive relationship with the states that will benefit welfare reform in the future.

The DPC believes that this approach is insufficient because it does not make work and participation requirements applicable to maintenance-of-effort funds. As noted earlier, under the approach, states could avoid the penalties attached to the participation requirements by transferring beneficiaries into a program funded with maintenance-of-effort dollars. No matter how much jawboning HHS does, states can be expected to avail themselves of this financially beneficial option. In essence, then, the approach would cut substantially the participation rates listed in the statute: in 1997, for example, a state would need to place in work activities not 25 percent of its total caseload, but only 25 percent of the caseload remaining after the state has moved the hardest cases to a separate maintenance-of-effort program. And because the approach would make the statute's work requirements so much easier for states to meet, governors will have far less incentive to work press for passage of our welfare-to-work program.

2. The second option is to impose the law's work and participation requirements -- but only those requirements -- on the states' use of maintenance-of-effort dollars. This option would prevent states from gaming the system in the way described above. Beneficiaries paid with maintenance-of-effort funds, like beneficiaries paid with federal funds, would be counted in calculating whether a state has met its participation requirement. In all other, non-work-related respects, the states would have complete control over their maintenance-of-effort dollars. The one thing a state could not use these funds for is to escape the rigor of the statutory provisions pushing toward employment.

As noted earlier, HHS argues that selecting this option would provoke a battle with the states and undermine the kind of federal-state cooperation necessary for long-term success in reforming the welfare system. But it seems unlikely that the states would oppose with any great

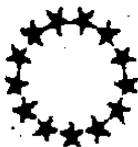
force an Administration policy that is limited to maintaining the force of the law's work requirements. If the states do object, the Administration should be able to make its case in a way that will prove persuasive. The DPC therefore recommends imposing the law's work and participation requirements and the penalties that attach to them -- but only those requirements and penalties -- to the states' use of maintenance-of-effort funds.

Bruce -

For some reason, my e-mail
isn't letting me attach documents.
Here it is in hard copy.
Edit away if you want.
Meanwhile, I'll try to get my
e-mail fixed.

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**NATIONAL
GOVERNORS'
ASSOCIATION**



AMERICAN PUBLIC WELFARE ASSOCIATION



National Conference of State Legislatures

January 17, 1997

The Honorable Donna Shalala
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Shalala:

We are writing to you on an issue of paramount importance to Governors, state administrators, and state legislators regarding whether federal prohibitions under the new welfare law apply to state maintenance-of-effort (MOE) dollars. We strongly believe that any effort to apply all federal TANF prohibitions and requirements to state maintenance-of-effort spending is unacceptable and would be a misinterpretation of the law.

States are now at a critical time in planning the implementation of their welfare reform efforts. State legislative sessions are starting, and foremost on the agenda in many states is welfare reform. Governors are now submitting to their state legislatures comprehensive welfare reform proposals, and detailed budget plans for the next fiscal year (beginning July 1 for most states). These budget requests will include state spending to meet the maintenance-of-effort requirements for the TANF block grant. In many of the states that have already submitted their state plans, administrators are beginning to implement many of the provisions of the block grant.

Given this activity at the state level, it is absolutely essential that the administration immediately clarify the maintenance-of-effort requirement under TANF and what constitutes qualified state expenditures for meeting the MOE. The U.S. Department of Health and Human Services (HHS) has not been forthcoming on this issue, placing states in a very difficult position as they move into their legislative sessions. Moreover, we are greatly alarmed by comments from HHS officials that among the range of interpretations under consideration by the department is that all the federal prohibitions and requirements imposed on federal TANF dollars would also be applied to state MOE dollars—even those in separate state-only funded programs. We believe such an interpretation is not supported by the language of the law and would be contradictory to the intent of Congress. It would have the immediate effect of curbing state flexibility and innovation in providing a variety of services, and greatly inhibit the ability of states to expend state dollars on vulnerable children and families, as states deem appropriate.

Clearly, the expenditure of federal funds under the TANF block grant is governed by a wide variety of prohibitions and requirements including the sixty-month lifetime limit on assistance, the assignment of child support rights, work requirements, requirements that teen parents live at home and stay in school, and extensive reporting requirements. However, the language of the statute treats state spending that qualifies toward the MOE requirement quite differently. We believe P.L. 104-193 gives states broad authority on how to spend their state maintenance-of-effort dollars. As long as spending is on allowable activities, including cash, child care, and job placement, and for eligible families, including those who have lost federal benefits due to the time limit or immigrant status, then such state spending should be considered qualified state expenditures and count toward the MOE. We believe that under the statute, eligible families are

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January 17, 1997

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those eligible for assistance under a state TANF program even if they are not eligible for federally-funded assistance because of a federal prohibition. This is quite clear from Section 409(a)(7) of the law. Additionally, if such spending occurs in a separate state-only funded program, then federal prohibitions and requirements are not applicable. There is no language in the bill to support imposing them, nor does HHS have the authority to impose these limitations through regulation.

We believe it is important to remember that a maintenance-of-effort requirement is very different from a matching requirement. For the latter, it is readily agreed that conditions imposed on federal dollars do attach to state matching dollars. However, the purpose of the maintenance-of-effort requirement under TANF was to ensure that states would continue to spend some portion of their own funds on needy families. It was not to impose prescriptive requirements on that spending. Some states may have state-only funded programs so that in providing family support services, one-time emergency assistance, and transportation and job retention services, the sixty-month time limit or other federal requirements will not be triggered.

States, if they choose, may also use their MOE dollars to support the most vulnerable such as children in families that have exceeded the sixty-month time limit; the legal noncitizen family barred from federal assistance for five years; the single parent for whom taking care of her severely disabled child is more than a full-time job; and the client not disabled enough to qualify for SSI but not able to work the required twenty to thirty hours a week. Again, we believe the language of the law and congressional intent gives states the flexibility to spend their maintenance-of-effort dollars on these families and not be encumbered by federal requirements or prohibitions.

We believe the language of the bill is also clear with respect to state MOE spending that occurs within *the state program funded under this part*—that is, the welfare program a state creates that combines federal TANF dollars and state dollars. Some of the prohibitions are clearly imposed only on funds *attributable to the federal grant* (sixty-month time limit) or states are prohibited from using *any part of the grant* to provide assistance to certain individuals (for example, teens not living at home or in an adult-supervised setting, teens not in school, or fugitive felons). We believe that the language is unequivocal that these prohibitions apply only to federal dollars. Thus, to the extent a state can and chooses to distinguish between federal and state dollars within its program, these prohibitions would not apply to individuals receiving assistance funded by state dollars.

Governors, state legislators, and state administrators are committed to implementation of welfare reform and agree that successful welfare reform will require boldness and innovation. We urge the administration to support us in our efforts and allow states to implement welfare reform in accordance with the flexibility contained in the law. We believe any interpretation regarding maintenance-of-effort that is contrary to what we have outlined is unacceptable and not sustainable under the law. We feel strongly that this issue must be resolved immediately, but

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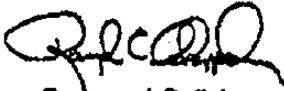
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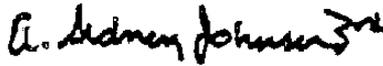
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certainly before the President meets with the Governors in early February. Until we receive a response from the administration, we will continue to provide our members with the above interpretation. We consider this issue to be of paramount importance to states and would be more than willing to meet with you to discuss the matter in greater detail.

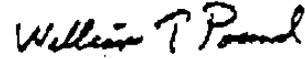
Sincerely,



Raymond C. Scheppach
Executive Director
National Governors' Association



A. Sidney Johnson III
Executive Director
American Public Welfare
Association



William T. Pound
Executive Director
National Conference of
State Legislatures

cc: Olivia Golden
Bruce Reed

THE WHITE HOUSE

Bruce -

I talked to Ray
today - NCA is
threatening to blow
up NSR mtg if we
don't give them an
answer on MOE.
We need to
decide ASAP.

- Emily

PHILIP M. CRANE, ILLINOIS
BILL THOMAS, CALIFORNIA
B. CLAY SHAW, JR., FLORIDA
NANCY L. JOHNSON, CONNECTICUT
JIM BUNNING, KENTUCKY
AMO HUGHTON, NEW YORK
VALLY KERREN, CALIFORNIA
JIM MCCREY, LOUISIANA
MEL HARROLD, MISSOURI
DAVE CAMP, MICHIGAN
JIM PAMSFAD, MINNESOTA
DEK ZIMMER, NEW JERSEY
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RICHARD E. NEAL, MASSACHUSETTS

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515-8348

January 22, 1997

PHILIP D. MOSELEY, CHIEF OF STAFF

MARCE BAYS, SECURITY CHIEF COUNSEL

The Honorable Donna E. Shalala, Ph.D.
Secretary of Health and Human Services
615F Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Shalala:

We have noticed several stories in the media about discussions within your Department regarding the definition of state maintenance of effort under the new welfare reform law. If either your Department or the Office of Management and Budget are considering imposing all federal requirements on every dollar of state spending, we hope you will decide against imposing this degree of federal control over state welfare spending.

In writing the welfare reform bill, our goal was to give states as much flexibility as possible. But there were selected requirements -- including the 5-year time limit, work, paternity establishment, and school attendance for teen mothers -- that we believed were so important that they should apply to all states. Thus, the new welfare block grant greatly increased state flexibility while nonetheless maintaining an important set of federal standards.

As the Congressional debate proceeded, a bipartisan agreement developed in favor of requiring states to maintain a specified level of welfare spending from their own funds. After considerable discussion, Congress set this minimum level, called the maintenance of effort, at 80 percent of 1994 state welfare spending (75 percent if a state meets the mandatory work requirements of the welfare reform law).

The question then arose whether federal requirements applied to all maintenance of effort funds. As outlined in the new section 409(a)(7) of the Social Security Act, we granted states more flexibility in spending their own funds. For example, states are allowed to count state spending on families with adults who have exceeded the 5-year time limit toward fulfilling their maintenance of effort requirement -- despite the fact that federal dollars are restricted for both groups.

The Honorable Donna E. Shalala, Ph.D.

January 22, 1997

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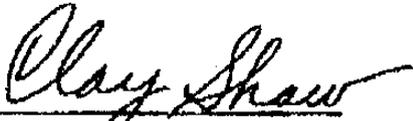
As participants in the legislative drafting of these arrangements, we want you to know that it was our intent, which we believe is well-expressed in the statutory language of section 409(a)(7), to allow states more flexibility in the use of state dollars. Thus, for HHS to now impose all the federal requirements on every dollar of state spending is both unwise policy and inconsistent with the statute.

Of course, we are aware that the funding arrangements in the statute might potentially allow states to "game" the federal requirements. States could, for example, establish two cash welfare programs for families with children, one funded by a combination of federal and state dollars and a second by state funds only. The state could then avoid the federal requirements in the program funded exclusively with state dollars -- and still count the spending toward their maintenance of effort requirement. A second possibility would be for states to place families most likely to make child support payments in the program funded only by state dollars. In this way, states could avoid sharing child support collections with the federal government.

We greatly appreciate your concern about states' setting up dual programs. However, we hope you will come to the same conclusion we reached and allow states the flexibility to spend their own dollars within the broad guidelines established by the language of section 409. Then we should work together to ensure that states do not take advantage of the flexibility we have granted them. If they do, we will work with you to find either a statutory or regulatory solution.

Thanks for your attention to this important issue. As always, we would be pleased to discuss this matter in more detail, either directly or through our staffs.

Sincerely,



E. Clay Shaw, Jr.
Chairman, Subcommittee
on Human Resources



Bill Archer
Chairman
Committee on Ways and Means

NOTE TO BRUCE REED

FROM John Monahan

RE: Proposed Program Instruction to States

Attached you will find a Department-cleared draft of a program instruction to states regarding the use of federal and state TANF funds. Please note that this draft instruction covers the bifurcation and definition of assistance issues.

Tomorrow morning, we will forward draft questions and answers that could be utilized by Administration officials if this instruction is released.

Please assure that all interested White House and OMB offices receive copies of this instruction prior to the meeting we are in the process of scheduling late Wednesday, January 22, or early on Thursday, January 23.

For questions relating to the guidance, please call Olivia Golden or myself.

cc: Elena Kagan
Ken Apfel
Keith Fontenot
Barry White
Diana Fortuna
Emily Bromberg

I. Nature and Purpose of this Guidance

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) gives States enormous flexibility to design their Temporary Assistance for Needy Family (TANF) programs in ways that promote work, responsibility, and self-sufficiency and strengthen families. Except as expressly provided under the statute, the Federal government may not regulate the conduct of States.

Within this context, we are planning to develop proposed TANF regulations which focus on the areas where Congress has expressly provided for the Secretary to take action -- i.e., with respect to data collection, penalties and bonuses. In developing these rules, we are committed to an extensive outreach strategy which ensures consultation with a wide range of groups that have an interest in children and families. To date, we have called upon State executive and legislative officials and their national representatives, advocates, non-profit organizations and foundations, labor, and business organizations to help us identify issues and ensure that alternative statutory interpretations and perspectives are considered.

Call for Guidance. During this consultation process, we have heard in many forums of the need for early guidance on issues of immediate importance to the development of State programs. Among these issues are Federal requirements related to the expenditure of Federal grant funds, including the definition of "assistance" which triggers these requirements; the scope of State flexibility in using State funds which qualify as expenditures for maintenance-of-effort (MOE) purposes; and State flexibility in using State MOE funds in State programs operated apart from TANF. The need for early guidance is driven by the start of State legislative sessions and the complexity and scope of the TANF statute.

States are understandably anxious to get answers to their questions. However, because of the scope of the TANF statute, and the interrelationships among its many pieces, answers are not easy to develop.

Because the new law represents such a major change in welfare policy, and the stakes are so high, we want to be sure that any guidance we issue is adequately grounded. Also, the TANF statute tries to achieve a balance between the competing goals of State flexibility and program accountability. Before issuing any statutory interpretation, we are taking some care to ensure that we maintain this balance. To ensure that we have a clear understanding of the positions of other key players on important issues, we have been engaged in an ongoing consultation process to get input of key groups. All of these factors have worked to increase the time required to develop policy answers.

Purpose of Guidance. In response to this need for guidance, we

have developed this paper. It is designed to provide States and other parties with an indication of our initial views of the potential interpretations of the statutory language and of the direction which we are most likely to take in drafting proposed rules. We believe the guidance reflects Congressional intent on TANF policies, and that it will promote program accountability, support substantial innovation in program design and provide States the flexibility they need to serve needy families effectively.

Scope of Guidance. Following a summary of key elements of the guidance and some additional context and background, the paper incorporates the following sections:

II. Basic State Options in Program Design (p.) -- a conceptual framework for the TANF program and its Federal and State components.

III. Use of Federal Funds (p.) -- the flexibility available to States and the limits on use of Federal funds, including restrictions on the assistance payable with Federal funds.

IV. Basic Requirements Governing State MOE Expenditures (p.) -- the requirements governing State expenditures that qualify for TANF MOE purposes and the expanded flexibility available to States to expend State funds on certain needy families, including certain immigrants, individuals who exceed the time limits and teen parents. [NOTE: The immigrant policy on p. 10 gives States broader flexibility to spend State MOE funds on immigrant families than was previously indicated in a Q and A issued by ACF. The new interpretation reflects the additional work done on interpreting "State program under this part" and on trying to give meaning to the many pieces of the statute which directly and indirectly speak to this issue.]

V. Definition of Assistance (p.) -- guidance needed to assess the scope of key TANF provisions, including time limits, work requirements, child support assignment, and data collection.

VI. Monitoring the Impacts of Separate State Programs (p.) -- an important cautionary note expressing concerns about some potential negative consequences of this practice.

VII. Overview of TANF Provisions (p.) -- a chart depicting the applicability of key provisions in the TANF statute, depending on whether Federal or State funds -- and whether a State TANF program or a separate State program -- are involved.

Key points that readers should note include the following:

- 1) States have the flexibility to count, towards their general TANF MOE requirement, expenditures of State funds

under separate State programs, as long as those expenditures meet the statutory requirements for "qualified State expenditures", including the requirement that they are made on behalf of "eligible families"; such expenditures are not subject to requirements which apply to the TANF program. (see section IV discussion and chart).

Because the statutory language for contingency fund MOE is different, States do NOT have the flexibility to count expenditures under separate State programs for the purpose of meeting the Contingency Fund MOE. All expenditures counted towards the 100% Contingency Fund MOE requirement must be made under the TANF program and therefore must meet TANF requirements.

2) Under the definition of "assistance" included in section V, nearly any form of assistance provided to families under the TANF program would be considered "assistance." Thus, TANF requirements such as time limits, work requirements, assignment of child support, and data collection are applicable (depending on the nature of funding involved).

We recognize that this guidance does not provide answers to all the major pending issues and does not answer many specific questions. Through the regulatory process, we will provide broader and more detailed guidance and direction. We will also provide a more formal process for soliciting and considering the views of interested parties.

While we would encourage States to use this interim guidance, it is not legally binding because it was not developed through the formal rule-making process.

Program Accountability and Interim Penalty Policies. We are committed to making sure that this legislation works, and the goals of welfare and welfare reform are achieved. In Section VI we identify concerns we have about policies which might undermine these objectives or produce other significant negative consequences (such as a serious loss of funds to the Federal government). It is important that State policies be consistent with both statutory language and statutory intent. As we later discuss, we will be looking broadly at State practices in TANF implementation for consistency with the statute's intent. If we note major negative effects, we will pursue appropriate remedies.

At the same time, we do not want to discourage State efforts to implement effective and innovative program designs or to develop targeted service strategies which will produce the best outcomes for families with special needs (such as those headed by grandparent caretakers or victimized by family violence). Thus, during this interim period, we do not want States to be unduly fearful of incurring penalties under section 409. Before Federal

regulations are in effect, States will not be subject to penalties as long as they implement programs which are related to the intent of the statute and operate within a reasonable interpretation of the statutory language.¹ Also, before we impose penalties, we will look at other factors that might provide "reasonable cause" such as: the need/timing for planning and implementation activities, the degree of compliance, demographic and economic situations, and other State-specific variables. In assessing corrective compliance plans, we will consider the divergent goals a State is trying to achieve, a State's efforts to balance and satisfy the different TANF requirements, and the efforts made to utilize community resources.

In exercising our accountability responsibilities under the statute, we are committed to working in partnership with States to ensure that children and families receive the assistance they need to move along the path to self-sufficiency.

II. Basic State Options on Program Design

To understand the basic options available to States under the new title IV-A, it is important to make note of some of the key terminology used in the statute.

The term "grant" refers to Federal funds provided to the State under the new section 403 of the Social Security Act². References to amounts "attributable to funds provided by the Federal government" have a similar meaning.

The terms "under the program funded under this part" and "under the State program funded under this part" refer to the State's TANF program. Unlike "grant" references, they encompass programs funded both with Federal funds and with State expenditures made under the TANF plan and program.

What counts as a State expenditure for TANF maintenance-of-effort (MOE) purposes is governed by the language in the new section 409(a)(7) of the Social Security Act. The statutory language in this section allows expenditures "in all State programs" to count as TANF MOE when spent on "eligible families" and meeting other requirements.

¹ This would include the requirement that both Federal and State "maintenance-of-effort" expenditures must generally support the statutory purposes outlined in section 401 of the Social Security Act, as amended.

² References to a grant under section 403(a) would exclude the Contingency Fund, but would include other TANF funds in section 403.

When the statutory provisions are read with these terms in mind, it is possible to distinguish three different types of program configuration under the new title IV-A: TANF programs funded by expenditures of Federal grant funds or by co-mingling of State funds and Federal grant funds; TANF programs where Federal grant and State funds are segregated; and programs funded by expenditures of State funds in outside programs (i.e., outside TANF, but counting towards meeting the State's MOE requirements). The language used in a specific TANF provision (or in a related provision elsewhere in the statute) will determine its applicability to these three types of programs.

In order to tailor programs to meet the specific needs of families moving from welfare to work, States may find some advantage to segregating Federal and State TANF dollars or spending State MOE funds in outside programs, rather than TANF. We encourage States to take great care in making such decisions and to ensure that any such decisions are consistent with meeting the goals of the program.³

The definition of "assistance" is also a critical factor in determining the applicability of key TANF provisions. This paper includes a separate discussion of that definition.

III. Use of Federal TANF Funds

Compared to prior law, the TANF statute provides States with enormous flexibility to decide how to spend the Federal funds available under section 403. In repealing the IV-A and IV-F statutes, Congress freed the States from very detailed rules about the types of families that could be served, the benefits that could be provided, administrative procedures that needed to be followed, etc. However, to ensure that programs would achieve key program goals, the new statute imposes certain requirements and limitations on how States can use Federal funds to provide assistance. To a lesser extent, it also limits State flexibility on how to use State funds that count towards MOE. Among the key provisions applicable only to the use of Federal funds are time limits, restrictions on expenditures for medical services and prohibitions on assistance to certain individuals and families,

³ Later in the paper, we provide a chart summarizing the applicability of key provisions of the statute to the different program configurations. We also summarize the rules governing allowable uses of Federal and State MOE funds. Because of the complexity of the TANF statute, States should review all of these sections in concert, together with the underlying statutory language, in deciding what program design to pursue.

including certain aliens⁴ and teen parents. Also, when Federal TANF funds are spent, all provisions applicable to the TANF program apply. Most importantly, work requirements, data collection, and requirements for child support assignment and cooperation apply. Additional information on the rules applicable to the use of Federal funds is included in the following discussion and the attached table.

Provisions governing the use of Federal TANF funds are found in three sections of the statute.

The new section 404 of the Social Security Act sets forth the basic rules for expenditure of Federal TANF funds.

- o They must be: (a) reasonably calculated to accomplish the purposes of the TANF program; or (b) an authorized expenditure for the State under title IV-A or IV-F as of September 30, 1995.
 - The statute specifies that assistance to low-income families for home heating and cooling costs falls within the purview of category (a) above.
 - To fall under category (b), the expenditure would need to be recognized as an allowable expenditure under the State's approved IV-A or IV-F plan in effect as of September 30, 1995.
- o Administrative expenditures may not exceed 15 percent of the total grant amount. The statute specifically excludes expenditures on "information technology and computerization needed for tracking or monitoring" required by or under TANF.
- o States may transfer up to 30 percent of the total grant to either the Child Care and Development Block Grant or the Social Services Block grant program.
 - No more than 1/3 of the total amount transferred may go to the Social Services Block grant.⁵
 - Once transferred, funds are no longer subject to the requirements of TANF, but are subject instead to the requirements of the program to which they are

⁴ Other restrictions on the use of State funds for aliens are contained in title IV of the PRWORA.

⁵ In other words, States must transfer \$2 to the Child Care and Development Block Grant in order to transfer \$1 to the Social Services Block Grant.

transferred. However, funds transferred to the Social Services Block grant may only be spent on children or families with income below 200 percent of poverty.

- o States may reserve their Federal TANF funds for future TANF expenditures without fiscal year limitation.
- o States may also use their Federal TANF funds for employment placement programs and for programs to fund individual development accounts.

The new section 408 imposes some restrictions on the use of Federal grant funds. Under this section, Federal funds may not be used to:

- 1) provide assistance to families that do not include a minor child residing with a custodial parent or other adult caretaker relative (or a pregnant individual);
- 2) provide assistance to a family that includes an adult who has received 60 months of countable assistance, unless the family qualifies for a hardship exception;
- 3) provide assistance to families which have not assigned rights to support or to individuals who do not cooperate in establishing paternity or obtaining child support⁶;
- 4) provide assistance to unmarried parents under age 18 who have a child at least 12 weeks old and are not attending high school or an equivalent training program;
- 5) provide assistance to unmarried parents under age 18 who do not live in appropriate adult-supervised settings (unless exempt);
- 6) pay for medical services, except pre-pregnancy family planning services;
- 7) provide cash assistance for a 10-year period following conviction of fraud in order to receive benefits in more than one State;
- 8) provide assistance to fugitive felons, individuals fleeing felony prosecution or violating conditions of probation and parole violators; or
- 9) provide assistance for a minor child who is absent (or

⁶ Section 408(a)(2) provides that there must be a deduction of not less than 25 percent and the State may deny the family any assistance.

expected to be absent) from the home, without good cause, for a specified minimum period of time.

Finally, section 115 of PRWORA calls for denial of TANF assistance to any individual convicted of a drug-related felony after August 22, 1996. However, the State may opt out of this provision or reduce its applicability, and certain kinds of Federal benefits are excepted.

IV. Basic Requirements Governing State MOE Expenditures

TANF⁷ MOE Requirements--General. States may expend their MOE funds on a broad range of activities without necessarily triggering Federal TANF requirements (such as time limits). Although States have significant discretion, especially with respect to State expenditures they make under separate State programs, there are statutory requirements which define the State expenditures which can be counted as TANF MOE. These are found at the new section 409(a) (7) of the Social Security Act.

Section 409(a) (7) (A) provides for a dollar-for-dollar reduction in a State's State Family Assistance Grant (SFAG) to the extent that "qualified State expenditures" in the immediately preceding fiscal year are less than an applicable percentage of "historic State expenditures." "Historic State expenditures" are subsequently defined to include expenditures by the State for FY 1994 under title IV-A (AFDC, EA, and child care) and IV-F (JOBS), as in effect during FY 1994.⁸

If a State fails to meet the work program participation requirements for a fiscal year, its MOE requirement is set at 80 percent of "historic State expenditures." If a State meets these requirements, its MOE requirement is set at 75 percent of historic State expenditures.

Also, in determining a State's MOE requirement, any IV-A expenditures made by the State in 1994 on behalf of individuals now covered by a Tribal TANF program are excluded from "historic

⁷ For Contingency Fund MOE purposes, State expenditures outside the TANF program do not count. See discussion in the following subsection for a further explanation. NOTE: This footnote was added because the contingency MOE discussion was moved down.

⁸ See section 409(a) (7) (B) (iii) for the statutory provisions governing the definition of historic State expenditures.

State expenditures."⁹

Contingency Fund MOE Requirements. MOE requirements governing State access to the Contingency Fund are found at section 403(b) and 409(a)(10). In general, this paper does not address special requirements pertaining to the Contingency Fund MOE. However, for the purpose of program planning, it is important for States to note that only State expenditures made within the TANF program count towards the Contingency Fund MOE. State expenditures in outside programs may count towards the TANF MOE, but they do not qualify for Contingency Fund MOE purposes¹⁰.

Qualified State Expenditures. In order for State expenditures to be considered "qualified State expenditures" for TANF MOE purposes, they must: (1) be made to or on behalf of a family that is eligible under TANF or that would be eligible for TANF except for the fact that the family had exceeded its 5-year limit on assistance or has been excluded from receiving assistance under TANF by PRWORA's immigration provisions (see discussion elsewhere in this paper for guidance on definition of "eligible families" and allowable immigrant expenditures); (2) be for one of the types of assistance listed in section 409(a)(7)(B)(i)(I); and (3) comply with all other requirements and limitations in section 409(a)(7).

Section 409(a)(7)(B)(i) defines "qualified State expenditures" as total expenditures by the State in a fiscal year under all State programs for the following activities with respect to "eligible families":

- o (aa) - Cash assistance;
- o (bb) - Child care assistance;
- o (cc) - Educational activities designed to increase self-sufficiency, job training, and work, excluding any expenditure for public education in the State except which involve the provision of services or assistance to a member of an eligible family which is not generally available to persons who are not members of an eligible family;

⁹ In section 409(a)(7)(B)(iii)(II), the statute suggests an alternative calculation of historic expenditures. This language is apparently left over from a time when the bill included a fixed appropriation for State Family Assistance grants. We believe it is no longer viable, based on the final appropriation language.

¹⁰ The statutory language in both sections dealing with Contingency Fund MOE refers to State expenditures "under the State program funded under this part." The TANF MOE counts expenditures "under all State programs," if otherwise qualified.

- o (dd) - administrative costs in connection with the matters described in items (aa); (bb) and (cc) and (ee), but only to the extent that such costs do not exceed 15 percent of the total amount of qualified State expenditures for the fiscal year;
- o (ee) - any other use of funds allowable under section 404(a)(1).

Meaning of "Eligible Families." Under the new section 409(a)(7)(B)(i)(I) of the Social Security Act, in order to count as qualified State expenditures for MOE purposes, State expenditures must be made with respect to "eligible families." Subclause (III) defines "eligible families" for this purpose to mean families eligible for assistance under the State TANF program and families who would be eligible for assistance except for the time-limit provision and the alien restrictions at section 402 of PRWORA.

We interpret this language to mean that State expenditures count as MOE only if made to or on behalf of families which:

- o have a child living with a parent or other adult relative (or to individuals which are expecting a child); and
- o are needy under the TANF income standards established by the State under its TANF plan.¹¹

Finally, many of the restrictions at section 408 -- including the teen parent provisions and the provisions on denial of assistance in fraud and fugitive felon cases -- do not apply to State MOE expenditures because they are written as restrictions on the use of the Federal grant. Additional information on these restrictions can be found in the chart and the discussion on use of Federal funds.

Allowable Immigrant Expenditures.¹² States have the flexibility

¹¹ We are not suggesting a definition of "child" for this purpose, but would expect States to use a definition consistent either with the "minor child" definition in section 419 or some other definition of child applicable under State law.

We are also not proposing Federal guidelines for what income standards would be used to determine if a family is needy, but will defer to State standards, for both TANF and MOE purposes.

¹² As noted on p. 2, the following immigrant policy gives States broader flexibility to spend State MOE funds on immigrant families than was previously indicated in a Q and A issued by

to use State MOE funds to serve "qualified"¹³ aliens. They also have the flexibility to use Federal TANF funds to serve "qualified" aliens who arrived prior to the enactment of the PRWORA (August 22, 1996). For "qualified" aliens arriving after enactment, there is a bar on the use of Federal TANF funds which extends five years from the date of entry¹⁴.

States also have the flexibility to use State MOE funds to serve legal aliens who are not "qualified".¹⁵

Finally, under section 411(d) of PRWORA, States have the flexibility to use State MOE funds to serve aliens who are not lawfully present in the U.S., but only through enactment of a State law, after the date of PRWORA enactment, which "affirmatively provides" for such benefits.

Restrictions on Educational Expenditures. We believe the intent of the language in section 409(a)(7)(B)(i)(I)(cc) is to exclude general educational expenditures by State or local governments for services or activities at the elementary, secondary, or postsecondary level which serve general educational purposes. Expenditures on services targeted on "eligible families", but not available to the general public, may be included. For example, MOE could include special classes for teen parents (that are TANF eligible) at high schools or other educational settings. Services to "eligible families" designed to accomplish the purposes specified in section 401 may also be included, pursuant

ACF. The new interpretation reflects the additional work done on interpreting "State program under this part" and on trying to find the appropriate meaning for the many pieces of the statute which directly and indirectly speak to this issue.

¹³ As defined under section 431 of PRWORA.

¹⁴ Pursuant to section 403(b) of PRWORA, the five-year bar does not apply to refugees, asylees, aliens whose deportation is being withheld under section 243(h) of the Immigration and Nationality Act, and U.S. veterans and their spouses and unmarried dependent children.

¹⁵ There is a technical problem in section 411 of PRWORA that prevents States from providing State or local public benefits to a handful of categories of legal aliens, e.g., temporary residents under IRCA, aliens with temporary protected status, and aliens in deferred action status. The structure of section 411 indicates Congress' belief that section 411(a) included all groups of aliens lawfully present in the U.S. Therefore, the Administration has proposed a technical amendment that would allow States to provide State or local public benefits to all aliens lawfully present in the U.S.

to section 409(a)(7)(B)(i)(I)(ee).

General restrictions. Pursuant to section 409(a)(7)(B)(iv), the following types of expenditures may NOT be included as part of a State's MOE:

- 1) expenditures of funds which originated with the Federal government;
- 2) State Medicaid expenditures;
- 3) State funds which match Federal funds (or State expenditures which support claims for Federal matching funds); and
- 4) expenditures which States make as a condition of receiving Federal funds under other programs¹⁶.

Special Child Care Rules. Notwithstanding this last restriction, when the following requirements are met, expenditures by a State for child care may satisfy both the TANF MOE requirement and the MOE requirement related to accessing child care matching funds at the new section 418(a)(2)(C) of the Social Security Act. First, the amount of child care expenditures countable for TANF MOE purposes may not exceed the child care MOE requirement for the State. Secondly, to count as TANF MOE, the expenditures must meet all the other requirements of section 409(a)(7); to count as child care MOE, expenditures must be allowable under the requirements of the Child Care and Development Fund. Before claiming child care expenditures under both MOE provisions, States need to check that the expenditures in fact meet the requirements of both programs. (E.g., there may be different families eligible for child care assistance under the two programs which prevent all expenditures from counting as MOE in both.)

Because of the general restrictions cited above, child care expenditures by the State which are matched with Federal funds (pursuant to section 418(a)(2)(C)) do not qualify as expenditures for TANF MOE¹⁷.

Interpretation of MOE Exclusion Language. Numerous questions have arisen about the language at section 409(a)(7)(B)(i)(II), entitled "Exclusion of Transfers from Other State and Local Programs."

¹⁶ Note the child care exception below.

¹⁷ Likewise, State expenditures which receive Federal child care matching funds do not qualify for child care MOE.

We believe part of the confusion derives from the caption; it refers to transfers, but the actual statutory language does not. Our view is that the provision should be read as a provision applicable only to State MOE expenditures made under separate State programs. Such expenditures may not involve a literal transfer of funds, but in a figurative sense, they would involve taking funds that are outside the program and bringing them into the program's purview (for MOE purposes).

In general, our view is that this provision is designed to prevent supplantation. We believe Congress wanted to prevent States from substituting expenditures they had been making in outside programs for expenditures on cash welfare and related benefits to needy families. The language in (aa) specifically addresses this point. It provides that States may get credit for MOE purposes only for additional or new expenditures from State and local programs. The standard for determining this is whether their expenditures in the preceding fiscal year were above the levels expended in the 12 months preceding October 1, 1995.

Section 409(a)(7)(B)(i)(II)(bb) can be read as an exception to the general rule in (aa). It would allow States to make expenditures in outside programs which were previously allowable under section 403 (and allowable at the time of enactment) and get full credit for such expenditures. In other words, there is not a requirement that these expenditures be additional or new expenditures (above FY 95 levels).

Ultimately, we do expect to require that States be able to document that any outside expenditures they claim for MOE purposes meet the requirements of (aa).¹⁸ At a minimum, States would have to identify the outside programs whose expenditures will be reflected as State MOE, establish what the State contributions to such programs were in the 12 months preceding October 1, 1995, and document the total State expenditures in such programs for the preceding fiscal year. States would also have to provide evidence that expenditures in outside programs which they want credited as MOE be expenditures on behalf of "eligible families". This evidence may be in the form of documentation of eligibility rules and procedures, or in other forms established by the State.¹⁹

¹⁸ Pursuant to the Paperwork Reduction Act of 1995, States will not be subject to specific documentation or reporting requirements prior to OMB approval.

¹⁹ States would also have to be able to document that MOE expenditures on educational assistance and administrative costs meet the special limitations at sections 409(a)(7)(B)(i)(I)(cc) and (dd), respectively.

V. Definition of Assistance

The terms "assistance" and "families receiving assistance" are used in the PRWORA in many critical places, including: 1) in most of the prohibitions and requirements of section 408, which limit the provision of assistance; 2) the denominator of the work participation rates in section 407(b); and 3) the data collection requirements of section 411(a). Because TANF replaces AFDC, EA and JOBS, and provides much greater flexibility than any of these programs, what constitutes assistance is less clear than it was previously. Furthermore, because many of the above-referenced sections are addressed in the penalty provisions of section 409, it is very important that States have some idea of our views of what constitutes assistance so that they can meet Federal requirements and avoid penalties.²⁰

The complexities involved in formulating a definition of "assistance" suggest that it is an area which could be greatly illuminated by both State practice under TANF and by the rulemaking process. Thus, we welcome suggestions from States and other parties as to what an appropriate definition would be. However, in the meantime, because States are looking for guidance which they can use in designing their programs, we are offering an initial perspective on the matter. Our general view is that, because of the combining of the funding streams for AFDC, EA and JOBS, some forms of support that a State is permitted to carry out under TANF are not what would be considered to be welfare. Thus, our initial perspective is to exclude some of those forms of support as assistance. More specifically, we would define "assistance" as every form of support provided to families under TANF except for the following:

- 1) services that have no direct monetary value to an individual family and that do not involve implicit or explicit income support, such as counseling, case management, peer support and employment services that do not involve subsidies or other forms of income support; and
- 2) one-time, short-term assistance (e.g., automobile repair to retain employment and avoid welfare receipt and appliance repair to maintain living arrangements).

We believe that these exclusions are consistent with

²⁰ In the absence of any statutory language or legislative history to indicate the contrary, we are viewing the term "assistance" as having the same meaning wherever it occurs in the statute in phrases such as "families receiving assistance" and "no assistance for..."

Congressional intent to provide States with flexibility to design programs that will focus their resources on enhancing parental responsibility and self-sufficiency. At the same time, it will enable them, for example, to exclude families who receive no financial support from participation rate calculations and individuals who only receive one-time help in avoiding welfare dependency from requirements such as assignment of child support rights.

VI. Monitoring the Impacts of Separate State Programs

When the Personal Responsibility and Work Opportunity Reconciliation Act was enacted, it was impossible to know what the overall effects of the legislation would be. No one knew how States would use the new flexibility available to them in designing their programs -- whether the new welfare programs would look similar to the AFDC and demonstration programs with which everyone was familiar or if they would incorporate a much different array of benefits, services, and eligibility rules. For this reason, the statute incorporates a series of provisions designed to gather information on the families receiving assistance, the assistance provided, and the effects on children and families.

One special area of uncertainty is what States will do with the flexibility they have to set up separate programs which qualify for MOE purposes, but are not subject to many of the TANF rules. With this new flexibility, States can:

- o make their programs more responsive to the individual and diverse needs of families;
- o provide services and impose expectations appropriate to individual family circumstances;
- o target resources more effectively.

At the same time, States could use this new flexibility in ways that might undermine important goals of welfare reform. In particular, we are concerned that States could design their programs so as to avoid time limits and the work requirements in section 407, thereby circumventing legislative intent to make assistance temporary and engage parents and caretakers in appropriate work.

We are also concerned that the development of separate State programs could have other unintended negative consequences. One major concern is that we will lose critical information about how the new programs are serving needy parents and children. Without a national view of State efforts (including efforts undertaken within separate State programs), we will have a diminished ability to measure program performance and impacts accurately and

equitably. A second major concern is about the potential loss to the Federal budget of its share of child support collections. In assessing the potential budgetary impact of this bill, Congress apparently did not envision such losses. We do not intend to allow States to set up separate State programs with the intent of retaining what would otherwise be the appropriate Federal share of child support collections.

In stating these concerns, we do not intend to stifle creative State thinking about how best to serve their needy families and children. We recognize that the ability of States to set up separate State programs can result in much more responsive and effective programs. At the same time, States should be aware of the Federal perspective of the risks involved. We believe it is our responsibility to monitor the overall implementation of this legislation and to assess whether it is having the intended consequences. If we find major problems, we believe we have the further responsibility to advise Congress and to work with it in identifying ways to resolve them.

VII. OVERVIEW OF TANF PROVISIONS UNDER DIFFERENT PROGRAM CONFIGURATIONS

PROVISION	FEDERAL TANF PROGRAMS ¹	SEGREGATED STATE TANF PROGRAMS ²	SEPARATE STATE PROGRAMS ³
Covered by State plan	Yes	Yes	No
Needy per income stds in State TANF plan	Yes	Yes	Yes ⁴
Restricted disclosure	Applicable	Not applicable	Not applicable
Allowable expenditures	For purposes and as authorized under IV-A or IV-F as of 9/30/95	Count towards both TANF and contingency fund MOEs. Must be for purposes of program or for cash asst, child care, certain education, or admin costs	Count only towards TANF MOE (not contingency fund MOE). See State TANF section for allowable purposes.
15 % admin cost cap	Yes; ADP exception	Yes	Yes
Medical services	Only pre-pregnancy family planning	No specific restriction	No specific restriction
24-month work reqt	Yes	Yes	No
2-month work reqt	Yes	Yes	No
407 work reqts	Yes	Yes	No
work sanctions	Yes	Yes	No
non-displacement	Yes	No	No
child reqt	Yes; "minor child"	Yes ⁴	Yes ⁴
child ineligible when absent minimum period	Yes	No	No
child support	Assignment & cooperation req'd. Share of collections to Fed govt.	Assignment & cooperation req'd. Share of collections to Fed govt.	Assignment & cooperation may not be req'd. No share of collections for Fed. govt.
time limit on assistance	Yes	No	No
teen school attendance	Required	No requirement	No requirement
teen parent living arrangements	Must be adult-supervised	No requirement	No requirement
Federal non-discrimination statutes	4 statutes applicable	4 statutes applicable	No specific provision
fraud cases	10-yr exclusion	No exclusion	No exclusion
drug felons	Receive reduced benefits	Receive reduced benefits	No provision

¹ This column would also apply programs where State MOE funds are co-mingled with Federal TANF funds.

² Under this scenario, Federal and State funds are not commingled. Since State funds are segregated, some -- but not all -- of the Federal TANF rules apply.

³ These programs count towards State MOE. They are not subject to TANF requirements, per se, but are subject to the MOE restrictions at section 409(a)(7).

⁴ Per definition of "eligible families."

data reporting	Applicable	Applicable	Not applicable
fugitive felons	Barred from assistance	No bar	No bar