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Compilation of Federal Rules on Claiming Third-Party Expenditures toward the TANF Maintenance of Effort Requirement

Updated March 17, 2010

[1] HHS appears to be applying the logic that said that non-refundable tax credits could not be claimed as MOE to say that forgiveness of debt does not count as an expenditure.

http://www.socialsecurity.gov/OP_Home/ssact/title04/0401.htm

SOCIAL SECURITY ACT

Part A—BLOCK GRANTS TO STATES FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

Purpose

Sec. 401. **[**42 U.S.C. 601**]** (a) In General.—The purpose of this part is to increase the flexibility of States in operating a program designed to—

(1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and

(4) encourage the formation and maintenance of two-parent families.

http://www.socialsecurity.gov/OP_Home/ssact/title04/0409.htm

SOCIAL SECURITY ACT

Part A—BLOCK GRANTS TO STATES FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

Penalties

Sec. 409. **[**42 U.S.C. 609**]** (a) In General.—Subject to this section:

(7) Failure of any state to maintain certain level of historic effort.—

(A) In general.—The Secretary shall reduce the grant payable to the State under section 403(a)(1) for fiscal year 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, or 2011 by the amount (if any) by which qualified State expenditures for the then immediately preceding fiscal year are less that the applicable percentage of historic State expenditures with respect to such preceding fiscal year.

(B) Definitions.—As used in this paragraph:

(i) Qualified state expenditures.—

(I) In general.—The term "qualified State expenditures" means, with respect to a State and a fiscal year, the total expenditures by the State during the fiscal year, under all State programs, for any of the following with respect to eligible families:

> (aa) Cash assistance, including any amount collected by the State as support pursuant to a plan approved under part D, on behalf of a family receiving assistance under the State program funded under this part, that is distributed to the family under section 457(a)(1)(B) and disregarded in determining the eligibility of the family for, and the amount of, such assistance.
>
> (bb) Child care assistance.
>
> (cc) Educational activities designed to increase self-sufficiency, job training, and work, excluding any expenditure for public education in the State except expenditures which involve the provision of services or assistance to a member of an eligible family which is not generally available to persons who are not members of an eligible family.
>
> (dd) Administrative costs in connection with the matters described in items (aa), (bb), (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.
>
> (ee) Any other use of funds allowable under section 404(a)(1).

(II) Exclusion of transfers from other state and local programs.—Such term does not include expenditures under any State or local program during a fiscal year, except to the extent that—

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

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

(III) Exclusion of amounts expended to replace penalty grant reductions.—Such term does not include any amount expended in order to comply with paragraph (12).

(IV) Eligible families.—As used in subclause (I), the term "eligible families" means families eligible for assistance under the State program funded under this part, families that would be eligible for such assistance but for the application of section 408(a)(7) of this Act, and families of aliens lawfully present in the United States that would be eligible for such assistance but for the application of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(V) Counting of spending on certain pro-family activities.—The term "qualified State expenditures" includes the total expenditures by the State during the fiscal year under all State programs for a purpose described in paragraph (3) or (4) of section 401(a).

(ii) Applicable percentage.—The term "applicable percentage" means for fiscal years 1997 through 2010, 80 percent (or, if the State meets the requirements of section 407(a) for the fiscal year, 75 percent).

(iii) Historic state expenditures.—The term "historic State expenditures" means, with respect to a State, the lesser of—

(I) the expenditures by the State under parts A and F (as in effect during fiscal year 1994) for fiscal year 1994; or

(II) the amount which bears the same ratio to the amount described in subclause (I) as—

(aa) the State family assistance grant, plus the total amount required to by paid to the State under former section 403 for fiscal year 1994 with respect to amounts expended by the State for child care under subsection (g) or (i) of section 402 (as in effect during fiscal year 1994); bears to

(bb) the total amount required to be paid to the State under former section 403 (as in effect during fiscal year 1994) for fiscal year 1994.

Such term does not include any expenditures under the State plan approved under part A (as so in effect) on behalf of individuals covered by a tribal family assistance plan approved under section 412, as determined by the Secretary.

(iv) Expenditures by the state.—The term "expenditures by the State" does not include—

(I) any expenditure from amounts made available by the Federal Government;

(II) any State funds expended for the medicaid program under title XIX;

(III) any State funds which are used to match Federal funds provided under section 403(a)(5); or

(IV) any State funds which are expended as a condition of receiving Federal funds other than under this part.

Notwithstanding subclause (IV) of the preceding sentence, such term includes expenditures by a State for child care in a fiscal year to the extent that the total amount of the expenditures does not exceed the amount of State expenditures in fiscal year 1994 or 1995 (whichever is the greater) that equal the non-Federal share for the programs described in section 418(a)(1)(A).

(v) Source of data.—In determining expenditures by a State for fiscal years 1994 and 1995, the Secretary shall use information which was reported by the State on ACF Form 231 or (in the case of expenditures under part F) ACF Form 331, available as of the dates specified in clauses (ii) and (iii) of section 403(a)(1)(D).

http://www.acf.hhs.gov/programs/ofa/law-reg/finalrule/regla1.pdf

[**NOTE:** HHS appears to be applying the logic that said that non-refundable tax credits could not be claimed as MOE to say that forgiveness of debt does not count as an expenditure.]

THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) PROGRAM; FINAL RULE
April 12, 1999

V. Part 260—General Temporary Assistance for Needy Families (TANF) Provisions (Part 270 of the NPRM)

Subpart A— What Provisions Generally Apply to the TANF Program?

Section 263.2 What kinds of State expenditures count toward meeting a State's basic MOE expenditure requirement? As discussed previously, in § 260.30, we have added a definition of ''expenditure'' that helps define what would be a qualified expenditure of Federal TANF funds or State MOE funds. Within this definition of ''expenditure,'' we indicate that refundable tax credits could be an expenditure. The purpose of this section is to clarify how to determine the amount of allowable expenditures in this situation. More specifically, it says that, for an earned income tax credit or other allowable credit, we would count as an expenditure only the State's actual payment to the family for that portion of the credit that the family did not use to offset their tax liability.

The family generally determines its income tax liability by following a number of basic steps. First, the family determines its adjusted gross income (income subject to a State's income tax). Then it applies any allowable exemptions and deductions to reduce the adjusted gross income. The net figure is the total amount of income that is subject to taxation. The taxable income is the basis for determining the amount of taxes owed. Then, the family applies any allowable credits to reduce the amount of taxes that it owes.

For example, a wage earner qualifies for a $200 earned income tax credit. The family's tax liability prior to the application of any credits is $75. When reconciling at the end of the income tax year, the eligible family uses the first $75 of the credit to reduce its State income tax liability to zero. If the State elects to refund any part of the remaining $125 in EITC, then the amount that it actually pays out to the family is a qualified expenditure and counts toward the State's TANF MOE. The $125 represents an actual outlay from State funds to provide extra money to the family. In this regard, the State has spent its own funds to provide a benefit to the family that is consistent with a purpose of TANF.

For emphasis, this section also reiterates that, in order to count as an expenditure of Federal TANF funds or State MOE funds, the purpose of the tax credit program must be reasonably calculated to accomplish one of the four purposes of the TANF program. We recognize that tax credits might be an appropriate and highly efficient method for getting benefits to needy families and want to support those efforts. In particular, State earned income tax credits provide valuable

supports and incentives for low-income working families, and we do not want to discourage more States from establishing these policies. At the same time, we want to be sure that our policies support the goals of TANF and promote continued State investments in needy families.

Also, because tax credits represent an area of significant interest to States, the Congress, and fiscal authorities, we have added new lines to the TANF Financial Report that will tell us how many Federal and State dollars are going to refundable earned income tax credits or other refundable State and local credits.

The mere fact that the State issues a tax refund check to a taxpayer does not necessarily indicate that the family has received a refundable tax credit. For example, a TANF-eligible family could receive a refund check simply because the aggregate amount withheld from its paychecks exceeded its tax liability. Such a refund would not meet the definition of a refundable EITC.

For example, assume an individual has a $75 State income tax liability for a year. Yet, through withholding, he or she paid a total of $150 in State income taxes throughout the year. After reconciliation at the end of the income tax year, the amount that the State owes the individual due to tax withholding is not considered a refundable tax credit. Nor is the return of an individual's overpayment of taxes an expenditure of the State.

In determining the amount of MOE that may be claimed, all credits would be subtracted from the amount of the tax liability. The family's tax liability is the amount owed to the State prior to any adjustments for credits or payments. Any excess credit remaining that the State refunds to the family may count as an expenditure if the program for tax credits is reasonably calculated to accomplish a purpose of the TANF program.

Taking another example, suppose the wage earner, who has paid $150 through withholding, actually qualifies for an earned income tax credit of $200. The $125 portion of the credit that exceeds the individual's $75 State income tax liability could qualify as an expenditure if the State pays it out to the family. The $150 withheld is irrelevant to the calculation because this does not represent the family's actual income tax liability. If the family were to receive a $275 refund, $125 (the balance remaining of the EITC after the tax liability is subtracted) would qualify as an expenditure.

Tax relief measures, including nonrefundable tax credits, as well as exemptions, deductions, and tax rate cuts, that serve only to offset a family's income tax liability do not qualify as expenditures.

In addition, tax credits that serve to rebate a portion of another State or local tax, including sales tax credits and property tax credits, are not expenditures under the definition of expenditure at § 260.30. This definition is consistent with longstanding Federal policy on the meaning of expenditure, as reflected in the single definition for outlays and expenditures at 45 CFR 92.3.

Also, if a State administers more than one tax credit program allowable for Federal TANF or State MOE purposes, the State may count as an expenditure the amount by which the combined

value of the allowable credits exceeds a TANF-eligible family's State income tax liability prior to application of all allowable credits.

The questions about State tax credits generally arose in the context of what is a ''qualified State expenditure'' for MOE purposes. In particular, the issue principally centered on whether States might count the portion of an earned income credit attributable to revenue loss toward their MOE. To properly address this issue, it is important to note that, in addition to the ''eligible families'' requirement discussed at § 263.2, the statute requires two key criteria to be met for MOE purposes. These criteria are: (1) the State's cost must be an expenditure; and (2) the expenditure must be reasonably calculated to accomplish a purpose of the TANF program. The second criterion is not a difficult standard to meet. States just need to be able to demonstrate that the specific tax benefit program is ''reasonably calculated'' to accomplish a purpose of the TANF program. Because more questions were raised as to what is an expenditure, this issue required more extensive deliberation.

To consider fully the argument that the entire cost of an earned income credit might represent an expenditure, we had to consider this issue within the broader framework of the full range of potential tax relief measures. Since we published the NPRM, we have received several inquiries regarding whether the cost of other tax relief measures were expenditures for MOE purposes.

An earned income credit is but one example of a tax relief measure. Some States also have other credits available to residents. These include, but are not limited to, property tax and homestead credits, child and dependent care credits, sales tax credits, credits for families that purchase a car seat, and credits for individuals with significant medical expenses. Tax relief also takes the form of income tax deductions and exemptions. Some States also offer tax credits to investors and businesses, e.g., credits that help or promote employment of low-income residents such as a rent reduction program credits, neighborhood assistance act credits, an enterprise zone act credits, day-care facility investment tax credits, and major business facility job-tax credits.

Few of these activities result in refunds in excess of any tax liability (whether it be income, sales, property tax liability). But, all of these activities cost the State lost tax revenue. Therefore, we had to consider whether lost revenue equals an expenditure. While the statute under 409(a)(7) uses the term ''expenditures,'' it does not define it. However, since 1988, when the Department issued its common administrative rule at 45 CFR 92.3, the term expenditures has been defined as outlays, for purposes of Federal grant funds. Because Congress did not provide another definition of expenditure in the TANF statute, we have presumed that the existing regulation defining expenditure as an outlay is applicable.

To outlay is to expend, spend, lay out, or pay out. We therefore do not consider that a decrease in a State's revenue associated with a tax credit program or other tax relief measure meets the common rule definition of an ''expenditure.'' Accordingly, we conclude that tax provision that only serve to provide a family with relief from State taxes such as income taxes, property taxes, or sales tax represent a loss of revenue to the State, but not an expenditure. However, the portion of a tax credit that exceeds a family's income tax liability and is paid to the family is an expenditure. That expenditure would count toward a State's TANF MOE requirement if it is reasonably calculated to meet a purpose of the TANF program.

Arguably, accepting less revenue (taxes) from the income of families (or business), provides a financial benefit to the family (or business) by allowing them to retain a greater share of their own money. As such, tax relief activities in general can serve to complement welfare reform efforts. However, tax relief measures that solely provide a family (or business) with relief from various State taxes are not expenditures.

In determining that the common rule Federal definition of expenditures was appropriate to use in the TANF context, we also examined the broader policy implications. Including nonrefundable credits and other tax relief measures that served solely to reduce tax liability could redirect Federal TANF and State MOE expenditures away from the neediest families (who get no direct benefit from nonrefundable credits) and could allow States to claim as MOE an extremely wide range of tax cuts. We do not think this result would be consistent with the intent of TANF.

At § 263.2, you will find additional discussion about the treatment of tax credits and other tax provisions.

http://www.acf.hhs.gov/programs/ofa/law-reg/finalrule/tanf_final_rule.pdf

REAUTHORIZATION OF THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) PROGRAM; FINAL RULE
February 5, 2008

VI. Part 263—Expenditures of State and Federal TANF Funds

Subpart A—What Rules Apply to a State's Maintenance of Effort?

Section 263.2 What kinds of State expenditures count toward meeting a State's basic MOE expenditure requirement? The Deficit Reduction Act of 2005 retained the same MOE spending levels required in PRWORA; however, it also added a new provision, ''Counting of Spending on Certain Pro-Family Activities'' at section 409(a)(7)(B)(I)(V) of the Social Security Act. We included this provision in § 263.2(a)(4) of the interim final rule to allow States to count non-assistance expenditures on pro-family activities if the expenditure is reasonably calculated to prevent and reduce the incidence of out-of-wedlock pregnancies (TANF purpose three), or to encourage the formation and maintenance of two-parent families (TANF purpose four). Under this provision, non-assistance, pro-family expenditures for benefits and services were not limited to ''eligible'' families (as defined in § 263.2(b)), which under prior rules, was a limitation on all MOE spending. Instead, States could claim qualified pro-family expenditures for non-assistance benefits and services provided to or on behalf of an individual or family, regardless of financial need or family composition. In developing the final rule, based on comments we received, we reconsidered the scope of the pro-family claiming provision. We have concluded that ''Counting of Spending on Certain Pro-Family Activities'' within TANF purposes three or four means counting of non-assistance expenditures on only the activities enumerated in the healthy marriage promotion and responsible fatherhood section of the DRA (sections 403(a)(2)(A)(iii) and 403(a)(2)(C)(ii) of the Act)—unless a limitation, restriction or prohibition under this subpart applies.

For other allowable expenditures within TANF purposes three or four, States may only claim toward their MOE requirement the portion expended for or on behalf of eligible families. We have amended the pro-family claiming provision at § 263.2(a)(4) to specify which nonassistance, pro-family expenditures within TANF purposes 3 or 4 are *not* limited to eligible families. With the exception of the pro-family claiming provision discussed above, States must continue to limit the provision of all other MOE-funded assistance and non-assistance benefits to eligible families as defined at § 263.2(b), regardless of the TANF purpose. We remind readers that Federal TANF assistance is also limited to eligible families, regardless of the TANF purpose.

Congress also created new TANF discretionary funding streams (Grants for Healthy Marriage Promotion and Responsible Fatherhood) in the DRA. These funds are in Title IV–A, sections403(a)(2)(A)(iii) and 403(a)(2)(C)(ii) of the Social Security Act. Under MOE, States may count qualified expenditures that are made as a condition of receiving Federal funds under Title IV–A toward their MOE requirement. For FY 2006, Healthy Marriage Promotion and Responsible Fatherhood grantees had to contribute a matching share of the total approved costs

of a project as a condition of receiving any of the Federal discretionary funds. Thus, a State may count these State expenditures, when made on allowable activities under the Healthy Marriage promotion and Promoting Responsible Fatherhood programs, toward its MOE requirement, unless a limitation, restriction, or prohibition under this subpart applies. This provision is outlined in § 263.2(g).

The regulations at 45 CFR part 92 on matching or cost-sharing requirements permit States to count toward their MOE requirement qualified, non-Federal, cash or in-kind expenditures by a third party. For example, this may include Healthy Marriage and Responsible Fatherhood providers in a State. As set forth in the policy announcement, TANF–ACF–PA–2004–01, dated December 1, 2004, and repeated in the interim final rule at § 263.2(e), we require an agreement in writing between the State and any third party allowing the State to count such expenditures toward its MOE requirement. This policy was initially explained in a policy announcement, TANF–ACF–PA– 2004–01, dated December 1, 2004 and repeated the policy in the interim final rule at § 263.2(e).

Comment: We received several comments of concurrence and appreciation for clarifying these provisions. One commenter asked us to clarify whether ‘‘pro-family’’ expenditures are limited to TANF eligible families, or whether it is broader and may include other low-income families. Other commenters wondered whether countable expenditures for activities like pre-K or after-school programs fall under the new pro-family claiming provision.

Response: When Congress created the expanded pro-family spending provision, it limited the provision to ‘‘certain pro-family activities.’’ Moreover, it created this new provision as part of the section of the DRA titled ‘‘Grants for Healthy Marriage Promotion and Responsible Fatherhood.’’ In reevaluating our rule to respond to these comments, we have concluded that this placement signaled Congressional intent that ‘‘certain’’ pro-family activities means the healthy marriage promotion and responsible fatherhood activities it described in this section of the DRA. Thus, the final rule limits pro-family activities for the purposes of this new provision to the healthy marriage activities listed in section 403(a)(2)(A)(iii) of the Act and the responsible fatherhood activities listed in section 403(a)(2)(C)(ii) of the Act, unless a limitation, restriction, or prohibition under this subpart applies to any such activity. These are the only expenditures within TANF purposes three or four that are *not* limited to eligible families. We recognize that this additional claiming provision became effective on October 1, 2005 (FY 2006). We further recognize that, since publication of the interim final rule, States may have been claiming toward their MOE requirement a whole array of non-assistance expenditures—e.g., after-school programs, pre-K programs, college scholarship programs—as a result of this new provision. This is because we presented this new claiming provision in the interim final rule in a general way. As a result, we have advised States that, until we publish the final rule, they may draw their own reasonable conclusions as to the sort of pro-family expenditure within TANF purpose three or four to claim under this new provision. Therefore, this amended provision will be effective with the effective date of this final rule.

In summary, with the exception of the pro-family, non-assistance expenditures described above, States may only claim toward their MOE requirement expenditures for or on behalf of eligible families. We remind readers that an eligible family is a financially needy family that consists of,

at a minimum, a child living with a caretaker relative or consists of a pregnant woman. Please see § 263.2(b) for further information on eligible families.

Section 263.5 When do expenditures in State-funded programs count? Due to an oversight on our part, we did not include this section in the interim final rule. It addresses the MOE ''new spending'' limitation in section 409(a)(7)(B)(i)(II) of the Social Security Act, which continues to apply. States may only count, for MOE purposes, expenditures in pre-existing State or local programs that exceed the amount expended in such programs during FY 1995. The original TANF rule provides that the new spending amount is determined by comparing total FY 1995 expenditures in the pre-existing program with total qualified expenditures for or on behalf of eligible families during the current fiscal year. The State may claim the excess, if any, toward its MOE requirement. This new spending limitation does not apply to expenditures under State or local programs that had been previously authorized and allowable under the State's former title IV–A programs in effect as of August 21, 1996.

Comment: A commenter noted an inconsistency between § 263.2 of the interim final regulations and this ''new spending'' section. One allows States to claim as MOE, expenditures for profamily activities, regardless of whether a family is financially ''eligible'' or not, but, the ''new spending'' test still refers only to ''eligible'' families. The commenter suggested that the new spending calculation needed to be changed to count qualified, pro-family, non-assistance expenditures within TANF purposes three or four.

Response: We agree with the commenter. This was an oversight. We have amended the new spending provision at § 263.5(b). The amount of expenditures that may be claimed for MOE purposes is limited to the amount by which total current fiscal year expenditures for certain non-assistance, pro-family activities within TANF purposes three or four exceed total State expenditures in the program during FY 1995. Readers should refer to the discussion of § 263.2 for more detail on counting these pro-family expenditures.

Section 263.6 What kinds of expenditures do not count? As we stated in the preamble of the interim final regulations, the Deficit Reduction Act of 2005 did not change the prohibition at section 409(a)(7)(B)(iv)(IV) of the Social Security Act. This provision prohibits States from counting expenditures made ''as a condition of receiving Federal funds *''other than under this part''* toward its TANF MOE requirement. Because paragraph (c) of our original rule did not accurately reflect this prohibition, we corrected it to say that the prohibition only applies to expenditures that a State makes as a condition of receiving Federal funds under another program that is not in Part IV–A of the Act. States may count the non-Federal share of expenditures on allowable activities under the healthy marriage promotion or promoting responsible fatherhood programs in sections 403(a)(2)(A)(iii) or 403(a)(2)(C)(ii) of the Act, unless a limitation, restriction or prohibition under this subpart applies. We received no comments on this section; thus, it has been retained without change in the final rule.

45 CFR 92.3, Page 430-432

TITLE 45: PUBLIC WELFARE AND HUMAN SERVICES

PART 92 – UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE, LOCAL, AND TRIBAL GOVERNMENTS

Subpart A: General

Sec. 92.3: Definitions.

As used in this part:

Accrued expenditures mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

Accrued income means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

Acquisition cost of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

Administrative requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from programmatic requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

Awarding agency means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

Cash contributions means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

Contract means (except as used in the definitions for grant and subgrant in this section and except where qualified by Federal) a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

Cost sharing or matching means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

Cost-type contract means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

Equipment means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

Expenditure report means: (1) For nonconstruction grants, the SF-269 ``Financial Status Report'' (or other equivalent report); (2) for construction grants, the SF-271 ``Outlay Report and Request for Reimbursement'' (or other equivalent report).

Federally recognized Indian tribal government means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

Government means a State or local government or a federally recognized Indian tribal government.

Grant means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

Grantee means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

Local government means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

Obligations means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

OMB means the United States Office of Management and Budget.

Outlays (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of inkind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

Percentage of completion method refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

Prior approval means documentation evidencing consent prior to incurring specific cost.

Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Share, when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted--not the value of third-party in-kind contributions.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

Subgrant means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of grant in this part.

Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Supplies means all tangible personal property other than equipment as defined in this part.

Suspension means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

Termination means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. ``Termination'' does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period; (2) Withdrawal of the unobligated balance as of the expiration of a grant; (3) Refusal to extend a grant r award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

Terms of a grant or subgrant mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

Third party in-kind contributions mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

Unliquidated obligations for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

45 CFR 92.24, Page 437-439

TITLE 45: PUBLIC WELFARE AND HUMAN SERVICES

PART 92 – UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE, LOCAL, AND TRIBAL GOVERNMENTS

Subpart C: Post-Award Requirements

Sec. 92.24 Matching or cost sharing.

(a) Basic rule: Costs and contributions acceptable. With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) Qualifications and exceptions—

(1) Costs borne by other Federal grant agreements. Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) General revenue sharing. For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) Cost or contributions counted towards other Federal costs-sharing requirements. Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) Costs financed by program income. Costs financed by program income, as defined in Sec. 92.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in Sec. 92.25(g).)

(5) Services or property financed by income earned by contractors. Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) Records. Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) Special standards for third party in-kind contributions.

(i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been and indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or
(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) Valuation of donated services—

(1) Volunteer services. Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) Employees of other organizations. When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) Valuation of third party donated supplies and loaned equipment or space.

(1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) Valuation of third party donated equipment, buildings, and land. If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) Awards for capital expenditures. If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching,

(2) Other awards. If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2) (i) and (ii) of this section apply:

> (i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.
>
> (ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in Sec. 92.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) Valuation of grantee or subgrantee donated real property for construction/acquisition. If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) Appraisal of real property. In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=16bfdc115a27c189022a36b054f67796&rgn=div5&view=text&node=45:2.1.1.1.17&idno=45

TITLE 45: PUBLIC WELFARE AND HUMAN SERVICES

PART 263—EXPENDITURES OF STATE AND FEDERAL TANF FUNDS (as amended including February 5, 2008)

Authority: 42 U.S.C. 604, 607, 609, and 862a; Pub. L. 109–171.

Source: 64 FR 17893, Apr. 12, 1999, unless otherwise noted.

§ 263.0 What definitions apply to this part?

(a) Except as noted in §263.2(d), the general TANF definitions at §260.30 through §260.33 of this chapter apply to this part.

(b) The term "administrative costs" means costs necessary for the proper administration of the TANF program or separate State programs.

(1) It excludes direct costs of providing program services.

(i) For example, it excludes costs of providing diversion benefits and services, providing program information to clients, screening and assessments, development of employability plans, work activities, post-employment services, work supports, and case management. It also excludes costs for contracts devoted entirely to such activities.

(ii) It excludes the salaries and benefits costs for staff providing program services and the direct administrative costs associated with providing the services, such as the costs for supplies, equipment, travel, postage, utilities, rental of office space and maintenance of office space.

(2) It includes costs for general administration and coordination of these programs, including contract costs and all indirect (or overhead) costs. Examples of administrative costs include:

(i) Salaries and benefits of staff performing administrative and coordination functions;

(ii) Activities related to eligibility determinations;

(iii) Preparation of program plans, budgets, and schedules;

(iv) Monitoring of programs and projects;

(v) Fraud and abuse units;

(vi) Procurement activities;

(vii) Public relations;

(viii) Services related to accounting, litigation, audits, management of property, payroll, and personnel;

(ix) Costs for the goods and services required for administration of the program such as the costs for supplies, equipment, travel, postage, utilities, and rental of office space and maintenance of office space, provided that such costs are not excluded as a direct administrative cost for providing program services under paragraph (b)(1) of this section;

(x) Travel costs incurred for official business and not excluded as a direct administrative cost for providing program services under paragraph (b)(1) of this section;

(xi) Management information systems not related to the tracking and monitoring of TANF requirements (e.g., for a personnel and payroll system for State staff); and

(xii) Preparing reports and other documents.

Subpart A—What Rules Apply to a State's Maintenance of Effort?

§ 263.1 How much State money must a State expend annually to meet the basic MOE requirement?

(a)(1) The minimum basic MOE for a fiscal year is 80 percent of a State's historic State expenditures.

(2) However, if a State meets the minimum work participation rate requirements in a fiscal year, as required under §§261.21 and 261.23 of this chapter, after adjustment for any caseload reduction credit under §261.41 of this chapter, then the minimum basic MOE for that fiscal year is 75 percent of the State's historic State expenditures.

(3) A State that does not meet the minimum participation rate requirements in a fiscal year, as required under §§261.21 and 261.23 of this chapter (after adjustment for any caseload reduction credit under §261.41 of this chapter), but which is granted full or partial penalty relief for that fiscal year, must still meet the minimum basic MOE specified under paragraph (a)(1) of this section.

(b) The basic MOE level also depends on whether a Tribe or consortium of Tribes residing in a State has received approval to operate its own TANF program. The State's basic MOE level for a fiscal year will be reduced by the same percentage as we reduced the SFAG as the result of any Tribal Family Assistance Grants awarded to Tribal grantees in the State for that year.

§ 263.2 What kinds of State expenditures count toward meeting a State's basic MOE expenditure requirement?

(a) Expenditures of State funds in TANF or separate State programs may count if they are made for the following types of benefits or services:

(1) Cash assistance, including the State's share of the assigned child support collection that is distributed to the family, and disregarded in determining eligibility for, and amount of the TANF assistance payment;

(2) Child care assistance (see §263.3);

(3) Education activities designed to increase self-sufficiency, job training, and work (see §263.4);

(4) Any other use of funds allowable under section 404(a)(1) of the Act including:

(i) Nonmedical treatment services for alcohol and drug abuse and some medical treatment services (provided that the State has not commingled its MOE funds with Federal TANF funds to pay for the services), if consistent with the goals at §260.20 of this chapter; and

(ii) Pro-family healthy marriage and responsible fatherhood activities enumerated in part IV–A of the Act, sections 403(a)(2)(A)(iii) and 403(a)(2)(C)(ii) that are consistent with the goals at §§260.20(c) or (d) of this chapter, but do not constitute "assistance" as defined in §260.31(a) of this chapter; and

(5)

(i) Administrative costs for activities listed in paragraphs (a)(1) through (a)(4) of this section, not to exceed 15 percent of the total amount of countable expenditures for the fiscal year.

(ii) Costs for information technology and computerization needed for tracking or monitoring required by or under part IV–A of the Act do not count towards the limit in paragraph (5)(i) of this section, even if they fall within the definition of "administrative costs."

(A) This exclusion covers the costs for salaries and benefits of staff who develop, maintain, support, or operate the portions of information technology or computer systems used for tracking and monitoring.

(B) It also covers the costs of contracts for the development, maintenance, support, or operation of those portions of information technology or computer systems used for tracking or monitoring.

(b) With the exception of paragraph (a)(4)(ii) of this section, the benefits or services listed under paragraph (a) of this section count only if they have been provided to or on behalf of eligible families. An "eligible family" as defined by the State, must:

(1) Be comprised of citizens or non-citizens who:

(i) Are eligible for TANF assistance;

(ii) Would be eligible for TANF assistance, but for the time limit on the receipt of federally funded assistance; or

(iii) Are lawfully present in the United States and would be eligible for assistance, but for the application of title IV of PRWORA;

(2) Include a child living with a custodial parent or other adult caretaker relative (or consist of a pregnant individual); and

(3) Be financially eligible according to the appropriate income and resource (when applicable) standards established by the State and contained in its TANF plan.

(c) Benefits or services listed under paragraph (a) of this section provided to a family that meets the criteria under paragraphs (b)(1) through (b)(3) of this section, but who became ineligible solely due to the time limitation given under §264.1 of this chapter, may also count.

(d) Expenditures for the benefits or services listed under paragraph (a) of this section count whether or not the benefit or service meets the definition of assistance under §260.31 of this chapter. Further, families that meet the criteria in paragraphs (b)(2) and (b)(3) of this section are considered to be eligible for TANF assistance for the purposes of paragraph (b)(1)(i) of this section.

(e) Expenditures for benefits or services listed under paragraph (a) of this section may include allowable costs borne by others in the State (e.g., local government), including cash donations from non-Federal third parties (e.g., a non-profit organization) and the value of third party in-kind contributions if:

(1) The expenditure is verifiable and meets all applicable requirements in 45 CFR 92.3 and 92.24;

(2) There is an agreement between the State and the other party allowing the State to count the expenditure toward its MOE requirement; and,

(3) The State counts a cash donation only when it is actually spent.

(f)(1) The expenditures for benefits or services in State-funded programs listed under paragraph (a) of this section count only if they also meet the requirements of §263.5.

(2) Expenditures that fall within the prohibitions in §263.6 do not count.

(g) State funds used to meet the Healthy Marriage Promotion and Responsible Fatherhood Grant match requirement may count to meet the MOE requirement in §263.1, provided the expenditure also meets all the other MOE requirements in this subpart.

[73 FR 6827, Feb. 5, 2008]

§ 263.3 When do child care expenditures count?

(a) State funds expended to meet the requirements of the CCDF Matching Fund (i.e., as match or MOE amounts) may also count as basic MOE expenditures up to the State's child care MOE amount that must be expended to qualify for CCDF matching funds.

(b) Child care expenditures that have not been used to meet the requirements of the CCDF Matching Fund (i.e., as match or MOE amounts), or any other Federal child care program, may also count as basic MOE expenditures. The limit described in paragraph (a) of this section does not apply.

(c) The child care expenditures described in paragraphs (a) and (b) of this section must be made to, or on behalf of, eligible families, as defined in §263.2(b).

§ 263.4 When do educational expenditures count?

(a) Expenditures for educational activities or services count if:

(1) They are provided to eligible families (as defined in §263.2(b)) to increase self-sufficiency, job training, and work; and

(2) They are not generally available to other residents of the State without cost and without regard to their income.

(b) Expenditures on behalf of eligible families for educational services or activities provided through the public education system do not count unless they meet the requirements under paragraph (a) of this section.

§ 263.5 When do expenditures in State-funded programs count?

(a) If a current State or local program also operated in FY 1995, and expenditures in this program would have been previously authorized and allowable under the former AFDC, JOBS, Emergency Assistance, Child Care for AFDC recipients, At-Risk Child Care, or Transitional Child Care programs, then current fiscal year expenditures in this program count in their entirety, provided that the State has met all requirements under §263.2.

(b) If a current State or local program also operated in FY 1995, and expenditures in this program would not have been previously authorized and allowable under the former AFDC,

JOBS, Emergency Assistance, Child Care for AFDC recipients, At-Risk Child Care, or Transitional Child care programs, then countable expenditures are limited to:

(1) The amount by which total current fiscal year expenditures for or on behalf of eligible families, as defined in §263.2(b), exceed total State expenditures in this program during FY 1995; or, if applicable,

(2) The amount by which total current fiscal year expenditures for pro-family activities under §263.2(a)(4)(ii) exceed total State expenditures in this program during FY 1995.

[64 FR 17893, Apr. 12, 1999, as amended at 73 FR 6828, Feb. 5, 2008]

§ 263.6 What kinds of expenditures do not count?

The following kinds of expenditures do not count:

(a) Expenditures of funds that originated with the Federal government;

(b) State expenditures under the Medicaid program under title XIX of the Act;

(c) Expenditures that a State makes as a condition of receiving Federal funds under another program that is not in Part IV-A of the Act, except as provided in §263.3;

(d) Expenditures that a State made in a prior fiscal year;

(e) Expenditures that a State uses to match Federal Welfare-to-Work funds provided under section 403(a)(5) of the Act; and

(f) Expenditures that a State makes in the TANF program to replace the reductions in the SFAG as a result of penalties, pursuant to §264.50 of this chapter.

[71 FR 37481, June 29, 2006]

§ 263.8 What happens if a State fails to meet the basic MOE requirement?

(a) If any State fails to meet its basic MOE requirement for any fiscal year, then we will reduce dollar-for-dollar the amount of the SFAG payable to the State for the following fiscal year.

(b) If a State fails to meet its basic MOE requirement for any fiscal year, and the State received a WtW formula grant under section 403(a)(5)(A) of the Act for the same fiscal year, we will also reduce the amount of the SFAG payable to the State for the following fiscal year by the amount of the WtW formula grant paid to the State.

§ 263.9 May a State avoid a penalty for failing to meet the basic MOE requirement through reasonable cause or corrective compliance?

No. The reasonable cause and corrective compliance provisions at §§262.4, 262.5, and 262.6 of this chapter do not apply to the penalties in §263.8.

Appendix I

ANNUAL REPORT ON STATE MAINTENANCE-OF-EFFORT PROGRAMS: ACF-204

State _____Fiscal Year ____Date Submitted _____

Complete this form for each program for which the State claims MOE expenditures.

1. Program Name
2. Description of Major Program Activities:
3. Program Purpose(s):
4. Program Type. Program is: under the TANF program__ is a separate State/local program__
5. Description of Work Activities (Complete only if this is a separate State/local program):
6. Total State Expenditures for Program: _____
7. Total State MOE Expenditures: _____
8. Number of Families Served with MOE Funds: _____
   This figure represents: the average monthly total ____ total for the year ____
9. Eligibility Criteria:
10. Prior Program Authorization:
    Was this program authorized and allowable under prior law? Yes____ No ____
11. Total Program Expenditures in FY 1995. _____

This certifies that all families for which the State claims MOE expenditures for the fiscal year meet the State's criteria for ``eligible families."

Signature:----------

Name:----------

Title:----------

Approved OMB No. xxxx-xxxx Form ACF-204

Instruction for Completion of Form ACF-204 Annual Report on State Maintenance-of-Effort Programs

All States must complete and submit this report in accordancewith these instructions and the requirements at 45 CFR 265.9(c) onbehalf of the State agency administering the TANF Program.

Due Dates: This form must be submitted by November 14.

States must submit this report for each fiscal year. Also, eachState must complete a form for each program for which the State has claimed MOE expenditures for the fiscal year.

Distribution: The original copy (with original signatures)should be submitted to: Administration for Children and Families,Office of Family Assistance, Aerospace Building, 5th Floor, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447. An additional copy should be submitted to the ACF Regional Administrator.

General Instructions

--Round all dollar amounts to the nearest dollar. Omit cents.
--Enter State Name.
--Enter the Fiscal Year for which this report is being submitted. Enter the date that the report is being submitted.

Line Item Instructions

Line 1. Program name. Enter the name of the program.

Line 2. Description of major activities. Describe the major activities and major types of benefits and services provided under the program.

Line 3. Program purpose. Provide the purpose(s) of the programand relate this purpose to the statutory and regulatory TANF purposes (at 45 CFR 260.20).

Line 4. Program type. Put an ``X'' on the appropriate line (indicating whether the MOE expenditures are being made under the TANF program or under a separate State program.

Line 5. Work program description. If the program is a separate State program, describe the work activities (if any) provided for eligible families and the extent to which eligible families are subject to work requirements. If the work activities are the same as the TANF activities, or a subset of the TANF activities, you may include a list of the activities and a cross-reference to the definitions provide in the annual report rather than representing them. (It is not necessary to describe work activities provided under TANF because that information is provided elsewhere.) Also include information explaining whether individuals served by the program must participate in work activities and describing the extent to which such requirements apply (e.g., to which categories of recipients).

Line 6. Total amount of State expenditures. Enter the total dollar amount of State expenditures in the program during the Federal fiscal year.

Line 7. Total State MOE expenditures. Enter the total dollar amount of expenditures reported in item <greek-i>6 that are reported as State MOE expenditures.

Line 8. Number of families served with MOE funds. Enter the number of eligible families that are receiving assistance and other forms of services and supports under the program. Also, put an ``X'' on the appropriate line to indicate whether the number being provided is a report on the average monthly number of families being served or on the total number served over the course of the fiscal year.

Line 9. Eligibility criteria. Provide the eligibility criteria for families served under this program. If the eligibility criteria differ for different kinds of program benefits or activities, specify the eligibility criteria for all the major benefits and activities.

Line 10. Prior authorization. Put an ``X'' on the appropriate line to indicate whether the program was authorized and allowable under prior law. Programs that were previously authorized and allowable under prior law (i.e., under an approved State IV-A plan in effect either on Sept. 30, 1995, or August 21, 1996, at State option) are not subject to the ``new spending'' test.

Line 11. Total program expenditures in 1995. If the program was not previously authorized and allowable (i.e., if the answer on item #10 is ``No''), enter the total expenditures for the program in 1995. Only qualified State expenditures above this level may count towards the State MOE total.

Certification. The certification must be signed by an authorized official. Under the signature line, type the title of the authorized official, together with the agency name.

http://www.acf.hhs.gov/programs/ofa/policy/pi-ofa/2008/200802/pi200802.htm

QUESTIONS AND ANSWERS ON THE FINAL TANF RULE

Pro-Family Maintenance of Effort Expenditures

Q1: The list of healthy marriage promotion activities includes "education in high schools on the value of marriage, relationships skills and budgeting." There has always been a prohibition against public school education programs for MOE. Please clarify.

A1: As we stated in the preamble discussion of the final rule, a State may count State expenditures made on allowable activities under the Healthy Marriage Promotion and Promoting Responsible Fatherhood programs toward its MOE requirement, unless a limitation, restriction, or prohibition under the subpart applied. Expenditures on public education activities are generally prohibited under TANF.

Q2: Please confirm that the restriction on MOE expenditures for TANF purposes 3 and 4 to needy families will first affect States' FY 2009 expenditures for FY 2010 caseload reduction credit and not before.

A2: The final TANF rule is effective FY 2009. Therefore, the change in the scope of the pro-family MOE claiming provision begins with FY 2009 expenditures. Yes, a State's FY 2010 caseload reduction credit, which reduces its FY 2010 required work participation rate, uses FY 2009 data and thus will be the first credit to which the restriction applies.

http://www.acf.hhs.gov/programs/ofa/recovery/tanf-faq.htm#_%20id=

QUESTIONS & ANSWERS ON THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (RECOVERY ACT): TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) PROGRAM EMERGENCY FUND

Third-Party Expenditures

Q1: Under what circumstances can a State count expenditures by a third party as State spending for purposes of the Emergency Fund?

A1: A State that has appropriate agreements in place and otherwise follows Federal requirements is allowed to count third-party expenditures as maintenance-of-effort (MOE) if the expenditures are for eligible families and meet a TANF purpose. Any dollars claimed as MOE in accordance with those requirements and spent in any of the three Emergency Fund categories will count when calculating the amount of emergency funds for which the State is eligible.

We remind States that the regulations at 45 CFR 263.2(e) specify the requirements for counting third-party expenditures as MOE. Policy Announcement TANF-ACF-PA-2004-01, issued December 1, 2004, provides additional guidance concerning third-party expenditures counted as MOE, including the restriction on counting as MOE third-party expenditures used to satisfy a cost-sharing requirement of another Federal program.

Q2: If a State claims the value of third-party as MOE in FY 2009 or FY 2010, will ACF adjust Emergency Fund base-year expenditure data to include similar third-party spending if the State did not claim such expenditures as MOE in the base year?

A2: Yes. HHS has the authority under the Recovery Act to adjust caseload and expenditure data to ensure that the respective request-year and base-year quarters are comparable "with respect to the groups of families served and types of aid provided." This adjustment language is intended to ensure that a jurisdiction that has made changes to the structure of its program or funding sources has neither a disadvantage nor an advantage because of those changes. In general, we will make any adjustments to quarterly base-year data rather than request quarters.

If the State claims third-party MOE in a request quarter but did not claim those third-party expenditures as MOE in the corresponding quarter of a base year, we will adjust the base-year data to include comparable expenditures made by that third party in the base year. We will make these adjustments because the Emergency Fund is intended to reimburse jurisdictions for the *increase* in expenditures in the category; base-year expenditures by a third party factor into calculating the amount of the increase. We will adjust the data whether the third party providing services is another governmental agency or a non-governmental organization. The State must include such third party data in its application for emergency funds.

To illustrate the sort of data that HHS needs to make this adjustment, suppose a State establishes an agreement in FY 2009 with ABC community group to count the funds that ABC expends in its emergency housing program as MOE. The State complies with all Federal requirements to count those expenditures as MOE and correctly includes this program in its State plan as a non-recurrent, short-term benefit. In applying for emergency funds, the State should provide information on the expenditures that ABC made in FY 2007 and FY 2008 for TANF-eligible families in the emergency housing program so that we can fund the increase in the expenditure category in FY 2009.

Q3: If HHS adjusts base-year data for third-party expenditures, does the State need to revise its MOE claiming to include those expenditures in FY 2007 or FY 2008?

A3: No. The point of such an adjustment is to account for the fact that those expenditures were *not* MOE expenditures in the base year.

Q4: Is it permissible for a foundation or other private entity to donate funds to a State that it could use as part of its increased expenditures in one of the three Emergency Fund categories?

A4: Yes, a third party could make an unrestricted cash donation to a State's general treasury. Such a cash donation that a State subsequently spends as MOE in one of the three Emergency Fund categories must comport with applicable Federal requirements, including the requirements of 45 part 92 and 45 CFR 263.2(e).

New Spending Test

Q1: Does the "new spending test" apply to maintenance-of-effort expenditures (MOE) that come from non-governmental, third-party organizations?

A1: The TANF rules (at 45 CFR 263.5) include a provision known as the "new spending test," which is intended to ensure that States maintain a meaningful financial commitment to TANF. Adopted as part of the original TANF rules in 1999 to implement the statutory provision contained in the 1996 law, the provision prevents a State from counting toward the maintenance-of-effort (MOE) requirement expenditures that were not part of the State's IV-A (AFDC and related) programs unless they are higher than the State's spending on that program in FY 1995.

We have determined that this provision does not apply to funds expended by non-governmental entities that a State counts as MOE. It only applies to State or local governmental programs. Thus, if a State wishes to include third party expenditures among its expenditures for purposes of qualifying for the Emergency Contingency Fund, the third party expenditures need not be in excess of a FY 1995 level of spending.

Q2: How does the "new spending test" apply to a program when it is funded with a mix of State or local government expenditures and non-governmental, third-party expenditures?

A2: If the program existed in FY 1995 and was not part of the authorized and allowable IV-A program activities, then the new spending test does apply. In that case, the State would have to

factor out the non-governmental expenditures from the FY 1995 base and current year expenditures. The new spending calculation would apply to the remaining State or local governmental expenditures, but would not apply to non-governmental expenditures.

Purchase of Gift Cards

Q1: Can a TANF jurisdiction purchase gift cards for TANF recipients?

A1: Yes, providing gift cards as an award to TANF recipients is a permissible use of Federal TANF funds (including TANF related ARRA funds) and State maintenance-of-effort (MOE) funds so long as the expenditure can be justified as meeting one or more of the statutory purposes of the TANF program as described in section 401 of the Social Security Act. Depending on their purpose, gift cards may be considered as basic assistance or non-assistance (including as a non recurrent short-term benefit provided that the regulatory requirements at 45 CFR 260.31(b)(1) for States or 45 CFR 286.10(b)(1) for Tribes are satisfied) depending on the purpose of the cards. Further, TANF jurisdictions must adhere to their disclosure and confidentiality requirements with regard to the sharing of TANF case information with retailers.

Q2: At what point do expenditures for gift cards occur?

A2: For TANF program purposes, the expenditure occurs at the time the gift cards are purchased from a retailer. However, any unredeemed portion of a gift card must be returned to the TANF agency and treated as a rebate or credit (see 2 CFR Part 220 Appendix A, C5). The returned amount must be spent on an allowable TANF purpose. These requirements will necessitate an agreement between the TANF jurisdiction and the retailer involving the return of any unredeemed amounts (and the time frame for doing so) to the TANF jurisdiction. The fiscal control and accounting procedures explained in the regulations at 45 CFR 92.20 as well as the audit requirements at 45 CFR 92.26 will apply to these expenditures. TANF jurisdictions must exercise sufficient oversight to ensure that unredeemed amounts on these gift cards are identified and documented.

Note: We understand that not all businesses will be able to meet the requirement mandating the return of unredeemed amounts, and we recognize that in some cases, this will preclude purchasing gift cards from them, but we have concluded that this policy is needed in order to ensure that program funds are actually spent for the purposes for which they're intended under the statute.

Q3: If the retailer of the gift cards agrees to donate a portion of the card's value to the State TANF agency, can the donated amount be treated as a third-party contribution to the State TANF agency's MOE requirement?

A3: Yes, the retailer's donation can be treated as a third-party in-kind contribution to the State TANF agency's MOE requirement provided that the regulatory requirements at 45 CFR 92.3, 92.24, and 263.2(e) are met. A key feature of these requirements is the need to establish a documented agreement between the State TANF agency and the retailer that allows the State

TANF agency to count the value of the retailer's contribution toward its MOE requirement. Further, the State TANF agency will count the retailer's donation to the value of the gift cards as an MOE expenditure at the time the gift cards are actually purchased by the State TANF agency.