

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### 45 CFR Parts 286 and 287

RIN 0970-AB78

#### Tribal Temporary Assistance for Needy Families Program (Tribal TANF) and Native Employment Works (NEW) Program

**AGENCY:** Administration for Children and Families, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Administration for Children and Families is issuing final regulations to implement key tribal provisions of the new welfare block grant program enacted in 1996—the Temporary Assistance for Needy Families, or TANF program and the new tribal work activities program—the Native Employment Works, or NEW Program. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104-193, established the Tribal TANF and NEW Programs. Subsequent technical changes were enacted by the Balanced Budget Act of 1997, Public Law 105-33. The TANF block grant program replaces the national welfare program known as Aid to Families with Dependent Children (AFDC) and the related programs known as the Job Opportunities and Basic Skills Training Program (JOBS) and the Emergency Assistance (EA) program.

These Final Rules reflect new Federal, Tribal, and State relationships in the administration of welfare programs; a new focus on moving TANF recipients into work; and a new emphasis on program information, measurement, and performance. They also reflect the Administration's commitment to regulatory reform.

**EFFECTIVE DATE:** These Final Rules are effective June 19, 2000.

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Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 between 8 a.m. and 7 p.m. eastern time.

**SUPPLEMENTARY INFORMATION:** On July 22, 1998, ACF published in the **Federal**

**Register** (63 FR 39365-39429) a Notice of Proposed Rulemaking (NPRM) that covered key Tribal TANF provisions of the new welfare block grant program, known as Temporary Assistance for Needy Families, or TANF. In addition, the NPRM covered key provisions of the Native Employment Works (NEW) program. We provided an extended 120-day comment period which ended on November 20, 1998. We offered commenters the opportunity to submit comments by mail or electronically via our web site. A number of commenters took advantage of this electronic access, but the majority of the comments we received were through the mail.

#### Comment Overview

We received an estimated 400 comments on the NPRM from 46 separate commenters. The largest number of comments came from tribal governments, followed by state agencies, and tribal organizations. For several reasons, we decided not to attempt precise numerical counts of the comments received. First, several comments had multiple signatories and others provided general endorsements of the comments of other parties. Also, commenters presented their views of overlapping and cross-cutting issues in many different ways; for example, some commented generically about major provisions of the proposed rule, while others provided specific suggestions about alternative approaches, words, and phrases. The diversity in the approach of commenters made precision in tallying comments impossible. Nevertheless, we are confident that this preamble accurately conveys the scope and nature of the comments received.

In the preamble to the proposed rule we discussed our general approach to some of the major cross-cutting issues up front, prior to the section-by-section analysis. Many of the commenters organized their comments in the same way, addressing the issues thematically instead of following the specific structure of the rule. This preamble follows that same basic format, presenting a separate discussion of cross-cutting issues apart from the separate section-by-section analysis (e.g., consultation, child support, plan format).

The discussion of data collection and reporting issues is presented in several places—the preambles for part 286 (Tribal TANF) and part 287 (NEW), and the preamble discussion entitled the “Paperwork Reduction Act” in the “Regulatory Impact Analyses” section of the preamble.

We believe that structuring the preamble this way enables us to provide

a clearer framework for the specific regulatory provisions and to represent the commenters' concerns most accurately.

We appreciate the time and attention that commenters gave to reviewing the NPRM and preparing their comments, and we have reviewed and considered each. As a result of their efforts, we have been able to resolve certain technical and administrative issues, incorporate numerous substantive revisions to the proposed rule, make key clarifications of policy goals, and consider alternative regulatory approaches.

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#### I. Overview: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996

On August 22, 1996, President Clinton signed “The Personal Responsibility and Work Opportunity Reconciliation Act of 1996” (PRWORA)

into law. The first title of this new law (Pub. L. 104–193) establishes a comprehensive welfare reform program that is designed to change the nation's welfare system. The new program is called Temporary Assistance for Needy Families, or TANF, in recognition of its focus on moving recipients into work and time-limiting assistance.

PRWORA repeals the existing welfare program known as Aid to Families with Dependent Children (AFDC), which provided cash assistance to needy families on an entitlement basis. It also repeals the related programs known as the Job Opportunities and Basic Skills Training program (JOBS) and Emergency Assistance (EA).

The new law reflects widespread, bipartisan agreement on a number of key principles:

- Welfare programs should be designed to help move people from Welfare-to-Work.
- Welfare should be a short-term, transitional experience, not a way of life.
- Parents should receive the child care and the health care they need to protect their children as they move from Welfare-to-Work.
- Child support programs should become tougher and more effective in securing support from absent parents.
- Because many factors contribute to poverty and dependency, solutions to these problems should not be “one size fits all.” The system should allow States, Indian tribes, and localities to develop diverse and creative responses to their own problems.
- The Federal government should focus less attention on eligibility determinations and place more emphasis on program results.

After more than two years of discussion and negotiation, PRWORA emerged as a bipartisan vehicle for comprehensive welfare reform. As President Clinton stated in his remarks as he signed the bill, “\* \* \* legislation provides an historic opportunity to end welfare as we know it and transform our broken welfare system by promoting the fundamental values of work, responsibility, and family.” Under the new statute, TANF funding and assistance for families comes with new expectations and responsibilities. Adults receiving assistance are expected to engage in work activities and develop the capability to support themselves and their families before their time-limited assistance runs out.

The new law provides federally-recognized Indian tribes, or consortia of such Tribes, the opportunity to apply for funding under section 412 of the Social Security Act (or the Act), as

amended by PRWORA, to operate their own TANF programs beginning July 1, 1997.

The law gives States and federally recognized Indian tribes the authority to use Federal welfare funds “in any manner that is reasonably calculated to accomplish the purposes” of the new program. Those purposes are: (1) To provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives; (2) to end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; (3) to prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and (4) to encourage the formation and maintenance of two-parent families.

Indian tribes that choose to administer a Tribal TANF program have been given broad flexibility to set TANF eligibility rules and to decide what benefits are most appropriate for their service areas and populations. Tribes who take on the responsibility for administering a TANF program will be expected to assist recipients making the transition to employment. Tribal TANF grantees also will be expected to meet work participation rates and other critical program requirements in order to avoid penalties and maintain their Federal funding. In meeting these expectations, Tribes need to examine the needs of their service areas and service populations, identify the causes of long-term underemployment and dependency, and work with families, communities, businesses, and other social service agencies in resolving employment barriers. TANF gives Tribes the flexibility they need to respond to such individual family needs. However, in return, it expects Tribes to move towards a strategy that provides appropriate services for needy families. PRWORA offers States and Tribes an opportunity to try new, far-reaching changes that can respond more effectively to the needs of families within their own unique environments. PRWORA also redefines the Federal role in administration of the nation's welfare system. It limits Federal regulatory and enforcement authority, but gives the Federal government new responsibilities for tracking the performance of States and Tribes.

In addition to establishing the Tribal TANF program, PRWORA authorizes funding, to the former Tribal JOBS grantees, for a tribal program “to make work activities available.” Based upon tribal recommendations, we have designated this tribal work activities

program as the Native Employment Works (NEW) program. Tribes are encouraged to focus the NEW Program on work activities and on services which support participation in work activities. In addition, Tribes are encouraged to create and expand employment opportunities when possible.

This new welfare reform legislation not only gives Tribes new opportunities, as in the case of the TANF program, and continued responsibilities, as in the case of the NEW Program, but it also dramatically affects intergovernmental relationships. It challenges Federal, Tribal, State and local governments to foster positive changes in the culture of the welfare system. It transforms the way agencies do business, requiring that they engage in genuine partnerships with each other, community organizations, businesses, and needy families.

## II. Regulatory Framework

### A. Pre-NPRM Consultation Process

In the spirit of both regulatory reform and the government-to-government relationship between Tribes and the federal government, we implemented a broad consultation strategy prior to the drafting of the Notice of Proposed Rulemaking (NPRM). In the preamble to the NPRM we briefly discussed this consultation strategy. However, we received many comments from Tribes questioning whether we had engaged in effective or meaningful Tribal consultation in the drafting of the proposed regulations. We are therefore taking this opportunity to further explain our consultation strategy.

In May 1998 President Clinton signed Executive Order 13084, which provides for “an effective process to permit elected officials and other representatives of Indian Tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.” In recognizing the unique relationship which the federal government and Tribal governments share, this consultation process allows agencies to develop meaningful consultation opportunities with the Tribes in the development of regulatory policies which directly affect them.

Accordingly, when PRWORA was signed on August 22, 1996 we began internal discussions on how best to obtain input from Tribes on the content of the regulations. We decided to take a multi-pronged approach, which was designed to ensure that Tribes would be provided opportunities at various times

throughout the regulation-drafting process to comment and provide input into the proposed regulations.

In early 1997, ACF Regional Offices sent letters out to all eligible tribal governments seeking comments and input on the TANF and NEW regulations. These offices then began to conduct regional Pre-NPRM Tribal TANF/NEW consultation meetings. These Regional meetings were held to discuss the PRWORA law and its potential impact on the Tribes, and to obtain specific information on what should be in the proposed regulations. Representatives from many Tribes attended these on-site consultations, providing us with much useful information. Concurrent with those meetings, we mailed a questionnaire to all federally recognized Tribes in the lower forty-eight states, as well as all Alaska Native entities eligible to operate a TANF and/or NEW Program, asking them to respond to specific questions in the areas of TANF and/or NEW implementation, plan content, penalties, work participation requirements, time limits, data reporting, and special provisions. We received many letters back from Tribes that provided valuable information and insights to us as we began to draft the regulations.

As we drafted the regulations we continued to seek tribal input about potential tribal TANF operations. Several meetings were held in Washington, D.C. with advocates, tribal representatives, national tribal organizations, and other stakeholders. Although these meetings included agenda items in addition to TANF, we took every available opportunity to include separate sessions where individuals were specifically invited to discuss what should be in the proposed rule. Similarly, Regional Offices included TANF discussions in meetings and discussions which they held throughout their regions. Finally, Tribes, tribal organizations, and other stakeholders had the opportunity to provide specific written comments in response to the published NPRM. The comments received were both valuable and appreciated.

Although we were unable to meet individually with every Tribe and tribal organization, we believe that we made our best and concerted effort of consulting with and involving the Tribes in the development of these regulations. We provided an effective process for the provision of meaningful and timely input into both the development and revision of the regulations. As you review the final Tribal TANF regulation, you will see the fruits of that consultation—many of

these comments have brought about substantive changes to the Final Rule, changes which we believe will have a positive effect on the provision of Tribal TANF services in Indian country.

#### *B. Related Regulations*

There is an important relationship between this rulemaking and the Final TANF Rule (64 FR 17720, April 12, 1999) generally applicable to State TANF programs. Tribal decisions on whether to elect to administer a Tribal TANF program will depend on a number of factors, including the nature of services and benefits that will be available to tribal members under the State TANF program. Thus, Tribes have a direct interest in the regulations governing State TANF programs.

Tribes also have an interest in these regulations because, while the statute allows Tribes to negotiate certain program requirements, such as work participation rates and time limits, it subjects tribal programs to the same data collection and reporting requirements as States. These requirements are found at part 265 of the Final TANF Rule (64 FR 17900) and appendices.

A number of States and Tribes have inquired whether a State can count contributions made to an Indian tribe with an approved Tribal Family Assistance Plan toward the State's MOE requirement. On June 2, 1997, the Office of Community Services and the Office of Family Assistance jointly issued a Policy Announcement, TANF-ACF-PA-2 in this regard. This policy announcement provides that State funds paid to an Indian tribe with an approved Tribal Family Assistance Plan may meet the definition of a qualified State expenditure for the purpose of a State's required MOE, if the funds are expended for: (1) "Eligible families," families who meet the income and resource standards established by the State; and (2) cash assistance, child care assistance, certain educational activities, or any other use of funds allowable under section 404(a)(1) of the Act, i.e., any use that is reasonably calculated to accomplish the purpose of the TANF program. The requirements contained in TANF-ACF-PA-2 remain in effect and fit within the provisions of 45 CFR 263.2 relating to the kind of expenditures that count toward meeting a State's basic MOE requirement, and funds spent accordingly would be allowable to satisfy the MOE requirements. In addition, the definition of "eligible families" limits MOE expenditures to families that include a child living with a parent or other adult care relative or to pregnant women.

In order for welfare reform to succeed in Indian country, it is important for State and Tribal governments to work together on a number of key issues, including data exchange and coordination of services. We remind States that Tribes have a right under law to operate their own programs. States should cooperate in providing the information necessary for Tribes to do so. Likewise, Tribes should cooperate with States in identifying tribal members and tracking receipt of assistance.

PRWORA also changed other major programs administered by ACF, the Department, and other Federal agencies that may significantly affect a State or Tribe's success in implementing welfare reform. For example, title VI of PRWORA repealed the child care programs that were previously authorized under title IV-A of the Social Security Act. In their place, it provided two new sources of child care funding (which we refer to collectively as the Child Care and Development Fund). These funds go to the Lead Agency that administers the Child Care and Development Block Grant program. A major purpose of the increases in child care funding provided under PRWORA is to assist low-income families in their efforts toward self-sufficiency. We issued Final Rules covering the Child Care and Development Fund on July 24, 1998 (see 63 FR 39935).

In 1998, the Office of Child Support Enforcement (OCSE), Native American Program, conducted a series of six Nation-to-Nation consultations with Indian tribes, tribal organizations and other interested parties to obtain tribal input prior to drafting the regulations for direct funding to Tribes and tribal organizations as authorized by section 455(f) of the Social Security Act. OCSE is drafting those regulations and expects that the NPRM will be published in the **Federal Register** by late summer.

The Secretary of Labor issued interim Final Rules on section 5001(c) of Public Law 105-33, regarding Welfare-to-Work (WtW) grants for Tribes, on November 18, 1997. A copy of these rules is available on the Internet at <http://www.wdsc.org/dinap/dinapw2w/ta.html>. General information on the Department of Labor's Indian and Native American WtW program is available at <http://www.wdsc.org/dinap/dinapw2w/index.html>.

We encourage you to look in the **Federal Register** for actions on these related rules in order to understand the important relationships among these programs in developing a comprehensive strategy that can provide

support to all families that are working to maintain their family structure and become self-sufficient.

### C. Statutory Context

These Final Rules reflect PRWORA, as enacted, and amended by Pub. L. 105–33 and Pub. L. 105–200. Pub. L. 105–33 created the new Welfare-to-Work (WtW) program, made a few substantive changes to the TANF program, and made numerous technical corrections to the TANF statute. Under section 403 of The Child Support Performance and Incentives Act of 1998, Pub. L. 105–200, Congress added a “rule of interpretation” to section 404(k)(3) of the Social Security Act, which indicates that the provision of transportation benefits under section 3037 of the Transportation Equity Act to an individual who is not otherwise receiving TANF assistance would not be considered assistance. We have made a conforming change to our definition of assistance at § 286.10 to reflect this policy.

### D. Regulatory Reform

In its latest *Document Drafting Handbook*, the Office of the Federal Register supports the efforts of the National Partnership for Reinventing Government and encourages Federal agencies to produce more reader-friendly regulations. In drafting the proposed and Final Rules, we paid close attention to this guidance and worked to produce a more readable rule. Individuals who are familiar with our previous welfare regulations should notice that this package incorporates a distinctly different, more readable style. We also provided electronic access to the document and gave readers the option to submit their comments electronically. We received a number of positive comments about how the NPRM was written and the electronic access.

Based in part on the positive reaction to the proposed rule, and in the spirit of facilitating understanding, we decided to retain much of the NPRM preamble discussion. We believe it will be useful for some readers in providing the overall context for the final regulations. However, where we are changing our policy in the Final Rule, or the context has changed since we issued the NPRM, we have made appropriate changes to the preamble. We also exercised some editorial discretion to make the discussion more succinct or clearer in places. Wherever we made significant changes in policy, the preamble notes and explains those changes.

In the spirit of providing access to information, we included draft data collection and reporting forms as appendices to the proposed rules even though we did not intend to publish the forms as part of the Final Rule. We thought that the inclusion of the draft forms would expand public access to this information and make it easier to comment on our data collection and reporting plans.

### E. Scope of This Rulemaking

Because there are no existing Tribal TANF or NEW regulations, this package is intended to cover the Final Rules as they relate to the provisions of the Tribal TANF and NEW Programs (including definitions of common and frequently used terms). While this decision has resulted in a large rule, we think it has enabled us to develop a more coherent regulatory framework and provide readers an opportunity to look at the many interconnected pieces at one time.

### F. Federal Programs To Assist Families To Achieve Self-Sufficiency

#### Child Care

Federal Child Care and Development Fund (CCDF) grants enable Tribes to provide child care subsidies to low-income Indian families so they can work, attend training or return to school. The importance of providing Federal support for child care stems from increased emphasis on transitioning welfare recipients to work and enabling low-income working families to remain in the workforce. Obtaining affordable and safe child care is widely recognized as a major barrier that keeps families on welfare and out of the workforce. Parents are more likely to obtain work and remain in the workforce if child care is affordable, stable, conveniently located and of good quality. Child care helps parents reach and maintain economic self-sufficiency. Quality child care also plays an important role in children's healthy development and preparation for school.

The Child Care and Development Fund (CCDF), as authorized by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), assists low-income families and those transitioning off welfare to obtain child care so they can work or attend training/education.

The CCDF brings together four Federal child care subsidy programs and allows States and Tribes to design a comprehensive, integrated service delivery system to meet the needs of low-income working families. The Child

Care and Development Block Grant Act (CCDBG), as amended by PRWORA, now permits tribal grantees to directly administer child care funds related to the now repealed Title IV–A programs (At-Risk, Transitional and AFDC child care), in addition to operating CCDBG programs. The amended CCDBG Act also permits tribal grantees to use funds for construction and renovation purposes.

The Administration for Children and Families (ACF) Child Care Bureau is responsible for oversight of the CCDF. Two percent of CCDF funding is earmarked for tribal child care programs. In fiscal year (FY) 1999, Tribes received over \$62 million from the CCDF, more than doubling previous Federal grant amounts made directly to Tribes for child care prior to PRWORA. (See <http://www.acf.dhhs.gov/programs/ccb> for more information.)

### Programs Promoting Work

This Administration has repeatedly shown its commitment to promoting the work objectives of this new law. Before and since the legislation was passed, the President and the Administration have worked very hard to ensure that Congress passed strong work provisions and provided adequate child care funding and other program supports to help families making the transition from Welfare-to-Work. These include, the Welfare-to-Work program (WtW), administered by the Department of Labor, the Welfare-to-Work Tax Credit enacted in the Balanced Budget Act, Welfare-to-Work housing vouchers included in the Fiscal Year 1999 budget for the Department of Housing and Urban Development, and Job Access transportation grants.

WtW provides grants to Indian tribes, States, localities, and other grantees to help them move long-term welfare recipients and certain noncustodial parents into lasting, unsubsidized jobs. The Welfare-to-Work Tax Credit provides a credit equal to 35 percent of the first \$10,000 in wages in the first year of employment, and 50 percent of the first \$10,000 in wages in the second year, to encourage the hiring and retention of long-term recipients. (It complements the Work Opportunity Tax Credit, which provides a credit of up to \$2,400 for the first year of wages to employers who hire long-term welfare recipients.)

The Welfare-to-Work Housing Voucher Program provides tenant-based Section 8 housing assistance to help eligible families make the transition from welfare to work. In FY 1999, HUD awarded 50,280 vouchers to communities, including two Tribes, that

created cooperative efforts among their housing, welfare and employment agencies. (Only Tribes with Section 8 housing programs were eligible to apply. You can find additional information on this initiative at <http://www.hud.gov/native>.)

The Transportation Equity Act for the 21st Century (TEA-21) authorizes \$750 million over five years for competitive grants to communities to develop innovative transportation activities to help welfare recipients and other low-income workers (*i.e.*, those with income up to 150 percent of poverty) get to work. For FY 1999, the Department of Transportation awarded 171 grants totaling \$71 million, including grants to several Tribes. You can find additional information at <http://www.fta.dot.gov/>. You can find more information about the Administration's initiatives at <http://www.whitehouse.gov/WH/Welfare>.

The President has also challenged America's businesses, its large nonprofit sector, and the executive branch of the Federal government to help welfare recipients go to work and succeed in the workplace.

In May 1997, the President helped to launch a new private-sector initiative to promote the hiring of welfare recipients by private-sector employers. The Welfare-to-Work Partnership, which started with 105 participating businesses, now includes over 12,000 businesses that have hired over 410,000 welfare recipients. This partnership has produced a variety of materials to support businesses in these efforts, including the "Blueprint for Business" hiring manual and "The Road to Retention," a report of companies that have achieved higher retention rates for former welfare recipients. You can find information about the Welfare-to-Work Partnership at <http://www.welfaretowork.org>.

The Small Business Administration (SBA) is addressing the unique and vital role of small businesses, which account for over one-half of all private-sector employment. It is helping small businesses make connections to job training organizations and job-ready welfare recipients. SBA is also providing training and assistance to Tribal welfare recipients who wish to start their own businesses through its Tribal Business Information Centers. Businesses can receive assistance through SBA's 1-800-U-ASK-SBA and through its network of one-stop centers, one-stop capital shops, and district offices. Information on SBA's Welfare-to-Work initiative (WtW) and other activities are available through the SBA home page at <http://www.sba.gov>.

In addition, the Vice President has developed a coalition of national civic, service, and faith-based groups committed to helping former welfare recipients succeed in the workforce—by providing mentoring, job training, child care, and other supports. On March 8, 1997, the President directed all Federal agencies to submit plans describing the efforts they would make to respond to this challenge. Under the Vice President's leadership, Federal agencies committed to hiring at least 10,000 welfare recipients over the next four years. Agencies have already fulfilled this commitment—nearly two years ahead of schedule. (You can find additional information on this effort at <http://www.welfaretowork.fed.gov>.)

#### *G. Applicability of the Rules*

As we indicated in the NPRM, a Tribe may operate its TANF and/or NEW Program under a reasonable interpretation of the statute prior to publication of the Final Rules. Thus, in determining whether a Tribe is subject to a penalty under TANF or a disallowance under the NEW Program, we would not apply regulatory interpretations retroactively. We have retained this basic policy, but modify it to clarify that the "reasonable interpretation" standard applies until the effective date of these Final Rules. Tribes remain bound by any Policy Announcements issued by ACF, including those issued in advance of the final regulations, both prior to and after the effective date of these regulations. You can find additional discussion of this policy at Part IV.C below, as well as in § 286.215 of the preamble.

### **III. Principles Governing Regulatory Development**

#### *A. Tribal Flexibility*

In the conference report to PRWORA, Congress stated that the best welfare solutions come from those closest to the problems, not from the Federal government. Thus, the legislation provides Tribes with the opportunity to reform welfare in ways that work best to serve the needs of their service areas and service populations. It gives Tribes the flexibility to design their own programs, define who will be eligible, establish what benefits and services will be available, and develop their own strategies for achieving program goals, including how to help recipients move into the work force.

To ensure that our rules support the legislative goals of PRWORA, we are also committed to gathering information on how Tribes are responding to the new opportunities available to them. We

reserve the right to revisit some issues, either through proposed legislation or regulation, if we identify situations where these rules are not furthering the objectives of the Act.

#### *B. Regulatory Authority*

Early input from the consultations with Indian tribes suggested that, consistent with the intent of Congress to provide for program flexibility, we should limit the extent to which we regulate Tribal TANF and NEW Programs. However, Congress gave us more authority to regulate the Tribal TANF and NEW Programs than State TANF programs. Unlike the process for reviewing and accepting plans for State TANF, the statute requires us to approve Tribal TANF plans. While we propose maximum flexibility in program design and procedure, we believe it is important for us to set forth, in regulations, the process for the submission and approval of plans and other program requirements.

Tribal TANF programs must meet minimum work participation rates, and Tribal TANF recipients are subject to maximum time limits for the receipt of assistance as well as penalties for failure to meet program requirements. While these requirements are specified in PRWORA for State TANF programs, they are not specified for Tribal TANF programs, and we will negotiate these with each tribal program. Although the proposed rules suggested flexibility in how these requirements could be established, we believe that it is important for us to lay out, in regulations, the criteria that we will use.

Although Tribes that operate TANF programs are subject to some of the same statutory requirements as are States, there are some requirements that do not apply to Tribes, such as the prohibitions in section 408. Since the statute does not always treat Tribes and States in the same way, we believe the Tribal TANF regulations should reflect the distinctions where appropriate.

#### *C. Accountability for Meeting Program Requirements and Goals*

The new law gives Tribes flexibility to design their TANF programs in ways that strengthen families and promote work, responsibility, and self-sufficiency. At the same time, however, TANF reflects a bipartisan commitment to ensuring that State and Tribal programs support the goals of welfare reform. To this end, the statutory provisions on data collection and penalties are crucial because they give us the authority we need to track what is happening to needy families and children under the new law, measure

program outcomes, and promote key objectives.

#### IV. Discussion of Cross-Cutting Issues

##### A. Child Support

One of TANF's purposes is to provide assistance to needy families so that children may be cared for in their own homes or the homes of relatives. Another is to end the dependence of needy parents on government benefits by promoting job preparation, work, marriage, and parental responsibility. A third is to prevent and reduce the incidence of out-of-wedlock pregnancies and to encourage the formation and maintenance of two-parent families. Child support enforcement provides an important means of achieving all of these goals for Indian families and children. In the NPRM, we solicited comments on the subject of conditioning eligibility for receipt of Tribal TANF assistance on cooperation with child support enforcement efforts. We received very few comments on this issue. The comments we received indicated that the decision on conditioning eligibility for Tribal TANF assistance on either cooperation or assignment of child support to the Tribe should be left to the individual Tribes or to tribal-state negotiations.

We have considered all comments received on the issue and believe that conditioning Tribal TANF eligibility on cooperation with child support enforcement agencies is consistent with assisting needy families achieve self-sufficiency. Section 286.75(a)(8) provides that, at their option, Tribal TANF programs may require cooperation with IV-D agencies as a prerequisite to receipt of TANF assistance. Good cause and other exceptions to cooperation shall be defined by the Tribal TANF program.

In addition, at § 286.155 we establish the rule that Tribal TANF programs may, at their option, condition eligibility for TANF assistance on assignment of child support to the Tribe. The statute does not address conditioning eligibility for Tribal TANF on the assignment of child support and we have determined that Tribes may require assignment as a condition of eligibility for Tribal TANF. If a Tribe elects this option, it may be approved only if the TFAP addresses the following to the satisfaction of the Secretary: (1) how the Tribe will use assigned support to further their TANF programs and, (2) procedures by which the Tribe will pay to the family any amount of child support collected and assigned to the Tribe that is in excess of

the amount of TANF assistance provided to that family.

Section 286.155(b)(1) means that a Tribe may not retain assigned support in excess of TANF assistance. Any such excess must be passed on to the family. Section 286.155(b)(2) requires that assigned child support retained by the Tribe be used for TANF purposes under the TFAP. The TFAP should specify how assigned support will be used.

Until ACF issues regulations regarding the direct funding of Tribal child support enforcement programs, most child support will continue to be collected by States. States will continue to distribute amounts collected in accordance with Federal requirements and may, consistent with those requirements, retain amounts assigned to the State as a condition of receipt of AFDC and/or State TANF assistance. Amounts in excess of the amount that may be retained by the State would normally be passed through to the family. However, States may remit such amounts, if assigned to a Tribe with respect to Tribal TANF, to the Tribe within the required disbursement time frames.

As we stated above, to ensure that our rules support the legislative goals of PRWORA, we are committed to gathering information on how Tribes are responding to the new opportunities available to them to promote self-sufficiency. We intend to revisit the issue of child support enforcement as it relates to Tribal TANF programs, either through proposed legislation or regulation, if we identify situations where the Final Tribal TANF rules are not furthering the objectives of the Act.

Implementation of child support enforcement in Indian country is key to achieving self-sufficiency. The Federal government has a major role in child support enforcement (particularly with regard to the operation of the Federal Case Registry, National New Hire Directory and the expanded Federal Parent Locator Service), the continuing Federal interest in the effectiveness of child support collections, and the continued Federal financial commitment, under TANF, for needy families whose children do not have access to parental support.

##### B. Plan Format

In the NPRM, we solicited comments on the subject of whether ACF should develop a format or preprint for TANF. We received few comments on this issue. We have decided that, although all plans have common required elements, there is no need to prescribe the format which a Tribe should use to develop its plan. A Tribe may therefore

use a format of its choosing, as long as all required statutory and regulatory elements are addressed.

##### C. Approved Plans Which Do Not Meet the Terms of the Final Rule

The Supreme Court has held that the Administrative Procedures Act (5 U.S.C. 551 et seq.) prohibits regulations from having retroactive effect because section 551 defines a rule as agency action having "future effect." We acknowledge that there will inevitably be Tribal TANF programs that are currently operating in a manner that is inconsistent with the Final Rule and that will need time to amend their plans and their operations to bring programs in line with the final regulations. Between publication of the final Tribal TANF and NEW regulations and the effective date of the regulations, we will permit Tribal TANF and NEW Programs to continue to operate under a "reasonable interpretation" of the statute and applicable Policy Announcements, with the understanding that as of the effective date ALL Tribal TANF and New programs must comply with the final regulations or face penalties for non-compliance. The time frames for submitting amendments at § 286.165 applies; any amendments must be submitted at least 30 days prior to the effective date of the final regulations (i.e., 90 days from the date of publication of the Final Rule).

##### D. Other General Issues

The following is a discussion of all the comments we received regarding the proposed rule, as well as a discussion of all the regulatory provisions which we have changed. In most cases the discussion follows the order of the regulatory text, addressing each part and section in turn. However, we incorporated the discussion regarding any changes to the "definitions" section in the appropriate topic area discussion section. For areas where we received no comments, and where no changes have been made to the draft language, we have included the preamble discussion from the NPRM. The entire regulatory text is included in the Final Rule.

#### V. Part 286—Tribal TANF Program Provisions

##### Subpart A—General Tribal TANF Provisions (§§ 286.1–286.15)

###### Section 286.1 What Does This Part Cover?

This part contains our Final Rule for the implementation of section 412 of the Social Security Act, except for section 412(a)(2) which is covered in part 287.

Section 412 allows federally-recognized Indian tribes, certain specified Alaska Native organizations and Tribal consortia to submit plans for the administration of a Temporary Assistance for Needy Families (TANF) program.

In this Final Rule, we have tried to retain the flexibility provided by the statute to the Tribal Family Assistance program. At the same time, we recognize the need to set forth the general rules that will govern the program.

In addition, in recognition of the unique legal relationship the United States has with Tribal governments, these regulations will be applied in a manner that respects and promotes a government-to-government relationship between Tribal governments and the United States government, Tribal sovereignty, and the realization of Indian self-governance.

In this Final Rule the terms "Tribal Family Assistance program" or "TFAP" and "Tribal TANF program" are used interchangeably.

#### *Section 286.5 What Definitions Apply to This Part?*

This section of the Final Rule includes definitions of the terms used in Part 286. Where appropriate, it also includes cross-references which direct the reader to other sections or subparts of the Final Rule for additional information.

In drafting this section of the Final Rule, we chose not to define every term used in the statute and in these final regulations. We understand that excessive definitions may unduly and unintentionally limit Tribal flexibility in designing programs that best serve their needs.

For example, we have not defined "Indian family" or "service population." Each Tribe administering its own Tribal TANF program is permitted by the statute to define its service population. Because funding for the Tribal TANF program is based on State expenditures of Federal funds on Indian families during fiscal year 1994, we believe the Tribal TANF program was intended to serve primarily Indian families. However, in order to provide flexibility to Tribes and States, Tribes may define service population and have the option of including only a portion of the Tribal enrollment, only Tribal members, all Indians, or even non-Indians residing in the service area. It will be up to each Tribe submitting a TANF plan to define the service population that the plan covers. The service population definition provided by a Tribe in turn determines what data

the State would be asked to provide to calculate the amount of the Tribal TANF grant. Note that at § 286.75(d)(2) if a Tribe chooses to include non-Indian families in its service population definition, the Tribe is required to demonstrate State agreement with the inclusion of that portion of the Tribe's service population.

We also have not defined the individual work activities that count for the purpose of calculating a Tribe's work participation rate. These are terms the Tribe should define in designing its Tribal TANF program. We believe Tribes should have maximum flexibility to define these terms as appropriate for their program design.

Readers will note that we use the term "we" throughout the regulation and preamble. The term "we" means the Secretary of the Department of Health and Human Services or any of the following individuals or agencies acting on the Secretary's behalf: the Assistant Secretary for Children and Families, the Regional Administrators for Children and Families, the Department of Health and Human Services, and the Administration for Children and Families.

Readers should also note that we use the term "Tribe" throughout the regulation and preamble. The term "Tribe" means federally-recognized Indian tribes, consortia of such Indian tribes, and the 13 entities in the State of Alaska that are eligible to administer a Tribal Family Assistance program, under an approved plan. It also refers to the Indian tribes and the Alaska Native organizations that are eligible to administer a NEW Program because they operated a Tribal JOBS Program in fiscal year 1995.

We have provided necessary definitions from PRWORA for the readers' convenience. However, we have chosen not to augment these statutory definitions.

We also have provided clarifying, operational and administrative definitions in the interest of developing clearer, more coherent and succinct regulations. These include common acronyms and definitions we believe are needed in order to understand the nature and scope of the provisions in this Final Rule. Some of these terms have commonly understood meanings; others are consistent with definitions included in the State TANF Final Rule. We advise readers to review all the terms in this section carefully because many of them determine the application of substantive requirements.

Federal requirements related to the expenditures of Federal grant funds necessitate the use of precise

definitions. An example of such a definition is that used for the term "administrative costs," which triggers particular Federal grant requirements (see § 286.50). This definition is important because we have established, at § 286.50, a graduated cap over the first three years of operation which will ultimately limit to 25 percent the amount of Tribal TANF funds that a Tribe may use for administrative costs.

The terms "assistance" and "families receiving assistance" are used in the PRWORA in many critical places that affect the Tribal TANF program. For the purposes of the Tribal TANF program, we are adopting the same definition of assistance as developed and included in the Final Rule for the State TANF program. Please refer to § 286.10 for a detailed discussion of this definition.

#### *Section 286.10 What Does the Term "Assistance" Mean? (New Section)*

This is a new section in the Final Rule. In the NPRM we noted that the term "assistance" was a key term that affected Tribal TANF programs in the areas of calculating work participation rates and time limits, data collection and reporting, and consistency with legislative mandates for TANF program operations. The proposed rule included the definition of assistance in § 286.5, with the other Tribal TANF definitions. However, because of the length and significance of this term, we decided to give it its own section in the Final Rule.

#### **Background**

The legislative history for title IV-A of the Act makes clear that Congress did not intend "assistance" to mean something different in the Tribal TANF context than it does in the general TANF context. In addition, while the legislative history indicates that Congress intended "assistance" to encompass more than cash payments, it does not provide specific guidance (see H.R. Rep. No. 725, 104th Cong., 2d Session). Insofar as the legislative history circumscribes the development of a Final Rule on the definition of "assistance," we determined that the statute requires a single definition of the term regardless of whether a State or a Tribe is administering the TANF program. Both the NPRM applicable to State TANF programs and the NPRM applicable to Tribal TANF programs proposed the same definition of assistance. For reference, please refer to 64 FR 17755 for an overview of comments received on the definition of assistance proposed in the NPRM applicable to State TANF programs published by ACF on November 20, 1997.

## Overview of Comments

We received multiple comments in response to the Tribal TANF NPRM on this definition. Several commenters indicated that individual Tribes should determine what they consider short term/emergency assistance. Others wanted to narrow the possible benefits that could be considered within the definition of assistance. Commenters also requested that we expand the definition of one-time short-term assistance.

As a result of consideration of all comments received on this key concept, we have made substantial modifications to the definition of assistance as in the proposed Tribal TANF rule. The modifications address concerns with the scope of benefits treated as assistance, the treatment of work supports and the exclusion from the definition of "one-time, short-term" assistance.

## Appropriateness of a Single Federal Definition of Assistance

*Comment:* Several commenters argued that Tribes should be able to determine for themselves how assistance would be defined in the TANF program rather than having a single Federal definition of TANF assistance.

*Response:* There are several reasons why we do not believe that this is a feasible option. The definition of assistance is central to the accountability provisions in the statute. There must be a single definition of this term in order to insure that key TANF provisions are implemented as intended. Having various definitions of assistance rather than a single, uniform definition would raise questions about the consistency and comparability of TANF data reports, program information, work participation rates, time limits, and application of penalties. It would also make it very difficult to understand whether or how the TANF program is contributing to the movement of needy families to self-sufficiency.

We have established one uniform definition of assistance at § 286.10. We emphasize that this definition does not substantially impede the flexibility of States and Tribes to set eligibility rules or to expend funds on a broad range of benefits and services for needy families. The definition of assistance does not limit the types of allowable benefits or services which State and Tribal TANF programs may provide. Rather, the major effect of the definition is to determine the applicability of key TANF requirements to the benefits that a State or Tribe elects to provide.

## Scope of Benefits Treated as Assistance

*Comments:* Several comments were received to the effect that the scope of what is considered assistance should be narrow and should exclude a variety of supports for working families such as child care, transportation and work-based assistance such as wage subsidies.

*Response:* We have made significant modifications to the definition of assistance with the effect that the scope of benefits deemed assistance is narrower than proposed in the published NPRMs. We agree that there are sound reasons for narrowing the definition of assistance to exclude some work supports. While neither the statute nor the legislative history specifically indicate that a particular subset of benefits under a TANF program should be excluded from the definition of assistance, there is also little direct evidence that Congress intended for time limits and data collection to apply to every conceivable array of new benefits or to working families that have not traditionally been part of the welfare system.

Clearly, in reforming the welfare program, Congress was trying to facilitate the ability of families to work and become self-sufficient. Two of the main effects of defining a TANF benefit as "assistance" are to require that a family work so that it can become self-sufficient and to time limit that benefit. However, the need to time limit work supports is mitigated where the family is already moving toward self-sufficiency.

At § 286.10(b) the definition of "assistance" provides that supports for working families (such as child care and transportation) are excluded. This exclusion covers supportive services needed to address employment-related needs and time spent by an employed individual in education and training needed for job retention and career advancement.

Except as provided in § 286.10(b), the exclusion does not cover supportive services related to participation in education, training, job search and related employment activities for nonworking families. Supportive services provided in this situation (to nonworking families) look more like traditional welfare rather than work supports. In addition, the same rationale for excluding nonworking families from the TANF work requirements, including work participation and time limits, does not exist for these families as exists for families that are already working. Educational and training activities are generally excluded under § 286.10(b)(6). The one exception is if education or

training benefits include allowances or stipends designed to provide income support. These particular types of education and training benefits are considered assistance.

While our definition excludes some forms of support as "assistance," the exclusions do not apply to the eligible Alaska Tribal entities and the State of Alaska in determining whether the Alaska Tribal entities' Tribal TANF programs are comparable to Alaska's State TANF program. For example, an Alaska Tribal entity that implements a Tribal TANF program may choose to include "direct services" as part of their benefit level definition, and these "direct services" would trigger the TANF requirements, i.e., work requirements, time limits, and data collection and reporting. Please refer to § 286.175 for more information on the Alaska comparability requirement.

## Exclusion of Contribution To and Distributions From Individual Development Accounts

The definition at § 286.10(b)(5) excludes contributions to, and distributions from Individual Development Accounts (IDAs). While commenters did not raise concerns with the treatment of IDA benefits under the definition of assistance, enactment of the Assets for Independence Act (AFIA) (under title IV of Pub. L. 105-285) subsequent to publication of the Tribal TANF NPRM justify a specific discussion here of the impact of IDAs on Tribal TANF programs. Please note that we have added a new section, § 286.40 and ask that you refer to the discussion of § 286.40 in the Preamble for additional information about Tribal contributions to IDAs and the extent to which such contributions are allowable TANF expenditures.

Contributions to and distributions from IDAs are excluded from the definition of assistance for several reasons. First, many of the assets in IDA accounts represent deposits from the earnings of low-income families and the interest on those deposits. These sorts of assets do not represent assistance from TANF or any other governmental source. Second, when contributions are made into IDA accounts from the Tribal TANF agency or other third parties, they only represent potential assistance at that point. The individuals whose funds are in the account are potential beneficiaries, but have very limited access to the funds in the account. These funds are unavailable to meet their basic needs. Furthermore, the distributions from IDA accounts would normally be excluded under other provisions of our definition (e.g. as

emergency benefits, for education, and as nonrecurring, short-term benefits). Because the residual cases are likely insignificant in terms of the amount of assistance involved and the tracking of such amounts might create significant administrative burdens, we believe it is appropriate to provide an umbrella exclusion for IDA benefits.

#### Employment-related Services

The "employment-related services" exclusion at § 286.10(b)(6) generally covers on-the-job training, subsidized employment, and most education and training activities since most do not represent income support. This exclusion also covers payments to employers and third parties for supervision and training and payments under performance-based contracts for success in achieving job placements and job retention. As discussed above, there may be types of education and training benefits (e.g. stipends or allowances) that fall within the definition of assistance. The definition of assistance includes payments to individuals participating in work experience or community service. It also includes need-based payments to individuals in any work activity whose purpose is to supplement the money they receive for participating in the activity.

The distinction we make between work subsidies paid to employers and payments to participants in work experience and community service is similar to distinctions made under tax law. For example, we refer you to Notice 93-3, issued by the Internal Revenue Service on December 17, 1998. This Notice explains that TANF payments that meet certain conditions would not be considered income, earned income, or wages for Federal income tax purposes. The Notice provides that: "Payments by a governmental unit to an individual under a legislatively provided social benefit for the promotion of the general welfare that are not basically for services rendered are not includable in the individual's gross income and are not wages for employment tax purposes, even if the individual is required to perform certain activities to remain eligible for the payments. \* \* \* Similarly, these payments are not earned income for Earned Income Credit (EIC) purposes." Our definition of assistance distinguishes between work subsidies paid to employers and community service and work experience on a similar basis. We believe that payments to participants in work experience and community service are closely associated with traditional welfare benefits and are designed primarily to

meet basic needs rather than as compensation for services performed. This view is also reflected in the Conference Report, H. Rep. 105-34, which added the Welfare-to-Work (WtW) program. In discussing the treatment of WtW cash assistance for time-limit purposes, it indicates that wage subsidies are indirect cash assistance. (See discussion in the preamble for § 286.130).

#### Nonrecurring, Short-Term Benefits

*Comment:* We received comments asking that short-term, episodic assistance for families in discrete circumstances and encompassing nonrecurring, short-term payments that could occur more than once in a 12 month period be excluded from the definition of assistance. Concerns were raised about the negative impact on innovation by TANF agencies unless the exclusion were expanded.

*Response:* In part, the narrower language in the proposed rule reflected our determination that it would not be appropriate to exempt families that received a substantial amount of assistance, assistance over a significant amount of time, or assistance provided on a recurring basis from work requirements and time limits. At the same time, we did not intend our definition to undermine State and Tribal efforts to divert families from the welfare rolls by providing short-term relief that could resolve discrete family problems. Based on comments received on the proposed rule as well as other sources of information, we realize that diversion activities are an important part of State and Tribal strategies to reduce dependency and encourage self-sufficiency. Restrictive Federal rules in this area could inadvertently stifle the ability of States and Tribes to respond effectively to discrete family problems. We also understand that subjecting families in diversion programs to all the TANF administrative and programmatic requirements would not represent an effective use of limited TANF resources.

Thus, the Final Rules include a revised definition that excludes more than one payment a year, so long as such payments provide only short-term relief to families, are meant to address a discrete crisis situation rather than to meet ongoing or recurrent needs, and will not provide for needs extending beyond four months. The revised definition uses the term "nonrecurring" rather than "one-time" because the former term is more consistent with the intended policy. A family may receive such benefits more than once. However, the expectation at the time such benefits are granted is that the situation will not

occur again, and such benefits are not to be provided on a regular basis. We believe the revised exclusion is limited enough in nature and scope not to undermine the statutory provisions of the TANF program, while giving Tribes the flexibility to design effective diversion strategies.

The definition also excludes supports provided to individuals participating in applicant job search. Applicant job search is a common form of diversion that clearly fits within the goals of TANF and within this exclusion's view of a "short-term" benefit.

Similarly, the definition excludes supports for families that were recently employed, during periods of temporary unemployment, in order to enable them to maintain continuity in their service arrangements. Unnecessary disruptions in these arrangements could negatively affect the family's ability to re-enter the labor force quickly and, in the case of child care, could negatively affect the children in the family.

The four-month limitation reflects our belief that we could not maintain the integrity of the short-term exclusion without providing some regulatory framework. As written, the four-month limitation does not restrict the amount of accrued debts or liabilities (such as overdue rent) that a Tribe may cover or impose a specific monetary limit on the amount of benefits that the Tribe may provide. The exclusion at § 286.10(b)(1) is more flexible with respect to past debts or liabilities; it merely limits the extent to which payments for future needs can be excluded from the definition of assistance. The limitation reflects the period of time for which future needs can be addressed by a single "nonrecurrent, short-term" benefit. It is not appropriate for Tribes merely to condense the time period over which they pay assistance to needy families so they can categorize the benefits as "nonassistance" and avoid TANF requirements. Also, if a family's emergency is not resolvable within a reasonably short period of time, the Tribe should not keep the case in emergency status, but should convert it to a TANF assistance case.

At the same time, if a family receives aid in one month that falls under the nonrecurring, short-term exclusion, but suffers a major setback later in the year and develops a need for ongoing assistance, we do not want to require the Tribe to redefine the month of initial aid as assistance and retroactively subject the family to TANF requirements.

We note that diverting individuals from programs where they have an entitlement to benefits or to prompt

action on a request for assistance could represent a violation of rules in the other programs. Because of the tremendous importance of food stamps and Medicaid as supports for working families, we strongly encourage Tribes to maintain critical linkages with States with regard to these programs because accessing these other program benefits could further the goals of TANF. Please refer to 64 FR 17760 for a full discussion of State responsibilities under the Food Stamp and Medicaid programs.

### Transitional services

To the extent that Tribes provide supports for working families, such as child care and transportation or work subsidies, or work-related services such as counseling, coaching, referrals, and job retention and advancement services under their transitional services programs, we exclude those services from the definition of assistance. In addition, short-term benefits such as cash assistance to stabilize a housing situation are excluded as "nonrecurring, short-term" assistance.

Tribes wanting to provide ongoing transitional payments that meet the definition of assistance to former recipients have two options. They may fund those programs under TANF as assistance, but use different need standards than they do for other forms of TANF assistance, or Tribes may fund ongoing transitional benefits with non-Federal Tribal funds.

#### *Section 286.15 (§ 286.10 in the NPRM)* *Who Is Eligible To Operate a Tribal TANF Program?*

This section of the Final Rule specifies which Indian tribes are eligible to submit Tribal Family Assistance Plans (TFAPs).

In general, any federally-recognized Indian tribe is eligible to submit a Tribal Family Assistance Plan. However, with respect to the State of Alaska, only the 12 Alaska Native regional nonprofit corporations specified at section 419 of the Act, plus the Metlakatla Indian Community of the Annette Islands Reserve may submit a TFAP.

In addition, a consortium of eligible Indian tribes may develop and submit a single TFAP.

### Subpart B—Tribal TANF Funding (§§ 286.20–286.60)

#### *Section 286.20 (§ 286.15 in the NPRM)* *How Is the Amount of a Tribal Family Assistance Grant (TFAG) Determined?, and*

#### *Section 286.25 (§ 286.20 in the NPRM)* *How Will We Resolve Disagreements Over the State-submitted Data Used to Determine the Amount of a Tribal Family Assistance Grant?*

We have combined the discussions for these two sections of the Final Rule because they are interrelated. These sections of the Final Rule discuss how the amount of a Tribal Family Assistance Grant (TFAG) will be determined and the actions we believe will be necessary to resolve disagreements over the data received from a State.

PRWORA requires the Secretary to pay TFAGs to federally-recognized Indian tribes with approved 3-year Tribal Family Assistance Plans. To determine the amount of a TFAG, we must use data submitted by the State or States in which the Indian tribe is located. Section 412(a)(1)(B) specifies the data that we will use. The statute provides that, for each fiscal year 1997–2002, an Indian tribe that has an approved Tribal Family Assistance Plan will receive an amount equal to the Federal share (including administrative expenditures, which would include systems costs) of all expenditures (other than child care expenditures) by the State or States under the AFDC and Emergency Assistance (title IV–A) programs, and the JOBS (title IV–F) program for fiscal year (FY) 1994 for Indian families residing in the service area(s) identified in the Tribal Family Assistance Plan. For Tribes that operated a Tribal JOBS Program in FY 1994, the State title IV–F expenditures (including administrative costs) used in the calculation of the TFAG would be for expenditures made by the State on behalf of non-member Indians and non-Indians, if either or both are included in the Tribal TANF population and are living in the designated Tribal TANF service area(s). Any expenditures by the State for Tribal members who were served by the State JOBS program will also be included in the determination.

Section 412(a)(1)(B)(ii)(II) of the statute allows Tribes the opportunity to disagree with State-submitted data and to submit additional information relevant to our determination of the TFAG amount. We believe Tribes should have an opportunity to submit relevant information in instances in which the State has failed to submit

requested data on a timely basis. However, we believe the lack of State-submitted data will be a very rare occurrence.

We will request State data based on the Tribe's identified service area and population, which may include areas outside the reservation and non-Indian families. We will allow States 30 days from the date of our request to submit the requested data before notifying the affected Tribe of its option under section 412(a)(1)(B)(ii)(II) of PRWORA to submit its own data. This time frame should allow States adequate time to gather and submit the data. However, in order for us to notify the State of any reduction in its grant not later than three months before payment of any quarterly installment, as specified by section 405(b), we will use the best available data to determine the amount of the TFAG, if the State has not submitted the specified data at the end of the 30-day period. Our experience to date has shown that we need time to resolve any issues related to determining the amount of a TFAG in order to meet the statutory requirement for notification to the State of the reduction in the amount of their State TANF grant.

We also believe a Tribe should have a reasonable period of time in which to review the State-submitted data and make a determination as to whether or not it concurs with the data. We have determined that a forty-five (45) day period should be sufficient for this activity. Therefore, we will allow a Tribe 45 days from when it receives the State-submitted data from us to notify us of its concurrence or non-concurrence with the data.

Once we receive State data, we will share it with the Tribe. We will also facilitate any meeting or discussions between the Tribe and the State to answer any questions the Tribe has about the submitted data. Any meetings or discussions to answer the Tribe's questions about the data need to be held within the 45-day period for Tribal concurrence. We believe it is in the best interests of both the Tribe and the State to reach a consensus on the State data. However, if the Tribe finds it cannot concur with the State data and has notified us to this effect, we will provide the Tribe an additional 45 days to submit additional relevant information. It will then be our responsibility under section 412(a)(1)(B)(ii)(II) to make the final determination as to the amount of the TFAG after review of the information submitted by the Tribe.

In instances in which the State has not submitted the requested data within

the time period given, we will notify the Tribe. We will give the Tribe 45 days from the date of our notification to submit relevant data. This 45-day time frame is the same time frame we have established for Tribes to submit information if they disagree with State-submitted data. In the absence of State-submitted data, we propose to use relevant Tribe-submitted data to determine the amount of the TFAG.

If a Tribe disagrees with the data submitted by the State, we will use the State-submitted data and any additional relevant information submitted by the Tribe to determine the amount of the TFAG. Relevant Tribal data may include, but are not limited to, Census Bureau data, data from the Bureau of Indian Affairs, data from other Federal programs, and tribal records.

Once the amount of the TFAG is officially determined, we will notify both the Tribe and the State of the Secretary's decision. Our goal will be to resolve any data issues at least two weeks prior to when we are required to notify the State. We will make official notification of the amount of the State Family Assistance Grant reduction to the appropriate State(s) no later than 90 days before the payment of the State's next quarterly SFAG installment.

*Comments:* Tribal commenters raised the issue of the sufficiency of fiscal year 1994 figures to determine the amount of the TFAG.

*Response:* ACF recognizes that the statutory TFAG funding formula fails to account for the State portion of funds expended for Indian families in fiscal year 1994. Without agreements with States to provide State matching funds, Tribes must absorb this funding gap. While ACF is committed to facilitating Tribes and States agreements on the provision of State matching funds, under the current statute, the amount of the TFAG is limited by the statutory formula specified at section 412(a)(1)(B) of the Act, and this formula does not allow for any adjustment to make up for the missing State portion of funds expended for Indian families in fiscal year 1994.

*Comments:* Commenters suggested that we clarify that the TFAG amount determined under section 412(a)(1)(B) is an amount equal to the total amount of Federal payments to the State for fiscal year 1994 attributable to expenditures under the former AFDC, JOBS and Emergency Assistance programs for Indian families, and that this amount includes not only expenditures attributable to direct family assistance, but also expenditures for administrative costs.

*Response:* The statute is clear that the TFAG amount is determined based on total Federal expenditures, and all expenditures for administrative costs must be included in the data that States submit under section 412(a)(1)(B)(ii)(I).

*Comments:* We received several comments calling for us to clarify that determination of the TFAG is not based upon the Tribe's definition of service population.

*Response:* We agree that, under the law, there is no nexus between a Tribe's definition of its service population and the formula under which the TFAG is determined. The TFAG funding formula must take into account ALL Indian families residing in the geographic service area or areas defined by the Tribe, but there is no requirement that the Indian families residing in a Tribe's geographic service area coincide with the Tribe's service population. Section 412(b)(1)(C) of the Act makes a clear distinction between a Tribe's service population and its service area or areas. The statute bases TFAG funding levels on ALL Indian families residing in the geographic service area determined by the Tribe. The statute leaves it to the Tribe to determine its service population and this service population may, but does not have to, include all Indian families residing in the Tribe's service area.

*Comments:* Several commenters suggested that we define the term "Indian Family" for the limited purpose of determining the amount of the TFAG. One commenter argued that a definition of Indian Family was critical in determining the amount of the TFAG. This commenter suggested that when we request the necessary data from the state to determine the TFAG, we should include in our letter to the state the definition of the Indian Family being proposed by the Tribe.

*Response:* In drafting the proposed rule, we chose not to define "Indian family" or "service population." ACF will not define the term "Indian family" in recognition of the fact that like any sovereign government, Tribes determine their own membership criteria. Each Tribe administering its own Tribal TANF program is permitted by the statute to define its service population. As we noted in the preamble, in order to provide maximum flexibility to the Tribe, each Tribe may define its service population and it has the option of including only a portion of the tribal enrollment, only tribal members, all Indians, or even non-Indians residing in the service area. It will be up to each Tribe submitting a TANF plan to define the population that the plan will serve.

We continue to believe that excessive definitions may in fact unduly and unintentionally limit tribal flexibility in designing programs that best meet their service population needs. We are not persuaded that defining the term Indian family is critical to determination of the TFAG.

However, because States need to know what data to submit under section 412(a)(1)(B)(ii)(I), we will require a Tribe to declare its definition of "Indian family" in its Tribal Family Assistance Plan. We therefore adopt the suggestion that, when we request the necessary data from the state to determine the TFAG, we include in our letter the definition of Indian family and a description of the proposed service area proposed by the Tribe (§ 286.20). We believe this information will aid the State in determining the amount equal to the Federal expenditures (other than child care expenditures) spent by the State or States under the AFDC and Emergency Assistance Programs (including administrative costs), and the JOBS programs for fiscal year 1994 for Indian families residing in the service area(s) identified in the TFAP.

*Comments:* A significant number of commenters requested that we extend the time frames for State submission of expenditure data used to determine the TFAG amount, and the time frame for the Tribe to notify us of either their concurrence or non-concurrence with the State expenditure data. All commenters were unanimous in their view that the proposed time frames of 21 days for the state to respond to our data request and the amount of time provided to the Tribe to determine whether or not it concurs with the state data were insufficient. All commenters recommended the proposed time frames of 21 days be extended. Some commenters recommended the time frames be extended to 30 days, while others recommended the time frames be extended to anywhere from 45 days to 90 days.

*Response:* We have determined that it would be helpful to allow the State to take up to 30 days from the date of our letter to submit its data, 45 days for the Tribe to concur or nonconcur, and 45 days for the Tribe to submit alternative data, prior to our making a determination of the TFAG amount. Our experience to date has shown that this will allow sufficient time for the State to gather the expenditure data, and sufficient time for the Tribe to either concur or not concur with the State expenditure data.

*Comment:* One commenter suggested that States be given the opportunity to review and rebut data submitted by

Tribes under section 412(a)(1)(B)(ii)(II) of the Act. Section 412(a)(1)(B)(ii)(II) specifies that if Tribes disagree with data States are required to submit under section 412(a)(1)(B)(ii)(I) in order to determine the TFAG, Tribes may submit to the Secretary such additional information as may be relevant to making the determination and the Secretary may consider such information before making such determination.

**Response:** We agree with tribal commenters that the statute contemplates only that States submit the data described in section 412(a)(1)(B)(i) of the Act. The law requires States to submit data indicating the total amount of the Federal payments to a State or States \* \* \* attributable to expenditures by the State or States under parts A and F (as so in effect) for fiscal year 1994 for Indian families residing in the service area or areas identified by the Indian tribe. The statute clearly indicates the parameters for State-submitted data. Once States submit the data described in section 412(a)(1)(B)(i) of the Act, only Tribes are afforded the opportunity to rebut or supplement such data by submitting additional information as may be relevant to the Secretary. Where there are inconsistencies in the data, follow-up discussions with the Tribe and the State will ensue.

**Comments:** Regarding the final regulation at § 286.25(a)(2), several comments were received proposing that we require a Tribe's agreement before the TFAG amount is determined.

**Response:** We have considered this and decided not to adopt this proposal. We have determined that the law does not envision conditioning determination of the TFAG amount on a Tribe's agreement. The statute specifies the data upon which the Secretary must determine the TFAG amount and provides for Tribes to submit additional relevant data in the event of disagreement with such data. The proposed scheme would frustrate clear Congressional intent as to how the TFAG is to be determined.

**Section 286.30 (286.25 in the NPRM)**  
**What Is the Process for Retrocession of a Tribal Family Assistance Grant?**

As defined at § 286.5, retrocession is a voluntary termination of a Tribal TANF program. Section 412 of the Act does not include a provision for retrocession. However, we recognize that Tribes voluntarily implement a TANF program for their needy families and should, therefore, be afforded the opportunity to withdraw their agreement to operate the program. For

example, a Tribe may lose a State's commitment to provide State funds for Tribal TANF, which could significantly impact the Tribe's financial ability to operate the program. Based on overwhelming support and comments by both Tribes and States, we determined the necessity of a retrocession provision in these regulations.

In providing a retrocession provision in the regulations, we developed a time frame which we believed ensured that: (1) There would be minimal disruption of services to families in need of assistance; (2) a Tribe made an informed decision in determining whether or not to cease operating the Tribal TANF program; and (3) a State was provided adequate notice to ensure continuity of program services.

A Tribe that retrocedes a Tribal TANF program is responsible for complying with the data collection and reporting requirements and all other program requirements for the period before the retrocession is effective. In addition, the Tribe is liable for any applicable penalties (see subpart D); and it is subject to the provisions of 45 CFR part 92 and OMB Circulars A-87 and A-133, and other Federal statutes and regulations applicable to the TANF program. The Tribe also will be responsible for any penalties resulting from audits covering the period up to the effective date of retrocession. Please refer to § 286.195 for the discussion on penalties.

**Overview of Comments**

We received substantial comments regarding the proposed retrocession process. Most of these comments came from Tribes, but we also received a number of comments from States, advocacy groups, and other community organizations. All commenters agreed that a Tribe should be allowed to relinquish the program, but most questioned both the time frame for notification as well as the time frame for retrocession itself.

To deal with the large number of comments on this issue, we decided to cluster the comments into the following general categories: (1) When a Tribe should be allowed to relinquish the program; (2) how much advance notice is adequate; (3) conditions for return of a program to a Tribe who has retroceded its grant; and (4) other concerns.

**Timing for Relinquishment**

**Comment:** The draft regulation required that the effective date of a retrocession coincide with the end of the grant period. Virtually all commenters took exception to this

limitation, noting that a Tribe should be allowed to relinquish the program (upon adequate notice) at any point in the year. These commenters argued that Tribes unable to adequately administer a program should be permitted to retrocede as soon as the state is able to begin providing services to the Tribal TANF service population. To require a Tribe to keep operating a program after the proposed effective date of the retrocession could result in a program diminished by a lack of resources or staff, an increased chance of tribal penalties, and the possibility of negative fiscal impacts occurring to other programs operated by the Tribe as the results of the Tribe's effort to meet the programmatic responsibilities under its tribal TANF plan.

**Response:** Regarding retrocession, we acknowledge that our proposal may not have been adequately responsive to the needs of Tribes operating a Tribal TANF program or to the families receiving services under the TANF program. However, that language was proposed because we believe that with approval of a plan to operate a Tribal TANF program comes both the Tribe's commitment and its responsibility to utilize funds specifically awarded under the TFAG to provide the approved services to its identified service population throughout the duration of the plan.

We agree with the commenters that Tribal TANF grantees should be given the opportunity to retrocede more than one day per year. It was never our intent to place tribal programs in the position of continuing operations beyond a reasonable time frame from when they sought to terminate Tribal TANF operations. Therefore, we have included specific language in the regulatory text which permits a Tribe to retrocede at any time, with the effective date of the retrocession the last day of any month, as mutually agreed upon by ACF, the Tribe, and the affected State.

**Adequate Advance Notice**

**Comments:** There were no consistent comments in this area. Although most Tribes and States agreed with the proposed 120-day time frame for notification, several Tribes commented that a time frame of 60 or 90 days was more than adequate for a state, in order to assure that a program failing to provide services would not be forced into a situation it could not handle. On the other hand, one state voiced concern that it would need a minimum of 180 days advance notice in order to develop the necessary infrastructure for service delivery and to minimize disruption of services.

*Response:* Since States are currently operating TANF programs, and since many States are already coordinating with Tribes, we believe that 120 days formal advance notice will give the State ample time to begin to implement services to those individuals previously served by the Tribal TANF program. However, in order to be responsive to unforeseen emergency circumstances which may require a more expeditious retrocession of a Tribal TANF program back to the state, the revised regulation will provide for an emergency waiver from the 120-day notice, upon mutual agreement by the Tribe and the affected State.

*Comments:* In many cases commenters recommended that the Tribe provide simultaneous notice to ACF and the state of its intent to terminate operation of the TANF program, thereby enabling the Tribe and state to begin discussions early, rather than waiting for ACF to formally notify the state of the Tribe's intent.

*Response:* In the writing of this section of the regulation we never intended to function as the intermediary between the Tribe and the State. Rather, our expectation has always been that the Tribe and State will work together to ensure that the families served under the Tribal TANF plan receive the necessary services. We believe it may be reasonably implied from section 405(b) of the Act that it is our responsibility to notify a State at least 90 days prior to the effective date of a Tribe's retrocession of the TANF program. However, we see no reason why the state, which will be responsible for taking over provision of TANF services to persons formerly served by the tribal program, should have less notice than ACF. We have revised the language in the final regulation to indicate that the Tribe should simultaneously notify ACF and the state of its intent to retrocede the TANF program.

#### **Conditions for Return of a Program to a Tribe Who Had Retroceded its Grant**

*Comments:* The draft regulations delineated two conditions for return of a TANF program to a Tribe that had previously retroceded. These conditions are that "the reasons for the retrocession are no longer applicable, and all outstanding funds and penalty amounts [are] repaid." Several commenters expressed their views that these conditions were unfair and exceeded the Secretary's authority under the statute.

*Response:* Section 412(e) of the Act grants the Secretary broad authority to "maintain program funding accountability." It is a reasonable

exercise of that authority to take into account the circumstances of a Tribe's previous retrocession when considering the approval of a subsequent Tribal TANF plan. We have rewritten the regulation to emphasize that § 286.30(e) (previously § 286.25(d)) is intended to implement the Secretary's fiscal oversight authority.

*Comment:* Several commenters referred to a retroceded Tribe's motivation for deciding to "renew" its TANF program operation, as distinguished from a "continuing program context." They pointed out that an unauthorized penalty would be imposed on a Tribe in this "renewal context," and that there is no regulatory authority to deny a Tribe the right to operate a program.

*Response:* If a Tribe submits a TFAP subsequent to its retrocession of its TANF program back to the State, it is inaccurate to characterize this as a "renewal." Rather, it is an application to operate a TANF program by an entity that was not able to complete its approved three-year TANF program. If a Tribe retrocedes its TANF program to the State, there are significant administrative, financial, and technical issues that must be addressed in transferring the Tribal TANF caseload to the State TANF program. It is an appropriate exercise of the Secretary's authority to "maintain program funding accountability" to require that a Tribe demonstrate that the circumstances that led to retrocession are no longer present. However, the Secretary may consider the extent to which the Tribe has control over such circumstances and those circumstances are related to fiscal accountability.

It is inaccurate to characterize § 286.25(d) as presented in the proposed rule as a "penalty." It is not. Rather, it is a reasonable inquiry that only arises when triggered by a particular objective fact: Namely, tribal retrocession. Tribes that retrocede are not "penalized"; they are merely required to rebut the presumption that they cannot complete a three-year TANF plan which is based on the fact that the Tribe retroceded a previously approved three-year TANF plan. If the "reason" for retrocession is beyond the control of the Tribe, or is not reasonably related to fiscal accountability, then the fact that a Tribe retroceded is irrelevant to its subsequent application to operate a TANF program.

#### **Other Concerns**

*Comments:* One Tribe commented that rather than return all unobligated funds to the Federal government, Tribes who retrocede a program should be allowed to retain a pro-rated amount of

funds based on the amount of time they operated the TANF program. These funds could be used in a variety of other welfare-related programs that the Tribe is involved with.

*Response:* Tribal TANF funds are awarded to provide specific welfare-related services and assistance under the Tribal TANF program, as specified in §§ 286.35–286.45. Tribes who are no longer operating a TANF program have no authority to expend Tribal TANF funds beyond those that were obligated for the purposes of the TANF program prior to the effective date of the retrocession. Upon retrocession, they are therefore unable to retain any funds other than those which were previously obligated.

*Comments:* Several states requested that the regulations devote more attention to the potential problems that a state may encounter after a retrocession. One state indicated that if a Tribe runs out of funds before it retrocedes the program, the state may not have sufficient funds to absorb the returning caseload. They requested that adequate federal funds be made available until state appropriations could be provided by the state legislature. Similarly, one state organization requested guidance on how states and Tribes should proceed if the tribal grant is exhausted before the end of the fiscal year.

*Response:* If a Tribe is making expenditures for purposes which are reasonably calculated to accomplish the purpose of the statute, such expenditures are within the authority of the Tribe to determine. If a Tribe expends all of its TANF grant before it retrocedes the program and such expenditures are not otherwise improper, there is no general authority under which the federal government may augment State TANF funds to absorb any returning caseload subsequent to retrocession.

We take seriously the concerns raised about potential problems that a State may encounter subsequent to retrocession. In fact, this is a major reason why we would permit retrocession during a grant period only upon agreement of the state. In the current environment we should not presume that this situation would create a financial hardship for the State. Some states have surplus funds because of caseload reductions. In addition, states have access to some supplemental funding sources that are not accessible to the Tribes—including the Bonus to Reward Decrease in Illegitimacy Ratio (section 403(a)(2)), Supplemental Grant for Population Increases (section 403(a)(3)), the High Performance Bonus

(section 403(a)(4)), and the Contingency Fund (section 403(b)).

In order for welfare reform to work in Indian country, it is important for State and Tribal governments to work together. To avoid some of the potential problems that may arise subsequent to retrocession, we encourage States to plan for such contingencies as well as to work with tribal partners to minimize its occurrence.

It is the responsibility of the Tribe to carefully manage funds in order to minimize potential problems in this area. The federal government has the authority to monitor TANF expenditures on the mandated quarterly reports to ensure the Tribe is maintaining a viable TANF program and we will provide technical assistance to the extent necessary to prevent retrocession where that is possible.

*Comment:* One state objected that unobligated funds would be returned by the Tribe to the federal government rather than the State, indicating that the regulation was unclear as to whether these funds would be returned to the States' SFAG account for drawdown availability. The return of funds would promote service continuity and ease financial constraints that may be brought about as a result of the retrocession.

*Response:* We have clarified the regulation to specify that the SFAG will be increased by the amount of the TFAG available for the subsequent quarterly installment.

*Comments:* Several states indicated that the regulations should incorporate ongoing budgetary oversight of the tribal programs and provide HHS with the ability to intervene if a tribal program is losing financial viability. They requested that the regulations be amended to include criteria and a process for a federal decision to terminate a tribal program if tribal members are not able to gain access to the services specified in the TFAP as well as provisions for early notification to the state of possible financial problems with a Tribal TANF program, and for early notification to clients and other involved parties prior to retrocession.

*Response:* The United States has a unique legal relationship with Indian tribal governments. The federal government has guaranteed the right of Indian tribes to self-government, and the Tribes exercise sovereign powers over their members and territory. Just as states, Tribes must be provided the opportunity to develop and administer their own TANF programs within the confines of the statute and regulations. Adequate budgetary oversight is

provided through the mandated submission of the quarterly reports.

*Comments:* Several states appealed for a "grace period" in meeting work participation requirements when there is a retrocession, and that they should be able to increase the percentage that can be exempted from time limits if adversely affected by a retrocession.

*Response:* The statute does not provide for a grace period, nor can we revise state TANF requirements in the Tribal TANF regulation. However, Regional Offices are available to provide technical assistance if a State is having difficulty incorporating former Tribal TANF recipients into the State program.

*Comment:* One state requested that the draft regulations be amended to include provisions allowing for "partial retrocession," such as when a consortium member drops out, or a Tribe changes its service area or service population in a way which changes the amount of the allocation.

*Response:* We have considered the suggestion and determined that § 286.30 of these rules adequately accommodate these situations.

*Section 286.35 (Section 286.30 in the NPRM) What are Proper Uses of Tribal Family Assistance Grant Funds?*

Section 412 of the Act does not specify the particular purposes for which a TFAG may be used. However, under these Final Rules any such use must be consistent with section 401(a) of the Act. We believe the Tribes should have the same flexibility as the States in their use of TANF funds. Therefore, we indicate at § 286.35 that the Tribal TANF grantees will be able to use their TFAGs for the same purposes as States may use their TANF funds as specified in section 404(a) of the Act.

Thus, a Tribe may use its TFAG in any reasonable manner to accomplish the purposes of part A of title IV of the Act. This may include the provision of low-income households with assistance in meeting home heating and cooling costs. In addition, we believe that Tribes should be able to use their TFAGs in any manner that was an authorized use of funds under the AFDC and JOBS programs, as those programs were in effect on September 30, 1995.

In determining whether a welfare-related service or activity may be funded with its TFAG, a Tribe should refer to the purposes of TANF, as described in section 401 of the Act, as well as to section 404(a). Tribes should be aware that TANF funds may be used for activities reasonably calculated to accomplish the purposes of part IV-A of the Act. As specified in section 401(a), those purposes are: (1) To provide

assistance to needy families so that children may be cared for in their own homes or in the homes of relatives; (2) to end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; (3) to prevent and reduce the incidence of out-of-wedlock pregnancies; and (4) to encourage the formation and maintenance of two-parent families. TANF funds are not authorized to be used to contribute to or otherwise support non-TANF programs. Use of TANF funds to support non-TANF programs or other unauthorized purpose shall give rise to penalties under section 409(a)(1) of the Act (made applicable to Tribes by section 412(g)).

*Comments:* Several commenters raised concerns with perceived restrictions on the use of TFAG funds for economic development and job creation activities.

*Response:* We will consider expenditures for economic development and job creation activities, and for supportive services to assist needy families to prepare for, obtain and retain employment to be permissible uses of TANF grant funds and will revise the regulatory language accordingly.

*Comment:* One commenter suggested that the language of § 286.30(a)(1) in the proposed rule be amended with the insertion of the words "but not limited to" after the word "including" on line 2 to clarify the fact that "reasonably related purposes" is not limited to home heating and cooling.

*Response:* The suggestion is appropriate, and we amended the language of § 286.35(a)(1) to insure clarity.

*Comment:* Regarding the proposed regulation at § 286.30(b), one commenter observed that in the proposed rule we had reserved this subsection, and presumed that we had intended to use it to define an appeals process when there was disagreement with the Secretary's determination of the TFAG amount. The commenter further suggested that § 286.30(b) specify that the appeals procedures found in 25 CFR part 900, subpart L, apply where the Tribe disagrees with the Secretary's determination of the TFAG amount.

*Response:* The commenter's presumption was incorrect on two counts. First, it is standard regulatory practice in order to preserve the future structural integrity of the provision to reserve a subsequent subsection when only one element in a sequence is used. Secondly, the appeals procedures found in 25 CFR part 900, subpart L, do not apply to the TANF program. The appeals procedures found in 25 CFR

part 900, subpart L, apply only to contracts by the Department of Health and Human Services (DHHS) and the Department of the Interior (DOI) in implementing title I of the Indian Self-Determination and Education Assistance Act or to programs administered by the DHHS or DOI for the benefit of Indians. The Department has determined that the TANF program is not contractible under the Indian Self-Determination and Education Assistance Act, nor is it a program administered by DHHS for the benefit of Indians. The TANF program is not one under which the federal government provides benefits or services directly to Indian tribes nor is TANF a program designed to benefit Indians based on their status as Indians, but rather it is a program designed to provide time limited assistance to needy families.

*Section 286.40 May a Tribe Use the Tribal Family Assistance Grant To Fund IDAs ? (New Section)*

*Comment:* Comments were raised about the extent to which the Individual Development Account (IDA) provision at section 404(h) of the Act was an optional program that Tribes could choose to implement.

*Response:* We addressed in the Preamble discussion at § 286.10 the question of the extent to which contributions to or distributions from IDAs were excluded from the definition of assistance. Here, we discuss the extent to which such contributions are allowable Tribal TANF expenditures. Section 404(h) of the Act expressly gives States the option to fund IDAs with TANF funds for individuals who are eligible for TANF assistance. The statute is silent with regard to whether Tribes have the same option to fund IDAs with TANF funds for individuals who are eligible for Tribal TANF assistance. However, in the subsequently enacted Assets for Independence Act (Pub. L. 105–285, or AFIA), there is strong evidence that Congress intended Tribes to have the same option to fund IDAs with TANF funds as is expressly provided to States. For example, section 412 of AFIA requires each qualified entity (including tribal governments) to prepare an annual report on the progress of the demonstration project including information on “the number and characteristics of individuals making a deposit into an individual development account, the amounts withdrawn from the individual development accounts and the purposes for which such amounts were withdrawn, and the balances remaining in the individual development accounts.” This legislative requirement would not make sense

unless Congress intended to authorize Tribes as well as States to fund IDAs with TANF funds. It is not necessary for a Tribal government to have applied for AFIA funding in order for a Tribal TANF program to fund IDAs with TANF funds. Rather, it is the authorization at section 404(7) of AFIA which indicates that Congress intended to permit Tribal TANF programs to fund IDAs on the same basis as State TANF programs may fund IDAs.

The IDA provision in the Act creates an optional program which is subject to specific statutory requirements. IDAs are similar to savings accounts and enable recipients to save earned income for certain specified, significant items. IDAs are subject to special statutory restrictions on TANF recipient deposits, who can match recipient contributions, and how recipients may spend IDA funds.

Funds in an IDA account do not affect a recipient's eligibility for TANF assistance. Withdrawals from the IDA must be paid directly to a college or university, a bank, savings and loan institution, an individual selling a home, or a special account (if the recipient is starting a business). Section 404(h)(2)(D) authorizes the Secretary to establish regulations to ensure that individuals do not withdraw funds held in an IDA except for one or more of the qualified purposes. Post secondary education expenses, first home purchase, and business capitalization specifically are allowed qualified withdrawals. With this in mind, we did not feel it was necessary to be overly prescriptive in mandating how Tribes would ensure that individuals do not make unauthorized withdrawals from IDA accounts. We have given States and Tribes broad flexibility to establish procedures that ensure that only qualified withdrawals are made.

*Section 286.45 (Section 286.35 in the NPRM) What Uses of Tribal Family Assistance Grant Funds Are Improper?*

Just as section 412 of the Act does not specify the particular purposes for which Tribal Family Assistance Grant funds may be used, it does not specify any prohibitions or restrictions on the use of TFAG funds in a Tribal TANF program. However, we believe it is important to indicate in this Final Rule what would not be a proper use of a TFAG. TFAG funds must be used for the operation and administration of the TANF program. Tribal TFAG funds may not be used to contribute to or to subsidize non-TANF programs. Any use of TFAG funds to contribute to or otherwise support non-TANF programs will be considered an improper use of

TANF funds and subject to penalties under § 286.195.

TFAG funds must be used to provide assistance to families and individuals that meet the eligibility criteria contained in the TFAP. We have revised the language in the final rule to clarify that funds must be used only for families or individuals meeting the Tribe's eligibility criteria. In addition, we propose that a TFAG may be used to provide assistance for no more than the number of months specified in a Tribe's approved TFAP.

OMB Circular A–87 includes restrictions and prohibitions that limit the use of a TFAG. In addition, all provisions in 45 CFR part 92 and OMB Circular A–133 apply to the Tribal TANF program. TANF is not one of the Block Grant programs exempt from the requirement of part 92 because OMB has determined that TANF should be subject to part 92.

**Non-Citizens**

Title IV of PRWORA establishes restrictions on the use of TANF funds to provide assistance to certain individuals who are not citizens of the United States. These restrictions are part of the definition of eligible family at § 286.5. Individuals who do not meet the criteria at § 286.5 may not receive TANF assistance paid with Tribal Family Assistance Grant funds.

**Construction and Purchase of Facilities**

The Comptroller General of the United States has prohibited the use of Federal funds for the construction or purchase of facilities or buildings unless there is explicit statutory authority permitting such use. Since the statute is silent on this, a Tribe may not use its TFAG for construction or for the purchase of facilities or buildings.

**Program Income**

We have received inquiries as to whether TANF funds may be used to generate program income. An example of program income is the income a Tribe earns if it sells a product (e.g., a software program) developed, in whole or mostly with TANF funds.

Tribes may generate program income to defray costs of the program. Under 45 CFR 92.25, there are several options for how this program income may be treated. To give Tribes flexibility in the use of TFAGs, we are proposing to permit Tribes to add to their Tribal Family Assistance Grant program income that has been earned by the Tribe. Tribes must use such program income for the purposes of the TANF program and for allowable TANF services, activities and assistance. We

will not require Tribes to report on the amount of program income earned, but they must keep on file financial records on program income earned and the purposes for which it is used in the event of an audit or review.

*Comment:* One comment relating to § 286.35(f) as proposed in the NPRM suggests that the proposed rule requiring that, "Tribes must use program income generated by the Tribal Family Assistance Grant for administrative costs during the grant period" needs to be clarified or deleted.

*Response:* There is no language or proposed rule in this section that requires that a Tribe use program income for administrative costs.

*Comment:* One comment relating to § 286.35(f) as proposed in the NPRM questions the statutory authority for this subsection, which requires that, "Tribes must use program income generated by the Tribal Family Assistance Grant for the purposes of the TANF program and for allowable TANF services, activities, and assistance," and suggests that this provision be clarified or deleted.

*Response:* The authority for this requirement is found in 45 CFR Part 92.25(g)(2), which governs the use of program income for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

#### Use of Funds

*Comment:* A commenter suggests that § 286.35(a)(3) as proposed in the NPRM should be amended by including qualified aliens in the language, to clarify that TFAG fund cannot be used to provide services to individuals who are not qualified aliens and who do not meet the definition of eligible families.

*Response:* The suggested amendment is in order, and we have incorporated it in the regulatory text at § 286.45(a)(3). However, for Tribes that receive State funds (which the State can count for MOE purposes) and those funds are not commingled with Federal TANF funds, a Tribe may use these funds to provide a State or local public benefit as defined in PRWORA title IV, section 411(c) to members of eligible families as defined in § 263.2(b) of the TANF Final Rule applicable to State TANF programs. (64 FR 17894, April 12, 1999) A State or local public benefit may be provided to qualified aliens and some non-qualified aliens (non-immigrants under the Immigration and Nationality Act or aliens paroled into this country under section 212(d)(5) of such Act for less than one year). State or local public benefits may also be provided to illegal aliens if the State enacts a law after August 22, 1996 that affirmatively

provides that illegal aliens are eligible to receive all or particular State or local public benefits (per 411(d) of PRWORA).

If the benefit is not a State or local public benefit or if the Federal or State or local public benefit is a non-cash benefit that is included on the Attorney General's Notice dated August 23, 1996 as necessary for the protection of life or safety, then the Tribe may help the alien family members—qualified and non-qualified. (See discussion in the preamble to the State TANF Final Rule (64 FR 17817–819, April 12, 1999).

*Comment:* With reference to § 286.35(b) as proposed, a commenter suggests that the \* \* \* (p)rohibition on using TANF funds to contribute to or subsidize non-TANF programs is overly restrictive."

*Response:* We disagree with the suggestion that the prohibition is overly restrictive. TANF funds may only be expended to further the purposes and goals for which the TANF program was created. The authority for this prohibition is clearly established in 45 CFR 92.25(g)(2).

#### *Section 286.50 (Section 286.40 in the NPRM) Is There a Limit on the Percentage of a Tribal Family Assistance Grant That Can Be Used for Administrative Costs?*

Under section 404(b) of the Act no more than 15 percent of a State's SFAG may be spent on administrative expenditures. Expenditures by a State for information technology and computerization needed for tracking or monitoring cases covered by the TANF program are excluded from the 15 percent limit. Because section 404(b) is not applicable to Tribal TANF programs, we asked in our discussions with Tribes and States, what limit, if any, should be placed on administrative expenditures under the Tribal TANF program. Many respondents indicated that a limit on administrative expenditures should not be applied to Tribal TANF programs. Other respondents indicated that Tribes do not have the same level of experience in operating this kind of welfare program as do States, and, that if a limit had to be set, any limit should be higher than the State TANF limit. Respondents also cited both the additional start-up expenses that Tribes will experience and the new requirements of the TANF program as a reason to set a higher limit for Tribal TANF programs.

In our deliberations on whether to propose a limit on administrative expenditures, we considered various options. One was to follow the statute and be silent on the issue. The second

option was to apply the same limit placed on States. The third option was to set a limit that recognizes the special needs of Tribes mentioned above. In whatever option we chose, we felt it necessary to ensure that most of a Tribal TANF grant would be available to carry out the primary objective of the TANF statute.

We understand the reason why many of the respondents said that an administrative expenditure limit should not be placed on Tribal TANF programs. However, not placing a limit could result in depriving needy families of the program benefits Congress intended families to receive. We believe setting a limit on administrative expenditures is more consistent with the purposes of the Act. Placing a limit on administrative expenditures guarantees that the major portion of a Tribal TANF grant goes to assisting needy families.

We have responded to the fact that Tribes do not have the same level of experience operating welfare programs as do the States. In addition, we recognize that Tribes will need to expend a larger portion of their grant funds on administration than States because they cannot take advantage of economies of scale. Therefore, as the discussion below details, we revised this section to provide for a graduated cap over the first three years of operation which will ultimately limit to 25 percent the amount of Tribal TANF funds that a Tribe may use for administrative expenditures during any grant period. Thus, after the first two years of operation each Tribal TANF grantee will be required to expend at least 75 percent of its grant on direct program services (and technology) during the grant period.

Because expenditures for information technology and computerization needed for tracking and monitoring of cases under the TANF program by the States will be excluded from the administrative expenditure limit, these same expenditures by Tribes will also be excluded from the Tribal limit.

Tribes must allocate costs to proper programs. Under the Federal Appropriations Law, grantees must use funds in accordance with the purpose for which they were appropriated. In addition, as stated previously, the grants administration regulations at part 92, and OMB Circular A–87, "Cost Principles for State, Local, and Indian Tribal Governments", apply to the TANF program. OMB Circular A–87, in particular, establishes the procedures and rules applicable to the allocation of costs among programs and the allowability of costs under Federal grant programs such as TANF.

## Overview of Comments

We received numerous comments regarding the proposed administrative cost provisions. A substantial majority of these comments came from Tribes and tribal organizations, but we also received comments from States, advocacy groups, and other community organizations.

To deal with the number of responses on this issue, we decided to cluster the comments into the following general categories: (1) The imposition of an administrative cost cap, including whether or not there is authority to impose such a cap; (2) the proposed 20 percent administrative cost limitation; (3) the treatment of eligibility determination and verification costs, as well as data entry costs, in the definition; (4) the relationship of indirect costs to administrative costs; and (5) identifying the base to be used to determine the cap (that is, whether the appropriate base for computing the Federal cap includes State matching funds). The first two categories will be dealt with in this section; the remaining three will be addressed in § 286.55.

### Imposition of an Administrative Cost Cap

*Comments:* We received multiple comments questioning whether ACF had statutory authority to impose a cap. Comments from a number of Tribes indicated their belief that the cap goes beyond the authority of Public Law 93-638, the Indian Self-Determination Act. These respondents asked that the entire section be deleted.

*Response:* There is legal support for imposition of an administrative cap. Although the statute only requires an administrative cost cap for States, Federal law does not preclude the Secretary from establishing a cap for the Tribal TANF program. Both the statute and legislative history make it clear that Congress intended that a substantial majority of TFAG funds be available to provide time-limited program assistance and/or services to needy Indian families. Section 412(b), which specifies Tribal Family Assistance plan requirements, clearly contemplates that the TFAG be used to support the provision of "assistance" and "welfare-related services."

While we believe in granting Tribes broad flexibility to design their programs and have left key definitions up to the discretion of the Tribes, we believe there is a need for Federal guidance on the definition of "administrative costs." The approach in this rule is a compromise between a Federal and tribal definition. It sets a

Federal framework that specifies some items that must be considered "administrative costs," but does not attempt to fully define the term.

We believe this framework is important. First, as the comments we received demonstrate, there is no common view of the meaning of this term. If we left this matter entirely to tribal discretion, we could expect a diversity of approaches, and Tribes might be subject to widely different penalty standards. Also, some Tribes might define the term so narrowly as to substantially undermine the intent of the administrative cost cap provisions. The philosophy underlying the administrative cost cap is clear: in order to protect needy families and children, it is critical that the substantial majority of TANF funds go towards helping needy families.

### The Amount of the Administrative Cost Cap

*Comments:* Almost all respondents requested the flexibility to negotiate a higher administrative cap either over the course of the entire three-year grant or for the initial start-up year(s). There were widespread comments attesting to the fact that although states have operated similar programs in the past and have invested heavily in an infrastructure to support the program, no such opportunity has existed for Tribes. Tribes will initially have extensive administrative costs while they develop the required infrastructure and data systems to manage the program, and some small Tribes may also experience economy of scale problems. Tribes believe that the 20 percent limitation provided for in the NPRM is overly restrictive and unrealistic, and they furthermore maintain that any cap should not have as its basis the state cap.

*Response:* Although we do not believe that the administrative cap proposed in the draft regulations was either arbitrary or paternalistic, we believe that a negotiated and graduated administrative cost cap would recognize that Indian tribes do not have the same sorts of resources as are available to States and therefore should be allowed to claim more administrative costs, especially in the initial operation and administration of a TANF program. There is no provision for start-up funds in the legislation, which compels Tribes to use funds from their Tribal Family Assistance Grant for that purpose.

It is critical to the establishment and effective and efficient operation of any viable social service program that a solid infrastructure be developed from the beginning. TANF is the first

comprehensive social services program that Tribes will operate. Therefore, Tribes with little or no infrastructure will need to create or strengthen their infrastructure in order to ensure a viable operating base for the program. Due to the uniqueness of TANF, even those Tribes with more sophisticated infrastructures will need to enhance and/or make substantial changes in their infrastructures to allow for the changes necessary to operate the TANF program effectively.

In most grant and contract programs Tribes are provided funds for planning, setup costs, contract support funds, and indirect costs to offset the lack of a tax base and other sources of funding to support Tribal programs. PRWORA provides no funding for Tribes to develop the necessary infrastructure to operate a TANF program.

Furthermore, program development and administrative activities (e.g., conference travel, home visits, procurement of goods and services, meetings with state and local TANF staff, etc.) are generally more expensive for Tribes than for state or local governments because of the distance from urban centers for most tribes, as well as the lack of transportation and public services.

Recognizing the unique administrative burdens on Tribes who have never been in the position of operating these programs, and who need to build an infrastructure capable of operating the Tribal TANF program, we have revised this section to allow ACF to negotiate with each Tribal TANF applicant individually for each year of a program's operation, a negotiated administrative cap for the first year not to exceed 35 percent, a negotiated administrative cap for the second year not to exceed 30 percent, and a negotiated administrative cap for all subsequent years of operation (that is, any and all years of program operation after the first two years) not to exceed 25 percent. Our negotiations will be based on, but not limited to, a Tribe's TANF funding level, the economic conditions and resources available to the Tribe, the relationship of the Tribe's administrative cost allocation proposal to the overall purposes of TANF, and a demonstration of the Tribe's administrative capability.

We believe that this graduated cap meets the intent of the law, yet provides Tribal TANF programs with additional funds to develop the necessary infrastructure to be successful in operating the Tribal TANF program. After the first two years of funding, each Tribal TANF grantee will be required to

expend at least 75 percent of its grant on direct service and benefits.

If a Tribe's administrative costs exceed the 25 percent limit (or 35 percent in the first year or 30 percent in the second year of operations), the penalty for misuse of funds (refer to § 286.195) will apply. The penalty will be in the amount spent on administrative costs in excess of the administrative cap for that particular year of operation. We will take an additional penalty in the amount of five percent of the TFAG if we find that a Tribe has intentionally exceeded the administrative cap limit. See discussion of § 286.200.

*Section 286.55 (Section 286.45 in the NPRM) What Types of Costs Are Subject to the Administrative Cost Limit on Tribal Family Assistance Grants?*

Just as with the State TANF program, we considered not proposing a Federal definition of "administrative costs." That option had appeal because: (1) It is consistent with the philosophy of a block grant; (2) we took a similar approach in some other policy areas (*i.e.*, in not defining individual work activities); (3) we support the idea that we should focus on outcomes, rather than process; and (4) the same definition might not work for each Tribe. Also, we were concerned we could exacerbate consistency problems if we created a Federal definition. Because of the wide variety of definitions in other related Federal programs, adoption of a single national definition could create variances in operational procedures within Tribal agencies and add to the complexities administrators would face in operating these programs.

At the same time, we were hesitant to defer totally to Tribal definitions. The philosophy underlying this provision is very important; in the interest of protecting needy families and children, it is critical that the substantial majority of Federal TANF funds go towards helping needy families. If we did not provide some definition, it would be impossible to ensure that the limit had meaning. Also, we felt that it would be better to give general guidance to Tribes than to get into disputes with individual Tribes about whether their definitions represented a "reasonable interpretation of the statute."

We thought that it was very important that any definition be flexible enough not to unnecessarily constrain Tribal choices on how they deliver services. We believe a traditional definition of administrative costs would be inappropriate because the TANF program is unique, and we expect TANF

to evolve into something significantly different from its predecessors and from other welfare-related programs. Specifically, we expect TANF to be a more service-oriented program, with substantially more resources devoted to case management and fewer distinctions between administrative activities and services provided to recipients.

The definition we have established does not directly address case management or eligibility determination. We understand that, especially for Tribal programs, the same individuals may be performing both activities. In such cases, to the extent that a worker's activities are essentially administrative in nature (*e.g.*, traditional eligibility determinations or verifications), the portion of the worker's time spent on such activities must be treated as administrative costs. However, to the extent that a worker's time is spent on case-management functions or delivering services to clients, that portion of the worker's time can be charged as program costs.

We believe that the definition in the Final Rule will not create a significant new administrative burden on Tribes. We believe that it is flexible enough to facilitate effective case management, accommodate evolving TANF program designs, and support innovation and diversity among Tribal TANF programs. It also has the significant advantage of being closely related to the definition in effect under the Job Training Partnership Act (JTPA). Thus, it should facilitate the coordination of Welfare-to-Work and TANF activities and support the transition of hard-to-employ TANF recipients into the work force.

Under §§ 286.40–45 of the Tribal TANF proposed regulations, Tribes could not spend more than 20 percent of their Federal TANF funds on administrative costs. The proposed regulation excluded expenditures for "information technology and computerization needed for tracking or monitoring" from the administrative cost cap, and the definition of administrative cost in § 286.5 provided additional information on what costs are both included and excluded from the definition of administrative costs and the cap.

The proposed definition at § 286.5 stated: "Administrative costs means costs necessary for the proper administration of the TANF program. It includes the costs for general administration and coordination of this program, including overhead costs." It also provided examples of eleven types of activities that would be classified as "administrative costs," such as salaries and benefits not associated with

providing program services, plan and budget preparation, procurement, accounting, and payroll. In developing this definition, our intention was that it would be flexible enough to facilitate effective case management, accommodate evolving Tribal TANF program designs, and support innovation and diversity among the Tribal TANF programs. We expected that our final definition would support the evolution of Tribal TANF into a more service-oriented program, with substantially more resources devoted to case management and fewer distinctions between administrative activities and services provided to recipients.

We have not included specific language in the Final Rule about treatment of costs incurred by subgrantees, contractors, community service providers, and other third parties, and we received no comments in this area. Neither the statute nor the final regulation make any provision for special treatment of such costs. Thus, the expectation is that administrative costs incurred by these entities would be part of the total administrative cost cap. In other words, it is immaterial whether costs are incurred by the Tribal TANF agency directly or by other parties.

We realize this policy may create additional administrative burdens for the Tribe and do not want to unnecessarily divert resources to administrative activities. At the same time, we do not want to distort agency incentives to contract for administrative or program services. In seeking possible solutions for this problem, we looked at the JTPA approach (which allows expenditures on services that are available "off-the-shelf" to be treated entirely as program costs), but did not think that it provided an adequate solution. We thought that too few of the service contracts under TANF would qualify for simplified treatment on that basis.

#### **The Treatment of Certain Costs**

*Comments:* We received a number of comments requesting that we specify that the list of examples delineated in § 286.5 is for guidance only. There is a great deal of concern that this list will be seen as all-inclusive, rather than as a list of examples of activities which are considered as administrative costs.

*Response:* Although we believe our language is clear in this regard, we will clarify in the regulation that this list provides examples of costs that are considered administrative in nature, but is not all-inclusive.

*Comments:* Many of those commenting on this issue (and on the

definition of administrative costs found in § 286.5) wanted us to clarify that eligibility determinations and verifications are more closely aligned to program costs than to administrative costs. Some argued that eligibility determination was not an administrative activity and was not easily or logically separable from case management. Still others commented on the burden associated with our proposal and the general need for tribal flexibility in this area. They argued that because eligibility determination and verification is part of the overall case management function, it would more appropriately be categorized as a program or service function than administration. They further argued that the differentiation between eligibility and service delivery would be virtually impossible, because a case manager may collect information for the purpose of providing or arranging supportive services, but use that same information to determine the family's eligibility.

*Response:* While we understand that Tribes with limited resources do not want to direct those limited resources to prorating the expenses of front-line workers who are simultaneously engaged in eligibility determination, case management, and service provision to Tribal TANF beneficiaries, we do not believe it would be consistent with the intent of the administrative cost cap provisions for Tribes to be spending large amounts of money on eligibility determinations rather than program services. We have a statutory responsibility for protecting against misuse of funds, and we know that money diverted to administrative activities could decrease the availability of benefits and services for needy families. We also believe that a clear policy on eligibility determinations might produce more consistent penalty determinations and reduce audit disputes, appeals, and litigation regarding application of the misuse of funds penalty.

We do not agree that Tribes must incur a significant administrative burden in order to identify the costs associated with eligibility determination activities. We recognize that the nature of staff responsibilities is changing and the line between case management and eligibility determination is blurring. Thus, it may be more difficult to develop rules for allocating the time of workers between administrative and program activities. However, once a Tribe develops its allocation rules, the process of allocating staff time is straightforward and no more difficult than the current cost allocation process.

We also recognize that the Tribal TANF program offers the possibility for Tribes to administer programs in new ways. We understand that Tribes are developing program structures with blended functions, and we support such efforts. These Final Rules do not in any sense require Tribes to have separate administrative and program staff. They merely require that Tribes provide a reasonable method for determining and allocating administrative and program costs.

Based on these considerations, we have decided to add eligibility determinations to the list of administrative activities at § 286.5. More specifically, this rule reflects the basic definition that was in the proposed regulation (with the same basic examples of administrative cost activities), but adds the NPRM preamble policy that required eligibility determination to be treated as an administrative cost. We recognize that this is a significant policy decision that merits inclusion directly in the regulatory text.

Under the Final Rule, Tribes may develop their own definitions of administrative costs, consistent with this regulatory framework. Nevertheless, we want to remind them that they must properly allocate costs; that is, they must attribute administrative, program, and systems costs to benefitting programs and appropriate cost categories, in accordance with an approved cost allocation plan and the cost principles in part 92 and OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments."

*Comments:* A number of comments suggested that the proposed language in § 286.5, the definition of administrative costs, was not sufficiently clear.

*Response:* We never intended to develop a regulation that fully defined the term administrative costs. For example, we believed that, by inference, readers would understand the language proposed at § 286.5 to mean that costs related to delivery of program services were not administrative costs. However, comments received suggest that the proposed rule was not sufficiently clear, and we have revised § 286.5 to make this point more clearly. More specifically, we have added a new paragraph, to exclude costs of providing services from the definition of administrative costs. The definition more directly states that costs of providing services are outside the definition of administrative costs, and it explicitly provides that case management, diversion and assessment activities are both program service costs

and not considered administrative costs. (Note: Here, we would make a distinction between assessment activities designed to identify needs and develop appropriate service strategies versus assessing income, resources, and documentation for eligibility determination purposes; the latter are administrative costs). Further, it explains that items that would normally be administrative costs, but are systems-related and needed for monitoring or tracking purposes under Tribal TANF, fall under a systems exclusion. In other words, we will not consider those costs in determining whether a Tribe has exceeded its cap.

#### **The Relationship of Indirect Costs to Administrative Costs**

Indirect Costs negotiated by BIA, the Department's Division of Cost Allocation, or another federal agency are considered to be part of the total administrative costs. This is because such indirect costs are generally administrative, reflecting the proration of common administrative costs and overhead charges which are not readily identifiable as program costs. They must therefore be calculated as part of the administrative cost cap.

*Comments:* A number of respondents were adamant that we should use indirect cost rates that have already been negotiated with HHS or BIA, stating that negotiated indirect cost rate agreements with Federal agencies must be honored.

*Response:* In response to the comments that previously negotiated indirect cost rate caps be used, we emphasize that although most indirect costs are administrative in nature, there is no immediate relationship between administrative and indirect costs. Administrative costs might be classified as either direct or indirect costs, depending on how they are identified in the program. Indirect costs are costs (both administrative and programmatic) incurred for common or joint objectives across all programs, which cannot be identified readily or specifically but which are nevertheless necessary to the operations of the organization. A negotiated indirect cost rate is based on a specific direct cost base which is much smaller than the entire TFAG base. Tribal TANF programs whose actual administrative costs do not reach the imposed cap may be able to recover additional indirect costs in accordance with their agreements, as long as the total amount recovered does not exceed the approved indirect cost rate.

## Base for Computing the Cap

*Comments:* Several commenters argued that we should allow for the combining of program funding sources under a single cost pool for the purposes of determining administrative costs associated with program operations. The inclusion of any state "match" funds in the base would streamline accounting functions by allowing a Tribe to negotiate one administrative cost rate for multiple funding sources. They asked that TFAG funding and state funding be considered as one program for purposes of determining administrative costs.

*Response:* In most cases state "match" is comprised of additional state funds that a state pays to tribal grantees on behalf of Indian families residing in the State. There is no requirement that a state provide such funds to Tribes. Since these are state, and not federal funds, we are not regulating the use of the funds in this rule. Notwithstanding the fact that we know states use these funds toward their required MOE amount, and would rather have all funds used toward service provision, states should understand that some administrative activities are a necessary part of service provision. It is therefore in the interest of the Tribe, when negotiating with a state over the receipt and use of any additional state funds, to ensure that a portion of those funds be allowable for administrative activities. However, we decline to make the requested change in the final regulation.

*Comments:* Several respondents, including one Federal agency, noted that Tribes have insufficient funds to develop the necessary infrastructure, and will be unable to purchase the hardware and software required to support an automated system whether they are charged as administrative or program costs. They recommended that federal start-up costs be provided outside of the cap for this purpose.

*Response:* We acknowledge the fact that states have been operating assistance programs for many years, and have had many opportunities to develop the essential infrastructures. However, additional funds were not appropriated by Congress to provide funds to Tribes separate from their TFAG in order to develop such systems. No additional sources of funding are available for this purpose.

*Section 286.60 (Section 286.50 in the NPRM) Must Tribes Obligate All Tribal Family Assistance Grant Funds by the End of the Fiscal Year in Which They Are Awarded?*

## Background

Section 404(e) of the Act, entitled "Authority to Reserve Certain Amounts for Assistance," allows States to reserve Federal TANF funds that they receive "for any fiscal year for the purpose of providing, without fiscal year limitation, assistance under the State program funded under this part."

This section initially did not apply to Tribal TANF or NEW Programs. Our original interpretation of the statute was that it precluded us granting to Tribes the authority to reserve TFAGs grants paid to them without fiscal year limitation. Therefore, the NPRM indicated that Tribes must obligate their TFAGs by the end of the fiscal year in which they are awarded.

*Comments:* Every Tribe commenting on this provision of the proposed rule voiced opposition, indicating that the proposed rule would frustrate contingency budgeting, prevent Tribes from coping with volatile and increasing caseloads, and generally hamper Tribes' efforts to achieve the objectives of the TANF program.

*Response:* The proposed rule was based on fact that States are permitted to reserve TANF funds with no fiscal year limitation under section 404(e) of the Act which, at that time, did not apply to Tribal TANF programs. Since 404(e) did not apply to Tribal TANF programs, our proposed rule required Tribal TANF programs to obligate their TANF funds no later than the end of the fiscal year in which the TANF grant funds were awarded.

In response to comments raised to this proposed rule, we reconsidered and determined that there was statutory authority for limited carry forward of Tribal TANF funds beyond what we had initially proposed in the NPRM. However, the Foster Care Independence Act of 1999 (Pub. L. 106-169), signed by the President on December 14, 1999, included a number of technical corrections to PRWORA which made our reconsideration of this rule moot. Included in those amendments is a provision which makes section 404(e) of PRWORA applicable to Tribes. Pursuant to amended section 404(e), a Tribe may reserve amounts awarded to the Tribe under section 412, without fiscal year limitation, to provide assistance under the Tribal TANF program. Federal unobligated balances carried forward from previous fiscal years may only be expended on assistance and related

administrative costs associated with providing such assistance. The related administrative costs to provide that assistance will be reported against the negotiated administrative cost cap for the fiscal year in which the Federal funds were originally awarded.

The statute limits a Tribe's ability to spend reserved money in one very important way. A Tribe may expend funds only on benefits that meet the definition of assistance at § 286.10 or on the administrative costs directly associated with providing such assistance. It may not expend reserved funds on benefits specifically excluded from the definition of assistance or on activities generally directed at serving the goals of the program, but outside the scope of the definition of assistance.

The Tribe must obligate by September 30 of the current fiscal year any funds for expenditures on non-assistance. The Tribe must liquidate these obligations by September 30 of the immediate succeeding Federal fiscal year for which the funds were awarded. If the final liquidation amounts are lower than the original amount obligated, these funds must be reported as an unobligated balance for the year in which they were awarded. As mentioned in the previous paragraph, unobligated balances from previous fiscal years may only be expended on assistance and the administrative costs related to providing that assistance.

## Subpart C—Tribal TANF Plan Content and Processing (§§ 286.65–286.190)

*Section 286.65 (Section 286.55 in the NPRM) How Can a Tribe Apply To Administer a Tribal Temporary Assistance for Needy Families (TANF) Program?*

Any eligible Indian tribe or Alaska Native regional non-profit corporation or intertribal consortium that wishes to administer a Tribal TANF program must submit a three-year Tribal Family Assistance Plan to the Secretary of the Department of Health and Human Services. This requirement extends to those Tribes that are operating a Pub. L. 102-477 employment and training program (please refer to § 286.160 for information on this).

*Comment:* One State commented that the regulation should address what happens at the end of the three-year grant cycle, including a notification deadline for a Tribe to declare to ACF and the state an intent to continue or discontinue Tribal TANF operations.

*Response:* The statute requires that an eligible Tribe, Alaska Native organization or intertribal consortium wishing to administer a Tribal TANF

program submit a three-year TFAP. Although section 412(a)(1)(A) authorizes Tribal TANF funding for more than three years, the statute is silent as to the required procedures for Tribes which intend to continue operating a Tribal TANF program beyond the initial three-year period.

We have added regulatory language to § 286.65 to indicate that, 120 days prior to the end of the three-year grant period, current Tribal TANF grantees must notify the appropriate Regional Office, the Central Office, and the affected State or States of their intentions for the following grant cycle. They must do one of the following:

(1) If they do not intend to continue operating the Tribal TANF program beyond the three years, they should submit a letter of intent that so specifies;

(2) If they intend to continue program operations with no changes to the geographic service area or service population, they should submit a letter of intent that so specifies. A current Tribal TANF grantee that intends to continue TANF program operations with no changes in service area or service population must submit a three-year TANF plan for approval no later than 60 days before the end of the current grant cycle;

(3) If they intend to continue program operations, but are proposing a change in the geographic service area and/or service population that will require new data from the state or a renegotiation of the grant amount, then they must submit a new three-year plan for approval at that time.

We believe that this process will provide all parties with sufficient time to ensure that there is no disruption in service to the Tribal TANF families.

*Section 286.70 (Section 286.60 in the NPRM) Who Submits a Tribal Family Assistance Plan?*

The chief executive officer of the Tribe, eligible Alaska Tribal entity, or Tribal consortium must sign and submit the TFAP. This is generally the Tribal Chairperson. The TFAP must also be accompanied by a Tribal resolution indicating Tribal Council support for the proposed Tribal TANF program. In the case of a Tribal consortium, the TFAP must be accompanied by Tribal resolutions from all members of the consortium. These Tribal Council resolutions must demonstrate each individual Tribe's support of the consortium, the delegation of decision-making authority to the consortium's governing board, and the Tribe's recognition that matters involving relationships between the Tribal TANF consortia and the State and/or Federal

government on TANF matters are the express responsibility of the consortium's governing board.

We recognize that changes in the leadership of a Tribe or some other event may cause a participating Tribe to rethink its participation in the consortium and/or in Tribal TANF. If, for example, a subsequently elected Council decided to terminate participation in the consortium and in TANF, that decision might create a need for time to reintegrate a Tribal program or a part of the Tribal program into the State program. Thus, we specify at § 286.70(c) that, when one of the participating Tribes in a consortium wishes to withdraw from the consortium for purposes of either withdrawing from Tribal TANF altogether or to operate its own Tribal TANF program, that the Tribe needs to notify both the consortium and us of this fact at least 120 days prior to the planned effective date. This notification time frame is especially applicable if the Tribe is withdrawing from Tribal TANF altogether and the Tribe's withdrawal will cause a change to the service area or population of the consortium.

A Tribe withdrawing from a consortium for purposes of operating its own program must, in addition to the notification specified in the previous paragraph, submit its own Tribal TANF plan that meets the plan requirements at § 286.75 and the time frames specified at § 286.160.

*Section 286.75 (Section 286.65 in the NPRM) What Must Be Included in the Tribal Family Assistance Plan?*

**Background**

The TANF program concerns work, responsibility, and self-sufficiency for families. To that end, section 412(b) of the Act lists six features of a Tribal Family Assistance Plan.

**Approach to Providing Welfare-Related Services**

The TFAP must outline the Tribe's strategy for providing welfare-related services. The Act does not specify what this outline must entail; however, we believe it is important that it includes information necessary for anyone to understand what services will be provided and to whom the services will be provided.

To that end, the Tribal Family Assistance Plan must include, but is not limited to, information such as general eligibility criteria and special populations to be served, a description of the assistance and services to be offered, and the means by which they will be offered using TANF funds.

The description of general eligibility requirements consists of the Tribe's definition of "eligible family," including income and resource limits that make a family "needy," and the Tribe's definition of "Tribal member family" or "Indian family." The description of the services and assistance to be provided includes whether the Tribe will provide cash assistance, and what other assistance and services will be provided.

The PRWORA discusses a variety of special populations who can benefit from a TANF program. While the statute does not require a Tribal TANF program to provide specific or targeted services to these populations, if the Tribe opts to do so, it must include a discussion of those services in the TFAP. For example, teen parents without a secondary degree are a special target population for State TANF-related services. If a Tribe wants to provide specific services to teen parents, it needs to describe the specific services in the plan.

We are also requiring information in the Tribal TANF plan regarding whether services will be provided to families who are transitioning off TANF assistance due to employment. Section 411(a)(5) of the Act requires Tribes to report, on a quarterly basis, the total amount of TANF funds expended to provide transitional services to families that have ceased to receive assistance because of employment, along with a description of such services. Therefore, we believe it prudent for ACF and the public to know whether the Tribe's TANF program provides transitional services and, if so, what types of services will be offered.

Questions have been raised about the potential dual eligibility of Indians for State and Tribal TANF programs. It is the position of the Department that section 417 of the Act precludes our regulating the conduct of States in this area. Nonetheless, we note that the issue of the dual eligibility of Indians raises constitutional concerns about the denial of state citizenship rights under the fourteenth amendment. We also note that, under section 408(c) of the Act, State TANF programs are subject to title VI of the Civil Rights Act of 1964 and certain other Federal non-discrimination provisions.

As TANF focuses on outcomes, we believe a TFAP needs to identify the Tribe's goals for its TANF program and indicate how it will measure progress towards those goals. We believe this will help focus efforts on achieving positive outcomes for families. Progress can be measured longitudinally over time or over the short term, but should

be clearly targeted on those being served by the Tribal TANF program. For example: the incidence of teen pregnancy will be reduced by approximately X % over the three-year period of the TFAP, or educational achievement by teen parents receiving TANF assistance will experience an overall gain of at least one grade level over the three-year-period of the TFAP.

Sections 402(a)(4)(A) and (B) of the Act require States to certify that local governments and private sector organizations have been consulted regarding the State TANF plan and design of welfare services and have had at least 45 days to submit comments on the plan. We have included similar requirements as part of the Tribal TANF plan process. We have incorporated a public comment period as a means of soliciting input into the design of the Tribal TANF program and providing a means through which Tribes may design a program which truly meets the community's needs. This public comment period should afford affected parties the opportunity to review and comment on a Tribe's TFAP. While the Act does not specifically require Tribes to conduct a public comment period prior to submission of the TFAP, previous experience demonstrates the value of such a comment period towards tailoring the program to meet the individual circumstances of those who will be affected by the program and its far-reaching impact on Tribal children and families. Furthermore, we discern Congressional recognition in the Act of the value of public comment on the content of TANF plans and the design of welfare services. We believe that this is equally applicable to Tribal TANF plans.

Finally, it is important that individuals who apply for and/or receive TANF are afforded due process should the Tribe take an adverse action against them. Therefore, the TFAP must include an assurance that the Tribe has developed a specific TANF dispute resolution process. This process must be used when individuals or families dispute the Tribe's decision to deny, reduce, suspend, sanction or terminate assistance.

#### **Child Support Enforcement**

Just as the enactment of PRWORA created opportunities for Tribes to operate their own TANF programs, it provided new opportunities to ensure that Tribal families receive child support from responsible parents. The relationship between TANF and child support enforcement programs is important, regardless of whether the State or Tribe operates one or both of

these programs. In addition, the relationship between self-sufficiency and child support becomes extremely important for TANF families because of the time-limited nature of TANF assistance.

Under PRWORA, in order to receive a TANF block grant, a State must certify that it operates a child support enforcement program meeting requirements under title IV-D of the Act. A State child support enforcement program must provide the following services to TANF and former TANF recipients and to others who apply for services: location of parents, establishment of paternity and support orders and enforcement of orders. In order to receive TANF assistance from a State, a TANF applicant or recipient must assign any rights to support to the State and cooperate with the child support enforcement program in establishing paternity and securing support. Collections of assigned support are used to reduce State and Federal costs of the TANF program.

PRWORA does not place similar requirements on Tribes or families receiving Tribal TANF assistance. Tribes are not required to certify that they are operating a child support enforcement program as a condition of receiving a Tribal TANF grant. Nor is there any requirement that Tribal TANF applicants and recipients assign all rights to support as a condition of receipt of Tribal TANF. There are, therefore, no penalties to the Tribe for failing to operate a child support enforcement program nor to a Tribal TANF recipient for failing to cooperate with child support efforts. However, several Tribes with approved Tribal TANF plans are requiring Tribal TANF recipients to cooperate with child support efforts.

Prior to enactment of PRWORA, title IV-D of the Act placed responsibility for the delivery of child support enforcement services with the States. Consequently, States have attempted to provide child support services on Tribal lands but have generally been constrained in their abilities to establish paternity, or establish or enforce child support orders with respect to noncustodial parents who reside within the jurisdiction of a Tribe because of sovereignty and jurisdictional issues. Therefore, arrangements for child support services on Tribal lands may involve a specific agreement to recognize State or county jurisdiction on Tribal lands for the narrow purpose of child support enforcement. In such agreements, Tribes agree to allow the child support agency to extend State program procedures to the reservation.

Alternatively, some States and Tribes have entered into cooperative agreements under which a Tribal entity provides child support services on Tribal lands and receives funding from the State.

Under PRWORA, requirements for State/Tribal cooperative agreements, as well as direct Federal funding of Tribes for operating child support enforcement programs, were addressed for the first time in title IV-D of the Act. Section 5546 of the Balanced Budget Act of 1997 made technical amendments to the cooperative agreements language in section 454(33) of the Act and to direct funding of Tribal child support enforcement programs under section 455(f) of the Act.

Issues relating to responsibilities for providing child support enforcement services for Tribal TANF assistance cases and distribution of support collections in such cases have already been raised in several States. States and Tribes must work together to determine how Tribal TANF and State child support programs will work best for Tribal families. More than ever before, this collaboration is critical.

Since child support is a critical component of self-sufficiency for many single parent families, Tribes need to determine whether they want to condition a family's eligibility for Tribal TANF assistance on cooperation with the State child support enforcement program. If the Tribe will so condition eligibility, the TFAP should so specify.

Tribes that have entered into, or will enter into, cooperative agreements with their States on child support matters have decided that child support is a critical issue for families. Likewise, Tribes that will decide, after regulations have been issued, to operate their own child support enforcement programs know the importance of child support.

#### **Provision of Services**

As required by section 412(b)(1)(B), the TFAP must indicate whether the welfare-related services provided under this plan will be provided by the Indian tribe or through agreements, contracts or compacts with inter-Tribal consortia, States, or other entities. The Tribe determines which Tribal agency will have the lead responsibility for the overall administration of the Tribal TANF program. The designated lead agency plans, directs and operates the Tribal TANF Program on behalf of the Tribe. While it has the flexibility to contract many portions of the Tribal TANF program with public and/or private entities, the lead agency must maintain overall administrative control of the program. The lead agency is

required to submit and administer the Tribal TANF plans, coordinate Tribal TANF services with other Tribal and State programs, and collect and submit required data. Although not required by statute, we are requiring at § 286.75(b) that Tribes identify the lead agency in the TFAP because of its importance in the overall administration of and responsibility for the Tribal TANF program. The plan must also include a description of the administrative structure for supervision of the Tribal TANF program, including the designated unit responsible for the program and its location within the Tribal government.

For lead agencies that wish to enter into agreements or contracts with other entities, the TFAP needs to specify how the welfare-related services will be provided, *e.g.*, through sub-contracts. In the instance of Tribal consortia, the lead agency fulfills the same responsibility as the designated unit discussed above.

#### **Population/Service Area**

Section 412(b)(1)(C) of the Act requires that a TFAP identify the population and service area or areas to be served by the plan. Yet the statute defines neither of these terms.

In our consultation with Tribes on how service area and population should be defined, we heard from Tribes that they should be given flexibility to define their own Tribal TANF service area and population. We have also heard that, at least in the case of Oklahoma, we might expect disagreements between Tribes to arise if service area parameters were not established for Tribes in that State. This concern was due to the fact that none of the Tribes in Oklahoma, except for one, have reservations. Our intent in this Final Rule is to balance Tribal flexibility with the need to afford consideration to Tribes who disagree with another Tribe's proposed service area or population.

Therefore, with regards to service population, Tribes have the flexibility to decide whether their TFAP will serve all Indian families within the service area or solely the enrolled members of the Tribe. A Tribe would convey its decision in the TFAP. If the TFAP provides for services to all Indian families within the service area, then the Tribe agrees to provide such services. If the TFAP provides for services solely to families of enrolled members of the Tribe, then the Tribe does not agree to provide services to the families of non-enrolled Indians residing in the service area of the Tribe.

Regardless of the decision reached by the Tribe in this matter, the responsibility for TANF services to non-

Indian families in the Tribal service area resides with the State TANF program, unless the Tribe has negotiated an agreement with the State to allow the Tribe to serve non-Indian families within the Tribal service area. If such an agreement has been reached, the Tribe must include a copy of the agreement or other such documentation of State concurrence, such as a letter from the State, with the TFAP.

There may be various reasons why both a Tribe and the State would want the Tribe to provide TANF assistance to all needy families in its service area (for example, there are very few non-Indian families in the service area). We believe this flexibility to allow a Tribe to include non-Indians in its service population, with State agreement, benefits both Tribes and States.

In those instances where non-enrolled Indians or non-Indians are served by the Tribal TANF Program, the Tribal TANF program is the final authority on the services to be provided. The non-enrolled member's Tribe or the State(s) cannot decide on the nature of the services to be provided by the Tribal TANF program.

With regards to service area, a Tribal TANF service area could include the Tribe's reservation or just portions of the reservation. It could also include "near reservation areas" meeting BIA requirements as outlined at 25 CFR 20.1(r). For Tribes without land bases, the service area could include all or part of the Tribe's service area as defined by BIA.

In the case of claimed service areas extending beyond the Tribe's "near reservation area" or BIA-defined service area, we are concerned about possible complications resulting from misunderstandings on the scope of the service area. Therefore, if a Tribe claims an alternative service area, the TFAP should clearly define the demographic extent of such areas and include a memorandum of understanding with the appropriate State(s) agency or Tribal government reflecting State(s) or Tribal agreement to the servicing of the Tribal TANF service population by the Tribal TANF Program in the extended area.

Likewise, for Tribes in Oklahoma, if the Tribe defines its service area as other than just its "tribal jurisdiction statistical area" (TJSA), the Tribe must include an agreement with the appropriate Tribal government reflecting that Tribe's agreement to the service area. TJSA's are areas delineated for each federally-recognized Tribe in Oklahoma without a reservation by the Census Bureau.

#### **Duplicative Assistance**

Section 412(b)(1)(D) indicates that an individual receiving assistance from a Tribal TANF program may not receive assistance from another State or Tribal TANF program for the same purpose. The TFAP must contain an assurance that families receiving assistance under the Tribal TANF plan will not receive duplicative services under any other State or Tribal TANF plan. The Tribe must develop a process to ensure that duplication does not occur and must include a description of that process in the TFAP. We believe any process the Tribe develops should include a mutual information exchange between the Tribe and State(s) and other nearby Tribal TANF grantees.

#### **Employment Opportunities**

Section 412(b)(1)(E) requires that Tribes identify in their TFAPs the employment opportunities in and near the service area or areas of the Indian tribe. Section 286.75(g) of the Final Rule reiterates this requirement. The employment opportunities within and near the Tribal TANF service area will greatly impact the service population's ability to obtain and maintain employment. In designing the Tribal TANF program, Tribes should consider current unemployment rates, public and private sector employment opportunities, and education and training resources. These factors should provide a basis for the Tribe's proposed work activities, work participation requirements, penalties against individuals, and time limits.

Section 412(b)(1)(D) of the Act also requires that TFAPs identify the manner in which the Indian tribe will cooperate and participate in enhancing employment opportunities for TANF recipients consistent with any applicable State standards. At § 286.75(g)(2) we reiterate the statutory requirement that the TFAPs describe how the Tribe will enhance employment opportunities for their TANF recipients. Tribes should consider the best means by which they can work with other Tribal or State agencies, and other private and public sector entities on or near the reservation, to enhance employment opportunities. These efforts may be through memoranda of understanding or other public-private partnerships. These activities should also be consistent with any State employment standards (for example, a State minimum wage requirement).

## Fiscal Accountability

As required by section 412(b)(1)(F) of the Act, the TFAP must provide an assurance that the Tribe applies the fiscal accountability provisions of section 5(f)(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450c(f)(1)), relating to the submission of a single-agency audit report required by chapter 75 of title 31, United States Code.

## Establishing Minimum Work Participation Requirements, Time Limits for the Receipt of Assistance and Penalties Against Individuals

PRWORA promotes self-sufficiency and independence while holding individuals to a higher standard of personal responsibility for the support of their children than prior law. The legislation expands the concept of mutual responsibility, introduced under the Family Support Act of 1988, that income assistance to families with able-bodied adults should be transitional and conditioned upon their efforts to become self-sufficient. These goals are reflected in the State TANF provisions requiring individuals to participate in work activities, limiting the number of months that assistance will be provided, and penalizing individuals for failure to participate in work activities as required.

Minimum work participation requirements, time limits for the receipt of assistance and penalties against individuals who refuse to participate in work activities as required are explicitly stated for the State TANF programs in the statute. For the Tribal TANF programs, these three components are not specified. Instead, section 412(c) of the Act provides that for each Tribal TANF grantee Tribal TANF minimum work participation requirements, time limits for the receipt of assistance, and penalties against individuals are to be established by the Secretary with the participation of the Tribes.

The statute further specifies that Tribal TANF work participation requirements and time limits are to be consistent with the purposes of TANF and consistent with the economic conditions and resources available to each Tribe. In addition, penalties against individuals are to be similar to those found in section 407(e) of the statute. However, the statute does not specify a process or procedure to be used to establish minimum work participation requirements, appropriate time limits for the receipt of assistance, and penalties against individuals for each Tribal TANF grantee.

During discussions with Tribes and States as to what process should be used to establish these requirements for each Tribal TANF grantee, many suggested that we use the proposal a Tribe includes in its Tribal TANF plan as the basis for negotiating and establishing these requirements. We agree that it would be prudent to establish these requirements as part of the TANF plan process so that Tribes will know in advance of accepting the TANF program grant the requirements to which they are committing and for which they will be held accountable.

Thus, we are requiring that each Tribe specify its proposal for minimum work participation requirements, time limits for the receipt of assistance, penalties against individuals who refuse to participate in work activities as required, and related policies in its Tribal TANF plan. In addition, the Tribe must include a rationale for its proposals and related policies in the plan. The rationale should address how the Tribe's proposal is consistent with the purposes of TANF and is consistent with the economic conditions and resources available to the Tribe.

Examples of the information that we would expect to be included to illustrate the Tribe's proposal include, but are not limited to: Poverty, unemployment, jobless and job surplus rates; education levels of adults in the service area; availability of and/or accessibility to resources (educational facilities, transportation) to help families become employable and find employment; and employment opportunities on and near the service area.

We will review and evaluate a Tribe's proposal for these components as part of the review and approval process for the entire plan. Additional information or discussion about a Tribe's proposal may be necessary before we approve the plan.

Minimum work participation requirements are further detailed at §§ 286.80–110 of the Final Rule. The Final Rule at §§ 286.115–130 contains additional information on time limits. Information on penalties against individuals is outlined at §§ 286.135–150.

*Comments:* We received a number of comments regarding the definition of "service population." One commenter concurred that a Tribe should define its own service area and service population. Another commenter asked that the TFAP include information on how other entities would serve groups excluded from the definition of "service population." Yet another commenter indicated that a Tribe should be mandated to provide services to all

individuals living within its boundaries and precluded from considering enrolled members who are located near-reservation.

*Response:* Section 412(b)(1)(C) of the Act requires a Tribe to identify the service area or areas to be served by the TFAP, yet does not define the term. The preamble of the proposed rule included a lengthy discussion on our intent and expectations in this area, and we have restated that discussion above. We believe that all comments have already been answered.

*Comment:* One commenter asked that the final regulations encourage a mutual effort between the state and the Tribe as the Tribe defines its service area.

*Response:* For welfare reform to succeed in Indian country, Tribes and States need to work together in addressing various issues. Throughout this rule we encourage coordination and cooperation between Tribes and States, as well as between Tribes.

*Section 286.80 (Section 286.70 in the NPRM) What Information on Minimum Work Participation Requirements Must a Tribe Include in Its Tribal Family Assistance Plan?*

## Background

As Tribes focus on assisting adults in obtaining work and earning paychecks quickly, parents receiving assistance from a Tribal TANF program are also expected to meet new and more stringent work requirements.

Section 401(a)(2) of the Act states that one of the purposes of TANF is to promote job preparation and work to help needy families become self-sufficient. The statute, at section 407, provides specific individual work participation requirements and participation rate goals to ensure this purpose is carried out under State TANF programs. For State TANF programs, work participation requirements encompass (1) the proportion of TANF families participating in the activities (participation rate targets); (2) the activity level to be required of families, e.g., average number of hours of work per week; (3) the activities that families must be engaged in, e.g., subsidized employment, vocational training, etc.; and (4) exemptions, limitations and special rules related to work requirements.

In providing flexibility in establishing work participation requirements, Congress recognized that Tribal economies and resources will vary and affect a Tribal TANF family's and program's ability to meet the work requirements imposed upon State TANF

recipients and State TANF programs. Since the statutory language requires that the work requirements take into consideration the economic conditions and resources available to each Tribe, we cannot establish across-the-board minimum work requirements that would be applied to all Tribes. Additionally, written and verbal feedback from Tribes indicated overwhelming support for negotiating on a case-by-case basis with each individual Tribe (as opposed to applying an across-the-board minimum) that will reflect the differences among Tribal economies and resources.

In order to have the information needed to establish minimum work participation requirements for each Tribal grantee, we specify at § 286.80 that each Tribe specify in its TFAP: (1) The targeted participation rates for each of the fiscal years covered by the plan; (2) the minimum number of hours families will be required to participate in work activities for each of the fiscal years covered by the plan; (3) the work activities that count towards the work requirement; (4) any limitations and special rules related to work requirements; and (5) the rationale for the Tribe's proposed work requirements, including how they are consistent with the purposes of TANF and with the economic conditions and resources available to the Tribe.

Considering that many Tribal families reside in remote areas and lack of adequate transportation is a major concern, the final regulation at § 286.80(b)(2)(i) allows a Tribe to include reasonable transportation time to and from the activity site in determining the number of hours of participation. Counting transportation time may be indicative of the economic conditions and resources available to a Tribe, and transportation is an economic resource.

Therefore, if a Tribe proposes to count reasonable transportation time towards the minimum number of hours individuals participate, the Tribe's TFAP will need to so specify. The Tribe's definition of "reasonable" would also have to be included in the plan. However, we would also expect Tribes proposing to include reasonable transportation time in determining the number of hours of work participation, to demonstrate that their overall proposal for number of hours is consistent with the purposes of TANF.

As discussed above, the Tribe's rationale for its proposed work participation requirements could include, but is not limited to: Poverty, unemployment, jobless and job surplus rates; education levels of adults in the

service area; availability and/or accessibility to resources (educational facilities, transportation) to help families become employable and find employment; and employment opportunities on and near the service area.

As noted above, any Tribe proposing to include reasonable transportation time as part of its proposal on minimum hours of participation will also have to include a rationale for this decision.

*Comments:* Several commenters support the overall flexibility afforded Tribes in defining work and negotiating participation rates proposed in § 286.70 of the NPRM. They indicate that the provisions of the section appear reasonable. They also support providing the Tribes the opportunity to revise rates in subsequent years.

However, one commenter, in addressing this section, suggested that the work participation rates should be capped at 15 percent.

*Response:* The statute at Section 412(c) provides that work participation rates shall be established consistent with the purposes of the Act, consistent with the economic conditions and resources available to each Tribe, and in a manner similar to comparable provisions in Section 407(e). This clearly provides for a negotiated rate and not for any type of general cap.

*Comment:* One commenter suggests that in § 286.70(a) of the NPRM the words "negotiate with us" be removed and replaced with "provide ACF".

*Response:* The statute at section 412 provides that "The Secretary, with the participation of the Indian tribes, shall establish for each Indian tribe \* \* \* minimum work requirements. \* \* \* This clearly provides for a negotiation process.

*Comments:* Several commenters strongly endorsed the provisions of § 286.70(b)(1) as proposed in the NPRM, which allows the Tribes the option to establish different participation rates, *i.e.* one for all families, a rate for all families and two-parent families, or two separate rates for one-parent and two-parent families.

Several commenters agreed with § 286.70(b)(2)(i) as proposed, which allows "reasonable" transportation time to be counted toward determining the hours of work participation and encourage its retention. However, one commenter objected to the Tribes having to explain how counting this time is consistent with the purposes of TANF.

*Response:* We agree with the desirability of retaining this provision. However, just as a basic rationale is required to explain or "justify" work

requirements and participation rates on a plan by plan basis, so too should a basic rationale be provided to establish the "reasonableness" of the allowance, and to explain how it contributes to the needs of the Tribe and is therefore consistent with the purposes of TANF.

*Comments:* Several commenters pointed out that there is no reason or justification for the requirement found in § 286.70(b)(5) of the proposed rule, that if a Tribe's TFAP differs from that required of the State for participation rates and work activities, it must be justified in comparison to the State requirements. Commenters point out that while justification for participation rates and work activities is necessary and proper, it should be based on tribal criteria and established needs, and not be measured against or compared with the State's.

*Response:* We agree. We have revised the first paragraph of § 286.80(b)(5) accordingly.

*(Section 286.75 in the NPRM) What Additional Information on Minimum Work Participation Rates Must Be Included in a Tribal Family Assistance Plan? (Deleted)*

Upon review of the proposed rule, we determined that this section was unnecessary, as it repeated information found in other sections as well. We therefore removed it from the Final Rule, and renumbered the rule accordingly.

*Section 286.85 (Section 286.80 in the NPRM) How Will We Calculate the Work Participation Rates?*

Commenters addressing this section agreed with its provisions as written and endorsed their retention.

Similar to the calculations for State participation rates, the final regulations at § 286.85 indicate that the yearly participation rate will be the average of the monthly participation rates. Monthly rates, for each rate approved in the Tribe's TANF plan, will be determined by a ratio with the numerator and denominator defined as follows:

*Numerator:* The number of families with an adult or minor head-of-household receiving TANF assistance from the Tribe engaged in work activities as defined in the Tribe's approved TANF plan for the required number of hours.

*Denominator:* The number of families with an adult or minor head-of-household receiving TANF assistance from the Tribe.

This calculation will be appropriately modified depending upon whether the Tribe chooses to target (1) an all-family

rate, (2) an all-family rate and a two-parent rate, or (3) a one-parent rate and a two-parent rate.

We have also made it clear in this Final Rule that a Tribe may count as a month of participation any partial months of assistance, if an adult in the family is engaged in work activities for the minimum average number of hours in each full week that the family receives assistance in that month. These families are already included in the denominator since they are recipients of assistance in that month.

#### Exclusions From Work Participation Rate Calculations

The PRWORA does not specify exclusions from the participation rate calculations for Tribal TANF programs. However, consistent with the flexibility provided State TANF programs, in § 286.85(c)(2) we allow Tribes to exclude from the total number of TANF families (the denominator): (1) Those families who have a child under the age of one if the Tribe opts to exempt these families from participating in activities (and so specified in the Tribe's TANF plan); and (2) on a limited basis, those families who are sanctioned for non-compliance.

The statute at section 407(b)(1)(B)(i)(II) precludes States from excluding families sanctioned for non-compliance with the work participation requirements from the denominator if the families have been sanctioned for more than three months out of a twelve-month period. We considered whether to apply the same restriction to Tribal TANF work participation rate calculations. We were concerned that if we did not apply the same restriction and allowed Tribes to exclude sanctioned families indefinitely, then we would be inadvertently encouraging Tribes to discontinue their efforts in bringing those families into compliance and working towards self-sufficiency. Therefore, we decided at § 286.85(c)(2)(i) that families sanctioned for non-compliance with the work participation requirements are to be excluded from the denominator only if they have not been sanctioned for more than three months (whether or not consecutively) out of the last twelve months.

The final regulations do not provide for any other exclusions in calculating the Tribal TANF participation rate.

We considered whether we should negotiate exclusions from the work participation rate calculations on a case-by-case basis with each individual Tribe. We rejected this approach because we believe a uniform method for calculating Tribal TANF work

participation rates will help ensure that penalties are applied equitably across Tribes administering a TANF program. Additionally, since the rates themselves will be negotiated with each individual Tribe, such negotiations will already take into account unique circumstances which may make it difficult for certain families to participate in work activities.

#### Two-Parent Families

Section 407(b)(2) of the Act, as amended by the Balanced Budget Act of 1997, requires a State to not consider as a two-parent family a family in which one of the parents is disabled for purposes of the work participation rate. Thus, a two-parent family in which one of the parents is disabled will be treated as a single-parent family for purposes of calculating the work participation rate. In § 286.85(e) this provision is made applicable to Tribal TANF programs as well.

*Section 286.90 (Section 286.85 in the NPRM) How Many Hours Per Week Must an Adult or Minor Head-of-Household Participate in Work-Related Activities To Count in the Numerator of the Work Participation Rate?, and*

*Section 286.95 (Section 286.90 in the NPRM) What, if Any, Are the Special Rules Concerning Counting Work for Two-Parent Families?*

For Tribal TANF programs the statute does not specify the minimum number of hours individuals must participate in order to be counted for participation rate calculations. The Act gives us the authority to negotiate these requirements with Tribes. The final regulation at § 286.95 indicates that the minimum average number of hours per week for State TANF families presumptuously applies to Tribal TANF families as well. However, unlike the State requirements, we have provided Tribes the opportunity to rebut this presumption. Tribes will be permitted to establish fewer minimally required hours for families if a Tribe provides appropriate justification in its TANF plan. For example, the availability and accessibility of resources may not enable Tribal individuals to participate at the minimum number of hours per week required of State TANF recipients.

Section 407(c)(2)(B) of the Act enables States to consider as engaged in work a custodial parent or caretaker relative with a child under age 6, who is the only parent or caretaker relative in the family, if s(he) participates for an average of 20 hours per week. We have extended this provision to Tribal TANF programs.

The Balanced Budget Act of 1997 amended section 407(c)(1)(B)(i) of the Act to allow both parents in a two-parent family to share the number of hours required to be considered as engaged in work for purposes of meeting State TANF work requirements. The final regulation at § 286.95 indicates that Tribal TANF programs will also be able to apply this policy.

*Comments:* Several commenters pointed out that (as indicated in the proposed rule) § 286.85, or at least § 286.85(a), appeared to be in conflict with proposed § 286.80 and § 286.90. They pointed out that § 286.80 allowed for a Tribe to establish minimum work participation rates for all cases, while § 286.90 provided only that an adult or minor caretaker must participate in work activities for at least the minimum average number of hours per week specified in the Tribe's approved TFAG. On the other hand, § 286.90(a) established a mandatory 20 hours per week minimum for a single custodial parent or caretaker relative with a child under six years of age. Additionally, § 286.90(b) provided that in a two-parent family the number of work hours required could be shared. Commenters suggested that § 286.90 should be deleted in its entirety.

*Response:* We agree there was a conflict between what is now § 286.95(a) and §§ 286.70 and 286.80, and that § 286.95(a) should be deleted. The Tribe should be allowed to set minimum work requirements for parents or caretakers of children under six as part of their general establishment of work requirements in its TFAG. However, we have determined that permitting two-parent families to share hours encourages and supports the maintenance of such families. Therefore, § 286.95 is justified under section 401 of the Act.

*Section 286.100 (Section 286.95 in the NPRM) What Activities Count Towards the Work Participation Rates?*

*Comments:* Commenters supported the flexibility this section allowed the Tribes in identifying work activities.

PRWORA does not specify the work activities required of Tribal TANF recipients but instead authorizes the establishment of minimum work participation requirements, which include work activities, for each Tribal grantee. The overwhelming feedback we received in discussions with Tribes suggested that the work activities identified for States in the statute be considered activities that count toward a Tribal TANF participation rate with two caveats: (1) That they not be limited to those activities; and (2) that they not

be further defined in the regulations. Therefore, at § 286.100 we listed the same activities found at section 407(b) of the Act. In addition, we are providing Tribes further flexibility to identify additional activities that they would consider acceptable and necessary in helping families work towards self-sufficiency. For example, a Tribe may identify subsistence activities or substance abuse treatment as activities the Tribe believes necessary to help families achieve self-sufficiency.

Furthermore, since we are not defining the work activities in the final regulations for States, but are instead asking States to define them, we feel it is appropriate to afford Tribes the same definition flexibility.

*Section 286.105 (Section 286.100 in the NPRM) What Limitations Concerning Vocational Education, Job Search and Job Readiness Assistance Exist with Respect to the Work Participation Rate?*

Tribal TANF work activities should not be subject to the same restrictions on vocational training as are placed on State TANF programs by statute (*i.e.*, not be limited to 12 months). Because Tribal families may have minimal work skills and experience, and Tribal work opportunities may be much more limited, Tribes should have the flexibility to engage Tribal families in more extensive training. Therefore, the final regulation at § 286.105(a) does not impose the same limitation that is imposed upon States.

However, with respect to the job search/job readiness limitation required of State TANF programs, we believe that Tribal TANF families should also not simply be asked to job search or participate in job readiness activities as their sole activity for lengthy periods of time. Therefore, the Final Rule at § 286.105(b) is similar to the provision found at section 407(c)(2)(A)(i) of the Act that limits to six weeks in a fiscal year the length of time that a State can consider participation in job search/job readiness in a fiscal year by any individual to be considered engaged in work.

We are also affording Tribes the option afforded to States that if the unemployment rate in a Tribal TANF service area is at least 50 percent greater than the United States' total unemployment rate for the fiscal year, then job search and job readiness assistance can be counted for up to twelve weeks during that fiscal year.

However, unlike for State TANF programs, we indicate at § 286.105(c) that if job search is conducted on an ancillary basis as part of another activity, then time spent in job search

activities can count without limitation. We believe that as long as a family is engaging in activities in addition to job searching, then including hours spent in job search as part of their other activities is consistent with the intent of the law, to help families reach their goal of achieving self-sufficiency as soon as possible.

*Comments:* Several commenters strongly supported the provisions of this section. Three commenters objected to the limitation in proposed § 286.100(b)(1) on job search and job readiness activities, arguing that this section was not supported by section 412 of the Act. They suggested that the six week limitation on job search and job readiness activities should be deleted and that any limitations should be negotiated by the Tribes.

*Response:* Given that all TANF assistance is time-limited and the fact that the statute specifically limits the amount of time that job search and job readiness may be counted as work activities under State programs, we determined that permitting Tribes to negotiate limitations on job search and job readiness on a case-by-case basis could not be justified under the statute. Therefore, we have not changed the language in this section.

*Section 286.110 (Section 286.105 in the NPRM) What Safeguards Are There To Ensure That Participants in Tribal TANF Work Activities Do Not Displace Other Workers?*

Section 407(f)(2) of the Act contains two safeguards to ensure that in helping welfare recipients become self-sufficient, we do not jeopardize the economic well-being of non-TANF families through displacement. First, a recipient may not be assigned to a vacant position if the employer has placed other individuals on layoff from the same or equivalent job. Second, an employer may not terminate the employment of any regular employee in order to create a vacancy for the employment of a TANF recipient. We believe these safeguards provide important protection for all workers and need to be in place under both Tribal and State TANF programs. Furthermore, we do not intend for these provisions to preempt or supersede any Tribal laws providing greater protection for employees.

**Time Limits**

In addition to promoting self-sufficiency and independence through employment, PRWORA stresses the temporary nature of welfare and limits the number of months that assistance can be provided with TANF funds.

PRWORA provides a 60-month (or less, at State option) time limit for the receipt of TANF assistance under State TANF programs. The time limit provisions include not only the length of time that assistance can be provided, but also what months of assistance will count toward the time limit and whether any categories of recipients are exempt from the time limit rules. We have the authority, under section 412(c) of the Act, to establish for each Tribe, with the participation of the Tribe, appropriate time limits for receipt of assistance. Once established for each Tribe, the Tribe may not use its TFAG to provide assistance to a family that includes an adult beyond the established time limit.

Section 412(c)(2) of the statute further provides that the time limits established for Tribal TANF programs must be consistent with the purposes of TANF and consistent with the economic conditions and resources available to each Tribe. This principle has been echoed in our on-going consultation with Tribes and Tribal organizations. The comments we have received strongly suggest that the Tribal TANF time limits should reflect the unique circumstances of each service area and service population.

*Comments:* Several commenters objected to proposed § 286.105, which requires safeguards to ensure that participants in tribal TANF work activities do not displace other workers. Their objections were based on the premise that these provisions sought to impose a rule on Tribes that the Act, at section 407(f)(2), applies only to the states. They further argued that, as proposed in § 286.105(2)(b), it would impose on the Tribes requirements for internal grievance procedures, in direct violation of their sovereignty. They argue that while the Tribes should have the option to adopt such rules on a voluntary basis and that while they probably would do so, they should not be imposed on them as mandatory requirements. On this basis, they recommended that this section be deleted entirely.

*Response:* The requirement that each Tribal TANF program create nondisplacement procedures reflects our concern about the possibility that placement of Tribal TANF recipients at work sites could displace other workers from their jobs. When workers are displaced by Tribal TANF recipients, there is the danger that the displaced workers may be forced to become the next generation of TANF recipients, which would be contrary to the purposes of the TANF program. In addition, this requirement is consistent with section 412 (a)(3)(B) of the Act that

applies to Tribal Welfare-to-Work programs and that incorporate a nondisplacement requirement. Through § 286.110, we want to encourage Tribes to exercise due care as they promote work and implement new job development, placement, and referral activities in a manner that is consistent with the proper use of TANF funds and that does not unintentionally frustrate the goals of the TANF program. Section 286.110(2)(b) merely requires that Tribes establish and maintain internal grievance procedures to resolve complaints that workers have been displaced. We agree that it is an essential exercise of tribal sovereignty for Tribes to determine for themselves the substance of these grievance procedures and to take whatever action the Tribe deems appropriate to resolve complaints concerning displacement under those procedures.

*Section 286.115 (Section 286.110 in the NPRM) What Information on Time Limits for the Receipt of Assistance Must a Tribe Include in Its Tribal Family Assistance Plan?*

As part of its plan, a Tribe will propose a time limit for receipt of Tribal TANF assistance that will apply to its service population and provide a rationale for its proposal. By "time limit," we mean the maximum number of months (whether or not consecutive) that federally funded assistance will be provided to a Tribal TANF family that includes an adult. The proposed time limit should reflect the intent of Congress that welfare should be temporary and not a way of life. The proposal should also take into consideration those factors that may impact on the length of time that a TANF family might be expected to need in order to find employment and become self-sufficient.

To allow for maximum flexibility, we are not requiring that the same time limit apply throughout the Tribal TANF service area. A Tribe should have the option to decide that because economic conditions and the availability and accessibility of services vary, it is appropriate to establish different time limits by geographic area. For example, a Tribe could choose to establish a shorter time limit for a part of the service area that has many employment opportunities than for another part of the service area with high unemployment.

If the Tribe proposes to provide assistance for longer than 60 months, it should explain how that time limit was determined and provide a rationale for its determination. As mentioned earlier, examples of the information that we

would expect to be included to illustrate the Tribe's proposal include, but are not limited to: Poverty, unemployment, jobless and job surplus rates; education levels of adults in the service area; availability of and/or accessibility to resources (educational facilities, transportation) to help families become employable and find employment; and employment opportunities on and near the service area.

As part of the negotiation process, we may ask for additional information and/or further discussion before the proposed time limits are approved. This would ensure that all factors are considered in establishing appropriate time limits for a Tribal TANF program.

**Determining if the Time Limit Has Been Exceeded**

Section 408(a)(7) of the Act provides that States may not use Federal funds to provide assistance to a family that includes an adult who has received assistance for more than five years. In other words, if a family does not include any adults who are receiving assistance (i.e., only the children receive assistance), then the time limit does not apply. We have made the Tribal TANF requirements consistent with the State requirements in this area. The intent of Congress is that families should achieve self-sufficiency through employment. It does not seem reasonable to apply the time limit requirement to cases where only children are receiving assistance, and employment is not an option.

Section 408(a)(7)(B) of the Act requires States to disregard certain months of assistance in determining if the 60-month time limit has been exceeded. Specifically, State TANF programs do not count any month during which a minor who was not head of the household or married to the head of the household received assistance. For the reasons explained below, we propose to apply this disregard provision to Tribes.

The decision as to whether a family has met the time limit is based on how long the adults have received assistance. Therefore, it does not seem reasonable to include months when an individual received assistance as a minor. However, Tribes, like States, would count months when a minor received assistance as the head of a household or as the spouse of the head of the household. The reason is that minor heads of households and minors who are married to heads of household are generally treated as adults in terms of other program requirements under the Act.

Section 407(a)(7)(D) of the Act, as amended by the Balanced Budget Act of

1997, requires that Tribes and States disregard as a month of assistance any month during which an adult lived in Indian country or an Alaskan Native village in which at least 50 percent of the adults were not employed. To determine whether 50 percent of the adults were not employed, the statute allows the use of any reliable data with respect to the month. This would allow the use of the Labor Force Report, which is issued every two years by the Bureau of Indian Affairs, Department of Labor Unemployment Data, or any other reliable data source or combination of data sources.

*Comments:* Several comments were received supporting maximum flexibility for Tribes in accommodating the unique characteristics of their service populations.

Comments were also received noting that, while the regulations provide for time limits to be negotiated by Tribes beyond the 60-month limit imposed on states by statute, " \* \* \* no clear guidance has been provided on the type of information that will be considered in approving extended time limits," and suggesting that factors that would be considered be enumerated in the Final Rule.

*Response:* Section 286.115(b)(1) does provide examples of the types of information that will be considered. However, this list is not intended to be exhaustive. In acknowledgment of the differences of geographical, social, and economical conditions affecting each Tribe, each Tribe must have the opportunity to justify its proposed time limit based on its unique needs, and where appropriate, even to justify different time limits for different geographic areas based on special conditions.

*Comment:* Comments were received supporting the flexibility provided in proposed § 286.110(d)(2) which allowed Tribes a very wide range in the data that could be used to establish and support the invocation of the "50 percent not employed exception." However, these commenters also suggested that, "(i)f Tribes are expected and required to collect and collate this data, adequate resources for comprehensive data collection should be made available."

*Response:* While we do not disagree on the need for adequate resources, the statute makes no provision for funding to Tribes for data collection.

*Comment:* With regard to proposed § 286.110(e), one commenter suggested that additional language should be inserted at the beginning of this section making more specific reference to proposed §§ 286.110(a)(2) and (3); § 286.110(d); and § 286.115 as

exceptions to the requirement to count previous assistance received toward the total lifetime restriction.

*Response:* We believe the language in §§ 286.115(a) and 286.120 is sufficient and that additional language would be redundant and unnecessary.

*Comment:* One commenter recommended including the definition of "adult" for the purposes of the 50 percent unemployment disregard.

*Response:* There is no qualifier in the statute, so we have chosen not to further define this term in the regulation.

*Section 286.120 (Section 286.115 in the NPRM) Can Tribes Make Exceptions to the Established Time Limit for Families?*

For State TANF programs, section 408(a)(7)(C) of the Act allows for two hardship exceptions from the 60-month time limit: (1) Families that meet the State's definition of "hardship"; and (2) families that include an individual who has been battered or subjected to extreme cruelty. A State may exempt no more than 20 percent of its average monthly caseload under these exceptions.

Section 412(c) of the Act does not mention a similar exception for Tribal TANF programs. However, because the time limit provisions include not only how long a family may receive Tribal TANF benefits, but also who is subject to the time limits, it is reasonable that Tribes should have the option to provide for similar exceptions from their established time limits. The final regulations provide that we will negotiate the maximum percentage of cases in the Tribe's caseload which may be exempted from the established time limits.

*Comment:* One commenter recommended the addition of language in proposed § 286.115 for exemption from the time limit to be made for "(f)amilies who are determined by the Tribe to be directly impacted by a declared economic disaster in their area \* \* \*."

*Response:* Section 286.120(a)(1) provides that exemptions may be provided for "hardship, as defined by the Tribe \* \* \*." This allows for the Tribe to make provision for such an exemption in their plan if it chooses to do so.

*Comment:* One commenter suggested that due to the nature of domestic violence and the resulting length of time often needed to assist a victim in becoming job ready, Tribes should define exceptions on an individual basis.

*Response:* This section provides no standard for the length of exemptions. Each Tribe may define these based on

its client and program needs if it chooses to do so.

*Section 286.125 (Section 286.120 in the NPRM) Does the Receipt of TANF Benefits Under a State or Other Tribal TANF Program Count Towards a Tribe's TANF Time Limit?*

Under section 408(a)(7) of the Act, a State must consider receipt of TANF benefits under other State programs in determining if the 60-month time limit has been exceeded. Although section 412 of the Act does not include a similar requirement for Tribal TANF programs, we believe that prior receipt of TANF must also be counted by Tribes when determining if the time limit has been exceeded. We do not believe the intent of Congress was otherwise. Thus, a Tribe must count towards an adult's time limit all prior months of TANF assistance funded with TANF block grant funds, except for any month that was exempt or disregarded by statute or regulation.

As stated earlier, the PRWORA promotes self-sufficiency and independence by providing people with more work opportunities while holding individuals to a higher standard of personal responsibility for the support of their children. The legislation expands the concept of mutual responsibility, introduced under the Family Support Act of 1988, that income assistance to families with able-bodied adults should be transitional and conditioned upon their efforts to become self-sufficient. As Tribes focus on helping adults get work and earn paychecks quickly, parents are also expected to meet new, tougher work requirements. We will expect Tribes to ensure that parents understand what is required of them, and to develop proposals for penalties against individuals that reflect the importance of those requirements.

*Comments:* Commenters pointed to the difficulty in complying with the requirements of proposed § 286.120 that a participant's prior months of TANF assistance received outside of their own program must be counted toward the individual's total eligibility determination. The difficulty is based on the lack of reliable information exchange systems between Tribes and between Tribes and states or other local governments administering TANF. It was suggested that language be added relieving the Tribe of this need to comply if information is not available or " \* \* \* where compliance is not required under an approved tribal TANF plan."

*Response:* While we recognize the difficulty for Tribes in determining prior

receipt of TANF assistance, we believe that Congress was clear that TANF assistance must be time-limited. Therefore, it is necessary to document all assistance provided to an individual regardless of source.

We also recognize that if the information necessary to determine length of assistance from other sources, i.e. a state or another Tribe, cannot be accessed or if an individual commits fraud at the time of enrollment in identifying prior assistance, the Tribe cannot be held responsible. However, TFAPs do include provisions for recourse against individuals in instances of misrepresentation and fraud.

*Section 286.130 Does the Receipt of Welfare-to-Work (WtW) Cash Assistance Count Towards a Tribe's Time Limit? (New Section)*

*Comment:* A couple of commenters suggested that we address the impact of WtW cash assistance on the time limit for receipt of Tribal TANF assistance. We believe that discussion of this issue is especially important in light of amendments to the Act dealing with WtW assistance which were enacted subsequent to publication of the Tribal TANF NPRM.

*Response:* This is a new section in the Final Rule. Here we have clarified the circumstances under which benefits received by a family under WtW count against the time limit for receipt of TANF assistance. We do not believe that the statute permits a broad exclusion of WtW cash assistance from the definition of assistance applicable to Tribal TANF operations. Section 408(a)(7)(G) of the Act provides that "noncash [WtW] assistance" shall not be considered assistance for purposes of the TANF program time limit. This specific and limited exclusion strongly suggests that cash WtW assistance should generally be considered assistance. If a WtW benefit falls within the definition of assistance at § 286.130, it must count toward the TANF time limit.

In defining "WtW cash assistance," (i.e., what counts towards the time limit for receipt of TANF assistance), we started with the presumption that to be considered "WtW cash assistance" a benefit must fall within the general definition of assistance at § 286.10. Therefore, services, work supports, and nonrecurring, short-term benefits that are excluded from the definition of assistance at § 286.10(b) may not be "WtW cash assistance." Also excluded are supportive services for nonworking families. Although these may be thought of as assistance, these benefits are services designed to meet specific

nonbasic needs and should not be characterized like cash.

"WtW cash assistance" includes assistance designed to meet a family's ongoing, basic needs. It also includes such benefits as cash assistance to the family, even when provided to participants in community service or work experience (or other work activities) and conditioned on work. Conference Report (H.Rpt. 105-217) specifically mentions "wage subsidies" as an example of "WtW cash assistance."

We want to make it clear that the definition of "WtW cash assistance" in no way limits the types of WtW benefits for which families that have exhausted receipt of TANF assistance are eligible or may receive. States, Tribes, and local agencies may provide cash and noncash WtW assistance and other benefits to such families beyond the TANF-related time limit on assistance.

*Section 286.135 (Section 286.125 in the NPRM) What Information on Penalties Against Individuals Must Be Included in a Tribal Family Assistance Plan?;*

*Section 286.140 What Special Provisions Apply to Victims of Domestic Violence? (New Section);*

*Section 286.145 (Section 286.130 in the NPRM) What Is the Penalty if an Individual Refuses to Engage in Work Activities?; and*

*Section 286.150 (Section 286.135 in the NPRM) Can a Family, With a Child Under Age 6, Be Penalized Because a Parent Refuses To Work Because (S)He Cannot Find Child Care?*

Similar to our handling of these three sections in the NPRM, this Final Rule combines the discussions of these because of the inter-relationship among them.

As mentioned above, section 412(c) of the Act gives flexibility to establish penalties against individuals, and related policies, for each Tribal TANF grantee. Section 412(c)(3) specifies that penalties against individuals established for each Tribal TANF grantee must be similar to comparable provisions in section 407(e). However, the statute does not specify a process or procedure to accomplish this.

As discussed earlier, we will use the Tribal TANF plan process to establish the requirements related to penalties against individuals and related policies that will become a part of the Tribal TANF program. In addition, the Tribe must include a rationale for its proposal and related policies in the plan. The rationale needs to address how the Tribe's proposal is: consistent with the purposes of section 412 of the Act;

consistent with the economic conditions and resources available to the Tribe; and similar to the requirements applicable to States as specified at section 407(e) of the Act.

States are required to reduce the amount of assistance otherwise payable to the family pro rata (or more at State option) for the period during the month in which the individual refused to engage in work as required, subject to good cause and other exceptions determined by the State. The States also are given, by the statute at section 407(e)(1)(B), the option to terminate the case.

In addition, a State may establish, pursuant to section 407(e)(1) of the Act, good cause exceptions to penalties for failure to engage in work as required. We believe that Tribes must also be able to establish reasonable good cause exceptions because penalties against individuals established for each Tribal TANF grantee must be comparable to those specified at section 407(e). A Tribe must include a rationale for its good cause exceptions. The rationale should address how the good cause exceptions are reasonable and how they relate to the goals of the Tribe's TANF program.

As specified in the statute at section 407(e)(2), a State may not reduce or terminate assistance to a single custodial parent caring for a child under age six for refusing to engage in work as required, if the parent demonstrates an inability (as determined by the State) to obtain needed child care. The parent's demonstrated inability must be for one of the following reasons:

- Appropriate child care within a reasonable distance from the individual's home or work site is unavailable;
- Informal child care by a relative or under other arrangements is unavailable or unsuitable; or
- Appropriate and affordable formal child care arrangements are unavailable.

We believe a comparable provision should apply to Tribal TANF programs as the lack of child care may be even more acute on remote Indian reservations.

Refusal to work when the Tribe determines an acceptable form of child care is available is not protected from sanctioning.

Because each Tribe has the authority to determine whether the individual has adequately demonstrated an inability to obtain needed child care, we expect the Tribe to define the terms "appropriate child care," "reasonable distance," "unsuitability of informal care," and "affordable child care arrangements." The Tribe must also provide families

with the criteria (including the definitions) that it applies in implementing the exception and the means by which a parent can demonstrate an inability to obtain needed child care.

To keep families moving toward self-sufficiency and to promote Tribal compliance with this penalty exception, our rules provide that Tribes must have procedures in place that: (1) Enable a family to demonstrate its inability to obtain needed child care; (2) inform parents that the family's benefits cannot be reduced or terminated when they demonstrate that they are unable to work due to the lack of needed child care for a child under the age of six; and (3) advise parents that the time during which they are excepted from the penalty will still count toward the time limit on Federal benefits at section 408(a)(7) of the Act, if applicable.

The regulations for the Child Care and Development Fund (CCDF) reinforce the importance of providing this vital information to parents by also requiring the child care lead agency, as part of its consumer education efforts, to inform TANF parents seeking child care in the CCDF system of the existence of the child care exception and how to demonstrate an inability to obtain needed child care. Further, the CCDF rule requires the lead agency for child care to coordinate with the TANF agency in order to understand how the TANF agency defines and applies the terms of the statute regarding the penalty exception and to include the definitions of any appropriate terms or criteria in the CCDF plan.

Under section 402(a)(7) of the Act States may opt to establish and enforce standards and procedures for identifying and helping victims of domestic violence. If the State has chosen to establish these standards, it may waive certain program requirements, including work requirements, in cases where compliance would make it more difficult for an individual receiving assistance to escape domestic violence or would unfairly penalize victims or individuals who are at risk of further violence. The State must determine that the individual receiving the program waiver has good cause for failing to comply with the requirements. Tribes may also wish to consider whether to establish their own standards and procedures related to victims of domestic violence.

There may be other reasons a Tribe may want to impose a penalty on an individual who refuses to cooperate with program requirements other than work activity requirements. For

example, a Tribe may want to impose a penalty on a custodial parent who refuses to cooperate with a child support enforcement program.

Based on the above information, we believe the Tribe's TANF plan must address the following questions:

(1) Will the Tribe impose a pro rata reduction, or more at Tribal option, or will it terminate assistance to a family which includes an adult or minor head-of-household that refuses to engage in work as required?

(2) What will be the proposed Tribal policies with respect to a single custodial parent, with a child under the age of 6, who refuses to engage in work activities because of a demonstrated inability to obtain child care?

(3) What good cause exceptions, if any, does the Tribe propose which will allow individuals to avoid penalties for failure to engage in work activities? What is the rationale for these exceptions?

(4) What other rules governing penalties does the Tribe propose?

(5) What, if any, will be the Tribe's policies in relation to victims of domestic violence?

With respect to the prohibition on penalizing single custodial parents with a child under age 6, we want to underscore the pivotal role of child care in supporting work and that the lack of appropriate, affordable child care can create unacceptable hardships on children and families. To keep families moving toward self-sufficiency, Tribes may want to consider adopting a process or procedure that enables a family to demonstrate its inability to obtain needed child care. Just as States must have policies for continuing benefits to a single-parent family when it demonstrates that it is unable to work due to the lack of child care for a child under the age of six, it is important for Tribes to have policies too. Like States, Tribes should inform eligible parents that the time during which they are excused from the penalty will count towards the time limit on benefits, unless the Tribe's approved time limit proposal provides for an exception.

The regulations for the Child Care and Development Fund (CCDF) reinforce the importance of providing this vital information to parents by requiring the child care Lead Agency, as part of its consumer education efforts, to inform parents about the penalty exception to the TANF work requirement. It must also provide parents with the information outlined above concerning the process or procedures for demonstrating an inability to obtain needed child care.

As the role of child care is pivotal in supporting work activities, it is important for the Tribal and State CCDF programs to coordinate fully with the Tribal TANF program. Coordination between CCDF and TANF is critical to the success of both programs.

In addressing the economic conditions and available resources in support of its proposal for penalties against individuals, the Tribe may refer back to the information already provided in the plan in relation to the Tribe's proposal for minimum work participation requirements and time limits. It may also offer additional information in support of its proposal.

*Comment:* One commenter objected to § 286.125 as proposed on the basis that it " \* \* \* proposes to establish criteria which must be included in a Tribal TANF plan for penalizing individuals who refuse to engage in work activities."

*Response:* We believe that the commenter has misread this section. The specific subsection to which we believe reference is made, § 286.125(a)(1) as proposed, does not propose to establish any criteria. It requires that the Tribe respond to the question of whether it plans to impose a pro rata reduction or some other alternative, without imposing either.

When coupled with § 286.145, this section clearly provides that penalties, and the methodology for imposing them, can be established in their TFAP by each Tribe.

*Comment:* One commenter objected to the entire § 286.135 as proposed, arguing that it "describes special rules to be imposed by ACF on Tribes," and that "(t)he law does not require special consideration in these areas."

*Response:* We believe the rule recognizes that child care helps parents reach and maintain economic self-sufficiency and is consistent with the law. Obtaining appropriate, affordable and safe child care is widely recognized as a major barrier that keeps families on welfare and out of the workforce. This section recognizes that parents are more likely to obtain work and remain in the workforce if appropriate child care is available while also recognizing that Tribes must define for themselves the criteria which families must satisfy in order to avoid work participation penalties due to unavailability of child care.

*Comment:* Commenters suggested that while child care may be available, it may not always be appropriate, and therefore recommends that the word "appropriate" be inserted before the words "child care."

*Response:* We have revised the regulatory language accordingly.

*Section 286.155 May a Tribe Condition Eligibility for Tribal TANF Assistance on Assignment of Child Support to the Tribe? (New Section)*

A thorough discussion of this section can be found earlier in the preamble, under IV.A Discussion of Cross-Cutting Issues—Child Support.

#### **Tribal TANF Plan Processing**

*Section 286.160 (Section 286.140 in the NPRM) What Are the Applicable Time Frames and Procedures for Submitting a Tribal Family Assistance Plan?*

The PRWORA does not give a date by which a Tribe must submit a Tribal Family Assistance Plan. In establishing the time frame within which a Tribe must submit the TFAP, we considered two factors. The first was the requirement found at section 405(b) of the Act that we provide to a State timely notice of the amount of the reduction to its State Family Assistance Grant (SFAG) that results from the operation of a Tribal TANF program. The statute requires this notice to be made three (3) months before we take the reduction in the State's SFAG quarterly installment. The second consideration is the authority at section 412 (b)(2) of the Act which provides for Secretarial approval of each Tribal Family Assistance Plan.

As mentioned in the discussion on determining the amount of a Tribal Family Assistance Grant, our experience to date has indicated that we need sufficient time to request data from the State, receive and process it, and resolve any issues, prior to making official notice to the State. We have outlined time frames at § 286.20 for requesting State data and resolving any issues concerning the data. In order to meet these time frames and meet the requirement for a three-month notice to the State, the Final Rule at § 286.160 requires a Tribe to submit to us a letter of intent, unless the Tribe has already requested, received and resolved any issues regarding the State-supplied data. We will use the letter of intent to request the data from the State and thus will need to specify the Tribe's proposed implementation date and proposed service area and population. We have specified time frames for the submission of the letter of intent at § 286.160(a).

In order to meet the approval requirement, including review, discussion, and where appropriate, modification of the TFAP in consultation with the Tribe, we have determined that we will need a

minimum of 120 days to accomplish these actions for Tribes who propose to implement a program on the first day of a calendar quarter. Therefore, the final regulation at § 286.160(a) requires the formal submission of a Tribal TANF plan to us based on the dates specified in the table below.

A Tribe will be able to implement a Tribal TANF program on the first day of

any month. However, due to the requirement for a three-month notification to the State of its adjusted quarterly SFAG amount, a Tribe who wishes to implement a TANF program on other than the first day of a calendar quarter, i.e., January 1, April 1, July 1 or October 1, will need to submit both its letter of intent and its formal plan as

if the proposed implementation date was the first day of a calendar quarter. The following table illustrates, based on implementation dates, when a Tribe needs to submit its letter of intent and formal plan in order for us to meet the statutory requirement for notification to the State.

If proposed implementation date is:	The letter of intent is due:	The formal plan is due:	And we must notify the State by:
January 1, February 1 or March 1 April 1, May 1 or June 1 ..... July 1, August 1 or September 1 ... October 1, November 1 or December 1.	July 1 of previous year ..... October 1 of previous year ..... January 1 of same year ..... April 1 of same year .....	September 1 of previous year ..... December 1 of previous year ..... March 1 of same year ..... June 1 of same year .....	October 1 of previous year. January 1 of same year. April 1 of same year. July 1 of same year.

As noted above, the Secretary has explicit authority to approve Tribal TANF plans. In exercising this authority, we plan to work with each Tribe that submits a TFAP to ensure that plans contain the information required by statute and regulation. A Tribe may make revisions to its plan during the review process. In instances where we disapprove a plan, the final regulation at § 286.165(e) provides an appeal process.

#### Public Law 102-477

Public Law 102-477, the Indian Employment, Training and Related Services Demonstration Act of 1992, allows Tribes to integrate certain federally funded employment, training and related services programs into a single plan. The purpose of this public law is to improve the effectiveness of these programs and services.

The PRWORA requires the Secretary to review and approve all TFAPs for Tribes seeking to operate a Tribal TANF Program. Those requirements are found at section 412(a). Section 5 of Public Law 102-477 states "the programs that may be integrated in a demonstration project \* \* \* shall include any program under which an Indian tribe is eligible for receipt of funds." In order to receive a Tribal Family Assistance Grant, Tribes must first have approved Tribal TANF plans. Therefore, the final regulation at § 286.160(f) indicates that a Tribe must have separate approval of its TFAP from the Secretary before it can integrate the Tribal TANF program into a Public Law 102-477 plan.

#### Overview of Comments

Comments were received from several Tribes, consortia, inter-tribal organizations, and states regarding this requirement. All the commenters questioned the need for a separate stand-alone plan and recommended that this requirement be dropped. The

commenters supported this position by noting that the intent of Pub.L. 102-477 is to facilitate integration of labor-related social service programs. They also noted that such integration would " \* \* \* provide a more comprehensive view" and "give \* \* \* ACF staff greater understanding of how the Tribe(s) will provide services to meet TANF work requirements." Finally, the commenters argued that, "there is no reason why an annual integrated plan cannot \* \* \* include the required items (elements)" of a TANF plan.

*Response:* The rationale cited in the proposed rule and related discussions for requiring approval of a stand-alone TANF plan prior to integration into a Pub.L. 102-477 plan is that the statute specifically requires the Secretary to approve a tribal TANF plan as opposed to just acknowledging the plan as complete, as is done with state plans. Just as the review, negotiation, and approval process(es) that must take place between the Tribe and HHS to arrive at an approved plan cannot be delegated to any other agency or department, neither can it be subject to any conditions that might be imposed by the Department of Interior relating to approval of a Pub.L. 102-477 program.

Furthermore, in addition to the requirement for approval of the plan and the process that it necessitates, there are important programmatic considerations that must be taken into consideration:

First, the development of the tribal TANF plans, at least initially, can and does often entail developmental activities and negotiation processes involving the Tribe, State, and HHS, that are unique to the TANF program and clearly beyond the scope of what is allowed or required of other programs that could be included in a Pub.L. 477 plan. These include such things as: Establishing service area and

population; determining level of funding entitlement; establishing eligibility criteria, tenure of service and program duration; negotiating the nature and scope of state support; and development of state and tribal collaboration.

Second, at the time of renewal or in the case of an amendment to a TANF plan, there is a requirement for renegotiation with, and subsequent review and approval by the Secretary that requires the plan to be considered on its own merit.

Finally, Pub. L. 102-477 gives the Department of Interior complete authority to approve or disapprove Pub.L. 102-477 plans, while PRWORA gives the Secretary sole authority to approve or disapprove TANF plans. These two functions and the processes which they entail are unique, distinct processes and of necessity must remain so between the two Departments.

#### *Section 286.165 (Section 286.145 in the NPRM) How Is a Tribal Family Assistance Plan Amended?*

Section 412 of the statute does not address amendments to Tribal TANF plans. We believe that Tribes need to have an opportunity, during the period covered by a plan, to amend the plan. Thus, the final regulation at § 286.165 allows Tribes to amend TFAPs.

In addition, the final regulation establishes the procedure for the submission, review and implementation of a Tribal TANF plan amendment. We require the submission to the Secretary of a plan amendment no later than thirty (30) days prior to the implementation of the amendment. The implementation date for an approved amendment will be the first day of any month. We will take prompt action to approve or disapprove the proposed amendment. If we disapprove a plan amendment, the Tribe will be given an opportunity to appeal

the decision. Use of TANF funds for services or activities under an amendment cannot be made until the implementation date of the approved amendment.

*Section 286.170 How May a Tribe Petition for Administrative Review of Disapproval of a TFAP or Amendment? (New Section)*

We received a comment that the Final Rule should outline an appeals process to be used by Tribes when a TFAP or plan amendment is not approved. We concur and, accordingly, have included this new section in the Final Rule.

**Specials Provisions for Alaska**

*Section 286.175 (Section 286.150 in the NPRM) What Special Provisions Apply to Alaska?;*

*Section 286.180 (Section 286.155 in the NPRM) What is the Process for Developing the Comparability Criteria That Are Required in Alaska?;*

*Section 286.185 (Section 286.160 in the NPRM) What Happens When a Dispute Arises Between the State of Alaska and the Tribal TANF Eligible Entities in the State Related to the Comparability Criteria?; and*

*Section 286.190 (Section 286.165 in the NPRM) If the Secretary, the State of Alaska, or Any of the Tribal TANF Eligible Entities in the State of Alaska Want to Amend the Comparability Criteria, What is the Process for Doing So?*

*Comment:* One commenter expressed concern that the comparability requirement places an unfair burden to Tribes in Alaska and has been a major deterrent to Tribes wishing to operate a Tribal TANF program in Alaska.

*Response:* Section 412(i) of the statute requires the Tribal TANF eligible entities in the State of Alaska to operate a program in accordance with requirements comparable to the State of Alaska's TANF program. Given the requirements of the statute, we provided a framework for Tribes to work together with the state toward developing comparability criteria. As we indicated in the Preamble to the proposed rule, in November 1996 we sponsored a meeting during which a "Single Points of Contact (SPOC)" group was formed to develop an initial comparability criteria document. These representatives of the 13 eligible Tribal TANF eligible entities, the State, and ACF continued to meet and further refine the document until such time as the first eligible entity submitted a Tribal TANF plan. Because of the ongoing collaboration and coordination among all affected parties,

this process allowed the greatest level of flexibility possible given the mandatory requirements of the statute. All eligible entities have agreed to the comparability criteria document which was developed as a result of this process.

**Subpart D—Accountability and Penalties (Sections 286.195–286.240)**

It is clear that, in enacting the applicable penalties at section 409(a) of the Act, Congress intended for Tribal flexibility to be balanced with Tribal accountability. To assure that Tribes fulfil their new responsibilities under the TANF program, Congress established a number of penalties and requirements under section 409. The penalty areas indicate the areas of performance that Congress found most significant and appropriate for Tribal programs. Through specific sanctions, Congress provided the Secretary authority to enforce particular provisions in the law.

As referenced in section 412 of the Act, section 409(a) includes four penalties that can be imposed on Tribes. This subpart of the Final Rule covers these penalties.

*Comment:* One commenter points out the inequity found in the fact that while Tribes can be penalized for not meeting the participation rates, they are excluded from the bonus rewards for achieving certain levels of performance.

*Response:* These provisions are set by the statute and cannot be affected by regulation.

*Section 286.195 (Section 286.170 in the NPRM) What Penalties Will Apply to Tribes?*

The four penalties that apply to Tribes are as follows:

(1) A penalty of the amount by which a Tribe's grant was used in violation of part IV—A of the Act;

(2) A penalty of five percent of the TFAG as a result of findings which show that the Tribe intended to violate a provision of the Act;

(3) A penalty in the amount of the outstanding loan plus the interest owed on the outstanding amount for failure to repay a Federal loan; and

(4) A penalty for failure to satisfy the minimum work participation rates.

As specified in section 409(a)(3) of the Act, the participation rate penalty amount will depend on whether the Tribe was under a penalty for this reason in the preceding fiscal year. If a penalty was not imposed on the Tribe in the preceding year, the penalty reduction will be a maximum of five percent of the TFAG in the following year. If a penalty was imposed in the preceding year, the penalty reduction

will be increased by 2 percent per year, up to a maximum of 21 percent. We will take into consideration the severity of the failure in determining the amount of the penalty. In our consultation with Tribes, we have been advised that it will be difficult to satisfy the participation rates because of economic conditions (e.g., high unemployment rates) in Tribal service areas. Although these conditions will be considered in establishing the minimum participation rates for each TFAG program, we recognize that it may still be difficult for Tribes to meet this requirement. For this reason, we will take into consideration the following two factors in determining the amount of the penalty: (1) Increases in the unemployment rate in the Tribe's service area, and (2) changes in TFAG caseload (e.g., increases in the number of families receiving services).

If we impose a penalty on a Tribe, the following fiscal year's TFAG will be reduced. In calculating the amount of the penalty, all applicable penalty percentages will be added together and the total will be applied to the amount of the TFAG that would have been payable if no penalties were assessed against the Tribe. As a final step, other (non-percentage) penalty amounts will be subtracted. If this calculation would result in the TFAG being reduced by more than 25 percent, we will apply the State TANF limitation in section 409(d) of the Act. In applying the penalties against a State TANF program, we cannot reduce the State's block grant by more than 25 percent in any quarter. If we are unable to collect the entire penalty in a fiscal year, any excess penalty amounts will be applied against the grants for succeeding years. We intend to treat Tribes like States in this area, and limit the amount of TFAG reduction due to penalties to 25 percent in any given fiscal year.

**Failure To Repay a Federal Loan**

Section 406 of the Act permits Tribes to borrow funds to operate their TANF programs. Tribes must use these loan funds for the same purposes as apply to other Federal TANF funds. In addition, the statute also specifically provides that Tribes may use such loans for welfare anti-fraud activities and for the provision of assistance to Indian families that have moved from the service area of a State or other Tribe operating a Tribal TANF program. Tribes have three years to repay loans and must pay interest on any loans received. We will be issuing a program instruction notifying Tribes and States of the application process and the information needed for the application.

Section 409(a)(6) of the Act establishes a penalty for Tribes that do not repay loans provided under section 406. We will penalize Tribes for failing to repay a loan provided under section 406 (see § 286.195(a)(4) and § 286.210). A specific vehicle for determining a Tribe's compliance with this requirement is unnecessary. In our loan agreements with Tribes, we will specify due dates for the repayment of the loans and will know if payments are not made.

#### Outstanding Penalties and Retrocession

In developing the proposed rules, a question arose concerning how we will treat situations where a Tribe decides to retrocede the TANF program. Since the Tribe will no longer receive a TFAG, we would be unable to collect any penalty by withholding or offsetting in the succeeding fiscal year. However, we stipulate in the final regulation that a Tribe that retrocedes a Tribal TANF program is responsible for the payment of any penalty that may be assessed for the period the program was in effect.

#### Replacement of Penalty Amounts

Section 409(a)(12) of the Act requires a State to expend its own funds to replace any reduction in its SFAG due to the imposition of a penalty. This is to prevent recipients from also being penalized for the State's failure to administer its program in accordance with the requirements of the Act. We believe that a similar failure by a Tribe should not cause Tribal TANF recipients to be penalized. For this reason, in the same fiscal year as a penalty is imposed, at § 286.195(c)(1) we require a Tribe to expend Tribal funds to replace any reduction in the TFAG resulting from penalties that have been imposed. The Tribe must document compliance with this provision on its TANF Financial Report.

As amended by the Balanced Budget Act of 1997, section 409(a)(12) states that failure of a State to replace any reduction in its SFAG amount due to penalties may result in a penalty of not more than 2 percent of the SFAG, plus the amount that was required to be replaced. However, we do not want to subject Tribes to a penalty that is so severe that services to recipients are jeopardized. Therefore, at § 286.195(c)(2) we impose a similar, but not the same, penalty on Tribes. We stipulate in the Final Rule that we may impose a penalty of not more than 2 percent of the TFAG if a Tribe fails to expend its own funds to replace any reduction in the TFAG due to penalties.

*Comments:* Two commenters suggested that there is no statutory basis

for this section and that it should be deleted.

*Response:* The statutory basis for this section is found at sections 412(g)(1) and (a)(2) which clearly make the provisions of subsections (a)(1), (a)(3), (a)(6), (b), and (c) of section 409 applicable to tribal grants.

*Comment:* One commenter suggested that "(t)he Tribes need to have meaningful involvement \* \* \*" in the process of determining whether violations have occurred and whether penalties should be assessed."

*Response:* We believe that this is provided by the very nature of the process as set forth in § 286.220, which provides opportunity for the Tribe to respond to and dispute any findings.

*Comment:* One commenter objected specifically to proposed § 286.170(a)(3), which imposes penalties for failure to meet minimum work requirements.

*Response:* As noted in the previous response to the general objections to this section, these penalties are specified by the statute.

*Comment:* Several commenters objected to the provisions of subsections (c)(1) and (c)(2), which provide that the Tribe must expend additional tribal funds to replace any reduction due to penalties and provide for additional penalties for failure to do so.

*Response:* Although section 409(a)(12) of the statute only requires states to provide "replacement funds" for funds lost due to penalties, and additional penalties for failure to provide them, Federal law does not preclude the Secretary from establishing this requirement for Tribes. A Tribe's failure to administer its program in accordance with the requirements of the Act should not cause Tribal TANF recipients to be penalized. Thus we have made no changes to this section.

#### *Section 286.200 (Section 286.175 in the NPRM) How Will We Determine if Tribal Family Assistance Grant Funds Were Misused or Intentionally Misused?*

It is clear that in establishing the many penalties at section 409(a) of the Act, Congress expressed its intent that both States and Tribes balance flexibility with accountability. Because of the differences in the requirements for State and Tribal programs, as mentioned above, section 412 specifies that only four of the requirements and penalties under section 409 apply to Tribes. The penalty areas, or rather, the areas of Tribal performance that Congress found significant and attached fiscal sanctions to, vary considerably. Thus, in considering what method to employ in monitoring Tribal performance, we concluded that no one

method could be employed. The following explains the different methods we will use to determine if a Tribe used TFAG funds in violation of the Act.

#### Misuse of Funds

The penalty at § 286.195(a)(1) and § 286.200(a) provides that if a Tribe has been found to have used funds in violation of title IV—A through an audit conducted under the Single Audit Act (31 U.S.C. Chapter 75), as referenced in section 102(f) of the Indian Self-Determination Act Amendments of 1994 (Pub. L. 103-413), the Tribe is subject to a penalty in the amount misused. This is the only penalty for which Congress identified a method for determining a penalty.

Under the requirements of the Single Audit Act, Tribes operating Federal grant programs meeting a monetary threshold (currently \$300,000 for all Federal grants) must conduct an annual audit. Those Tribes which meet the threshold must comply with this annual audit requirement.

The single audit is an organization-wide audit that reviews Tribal performance in many program areas. We implemented the Single Audit Act through use of Office of Management and Budget (OMB) Circular A-128, "Audits of State and Local Governments." Because of amendments made to the Single Audit Act in 1996, OMB recently revised this circular and a similar circular for non-profit organizations, A-133. Effective June 30, 1997, A-128 has been rescinded, with the result that the revised A-133 now includes the single audit requirements for States, local governments, Indian tribes and non-profit organizations.

In conducting their audits, among the tools auditors use are the statute and regulations for each program and a compliance supplement issued by OMB that focuses on certain areas of primary concern. Upon issuance of final regulations, we will prepare a TANF program compliance supplement.

The Single Audit Act does not preclude us or other Federal offices or agencies, such as the Office of the Inspector General (OIG), from conducting audits or reviews. In fact, we conclude that we have specific authority to conduct additional audits or reviews. Under 31 U.S.C. 7503(b),

"\* \* \* A Federal agency may conduct, or arrange for additional audits which are necessary to carry out its responsibilities under Federal law or regulation. The provisions of this chapter do not authorize any non-Federal entity (or subrecipient thereof) to constrain, in any manner, such agency from carrying out or arranging for

such additional audits, except that the Federal agency shall plan such audits to not be duplicative of audits of Federal awards.”

Thus, although the single audit will be our primary means for determining if a Tribe has misused funds, we may, through our own audits and reviews, or through OIG and its contractors, conduct audits or reviews of the Tribal TANF program which will not be duplicative of single organization-wide audit activities. Our need to conduct such audits may arise from complaints from individuals and organizations, requests by the Congress to review particular areas of interest, or other indications which signal problems in Tribal compliance with TANF program requirements. These additional reviews and audits may be the basis for assessing a penalty under this section.

#### Intentional Misuse of Funds

Where a penalty is determined for the misuse of funds, we may apply a second penalty if we determine that the Tribe has intentionally misused its TFAG. The criteria for determining “intentional misuse” are found at § 286.200(d). The single audit will be the primary means for determining this penalty as it is linked to the penalty for misuse of funds. However, as with the use of the single audit for misuse of funds, we may also conduct other reviews and audits in response to complaints from individuals and organizations or other indications which signal problems with compliance with TANF program requirements. These additional reviews and audits may be the basis for assessing a penalty under this section.

#### Additional Single Audit Discussion

Although we specify that the single audit will be the primary means to determine the specific penalties for misuse and intentional misuse of TFAG funds, we will not ignore other single audit findings such as Tribal non-compliance with the minimum participation rate requirement. Where the single audit is used to determine a penalty for failure to satisfy the minimum participation rate, the penalty that will apply is the percentage reduction described at § 286.195(a)(3), not the dollar-for-dollar penalty at § 286.195(a)(1) for misuse of funds.

The single audit may also reveal Tribal non-compliance with the negotiated time limit requirements (see § 286.120). Since Tribes are not subject to the State penalty at section 409(a)(9) for failure to comply with the time limit provisions, the question arose as to whether the Tribe’s failure should be treated as a misuse of funds. Because the penalty for misuse of funds is equal

to the amount that was spent incorrectly, the Tribal penalty could potentially be higher than the five percent penalty for States. As a result, a Tribe could be subject to a higher penalty by comparison. To avoid disparate treatment of States and Tribes in this area, we will limit any potential penalty for failure to comply with the Tribal time limits to a maximum of five percent.

Similarly, where we, or OIG, conduct an audit or review and have findings that could result in a penalty, the penalty amount that will apply is the penalty amount associated with the specific penalty under section 409(a) of the Act.

*Comments:* Several Tribes questioned whether ACF has the authority to conduct additional audits and reviews that may result in penalties on Tribes. They assert that the only penalties that may be applied regarding misuse of funds are determined by the Single Audit Act.

*Response:* The single audit will be the primary means for determining the penalty for misuse of funds, whether misused intentionally or not. The single audit may also be used to determine tribal non-compliance with other Tribal TANF requirements, such as minimum participation rate or negotiated time limit requirements. However, the Single Audit Act does not preclude Federal agencies from conducting additional audits or reviews. As we indicated above, we have specific authority under 31 U.S.C. 7503(b) to conduct or arrange for such additional audits or reviews. Such an audit or review will not be duplicative of the single organization-wide audit activities. The need to conduct such an audit or review will be based on indications that may signal problems in tribal compliance with TANF program requirements, such as complaints from individuals or organizations, or may arise from a request by Congress to review a particular area of interest.

*Section 286.205 (Section 286.180 in the NPRM) How Will We Determine if a Tribe Fails To Meet the Minimum Work Participation Rate(s)?*

Tribal compliance with the minimum work participation rates under § 286.205 will be primarily monitored through the information required by section 411(a) of the Act. The Final Rule at § 286.80 provides additional information on minimum work participation requirements.

Some of the data required to be reported by section 411(a) of the Act were included to gather information in this area. Thus, we concluded that the

section 411(a) data collection tools would be our primary means for determining this penalty. Our ability to meet our program management responsibilities may also mean that we will conduct reviews in the future to verify the data submitted by Tribes, particularly in this area where a fiscal penalty is applicable.

Timely and accurate data is essential if we are to determine Tribal compliance in this area. Thus, if a Tribe fails to submit a timely report, we will consider this as a failure by the Tribe to meet its work participation rate requirements and will enforce the penalty for failure to meet the work participation requirements. Likewise, if the data indicating that the Tribe has met its participation rate is found to be so inaccurate as to seriously raise a doubt that the Tribe has met these requirements, we may enforce the participation rate penalty.

Although the single audit will be the primary means for determining certain specific penalties for misuse or intentional misuse of TFAG funds, if a single audit detects Tribal non-compliance in the minimum participation rate area, we cannot ignore that finding. Therefore, we will consider imposing a penalty based on the single audit in this area. The penalty amount that will apply is the penalty under section 409(a)(3) for failure to meet the participation rates and not the penalty under section 409(a)(1) for misuse of funds.

*Comment:* A commenter suggested that an exception should be made to the requirement for meeting work participation requirements for “regions struggling because of declared economic disasters.”

*Response:* Tribes already have the ability in § 286.80 to establish exemptions, limitations, and special rules in relation to work requirements as part of their basic plan.

*Comment:* One commenter questions the language of proposed § 286.185(b), which provides that “\* \* \* (t)he accuracy of the reports are subject to validation by (ACF) \* \* \*” and asks how that will occur. Suggestion was made that either the information identifying the means of validation be included or that this language be removed altogether.

*Response:* Section 286.205(a) clearly provides that the Tribal TANF Data Report submitted by the Tribe will be the major source for determining compliance. Also, § 286.220 provides opportunity for the Tribe to explain and/or justify the data.

*Section 286.210 (Section 286.185 of the NPRM) What is the Penalty For a Tribe's Failure To Repay a Federal Loan?*

If the Tribe fails to repay its loan, plus any accumulated interest, in accordance with its agreement with ACF, we will reduce the Tribe's TFAG for the immediately succeeding fiscal year by the outstanding loan amount, plus any interest owed. Neither the reasonable cause provisions at § 286.225 of this chapter nor the corrective compliance plan provisions at § 286.230 of this chapter apply when a Tribe fails to repay a Federal loan. Please refer to § 286.235 for more information on this penalty.

*Section 286.215 (Section 286.190 in the NPRM) When Are the TANF Penalty Provisions Applicable?*

This section of the Final Rules provides the general time frames for the effective dates of the Tribal TANF provisions. As we noted in the NPRM, many of the penalty and funding provisions had statutorily delayed effective dates. For example, while Tribes will be held accountable for the penalties of misuse of funds from the date of implementation of TANF, the penalty to satisfy minimum participation rates will not apply until six months after the date of implementation of the Tribal TANF program.

We also made the important point that we did not intend to apply the TANF rules retroactively against Tribes. We indicated that, with respect to any actions or behavior that occurred before the Final Rule, we would judge Tribal actions and behavior only against a reasonable interpretation of the statute.

In the period prior to the effective date of the Final Rules, Tribes must implement the TANF provisions in accordance with a reasonable interpretation of the statute. If a Tribe's actions are found to be inconsistent with the final regulations, but it has acted in accordance with a reasonable interpretation of the statute and its approved TFAP, no penalty will be taken against the Tribe. However, if a Tribe is found to be liable for a penalty prior to the effective date of the Final Rules, the Tribe may present its arguments for "reasonable cause," which, if granted, will result in no penalty being taken.

*Comments:* Several commenters suggested that the provisions of proposed § 286.190(b), which provides that a Tribe may be subject to the penalties for failure to meet the minimum work requirements beginning after the first 6 months of operation of

a program, are too stringent. Suggestions were made that the "grace period" on compliance should be extended from 12 to 24 months.

*Response:* Minimum work requirements are determined via the negotiation process. If a Tribe determines during this process that it may have difficulty meeting the negotiated rate, it should not agree to that rate. Thus, we are retaining the proposed language.

*Section 286.220 (Section 286.195 in the NPRM) What Happens if a Tribe Fails To Meet TANF Requirements?*

If we determine that a Tribe has failed to meet any of the requirements included in the penalty provisions, we will notify the Tribe in writing. Our notification to the Tribe will include: (1) The penalty, including the specific penalty amount; (2) the basis for our decision; (3) an explanation of the Tribe's opportunity to submit a reasonable cause justification and/or corrective compliance plan where appropriate; and, (4) an invitation to the Tribe to present its arguments if it believes that the data or method for making the decision was in error, or that the Tribe's actions, in the absence of Federal regulations, were based on a reasonable interpretation of the statute.

**Reasonable Cause and Corrective Compliance Plan**

Provisions at sections 409(b) of the Act state that we can excuse or reduce certain penalties if we determine that the Tribe has reasonable cause for failing to comply with certain requirements that are subject to a penalty. At § 286.225 Tribes will have the opportunity to demonstrate reasonable cause upon receipt of a written notification of a proposed penalty.

Section 409(c) of the Act, as amended by the Balanced Budget Act of 1997, provides that prior to imposing certain penalties against a Tribe, we will notify the Tribe of the violation and allow the Tribe the opportunity to enter into a corrective compliance plan which outlines how the Tribe will correct the violation and ensure continuing compliance with TANF requirements.

*Comments:* Several comments were received relating to the fact that, while setting time frames for the Tribe to respond to findings that would result in penalties, § 286.195 as proposed sets no time frame for the agency to respond, and that the two-week time frame in subsection (e) for the Tribe to submit additional information is too short.

*Response:* We have clarified subsection (c) to specify that we will notify the Tribe of our decision with

respect to their submissions within two weeks from when the determination is made. We have amended subsection (e) to allow the Tribe thirty (30) days for submission of additional information. We have also amended § 286.205 to clarify what we mean by "complete and accurate."

*Section 286.225 (Section 286.200 in the NPRM) How May a Tribe Establish Reasonable Cause For Failing To Meet a Requirement That Is Subject to Application of a Penalty?*

This section describes the factors that we will consider in deciding whether or not to excuse a penalty based on a Tribe's claim of reasonable cause, describes the contents of an acceptable corrective compliance plan that will correct the problems that resulted in a penalty, and discusses the process for applying these provisions.

PRWORA did not specify any definition of reasonable cause or indicate what factors we should use in determining a reasonable cause exceptions for a penalty. We will consider only certain, limited factors when we decide whether or not to excuse a penalty for reasonable cause. In keeping with the need to support the commitment of Congress, the Administration, States, and Tribes to the objectives of the TANF program, including program accountability, we have identified a limited number of reasonable cause factors with an emphasis on corrective solutions. These are the same reasonable cause factors that are applicable for State programs. These factors are applicable to all penalties for which the reasonable cause provision applies. In the case of the penalty for failure to satisfy the minimum participation rates, one additional factor is applicable only to that specific penalty.

General reasonable cause may include the following: (1) Natural disasters and other calamities (e.g., hurricanes, tornadoes, earthquakes, fires, floods, etc.) whose disruptive impact was so significant that the Tribe failed to meet a requirement; (2) formally issued Federal guidance which provided incorrect information resulting in the Tribe's failure, or guidance that was issued after a Tribe implemented the requirements of the Act based on a different but reasonable interpretation of the Act; (3) isolated, non-recurring problems of minimum impact that are not indicative of a systemic problem; (4) significant increases in the unemployment rate in the service area and changes in the TFAG caseload size; and (5) the clearly demonstrated need to

divert critical system resources to Y2K compliance activities.

We have included one additional specific reasonable cause factor for a Tribe's failure to satisfy minimum work participation rates. Under the Final Rule at § 286.225(c), a Tribe may demonstrate that its failure is due to its granting of good cause to victims of domestic violence. In this case, the Tribe must show that it would have achieved the work participation rate(s) if cases with good cause were removed from both parts of the calculation (*i.e.*, from the denominator and the numerator described in § 286.85). In addition, a Tribe must show that it granted good cause in accordance with policies approved in the Tribe's Family Assistance Plan (refer to § 286.135).

We understand that limited employment opportunities in many Tribal service areas may affect a Tribe's ability to satisfy the participation rates. However, as explained in § 286.100, the work participation requirements established for each Tribe will take into consideration the Tribe's economic conditions and resources.

The burden of proof rests with the Tribe to adequately and fully explain what circumstances, events, or other occurrences constitute reasonable cause with reference to failure to meet a particular requirement. The Tribe must provide us with all relevant information and documentation to substantiate its claim of reasonable cause for failure to meet one or more of these requirements.

*Comments:* Several commenters suggested that the language of § 286.170(a)(3) as proposed, which provides for consideration to be given for unemployment increases and changes in the caseload size in determining whether a Tribe has failed to meet the minimum work participation rates, should be incorporated into this section.

*Response:* We agree. We have amended § 286.225(a) with the addition of these additional factors that can be used to claim reasonable cause.

*Comment:* A commenter suggested an exception be made for “\* \* \* regions struggling because of declared economic disasters.”

*Response:* We believe that the revision mentioned above addresses this concern.

*Comment:* One commenter suggested that an exception should be made for “\* \* \* extreme weather conditions \* \* \*.”

*Response:* We believe that it is not unreasonable to include extreme weather conditions, which seriously disrupt transportation or prevent access to services, work sites, or related

activities in this section. We have amended section 286.225(a)(1) accordingly.

*Comment:* One commenter suggests that “\* \* \* this section should include acknowledgment of the lack of employment, poor economic development, and lack of transportation and childcare on reservations.”

*Response:* We believe these factors are acknowledged in the general plan content area. They are also taken into account when negotiating work participation rates in the individual plans.

*Section 286.230 (Section 286.205 in the NPRM) What If a Tribe Does Not Have Reasonable Cause for Failing To Meet a Requirement?*

As mentioned above, section 409(c) of the Act, as amended by the Balanced Budget Act of 1997, provides that prior to imposing certain penalties against a Tribe, the Tribe will be given the opportunity to enter into a corrective compliance plan.

The corrective compliance plan must identify the action steps, outcomes, and time frames for completion that the Tribe believes will fully and adequately correct the violation. We recognize that each plan will be specific to the violation (or penalty) and that each Tribe operates its TANF program in a unique manner. Thus, we will review each plan on a case-by-case basis. Our determination to accept a plan will be guided by the extent to which the Tribe's plan indicates that it will correct the situation leading to the penalty.

In instances where a Tribe used its TFAG in a manner that is prohibited (see § 286.200 on misuse of funds), we will expect that it will remove this expenditure from its TANF accounting records and provide steps to assure that such a problem does not recur.

Section 409(c)(3) of the Act appropriately requires that a violation be corrected “in a timely manner.” A Tribe's timely correction of problems resulting in a penalty is critical if for no other reason than to assure that the Tribe is not subject to subsequent penalties. While we recognize that the types of problems Tribes encounter may vary, some concern exists that, if we do not restrict the length of a corrective compliance plan, there is the possibility a Tribe could indefinitely prolong the corrective compliance process, leaving problems unresolved into another fiscal year. As a result, the Tribe's ability to operate an effective program to serve the needs of its service population would be severely limited.

Therefore, we are limiting the period covered by a corrective compliance plan

to six months, *i.e.*, the plan period ends six months from the date we accept a Tribe's compliance plan. We believe that, for most violations, Tribes will have some indication prior to our notice that a problem exists and will be able to begin addressing the problem prior to submitting the corrective compliance plan. Therefore, we think it fair and reasonable that the corrective compliance plan period begin with our acceptance of the plan, giving the Tribe sufficient time to correct or terminate the violation(s).

Our review of a Tribe's efforts to complete its action steps and achieve the outcomes within the time frames established in the plan will determine if the penalty will be fully excused, reduced, or applied in full.

### Corrective Compliance Plan Review

During the 60-day period defined below, we will consult with the Tribe on any modifications to the corrective compliance plan and seek mutual agreement on a final plan. Any modifications to the Tribe's corrective compliance plan resulting from such consultation will constitute the Tribe's final corrective compliance plan and will obligate the Tribe to initiate the corrective actions specified in that plan.

We may either accept the Tribe's corrective compliance plan within the 60-day period that begins on the date the plan is received by us, or reject the plan during this same period. If a Tribe does not agree to modify its plan as we recommend, we may reject the plan. If we reject the plan, we will immediately notify the Tribe that the penalty is imposed. The Tribe may appeal this decision in accordance with the provisions of section 410 of the Act and the final regulations at § 286.240. If we have not taken an action to reject a plan by the end of the 60-day period, the plan is accepted, as required by section 409(c)(1)(D) of the Act.

If a Tribe corrects or discontinues, as appropriate, the problems in accordance with its corrective compliance plan, we will not impose the penalty. If we find that the Tribe has acted in substantial compliance with its plan but the violation has not been fully corrected, we may decide to reduce the amount of the penalty or, if the situation is compelling, excuse the penalty in its entirety. We will make a determination of substantial compliance based upon information and documentation furnished by the Tribe. In determining substantial compliance, we will consider the willingness of the Tribe to correct the violation and the adequacy of the corrective actions undertaken by the Tribe pursuant to its plan.

## Process

Because both the reasonable cause and the corrective compliance plan provisions apply, we will establish the determination of reasonable cause in conjunction with the determination of acceptability of a Tribe's corrective compliance plan, if any is submitted. Thus, a Tribe may submit to us its justification for reasonable cause and corrective compliance plan within 60 days of the receipt of our notice of failure to comply with a requirement.

A Tribe may choose to submit reasonable cause justification without a corrective compliance plan. If we do not accept the Tribe's justification, the Tribe will be notified in writing. This notification will also inform the Tribe of its opportunity to submit a corrective compliance plan. The Tribe will have a 60-day period that begins with the date of the notice of the violation to submit to us a corrective compliance plan to correct the violation. A Tribe may also choose to submit only a corrective compliance plan if it believes that the reasonable cause factors do not apply to the particular penalty.

Although a corrective compliance plan is not required when a Tribe has reasonable cause for failing to meet a requirement which is subject to a penalty, we stress the importance of corrective action to prevent similar problems from recurring. While a Tribe may have a very good explanation why it failed to satisfy a requirement under the Act, we will work with the Tribe to identify solutions to eliminate these problems or prevent them from recurring. Otherwise, they may well continue and detract from the Tribe's ability to operate an effective program to serve the needs of its families. Our goal is to focus on positive steps to improve the program.

## Due Dates

The Tribe's response to our notification that it has failed to meet a requirement under section 409(a) of the Act, either including its reasonable cause justification and/or its corrective compliance plan, must be postmarked within sixty days of the receipt of our notification letter to the Tribe. Also, if a Tribe believes that our determination is incorrect, any documentation supporting its position should be submitted within sixty days of the date of the receipt of our notice.

If, upon review of the Tribe's submittal, we find that we need additional information, the Tribe must provide the information within two weeks of the date of our request. This is

to make sure we are able to respond timely.

## Imposing the Penalty

Once a final decision is made to impose a full or partial penalty, we will notify the Tribe that its TFAG will be reduced and inform the Tribe of its right to appeal our decision to the Departmental Appeals Board (the Board).

In imposing a penalty, we will not reduce any TFAG to a Tribe by more than 25 percent. If this limitation of 25 percent prevents us from recovering the full amount of penalties during a fiscal year, we will carry the penalty forward and reduce the TFAG for the immediately succeeding fiscal year by the remaining amount.

*Comment:* A comment was received indicating that the time frames proposed in § 286.205(b) and (c) appear to be adequate.

*Response:* No response is needed.

*Comment:* A comment regarding proposed § 286.205(f) suggests that there needs to be documentation accepting or rejecting a compliance plan, and that the time frame for response should be accelerated and begin with the postmark date of the plan rather than the receipt date at ACF.

*Response:* We believe the process, which provides for notification to the Tribe of our determination that a penalty is applicable, and the Tribe's response in the form of either a submission of a compliance plan or challenge to the finding(s), as well as other corresponding actions throughout the appeal process adequately provides for sufficient documentation. The time frame in § 286.230(f), like the time frames set forth throughout this entire section, is determined by the Departmental Appeals Board procedures.

*Section 286.235 (Section 286.210 in the NPRM) What Penalties Cannot Be Excused?*

Sections 409(b)(2) and 409(c)(3), as amended by the Balanced Budget Act of 1997, provide that reasonable cause and corrective compliance plan are not available for certain penalties. One of these penalties is the penalty for failure to repay a Federal loan issued under section 406. Thus we cannot forgive any outstanding loan amount or the interest owed on the outstanding amount.

The other penalty that cannot be excused is the penalty for failure to replace any grant reduction resulting from other penalties that have been imposed.

*Section 286.240 (Section 286.215 in the NPRM) How Can a Tribe Appeal Our Decision To Take a Penalty?*

Section 410 of the Act provides that within five days after the date the Secretary takes any adverse action under this part with respect to a State, the Secretary shall notify the chief executive officer of the State of the adverse action. We believe that it is reasonable to make these same appeal provisions, including the time frames in section 410, available for Tribes. Thus, within sixty days after the date a Tribe receives notice of such adverse action, the Tribe may appeal the action, in whole or in part, to the Board by filing an appeal with the Board. Where not inconsistent with section 410(b)(2), a Tribes's appeal to the Board will be subject to our regulations at 45 CFR part 16.

By inclusion in this rule, section 410(b)(2) provides that the Board shall consider an appeal filed by the Tribe on the basis of documentation the Tribe may submit, along with any additional information required by the Board to support a final decision. In deciding whether to uphold an adverse action or any portion of such action, the Board shall conduct a thorough review of the issues and make a final determination within sixty days after the appeal is filed.

Finally, a Tribe may obtain judicial review of a final decision by the Board by filing an action within ninety days after the date of the final decision with the district court of the United States in the judicial district where the Tribe or TFAG service area is located. The district court shall review the final decision of the Board on the record established in the administrative proceeding, in accordance with the standards of review prescribed by subparagraphs (A) and (E) of section 706(2) of title 5, U.S.C. The review will be on the basis of the documents and supporting data submitted to the Board.

*Comments:* Several commenters commented on the fact that § 286.215 as proposed does not specify whether ACF will cease or reduce funding during an appeal.

*Response:* We do not intend to cease or withdraw funding during the appeals process. We have amended § 286.240 accordingly.

## Subpart E—Data Collection and Reporting Requirements (Sections 286.245—286.285, Appendices A-H)

### General Approach

Section 412(h) of the Act makes section 411 data collection and reporting requirements applicable to

Tribes. The requirements for States are addressed separately under the final State TANF regulations (64 FR 17857) which were published April 12, 1999. Although the reporting requirements stipulated under the final State TANF regulations are also required of Tribes under the statute, some of the particular data elements are not applicable. In order to minimize misunderstandings about what data elements are applicable to Tribes, we separately address the Tribal data collection and reporting requirements in this Final Rule. Additional background and summary information on these requirements, including a complete discussion of modifications which have been made to the proposed requirements, can be found at part 265 of the State TANF Final Rule.

Based on comments we received both prior to and after the development of the proposed regulations, Tribes generally view the section 411 requirements as very difficult to meet. Automated systems capabilities necessary for collecting and reporting the data required of the Act are sorely lacking on most reservations. Tribes also cited difficulties in obtaining current and accurate data from other program sources that are not administered by Tribes, and that may not be readily available to Tribal TANF program operators. For example, Tribes do not generally administer programs such as Food Stamps, Medicaid, subsidized housing, Child Support Enforcement, and State-administered child care programs, yet the specified data elements require such information. Tribes expressed concern that obtaining these data would entail developing costly mechanisms to gather accurate information on a monthly basis from States.

We are sensitive to these issues and are committed to helping Tribes, to the extent possible, in meeting the reporting requirements.

Before we discuss the comments associated with specific sections of the regulatory text or the Appendices, we want to respond to two cross-cutting issues:

#### **Publishing the Appendices as a Part of the Rule**

*Comment:* A few commenters urged us to publish the specific data elements as a part of the Final Rule and to codify them as a part of the Code of Federal Regulations (CFR). This approach, they believed, would help ensure that Tribes would not only have early access to the requirements but, once they were codified, the requirements would be less

subject to change, given the time it takes to revise Federal rules.

Other commenters urged us to publish the data elements in the **Federal Register** at the same time we published the Final Rule for the purpose of advance notice to the Tribes of the specific data requirements, but they did not recommend that they be a part of the Final Rule in the CFR.

*Response:* We agree with the importance of giving Tribes early access to the specific data elements and have published the appendices, including all data elements and instructions, in today's **Federal Register** along with the Final Rule.

It was never our intention, however, that these data collection requirements become a part of the rule itself or be codified in the CFR. We believe data collection needs may change over time, in part because the program is a dynamic one and because Congress may modify the reporting requirements. Therefore, we would want to be able to respond to those changes as quickly as possible. Since changes in reporting requirements require Paperwork Reduction Act (PRA) approvals, the public is guaranteed an opportunity to comment on any future changes to the TANF Data and Financial Reports as a part of the PRA review process.

#### **Y2K Compliance**

We have taken a number of actions to raise awareness of the problem and respond to questions from human service providers. For example, we have established an Internet e-mail address and phone line and a Y2K web page (<http://www.y2k.acf.dhhs.gov>). We have also distributed information packages to more than 7,000 human service providers and representative organizations, and we have added a reasonable cause criterion related to Y2K compliance. This new criterion provides penalty relief to a Tribe if it can clearly demonstrate that addressing Y2K issues prevented it from meeting the reporting requirements for the first two quarters and it reports the first two quarters of data by November 15, 2000.

*Section 286.245 (Section 286.220 in the NPRM) What Data Collection and Reporting Requirements Apply to Tribal TANF Programs?*

This section describes the general scope and purpose of this subpart as it applies to Tribal TANF data collection and reporting. Paragraph (a) also makes clear that section 412(h) of the Act requires that the same reporting requirements of section 411 of the Act be applied to Tribal TANF Programs. We have modified the proposed State

regulatory requirements in order to collect from Tribal TANF programs only the data required based on section 411(a) of the Act—quarterly reporting requirements; section 411(b)—report to Congress, and section 412(c)—work participation requirements. One reason for the modification is that Tribes do not have a maintenance-of-effort (MOE) requirement; thus there is no need for data related to MOE. (Section 411(a)(1)(A)(xii) authorizes the collection of information that is necessary for calculating participation rates).

The final regulation at § 286.255(b) also makes clear that Tribes will be required to submit: (1) Disaggregated data for two types of families: those receiving assistance and those no longer receiving assistance; and (2) aggregated data for three categories of families: Those receiving assistance, those applying for assistance, and those no longer receiving assistance.

This subpart also explains the proposed content of the quarterly TANF Data Report, TANF Financial Report, and the annual report, as well as reporting due dates.

*Section 286.250 (Section 286.225 in the NPRM) What Definitions Apply to This Subpart?*

The data collection and reporting regulations rely on the general Tribal TANF definitions at § 286.5.

In this subpart, we are proposing one additional definition—for data collection and reporting purposes only—a definition of “TANF family.” This definition will apply to data collection for the Tribal TANF program as it will to State TANF programs.

The law uses various terms to describe persons being served under the TANF program, e.g., eligible families, families receiving assistance, and recipients. Unlike the AFDC program, there are no persons who must be served under the TANF program. Therefore, each Tribe and State will develop its own definition of “eligible family,” to meet its unique program design and circumstances.

We do not expect coverage and family eligibility definitions to be comparable across Tribes and States. Therefore, we have established a definition that will enable us to better understand the different Tribal and State programs and their effects. The definition of “TANF family” starts with the persons in the family who are actually receiving assistance under the Tribal TANF program. (Any non-custodial parents participating in work activities will be included as a person receiving assistance in an “eligible family” since

Tribes may only serve non-custodial parents on that basis.) We, then, would include three additional categories of persons living in the household, if they are not already receiving assistance. These three additional categories are:

- (1) Parent(s) or caretaker relative(s) of any minor child receiving assistance;
- (2) Minor siblings of any child receiving assistance; and
- (3) Any person whose income and resources would be counted in determining the family's eligibility for or amount of assistance.

We believe information on these additional individuals is critical to understanding the effects of TANF on families and the variability among Tribal and State caseloads, e.g., to what extent are differences due to, or artifacts of, Tribal or State eligibility rules.

- We need information on the parent(s) or caretaker relative(s) (i.e., an adult relative, living in the household but not receiving assistance, and caring for a minor child) to understand the circumstances that exist in no-parent (e.g., child-only) cases not covered by key program requirements, such as time limits and work requirements.

- We need information on minor siblings in order to understand the impact of "family cap" provisions.

- We also need information on other persons whose income or resources are considered in order to understand the paths by which families avoid dependence.

For research and other purposes, there was interest in collecting data on a broader range of persons in the household, e.g., any other person living in the household such as a grandmother or a non-marital partner of the mother. We determined that we should limit reporting to those categories of persons on whom the Tribes and States will gather data for their own purposes and for which information will be directly relevant to administration of the TANF program.

In the interest of greater comparability of data, we also considered defining terms such as "parent," "caretaker relative," and "sibling." We chose not to define these terms because we were concerned that our data collection policies could inadvertently constrain Tribal and State flexibility in designing their programs. We believe that variation among Tribal and State definitions in these areas will not be significant and will not decrease the usefulness of the data.

We believe this definition of family will not create an undue burden on Tribes since all these additional persons either are part of an aided child's immediate family or have their income or resources considered in determining eligibility.

Finally, we want to emphasize that we have established this definition of "TANF family" for reporting purposes only. Our aim is to obtain data that will be as comparable as possible under the statute, and, to the extent possible, over time. Some comparability in data collection is necessary for assessing program performance; understanding the impact of program changes on families and children; and informing the States, the Tribes, the Congress, and the public of the progress of welfare reform.

*Section 286.255 (Section 286.230 in the NPRM) What Quarterly Reports Must the Tribe Submit to Us?*

Each Tribe must file two reports on a quarterly basis—the TANF Data Report and the Tribal TANF Financial Report. You will find the Data Report in its entirety in the Appendices to this Part.

**TANF Data Report**

The TANF Data Report consists of three sections (Appendices A, B, and C), two of which provide disaggregated case information. The third section provides aggregated data. The contents of each section were thoroughly discussed in the NPRM.

*Section 286.260 (Section 286.235 of the NPRM) May Tribes Use Sampling and Electronic Filing?*

We will implement section 411(a) of the Act by permitting Tribes to meet the data collection and reporting requirements by submitting the disaggregated case file data based on the use of a scientifically acceptable sampling method approved by the Secretary. Tribes may also submit all data on all cases monthly rather than on a sample of cases. However, Tribes, like States, are not authorized to submit aggregated data based on a sample.

We provide a definition of "scientifically acceptable sampling method" in paragraph (b) of this section. This definition reflects generally acceptable statistical standards for selecting samples and is consistent with existing AFDC/JOBS statistical policy.

At a later date, we will issue the TANF Sampling and Statistical Manual which will contain instructions on the approved procedures and more detailed specifications for sampling methods applicable to both Tribal and State TANF programs.

We also offer Tribes the opportunity to file quarterly reports electronically. We plan to develop a PC-based software package that will facilitate data entry and create transmission files for each report. The transmission files created by the system will be the standard file format for electronic submission to us.

We also plan to provide some edits in the system to ensure data consistency.

Because the data collection and reporting requirements are applicable in advance of our developing the software package, Tribes will have the option to submit a disk with the required data or submit hard copy reports. Additionally, Tribes that do not have the necessary equipment for electronic submission would continue to submit data on disk or submit hard copy reports.

*Section 286.265 (Section 286.240 in the NPRM) When Are Quarterly Reports Due?*

Unlike for States, there are no report submission time frames specified by the Act for Tribes. In our December 1997 policy announcement (TANF-ACF-PA-97-4), we stated that Tribes are required to submit the TANF data reports within 45 days following the end of each report quarter (consistent with that given to States). This Final Rule contains the same time frame; Tribes must submit the TANF Data Report and the Tribal TANF Financial Report no later than 45 days following the close of each report quarter. If the 45th day falls on a weekend or on a national, State or Tribal holiday, the reports will be due no later than the next business day.

Section 116(a) of PRWORA indicates that the effective date for title IV-A of the Social Security Act as amended by PRWORA is July 1, 1997. This would seem to indicate that Tribal TANF grantees would need to begin collecting the required TANF data as of the implementation date of their Tribal TANF program. However, section 116(a)(2) states that the provisions of section 411(a) are delayed for States to the later of July 1, 1997, or the date that is six months after the date that the Secretary of Health and Human Services receives a complete State plan.

Although section 116(a) on its face seems to apply only to the States, we are interpreting this section to be applicable to Tribal grantees as well with regards to section 411(a). We base our interpretation on section 412(h) which states that section 411 applies to Tribes and the fact that section 116(a)(2) is titled "Delayed Effective Date For Certain Provisions". We interpret the language of section 116(a)(2) to mean that section 411(a) of the Act could be delayed by all entities subject to it. As the effective date of section 411(a) is delayed for States, we believe the effective date is also delayed for Tribes.

We will also apply section 116(a)(2) of the Act to Tribes. Section 116(a)(2) gives States a six-month reprieve from data reporting requirements upon initial

implementation of their TANF programs. We recognize that, unlike States, most Tribes have never operated an AFDC-type program, and considerable time and effort will be needed to start up the Tribal TANF program. We believe that providing

Tribes with a six-month time period before data needs to begin to be collected and submitted will aid Tribes in the initial program implementation stage.

Therefore, the effective date of a Tribe's first TANF Data Report and

Tribal TANF Financial Report will be for the period beginning six months after the implementation date of its TANF program.

For example —

Tribes implements TANF	Data collection reporting period starts	Covering the period	First data report is due
July 1, 1997 .....	January 1, 1998 .....	Jan.—Mar. 1998 .....	May 15, 1998.
October 1, 1997 .....	April 1, 1998 .....	Apr.—June 1998 .....	Aug. 14, 1998.
November 1, 1997 .....	May 1, 1998 .....	May—June 1998 .....	Aug. 14, 1998.
January 1, 1998 .....	July 1, 1998 .....	July—Sept. 1998 .....	Nov. 16, 1998.
February 1, 1998 .....	August 1, 1998 .....	Aug.—Sept. 1998 .....	Nov. 16, 1998.
March 1, 1998 .....	September 1, 1998 .....	Sept. 1998 .....	Nov. 16, 1998.
April 1, 1998 .....	October 1, 1998 .....	Oct.—Dec. 1998 .....	Feb. 15, 1999.

For Tribes currently operating a TANF program, the Tribe shall begin collecting data for the TANF Data Report as of the effective date of this regulation.

*Comment:* It was pointed out that proposed § 286.240(a) failed to recognize State and Tribal holidays as legitimate “one business day” waivers for the submission of required quarterly reports..

*Response:* We have revised the regulations at § 286.265(b) to include such holidays as legitimate waivers.

*Comment:* Several comments were made that the data collection and reporting requirements proposed in § 286.240(b) should be implemented after 12 months rather than six months.

*Response:* Section 116 of PRWORA permits only a six-month delay. Furthermore, the wording of § 286.240(b) as proposed implied that financial data did not have to be gathered and reported for six months. This is an obvious oversight, and we have corrected that language.

*Section 286.270 (Section 286.245 in the NPRM) What Happens if the Tribe Does Not Satisfy the Quarterly Reporting Requirements?*

As previously discussed, section 412(h) of the Act requires Tribes to report on certain data in accordance with section 411. Unlike for States, the Act does not impose fiscal penalties on Tribes that do not submit the reports. However, in § 286.270(a), we caution Tribes that by not submitting complete and accurate reports, which include the data necessary for calculating participation rates, they are liable for penalties associated with failure to meet the established participation targets.

In addition, failure to submit the required Tribal TANF Financial Report could raise an issue of proper use of funds.

*Section 286.275 (Section 286.250 in the NPRM) What Information Must Tribes File Annually?*

Section 411(b) of the Act requires the Secretary to prepare an annual report to Congress addressing the States' implementation and operation of the TANF program. Since section 412(h) makes all of section 411 applicable to Tribal TANF programs, we interpret this to mean that Congress intended that Tribes as well as States collect the data necessary for the section 411(b) annual report. Therefore, we will need data on Tribal TANF programs for inclusion in the section 411(b) Report to Congress. We will collect some of the information required in section 411(b) for this Report to Congress as an addendum to the fourth quarter Tribal TANF Financial Report.

At a later date, we will work with Tribes and others to identify the specific information that should be included in this report.

In order to minimize the reporting burden on Tribes, we will collect some information for our report to Congress from the quarterly Data and Financial Reports, Tribal plans, annual reviews, and/or special studies. We also want to take advantage of the research efforts on the TANF program currently being conducted by several research organizations. To the extent that we may be able to build on existing endeavors, we will avoid duplication of effort, reduce reporting burden, and produce a better, more complete picture of Tribal TANF programs nationally.

*Comment:* Some commenters said that the data required was repetitive of information collected for use in other program functions.

*Response:* We have changed the regulations to indicate that the Tribal TANF grantee's annual report may include by reference all information previously supplied either in its TFAP

or a previous annual report, and we will no longer require performance and program reports. Further, the annual report is no longer associated with the Tribal TANF grantee's fourth quarter financial report. The annual report may now be submitted either as an addendum to the fourth quarter TANF data report or as a separate annual report.

*Section 286.280 (Section 286.255 in the NPRM) When Are Annual Reports Due?*

As indicated at § 286.280(a), the annual reports must be filed ninety (90) days after the close of the Federal fiscal year. This deadline is consistent with the deadline for most annual reports under DHHS grant programs.

*Comment:* Some commenters expressed concern about the timing of the first annual report, as some Tribes may have only a month or two of Tribal TANF operations before the first such report is due.

*Response:* We revised § 286.280(b) to indicate that a Tribe does not have to submit an annual report until the end of the first full fiscal year during which it has operated the plan, but the report must include all relevant data since the plan was approved. For example, if a plan is approved September 1999, the first annual report is due 90 days after the end of Fiscal Year 2000, and is to cover the period September 1999 through September 2000.

In addition, the wording of § 286.255(b) as proposed implied that the first annual report for all Tribes is for FY 1998. This was an obvious oversight, and we corrected that language.

*Comment:* It was suggested that we use State-submitted data where there is a duplication of TANF data.

*Response:* The Statue specifically requires that Tribes gather and report data on their service population. To the

extent that data required are available only from a State or another Tribe (e.g., months receiving TANF), the Tribe must make a good faith effort to obtain the data.

*Section 286.285 (Section 286.260 in the NPRM) How Do the Data Collection and Reporting Requirements Affect Public Law 102-477 Tribes?*

Pub. L. 102-477, the Indian Employment and Training and Related Services Demonstration Act of 1992, affords Tribes an opportunity to consolidate certain programs into one grant. In paragraph (a) of this section we require Tribes desiring to include TANF in their Pub. L. 102-477 plan to obtain approval to operate a Tribal TANF program first through the Tribal TANF plan submission process outlined in these regulations. (See § 286.160 regarding the Tribal TANF plan approval process).

While Pub. L. 102-477 enables Tribes to prepare one consolidated report regarding the programs included in the plan, it does not provide for waivers of statutory requirements. Because the Tribal TANF data collection and reporting requirements are statutory, § 286.285(a) clarifies that Pub. L. 102-477 Tribes must continue to submit the specified data of the Act.

However, in § 286.285(b) we propose that the statutory data (both disaggregated and aggregated) can be submitted in a Pub. L. 102-477 consolidated report to the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), in a format negotiated with BIA. We considered whether we should require Pub. L. 102-477 Tribes to submit TANF reports directly to us, but rejected this idea on the basis that Pub. L. 102-477 specifically authorizes Tribes to consolidate data and make one report for all integrated programs in the plan. However, we are providing Pub. L. 102-477 Tribes with the option to report the required TANF data directly to us. We will work jointly with BIA in collecting the statutory data required.

## Appendices A-H

### Background

In Subpart E—Data Collection and Reporting Requirements—of the Proposed Rule we published the following eight Appendices: Appendix A—Proposed TANF Disaggregated Data Collection for Families Receiving Assistance Under the TANF Program; Appendix B—Proposed TANF Disaggregated Data Collection for Families no Longer Receiving Assistance under the TANF Program;

Appendix C—Proposed TANF Aggregated Data Collection for Families Applying for, Receiving, and no Longer Receiving Assistance under the TANF Program; Appendix D—Proposed TANF Financial Report; Appendix E—Proposed Summary of Sampling Specifications; Appendix F—Statutory Reference Table for Appendix A; Appendix G—Statutory Reference Table for Appendix B; and Appendix H—Statutory Reference Table for Appendix C.

In the NPRM we indicated that these appendices to part 286 would not be included in the final regulations. However, we are addressing the comments we received about these appendices.

*Comments:* We received several comments about not including Appendices A, B, C, and D in the final regulations.

*Response:* Our rationale for not including them is threefold. First, if they were included, then anytime it was necessary to make any type of change to the data to be reported (including reducing the data required, sample sizes, and changes in definitions), it would be necessary to republish the revised requirements as regulations. Second, it is necessary to design a data collection system that accurately reflects statutory intent. And third, pursuant to section 412(g) of PRWORA, the data collection and reporting requirements of section 411 apply to Tribal TANF programs, subject to certain clarifications. We will make such clarifications as are necessary through the issuance of a Program Instruction.

In the interim, for purposes of implementing statutory provisions relating to data and measurement of work participation rates, it is necessary to obtain some data about Tribal TANF programs. Instructions as to what data must be supplied by the Tribes are contained in the data system program instructions issued by ACF on May 5, 1998—“TANF-ACF-PI-98-2 Interim Tribal TANF Data Report, Form ACF-343, Approved by the Office of Management and Budget (OMB) Through 12/31/1998 (Control No. 0970-0176)”. Note: an extension through April 30, 2000 has been granted.

*Comments:* In the preamble, we requested comments as to whether we should include a tribal enrollment identifier. The comments we received indicate general opposition to this provision.

*Response:* A tribal enrollment identifier is not included.

## Appendix A, TANF Disaggregated Data Collection for Families Receiving Assistance Under the TANF Program; and:

## Appendix B, TANF Disaggregated Data Collection for Families no Longer Receiving Assistance Under the TANF Program

*Comments:* Commenters requested assurance that specific individuals and families not be identified.

*Response:* All data gathered under this Statute is covered by the Privacy Act of 1974, 5 U.S.C. section 552a, as amended in 1997 (5 U.S.C.A. section 552a), which restricts the use and release of data on individuals.

*Comment:* It was stated that the data requested in Appendix B would be available only for the last month the case was active and thus would place a tremendous burden on Tribes to collect. The only time such data would be available would be for the last month the case was active.

*Response:* The data being requested is to be supplied only once—in the month in which the case was closed, which would be the month after the last month it was active.

## Appendix C, TANF Aggregated Data Collection for Families Applying for, Receiving, and no Longer Receiving Assistance Under the TANF Program

*Comment:* A comment was received that the term “out-of-wedlock” should be replaced with “marital status of household adults” because the term is culturally insensitive to Tribes who consider no birth of a child within a tribal community illegitimate.

*Response:* The statute requires data on “out-of-wedlock” births. Marital status of adults during the month of the report is already included as an item to be reported.

## Appendix D, TANF Financial Report

Instructions for completing and submitting a Tribal TANF financial report will be issued in a subsequent program instruction.

*Comment:* A comment was received that we should not require reporting of tribal expenditures for TANF.

*Response:* This data is to be reported only when TFAG funds are withheld for a penalty and the Tribe must substitute its own funds in an amount that is no less than the amount withheld. Fiduciary responsibilities require us to obtain this particular data.

## Appendix E, Summary of Sampling Specifications

*Comment:* Several commenters expressed concern that the sample sizes

proposed were too large to permit all but the largest Tribes to utilize that method of collecting and reporting data.

*Response:* The proposed sample sizes specified were based on the necessity for making confidence level statements about the observed work participation rates being within a given range. The sample size could be reduced based on the proportion of the caseload it represented through a statistical formula called the "finite population factor" (or population correction factor). Use of this factor is already permitted in the interim data system program instructions issued by ACF on May 5, 1998 (TANF-ACF-PI-98-2) and may be used for the final system.

All samples involve extra administrative costs for design, control, and monitoring. While the use of the "finite population factor" will somewhat reduce the sample size, the reduction may not be significant enough to offset the extra administrative costs involved. If the caseload is small and there is relatively low turnover in the cases, the extra administrative costs of design, control, and monitoring may far outweigh any benefits to be derived from sampling.

ACF has made available to Tribes, at no cost, an automated data entry and reporting system for the interim reporting that is now in effect. As data collection requirements are finalized for Tribes, a new system will be made available to the Tribes, again at no cost. The essential value to this system (or any other similar automated system) is that once the data is entered into the system, only changes have to be entered. This reduces the reporting burden substantially. Costs associated with designing, administering, monitoring, and controlling a sample will be considered administrative costs.

*Comment:* A comment was received that the sample size should be for the TANF program as a whole rather than for each individual Tribe.

*Response:* The Statute requires that we determine if each Tribe is meeting its negotiated work participation rates. We can do this only if we obtain scientifically acceptable samples from each Tribe.

*Comment:* It was suggested that "scientifically acceptable sampling method" be replaced with "or any other scientifically supportable sampling method proposed by the Tribe and approved for use which has been included in the Tribal TANF plan."

*Response:* There is no practical difference between "scientifically supportable" and "scientifically acceptable." "Scientifically acceptable sampling method" has the advantage of

being the more commonly used and understood phrase. Inclusion of a statistical sample plan development process within the framework of the Tribal TANF plan development process would unnecessarily complicate this process.

## **VI. Part 287—Native Employment Works (NEW) Program Provisions**

### **Discussion of Selected Regulatory Provisions**

The following is a discussion of selected NEW regulatory provisions. It is divided into two sections. In the first section, we summarize each subpart of Part 287 and provide background or additional explanatory information if it is helpful for clarification of the Final Rules. In the second section, we address the following program areas in detail: client eligibility, work activities and coordination.

### **Overview of Comments**

Seventeen entities commented on the NEW provisions, including twelve Tribes. Of those twelve, nine were NEW grantees and two of the grantees have incorporated NEW under a Pub.L. 102-477 demonstration project. Several Tribal and State coalition organizations also provided comments, as well as three states. No federal agencies submitted comments.

In general, the NEW proposed rule received strong support for providing broad flexibility in: conducting NEW Programs, determining service populations and areas, formatting plans, designing programs, defining work activities, providing services and allowing job creation activities. There was also praise for supporting incorporation of the NEW Program into Pub.L. 102-477 demonstration projects and preserving the concept of a single plan and report.

Several comments addressed issues beyond the department's control, such as providing additional program funding, amending the program to include other Tribes, and changing the basis of NEW funding from the FY 94 funding level.

*Comment:* One state commented that states should not have to count tribal members that receive TANF benefits in the state's participation rate.

*Response:* According to § 261.25 of the State TANF regulations, states have the option to include tribal families receiving assistance under a tribal TANF or work program in calculating the State's participation rates under § 261.22 and 261.24. Issues related to providing services to tribal families by State TANF programs fall under the purview of State TANF regulations.

*Comment:* Some commenters assumed that the purpose of the NEW Program was identical to that of the Tribal Job Opportunities and Basic Skills (JOBS) Training Program.

*Response:* Although NEW replaced the Tribal JOBS Program, its purpose and scope are different, with the NEW legislation authorizing a program to provide work activities. The statute allows Tribes the autonomy to determine service population, service area and work activities.

*Comments:* Comments from several states indicated a concern that the NEW regulations are not overly supportive of TANF requirements, and do not specifically target TANF recipients.

*Response:* The regulations do not target TANF recipients because the statute does not require them to do so.

We believe the law provides the opportunity for eligible Tribes to design programs to create work activities for their participants. The tribal work program is a new program with a different purpose than the old Tribal JOBS Program. The funding is a separate appropriation and not from the state TANF allocation. Even though NEW Programs are not mandated to serve TANF recipients, an overwhelming majority of NEW grantees do.

*Comment:* Several commenters asked that we permit a grantee operating both NEW and Tribal TANF programs to submit a single, comprehensive program plan. They suggested the statute does not prohibit this action, that it would eliminate unnecessary administrative paperwork, emphasize that the NEW Program is a natural complement to Tribal TANF, and encourage the coordination of NEW and Tribal TANF programs.

*Response:* Regardless of whether a grantee operates the NEW Program or both the NEW and Tribal TANF programs, the grantee must meet the separate statutory requirements of each program. There is no provision in the statute that permits a Tribe to meet a different set of provisions if it operates both programs.

Because the statutory requirements of the NEW and Tribal TANF programs are significantly different, we believe it would be inefficient to develop and maintain procedures for submission of joint plans. Through the plan, the grantee provides information to establish that the Tribe is committed to meeting the statutory requirements of the program. It establishes that the grantee intends to fulfill the requirements of the law and has implemented operational procedures by which the Tribe will operate a program in compliance with the statute. Because

of the significant difference in the statutory requirements for NEW and Tribal TANF, the requirements related to plan content must of necessity reflect these different requirements. For example, the statute requires numerous data reporting requirements that are applicable to Tribal TANF grantees and not to NEW Program grantees. These varying requirements are reflected in different plan structures and outlines for the two programs.

In addition, NEW and Tribal TANF programs have different funding sources. These sources do not merge when a Tribe receives funding for operation of the programs, unless a Tribe is operating under the 102-477 Demonstration Project. The programs remain distinct when they enter into a Tribe's funding stream. With programs having separate funding sources, the grantee must report program operations and financial activities that are unique to each program. The Tribe must keep separate and distinct information about each of the programs in terms of activities and services and provide an accounting of funds in accordance with regulatory requirements and Departmental policies.

Because a grantee must meet the statutory requirements of each program, we do not believe a significant reduction in paperwork would result by having a single plan. As noted above, even if a single plan were used, it would still be necessary to include documentation about each program's purpose, structure, objectives, operational procedures, services and benefits and reporting requirements.

Development and maintenance of separate plans when a Tribe operates both NEW and Tribal TANF programs does not necessarily result in a loss of a Tribe's ability to coordinate activities of the two programs. It could also serve to emphasize the flexibility a grantee has to design and integrate programs that will complement each other in providing effective services to its service population.

We made a technical correction to § 287.160(b) to clarify language regarding the deadline for submission of the financial report (SF-269A).

Other commenters addressed coordination factors, language, and report due dates. Responses are provided for those specific comments organized by subparts and sections, following the order of the regulatory text.

#### **Subpart A—General NEW Provisions (Sections 287.1–287.10)**

Part 287 contains our Final Rule for implementation of section 412(a)(2) of

the Act, as enacted by PRWORA. The statute provides flexibility to the Tribes in the implementation and operation of the NEW Program, which is to provide work activities. Not only do we highlight this factor as an intent of the statute, we express that Tribes have the opportunity to create a program that will serve a Tribe's most vulnerable and needy population.

This is also the portion of the Final Rule where we indicate the start date and define terms in part 287 that have special meanings or need clarification to ensure a common understanding. Although a term may be defined in this subpart, that definition may be repeated in a section if the term is uncommon or used in a special way. We chose not to define every term used in the statute and in these Final Rules. We believe that excessive definitions may unduly and unintentionally limit Tribal flexibility in designing programs.

#### *Section 287.5 What is the Purpose and Scope of the NEW Program?*

*Comments:* Several commenters suggested clarification of the purpose and scope of the tribal work program that ACF has designated as the NEW Program. Since the NEW Program replaced the Tribal JOBS Program, the commenters' expectations were that the two programs would have similar purposes.

*Response:* Unlike the Tribal JOBS Program, which served only AFDC clients, the purpose for the tribal work program is to make work activities available to the populations and areas the Tribe specifies.

*Comment:* One commenter indicated the scope of the program, as stated in the proposed regulations at § 287.5, extended beyond the statutory language.

*Response:* In order to conform the scope of the program with the statute, we have deleted § 287.5(b).

*Comment:* One State suggested designing a program more supportive of TANF requirements.

*Response:* The statute does not require the tribal work program to supplement the TANF program. Requiring grantees to design their programs to support TANF requirements would impinge upon the Tribe's sovereignty and program flexibility. Section 287.115 of the regulations does, however, require coordination between NEW Programs and TANF agencies in cases where the NEW Program has decided to serve TANF recipients.

#### **Subpart B—Eligible Tribes (Sections 287.15–287.30)**

Funding to operate a NEW Program is only available to those grantees who are defined as "eligible Indian tribes" in the statute. An eligible Indian tribe is an Indian tribe or Alaska Native organization that operated a Job Opportunities and Basic Skills Training (JOBS) program in fiscal year (FY) 1995. When PRWORA was enacted, seventy-six Indian tribes and Alaska Native organizations comprised the universe of eligible Indian tribes.

A consortium of eligible Indian tribes may receive NEW Program funding. Where the consortium operated a JOBS program in FY 1995, the Tribes may apply again as a consortium for NEW Program funds, or a Tribe that is a member of the consortium may apply for individual funding.

If a consortium should break up or any Tribe withdraws from a consortium, remaining funds and future grants must be divided among the Tribes that were members of the consortium, if each individual Tribe obtains ACF approval to continue to operate a NEW Program.

Public Law 102-477 allows Tribal governments to coordinate federally funded programs that provide employment, training and related services into a single, comprehensive program. The 102-477 grantees may include the NEW Program in their plan.

#### *Section 287.15 Which Tribes are Eligible to Apply for NEW Program Grants?*

*Comment:* One commenter on this section suggested that NEW needs to be amended to include Tribes who have not previously operated the JOBS program.

*Response:* ACF recognizes the potential benefits of having NEW Programs operate in additional tribal areas. However, section 412(a)(2) of the Act explicitly specifies those Tribes and Alaska Native Organizations who are eligible for NEW Program funding. Only "eligible Tribes" qualify to receive funding. The law clearly indicates that it was Congressional intent to establish a limited work activities program, one that would allow only those Tribes who had previously and most recently operated a JOBS program to continue operation of the replacement work activities program.

#### *Section 287.25 May Tribes Form a Consortium to Operate a NEW Program?*

*Comment:* In the proposed rule, ACF proposed at § 287.25(c) to require that the program plan submitted by a newly formed consortium include a copy of a

resolution from each Tribe indicating its membership in the consortium and authorizing the consortium to act on its behalf in regard to administering a NEW Program. One commenter suggested that we add that for Alaska Native Organizations grantees that form a consortium, a supporting resolution from their executive board is sufficient to satisfy this requirement.

*Response:* We incorporated the suggestion.

**Section 287.30** *If an Eligible Consortium Breaks up, What Happens to the NEW Program Grant?*

*Comments:* Two commenters suggested that only those grantees who operated a JOBS Program in FY 1995 should continue to receive NEW funding at the FY 1994 funding level, regardless of a change in service area.

*Response:* Statutory provisions governing the NEW Program provide that funding for an eligible Tribe shall not be affected by a change in its service area. PRWORA authorizes funds for operation of the NEW Program for six fiscal years (FY 1997–FY 2002). The amount of each eligible Tribe's grant is fixed for each of those six years and is equal to the amount of the JOBS grant the eligible Tribe received in FY 1994.

**Subpart C—NEW Program Funding (Sections 287.35–287.65)**

With the creation of the TANF block grant, the JOBS programs, including Tribal JOBS, were terminated. However, funding was continued to those Tribes who operated a Tribal JOBS Program in fiscal year 1995 for the purpose of providing work activities. The NEW Program provides funding for Tribes and inter-tribal consortia to administer NEW Programs in FYs 1997 through 2002. The funding level is set by the statute to remain at \$7,638,474 for each FY, the FY 1994 Tribal JOBS funding level. This is the sole basis for the funding amounts. The FY 1994 JOBS grant amounts were originally based on agreements between Tribal JOBS grantees and their respective States regarding the ratio of Tribe to State adult AFDC recipients. Recipient counts and agreements are not now required, since the NEW Program grants are fixed amounts. There are no matching fund requirements for NEW. To apply for funding, an eligible grantee must submit a plan that establishes it will operate a program in accordance with the statute. Funds must be used to operate programs that make work activities available to such population and service area as the grantees specify. Work activities may include supportive and job retention services necessary for assisting NEW

Program participants in preparing for, obtaining and/or retaining employment. Grantees are required to adhere to applicable financial reporting and auditing requirements.

Some Tribes expressed an interest in being able to carry forward any unexpended NEW funds to the next year. Section 404(e) of the Act allows States to reserve amounts paid to the State for any FY for the purpose of providing TANF assistance without FY limitation. This section 404(e) of the statute is not applicable to Tribal TANF or NEW Programs. Section 412(a)(2) is silent on an obligation period for NEW Program funds. The absence in the statute of a specific provision authorizing carryover of NEW Program funds means that such carryover is not permissible. Carryover authority may not be implied, but must be specifically granted by Congress. Unauthorized carryover of appropriated funds violates 31 U.S.C. 1301(c)(2), which states that an appropriation may be construed to be permanent or available continuously only if the appropriation expressly provides that it is available after the fiscal year covered by the law in which it appears.

**Section 287.35** *What Grant Amounts are Available Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) for the NEW Program?*

*Comment:* One commenter observed that to base NEW Program funding on the FY 1994 funding level is inaccurate due to population increases, economic inflation, and similar factors.

*Response:* ACF is unable to change the manner in which the NEW Program is funded. The statute specifies that each eligible Tribe shall receive a grant each fiscal year in the amount of its fiscal year 1994 tribal JOBS grant. The grants are fixed amounts. Congress chose not to link the funding to additional factors.

**Section 287.55** *What Time Frames and Guidelines Apply Regarding the Obligation and Liquidation Periods for NEW Program Funds?*

*Comment:* One Tribe requested that we clarify the terms “fiscal year” and “program year.” It was stated that the terms are confusing and misleading. The commenter also noted that because of the financial procedures related to obligating and liquidating funds, it is important that the terms are clearly defined in the regulations.

*Response:* In accordance with provisions of section 116(a)(1) of Title I of PRWORA, funding for the NEW Program became available on July 1,

1997. NEW Program funds are issued for each fiscal year thereafter. The grants are annual grants. The definition of fiscal year found at section 419 of the Act is applicable to the NEW Program. A fiscal year is the twelve-month period that begins October 1 and ends September 30. The definitions of fiscal year and program year are contained in § 287.10.

Because of the provisions of PRWORA and fiscal policies governing the use of annual grants, we determined that funds provided for a fiscal year are for use during the twelve-month period July 1 through June 30. We call this twelve-month period for use of program funds the program year. The program year, therefore, represents the annual program operations year.

Possible confusion between the two terms is minimized by recalling that funds for a fiscal year for operation of a NEW Program are not available at the beginning of a FY, October 1, but are first available on July 1. For example, NEW funds appropriated for FY 1998 (October 1, 1997–September 1998) were first available on July 1, 1998, for operation of the 1998 NEW Program year. The 1998 NEW Program year began July 1, 1998, and ended June 30, 1999.

*Comment:* ACF was asked to explain the time frames and guidelines that apply regarding obligation and liquidation periods for NEW Program funds.

*Response:* Funds allocated for a FY are for use during the corresponding program year, the period that begins July 1 of the FY and ends June 30 of the following FY. Since the funds are annual grant awards, they must be obligated by June 30, the end of the funding period or program year. Unobligated funds will be returned to the Federal government through the issuance of negative grant awards. Eligible Tribes are required to report any unobligated funds on the SF-269A within 30 days after the funding period, i.e. by July 30.

The liquidation period is the one-year period after the end of the obligation period. This means a Tribe must liquidate all obligations incurred under the NEW Program grant award not later than June 30 of the following FY. For example, funds provided for FY 1998 must be obligated no later than June 30, 1999. All obligations for operation of the program must then be liquidated no later than June 30, 2000, one year after the end of the obligation period. Eligible Tribes are required to report any unliquidated funds on the SF-269A within 90 days after the conclusion of

the program year or of the liquidation period.

*Comment:* Numerous comments were received regarding the proposed prohibition on carry over of unobligated NEW grant funds into future program years.

*Response:* While ACF is sensitive to the fact that carry-over of funds is permitted in other Federal Indian work programs, we have nonetheless determined that specific legislative authorization is needed to allow NEW grantees to reserve grant funds for future program years. Tribal NEW grants are fixed for each fiscal year at the amount received by the Indian tribe in fiscal year 1994 under section 482(i) (as in effect during fiscal year 1994). Thus, the statute determines that NEW grant funds are "one-year" monies. This means that NEW grant funds must be obligated for the needs of the current program year. ACF has determined that specific statutory authorization would be needed to permit NEW grantees to reserve or carry over NEW grant funds without fiscal year limitation.

#### *Section 287.65 What OMB Circulars Apply to the NEW Program?*

*Comment:* ACF received one comment to this section. The commenter noted that if a program is implemented by a nonprofit organization rather than a Tribe, OMB circular A-122, "Cost Principles for Non-Profit Organizations" would apply. Therefore, the list of circulars applicable to the NEW Program should include OMB Circular A-122.

*Response:* We concur with the commenter's suggestion. In a limited number of instances, the administrative unit qualifying to receive NEW Program funds on behalf of an eligible Tribe or a consortium of eligible Tribes is a non-profit agency or organization. We have revised the final regulations to indicate OMB Circular A-122 may apply to the NEW Program.

#### **Subpart D—Plan Requirements (Sections 287.70–287.100)**

The submission of a NEW plan is to document the establishment and operation of a Tribe's NEW Program. Through this document the Tribe requests funding for its program, as outlined. The requirement for submission of a NEW Program plan also applies to a Tribe if it operates a Tribal TANF program.

For operation of a NEW Program for the first year in which funds were available, FY 1997, we required a one year interim preprint. This allowed Tribes the opportunity to structure their initial NEW Program around a shorter

planning cycle. Guidance for preprint submittal to operate a FY 1997 NEW Program was issued in the document entitled, "Native Employment Works Program: Abbreviated Preprint." Issued through a program instruction (NEW-ACF-PI-97-1, dated July 17, 1997), it also included instructions for Tribes operating Pub. L. 102-477 programs.

After the first year of operation, a Tribe will be able to develop a long range planning document that takes into consideration the positive and negative aspects of the interim preprint. We will require the ongoing plan, including certifications, to cover a three-year period. The requirement that a NEW Program plan cover a three-year period is consistent with the Tribal TANF plan requirement. We will issue program instructions to provide guidance for submission and approval of future NEW plans and any subsequent modifications.

In general, Tribes who had previously consolidated their JOBS program into a Pub. L. 102-477 plan submitted a letter indicating that the NEW Program was incorporated into their 102-477 plan where there were no substantive changes between the Tribal JOBS Program and the NEW Program. However, a 102-477 plan modification will be required if substantive changes are made in the future.

We considered a number of factors in deciding on the funding period for the NEW Program. We noted that PRWORA first made funds available on July 1, 1997, for the operation of the NEW Program. Yet, the law refers to funding the program for FYs and defines FY in the usual manner. We believe a correct interpretation of the statute is to have the NEW Program begin on July 1 of each year and run through June 30 of the following year.

#### *Section 287.70 What Are the Plan Requirements for the NEW Program?*

*Comments:* Several commenters suggested that the description of the NEW Program plan exclude the description of client services because it was duplicative of the description of work activities to be provided.

*Response:* The elements grantees are required to describe in the plan were taken directly from the NEW planning guidance. Upon further review, we determined that the applicable section of the guide was requesting information to determine client eligibility and a process for prioritizing clients to receive services. Thus, the information requested is different and not duplicative. As a result, we did not change that section.

*Comment:* One state commented that the Tribes should be required to describe the NEW Program as states are required to.

*Response:* We believe the commenter was confused because states don't have work programs per se, and § 287.70 does list plan requirements for Tribes.

#### *Section 287.75 When Does the Plan Become Effective?*

The Secretary required Tribes to submit an interim Tribal preprint, the "Native Employment Works Program Abbreviated Preprint," if they were offering NEW Program services effective July 1, 1997. The preprint became operative July 1, 1997, and remained in effect until the end of the program year, June 30, 1998. Subsequent three-year plans must be submitted to the Secretary by a deadline to be established. The 1998 plan covered program years 1998, 1999, and 2000.

#### *Section 287.85 How Is a NEW Plan Amended?*

*Comments:* Comments were received suggesting a word change in proposed § 287.85(c) that any substantial change in plan content or operations be "submitted" rather than "reported" to ACF.

*Response:* We have made that change to the regulatory language.

*Comment:* A commenter suggested that an amendment to a NEW plan become effective the first day of the quarter in which the amendment is submitted.

*Response:* Such an action would make the amendment retroactive. If for some reason the amendment was disapproved, there may be a negative consequence if the grantee had already implemented the change. A quarterly time frame is essentially meaningless for NEW operations and reports.

#### **Subpart E—Program Design and Operations (Sections 287.105–287.145)**

In this subpart, we require Tribes to indicate who the program will serve, what activities and services will be provided, the coordination required to promote program effectiveness and program outcomes. Each Tribe will have to give careful consideration to the populations most in need of services to help them avoid long-term dependency and chronic unemployment. Opportunities for work may not be readily available on reservations and the surrounding economic conditions vary greatly. Consequently, we are allowing grantees the option of using program funds to encourage economic development initiatives leading to job creation. Additionally, we support the

alternative of encouraging traditional subsistence and other culturally relevant activities.

Generally, the need for services exceeds the demand. Consequently, an intake prioritization procedure may need to be instituted to determine the order of serving clients. NEW Programs should be tailored to fit the needs of its designated population and can be designed to serve a variety of clients, including General Assistance, TANF clients, other target groups, such as, teen parents, non-custodial parents, seasonal workers, unemployed parents and veterans, ex-offenders, *etc.*

It is not only important to coordinate with other tribal programs to develop a comprehensive service delivery system, but State programs, social service agencies, non-profit organizations, private industry and any other entity which can provide resources or opportunities for the benefit of NEW clients and their families. It is common practice to combine activities and services from different programs to provide seamless services to individual clients and their families. This may be very appropriate in the delivery of services to TANF clients who are obligated to participate in prescribed work activities. NEW Program activities may supplement TANF work activities in order to meet TANF work requirements. In some cases States are counting NEW Program participation in fulfillment of participation rate requirements, where possible.

By allowing Tribes flexibility in determining measures of program outcome, we do not intend to imply that this is not an important area. Because each NEW Program grantees' goals, objectives, population and economic conditions will be different, we anticipate that Tribes will develop different program standards and measures to realistically reflect achievable outcomes and evaluate program performance.

It is crucial for NEW Program grantees to establish at the outset of program operations their goals, expected outcomes, and outcome measures. Only with such information will program administrators be able to reasonably evaluate to what extent a NEW Program is successful.

There was one technical change. The word "tribal" was added to the regulatory text, at § 287.115(d), regarding TANF participation rates because this section pertains to Tribal and State TANF programs.

*Section 287.110 Who is Eligible to Receive Assistance or Services Under a Tribe's NEW Program?*

*Comment:* One comment suggested that all welfare recipients on the reservation be eligible for the NEW Program.

*Response:* The statute as amended stipulates each grantee "shall use the grant for the purpose of operating a program to make work activities available to such population and such service area or areas as the Tribe specifies." Each grantee has the autonomy to determine client eligibility. Whether or not to serve TANF recipients is a decision to be made by each tribal grantee.

*Section 287.115 When a NEW Grantee Serves TANF Recipients, What Coordination Should Take Place With the Tribal or State TANF Agency?*

*Comments:* Conflicting comments were received on this section. Some commenters wanted the factors upon which coordination should occur to be reduced to only the essential ones. Other commenters wanted more guidance on coordination when a NEW Program serves TANF recipients.

*Response:* The Final Rule stipulates coordination should occur, not must occur. While some areas of coordination are more important than others, each factor listed represents a sound management practice. The language presented in no way discourages tribal-state negotiations and presents more options for tribal-state collaboration. It is ACF's intent to insure that each grantee evaluate the need for various coordination activities based on its program structure and operations.

*Comment:* It was recommended that ACF mandate Tribe/State agreements to delineate roles, responsibilities, and services.

*Response:* While ACF would advocate such a practice, this is an area left to tribal/state discretion. Consequently, the suggestion was not incorporated.

*Section 287.120 What Work Activities May be Provided Under the NEW Program?*

*Comment:* There was a comment that Tribes be able to include work activities for their TANF recipients.

*Response:* Section 287.120 allows Tribes to define their own work activities to best address their clients' needs. The Tribes may include whatever work activities they deem appropriate to their service populations. Those listed in the rules are merely examples and not all-inclusive. The rule was not changed to include more examples.

*Comment:* One commenter expressed the importance of including traditional and tribal relevant activities as allowable work activities. The commenter further suggested that NEW participants be allowed to comply with work participation requirements.

*Response:* Since "traditional subsistence activities" is listed in § 287.120, that activity is already identified as an allowable activity. However, the listed activities are examples and grantees are not limited to the list. Regarding the second comment, it should be noted that there are no work activity requirements under the NEW Program. The commenter may be referring to TANF work participation requirements. It is left to the discretion of the NEW grantee what work activities are to be provided. Negotiations and agreement with the TANF agency (and applicable TANF rules) will determine whether NEW work activities can be counted toward a TANF agency's participation rate.

*Section 287.130 Can NEW Program Activities Include Job Market Assessments, Job Creation and Economic Development Activities?*

*Comments:* Some commenters suggested that the term "job market assessments" be eliminated from the list of activities allowable under the NEW Program. Another commenter categorized this section as good for offering guidance on maximizing their program services.

*Response:* This proposed activity was recommended by one of the NEW Program directors and has validity for the grantees that choose to conduct such activity. ACF would rather be inclusive and provide a greater range rather than be exclusive for those grantees interested in conducting such activity. This is an allowable, not mandatory activity. The suggested change was not made.

*Section 287.140 With Whom Should the Tribe Coordinate in the Operation of its Work Activities and Services?*

*Comment:* It was suggested that the Indian and Native American Welfare-to-Work (INAWTW) program be specifically mentioned as a program to coordinate NEW with in § 287.140.

*Response:* Often Federal programs are not reauthorized, or are authorized with different names and/or revised scopes. For that reason, in the proposed rules we opted not to name specific programs. Consequently the suggestion was not incorporated.

*Section 287.145 What Measures Will be Used to Determine NEW Program Outcomes?*

*Comments:* Several comments were received urging ACF to allow grantees the ability to define their own standards and measures.

*Response:* That was the intent of the proposed rules and remains so in the Final Rule. According to the NEW Program Planning Guidance, each NEW grantee is to develop at least two program standards. The guidance states "the Tribe is encouraged to develop its own standards." The Final Rule supports and encourages each grantee to develop its own standards. Several examples are provided in the regulations due to the many inquiries that were received for guidance in this area. If more standards are developed and achieved by the NEW grantee, the successful program elements will provide further evidence of positive program performance.

**Subpart F—Data Collection and Reporting Requirements Sections 287.150—287.170)**

Although not specified in PRWORA for the NEW Program, it is necessary to outline the minimum data gathering and reporting obligations for any grantee receiving Federal funding. The particular nature of the program services offered within the NEW Program require the granting authority to set forth some uniform standards for appropriate accountability and service definitions and to insure the availability of information necessary for public oversight and evaluation.

Through considerable consultation and discussion with advocacy groups and many eligible Tribes, the Secretary has elected to develop minimum reporting and data collection requirements. This minimum reporting requirement will be evident in the shift from quarterly reporting, which was required under the Tribal JOBS Program, to annual program and fiscal reporting. We expect NEW grantees to simply maintain certain case information on file rather than regularly submitting formal reports of these records to the Federal government.

We will require NEW Program grantees to submit a report covering program operations and a report covering financial expenditures. These reports must also be submitted by NEW Program grantees who operate a TANF program.

The program operations report will provide information essential for monitoring and measuring program performance. It also includes data

elements to assist management in evaluating program objectives, performance measures and allocation of resources.

The NEW Program operations report is an annual report. The report will be due September 28, which is 90 days after the close of the NEW Program year. The report is based on data collected from the current program year. The report must be submitted to the appropriate ACF Regional Administrator and a copy forwarded to the ACF, Office of Community Services, Division of Tribal Services, Attention: Data Reporting Team.

Under the Public Law 102–477 initiative, all services are integrated under a single 102–477 program plan; funds from the programs are commingled under a single budget; and activities are reported under a single reporting system. In general, the 102–477 Tribes deal only with the lead Federal agency, the Bureau of Indian Affairs (BIA). The report is submitted annually to BIA and shared with the Departments of Health and Human Services and Labor.

The program operations report was developed by the Secretary in consultation with NEW Program grantees and other interested parties. For simplicity and consistency the NEW report was formatted very similar to the 102–477 report.

For Tribes that operate both the NEW and TANF programs, we considered developing a single reporting instrument. However, we believe that a single report is not feasible nor would it reduce the amount of reporting. There are TANF reporting requirements in the law which are not required for NEW Program grantees. Also, the reporting cycles could be different for a Tribe operating TANF and NEW Programs and to report program operations with different reporting periods on a single form could be more complicated and confusing than if separate reports were used. In addition, we may obtain data which is not comparable if we require Tribes who operate only a NEW Program to report one set of data while requiring Tribes that operate TANF and NEW Programs to report on different or fewer data elements.

Grantees must report NEW financial activities annually on a Standard Form SF–269A. This form is required for reporting NEW Program expenditures if a Tribe operates both NEW and TANF programs. 102–477 grantees also report financial data on the SF–269A.

*Comment:* It was suggested that we give grantees at least a 12-month grace period before data section reporting requirements are implemented.

*Response:* We believe a delay in submitting financial and operations reports is unwarranted for several reasons. First, submission of the required reports in accordance with the time frames set forth in the regulations provide both the agency and the grantees with essential management information required to access how the newly instituted work activities programs are meeting their goals and objectives. Second, grantees must meet time frames for submission of forms regarding financial activities in accordance with applicable regulations and Departmental policies. Finally, reporting requirements for the NEW Program are minimal. Only an annual financial activities report and an annual program operations report are required.

*Section 287.160 What Reports Must a Grantee File Regarding Financial Operations?*

*Comment:* Several commenters objected to requiring submission of the annual fiscal report on September 28 rather than September 30. The commenters note that while September 28 may be literally 90 days from the end of the NEW Program year, an end-of-the-quarter date of September 30 would be much easier for tribal staff to remember and be consistent with other deadlines that commonly fall either at the beginning or the end of a calendar month.

*Response:* Regulations at 45 CFR 92.41(4) require that grantees submit annual reports 90 days after the end of the reporting quarter. For the NEW Program, the end of the reporting quarter is June 30. The 90 days after June 30 is September 28. Consequently, ACF is unable to change the due date of the fiscal reports to September 30.

*Section 287.165 What are the Data Collection and Reporting Requirements for Public Law 102–477 Tribes That Consolidate a NEW Program With Other Programs?*

*Comment:* It was suggested that ACF needs to begin identifying a process with Pub.L. 102–477 Tribes to reduce reporting requirements while maintaining the efficiencies and opportunities offered under Pub. L. 102–477.

*Response:* The operation of work programs under a Pub.L. 102–477 plan affords Tribes the opportunity to consolidate the administrative, operational and reporting activities of these programs into a single system. The NEW Program is eligible for inclusion under a Pub.L. 102–477 plan. We encourage eligible Tribes to consider the benefits of operating under this

demonstration program. Minimal reporting requirements are already in place for 102–477 Tribes. If a Tribe incorporates NEW under a Pub.L. 102–477 demonstration program, only the Pub.L. 102–477 annual report is due to BIA. There are no separate or additional NEW reporting requirements.

*Comment:* One commenter stated it was unclear what reports are due when Tribes operate under Pub.L. 102–477 and suggested that flexibility should be maximized to the greatest extent possible by carrying the objectives of Pub.L. 102–477 into data reporting.

*Response:* The BIA administers the Pub.L. 102–477 demonstration programs and establishes guidelines regarding data collection and reporting requirements. Currently, only an annual operations report and an annual fiscal report are required for Tribes that operate under Pub.L. 102–477. For Tribes operating Pub.L. 102–477 programs, we will obtain information on NEW Program operations and fiscal activities through the Pub.L. 102–477 reporting system.

*Section 287.170 What are the Data Collection and Reporting Requirements for a Tribe That Operates Both the NEW Program and a Tribal TANF Program?*

*Comment:* Several commenters stated that separate data collection and reporting requirements for Tribes that operate both TANF and NEW Programs are burdensome and unnecessary. One commenter noted that requiring reports for both programs exacerbates the already cumbersome proposed reporting requirements for TANF.

*Response:* ACF believes that a single report for Tribes operating both Tribal TANF and NEW Programs would not reduce the amount of reporting but would more likely make the reporting requirements more burdensome and complex. There are TANF reporting requirements in the law which are not required for NEW Program grantees. Also, the reporting cycles could be different for a Tribe operating TANF and NEW Programs, and to report program operations with different reporting periods on a single form could be more confusing and complicated than if separate reports were used. In addition, we may obtain data which is not comparable if we require Tribes who operate only a NEW Program to report one set of data while requiring Tribes that operate TANF and NEW Programs to report on different data elements.

## Discussion of Program Areas

### Client Eligibility

Section 412(a)(2)(C) of the Act, as amended, allows for NEW grantees to

define their population and service area(s) for the NEW Program. This eligibility requirement is different and much broader than the Tribal JOBS Program, where the purpose was to provide Tribal members receiving AFDC with education, training and employment services.

There has been some discussion between ACF and the Tribes on how and who the NEW Program should supplement or support. Should NEW be an adaptable, independent program addressing client needs; should it support the Tribal TANF program if a Tribe were to choose to operate its own TANF program; should it be a supplement to State TANF programs, acting as a safety net for those that don't qualify for TANF or who have met the TANF time limits; or should the program be a combination of these options? We believe each NEW grantee should make these determinations, for they are in the best position to respond to the needs of their reservation and to allocate Tribal program resources to meet those needs.

In light of scarce Tribal resources, unnecessary restrictions and rules may prevent Tribes from using their NEW Programs as safety nets for families ineligible for other programs or who have met the time limits under TANF. Some Tribes are beginning to struggle with the issue of Tribal families having met the time limits in States where shorter time limits were established under waivers.

Moreover, the Indian and Native American Welfare-to-Work program, which all NEW grantees are eligible to apply for, makes available funding to serve categories of hard-to-employ TANF recipients. Duplication of services should be avoided. NEW grantees have the option of supplementing work activities and services provided by TANF and Welfare-to-Work programs to TANF clients or providing work activities and services to other needy clients. A grantee may also choose to serve both TANF and non-TANF clients. The decisions are left to Tribal discretion and not dictated by these rules.

When an eligible Tribe elects to receive NEW Program funds, but not to operate the Tribal TANF program, individuals receiving State TANF assistance must participate in State TANF work activities. If a NEW Program elects to serve individuals who are State TANF recipients, then it should do so as an addition to or extension of the State TANF work activities to avoid duplication of services and provide maximum benefits to the families served. There will need to be close

coordination between the TANF agency and the NEW Program to provide comprehensive services to the families jointly served.

During our consultation phase, our Tribal partners overwhelmingly recommended that they be allowed maximum flexibility as reflected in PRWORA, including defining their service population and area(s) and designing and operating effective programs. Restrictive program rules on client eligibility and program expenditures would create barriers to providing comprehensive, seamless service delivery to needy Tribal families. Consequently, in keeping with the intent of the law and Tribal sovereignty, we have chosen to allow maximum flexibility in NEW client eligibility requirements, program design and operations.

### Work Activities

Section 412(a)(2)(C) of the Act, as amended, describes the use of the NEW grant. Each Indian tribe to which a grant is made under this paragraph must use the grant for the purpose of operating a program to make work activities available to such population and service area(s) as the Tribe specifies.

ACF supports Tribal autonomy in defining what constitutes work activities. The statutory language for NEW contrasts notably with the statute for the now repealed Tribal JOBS Program. JOBS required that Tribes have the following mandatory work components: Educational activity; job skills training; job readiness; and job development and job placement activity. In addition, a Tribe was required to have at least one of the following components: group and individual job search; on-the-job training; community work experience; work supplementation; or alternative education, training and employment activities.

Section 407(d) defines work activities for the TANF program as: Unsubsidized employment; subsidized private or public sector employment; work experience; on-the-job training; job search and job readiness; community service programs; vocational educational training; job skills training; education; satisfactory attendance; and provision of child care.

In order to determine how work activities should be defined under NEW, we reviewed allowable activities under JOBS, TANF and Welfare-to-Work. Again we consulted our Tribal partners and other interested parties regarding both the Tribal TANF and the NEW Programs.

The first question posed was: "What relationship should there be between work activities as defined in section 407 of the Act and the work activity that is required to be made available by section 412(a)(2)?" The consensus was that NEW Program grantees should define "work activities" and that section 407 should serve as a guideline for them. Tribes stated that they should be allowed to use culturally relevant activities to solve unique problems. In order to give Tribes as much flexibility as possible we have included the activities listed in section 407 as examples of NEW work activities. In addition, we have added job creation, economic development, and traditional subsistence activities, such as hunting and fishing.

The second question posed was: "What is the interconnection between NEW work activities and work activity participation to the State or Tribal TANF program?" Some felt that requiring NEW Programs to "mirror" TANF work activities would facilitate Tribe/State coordination and simplify program administration. However, certain educational and training assistance which may accrue to the clients would be lost in the process, possibly eliminating client options which are more practical, available or needed. NEW Programs can provide work activities above and beyond what can be provided under TANF or WtW programs, thus broadening the clients' opportunities and options.

States and Tribes should coordinate closely to ensure that NEW and TANF work activities are best arranged in a complimentary fashion to advance the TANF client's employability goals.

### Coordination

The Family Support Act of 1988 created the opportunity for Indian tribes and Alaska Native organizations to conduct JOBS programs. Operating a Tribal JOBS Program required coordination with State programs to ensure that the necessary interfaces between the Tribal JOBS Programs and State title IV-A programs were in place. It also required that a Tribe and a State be able to exchange information regarding such things as eligibility status, child care services, changes in employment status, and participation status.

Under the JOBS program, coordination was necessary in order to prevent duplication of services, assure the maximum level of services was available to participants and ensure that costs of other program services for which welfare recipients were eligible were not shifted to the JOBS program.

Coordination between TANF and NEW is still needed for some of these same reasons.

All work activities required as a condition of eligibility to receive temporary public assistance are now prescribed by the TANF program administered by the States and, at their option, Tribes. There is some misunderstanding that NEW Programs should serve all State tribal TANF recipients. With 74 percent of all NEW grants being below \$100,000, it is unrealistic to expect NEW Programs to be able to meet such demands. The Tribe and State should negotiate an agreement if the Tribe plans to serve all Tribal TANF clients, which may necessitate the need for supplementary funding from the State. Additional State funds would allow Tribes to: increase the availability of activities and services; provide additional activities and services so that clients could meet the State's participation rate; or serve more clients.

Congress did not replace the Tribal JOBS Program with another tribal work program of identical focus. Individuals who receive TANF assistance, regardless of Native American or Alaska Native heritage, have to participate in work activities as prescribed by the State TANF program (unless the Tribe elects to operate its own TANF program) in order to continue to be eligible to receive TANF assistance. Under these circumstances then, what are the requirements for coordination between a NEW Program and a State TANF program?

For participants in the NEW Program, coordination efforts should be designed to best fulfill the participants' self-sufficiency goals. It is critical that any TANF client referred to NEW be placed in activities leading to fulfillment of their employment goal or a job as soon as possible. Otherwise the client may consume valuable time. Since TANF is time limited any TANF client not able to receive immediate services should be sent back to the referring agency. Clients in work activities under a State TANF program may be required to participate for a minimum number of hours per week to remain eligible for TANF assistance, and the State maintains responsibility for the costs of that participation. If a NEW Program elects to serve individuals who are participating in State TANF work activities, it should do so as an addition or extension to the State TANF work activities. This will avoid duplication of services, extend the range of work activities and services provided, and assure that costs of State TANF work activities are not shifted inappropriately

to the NEW Program. In order to provide these assurances, initial and ongoing coordination between the NEW Program and the State TANF agency will be necessary. Also, the responsibility of meeting the TANF reporting requirements must be coordinated when serving TANF clients.

Moreover, local NEW and TANF case workers need to be aware of each program's requirements and procedures to offer the best mix of services to joint clients. For example, bonuses, stipends, and performance awards are allowed under NEW. However, depending on the rules of a Tribal or State TANF program, such payments made from NEW Program funds may be counted as income in determining and maintaining TANF eligibility. Rules of other need-based programs may also require that such payments be counted as income in the eligibility and payment determinations. NEW Program operators would want to take such information into consideration when determining what services to provide and the affect on their clients' situations.

For a Tribe that previously operated a JOBS program and elects to also conduct a TANF program, many of the coordination and collaboration relationships will be internal within the Tribe. This would also be true if a grantee had responsibility for the DOL or BIA employment programs. The importance of developing and maintaining those relationships is amplified by the additional responsibilities that come with operating a public assistance program. Many contracted work sites, for example, used by a State may also be available to Tribal TANF programs.

Section 407(b)(4) of the Act, as amended by the Balanced Budget Act of 1997, expands the State option to include individuals receiving assistance from a Tribal TANF program in the State's work participation rate calculation to also include individuals receiving assistance from a Tribal NEW Program. Unlike the Tribal JOBS Program, this is a State option, and as such Tribes do not have authority to exempt NEW/TANF program participants from State TANF program work requirements. The statute is silent (exception at section 412(h) noted) regarding comparability of programs. However, the statute prescribes minimum work participation rates for State TANF programs and the minimum number of hours necessary to qualify as engaged in work, and we would expect that agreements on respective roles and responsibilities will be established between States and Tribes operating NEW Programs.

## VII. Regulatory Impact Analyses

### A. Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This rulemaking implements statutory authority based on broad consultation and coordination. It reflects our response to comments received on the NPRM that we issued on July 22, 1998.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. As described elsewhere in the preamble, ACF consulted with Tribal, State and local officials and their representative organizations, as well as a broad range of advocacy groups, researchers and others to obtain their views prior to the publication of the NPRM. We also considered comments received in response to the NPRM.

We respond to the comments that we received in the discussions of individual regulatory provisions within the preamble. These rules reflect the comments that we received in response to the NPRM. They also reflect the intent of PRWORA to achieve a balance between granting Indian tribes the flexibility they need to develop and operate effective and responsive programs and ensuring that the objectives of the statute are met. In addition, these rules recognize the differences that must and will exist between Tribal and State TANF programs.

Under the new law, tribal flexibility is achieved by giving Tribes the opportunity to develop, design and administer their own TANF block grants; and for the NEW grantees, they have great flexibility in the design of their NEW Programs. Ensuring that program goals are accomplished is achieved through the provisions on plan content, penalty provisions, and data collection.

We support tribal flexibility in various ways—such as giving Tribes the ability to define key program terms; and supporting the negotiation of minimum work participation requirements and time limits for each Tribal TANF program. We support the achievement of program goals by ensuring that we capture key information on what is happening under both the Tribal TANF and NEW Programs and maintaining the integrity of the work and other penalty provisions of the TANF program.

We take care to protect against negative impacts on needy families receiving assistance from Tribal TANF grantees by including three provisions not required by the statute, using the regulatory authority given to us by the statute. One of these provisions is the provision for retrocession; the second provision is the limit on administrative expenditures. Retrocession can be found at § 286.30, and the limitation on administrative expenditures can be found at § 286.50.

The third provision we included to protect against negative impacts on needy families is the provision for the replacement of amounts withheld from a tribal Family Assistance Grant due to the imposition of a penalty. We considered not including this provision; however, we believe that the benefits and protections this policy brings to the needy families being served by a Tribal TANF program outweigh the potential cost to the Tribe.

One of our key goals in developing the Tribal TANF penalty rules was to ensure tribal performance in the key areas provided under statute—including work participation, the proper use of Federal TANF funds, and data reporting. The law specified that we should enforce tribal actions in these areas and also specified the penalty for each failure. Through the “reasonable cause” and “corrective compliance” provisions in the rules we give some consideration to special circumstances within a Tribe to help ensure that neither the Tribe nor needy families served by the Tribe will be unfairly penalized for circumstances beyond their control.

In the work and penalty areas, this rulemaking provides information to the Tribes that will help them understand our specific expectations and take the steps necessary to avoid penalties. These rules may ultimately affect the number and size of penalties that are imposed on Tribes, but the basic expectations on Tribes are statutory.

The financial impacts to the Federal government of these rules are minimal for three reasons. First, the level of funding provided for both the block grant and the NEW Program is fixed. Second, the amount of a Tribe’s TANF block grant is deducted from the State TANF block grant of the State in which the Tribe is located; thus, no additional Federal outlays are necessary beyond the amount needed for State Family Assistance Grants. And third, Tribal TANF grantees are not eligible for either the contingency fund or performance bonuses; thus, there are no additional outlays required for these two items.

A Tribe’s TANF grant could be affected by the penalty decisions made under the law and these rules.

Otherwise, we do not believe that the rulemaking will affect the overall level of funding or expenditures. However, it could have minor impacts on the nature and distribution of such expenditures.

These rules could have a minimal financial impact on State governments. This is due to the statutory requirement that State data be used to determine the amount of a Tribal Family Assistance Grant. The actual impact to any one State is difficult to determine as it is not known how many Tribes will apply to administer a TANF program. There are some States that have federally-recognized Tribes within their borders; yet there are many that do not have any federally-recognized Tribes within their borders.

In the area of TANF data collection, the statutory requirements are specific and extensive—especially with respect to case-record or disaggregated data. These rules also include data reporting with respect to program expenditures. They expand upon the expenditure data explicitly mentioned by the statute in order to ensure that: needy families continue to receive assistance and services; monies go for the intended purposes; and the financial integrity of the program is maintained.

The NEW Program grantees must report participant characteristics and program outcome data that the Secretary and others will use to determine the impact of the program. Only an annual operations report and an annual financial activities report are required.

The impacts of these rules on needy individuals and families will depend on the choices that a Tribe makes in implementing the new law. Our data collection should enable tracking of these effects over time and across Tribes. Overall, our assessment of these rules indicates that they represent the least burdensome approach consistent with the regulatory objectives.

The Department has determined that this rule is significant under the Executive Order. The Office of Management and Budget has reviewed the rule.

### B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities. This rule will affect only

federally-recognized Indian tribes and Alaska Native organizations. Therefore, the Secretary certifies that this rule will not have a significant impact on small entities.

#### C. Family Impact Assessment

We certify that we have made an assessment of this rule's impact on the well-being of families, as required under section 654 of The Treasury and General Government Appropriations Act of 1999. The purpose of the TANF program is to strengthen the economic and social stability of families, in part by supporting the formation and maintenance of two-parent families and reducing out-of-wedlock child-bearing. As required by statute, this rule gives flexibility to Tribes to design programs that can best serve this purpose.

#### D. Paperwork Reduction Act

This rule contains information collection activities that have been reviewed and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA). (OMB has already approved an Interim Tribal TANF Data Report, Form ACF-343, Control No. 0970-0176. OMB has also approved a NEW Program data reporting form, "The Native Employment Works (NEW) Program Plan Guidance and Report Requirements," Control No. 0970-0174). Under this Act, no persons are required to respond to a collection of information unless it displays a valid OMB control number. If you have any comments on these information collection requirements, please submit them to OMB within thirty days. The address is: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street NW, Washington, DC 20503, Attn: ACF/DHHS Desk Officer. The public will have an opportunity to provide comments before OMB makes a final decision.

The following discussion incorporates our response to comments regarding information collection that we received on the NPRM and the Paperwork Notice published on July 22, 1998. This rule contains provisions covering two quarterly reports (one program data, the other financial) and one annual report for the Tribal TANF program. The proposed reports were attached to the proposed rule as an Appendix. We will revise these instruments based on the

comments we have received, and will issue them to Tribes through the ACF policy issuance system after they have been cleared through OMB. We have, however, responded to the comments received elsewhere in the preamble of this Final Rule.

#### Quarterly Data and Financial Reports

The two quarterly reports are the Tribal TANF Data Report (Appendices A through C) and the Tribal TANF Financial Report (Appendix D). The Tribal TANF Data Report consists of three sections. Two of these three sections consist of disaggregated case-record data elements, and one consists of aggregated data elements.

We need this information collection to meet the requirements of section 411(a) and to implement other sections of the Act, including sections 407 (work participation requirements), 409 (penalties), and 411(b) (Annual Report to Congress).

The Tribal TANF Financial Report consists of one form. (See Appendix D.) We need this report to meet the requirements of sections 411(a)(2), 411(a)(3), and 411(a)(5), and to carry out our other financial management and oversight responsibilities. These include providing information that could be used in determining whether Tribes are subject to penalties under section 409(a)(1), tracking the reasonableness of our definition of "assistance"; learning the extent to which recipients of benefits and services are covered by program requirements, and helping to validate the disaggregated data we receive on TANF cases.

#### Annual Reports

We are also requiring an annual report in order to collect the data required by section 411(b). This report requires the submission of information about the characteristics of each tribal program; the design and operation of the program; the services, benefits, and assistance provided; the Tribe's eligibility criteria; and the Tribe's definition of work activities. At its option, each Tribe may also include a description of any unique features, accomplishments, innovations, or additional information appropriate for inclusion in the Department's annual report to the Congress.

Instructions pertaining to submission of the annual NEW Program operations report are contained in the NEW Program guidance document, "The

Native Employment Works (NEW) Program Plan Guidance and Report Requirements." This document will be distributed through ACF's program instruction system.

#### Changes in the Estimate of Burden

In the NPRM we estimated that only 18 Tribes would have approved Tribal TANF plans and would therefore be respondents. Based both on the number of Tribes currently operating TANF and those who are actively preparing Tribal TANF plans, we have increased those estimates.

#### Burden Estimates

The respondents for the Tribal TANF Data Reports and the Reasonable Cause/Corrective Action documentation process are the Tribes that have approved Tribal TANF plans.

In estimating the reporting burden in the NPRM, we pointed out that this reporting burden will be new to the Tribes. Unlike States, many Tribes do not have the electronic capacity for meeting the reporting requirements. However, Tribal TANF programs will not be required to submit all of the data required for State TANF programs because some provisions for which data are being collected apply only to States. In addition, the number of families on which the Tribal TANF grantees will have to report will be substantially lower than the number of families on which States will be reporting.

In calculating the estimates of the reporting burden, we assumed that not all Tribal TANF grantees would collect the data by means of a review sample because their caseloads will not support a valid sample. However, we believe that a number of Tribal TANF grantees will eventually choose to undertake the one-time burden and cost of developing or modifying their systems to provide the required data directly from their automated systems, thus substantially reducing or eliminating the ongoing annual burden and cost reflected in these estimates.

The annual burden estimates include any time involved pulling records from files, abstracting information, returning records to files, assembling any other material necessary to provide the requested information, and transmitting the information.

The annual burden estimates for the Tribal TANF data collections are:

Instrument or requirement	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Tribal TANF Data Report—§ 286.255(b) .....	136	4	451	64,944

Instrument or requirement	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Tribal TANF Annual Report—§ 286.275 .....	<sup>2</sup> 36	1	40	1,440
Reasonable Cause/ Corrective Action Documentation Process—§ 286.225 .....	<sup>3</sup> 36	1	60	2,160

Estimated Total Annual Burden Hours: 68,544

The annual burden estimates for the NEW data collections are:

Instrument or requirement	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
NEW Program Operations Report .....	<sup>4</sup> 78	1	16	1,248

As indicated above, we have made a substantial upward adjustment in the number of respondents and total burden hours.

We considered comments by the public on these collections of information in:

- Evaluating whether the collections are necessary for the proper performance of our functions, including whether the information will have practical utility;
- Evaluating the accuracy of our estimate of the burden of the collections of information, including the validity of the methodology and assumptions used, and the frequency of collection;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, *e.g.*, the electronic submission of responses.

#### *E. Unfunded Mandates Reform Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the rule.

We have determined that the rules will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

#### *F. Congressional Review of Regulations*

This Final Rule is not a “major” rule as defined in Chapter 8 of 5 U.S.C.

#### *G. Executive Order 13132*

Executive Order 13132 on Federalism applies to policies that have federalism implications, defined as “regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” This rule does not have federalism implications for State or local governments as defined in the Executive Order.

#### **List of Subjects in 45 CFR Parts 286 and 287**

Administrative practice and procedure, Day Care, Employment, Grant programs— social programs, Indian tribes, Loan programs—social programs, Manpower training programs, Penalties, Public Assistance programs, Reporting and record keeping requirements, Vocational education.

(Catalogue of Federal Domestic Assistance Programs: 93.558 TANF programs—Tribal Family Assistance Grants; 93.559—Loan Fund; 93.594—Native Employment Works Program; 93.595—Welfare Reform Research, Evaluations and National Studies)

Dated: January 28, 2000.

**Olivia A. Golden,**

*Assistant Secretary for Children and Families.*

Approved: February 7, 2000.

**Donna E. Shalala,**

*Secretary, Department of Health and Human Services.*

For the reasons set forth in the preamble, we are amending 45 CFR chapter II by adding parts 286 and 287 to read as follows:

## **PART 286—TRIBAL TANF PROVISIONS**

Sec.

### **Subpart A—General Tribal TANF Provisions**

286.1 What does this part cover?

286.5 What definitions apply to this part?

286.10 What does the term “assistance” mean?

286.15 Who is eligible to operate a Tribal TANF program?

### **Subpart B—Tribal TANF Funding**

286.20 How is the amount of a Tribal Family Assistance Grant (TFAG) determined?

286.25 How will we resolve disagreements over the State-submitted data used to determine the amount of a Tribal Family Assistance Grant?

286.30 What is the process for retrocession of a Tribal Family Assistance Grant?

286.35 What are proper uses of Tribal Family Assistance Grant funds?

286.40 May a Tribe use the Tribal Family Assistance Grant to fund IDAs?

286.45 What uses of Tribal Family Assistance Grant funds are improper?

286.50 Is there a limit on the percentage of a Tribal Family Assistance Grant that can be used for administrative costs?

286.55 What types of costs are subject to the administrative cost limit on Tribal Family Assistance Grants?

286.60 Must Tribes obligate all Tribal Family Assistance Grant funds by the end of the fiscal year in which they are awarded?

**Subpart C—Tribal TANF Plan Content and Processing**

- 286.65 How can a Tribe apply to administer a Tribal Temporary Assistance for Needy Families (TANF) program?
- 286.70 Who submits a Tribal Family Assistance Plan?
- 286.75 What must be included in the Tribal Family Assistance Plan?
- 286.80 What information on minimum work participation requirements must a Tribe include in its Tribal Family Assistance Plan?
- 286.85 How will we calculate the work participation rates?
- 286.90 How many hours per week must an adult or minor head-of-household participate in work-related activities to count in the numerator of the work participation rate?
- 286.95 What, if any, are the special rules concerning counting work for two-parent families?
- 286.100 What activities count towards the work participation rate?
- 286.105 What limitations concerning vocational education, job search and job readiness assistance exist with respect to the work participation rate?
- 286.110 What safeguards are there to ensure that participants in Tribal TANF work activities do not displace other workers?
- 286.115 What information on time limits for the receipt of assistance must a Tribe include in its Tribal Family Assistance Plan?
- 286.120 Can Tribes makes exceptions to the established time limit for families?
- 286.125 Does the receipt of TANF benefits under a State or other Tribal TANF program count towards a Tribe's TANF time limit?
- 286.130 Does the receipt of Welfare-to-Work (WtW) cash assistance count towards a Tribe's TANF time limit?
- 286.135 What information on penalties against individuals must be included in a Tribal Family Assistance Plan?
- 286.140 What special provisions apply to victims of domestic violence?
- 286.145 What is the penalty if an individual refuses to engage in work activities?
- 286.150 Can a family, with a child under age 6, be penalized because a parent refuses to work because (s)he cannot find child care?
- 286.155 May a Tribe condition eligibility for Tribal TANF assistance on assignment of child support to the Tribe?
- 286.160 What are the applicable time frames and procedures for submitting a Tribal Family Assistance Plan?
- 286.165 How is a Tribal Family Assistance Plan amended?
- 286.170 How may a Tribe petition for administrative review of disapproval of a TFAP or amendment?
- 286.175 What special provisions apply to Alaska?
- 286.180 What is the process for developing the comparability criteria that are required in Alaska?
- 286.185 What happens when a dispute arises between the State of Alaska and the Tribal TANF eligible entities in the State related to the comparability criteria?

- 286.190 If the Secretary, the State of Alaska, or any of the Tribal TANF eligible entities in the State of Alaska want to amend the comparability criteria, what is the process for doing so?

**Subpart D—Accountability and Penalties**

- 286.195 What penalties will apply to Tribes?
- 286.200 How will we determine if Tribal Family Assistance Grant funds were misused or intentionally misused?
- 286.205 How will we determine if a Tribe fails to meet the minimum work participation rate(s)?
- 286.210 What is the penalty for a Tribe's failure to repay a Federal loan?
- 286.215 When are the TANF penalty provisions applicable?
- 286.220 What happens if a Tribe fails to meet TANF requirements?
- 286.225 How may a Tribe establish reasonable cause for failing to meet a requirement that is subject to application of a penalty?
- 286.230 What if a Tribe does not have reasonable cause for failing to meet a requirement?
- 286.235 What penalties cannot be excused?
- 286.240 How can a Tribe appeal our decision to take a penalty?

**Subpart E—Data Collection and Reporting Requirements**

- 286.245 What data collection and reporting requirements apply to Tribal TANF programs?
- 286.250 What definitions apply to this subpart?
- 286.255 What quarterly reports must the Tribe submit to us?
- 286.260 May Tribes use sampling and electronic filing?
- 286.265 When are quarterly reports due?
- 286.270 What happens if the Tribe does not satisfy the quarterly reporting requirements?
- 286.275 What information must Tribes file annually?
- 286.280 When are annual reports due?
- 286.285 How do the data collection and reporting requirements affect Public Law 102-477 Tribes?

**Authority:** 42 U.S.C. 612

**Subpart A—General Tribal TANF Provisions****§ 286.1 What does this part cover?**

Section 412 of the Social Security Act allows Indian tribes to apply to operate a Tribal Family Assistance program. This part implements section 412. It specifies:

- (a) who can apply to operate a Tribal Family Assistance program;
- (b) the requirements for the submission and contents of a Tribal Family Assistance Plan;
- (c) the determination of the amount of a Tribal Family Assistance Grant; and
- (d) other program requirements and procedures.

**§ 286.5 What definitions apply to this part?**

The following definitions apply under this part:

*ACF* means the Administration for Children and Families.

*Act* means the Social Security Act, unless otherwise specified.

*Administrative cost* means costs necessary for the proper administration of the TANF program.

(1) It excludes the 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, information on and referral to Medicaid, Child Health Insurance Program (CHIP), Food Stamp and Native Employment Works (NEW) programs and case management.

(ii) It excludes the salaries and benefit 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, and

(iii) It excludes information technology and computerization needed for tracking and monitoring.

(2) It includes the costs for general administration and coordination of this program, including contract costs for these functions and indirect (or overhead) costs. Some examples of administrative costs include, but are not limited to:

(i) Salaries and benefits and all other direct costs not associated with providing program services to individuals, including staff performing administrative and coordination functions;

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

(iii) Monitoring of programs and projects;

(iv) Fraud and abuse units;

(v) Procurement activities;

(vi) Public relations;

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

(viii) 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 (1) of this definition;

(ix) Travel costs incurred for official business and not excluded as a direct

administrative cost for providing program services under paragraph (1) of this definition;

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

(xi) Preparing reports and other documents related to program requirements.

*Adult* means an individual who is not a "minor child," as defined below.

*Alaska Tribal TANF entity* means the twelve Alaska Native regional nonprofit corporations in the State of Alaska and the Metlakatla Indian Community of the Annette Islands Reserve.

*Assistant Secretary* means the Assistant Secretary for Children and Families, Department of Health and Human Services.

*Cash assistance*, when provided to participants in the Welfare-to-Work program, has the meaning specified at § 286.130.

*Comparability* means similarity between State and Tribal TANF programs in the State of Alaska.

Comparability, when defined related to services provided, does not necessarily mean identical or equal services.

*Consortium* means a group of Tribes working together for the same identified purpose and receiving combined TANF funding for that purpose.

*The Department* means the Department of Health and Human Services.

*Duplicative Assistance* means the receipt of services/ assistance from two or more TANF programs for the same purpose.

*Eligible families* means all families eligible for TANF funded assistance under the Tribal TANF program funded under section 412(a), including:

(1) All U.S. citizens who meet the Tribe's criteria for Tribal TANF assistance;

(2) All qualified aliens, who meet the Tribe's criteria for Tribal TANF assistance, who entered the U.S. before August 22, 1996;

(3) All qualified aliens, who meet the Tribe's criteria for Tribal TANF assistance, who entered the U.S. on or after August 22, 1996, who have been in the U.S. for at least 5 years beginning on the date of entry into the U.S. with a qualified alien status, are eligible beginning 5 years after the date of entry into the U.S. There are exceptions to this 5-year bar for qualified aliens who enter on or after August 22, 1996, and the Tribal TANF program must cover these excepted individuals:

(a) An alien who is admitted to the U.S. as a refugee under section 207 of the Immigration and Nationality Act;

(b) An alien who is granted asylum under section 208 of such Act;

(c) An alien whose deportation is being withheld under section 243(h) of such Act; and

(d) An alien who is lawfully residing in any State and is a veteran with an honorable discharge, is on active duty in the Armed Forces of the U.S., or is the spouse or unmarried dependent child of such an individual;

(4) All permanent resident aliens who are members of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act;

(5) All permanent resident aliens who have 40 qualifying quarters of coverage as defined by Title II of the Act.

*Eligible Indian tribe* means any Tribe or intertribal consortium that meets the definition of Indian tribe in this section and is eligible to submit a Tribal TANF plan to ACF.

*Family Violence Option (or FVO)* means the provision at section 402(a)(7) of the Act made available to Tribes under which a Tribe may certify in its Tribal TANF plan that it has elected the option to implement comprehensive strategies for identifying and serving victims of domestic violence.

*Fiscal year* means the 12-month period beginning on October 1 of the preceding calendar year and ending on September 30.

*FY* means fiscal year.

*Good cause domestic violence waiver* means a waiver of one or more program requirements granted by a Tribe to a victim of domestic violence under the FVO, as described in § 286.140(a)(3).

*Grant period* means the period of time that is specified in the Tribal TANF grant award document.

*Indian, Indian tribe and Tribal Organization* have the same meaning given such terms by section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), except that the term "Indian tribe" means, with respect to the State of Alaska, only the Metlakatla Indian Community of the Annette Islands Reserve and the following Alaska Native regional nonprofit corporations:

- (1) Arctic Slope Native Association;
- (2) Kawerak, Inc.;
- (3) Maniilaq Association;
- (4) Association of Village Council Presidents;
- (5) Tanana Chiefs Council;
- (6) Cook Inlet Tribal Council;
- (7) Bristol Bay Native Association;
- (8) Aleutian and Pribilof Island Association;

(9) Chugachmuit;

(10) Tlingit Haida Central Council;

(11) Kodiak Area Native Association; and

(12) Copper River Native Association.

*Indian country* has the meaning given the term in 18 U.S.C. 1151.

*Minor child* means an individual who:

(1) Has not attained 18 years of age; or

(2) Has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training).

*Minor Head-of-Household* means an individual under age 18, or 19 and a full-time student in a secondary school, who is the custodial parent of a minor child.

*PRWORA* means the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

*Qualified Aliens* has the same meaning given the term in 8 U.S.C. 1641 except that it also includes members of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act, who are lawfully admitted under 8 U.S.C. 1359.

*Retrocession* means the process by which a Tribe voluntarily terminates and cedes back (or returns) a Tribal TANF program to the State which previously served the population covered by the Tribal TANF plan. Retrocession includes the voluntary relinquishment of the authority to obligate previously awarded grant funds before that authority would otherwise expire.

*Secretary* means the Secretary of the Department of Health and Human Services.

*Scientifically acceptable sampling method* means a probability sampling method in which every sampling unit has a known, non-zero chance to be included in the sample and the sample size requirements are met.

*SFAG or State Family Assistance Grant* means the amount of the block grant funded under section 403(a) of the Act for each eligible State.

*SFAP or State Family Assistance Plan* is the plan for implementation of a State TANF program under PRWORA.

*State* means, except as otherwise specifically provided, the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa.

*TANF* means the Temporary Assistance for Needy Families Program, which is authorized under title IV-A of the Social Security Act.

*TANF funds* mean funds authorized under section 412(a) of the Act.

*TFAG or Tribal Family Assistance Grant* means the amount of the block

grant funded under section 412(a) of the Act for each eligible Tribe.

*TFAP or Tribal Family Assistance Plan* means the plan for implementation of the Tribal TANF program under section 412(b) of the Act.

*Title IV-A* refers to the title of the Social Security Act that now includes TANF, but previously included AFDC and EA. For the purpose of the TANF program regulations, this term does not include child care programs authorized and funded under section 418 of the Act, or their predecessors, unless we specify otherwise.

*Title IV-F* refers to the title of the Social Security Act that was eliminated with the creation of TANF and previously included the Job Opportunities and Basic Skills Training Program (JOBS).

*Tribal TANF expenditures* means expenditures of TANF funds, within the Tribal TANF program.

*Tribal TANF program* means a Tribal program subject to the requirements of section 412 of the Act that is funded by TANF funds on behalf of eligible families.

*Victim of domestic violence* means an individual who is battered or subject to extreme cruelty under the definition at section 408(a)(7)(C)(iii) of the Act.

*We (and any other first person plural pronouns)* refers to The Secretary of Health and Human Services, or any of the following individuals or organizations acting in an official capacity on the Secretary's behalf: the Assistant Secretary for Children and Families, the Regional Administrators for Children and Families, the Department of Health and Human Services, and the Administration for Children and Families.

*Welfare-related services* means all activities, assistance, and services funded under Tribal TANF provided to an eligible family. See definition of "Assistance" in § 286.10.

*Welfare-to-Work* means the program for funding work activities at section 412(a)(2)(C) of the Act.

*WtW* means Welfare-to-Work.

*WtW cash assistance*, when provided to participants in the Welfare-to-Work program, has the meaning specified at § 286.130.

**§ 286.10 What does the term "assistance" mean?**

(a) The term "assistance" includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (*i.e.*, for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).

(1) It includes such benefits even when they are:

(i) Provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients; and

(ii) Conditioned on participation in work experience or community service or any other work activity.

(2) Except where excluded under paragraph (b) of this section, it also includes supportive services such as transportation and child care provided to families who are not employed.

(b) It excludes:

(1) Nonrecurring, short-term benefits that:

(i) Are designed to deal with a specific crisis situation or episode of need;

(ii) Are not intended to meet recurrent or ongoing needs; and

(iii) Will not extend beyond four months.

(2) Work subsidies (*i.e.*, payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);

(3) Supportive services such as child care and transportation provided to families who are employed;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts;

(6) Services such as counseling, case management, peer support, child care information and referral, information on and referral to Medicaid, Child Health Insurance Program (CHIP), Food Stamp and Native Employment Works (NEW) programs, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and

(7) Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of the Act, to an individual who is not otherwise receiving assistance.

(c) The definition of the term assistance specified in paragraphs (a) and (b) of this section does not preclude a Tribe from providing other types of benefits and services consistent with the purposes of the TANF program.

**§ 286.15 Who is eligible to operate a Tribal TANF program?**

(a) An Indian tribe that meets the definition of Indian tribe given in § 286.5 is eligible to apply to operate a Tribal Family Assistance Program.

(b) In addition, an intertribal consortium of eligible Indian tribes may develop and submit a single TFAP.

**Subpart B—Tribal TANF Funding**

**§ 286.20 How is the amount of a Tribal Family Assistance Grant (TFAG) determined?**

(a) We will request and use data submitted by a State to determine the amount of a TFAG. The State data that we will request and use are the total Federal payments attributable to State expenditures, including administrative costs (which includes systems costs) for fiscal year 1994 under the former Aid to Families With Dependent Children, Emergency Assistance and Job Opportunities and Basic Skills Training programs, for all Indian families residing in the geographic service area or areas identified in the Tribe's letter of intent or Tribal Family Assistance Plan.

(1) A Tribe must indicate its definition of "Indian family" in its Tribal Family Assistance Plan. Each Tribe may define "Indian family" according to its own criteria.

(2) When we request the necessary data from the State, the State will have 30 days from the date of the request to submit the data.

(i) If we do not receive the data requested from the State at the end of the 30-day period, we will so notify the Tribe.

(ii) In cases where data is not received from the State, the Tribe will have 45 days from the date of the notification in which to submit relevant information. Relevant information may include, but is not limited to, Census Bureau data, data from the Bureau of Indian Affairs, data from other Federal programs, and Tribal records. In such a case, we will use the data submitted by the Tribe to assist us in determining the amount of the TFAG. Where there are inconsistencies in the data, follow-up discussions with the Tribe and the State will ensue.

(b) We will share the data submitted by the State under paragraph (a)(2)(i) of this section with the Tribe. The Tribe must submit to the Secretary a notice as to the Tribe's agreement or disagreement with such data no later than 45 days after the date of our notice transmitting the data from the State. During this 45-day period we will help resolve any questions the Tribe may have about the State-submitted data.

(c) We will notify each Tribe that has submitted a TFAP of the amount of the TFAG. At this time, we will also notify the State of the amount of the reduction in its SFAG.

(d) We will prorate TFAGs that are initially effective on a date other than October 1 of any given Federal fiscal

year, based on the number of days remaining in the Federal fiscal year.

**§ 286.25 How will we resolve disagreements over the State-submitted data used to determine the amount of a Tribal Family Assistance Grant?**

(a) If a Tribe disagrees with the data submitted by a State, the Tribe may submit additional relevant information to the Secretary. Relevant information may include, but is not limited to, Census Bureau data, data from the Bureau of Indian Affairs, data from other Federal programs, and Tribal records.

(1) The Tribe must submit any relevant information within 45 days from the date it notifies the Secretary of its disagreement with State submitted data under § 286.20(b).

(2) We will review the additional relevant information submitted by the Tribe, together with the State-submitted data, in order to make a determination as to the amount of the TFAG. We will determine the amount of the TFAG at the earliest possible date after consideration of all relevant data.

**§ 286.30 What is the process for retrocession of a Tribal Family Assistance Grant?**

(a) A Tribe that wishes to terminate its TFAG prior to the end of its three-year plan must—

(1) Notify the Secretary and the State in writing of the reason(s) for termination no later than 120 days prior to the effective date of the termination, or

(2) Notify the Secretary in writing of the reason(s) for termination no later than 30 days prior to the effective date of the termination, where such effective date is mutually agreed upon by the Tribe and the affected State(s).

(b) The effective date of the termination must coincide with the last day of a calendar month.

(c) For a Tribe that retrocedes, the provisions of 45 CFR part 92 will apply with regard to closeout of the grant. All unobligated funds will be returned by the Tribe to the Federal government.

(d) The SFAG will be increased by the amount of the TFAG available for the subsequent quarterly installment.

(e) A Tribe's application to implement a TANF program subsequent to its retrocession will be treated as any other application to operate a TANF program, except that we may take into account when considering approval—

(1) Whether the circumstances that the Tribe identified for termination of its TANF program remain applicable and the extent to which—

(i) The Tribe has control over such circumstances, and

(ii) Such circumstances are reasonably related to program funding accountability, and

(2) Whether any outstanding funds and penalty amounts are repaid.

(f) A Tribe which retrocedes a Tribal TANF program is responsible for:

(1) Complying with the data collection and reporting requirements and all other program requirements for the period before the retrocession is effective;

(2) Any applicable penalties (see subpart D) for actions occurring prior to retrocession; the provisions of 45 CFR Part 92 and OMB Circulars A-87 and A-133;

(3) compliance with other Federal statutes and regulations applicable to the TANF program; and

(4) any penalties resulting from audits covering the period before the effective date of retrocession.

**§ 286.35 What are proper uses of Tribal Family Assistance Grant funds?**

(a) Tribes may use TFAGs for expenditures that:

(1) Are reasonably calculated to accomplish the purposes of TANF, including, but not limited to, the provision to low income households with assistance in meeting home heating and cooling costs; assistance in economic development and job creation activities, the provision of supportive services to assist needy families to prepare for, obtain, and retain employment; the provision of supportive services to prevent of out-of-wedlock pregnancies, and assistance in keeping families together, or

(2) Were an authorized use of funds under the State plans for Parts A or F of title IV of the Social Security Act, as such parts were in effect on September 30, 1995.

**§ 286.40 May a Tribe use the Tribal Family Assistance Grant to fund IDAs?**

(a) If the Tribe elects to operate an IDA program, it may use Federal TANF funds or WtW funds to fund IDAs for individuals who are eligible for TANF assistance and may exercise flexibility within the limits of Federal regulations and the statute.

(b) The following restrictions apply to IDA funds:

(1) A recipient may deposit only earned income into an IDA.

(2) A recipient's contributions to an IDA may be matched by, or through, a qualified entity.

(3) A recipient may withdraw funds only for the following reasons:

(i) To cover post-secondary education expenses, if the amount is paid directly to an eligible educational institution;

(ii) For the recipient to purchase a first home, if the amount is paid directly to the person to whom the amounts are due and it is a qualified acquisition cost for a qualified principal residence by a qualified first-time buyer; or

(iii) For business capitalization, if the amounts are paid directly to a business capitalization account in a federally insured financial institution and used for a qualified business capitalization expense.

(c) To prevent recipients from withdrawing funds held in an IDA improperly, Tribes may do the following:

(1) Count withdrawals as earned income in the month of withdrawal, unless already counted as income,

(2) Count withdrawals as resources in determining eligibility, or

(3) Take such other steps as the Tribe has established in its Tribal plan or written Tribal policies to deter inappropriate use.

**§ 286.45 What uses of Tribal Family Assistance Grant funds are improper?**

(a) A Tribe may not use Tribal Family Assistance Grant funds to provide assistance to:

(1) Families or individuals that do not otherwise meet the eligibility criteria contained in the Tribal Family Assistance Plan (TFAP); or

(2) For more than the number of months as specified in a Tribe's TFAP (unless covered by a hardship exemption); or

(3) Individuals who are not citizens of the United States or qualified aliens or who do not otherwise meet the definition of "eligible families" at § 286.5.

(b) Tribal Family Assistance Grant funds may not be used to contribute to or to subsidize non-TANF programs.

(c) A Tribe may not use Tribal Family Assistance Grant funds for services or activities prohibited by OMB Circular A-87.

(d) All provisions in OMB Circular A-133 and in 45 CFR part 92 are applicable to the Tribal TANF program.

(e) Tribal TANF funds may not be used for the construction or purchase of facilities or buildings.

(f) Tribes must use program income generated by the Tribal Family Assistance grant for the purposes of the TANF program and for allowable TANF services, activities and assistance.

**§ 286.50 Is there a limit on the percentage of a Tribal Family Assistance Grant that can be used for administrative costs?**

(a) ACF will negotiate a limitation on administrative costs with each Tribal TANF applicant individually for the

first year of a program's operation based on the applicant's proposed administrative cost allocation. No Tribal TANF grantee may expend more than 35 percent of its Tribal Family Assistance Grant for administrative costs during the first year.

(b) ACF will negotiate a limitation on administrative costs with each Tribal TANF applicant individually for the second year of a program's operation based on the applicant's proposed administrative cost allocation. No Tribal TANF grantee may expend more than 30 percent of its TFAG for administrative costs during the second year.

(c) ACF will negotiate a limitation on administrative costs with each Tribal TANF applicant individually for the third and all subsequent years of a program's operation based on the applicant's proposed administrative cost allocation. As negotiated, a Tribal TANF grantee may not expend more than 25 percent of its TFAG for administrative costs during any subsequent grant period.

(1) For the purposes of determining administrative costs, Tribes with approved plans who have been operating Tribal TANF programs prior to the effective date of this regulation will be able to negotiate a reasonable adjustment in their approved administrative cost rate, not to exceed the limitations in the Final Rule delineated above.

(2) [Reserved]

(d) ACF will negotiate limitations on administrative costs based on, but not limited to, a Tribe's TANF funding level, economic conditions, and the resources available to the Tribe, the relationship of the Tribe's administrative cost allocation proposal to the overall purposes of TANF, and a demonstration of the Tribe's administrative capability.

**§ 286.55 What types of costs are subject to the administrative cost limit on Tribal Family Assistance Grant funds?**

(a) Activities that fall within the definition of "administrative costs" at § 286.5 are subject to the limit determined under § 286.50.

(b) Information technology and computerization for tracking, data entry and monitoring, including personnel and other costs associated with the automation activities needed for Tribal TANF monitoring, data entry and tracking purposes, are excluded from the administrative cost cap, even if they fall within the definition of "administrative costs."

(c) Designing, administering, monitoring, and controlling a sample are not inherent parts of information

technology and computerization and, thus, costs associated with these tasks must be considered administrative costs.

(d) Indirect Costs negotiated by BIA, the Department's Division of Cost Allocation, or another federal agency must be considered to be part of the total administrative costs.

**§ 286.60 Must Tribes obligate all Tribal Family Assistance Grant funds by the end of the fiscal year in which they are awarded?**

(a) No. A Tribe may reserve amounts awarded to it, without fiscal year limitation, to provide assistance under the Tribal TANF program.

(b) A Tribe may expend funds beyond the fiscal year in which awarded only on benefits that meet the definition of assistance at § 286.10 or on the administrative costs directly associated with providing that assistance.

**Subpart C—Tribal TANF Plan Content and Processing**

**§ 286.65 How can a Tribe apply to administer a Tribal Temporary Assistance For Needy Families (TANF) Program?**

(a) Any eligible Indian tribe, Alaska Native organization, or intertribal consortium that wishes to administer a Tribal TANF program must submit a three-year TFAP to the Secretary of the Department of Health and Human Services. The original must be submitted to the appropriate ACF Regional Office with a copy to the ACF Central Office.

(b) A Tribe currently operating a Tribal TANF program must submit to the appropriate ACF Regional Office, with a copy to the ACF Central Office, no later than 120 days prior to the end of the three-year grant period, either—

(1) A letter of intent, with a copy to the affected State or States, which specifies they do not intend to continue operating the program beyond the end of the three-year grant period; or

(2) A letter of intent, with a copy to the affected State or States, which specifies they intend to continue program operations with no changes to the geographic service area or service population; or

(3) A new three-year plan which indicates a change in either the geographic service area or service population.

(c) For Tribes choosing option (b)(2) above, a new three-year plan must be submitted to the appropriate ACF Regional Office, with a copy to the ACF Central Office, no later than 60 days before the end of the current three-year grant period.

**§ 286.70 Who submits a Tribal Family Assistance Plan?**

(a) A TFAP must be submitted by the chief executive officer of the Indian tribe and be accompanied by a Tribal resolution supporting the TFAP.

(b) A TFAP from a consortium must be forwarded under the signature of the chief executive officer of the consortium and be accompanied by Tribal resolutions from all participating Tribes that demonstrate each individual Tribe's support of the consortium, the delegation of decision-making authority to the consortium's governing board, and the Tribe's recognition that matters involving operation of the Tribal TANF consortium are the express responsibility of the consortium's governing board.

(c) When one of the participating Tribes in a consortium wishes to withdraw from the consortium, the Tribe needs to both notify the consortium and the Secretary of this fact.

(1) This notification must be made at least 120 days prior to the effective date of the withdrawal.

(2) The time frame in paragraph (c)(i) of this section is applicable only if the Tribe's withdrawal will cause a change to the service area or population of the consortium.

(d) When one of the participating Tribes in a consortium wishes to withdraw from the consortium in order to operate its own Tribal TANF program, the Tribe needs to submit a Tribal TANF plan that follows the requirements at § 286.75 and § 286.165.

**§ 286.75 What must be included in the Tribal Family Assistance Plan?**

(a) The TFAP must outline the Tribe's approach to providing welfare-related services for the three-year period covered by the plan, including:

(1) Information on the general eligibility criteria the Tribe has established, which includes a definition of "needy family," including income and resource limits and the Tribe's definition of "Tribal member family" or "Indian family."

(2) A description of the assistance, services, and activities to be offered, and the means by which they will be offered. The description of the services, assistance, and activities to be provided includes whether the Tribe will provide cash assistance, and what other assistance, services, and activities will be provided.

(3) If the Tribe will not provide the same services, assistance, and activities in all parts of the service area, the TFAP must indicate any variations.

(4) If the Tribe opts to provide different services to specific populations, including teen parents and individuals who are transitioning off TANF assistance, the TFAP must indicate whether any of these services will be provided and, if so, what services will be provided.

(5) The Tribe's goals for its TANF program and the means of measuring progress towards those goals;

(6) Assurance that a 45-day public comment period on the Tribal TANF plan concluded prior to the submission of the TFAP.

(7) Assurance that the Tribe has developed a dispute resolution process to be used when individuals or families want to challenge the Tribe's decision to deny, reduce, suspend, sanction or terminate assistance.

(8) Tribes may require cooperation with child support enforcement agencies as a condition of eligibility for TANF assistance. Good cause and other exceptions to cooperation shall be defined by the Tribal TANF program.

(b) The TFAP must identify which Tribal agency is designated by the Tribe as the lead agency for the overall administration of the Tribal TANF program along with a description of the administrative structure for supervision of the TANF program.

(c) The TFAP must indicate whether the services, assistance and activities will be provided by the Tribe itself or through grants, contracts or compacts with inter-Tribal consortia, States, or other entities.

(d) The TFAP must identify the population to be served by the Tribal TANF program.

(1) The TFAP must identify whether it will serve Tribal member families only, or whether it will serve all Indian families residing in the Tribal TANF service area.

(2) If the Tribe wishes to serve any non-Indian families (and thus include non-Indians in its service population), an agreement with the State TANF agency must be included in the TFAP. This agreement must provide that, where non-Indians are to be served by Tribal TANF, these families are subject to Tribal TANF program rules.

(e) The TFAP must include a description of the geographic area to be served by the Tribal TANF program, including a specific description of any "near reservation" areas, as defined at 45 CFR 20.1(r), or any areas beyond "near reservation" to be included in the Tribal TANF service area.

(1) In areas beyond those defined as "near reservation", the TFAP must demonstrate the Tribe's administrative capacity to serve such areas and the

State(s)', and if applicable, other Tribe(s)' concurrence with the proposed defined boundaries.

(2) A Tribe cannot extend its service area boundaries beyond the boundaries of the State(s) in which the reservation and BIA near-reservation designations are located.

(3) For Tribes in Oklahoma, if the Tribe defines its service area as other than its "tribal jurisdiction statistical area" (TJSA), the Tribe must include an agreement with the other Tribe(s) reflecting agreement to the service area. TJSAs are areas delineated by the Census Bureau for each federally-recognized Tribe in Oklahoma without a reservation.

(f) The TFAP must provide that a family receiving assistance under the plan may not receive duplicative assistance from other State or Tribal TANF programs and must include a description of the means by which the Tribe will ensure duplication does not occur.

(g) The TFAP must identify the employment opportunities in and near the service area and the manner in which the Tribe will cooperate and participate in enhancing such opportunities for recipients of assistance under the plan, consistent with any applicable State standards. This should include:

(1) A description of the employment opportunities available, in both the public and private sector, within and near the Tribal service area; and

(2) A description of how the Tribe will work with public and private sector employers to enhance the opportunities available for Tribal TANF recipients.

(h) The TFAP must provide an assurance that the Tribe applies the fiscal accountability provisions of section 5(f)(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450c(f)(1)), relating to the submission of a single-agency audit report required by chapter 75 of title 31, United States Code.

**§ 286.80 What information on minimum work participation requirements must a Tribe include in its Tribal Family Assistance Plan?**

(a) To assess a Tribe's level of success in meeting its TANF work objectives, a Tribe that submits a TFAP must negotiate with the Secretary minimum work participation requirements that will apply to families that receive Tribal TANF assistance that includes an adult or minor head of household receiving such assistance.

(b) A Tribe that submits a TFAP must include in the plan the Tribe's proposal for minimum work participation

requirements, which includes the following:

(1) For each fiscal year covered by the plan, the Tribe's proposed participation rate(s) for all families, for all families and two-parent families, or for one-parent families and two-parent families;

(2) For each fiscal year covered by the plan, the Tribe's proposed minimum number of hours per week that adults and minor heads of household will be required to participate in work activities;

(i) If the Tribe elects to include reasonable transportation time to and from the site of work activities in determining the hours of work participation, it must so indicate in its TFAP along with a definition of "reasonable" for purposes of this subsection, along with:

(A) An explanation of how the economic conditions and/or resources available to the Tribe justify inclusion of transportation time in determining work participation hours; and

(B) An explanation of how counting reasonable transportation time is consistent with the purposes of TANF;

(3) The work activities that count towards these work requirements;

(4) Any exemptions, limitations and special rules being established in relation to work requirements; and

(5) The Tribe must provide rationale for the above, explaining how the proposed work requirements relate to and are justified based on the Tribe's needs and conditions.

(i) The rationale must address how the proposed work requirements are consistent with the purposes of TANF and with the economic conditions and resources of the Tribe.

(ii) Examples of the information that could be included to illustrate the Tribe's proposal include, but are not limited to: poverty, unemployment, jobless and job surplus rates; education levels of adults in the service area; availability of and/or accessibility to resources (educational facilities, transportation) to help families become employable and find employment; and employment opportunities on and near the service area.

**§ 286.85 How will we calculate the work participation rates?**

(a) Work participation rate(s) will be the percentage of families with an adult or minor head-of-household receiving TANF assistance from the Tribe who are participating in a work activity approved in the TFAP for at least the minimum number of hours approved in the TFAP.

(b) The participation rate for a fiscal year is the average of the Tribe's

participation rate for each month in the fiscal year.

(c) A Tribe's participation rate for a month is expressed as the following ratio:

(1) The number of families receiving TANF assistance that include an adult or a minor head-of-household who is participating in activities for the month (numerator), divided by

(2) The number of families that include an adult or a minor head-of-household receiving TANF assistance during the month excluding:

(i) Families that were penalized for non-compliance with the work requirements in that month as long as they have not been sanctioned for more than three months (whether or not consecutively) out of the last 12 months; and

(ii) Families with children under age one, if the Tribe chooses to exempt these families from participation requirements.

(d) If a family receives assistance for only part of a month or begins participating in activities during the month, the Tribe may count it as a month of participation if an adult or minor head-of-household in the family is participating for the minimum average number of hours in each full week that the family receives assistance or participates in that month.

(e) Two-parent families in which one of the parents is disabled are considered one-parent families for the purpose of calculating a Tribe's participation rate.

**§ 286.90 How many hours per week must an adult or minor head-of-household participate in work-related activities to count in the numerator of the work participation rate?**

During the month, an adult or minor head-of-household must participate in work activities for at least the minimum average number of hours per week specified in the Tribe's approved Tribal Family Assistance Plan.

**§ 286.95 What, if any, are the special rules concerning counting work for two-parent families?**

Parents in a two-parent family may share the number of hours required to be considered as engaged in work.

**§ 286.100 What activities count towards the work participation rate?**

(a) Activities that count toward a Tribe's participation rate may include, but are not limited to, the following:

- (1) Unsubsidized employment;
- (2) Subsidized private sector employment;
- (3) Subsidized public sector employment;
- (4) Work experience;

(5) On-the-job training (OJT);

(6) Job search and job readiness

assistance; (see § 286.105)

(7) Community service programs;

(8) Vocational educational training; (see § 286.105)

(9) Job skills training directly related to employment;

(10) Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;

(11) Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, if a recipient has not completed secondary school or received such a certificate;

(12) Providing child care services to an individual who is participating in a community service program; and

(13) Other activities that will help families achieve self-sufficiency.

(b) [Reserved]

**§ 286.105 What limitations concerning vocational education, job search and job readiness assistance exist with respect to the work participation rate?**

(a) Tribes are not required to limit vocational education for any one individual to a period of 12 months.

(b) There are two limitations concerning job search and job readiness:

(1) Job search and job readiness assistance only count for 6 weeks in any fiscal year.

(2) If the Tribe's unemployment rate in the Tribal TANF service area is at least 50 percent greater than the United States' total unemployment rate for that fiscal year, then an individual's participation in job search or job readiness assistance counts for up to 12 weeks in that fiscal year.

(c) If job search or job readiness is an ancillary part of another activity, then there is no limitation on counting the time spent in job search/job readiness.

**§ 286.110 What safeguards are there to ensure that participants in Tribal TANF work activities do not displace other workers?**

(a) An adult or minor head-of-household taking part in a work activity outlined in § 286.100 cannot fill a vacant employment position if:

(1) Any other individual is on layoff from the same or any substantially equivalent job; or

(2) The employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction in its work force in order to fill the vacancy with the TANF participant.

(b) A Tribe must establish and maintain a grievance procedure to

resolve complaints of alleged violations of this displacement rule.

(c) This regulation does not preempt or supersede Tribal laws providing greater protection for employees from displacement.

**§ 286.115 What information on time limits for the receipt of assistance must a Tribe include in its Tribal Family Assistance Plan?**

(a) The TFAP must include the Tribe's proposal for:

(1) Time limits for the receipt of Tribal TANF assistance;

(2) Any exceptions to these time limits; and

(3) The percentage of the caseload to be exempted from the time limit due to hardship or if the family includes an individual who has been battered or subjected to extreme cruelty.

(b) The Tribe must also include the rationale for its proposal in the plan. The rationale must address how the proposed time limits are consistent with the purposes of TANF and with the economic conditions and resources of the Tribe.

(1) Examples of the information that could be included to illustrate the Tribe's proposal include, but are not limited to: Poverty, unemployment, jobless and job surplus rates; education levels of adults in the service area; availability of and/or accessibility to resources (educational facilities, transportation) to help families become employable and find employment; and employment opportunities on and near the service area.

(c) We may require that the Tribe submit additional information about the rationale before we approve the proposed time limits.

(d) Tribes must not count towards the time limit:

(1) Any month of receipt of assistance to a family that does not include an adult head-of-household;

(2) A family that does not include a pregnant minor head-of-household, minor parent head-of-household, or spouse of such a head-of-household; and

(3) Any month of receipt of assistance by an adult during which the adult lived in Indian country or in an Alaskan Native Village in which at least 50 percent of the adults were not employed.

(e) A Tribe must not use any of its TFAG to provide assistance (as defined in § 286.10) to a family that includes an adult or minor head-of-household who has received assistance beyond the number of months (whether or not consecutive) that is negotiated with the Tribe.

**§ 286.120 Can Tribes make exceptions to the established time limit for families?**

(a) Tribes have the option to exempt families from the established time limits for:

(1) Hardship, as defined by the Tribe, or

(2) The family includes someone who has been battered or has been subject to extreme cruelty.

(b) If a Tribe elects the hardship option, the Tribe must specify in its TFAP the maximum percent of its average monthly caseload of families on assistance that will be exempt from the established time limit under paragraph (a) of this section.

(c) If the Tribe proposes to exempt more than 20 percent of the caseload under paragraph (a) of this section, the Tribe must include a rationale in the plan.

**§ 286.125 Does the receipt of TANF benefits under a State or other Tribal TANF program count towards a Tribe's TANF time limit?**

Yes, the Tribe must count prior months of TANF assistance funded with TANF block grant funds, except for any month that was exempt or disregarded by statute, regulation, or under any experimental, pilot, or demonstration project approved under section 1115 of the Act.

**§ 286.130 Does the receipt of Welfare-to-Work (WtW) cash assistance count towards a Tribe's TANF time limit?**

(a) For purposes of an individual's time limit for receipt of TANF assistance as well as the penalty provision at § 286.195(a)(1), WtW cash assistance counts towards a Tribe's TANF time limit only if:

(1) Such assistance satisfies the definition at § 286.10; and

(2) Is directed at ongoing basic needs.

(b) Only cash assistance provided in the form of cash payments, checks, reimbursements, electronic funds transfers, or any other form that can legally be converted to currency is subject to paragraph (a) of this section.

**§ 286.135 What information on penalties against individuals must be included in a Tribal Family Assistance Plan?**

(a) The TFAP must include the Tribe's proposal for penalties against individuals who refuse to engage in work activities. The Tribe's proposal must address the following:

(1) Will the Tribe impose a pro rata reduction, or more at Tribal option, or will it terminate assistance to a family?

(2) After consideration of the provision specified at § 286.150, what will be the proposed Tribal policies related to a single custodial parent, with

a child under the age of 6, who refuses to engage in work activities because of a demonstrated inability to obtain needed child care?

(3) What good cause exceptions, if any, does the Tribe propose that will allow individuals to avoid penalties for failure to engage in work?

(4) What other rules governing penalties does the Tribe propose?

(5) What, if any, will be the Tribe's policies related to victims of domestic violence consistent with § 286.140?

(b) The Tribe's rationale for its proposal must also be included in the TFAP.

(1) The rationale must address how the proposed penalties against individuals are consistent with the purposes of TANF, consistent with the economic conditions and resources of the Tribe, and how they relate to the requirements of section 407(e) of the Act.

(2) Examples of the information that could be included to illustrate the Tribe's proposal include, but are not limited to; poverty, unemployment, jobless and job surplus rates; education levels of adults in the service area; availability of and/or accessibility to resources (educational facilities, transportation) to help families become employable and find employment; and employment opportunities on and near the service area.

(c) We may require a Tribe to submit additional information about the rationale before we approve the proposed penalties against individuals.

**§ 286.140 What special provisions apply to victims of domestic violence?**

(a) Tribes electing the Family Violence Option (FVO) must certify that they have established and are enforcing standards and procedures to:

(1) Screen and identify individuals receiving TANF assistance with a history of domestic violence, while maintaining the confidentiality of such individuals;

(2) Refer such individuals to counseling and supportive services; and

(3) Provide waivers, pursuant to a determination of good cause, of TANF program requirements to such individuals for so long as necessary in cases where compliance would make it more difficult for such individuals to escape domestic violence or unfairly penalize those who are or have been victimized by such violence or who are at risk of further domestic violence.

(b) Tribes have broad flexibility to grant waivers of TANF program requirements, but such waivers must:

(1) Identify the specific program requirement being waived;

(2) Be granted based on need as determined by an individualized assessment by a person trained in domestic violence and redeterminations no less than every six months;

(3) Be accompanied by an appropriate services plan that:

(i) Is developed in coordination with a person trained in domestic violence;

(ii) Reflects the individualized assessment and any revisions indicated by any redetermination; and

(iii) To the extent consistent with paragraph (a)(3) of this section, is designed to lead to work.

(c) If a Tribe wants us to take waivers that it grants under this section into account in deciding if it has reasonable cause for failing to meet its work participation rates or comply with the established time limit on TANF assistance, has achieved compliance or made significant progress towards achieving compliance with such requirements during a corrective compliance period, the waivers must comply with paragraph (b) of this section.

(d) We will determine that a Tribe has reasonable cause for failing to meet its work participation rates or to comply with established time limits on assistance if—

(1) Such failures were attributable to good cause domestic violence waivers granted to victims of domestic violence;

(2) In the case of work participation rates, the Tribe provides evidence that it achieved the applicable rates except with respect to any individuals who received a domestic violence waiver of work participation requirements. In other words, the Tribe must demonstrate that it met the applicable rates when such waiver cases are removed from the calculation of work participation rate;

(3) In the case of established time limits on assistance, the Tribe provides evidence that it granted good cause domestic violence waivers to extend time limits based on the need for continued assistance due to current or past domestic violence or the risk of further domestic violence, and individuals and their families receiving assistance beyond the established time limit under such waivers do not exceed 20 percent of the total number of families receiving assistance.

(e) We may take good cause domestic violence waivers of work participation or waivers which extend the established time limits for assistance into consideration in deciding whether a Tribe has achieved compliance or made significant progress toward achieving compliance during a corrective compliance period.

(f) Tribes electing the FVO must submit the information specified at § 286.275(b)(7).

**§ 286.145 What is the penalty if an individual refuses to engage in work activities?**

If an individual refuses to engage in work activities in accordance with the minimum work participation requirements specified in the approved TFAP, the Tribe must apply to the individual the penalties against individuals that were established in the approved TFAP.

**§ 286.150 Can a family, with a child under age 6, be penalized because a parent refuses to work because (s)he cannot find child care?**

(a) If the individual is a single custodial parent caring for a child under age six, the Tribe may not reduce or terminate assistance based on the parent's refusal to engage in required work if he or she demonstrates an inability to obtain needed child care for one or more of the following reasons:

(1) Appropriate child care within a reasonable distance from the home or work site is unavailable;

(2i) Informal child care by a relative or under other arrangements is unavailable or unsuitable; or

(3) Appropriate and affordable formal child care arrangements are unavailable.

(b) Refusal to work when an acceptable form of child care is available is not protected from sanctioning.

(c) The Tribe will determine when the individual has demonstrated that he or she cannot find child care, in accordance with criteria established by the Tribe. These criteria must:

(1) Address the procedures that the Tribe uses to determine if the parent has a demonstrated inability to obtain needed child care;

(2) Include definitions of the terms "appropriate child care," "reasonable distance," "unsuitability of informal care," and "affordable child care arrangements"; and

(3) Be submitted to us.

(d) The Tribal TANF agency must inform parents about:

(1) The penalty exception to the Tribal TANF work requirement, including the criteria and applicable definitions for determining whether an individual has demonstrated an inability to obtain needed child care;

(2) The Tribe's procedures (including definitions) for determining a family's inability to obtain needed child care, and any other requirements or procedures, such as fair hearings, associated with this provision; and

(3) The fact that the exception does not extend the time limit for receiving Federal assistance.

**§ 286.155 May a Tribe condition eligibility for Tribal TANF assistance on assignment of child support to the Tribe?**

(a) Tribes have the option to condition eligibility for Tribal TANF assistance on assignment of child support to the Tribe consistent with paragraph (b) of this section.

(b) For Tribes choosing to condition eligibility for Tribal TANF assistance on assignment of child support to the Tribe, the TFAP must address the following—

(1) Procedures for ensuring that child support collections, if any, in excess of the amount of Tribal TANF assistance received by the family must be paid to the family; and,

(2) How any amounts generated under an assignment and retained by the Tribe will be used to further the Tribe's TANF program, consistent with § 286.45(f).

**§ 286.160 What are the applicable time frames and procedures for submitting a Tribal Family Assistance Plan?**

(a) A Tribe must submit a Tribal TANF letter of intent and/or a TFAP to the Secretary according to the following time frames:

Implementation date:	Letter of intent due to ACF and the State:	Formal plan due to ACF:	ACF notification to the State due:
January 1, February 1 or March 1 April 1, May 1 or June 1 ..... July 1, August 1 or September 1 ... October 1, November 1 or December 1.	July 1 of previous year ..... October 1 of previous year ..... January 1 of same year ..... April 1 of same year .....	September 1 of previous year ..... December 1 of previous year ..... March 1 of same year ..... June 1 of same year .....	October 1 of previous year. January 1 of same year. April 1 of same year. July 1 of same year.

(b) A Tribe that has requested and received data from the State and has resolved any issues concerning the data more than six months before its proposed implementation date is not required to submit a letter of intent.

(c) The effective date of the TFAP must be the first day of any month.

(d) The original TFAP must be sent to the appropriate ACF Regional Administrator, with a copy sent to the Division of Tribal Services, Office of Community Services, Administration for Children and Families.

(e) A Tribe that submits a TFAP or an amendment to an existing plan that cannot be approved by the Secretary will be given the opportunity to make revisions in order to make the TFAP, or an amendment, approvable.

(f) Tribes operating a consolidated Public Law 102-477 program must submit a TFAP plan to the Secretary for review and approval prior to the

consolidation of the TANF program into the Public Law 102-477 plan.

**§ 286.165 How is a Tribal Family Assistance Plan amended?**

(a) An amendment to a TFAP is necessary if the Tribe makes any substantial changes to the plan, including those which impact an individual's eligibility for Tribal TANF services or participation requirements, or any other program design changes which alter the nature of the program.

(b) A Tribe must submit a plan amendment(s) to the Secretary no later than 30 days prior to the proposed implementation date. Proposed implementation dates shall be the first day of any month.

(c) We will promptly review and either approve or disapprove the plan amendment(s).

(d) Approved plan amendments are effective no sooner than 30 days after date of submission.

(e) A Tribe whose plan amendment is disapproved may petition for an administrative review of such disapproval under § 286.170 and may appeal our final written decision to the Departmental Appeals Board no later than 30 days from the date of the disapproval. This appeal to the Board should follow the provisions of the rules under this subpart and those at 45 CFR part 16, where applicable.

**§ 286.170 How may a Tribe petition for administrative review of disapproval of a TFAP or amendment?**

(a) If, after a Tribe has been provided the opportunity to make revisions to its TFAP or amendment, the Secretary determines that the TFAP or amendment cannot be approved, a written Notice of Disapproval will be

sent to the Tribe. The Notice of Disapproval will indicate the specific grounds for disapproval.

(b) A Tribe may request reconsideration of a disapproval determination by filing a written Request for Reconsideration to the Secretary within 60 days of receipt of the Notice of Disapproval. If reconsideration is not requested, the disapproval is final and the procedures under paragraph (f) of this section must be followed.

(1) The Request for Reconsideration must include—

(i) All documentation that the Tribe believes is relevant and supportive of its TFAP or amendment; and

(ii) A written response to each ground for disapproval identified in the Notice of Disapproval indicating why the Tribe believes that its TFAP or amendment conforms to the statutory and regulatory requirements for approval.

(c) Within 30 days after receipt of a Request for Reconsideration, the Secretary or designee will notify the Tribe of the date and time a hearing for the purpose of reconsideration of the Notice of Disapproval will be held. Such a hearing may be conducted by telephone conference call.

(d) A hearing conducted under § 286.170(c) must be held not less than 30 days nor more than 60 days after the date of the notice of such hearing is furnished to the Tribe, unless the Tribe agrees in writing to an extension.

(e) The Secretary or designee will make a written determination affirming, modifying, or reversing disapproval of the TFAP or amendment within 60 days after the conclusion of the hearing.

(f) If a TFAP or amendment is disapproved, the Tribe may appeal this final written decision to the Departmental Appeals Board (the Board) within 30 days after such party receives notice of determination. The party's appeal to the Board should follow the provisions of the rules under this section and those at 45 CFR part 16, where applicable.

#### **§ 286.175 What special provisions apply in Alaska?**

A Tribe in the State of Alaska that receives a TFAG must use the grant to operate a program in accordance with program requirements comparable to the requirements applicable to the State of Alaska's Temporary Assistance for Needy Families program. Comparability of programs must be established on the basis of program criteria developed by the Secretary in consultation with the State of Alaska and the Tribes in Alaska. The State of Alaska has authority to waive the program comparability

requirement based on a request by an Indian tribe in the State.

#### **§ 286.180 What is the process for developing the comparability criteria that are required in Alaska?**

We will work with the Tribes in Alaska and the State of Alaska to develop an appropriate process for the development and amendment of the comparability criteria.

#### **§ 286.185 What happens when a dispute arises between the State of Alaska and the Tribal TANF eligible entities in the State related to the comparability criteria?**

(a) If a dispute arises between the State of Alaska and the Tribes in the State on any part of the comparability criteria, we will be responsible for making a final determination and notifying the State of Alaska and the Tribes in the State of the decision.

(b) Any of the parties involved may appeal our decision, in whole or in part, to the HHS Departmental Appeals Board (the Board) within 60 days after such party receives notice of determination. The party's appeal to the Board should follow the provisions of the rules under this section and those at 45 CFR part 16, where applicable.

#### **§ 286.190 If the Secretary, the State of Alaska, or any of the Tribal TANF eligible entities in the State of Alaska want to amend the comparability criteria, what is the process for doing so?**

(a) At such time that any of the above parties wish to amend the comparability document, the requesting party should submit a request to us, with a copy to the other parties, explaining the requested change(s) and supplying background information in support of the change(s).

(b) After review of the request, we will make a determination on whether or not to accept the proposed change(s).

(c) If any party wishes to appeal the decision regarding the adoption of the proposed amendment, they may appeal using the appeals process pursuant to § 286.165.

#### **Subpart D—Accountability and Penalties**

#### **§ 286.195 What penalties will apply to Tribes?**

(a) Tribes will be subject to fiscal penalties and requirements as follows:

(1) If we determine that a Tribe misused its Tribal Family Assistance Grant funds, including providing assistance beyond the Tribe's negotiated time limit under § 286.115, we will reduce the TFAG for the following fiscal year by the amount so used;

(2) If we determine that a Tribe intentionally misused its TFAG for an

unallowable purpose, the TFAG for the following fiscal year will be reduced by an additional five percent;

(3) If we determine that a Tribe failed to meet the minimum work participation rate(s) established for the Tribe, the TFAG for the following fiscal year will be reduced. The amount of the reduction will depend on whether the Tribe was under a penalty for this reason in the preceding year. If not, the penalty reduction will be a maximum of five percent. If a penalty was imposed on the Tribe in the preceding year, the penalty reduction will be increased by an additional 2 percent, up to a maximum of 21 percent. In determining the penalty amount, we will take into consideration the severity of the failure and whether the reasons for the failure were increases in the unemployment rate in the TFAG service area and changes in TFAG caseload size during the fiscal year in question; and

(4) If a Tribe fails to repay a Federal loan provided under section 406 of the Act, we will reduce the TFAG for the following fiscal year by an amount equal to the outstanding loan amount plus interest.

(b) In calculating the amount of the penalty, we will add together all applicable penalty percentages, and the total is applied to the amount of the TFAG that would have been payable if no penalties were assessed against the Tribe. As a final step, we will subtract other (non-percentage) penalty amounts.

(c) When imposing the penalties in paragraph (a) of this section, we will not reduce an affected Tribe's grant by more than 25 percent. If the 25 percent limit prevents the recovery of the full penalty imposed on a Tribe during a fiscal year, we will apply the remaining amount of the penalty to the TFAG payable for the immediately succeeding fiscal year.

(1) If we reduce the TFAG payable to a Tribe for a fiscal year because of penalties that have been imposed, the Tribe must expend additional Tribal funds to replace any such reduction. The Tribe must document compliance with this provision on its TANF expenditure report.

(2) We will impose a penalty of not more than 2 percent of the amount of the TFAG on a Tribe that fails to expend additional Tribal funds to replace amounts deducted from the TFAG due to penalties. We will apply this penalty to the TFAG payable for the next succeeding fiscal year, and this penalty cannot be excused (see § 286.235).

(d) If a Tribe retrocedes the program, the Tribe will be liable for any penalties incurred for the period the program was in operation.

**§ 286.200 How will we determine if Tribal Family Assistance Grant funds were misused or intentionally misused?**

(a) We will use the single audit or Federal review or audit to determine if a Tribe should be penalized for misusing Tribal Family Assistance Grant funds under § 286.195(a)(1) or intentionally misusing Tribal Family Assistance Grant funds under § 286.195(a)(2).

(b) If a Tribe uses the TFAG in violation of the provisions of the Act, the provisions of 45 CFR part 92, OMB Circulars A-87 and A-133, or any Federal statutes and regulations applicable to the TANF program, we will consider the funds to have been misused.

(c) The Tribe must show, to our satisfaction, that it used the funds for purposes that a reasonable person would consider to be within the purposes of the TANF program (as specified at § 286.35) and the provisions listed in § 286.45.

(d) We will consider the TFAG to have been intentionally misused under the following conditions:

(1) There is supporting documentation, such as Federal guidance or policy instructions, indicating that TANF funds could not be used for that purpose; or

(2) After notification that we have determined such use to be improper, the Tribe continues to use the funds in the same or similarly improper manner.

(e) If the single audit determines that a Tribe misused Federal funds in applying the negotiated time limit provisions under § 286.115, the amount of the penalty for misuse will be limited to five percent of the TFAG amount.

(1) This penalty shall be in addition to the reduction specified under § 286.195(a)(1).

(2) [Reserved]

**§ 286.205 How will we determine if a Tribe fails to meet the minimum work participation rate(s)?**

(a) We will use the Tribal TANF Data Reports required under § 286.255 to determine if we will assess the penalty under § 286.195(a)(3) for failure to meet the minimum participation rate(s) established for the Tribe.

(b) Each Tribal TANF Grantee's quarterly reports (the TANF Data Report and the Tribal TANF Financial Report) must be complete and accurate and filed by the due date. The accuracy of the reports are subject to validation by us.

(1) For a disaggregated data report, "a complete and accurate report" means that:

(i) The reported data accurately reflect information available to the Tribal

TANF grantee in case records, financial records, and automated data systems;

(ii) The data are free from computational errors and are internally consistent (e.g., items that should add to totals do so);

(iii) The Tribal TANF grantee reports data for all required elements (i.e., no data are missing);

(iv) The Tribal TANF grantee provides data on all families; or

(v) If the Tribal TANF grantee opts to use sampling, the Tribal TANF grantee reports data on all families selected in a sample that meets the specification and procedures in the TANF Sampling Manual (except for families listed in error); and

(vi) Where estimates are necessary (e.g., some types of assistance may require cost estimates), the Tribal TANF grantee uses reasonable methods to develop these estimates.

(2) For an aggregated data report, "a complete and accurate report" means that:

(i) The reported data accurately reflect information available to the Tribal TANF grantee in case records, financial records, and automated data systems;

(ii) The data are free from computational errors and are internally consistent (e.g., items that should add to totals do so);

(iii) The Tribal TANF grantee reports data on all applicable elements; and

(iv) Monthly totals are unduplicated counts for all families (e.g., the number of families and the number of out-of-wedlock births are unduplicated counts).

(3) For the Tribal TANF Financial Report, a "complete and accurate report" means that:

(i) The reported data accurately reflect information available to the Tribal TANF grantee in case records, financial records, and automated data systems;

(ii) The data are free from computational errors and are internally consistent (e.g., items that should add to totals do so);

(iii) The Tribal TANF grantee reports data on all applicable elements; and

(iv) All expenditures have been made in accordance with 45 CFR part 92 and all relevant OMB circulars.

(4) We will review the data filed in the quarterly reports to determine if they meet these standards. In addition, we will use audits and reviews to verify the accuracy of the data filed by the Tribal TANF grantee.

(c) Tribal TANF grantees must maintain records to adequately support any report, in accordance with 45 CFR part 92 and all relevant OMB circulars.

(d) If we find reports so significantly incomplete or inaccurate that we

seriously question whether the Tribe has met its participation rate, we may apply the penalty under § 286.195(a)(3).

**§ 286.210 What is the penalty for a Tribe's failure to repay a Federal loan?**

(a) If a Tribe fails to repay the amount of principal and interest due at any point under a loan agreement:

(1) The entire outstanding loan balance, plus all accumulated interest, becomes due and payable immediately; and

(2) We will reduce the TFAG payable for the immediately succeeding fiscal year quarter by the outstanding loan amount plus interest.

(b) Neither the reasonable cause provisions at § 286.225 nor the corrective compliance plan provisions at § 286.230 apply when a Tribe fails to repay a Federal loan.

**§ 286.215 When are the TANF penalty provisions applicable?**

(a) A Tribe may be subject to penalties, as described in § 286.195(a)(1), § 286.195(a)(2) and § 286.195(a)(4), for conduct occurring on and after the first day of implementation of the Tribe's TANF program.

(b) A Tribe may be subject to penalties, as described in § 286.195(a)(3), for conduct occurring on and after the date that is six months after the Tribe begins operating the TANF program.

(c) We will not apply the regulations retroactively. We will judge Tribal actions that occurred prior to the effective date of these rules and expenditures of funds received prior to the effective date only against a reasonable interpretation of the statutory provisions in title IV-A of the Act.

(1) To the extent that a Tribe's failure to meet the requirements of the penalty provisions is attributable to the absence of Federal rules or guidance, Tribes may qualify for reasonable cause, as discussed in § 286.225.

(2) [Reserved]

**§ 286.220 What happens if a Tribe fails to meet TANF requirements?**

(a) If we determine that a Tribe is subject to a penalty, we will notify the Tribe in writing. This notice will:

(1) Specify what penalty provision(s) are in issue;

(2) Specify the amount of the penalty;

(3) Specify the reason for our determination;

(4) Explain how and when the Tribe may submit a reasonable cause justification under § 286.225 and/or a corrective compliance plan under § 286.230(d) for those penalties for

which reasonable cause and/or corrective compliance plan apply; and

(5) Invite the Tribe to present its arguments if it believes that the data or method we used were in error or were insufficient, or that the Tribe's actions, in the absence of Federal regulations, were based on a reasonable interpretation of the statute.

(b) Within 60 days of receipt of our written notification, the Tribe may submit a written response to us that:

(1) Demonstrates that our determination is incorrect because our data or the method we used in determining the penalty was in error or was insufficient, or that the Tribe acted prior to June 19, 2000, on a reasonable interpretation of the statute;

(2) Demonstrates that the Tribe had reasonable cause for failing to meet the requirement(s); and/or

(3) Provides a corrective compliance plan as discussed in § 286.230.

(c) If we find that the Tribe was correct and that a penalty was improperly determined, or find that a Tribe had reasonable cause for failing to meet a requirement, we will not impose the related penalty and so notify the Tribe in writing within two weeks of such a determination.

(d) If we determine that the Tribe has not demonstrated that our original determination was incorrect or that it had reasonable cause, we will notify the Tribe of our decision in writing.

(e) If we request additional information from a Tribe, it must provide the information within thirty days of the date of our request.

**§ 286.225 How may a Tribe establish reasonable cause for failing to meet a requirement that is subject to application of a penalty?**

(a) We will not impose a penalty against a Tribe if it is determined that the Tribe had reasonable cause for failure to meet the requirements listed at § 286.195(a)(1), § 286.195(a)(2), or § 286.195(a)(3). The general factors a Tribe may use to claim reasonable cause include, but are not limited to, the following:

(1) Natural disasters, extreme weather conditions, and other calamities (*e.g.*, hurricanes, earthquakes, fire, and economic disasters) whose disruptive impact was so significant that the Tribe failed to meet a requirement.

(2) Formally issued Federal guidance which provided incorrect information resulting in the Tribe's failure or prior to the effective date of these regulations, guidance that was issued after a Tribe implemented the requirements of the Act based on a different, but reasonable, interpretation of the Act.

(3) Isolated, non-recurring problems of minimal impact that are not indicative of a systemic problem.

(4) Significant increases in the unemployment rate in the TFAG service area and changes in the TFAG caseload size during the fiscal year being reported.

(b) We will grant reasonable cause to a Tribe that:

(1) Clearly demonstrates that its failure to submit complete, accurate, and timely data, as required at § 286.245, for one or both of the first two quarters of FY 2000, is attributable, in significant part, to its need to divert critical system resources to Year 2000 compliance activities; and

(2) Submits complete and accurate data for the first two quarters of FY 2000 by November 15, 2000.

(c) In addition to the reasonable cause criteria specified above, a Tribe may also submit a request for a reasonable cause exemption from the requirement to meet its work participation requirements in the following situation:

(1) We will consider that a Tribe has reasonable cause if it demonstrates that its failure to meet its work participation rate(s) is attributable to its provisions with regard to domestic violence as follows:

(i) To demonstrate reasonable cause, a Tribe must provide evidence that it achieved the applicable work rates, except with respect to any individuals receiving good cause waivers of work requirements (*i.e.*, when cases with good cause waivers are removed from the calculation in § 286.85); and

(ii) A Tribe must grant good cause waivers in domestic violence cases appropriately, in accordance with the policies in the Tribe's approved Tribal Family Assistance Plan.

(2) [Reserved]

(d) In determining reasonable cause, we will consider the efforts the Tribe made to meet the requirements, as well as the duration and severity of the circumstances that led to the Tribe's failure to achieve the requirement.

(e) The burden of proof rests with the Tribe to fully explain the circumstances and events that constitute reasonable cause for its failure to meet a requirement.

(1) The Tribe must provide us with sufficient relevant information and documentation to substantiate its claim of reasonable cause.

(2) [Reserved]

**§ 286.230 What if a Tribe does not have reasonable cause for failing to meet a requirement?**

(a) To avoid the imposition of a penalty under § 286.195(a)(1),

§ 286.195(a)(2), or § 286.195(a)(3), under the following circumstances a Tribe must enter into a corrective compliance plan to correct the violation:

(1) If a Tribe does not claim reasonable cause for failing to meet a requirement; or

(2) If we found that a Tribe did not have reasonable cause.

(b) A Tribe that does not claim reasonable cause will have 60 days from receipt of the notice described in § 286.220(a) to submit its corrective compliance plan to us.

(c) A Tribe that does not demonstrate reasonable cause will have 60 days from receipt of the second notice described in § 286.220(d) to submit its corrective compliance plan to us.

(d) In its corrective compliance plan the Tribe must outline:

(1) Why it failed to meet the requirements;

(2) How it will correct the violation in a timely manner; and

(3) What actions, outcomes and time line it will use to ensure future compliance.

(e) During the 60-day period beginning with the date we receive the corrective compliance plan, we may, if necessary, consult with the Tribe on modifications to the plan.

(f) A corrective compliance plan is deemed to be accepted if we take no action to accept or reject the plan during the 60-day period that begins when the plan is received.

(g) Once a corrective compliance plan is accepted or deemed accepted, we may request reports from the Tribe or take other actions to confirm that the Tribe is carrying out the corrective actions specified in the plan.

(1) We will not impose a penalty against a Tribe with respect to any violation covered by that plan if the Tribe corrects the violation within the time frame agreed to in the plan.

(2) We must assess some or all of the penalty if the Tribe fails to correct the violation pursuant to its corrective compliance plan.

**§ 286.235 What penalties cannot be excused?**

(a) The penalties that cannot be excused are:

(1) The penalty for failure to repay a Federal loan issued under section 406.

(2) The penalty for failure to replace any reduction in the TFAG resulting from other penalties that have been imposed.

(b) [Reserved]

**§ 286.240 How can a Tribe appeal our decision to take a penalty?**

(a) We will formally notify the Tribe of a potential reduction to the Tribe's

TFAG within five days after we determine that a Tribe is subject to a penalty and inform the Tribe of its right to appeal to the Departmental Appeals Board (the Board) established in the Department of Health and Human Services. Such notification will include the factual and legal basis for taking the penalty in sufficient detail for the Tribe to be able to respond in an appeal.

(b) Within 60 days of the date it receives notice of the penalty, the Tribe may file an appeal of the action, in whole or in part, to the Board.

(c) The Tribe must include all briefs and supporting documentation when it files its appeal. A copy of the appeal and any supplemental filings must be sent to the Office of General Counsel, Children, Families and Aging Division, Room 411-D, 200 Independence Avenue, SW, Washington, DC 20201.

(d) ACF must file its reply brief and supporting documentation within 45 days after receipt of the Tribe's submission under paragraph (c) of this section.

(e) The Tribe's appeal to the Board must follow the provisions of this section and those at §§ 16.2, 16.9, 16.10, and 16.13 through 16.22 of this title to the extent they are consistent with this section.

(f) The Board will consider an appeal filed by a Tribe on the basis of the documentation and briefs submitted, along with any additional information the Board may require to support a final decision. Such information may include a hearing if the Board determines that it is necessary. In deciding whether to uphold an adverse action or any portion of such action, the Board will conduct a thorough review of the issues.

(g) The filing date shall be the date materials are received by the Board in a form acceptable to it.

(h) A Tribe may obtain judicial review of a final decision by the Board by filing an action within 90 days after the date of such decision with the district court of the United States in the judicial district where the Tribe or TFAG service area is located.

(1) The district court will review the final decision of the Board on the record established in the administrative proceeding, in accordance with the standards of review prescribed by 5 U.S.C. 706(2). The court's review will be based on the documents and supporting data submitted to the Board.

(2) [Reserved]

(i) No reduction to the Tribe's TFAG will occur until a final disposition of the matter has been made.

## Subpart E—Data Collection and Reporting Requirements

### § 286.245 What data collection and reporting requirements apply to Tribal TANF programs?

(a) Section 412(h) of the Act makes section 411 regarding data collection and reporting applicable to Tribal TANF programs. This section of the regulations explains how we will collect the information required by section 411 of the Act and information to implement section 412(c) (work participation requirements).

(b) Each Tribe must collect monthly and file quarterly data on individuals and families as follows:

(1) Disaggregated data collection and reporting requirements in this part apply to families receiving assistance and families no longer receiving assistance under the Tribal TANF program; and

(2) Aggregated data collection and reporting requirements in this part apply to families receiving, families applying for, and families no longer receiving assistance under the Tribal TANF program.

(c) Each Tribe must file in its quarterly TANF Data Report and in the quarterly TANF Financial Report the specified data elements.

(d) Each Tribe must also submit an annual report that contains specified information.

(e) Each Tribe must submit the necessary reports by the specified due dates.

### § 286.250 What definitions apply to this subpart?

(a) Except as provided in paragraph (b) of this section, the general TANF definitions at §§ 286.5 and 286.10 apply to this subpart.

(b) For data collection and reporting purposes only, "TANF family" means:

(1) All individuals receiving assistance as part of a family under the Tribe's TANF program; and

(2) The following additional persons living in the household, if not included under paragraph (b)(1) of this section:

(i) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(ii) Minor siblings of any child receiving assistance; and

(iii) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

### § 286.255 What quarterly reports must the Tribe submit to us?

(a) *Quarterly reports.* Each Tribe must collect on a monthly basis, and file on a quarterly basis, the data specified in

the Tribal TANF Data Report and the Tribal TANF Financial Report.

(b) *Tribal TANF Data Report.* The Tribal TANF Data Report consists of three sections. Two sections contain disaggregated data elements and one section contains aggregated data elements.

(1) *TANF Data Report: Disaggregated Data—Sections one and two.* Each Tribe must file disaggregated information on families receiving TANF assistance (section one) and families no longer receiving TANF assistance (section two). These two sections specify identifying and demographic data such as the individual's Social Security Number; and information such as the type and amount of assistance received, educational level, employment status, work participation activities, citizenship status, and earned and unearned income. These reports also specify items pertaining to child care and child support. The data requested cover adults (including non-custodial parents who are participating in work activities) and children.

(2) *TANF Data Report: Aggregated Data—Section three.* Each Tribe must file aggregated information on families receiving, applying for, and no longer receiving TANF assistance. This section of the Report asks for aggregate figures in the following areas: the total number of applications and their disposition; the total number of recipient families, adult recipients, and child recipients; the total number of births, out-of-wedlock births, and minor child heads-of-households; the total number of non-custodial parents participating in work activities; and the total amount of TANF assistance provided.

(c) *The Tribal TANF Financial Report.* Each Tribe must file quarterly expenditure data on the Tribe's use of Tribal Family Assistance Grant funds, any Tribal fund expenditures which are being substituted for TFAG funds withheld due to a penalty, and any State contributions. The report must be submitted on a form prescribed by ACF.

### § 286.260 May Tribes use sampling and electronic filing?

(a) Each Tribe may report disaggregated data on all recipient families (universal reporting) or on a sample of families selected through the use of a scientifically acceptable sampling method. The sampling method must be approved by ACF in advance of submitting reports.

(1) Tribes may not use a sample to generate the aggregated data.

(2) [Reserved]

(b) "Scientifically acceptable sampling method" means a probability

sampling method in which every sampling unit has a known, non-zero chance to be included in the sample, and the sample size requirements are met.

(c) Each Tribe may file quarterly reports electronically, based on format specifications that we will provide. Tribes who do not have the capacity to submit reports electronically may submit quarterly reports on a disk or in hard copy.

**§ 286.265 When are quarterly reports due?**

(a) Upon a Tribe's initial implementation of TANF, the Tribe shall begin collecting data for the TANF Data Report as of the date that is six months after the initial effective date of its TANF program. The Tribe shall begin collecting financial data for the TANF Financial Report as of the initial effective date of its TANF program.

(b) Each Tribe must submit its TANF Data Report and TANF Financial Report within 45 days following the end of each quarter. If the 45th day falls on a weekend or on a national, State or Tribal holiday, the reports are due no later than the next business day.

**§ 286.270 What happens if the Tribe does not satisfy the quarterly reporting requirements?**

(a) If we determine that a Tribe has not submitted to us a complete and accurate Tribal TANF Data Report within the time limit, the Tribe risks the imposition of a penalty at § 286.205 related to the work participation rate targets since the data from the Tribal TANF Data Report is required to calculate participation rates.

(b) Non-reporting of the Tribal TANF Financial Report may give rise to a penalty under § 286.200 since this Report is used to demonstrate compliance with provisions of the Act, the provisions of 45 CFR part 92, OMB Circulars A-87 and A-133, or any Federal statutes and regulations applicable to the TANF program.

**§ 286.275 What information must Tribes file annually?**

(a) Each Tribal TANF grantee must file an annual report containing information on its TANF program for that year. The report may be filed as:

(1) An addendum to the fourth quarter TANF Data Report; or

(2) A separate annual report.

(b) Each Tribal TANF grantee must provide the following information on its TANF program:

(1) The Tribal TANF grantee's definition of each work activity;

(2) A description of the transitional services provided to families no longer

receiving assistance due to employment; and

(3) A description of how a Tribe will reduce the amount of assistance payable to a family when an individual refuses to engage in work without good cause pursuant to § 286.145.

(4) The average monthly number of payments for child care services made by the Tribal TANF grantee through the use of disregards, by the following types of child care providers:

(i) Licensed/regulating in-home child care;

(ii) Licensed/regulating family child care;

(iii) Licensed/regulating group home child care;

(iv) Licensed/regulating center-based child care;

(v) Legally operating (*i.e.*, no license category available in Tribal TANF grantee's locality) in-home child care provided by a nonrelative;

(vi) Legally operating (*i.e.*, no license category available in Tribal TANF grantee's locality) in-home child care provided by a relative;

(vii) Legally operating (*i.e.*, no license category available in Tribal TANF grantee's locality) family child care provided by a nonrelative;

(viii) Legally operating (*i.e.*, no license category available in Tribal TANF grantee's locality) family child care provided by a relative;

(ix) Legally operating (*i.e.*, no license category available in Tribal TANF grantee's locality) group child care provided by a nonrelative;

(x) Legally operating (*i.e.*, no license category available in Tribal TANF grantee's locality) group child care provided by a relative; and

(xi) Legally operating (*i.e.*, no license category available in Tribal TANF grantee's locality) center-based child care.

(5) A description of any nonrecurring, short-term benefits provided, including:

(i) The eligibility criteria associated with such benefits, including any restrictions on the amount, duration, or frequency of payments;

(ii) Any policies that limit such payments to families that are eligible for TANF assistance or that have the effect of delaying or suspending a family's eligibility for assistance; and

(iii) Any procedures or activities developed under the TANF program to ensure that individuals diverted from assistance receive information about, referrals to, or access to other program benefits (such as Medicaid and food stamps) that might help them make the transition from Welfare-to-Work; and

(6) A description of the procedures the Tribal TANF grantee has established

and is maintaining to resolve displacement complaints, pursuant to § 286.110. This description must include the name of the Tribal TANF grantee agency with the lead responsibility for administering this provision and explanations of how the Tribal TANF grantee has notified the public about these procedures and how an individual can register a complaint.

(7) Tribes electing the FVO must submit a description of the strategies and procedures in place to ensure that victims of domestic violence receive appropriate alternative services, as well as an aggregate figure for the total number of good cause domestic waivers granted.

(c) If the Tribal TANF grantee has submitted the information required in paragraph (b) of this section in the TFAP, it may meet the annual reporting requirements by reference in lieu of re-submission. Also, if the information in the annual report has not changed since the previous annual report, the Tribal TANF grantee may reference this information in lieu of re-submission.

(d) If a Tribal TANF grantee makes a substantive change in certain data elements in paragraph (b) of this section, it must file a copy of the change either with the next quarterly data report or as an amendment to its TFAP. The Tribal TANF grantee must also indicate the effective date of the change. This requirement is applicable to paragraphs (b)(1), (b)(2), and (b)(3) of this section.

**§ 286.280 When are annual reports due?**

(a) The annual report required by § 286.275 is due 90 days after the end of the Fiscal Year which it covers.

(b) The first annual report for a Tribe must include all months of operation since the plan was approved.

**§ 286.285 How do the data collection and reporting requirements affect Public Law 102-477 Tribes?**

(a) A Tribe that consolidates its Tribal TANF program into a Public-Law 102-477 plan is required to comply with the TANF data collection and reporting requirements of this section.

(b) A Tribe that consolidates its Tribal TANF program into a Public-Law 102-477 plan may submit the Tribal TANF Data Reports and the Tribal TANF Financial Report to the BIA, with a copy to us.

**Note:** The following appendices will not appear in the Code of Federal Regulations.

## Appendix A.—TANF Disaggregated Data Collection for Families Receiving Assistance Under the TANF Program—ACTIVES

### Instructions and Definitions

#### General:

- The Tribal grantee should collect and report data for each data element. The data must be complete (unless explicitly instructed to leave the field blank) and accurate (*i.e.*, correct).
- An "Unknown" code may appear only on four sets of data elements ([#32 and #67] Date of Birth, [#33 and #68] Social Security Number, [#41 and #74] Educational Level, and [#42 and #75] Citizenship/Alienage). For these data elements, unknown is not an acceptable code for individuals who are members of the eligible family (*i.e.*, family affiliation code "1").
- There are five data elements for which Tribes have the option to report based on either the budget month or the reporting month. These are: #16 Amount of Food Stamps Assistance; #19 Amount of Child Support; #20 Amount of Families Cash Resources; #64 Amount of Earned Income; and [#35 and #76] Amount of Unearned Income. Whichever choice the Tribe selects must be used for all families reported each month and must be used for all months in the fiscal year.

1. State FIPS Code: Tribal grantees should enter "00" or leave blank.
2. County FIPS Code: Tribal grantees should leave this field blank.
3. Tribal Code: For Tribal grantees, enter the three-digit Tribal code that represents your Tribe. See Appendix E of the TANF Sampling and Statistical Methods Manual for a complete listing of Tribal Codes. If there appears to be no code for your Tribe, immediately contact the Director, Division of Tribal Services, Office of Community Services. Newly formed consortiums must contact the Division to obtain a code. State agencies should leave this field blank.
4. Reporting Month: Enter the four-digit year and two-digit month codes that identify the year and month for which the data are being reported.

#### 5. Stratum:

**Guidance:** If a Tribe opts to provide data for its entire caseload, it may use this for its own coding purposes as long as a two-digit numerical code is specified.

**Instruction:** Enter any two-digit numerical code.

### Family-Level Data

**Definition:** For reporting purposes, the TANF family means:

- (a) All individuals receiving assistance as part of a family under the Tribe's TANF Program; and
- (b) The following additional persons living in the household, if not included under (a) above:
  - (1) Parent(s) or caretaker relative(s) of any minor child receiving assistance;
  - (2) Minor siblings of any child receiving assistance; and
  - (3) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

#### 6. Case Number—TANF:

**Guidance:** If the case number is less than the allowable eleven characters, Tribes may use lead zeros to fill in the number. This number will be used to refer back to the Tribal records concerning the case if a question about the data arises.

**Instruction:** Enter the number assigned by the Tribal grantee to uniquely identify the case.

7. ZIP Code: Enter the five-digit ZIP code for the TANF family's place of residence for the reporting month.

#### 8. Funding Stream:

**Guidance:** Tribal grantees are not to report data on families which do not receive any assistance, in at least part, from Federal TANF funds. The only applicable code for Tribes is "1".

**Instructions:** Enter code "1".

#### 9. Disposition:

**Guidance:** If a Tribe opts to report on its entire caseload, the only applicable code for the Tribe is "1".

**Instructions:** Enter code "1".

#### 10. New Applicant:

**Guidance:** A newly-approved applicant means the current reporting month is the first month in which the TANF family receives TANF assistance (and thus has had a chance to be reported on). This may be either the first month that the TANF family has ever received assistance or the first month of a new spell on assistance. A TANF family that is reinstated from a suspension is not a newly, approved applicant.

**Instruction:** Enter the one-digit code that indicates whether or not the TANF family is a newly-approved applicant.

1=Yes, a newly-approved application.

2=No.

#### 11. Number of Family Members:

**Instruction:** Enter two digits that represent the number of members in the family receiving assistance under the Tribe's TANF Program during the reporting month. Include in the number of family members, the noncustodial parent who the Tribe has opted to include as part of the eligible family, who is receiving assistance as defined in Sec. 260.31, or who is participating in work activities as defined for Tribes in their approved plan.

#### 12. Type of Family for Work Participation:

**Guidance:** This data element will be used in conjunction with other data elements (dependent on the approved Tribal plan) to determine work participation rates.

A family with a minor child head-of-household should be coded as either a single-parent family or two-parent family, whichever is appropriate.

If the family receiving assistance includes a custodial and noncustodial parent, then, if neither parent is disabled, the family should be coded as a two-parent family. A noncustodial parent is defined in section 260.30 as a parent who lives in the State or States (in which the Tribal Service area is located) and does not live with his/her child(ren). The Tribe must report information on the noncustodial parent if the noncustodial parent: (1) Is receiving assistance as defined in Sec. 260.31; (2) is participating in work activities as defined in the Tribal plan; or (3) has been designated by

the Tribe as a member of a family receiving assistance.

**Instruction:** Enter the one-digit code that represents the type of family

1=One parent family.

2=Two-Parent Family.

3=Family excluded from both the overall and two-parent work participation rates (no adult receiving assistance).

#### 13. Receives Subsidized Housing:

**Guidance:** Subsidized housing refers to housing for which money was paid by the Federal, State, or local government or through a private social service agency to the family or to the owner of the housing to assist the family in paying rent. Two families sharing living expenses does not constitute subsidized housing.

**Instruction:** Enter the one-digit code that indicates whether or not the TANF family received subsidized housing for the reporting month.

1=Public housing.

2=Rent subsidy.

3=No housing subsidy.

#### 14. Receives Medical Assistance:

**Instruction:** Enter "1" if, for the reporting month, any TANF family member is enrolled in Medicaid and thus eligible to receive medical assistance under the State plan approved under Title XIX or "2" if no TANF family member is enrolled in Medicaid.

1=Yes, enrolled in Medicaid.

2=No.

#### 15. Receives Food Stamps:

**Instruction:** Enter the one-digit code that indicates whether or not the TANF family is receiving food stamp assistance.

1=Yes, receives food stamp assistance.

2=No.

#### 16. Amount of Food Stamp Assistance:

**Guidance:** For situations in which the food stamp household differs from the TANF family, code this element in a manner that most accurately reflects the resources available to the TANF family. One acceptable method for calculating the amount of food stamp assistance available to the TANF family is to prorate the amount of food stamps equally among each food stamp recipient then add together the amounts belonging to the TANF recipients to get the total amount for the TANF family.

**Instruction:** Enter the TANF family's authorized dollar amount of food stamp assistance for the reporting month or for the month used to budget for the reporting month.

#### 17. Receives Subsidized Child Care:

**Instruction:** If the TANF family receives subsidized child care for the reporting month, enter code "1" or "2", whichever is appropriate. Otherwise, enter code "3".

1=Yes, receives child care funded entirely or in part with Federal funds (*e.g.*, receives TANF, CCDF, SSBG, or other federally funded child care).

2=Yes, receives child care funded entirely under a State, Tribal, and/or local program (*i.e.*, no Federal funds used).

3=No subsidized child care received.

#### 18. Amount of Subsidized Child Care:

**Guidance:** Subsidized child care means a grant by the Federal, State, Tribal, or local government to or on behalf of a parent (or caretaker relative) to support, in part or

whole, the cost of child care services provided by an eligible provider to an eligible child. The grant may be paid directly to the parent (or caretaker relative) or to a child care provider on behalf of the parent (or caretaker relative).

**Instruction:** Enter the total dollar amount of subsidized child care from all sources (*e.g.*, CCDF, TANF, SSBG, State, Tribal, local, etc.) that the TANF family has received for services in the reporting month. If the TANF family did not receive any subsidized child care for services in the reporting month, enter "0".

19. Amount of Child Support:

**Instruction:** Enter the total dollar value of child support received on behalf of the TANF family in the reporting month or for the month used to budget for the reporting month. This includes current payments, arrearages, recoupment, and pass-through amounts whether paid to the State or the family.

20. Amount of the Family's Cash Resources:

**Instruction:** Enter the total dollar amount of the TANF family's cash resources as the State defines them for determining eligibility and/or computing benefits for the reporting month or for the month used to budget for the reporting month.

Amount of Assistance Received and the Number of Months That the Family Has Received Each Type of Assistance under the Tribal TANF Program.

**Guidance:** The term "assistance" includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (*i.e.*, for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses). It includes such benefits even when they are provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients and conditioned on their participation in work experience, community service, or other work activities.

Except where excluded as indicated in the following paragraph, it also includes supportive services such as transportation and child care provided to families who are not employed.

The term "assistance" excludes:

(1) Nonrecurrent, short-term benefits (such as payments for rent deposits or appliance repairs) that:

- (i) Are designed to deal with a specific crisis situation or episode of need;
- (ii) Are not intended to meet recurrent or ongoing needs; and
- (iii) Will not extend beyond four months.

(2) Work subsidies (*i.e.*, payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);

(3) Supportive services such as child care and transportation provided to families who are employed;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts;

(6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and

(7) Transportation benefits provided under an Access to Jobs or Reverse Commute project, pursuant to section 404(k) of the Act, to an individual who is not otherwise receiving assistance.

The exclusion of nonrecurrent, short-term benefits under (1) of this paragraph also covers supportive services for recently employed families, for temporary periods of unemployment, in order to enable continuity in their service arrangements.

**Instruction:** For each type of assistance provided under the Tribal TANF Program, enter the dollar amount of assistance that the TANF family received or that was paid on behalf of the TANF family for the reporting month and the number of months that the TANF family has received assistance under the Tribe's TANF program. For TANF Child Care also enter the number of children covered by the dollar amount of child care. If, for a "type of assistance", no dollar amount of assistance was provided during the reporting month, enter "0" as the amount. If, for a "type of assistance", no assistance has been received (since the Tribe began its TANF Program or since the effective date of the final regulations) by the TANF eligible family, enter "0" as the number of months of assistance.

21. Cash and Cash Equivalents:

A. Amount.

B. Number of Months.

22. TANF Child Care:

**Guidance:** For TANF Child Care, enter the dollar amount, the number of children covered by the dollar amount of child care, and the total number of months that the family has received TANF child care assistance for families not employed. For example, a TANF family may receive a total of \$500.00 in TANF child care assistance for two children for the reporting month. Furthermore, the family may have received TANF child care for one or more child(ren) for a total of six months under the State (Tribal) TANF Program. In this example, the State (Tribe) would code 500, 2, and 6 for the amount, number of children and number of months respectively. Include only the child care funded directly by the Tribal TANF Program. Do not include child care funded under the Child Care and Development Fund, even though some of the funds were transferred to the CCDF from the TANF program.

A. Amount.

B. Number of Children Covered.

C. Number of Months.

23. Transportation:

A. Amount.

B. Number of Months.

24. Transitional Services:

A. Amount.

B. Number of Months.

25. Other:

A. Amount.

B. Number of Months.

26. Reason for and Amount of Reductions in Assistance:

**Instruction:** The amount of assistance received by a TANF family may have been reduced for one or more of the following reasons. For each reason listed below, indicate whether the TANF family received a reduction in assistance. Enter the total

dollar value of the reduction(s) for each group of reasons for the reporting month. If for any reason there was no reduction in assistance, enter "0".

a. Sanctions:

i. Total Dollar Amount of Reductions due to Sanctions:

Enter the total dollar value of reduction in assistance due to sanctions.

ii. Work Requirements Sanction:

1=Yes.

2=No.

iii. Family Sanction for an Adult with No High School Diploma or Equivalent:

1=Yes.

2=No.

iv. Sanction for Teen Parent not Attending School:

1=Yes.

2=No.

v. Non-Cooperation with Child Support:

1=Yes.

2=No.

vi. Failure to Comply with an Individual Responsibility Plan:

1=Yes.

2=No.

vii. Other Sanction:

1=Yes.

2=No.

b. Recoupment of Prior Overpayment:

Enter the total dollar value of reduction in assistance due to recoupment of a prior overpayment.

c. Other:

i. Total Dollar Amount of Reductions due to Other Reasons (exclude amounts for sanctions and recoupment): Enter the total dollar value of reduction in assistance due to reasons other than sanctions and recoupment.

ii. Family Cap:

1=Yes.

2=No.

iii. Reduction Based on Family Moving into the Tribal service area from a State or another Tribal area:

1=Yes.

2=No.

iv. Reduction Based on Length of Receipt of Assistance:

1=Yes.

2=No.

v. Other, Non-sanction:

1=Yes.

2=No.

27. Waiver Evaluation Experimental and Control Groups:

**Guidance:** This data element is not applicable to Tribes. Tribes should leave it blank.

28. Is the TANF Family Exempt during the reporting month from the Tribal Time-Limit Provisions:

**Guidance:** Under TANF rules, an eligible family that does not include a recipient who is an adult head-of-household, a spouse of the head-of-household, or a minor child head-of-household who has received federally-funded assistance for countable months up to the Tribal Time limit may continue to receive assistance. A countable month is a month of assistance for which the adult head-of-household, the spouse of the head-of-household, or the minor child head-of-household is not exempt from the Tribal

time-limit provisions. Families with an adult head-of-household, a spouse of a head-of-household, or minor child head-of-household who have received countable months of assistance up to the Tribal time limit, may be exempt from termination of assistance. Exemptions from termination of assistance include a hardship exemption (as defined by the Tribal plan). Also, if, in the reporting month, the Family lives in Indian country or in an Alaskan native village where the percent of adults not employed is 50 percent or more, the month of assistance is exempt from being counted (is disregarded).

**Instruction:** If the TANF family has no exemption from the Tribal time limit, enter code "01". If the TANF family does not include an adult head-of-household, a spouse of the head-of-household, or a minor child head-of-household who has received federally-funded assistance for the maximum number of countable months or is otherwise exempt from accrual of months of assistance or termination of assistance under the Tribal time limit for the reporting month, enter "02". If the TANF family includes an adult head-of-household, a spouse of the head-of-household, or minor child head-of-household who has not received federally-funded assistance for the maximum number of countable months or is otherwise exempt from accrual of months of assistance or termination of assistance under the Tribal time limit for the reporting month, enter "03", "04", or "05", whichever is appropriate. If the TANF family includes an adult head-of-household, a spouse of the head-of-household, or minor child head-of-household who has received assistance for the maximum countable months and the family is exempt from termination of assistance, enter code "06", "07", "08", "09", "10", or "11", whichever is appropriate.

01=Family is not exempt from Federal time limit.

Family does not include an adult head-of-household, a spouse of the head-of-household, or minor child head-of-household who has received federally-funded assistance for the maximum number of countable months:

02=Family is exempt from accrual of months and termination of assistance under the Federal five-year time limit for the reporting month because no adult head-of-household, a spouse of the head-of-household, or minor child head-of-household in the eligible family is receiving assistance.

Family includes an adult head-of-household, a spouse of the head-of-household, or minor child head-of-household, but has accrued less than the maximum number of months of assistance:

03=Not to be used by Tribes.

04=Family is exempt from accrual of months under the Tribal time limit for the reporting month because the family is living in Indian country or an Alaskan native village, where at least 50 percent of the adults living in the Indian country or Alaskan native village are not employed.

05=Not to be used by Tribes.

Family includes an adult head-of-household, a spouse of the head-of-household, or minor child head-of-household

who has received federally-funded assistance for the maximum number of countable months:

06=Not to be used by Tribes.

07=Family is exempt from termination of assistance under the Tribal time limit for the reporting month due to a hardship exemption, battery, or extreme cruelty.

08=Family is exempt from termination of assistance under Tribal policy for the reporting month based on a federally recognized good cause domestic violence waiver of time limits.

09=Family is exempt from termination of assistance under the Federal five-year time limit for the reporting month because the adult head-of-household, the spouse of the head-of-household, or minor child head-of-household is living in Indian country or an Alaskan native village, where at least 50 percent of whose adults are not employed.

10=Not to be used by Tribes.

11=Not to be used by Tribes.

29. Is the TANF Family A New Child-Only Family?

**Guidance:** A child-only family is a TANF family that does not include an adult or a minor child head-of-household who is receiving TANF assistance. For purposes of this data element, a new child-only family is a TANF family that: (a) has received TANF assistance for at least two months (*i.e.*, the reporting month and the month prior to the reporting month); (b) received benefits in the prior month, but not as a child-only case; and (c) is a child-only family for the reporting month. All other families—including those that are not a child-only case during the reporting month—are coded as "not a new-child-only family", *i.e.*, as code "2".

**Instructions:** If the TANF family is a new child-only family, enter code "1". Otherwise, enter code "2".

1=Yes, a new child-only family.

2=No, not a new child-only family.

#### Person-Level Data

Person-level data has two sections: (1) The adult and minor child head-of-household characteristic section and (2) the child characteristics section. Section 419 of the Act defines adult and minor child. An adult is an individual that is not a minor child. A minor child is an individual who (a) has not attained 18 years of age or (b) has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training).

Detailed data elements must be reported on all individuals unless, for a specific data element, the instructions explicitly give Tribes an option to not report for a specific group of individuals.

#### Adult and Minor Child Head-of-Household Characteristics

This section allows for coding up to six adults (or a minor child who is either a head-of-household or married to the head-of-household and up to five adults) in the TANF family. A minor child who is either a head-of-household or married to the head-of-household should be coded as an adult and will hereafter be referred to as a "minor child head-of-household". For each adult (or minor child head-of-household) in the TANF

family, complete the adult characteristics section. A noncustodial parent is defined in section 260.30 as a parent who lives in the State or States (in which the Tribal Service area is located) and does not live with his/her child(ren). The Tribe must report information on the noncustodial parent if the noncustodial parent: (1) Is receiving assistance as defined in Sec. 260.31; (2) is participating in work activities as defined in the Tribal Plan; or (3) has been designated by the Tribe as a member of a family receiving assistance.

The Tribe has the option to count a family with a noncustodial parent receiving assistance as a two-parent family for work participation rate purposes. As indicated below, reporting for certain specified data elements in this section is optional for certain individuals (whose family affiliation code is a 2, 3, or 5).

If there are more than six adults (or a minor child head-of-household and five adults) in the TANF family, use the following order to identify the persons to be coded: (1) The head-of-household; (2) parents in the eligible family receiving assistance; (3) other adults in the eligible family receiving assistance; (4) parents not in the eligible family receiving assistance; (5) caretaker relatives not in the eligible family receiving assistance; and (6) other persons whose income or resources count in determining eligibility for or amount of assistance of the eligible family receiving assistance, in descending order from the person with the most income to the person with least income (or resources if no income).

#### 30. Family Affiliation:

**Guidance:** This data element is used both for (1) The adult and minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

**Instruction:** Enter the one-digit code that shows the adult's (or minor child head-of-household's) relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance.

Not in eligible family receiving assistance, but in the household:

2=Parent of minor child in the eligible family receiving assistance.

3=Caretaker relative of minor child in the eligible family receiving assistance.

4=Minor sibling of child in the eligible family receiving assistance.

5=Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance.

#### 31. Noncustodial Parent Indicator:

**Guidance:** A noncustodial parent is defined in section 260.30 as a parent who lives in the State or States (in which the Tribal Service area is located) and does not live with his/her child(ren). The Tribe must report information on the noncustodial parent if the noncustodial parent: (1) Is receiving assistance as defined in Sec. 260.31; (2) is participating in work activities as defined in the Tribal plan; or (3) has been designated by the Tribe as a member of a family receiving assistance.

*Instruction:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) noncustodial parent status.

1=Yes, a noncustodial parent.

2=No.

32. Date of Birth: Enter the eight-digit code for date of birth for the adult (or minor child head-of-household) under the Tribal TANF Program in the format YYYYMMDD. If the adult's (or minor child head-of-household's) date of birth is unknown and the family affiliation code is not "1", enter the code "99999999".

33. Social Security Number: Enter the nine-digit Social Security Number for the adult (or minor child head-of-household) in the format nnnnnnnnn. If the social security number is unknown and the family affiliation code is not "1", enter "99999999".

34. Ethnicity:

*Instruction:* To allow for the multiplicity of race/ethnicity, please enter the one-digit code for each category of race and ethnicity of the TANF adult (or minor child head-of-household). Reporting of this data element is optional for individuals whose family affiliation code is 5.

Ethnicity:

a. Hispanic or Latino:

1=Yes, Hispanic or Latino.

2=No.

Race:

b. American Indian or Alaska Native:

1=Yes, American Indian or Alaska Native.

2=No.

c. Asian:

1=Yes, Asian.

2=No.

d. Black or African American:

1=Yes, Black or African American.

2=No.

e. Native Hawaiian or Other Pacific

Islander:

1=Yes, Native Hawaiian or Pacific Islander.

2=No.

f. White:

1=Yes, White.

2=No.

35. Gender: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) gender:

1=Male.

2=Female.

36. Receives Disability Benefits: The Act specifies five types of disability benefits. For each type of disability benefits, enter the one-digit code that indicates whether or not the adult (or minor child head-of-household) received the benefit.

a. Receives Federal Disability Insurance Benefits Under the Social Security OASDI Program (Title II of the Social Security Act):

1=Yes, received Federal disability insurance.

2=No.

b. Receives Benefits Based on Federal Disability Status under Non-Social Security Act Programs: These programs include Veteran's disability benefits, Worker's disability compensation, and Black Lung Disease disability benefits.

1=Yes, received benefits based on Federal disability status.

2=No.

c. Receives Aid to the Permanently and Totally Disabled Under Title XIV-APDT of the Social Security Act:

1=Yes, received aid under Title XIV-

APDT.

2=No.

d. Receives Aid to the Aged, Blind, and Disabled Under Title XVI-AABD of the Social Security Act:

1=Yes, received aid under Title XVI-AABD.

2=No.

e. Receives Supplemental Security Income under Title XVI-SSI of the Social Security Act:

1=Yes, received aid under Title XVI-SSI.

2=No.

37. Marital Status: Enter the one-digit code for the adult's (or minor child head-of-household's) marital status for the reporting month. Reporting of this data element is optional for individuals whose family affiliation code is 5.

1=Single, never married.

2=Married, living together.

3=Married, but separated.

4=Widowed.

5=Divorced.

38. Relationship to Head-of-Household:

*Guidance:* This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

*Instruction:* Enter the two-digit code that shows the adult's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or as determined by the State (Tribe) (*i.e.*, the relationship to the principal person of each person living in the household). If minor child head-of-household, enter code "01".

01=Head-of-household.

02=Spouse.

03=Parent.

04=Daughter or son.

05=Stepdaughter or stepson.

06=Grandchild or great grandchild.

07=Other related person (brother, niece, cousin).

08=Foster child.

09=Unrelated child.

10=Unrelated adult.

39. Parent With Minor Child in the Family:

*Guidance:* A parent with a minor child in the family may be a natural parent, adoptive parent, or step-parent of a minor child in the family. Reporting of this data element is optional for individuals whose family affiliation code is 3 or 5.

*Instruction:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) parental status.

1=Yes, a parent with a minor child in the family and used in two-parent participation rate.

2=Yes, a parent with a minor child in the family, but not used in two-parent participation rate.

3=No.

40. Needs of a Pregnant Woman: Some States (Tribes) consider the needs of a pregnant woman in determining the amount of assistance that the TANF family receives. If the adult (or minor child head-of-household) is pregnant and the needs associated with this pregnancy are considered in determining the amount of

assistance for the reporting month, enter a "1" for this data element. Otherwise enter a "2" for this data element. This data element is applicable only for individuals whose family affiliation code is 1.

1=Yes, additional needs associated with pregnancy are considered in determining the amount of assistance.

2=No.

41. Educational Level: Enter the two-digit code to indicate the highest level of education attained by the adult (or minor child head-of-household). Unknown is not an acceptable code for individuals whose family affiliation code is "1". Reporting of this data element is optional for individuals whose family affiliation code is 5.

01-11=Grade level completed in primary/secondary school including secondary level vocational school or adult high school.

12=High school diploma, GED, or National External Diploma Program.

13=Awarded Associate's Degree.

14=Awarded Bachelor's Degree.

15=Awarded graduate degree (Master's or higher).

16=Other credentials (degree, certificate, diploma, etc.).

98=No formal education.

99=Unknown.

42. Citizenship/Alienage:

*Instruction:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) citizenship/alienage. Unknown is not an acceptable code for individuals whose family affiliation code is "1". Reporting of this data element is optional for individuals whose family affiliation code is 5.

1=U. S. citizen, including naturalized citizens.

2=Qualified alien.

9=Unknown.

43. Cooperation with Child Support: Enter the one-digit code that indicates if the adult (or minor child head-of-household) has cooperated with child support. Reporting of this data element is optional for individuals whose family affiliation code is 5.

1=Yes, adult (or minor child head-of-household) has cooperated with child support.

2=No.

9=Not applicable.

44. Number of Months Countable toward Federal Time Limit: Enter the number of months countable toward the adult's (or minor child head-of-household's) Tribal time limit based on the cumulative amount of time the individual has received TANF from both the State (Tribe) and other States or Tribes. Reporting of this data element is optional for individuals whose family affiliation code is 2, 3, or 5.

45. Number of Countable Months Remaining Under the Tribe's Time Limit: Enter the number of months that remain countable toward the adult's (or minor child head-of-household's) Tribal time limit. Reporting of this data element is optional for individuals whose family affiliation code is 2, 3, or 5.

46. Is Current Month Exempt from the State's (Tribe's) Time Limit: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) current exempt

status from Tribe's time limit. Reporting of this data element is optional for individuals whose family affiliation code is 2, 3, or 5.

1=Yes, adult (or minor child head-of-household) is exempt from the Tribe's time limit for the reporting month.

2=No.

47. Employment Status: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) employment status. Reporting of this data element is optional for individuals whose family affiliation code is 5.

1=Employed.

2=Unemployed, looking for work.

3=Not in labor force (*i.e.*, unemployed, not looking for work, includes discouraged workers).

48. Work Participation Status:

*Guidance:* This item is used in calculating the work participation rates. The following two definitions are used in reporting this item and in determining which families are included in and excluded from the calculations.

"Disregarded" from the participation rate means the TANF family is not included in the calculation of the work participation rate.

"Exempt" means that the individual will not be penalized for failure to engage in work (*i.e.*, good cause exception); however, the TANF family is included in the calculation of the work participation rate.

A Tribe is not required to disregard all families that could be disregarded. For example, a family with a single custodial parent with a child under 12 months (and the parent has not been disregarded for 12 months) may be disregarded. However, if the single custodial parent is meeting the work requirements, the Tribe may want to include the family in its work participation rate. In this situation, the Tribe should use work participation status code "19" rather than code "01".

*Instruction:* Enter the two-digit code that indicates the adult's (or minor child head-of-household's) work participation status. If the State chooses to include the noncustodial parent in the two-parent work participation rate, the State must code the data element "Type of Family for Work Participation Rate" with a "2" and enter the applicable code for this data element. If a State chooses to exclude the noncustodial parent from the two-parent work participation rate, the State must code the data element "Type of Family for Work Participation" with a "1" and code the data element "Work Participation Status" for the noncustodial parent with a "99". This data element is not applicable for individuals whose family affiliation code is 2, 3, 4, or 5 (*i.e.*, use code "99" or leave blank).

01=Disregarded from participation rate, single custodial parent with child under 12 months.

02=Disregarded from participation rate because all of the following apply: required to participate, but not participating; and sanctioned for more than 3 months within the preceding 12-month period (Note, this code should be used only in a month for which the family is disregarded from the participation rate. While one or more adults may be sanctioned in more than 3 months

within the preceding 12-month period, the family may not be disregarded from the participation rate for more than 3 months within the preceding 12-month period).

03=Disregarded, family is part of an ongoing research evaluation (as a member of a control group or experimental group) approved under Section 1115 of the Social Security Act.

04=Not applicable to Tribes.

05=Not applicable to Tribes.

06=Exempt, single custodial parent with child under age 6 and child care unavailable.

07=Exempt, disabled.

08=Exempt, caring for a severely disabled child.

09=Exempt, under a federally recognized good cause domestic violence waiver.

10=Not applicable to Tribes.

11=Exempt, other.

12=Required to participate, but not participating; sanctioned for the reporting month; and sanctioned for more than 3 months within the preceding 12-month period.

13=Required to participate, but not participating; and sanctioned for the reporting month, but not sanctioned for more than 3 months within the preceding 12-month period.

14=Required to participate, but not participating; and not sanctioned for the reporting month.

15=Deemed engaged in work—single teen head-of-household or married teen who maintains satisfactory school attendance.

16=Deemed engaged in work—single teen head-of-household or married teen who participates in education directly related to employment for an average of at least 20 hours per week during the reporting month.

17=Deemed engaged in work—parent or relative (who is the only parent or caretaker relative in the family) with child under age 6 and parent engaged in work activities for at least 20 hours per week.

18=Required to participate and participating, but not meeting minimum participation requirements.

19=Required to participate and meeting minimum participation requirements.

99=Not applicable (*e.g.*, person living in household and whose income or resources are counted in determining eligibility for or amount of assistance of the family receiving assistance, but not in eligible family receiving assistance or noncustodial parent that the Tribe opted to exclude in determining participation rate).

#### Adult Work Participation Activities

*Guidance:* To calculate the average number of hours per week of participation in a work activity, add the number of hours of participation across all weeks in the month and divide by the number of weeks in the month. Round to the nearest whole number.

Some weeks have days in more than one month. Include such a week in the calculation for the month that contains the most days of the week (*e.g.*, the week of July 27–August 2, 1997 would be included in the July calculation). Acceptable alternatives to this approach must account for all weeks in the fiscal year. One acceptable alternative is to include the week in the calculation for whichever month the Friday falls (*i.e.*, the

JOBS approach). A second acceptable alternative is to count each month as having 4.33 weeks.

During the first or last month of any spell of assistance, a family may happen to receive assistance for only part of the month. If a family receives assistance for only part of a month, the State (Tribe) may count it as a month of participation if an adult (or minor child head-of-household) in the family (both adults, if they are both required to work) is engaged in work for the minimum average number of hours for any full week(s) that the family receives assistance in that month.

*Special Rules:* Each adult (or minor child head-of-household) has a life-time limit for vocational educational training. Vocational educational training may only count as a work activity for a total of 12 months. For any adult (or minor child head-of-household) that has exceeded this limit, enter "0" as the average number of hours per week of participation in vocational education training, even if (s)he is engaged in vocational education training. The additional participation in vocational education training may be coded under "Other".

*Limitations:* The four limitations<sup>1</sup> concerning job search and job readiness are:

(1) Job search and job readiness assistance only count for 6 weeks in any fiscal year;  
(2) An individual's participation in job search and job readiness assistance counts for no more than 4 consecutive weeks;

(3) If the Tribe's total unemployment rate for a fiscal year is at least 50 percent greater than the United States' total unemployment rate for that fiscal year, then an individual's participation in job search or job readiness assistance counts for up to 12 weeks in that fiscal year; and

(4) A State may count 3 or 4 days of job search and job readiness assistance during a week as a full week of participation, but only once for any individual. For each week in which an adult (or minor child head-of-household) exceeds any of these limitations, use "0" as the number of hours in calculating the average number of hours per week of job search and job readiness, even if (s)he may be engaged in job search or job readiness activities.

*Instruction:* For each work activity in which the adult (or minor child head-of-household) participated during the reporting month, enter the average number of hours per week of participation, except as noted above. For each work activity in which the adult (or minor child head-of-household) did not participate, enter zero as the average number of hours per week of participation. These work activity data elements are applicable only for individuals whose family affiliation code is 1.

49. Unsubsidized Employment.

50. Subsidized Private-Sector Employment.

51. Subsidized Public-Sector Employment.

52. Work Experience.

53. On-the-job Training.

54. Job Search and Job Readiness Assistance.

*Instruction:* As noted above, the statute limits participation in job search and job

<sup>1</sup> A Tribe, which has negotiated different limitations, should use their best judgment to determine which code to use.

readiness training in four ways. Enter, in this data element, the average number of hours per week of participation in job search and job readiness training that are within the statutory limitations.

Otherwise, count the additional hours of work participation under the work activity "Other Work Activities".

55. Community Service Programs.

56. Vocational Educational Training:

*Instruction:* As noted above, the statute contains special rules limiting an adult's (or minor child head-of-household's) participation in vocational educational training to twelve months. Enter, in this data element, the average number of hours per week of participation in vocational educational training that are within the statutory limits.

57. Job Skills Training Directly Related to Employment.

58. Education Directly Related to Employment for Individuals with no High School Diploma or Certificate of High School Equivalency.

59. Satisfactory School Attendance for Individuals with No High School Diploma or Certificate of High School Equivalency.

60. Providing Child Care Services to an Individual Who Is Participating in a Community Service Program.

61. This data element is not applicable for Tribes. If the Tribe's approved plan contains work activities not listed above, the total average hours for those activities should be reported in data element 62 "Other Work Activities".

62. Other Work Activities: Tribes should report total average hours for activities not elsewhere reported.

63. Required Hours of Work under Waiver Demonstration: Not applicable to Tribes. Leave blank.

64. Amount of Earned Income: Enter the dollar amount of the adult's (or minor child head-of-household's) earned income for the reporting month or for the month used to budget for the reporting month. Include wages, salaries, and other earned income in this item.

65. Amount of Unearned Income: Unearned income has five categories. For each category of unearned income, enter the dollar amount of the adult's (or minor child head-of-household's) unearned income for the reporting month or for the month used to budget for the reporting month.

a. Earned Income Tax Credit (EITC):

*Guidance:* Earned Income Tax Credit is a refundable Federal, State, or local tax credit for families and dependent children. EITC payments are received monthly (as advance payment through the employer), annually (as a refund from IRS), or both.

*Instruction:* Enter the total dollar amount of the Earned Income Tax Credit actually received, whether received as an advance payment or a single payment (e.g., tax refund), by the adult (or minor child head-of-household) during the reporting month or the month used to budget for the reporting month. If the State counts the EITC as a resource, report it here as unearned income in the month received (i.e., reporting month or budget month, whichever the State is using). If the State assumes an advance

payment is applied for and obtained, only report what is actually received for this item.

b. Social Security: Enter the dollar amount of Social Security benefits that the adult in the State (Tribal) TANF family has received for the reporting month or for the month used to budget for the reporting month.

c. SSI: Enter the dollar amount of SSI that the adult in the State (Tribal) TANF family has received for the reporting month or for the month used to budget for the reporting month.

d. Worker's Compensation: Enter the dollar amount of Worker's Compensation that the adult in the State (Tribal) TANF family has received for the reporting month or for the month used to budget for the reporting month.

e. Other Unearned Income:

*Guidance:* Other unearned income includes (but is not limited to) RSDI benefits, Veterans benefits, Unemployment Compensation, other government benefits, a housing subsidy, a contribution or income-in-kind, deemed income, Public Assistance or General Assistance, educational grants/scholarships/loans, and other. Do not include EITC, Social Security, SSI, Worker's Compensation, value of food stamp assistance, the amount of a Child Care subsidy, or the amount of Child Support.

*Instruction:* Enter the dollar amount of other unearned income that the adult in the State TANF family has received for the reporting month or for the month used to budget for the reporting month.

#### *Child Characteristics*

This section allows for coding the child characteristics for up to ten children in the TANF family. A minor child head-of-household should be coded as an adult, not as a child. The youngest child should be coded as the first child in the family, the second youngest child as the second child, and so on. If there are more than ten children in the TANF family, use the following order to identify the persons to be coded: (1) Children in the eligible family receiving assistance in order from youngest to oldest; (2) minor siblings of child in the eligible family receiving assistance from youngest to oldest; and (3) any other children.

66. Family Affiliation:

*Guidance:* This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

*Instruction:* Enter the one-digit code that shows the child's relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance.

Not in eligible family receiving assistance, but in the household

2=Parent of minor child in the eligible family receiving assistance.

3=Caretaker relative of minor child in the eligible family receiving assistance.

4=Minor sibling of child in the eligible family receiving assistance.

5=Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance.

67. Date of Birth: Enter the eight-digit code for date of birth for this child under the State (Tribal) TANF Program in the format YYYYMMDD. If the child's date of birth is unknown and the family affiliation code is not "1", enter the code "99999999".

68. Social Security Number: Enter the nine-digit Social Security Number for the child in the format nnnnnnnnn. Reporting of this data element is optional for individuals whose family affiliation code is 4. If the Social Security number is unknown and the family affiliation code is not "1", enter "999999999".

69. Race/Ethnicity:

*Instruction:* To allow for the multiplicity of race/ethnicity, please enter the one-digit code for each category of race and ethnicity of the TANF adult (or minor child head-of-household). Reporting of this data element is optional for individuals whose family affiliation code is 5.

Ethnicity:

a. Hispanic or Latino:

1=Yes, Hispanic or Latino.

2=No.

Race:

b. American Indian or Alaska Native:

1=Yes, American Indian or Alaska Native.

2=No.

c. Asian:

1=Yes, Asian.

2=No.

d. Black or African American:

1=Yes, Black or African American.

2=No.

e. Native Hawaiian or Other Pacific

Islander:

1=Yes, Native Hawaiian or Pacific Islander.

2=No.

f. White:

1=Yes, White.

2=No.

70. Gender: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) gender:

1=Male.

2=Female.

71. Receives Disability Benefits: The Act specifies five types of disability benefits. Two of these types of disability benefits are applicable to children. For each type of disability benefits, enter the one-digit code that indicates whether or not the child received the benefit.

a. Receives Benefits Based on Federal Disability Status under Non-Social Security Act Programs: These programs include Veteran's disability benefits, Worker's disability compensation, and Black Lung Disease disability benefits.

1=Yes, received benefits based on Federal disability status.

2=No.

b. Receives Supplemental Security Income under Title XVI—SSI of the Social Security Act:

1=Yes, received aid under Title XVI—SSI.

2=No.

72. Relationship to Head-of-Household:

*Guidance:* This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

*Instruction:* Enter the two-digit code that shows the child's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or as determined by the Tribe, (*i.e.*, the relationship to the principal person of each person living in the household. )

- 01=Head-of-household.
- 02=Spouse.
- 03=Parent.
- 04=Daughter or son.
- 05=Stepdaughter or stepson.
- 06=Grandchild or great grandchild.
- 07=Other related person (brother, niece, cousin).
- 08=Foster child.
- 09=Unrelated child.
- 10=Unrelated adult.

**73. Parent With Minor Child in the Family:**

*Guidance:* This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Code "1" is not applicable for children. A parent with a minor child in the family may be a natural parent, adoptive parent, or step-parent of a minor child in the family. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

*Instruction:* Enter the one-digit code that indicates the child's parental status.

1=Yes, a parent with a minor child in the family and used in two-parent participation rate.

2=Yes, a parent with a minor child in the family, but not used in two-parent participation rate.

3=No.

**74. Educational Level:** Enter the two-digit code to indicate the highest level of education attained by the child. Unknown is not an acceptable code for individuals whose family affiliation code is "1". Reporting of this data element is optional for individuals whose family affiliation code is 4.

01–11=Grade level completed in primary/secondary school including secondary level vocational school or adult high school.

12=High school diploma, GED, or National External Diploma Program.

13=Awarded Associate's Degree.

14=Awarded Bachelor's Degree.

15=Awarded graduate degree (Master's or higher).

16=Other credentials (degree, certificate, diploma, etc. ).

98=No formal education.

99=Unknown.

**75. Citizenship/Alienage:**

*Instruction:* Enter the one-digit code that indicates the child's citizenship/alienage. Unknown is not an acceptable code for an individual whose family affiliation code is "1". Reporting of this data element is optional for individuals whose family affiliation code is "4".

1=U. S. citizen, including naturalized citizens.

2=Qualified alien.

9=Unknown.

**76. Amount of Unearned Income:** Unearned income has two categories. For each category of unearned income, enter the dollar amount of the child's unearned income.

a. SSI: Enter the dollar amount of SSI that the child in the State (Tribal) TANF family has received for the reporting month or for the month used to budget for the reporting month.

b. Other Unearned Income: Enter the dollar amount of other unearned income that the child in the State (Tribal) TANF family has received for the reporting month or for the month used to budget for the reporting month.

**APPENDIX B.—TANF Disaggregated Data Collection for Families No Longer Receiving Assistance Under the TANF Program—Closed Cases**

*Instructions and Definitions*

*General Instruction:* The Tribal grantee should collect and report data for each data element. The data must be complete (unless explicitly instructed to leave the field blank) and accurate (*i.e.*, correct).

An "Unknown" code may appear only on four data elements (#15 Date of Birth, #16 Social Security Number, #24 Educational Level, and #25 Citizenship/Alienage). For these data elements, unknown is not an acceptable code for individuals who are members of the eligible family (*i.e.*, family affiliation code "1"). States are not expected to track closed cases in order to collect information on families for months after the family has left the rolls. Rather, States are to report based on the last month of assistance.

1. State FIPS Code: Tribal grantees should enter "00" or leave blank.

2. County FIPS Code: Tribal grantees should leave this field blank.

3. Tribal Code: For Tribal grantees, enter the three-digit Tribal code that represents your Tribe. See Appendix E of the TANF Sampling and Statistical Methods Manual for a complete listing of Tribal Codes. If there appears to be no code for your Tribe, immediately contact the Director, Division of Tribal Services, Office of Community Services. Newly formed consortiums must contact the Division to obtain a code. State agencies should leave this field blank.

4. Reporting Month: Enter the four-digit year and two-digit month code that identifies the year and month for which the data are being reported.

**5. Stratum:**

*Guidance:* If a Tribe opts to provide data for its entire caseload (*i.e.*, does not select a sample of cases to report on), the Tribe may use this data element for its own coding purposes as long as a two digit numerical code is specified.

*Instruction:* Enter any two-digit numerical code.

*Family-Level Data*

*Definition:* For reporting purposes, the TANF family means:

(a) All individuals receiving assistance as part of a family under the State's (Tribe's) TANF Program; and

(b) The following additional persons living in the household, if not included under (a) above:

(1) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(2) Minor siblings (including unborn children) of any child receiving assistance; and

(3) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

**6. Case Number—TANF:**

*Guidance:* If the case number is less than the allowable eleven characters, a State may use lead zeros to fill in the number.

*Instruction:* Enter the number that was assigned by the State agency or Tribal grantee to uniquely identify the TANF family.

7. ZIP Code: Enter the five-digit ZIP code for the family's place of residence for the reporting month.

**8. Disposition:**

*Guidance:* If a Tribe opts to report on its entire caseload, the only applicable code for the Tribe is "1".

*Instructions:* Enter code "1".

**9. Reason for Closure:**

*Guidance:* A closed case is a family whose assistance was terminated for the reporting month, but received assistance under the State's TANF Program in the prior month. A temporarily suspended case is not a closed case. If there is more than one applicable reason for closure, determine the principal (*i.e.*, most relevant) reason. If two or more reasons are equally relevant, use the reason with the lowest numeric code. For example, when an adult marries, the income and resources of the new spouse are considered in determining eligibility. If, at the time of the marriage, the family becomes ineligible because of the addition of the spouse's income and/or resources, the case closure should be coded using code "2".

If the family did not become ineligible based on the income and resources at the time of the marriage, but rather due to an increase in earnings subsequent to the marriage, then the case closure should be coded using code "1".

*Instruction:* Enter the two-digit code that indicates the reason for the TANF family no longer receiving assistance.

01=Employment and/or excess earnings.

02=Marriage.

03=Not applicable to Tribes.

**Sanctions:**

04=Work-related sanction.

05=Child support sanction.

06=Teen parent failing to meet school attendance requirement.

07=Teen parent failing to live in an adult setting.

08=Failure to finalize an individual responsibility plan (*e.g.*, did not sign plan).

09=Failure to meet individual responsibility plan provision or other behavioral requirements (*e.g.*, immunize a minor child, attend parenting classes).

**State (Tribal) Policies:**

10=Tribal time limit reached.

11=Child support collected.

12=Excess unearned income (exclusive of child support collected).

13=Excess resources.

14=Youngest child too old to qualify for assistance.

15=Minor child absent from the home for a significant time period.

16=Failure to appear at eligibility/redetermination appointment, submit

required verification materials, and/or cooperate with eligibility requirements.

17=For Tribes, transfer to a State program, another program of the reporting Tribe or another Tribe's TANF program.

Other.

18=Family voluntarily closes the case.

99=Other.

10. Received Subsidized Housing:

*Guidance:* Subsidized housing refers to housing for which money was paid by the Federal, State, Tribal, or local government or through a private social service agency to the family or to the owner of the housing to assist the family in paying rent. Two families sharing living expenses does not constitute subsidized housing.

*Instruction:* Enter the one-digit code that indicates whether or not the TANF family received subsidized housing for the reporting month (or for the last month of TANF assistance).

1=Public housing.

2=Rent subsidy.

3=No housing subsidy.

11. Received Medical Assistance: Enter "1" if, for the reporting month (or for the last month of TANF assistance), any TANF family member was enrolled in Medicaid and, thus eligible to receive medical assistance under the State plan approved under Title XIX or "2" if no TANF family member was enrolled in Medicaid.

1=Yes, enrolled in Medicaid.

2=No.

12. Received Food Stamps: Enter the one-digit code that indicates whether or not the TANF family received food stamp assistance for the reporting month (or for the last month of TANF assistance).

1=Yes, received food stamp assistance.

2=No.

13. Received Subsidized Child Care:

*Instruction:* If the TANF family received subsidized child care for services in the reporting month (or for the last month of TANF assistance), enter code "1" or "2", whichever is appropriate. Otherwise, enter code "3".

1=Yes, received federally funded (entirely or in part) child care (e.g., receives either TANF, CCDF, SSBG, or other federally funded child care).

2=Yes, received child care funded entirely under a State, Tribal, and/or local program (i.e., no Federal funds used).

3=No.

#### Person-Level Data

This section allows for coding up to sixteen persons in the TANF family. If there are more than sixteen persons in the TANF family, use the following order to identify the persons to be coded:

- (1) the head-of-household;
- (2) parents in the eligible family receiving assistance;
- (3) children in the eligible family receiving assistance;
- (4) other adults in the eligible family receiving assistance;
- (5) parents not in the eligible family receiving assistance;
- (6) caretaker relatives not in the eligible family receiving assistance;
- (7) minor siblings of a child in the eligible family; and

(8) other persons, whose income or resources count in determining eligibility for or amount of assistance of the eligible family receiving assistance, in descending order from the person with the most income to the person with the least income (resources if no income).

As indicated below, reporting for certain specified data elements in this section is optional for certain individuals (whose family affiliation code is a 2, 3, 4, or 5).

14. Family Affiliation:

*Instruction:* Enter the one-digit code that shows the individual's relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance. Not in eligible family receiving assistance, but in the household:

2=Parent of minor child in the eligible family receiving assistance.

3=Caretaker relative of minor child in the eligible family receiving assistance.

4=Minor sibling of child in the eligible family receiving assistance.

5=Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance.

15. Date of Birth: Enter the eight-digit code for date of birth for this individual under TANF in the format YYYYMMDD. If the individual's date of birth is unknown and the individual's family affiliation code is not "1," enter the code "99999999".

16. Social Security Number: Enter the nine-digit Social Security Number for the individual in the format nnnnnnnnn. If the social security number is unknown and the individual's family affiliation code is not "1," enter "999999999".

17. Race/Ethnicity: Instructions: To allow for the multiplicity of race/ethnicity, please enter the one-digit code for each category of race and ethnicity of the TANF individual. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

Ethnicity:

a. Hispanic or Latino:

1=Yes, Hispanic or Latino.

2=No.

Race:

b. American Indian or Alaska Native:

1=Yes, American Indian or Alaska Native.

2=No.

c. Asian:

1=Yes, Asian.

2=No.

d. Black or African American:

1=Yes, Black or African American.

2=No.

f. Native Hawaiian or Other Pacific Islander:

1=Yes, Native Hawaiian or Pacific Islander.

2=No.

g. White:

1=Yes, White.

2=No.

18. Gender: Enter the one-digit code that indicates the individual's gender.

1=Male.

2=Female.

19. Received Disability Benefits:

*Instructions:* The Act specifies five types of disability benefits. For each type of disability benefits, enter the one-digit code that

indicates whether or not the individual received the benefit.

a. Received Federal Disability Insurance Benefits Under the Social Security OASDI Program (Title II of the Social Security Act):

Enter the one-digit code that indicates the adult received Federal disability insurance benefits for the reporting month (or the last month of TANF assistance). This item is not required to be coded for a child.

1=Yes, received Federal disability insurance.

2=No.

b. Receives Benefits Based on Federal Disability Status under Non-Social Security Act Programs: These programs include Veteran's disability benefits, Worker's disability compensation, and Black Lung Disease disability benefits. Enter the one-digit code that indicates the individual received benefits based on Federal disability status for the reporting month (or the last month of TANF assistance). This data element should be coded for each adult and child with family affiliation code "1".

1=Yes, received benefits based on Federal disability status.

2=No.

c. Received Aid to the Permanently and Totally Disabled Under Title XIV-APDT of the Social Security Act: Enter the one-digit code that indicates the adult received aid under a State plan approved under Title XIV for the reporting month (or the last month of TANF assistance). This item is not required to be coded for a child.

1=Yes, received aid under Title XIV-APDT.

2=No.

d. Received Aid to the Aged, Blind, and Disabled Under Title XVI-AABD of the Social Security Act: Enter the one-digit code that indicates the adult received aid under a State plan approved under Title XVI-AABD for the reporting month (or the last month of TANF assistance). This item is not required to be coded for a child.

1=Yes, received aid under Title XVI-AABD.

2=No.

e. Received Supplemental Security Income Under Title XVI-SSI of the Social Security Act: Enter the one-digit code that indicates the individual received aid under a State plan approved under Title XVI-SSI for the reporting month (or the last month of TANF assistance). This data element should be coded for each adult and child with family affiliation code "1".

1=Yes, received aid under Title XVI-SSI.

2=No.

20. Marital Status: Enter the one-digit code for the marital status of the adult recipient. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

1=Single, never married.

2=Married, living together.

3=Married, but separated.

4=Widowed.

5=Divorced.

21. Relationship to Head-of-Household:

*Instruction:* Enter the two-digit code that shows the individual's relationship (including by marriage) to the head of the household, as defined by the Food Stamp

Program or as determined by the State (Tribe), (*i.e.*, the relationship to the principal person of each person living in the household.) If a minor child head-of-household, enter code "01".

01=Head-of-household.

02=Spouse.

03=Parent.

04=Daughter or son.

05=Stepdaughter or stepson.

06=Grandchild or great grandchild.

07=Other related person (brother, niece, cousin).

08=Foster child.

09=Unrelated child.

10=Unrelated adult.

22. Parent With Minor Child in the Family: *Guidance:* A parent with a minor child in the family may be a natural parent, adoptive parent, or step-parent of a minor child in the family. Reporting of this data element is optional for individuals whose family affiliation code is 3, 4, or 5.

*Instruction:* Enter the one-digit code that indicates the individual's parental status.

1=Yes, a parent with a minor child in the family.

2=No.

23. Needs of a Pregnant Woman: Some States (Tribes) consider the needs of a pregnant woman in determining the amount of assistance that the TANF family receives. If the individual was pregnant and the needs associated with this pregnancy were considered in determining the amount of assistance for the last month of TANF assistance, enter a "1" for this data element. Otherwise enter a "2" for this data element. This data element is applicable only for individuals whose family affiliation code is 1.

1=Yes, additional needs associated with pregnancy were considered in determining the amount of assistance.

2=No.

24. Educational Level: Enter the two-digit code to indicate the highest level of education attained by the individual. Unknown is not an acceptable code for individuals whose family affiliation code is "1". Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

01–11=Grade level completed in primary/secondary school including secondary level vocational school or adult high school.

12=High school diploma, GED, or National External Diploma Program.

13=Awarded Associate's Degree.

14=Awarded Bachelor's Degree.

15=Awarded graduate degree (Master's or higher).

16=Other credentials (degree, certificate, diploma, etc.).

98=No formal education.

99=Unknown.

25. Citizenship/Alienage:

*Instruction:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) citizenship/alienage. Unknown is not an acceptable code for an individual whose family affiliation code is "1". Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

1=U. S. citizen, including naturalized citizens.

2=Qualified alien.

9=Unknown.

26. Number of Months Countable toward Tribal Time Limit: Enter the number of months countable toward the adult's (or minor child head-of-household's) Tribal time limit based on assistance received from (1) the Tribe and (2) from other Tribes or from States. Reporting of this data element is optional for individuals whose family affiliation code is 2, 3, 4, or 5.

27. Number of Countable Months Remaining Under Tribe's Time Limit: Enter the number of months that remain countable toward the adult's (or minor child head-of-household's) Tribal time limit. Reporting of this data element is optional for individuals whose family affiliation code is 2, 3, 4, or 5.

28. Employment Status: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) employment status. Leave this field blank for other minor children. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

1=Employed.

2=Unemployed, looking for work.

3=Not in labor force (*i.e.*, unemployed and not looking for work, includes discouraged workers).

29. Amount of Earned Income: Enter the amount of the adult's (or minor child head-of-household's) earned income for the last month on assistance or for the month used to budget for the last month on assistance.

30. Amount of Unearned Income: Enter the dollar amount of the individual's unearned income for the last month on assistance or for the month used to budget for the last month on assistance.

### Appendix C—TANF Aggregated Data Collection for Families Applying for, Receiving, and No Longer Receiving Assistance Under the TANF Program

#### Instructions and Definitions

*General Instruction:* The State agency or Tribal grantee is to collect and report data for each data element, unless explicitly instructed to leave the field blank. Monthly caseload counts (*e.g.*, number of families, number of two-parent families, and number of closed cases) and number of recipients must be unduplicated monthly totals. States and Tribal grantees may use samples to estimate the monthly totals only for data elements #4, #5, #6, #15, #16, and #17.

1. State FIPS Code: Tribal grantees should enter "00" or leave blank.

2. Tribal Code: For Tribal grantees only, enter the three-digit Tribal code that represents your Tribe. See Appendix E of the TANF Sampling and Statistical Methods Manual for a complete listing of Tribal Codes. If there appears to be no code for your Tribe, immediately contact the Director, Division of Tribal Services, Office of Community Services. Newly formed consortiums must contact the Division to obtain a code. State agencies should leave this field blank.

3. Calendar Quarter: The four calendar quarters are as follows:

1=First quarter—January–March.

2=Second quarter—April–June.

3=Third quarter—July–September.

4=Fourth quarter—October–December.

Enter the four-digit year and one-digit quarter code (in the format YYYYQ) that identifies the calendar year and quarter for which the data are being reported (*e.g.*, first quarter of 1997 is entered as "19971").

#### Applications

*Guidance:* The term "application" means the action by which an individual indicates in writing to the agency administering the State (or Tribal) TANF Program his/her desire to receive assistance.

*Instruction:* All counts of applications should be unduplicated monthly totals.

4. Total Number of Applications: Enter the total number of approved and denied applications received for each month of the quarter. For each month in the quarter, the total in this item should equal the sum of the number of approved applications (in item #5) and the number of denied applications (in item #6). The monthly totals for this element may be estimated from samples.

A. First Month:

B. Second Month:

C. Third Month:

5. Total Number of Approved Applications: Enter the number of applications approved during each month of the quarter. The monthly totals for this element may be estimated from samples.

A. First Month:

B. Second Month:

C. Third Month:

6. Total Number of Denied Applications: Enter the number of applications denied (or otherwise disposed of) during each month of the quarter. The monthly totals for this element may be estimated from samples.

A. First Month:

B. Second Month:

C. Third Month:

#### Active Cases

For purposes of completing this report, include all TANF eligible cases receiving assistance (*i.e.*, cases funded under the TANF block grant) as cases receiving assistance under the Tribal TANF Program. All counts of families and recipients should be unduplicated monthly totals.

7. Total Amount of Assistance: Enter the dollar value of all assistance (cash and non-cash) provided to TANF families under the State (Tribal) TANF Program for each month of the quarter. Round the amount of assistance to the nearest dollar.

A. First Month:

B. Second Month:

C. Third Month:

8. Total Number of Families: Enter the number of families receiving assistance under the State (Tribal) TANF Program for each month of the quarter. The total in this item should equal the sum of the number of two-parent families (in item #9), the number of one-parent families (in item #10) and the number of no-parent families (in item #11).

A. First Month:

B. Second Month:

C. Third Month:

9. Total Number of Two-parent Families: Enter the total number of 2-parent families receiving assistance under the State (Tribal) TANF Program for each month of the quarter.

- A. First Month:  
B. Second Month:  
C. Third Month:
10. Total Number of One-Parent Families:  
Enter the total number of one-parent families receiving assistance under the State (Tribal) TANF Program for each month of the quarter.  
A. First Month:  
B. Second Month:  
C. Third Month:
11. Total Number of No-Parent Families:  
Enter the total number of no-parent families receiving assistance under the State (Tribal) TANF Program for each month of the quarter.  
A. First Month:  
B. Second Month:  
C. Third Month:
12. Total Number of Recipients: Enter the total number of recipients receiving assistance under the State (Tribal) TANF Program for each month of the quarter. The total in this item should equal the sum of the number of adult recipients (in item #13) and the number of child recipients (in item #14).  
A. First Month:  
B. Second Month:  
C. Third Month:
13. Total Number of Adult Recipients:  
Enter the total number of adult recipients receiving assistance under the State (Tribal) TANF Program for each month of the quarter.  
A. First Month:  
B. Second Month:  
C. Third Month:
14. Total Number of Child Recipients:  
Enter the total number of child recipients receiving assistance under the State (Tribal) TANF Program for each month of the quarter.  
A. First Month:  
B. Second Month:  
C. Third Month:
15. Total Number of Noncustodial Parents Participating in Work Activities: Enter the total number of noncustodial parents participating in work activities (even if not receiving assistance) under the State (Tribal) TANF Program for each month of the quarter. The monthly totals for this element may be estimated from samples.  
A. First Month:  
B. Second Month:  
C. Third Month:
16. Total Number of Births: Enter the total number of births in families receiving assistance under the State (Tribal) TANF Program for each month of the quarter. The monthly totals for this element may be estimated from samples.  
A. First Month:  
B. Second Month:  
C. Third Month:
17. Total Number of Out-of-Wedlock Births: Enter the total number of out-of-wedlock births in families receiving assistance under the State (Tribal) TANF Program for each month of the quarter. The monthly totals for this element may be estimated from samples. Tribes should report this data based on their historical cultural interpretation of out-of-wedlock.  
A. First Month:  
B. Second Month:  
C. Third Month:

#### Closed Cases

18. Total Number of Closed Cases: Enter the total number of closed cases for each month of the quarter.  
A. First Month:  
B. Second Month:  
C. Third Month:

### PART 287—THE NATIVE EMPLOYMENT WORKS (NEW) PROGRAM

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Sec.

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Authority: 42 U.S.C. 612.

#### Subpart A—General NEW Provisions

##### § 287.1 What does this part cover?

(a) The regulations in this part prescribe the rules for implementing section 412(a)(2) of the Social Security Act (the Act), as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub. L. 104–193) and the Balanced Budget Act of 1997 (Pub. L. 105–33).

(b) Section 412(a)(2) of the Act, as amended, authorizes the Secretary to issue grants to eligible Indian tribes to operate a program that makes work activities available to “such population and such service area or areas as the tribe specifies.”

(c) We call this Tribal work activities program the Native Employment Works (NEW) program.

(d) These regulations specify the Tribes who are eligible to receive NEW Program funding. They also prescribe requirements for: funding; program plan development and approval; program design and operation; and data collection and reporting.

##### § 287.5 What is the purpose and scope of the NEW Program?

The purpose of the NEW Program is to provide eligible Indian tribes, including Alaska Native organizations,

the opportunity to provide work activities and services to their needy clients.

**§ 287.10 What definitions apply to this part?**

The following definitions apply to this part:

*ACF* means the Administration for Children and Families;

*Act* means the Social Security Act, unless we specify otherwise;

*Alaska Native organization* means an Alaska Native village, or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), that is eligible to operate a Federal program under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450);

*Consortium* means a group of Tribes working together for the same identified purpose and receiving combined NEW funding for that purpose.

*Department* means the Department of Health and Human Services;

*Division of Tribal Services (DTS)* means the unit in the Office of Community Services within the Department's Administration for Children and Families that has as its primary responsibility the administration of the Tribal family assistance program, called the Tribal Temporary Assistance for Needy Families (TANF) program, and the Tribal work program, called the Native Employment Works (NEW) program, as authorized by section 412(a);

*Eligible Indian tribe* means an Indian tribe, a consortium of Indian tribes, or an Alaska Native organization that operated a Tribal Job Opportunities and Basic Skills Training (JOBS) program in fiscal year 1995 under section 482(i) of the Act, as in effect during that fiscal year;

*Fiscal year* means the 12-month period beginning on October 1 of the preceding calendar year and ending on September 30;

*FY* means fiscal year;

*Indian, Indian tribe, and Tribal organization*—The terms Indian, Indian tribe, and Tribal organization have the meaning given such terms by section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b);

*Native Employment Works Program* means the Tribal work program under section 412(a)(2) of the Act;

*NEW* means the Native Employment Works Program;

*Program Year* means, for the NEW Program, the 12-month period beginning on July 1 of the calendar year and ending on June 30;

*PRWORA* means the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193;

*Public Law 102–477* refers to the Indian Employment, Training and Related Services Demonstration Act of 1992, whose purpose is to provide for the integration of employment, training and related services to improve the effectiveness of those services;

*Secretary* means the Secretary of the Department of Health and Human Services;

*State* means, except as otherwise specifically provided, the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa;

*TANF* means the Temporary Assistance for Needy Families Program;

*Temporary Assistance for Needy Families Program* means a family assistance grant program operated either by a Tribe under section 412(a)(1) of the Act or by a State under section 403 of the Act;

*Tribal TANF program* means a Tribal program subject to the requirements of section 412 of the Act which is funded by TANF funds on behalf of eligible families;

*We (and any other first person plural pronouns)* refers to The Secretary of Health and Human Services, or any of the following individuals or organizations acting in an official capacity on the Secretary's behalf: The Assistant Secretary for Children and Families, the Regional Administrators for Children and Families, the Department of Health and Human Services, and the Administration for Children and Families.

**Subpart B—Eligible Tribes**

**§ 287.15 Which Tribes are eligible to apply for NEW Program grants?**

To be considered for a NEW Program grant, a Tribe must be an “eligible Indian tribe.” An eligible Indian tribe is an Indian tribe or Alaska Native organization that operated a Job Opportunities and Basic Skills Training (JOBS) program in FY 1995.

**§ 287.20 May a Public Law 102–477 Tribe operate a NEW Program?**

Yes, if the Tribe is an “eligible Indian tribe.”

**§ 287.25 May Tribes form a consortium to operate a NEW Program?**

(a) Yes, as long as each Tribe forming the consortium is an “eligible Indian tribe.”

(b) To apply for and conduct a NEW Program, the consortium must submit a plan to ACF.

(c) The plan must include a copy of a resolution from each Tribe indicating its membership in the consortium and authorizing the consortium to act on its behalf in regard to administering a NEW Program. If an Alaska Native organization forms a consortium, submission of the required resolution from the governing board of the organization is sufficient to satisfy this requirement.

**§ 287.30 If an eligible consortium breaks up, what happens to the NEW Program grant?**

(a) If a consortium should break up or any Tribe withdraws from a consortium, it will be necessary to allocate unobligated funds and future grants among the Tribes that were members of the consortium, if each individual Tribe obtains ACF approval to continue to operate a NEW Program.

(b) Each withdrawing Tribe must submit to ACF a copy of the Tribal resolution that confirms the Tribe's decision to withdraw from the consortium and indicates whether the Tribe elects to continue its participation in the program.

(c) The allocation can be accomplished by any method that is recommended and agreed to by the leaders of those Tribes.

(d) If no recommendation is made by the Tribal leaders or no agreement is reached, the Secretary will determine the allocation of funds based on the best available data.

**Subpart C—NEW Program Funding**

**§ 287.35 What grant amounts are available under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) for the NEW Program?**

Each Tribe shall receive a grant in an amount equal to the amount received by the Tribe in FY 1994 under section 482(i) of the Act (as in effect during FY 1994).

**§ 287.40 Are there any matching funds requirements with the NEW Program?**

No, Tribal grantees are not required to match NEW Federal funds.

**§ 287.45 How can NEW Program funds be used?**

(a) NEW grants are for making work activities available to such population as the Tribe specifies.

(b) NEW funds may be used for work activities as defined by the Tribal grantee.

(c) Work activities may include supportive services necessary for assisting NEW Program participants in preparing for, obtaining, and/or retaining employment.

**§ 287.50 What are the funding periods for NEW Program grants?**

NEW Program funds are for operation of the NEW Program for a 12-month period from July 1 through June 30.

**§ 287.55 What time frames and guidelines apply regarding the obligation and liquidation periods for NEW Program funds?**

(a) NEW Program funds provided for a FY are for use during the period July 1 through June 30 and must be obligated no later than June 30. Carry forward of an unobligated balance of NEW funds is not permitted. A NEW fund balance that is unobligated as of June 30 will be returned to the Federal government through the issuance of a negative grant award. Unobligated funds are to be reported on the SF-269A that Tribes must submit within 30 days after the funding period, *i.e.*, no later than July 30. This report is called the interim financial report.

(b) A Tribe must liquidate all obligations incurred under the NEW Program grant awards not later than one year after the end of the obligation period, *i.e.*, no later than June 30 of the following FY. An unliquidated balance at the close of the liquidation period will be returned to the Federal government through the issuance of a negative grant award. Unliquidated obligations are to be reported on the SF-269A that Tribes must submit within 90 days after the liquidation period, *i.e.*, by September 28. This report is called the final financial report.

**§ 287.60 Are there additional financial reporting and auditing requirements?**

(a) The reporting of expenditures are generally subject to the requirements of 45 CFR 92.41.

(b) NEW Program funds and activities are subject to the audit requirement of the Single Audit Act of 1984 (45 CFR 92.26).

(c) A NEW Program grantee must comply with all laws, regulations, and Departmental policies that govern submission of financial reports by recipients of Federal grants.

(d) Improper expenditure claims under this program are subject to disallowance.

(e) If a grantee disagrees with the Agency's decision to disallow funds, the grantee may follow the appeal procedures at 45 CFR Part 16.

**§ 287.65 What OMB circulars apply to the NEW Program?**

NEW Programs are subject to the following OMB circulars where applicable: A-87 "Cost Principles for State, Local, and Indian Tribal Governments," A-122 "Cost Principles

for Non-Profit Organizations," and A-133 "Audits of States and Local Governments."

**Subpart D—Plan Requirements****§ 287.70 What are the plan requirements for the NEW Program?**

(a) To apply for and conduct a NEW Program, a Tribe must submit a plan to ACF.

(b) The plan must identify the agency responsible for administering the NEW Program and include a description of the following:

- (1) Population to be served;
- (2) Service area;
- (3) Client services;
- (4) Work activities to be provided;
- (5) Supportive and job retention services to be provided;
- (6) Anticipated program outcomes, and the measures the Tribe will use to determine them; and
- (7) Coordination activities conducted and expected to be conducted with other programs and agencies.

(c) The plan must also describe how the Tribe will deliver work activities and services.

(d) The format is left to the discretion of each NEW grantee.

**§ 287.75 When does the plan become effective?**

NEW plans, which are three-year plans, become effective when approved by the Secretary. The plans are usually operative the beginning of a NEW Program year, July 1.

**§ 287.80 What is the process for plan review and approval?**

(a) A Tribe must submit its plan to the ACF Regional Office, with a copy sent to the Division of Tribal Services, Office of Community Services, Administration for Children and Families, Attention: Native Employment Works Team.

(b) To receive funding by the beginning of the NEW Program year (July 1), a Tribe must submit its plan by the established due date.

(c) ACF will complete its review of the plan within 45 days of receipt.

(d) After the plan review has occurred, if the plan is approvable, ACF will approve the plan, certifying that the plan meets all necessary requirements. If the plan is not approvable, the Regional Office will notify the Tribe regarding additional action needed for plan approval.

**§ 287.85 How is a NEW plan amended?**

(a) If a Tribe makes substantial changes in its NEW Program plan or operations, it must submit an amendment for the changed section(s) of the plan to the appropriate ACF

Regional Office for review and approval, with a copy sent to the Division of Tribal Services, Office of Community Services, Administration of Children and Families, Attention: Native Employment Works Team. The review will verify consistency with section 412(a)(2) of the Act.

(b) A substantial change is a change in the agency administering the NEW Program, a change in the designated service area and/or population, a change in work activities provided or a change in performance standards.

(c) A substantial change in plan content or operations must be submitted to us no later than 45 days prior to the proposed implementation date.

(d) ACF will complete the review of the amended plan within 45 days of receipt.

(e) An amended plan becomes effective when it is approved by the Secretary.

**§ 287.90 Are Tribes required to complete any certifications?**

Yes. A Tribe must include in its NEW Program plan the following four certifications and any additional certifications that the Secretary prescribes in the planning guidance: Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions; Certification Regarding Drug Free Workplace Requirements for Grantees Other Than Individuals; Certification Regarding Tobacco Smoke, and Assurances—Non-Construction Programs.

**§ 287.95 May a Tribe operate both a NEW Program and a Tribal TANF program?**

Yes. However, the Tribe must adhere to statutory and regulatory requirements of the individual programs.

**§ 287.100 Must a Tribe that operates both NEW and Tribal TANF programs submit two separate plans?**

Yes. Separate plans are needed to reflect different program and plan requirements as specified in the statute and in plan guidance documents issued by the Secretary for each program.

**Subpart E—Program Design and Operations****§ 287.105 What provisions of the Social Security Act govern the NEW Program?**

NEW Programs are subject only to those requirements at section 412(a)(2) of the Act, as amended by PRWORA, titled "Grants for Indian Tribes that Received JOBS Funds."

**§ 287.110 Who is eligible to receive assistance or services under a Tribe's NEW Program?**

(a) A Tribe must specify in its NEW Program plan the population and service area to be served. In cases where a Tribe designates a service area for its NEW Program that is different from its Bureau of Indian Affairs (BIA) service area, an explanation must be provided.

(b) A Tribe must include eligibility criteria in its plan and establish internal operating procedures that clearly specify the criteria to be used to establish an individual's eligibility for NEW services. The eligibility criteria must be equitable.

**§ 287.115 When a NEW grantee serves TANF recipients, what coordination should take place with the Tribal or State TANF agency?**

The Tribe should coordinate with the Tribal or State TANF agency on:

- (a) Eligibility criteria for TANF recipients to receive NEW Program services;
- (b) Exchange of case file information;
- (c) Changes in client status that result in a loss of cash assistance, food stamps, Medicaid or other medical coverage;
- (d) Identification of work activities that may meet Tribal or State work participation requirements;
- (e) Resources available from the Tribal or State TANF agency to ensure efficient delivery of benefits to the designated service population;
- (f) Policy for exclusions from the TANF program (e.g., criteria for exemptions and sanctions);
- (g) Termination of TANF assistance when time limits become effective;
- (h) Use of contracts in delivery of TANF services;
- (i) Prevention of duplication of services to assure the maximum level of services is available to participants;
- (j) Procedures to ensure that costs of other program services for which welfare recipients are eligible are not shifted to the NEW Program; and
- (k) Reporting data for TANF quarterly and annual reports.

**§ 287.120 What work activities may be provided under the NEW Program?**

(a) The Tribe will determine what work activities are to be provided.

(b) Examples of allowable activities include, but are not limited to: Educational activities, alternative education, post secondary education, job readiness activity, job search, job skills training, training and employment activities, job development and placement, on-the-job training (OJT), employer work incentives related to OJT, community work experience, innovative approaches with the private

sector, pre/post employment services, job retention services, unsubsidized employment, subsidized public or private sector employment, community service programs, entrepreneurial training, management training, job creation activities, economic development leading to job creation, and traditional subsistence activities.

**§ 287.125 What supportive and job retention services may be provided under the NEW Program?**

The NEW Program grantee may provide, pay for or reimburse expenses for supportive services, including but not limited to transportation, child care, traditional or cultural work related services, and other work or family sufficiency related expenses that the Tribe determines are necessary to enable a client to participate in the program.

**§ 287.130 Can NEW Program activities include job market assessments, job creation and economic development activities?**

(a) A Tribe may conduct job market assessments within its NEW Program. These might include the following:

- (1) Consultation with the Tribe's economic development staff or leadership that oversees the economic and employment planning for the Tribe;
- (2) Consultation with any local employment and training program, Workforce Development Boards, One-Stop Centers, or planning agencies that have undertaken economic and employment studies for the area in which the Tribe resides;
- (3) Communication with any training, research, or educational agencies that have produced economic development plans for the area that may or may not include the Tribe; and
- (4) Coordination with any State or local governmental agency pursuing economic development options for the area.

(b) The Tribe's NEW Program may engage in activities and provide services to create jobs and economic opportunities for its participants. These services should be congruous with any available local job market assessments and may include the following:

- (1) Tribal Employment Rights Office (TERO) services;
- (2) Job creation projects and services;
- (3) Self-employment;
- (4) Self-initiated training that leads a client to improved job opportunities and employment;
- (5) Economic development projects that lead to jobs, improved employment opportunities, or self-sufficiency of program participants;
- (6) Surveys to collect information regarding client characteristics; and

(7) Any other development and job creation activities that enable Tribal members to increase their economic independence and reduce their need for benefit assistance and supportive services.

**§ 287.135 Are bonuses, rewards and stipends allowed for participants in the NEW Program?**

Bonuses, stipends, and performance awards are allowed. However, such allowances may be counted as income in determining eligibility for some TANF or other need-based programs.

**§ 287.140 With whom should the Tribe coordinate in the operation of its work activities and services?**

The administration of work activities and services provided under the NEW Program must ensure that appropriate coordination and cooperation is maintained with the following entities operating in the same service areas as the Tribe's NEW Program:

- (a) State, local and Tribal TANF agencies, and agencies operating employment and training programs;
- (b) Any other agency whose programs impact the service population of the NEW Program, including employment, training, placement, education, child care, and social programs.

**§ 287.145 What measures will be used to determine NEW Program outcomes?**

Each grantee must develop its own performance standards and measures to ensure accountability for its program results. A Tribe's program plan must identify planned program outcomes and the measures the Tribe will use to determine them. ACF will compare planned outcomes against outcomes reported in the Tribe's annual reports.

**Subpart F—Data Collection and Reporting Requirements****§ 287.150 Are there data collection requirements for Tribes that operate a NEW Program?**

(a) Yes, the Tribal agency or organization responsible for operation of a NEW Program must collect data and submit reports as specified by the Secretary.

(b) A NEW Program grantee must establish and maintain efficient and effective record-keeping systems to provide accurate and timely information regarding its service population.

(c) Required reports will provide Tribes, the Secretary, Congress, and other interested parties with information to assess the success of the NEW Program in meeting its goals. Also, the reports will provide the Secretary with information for monitoring program and financial operations.

**§ 287.155 What reports must a grantee file with the Department about its NEW Program operations?**

(a) Each eligible Tribe must submit an annual report that provides a summary of program operations.

(b) The Secretary has developed an annual operations report (OMB clearance number 0970-0174). The report specifies the data elements on which grantees must report, including elements that provide information regarding the number and characteristics of those served by the NEW Program. This report is in addition to any financial reports required by law, regulations, or Departmental policies.

(c) The report form and instructions are distributed through ACF's program instruction system.

(d) The program operations report will be due September 28th, 90 days after the close of the NEW Program year.

**§ 287.160 What reports must a grantee file regarding financial operations?**

(a) Grantees will use SF-269A to make an annual financial report of expenditures for program activities and services.

(b) Two annual financial reports will be due to the appropriate Regional Office. The interim SF-269A is due no later than July 30, *i.e.*, 30 days after the end of the obligation period. The final SF-269A is due 90 days after the end of the liquidation period.

**§ 287.165 What are the data collection and reporting requirements for Public Law 102-477 Tribes that consolidate a NEW Program with other programs?**

(a) Currently, there is a single reporting system for all programs operated by a Tribe under Public Law 102-477. This system includes a program report, consisting of a narrative report, a statistical form, and a financial report.

(1) The program report is required annually and submitted to BIA, as the lead Federal agency and shared with DHHS and DOL.

(2) The financial report is submitted on a SF-269A to BIA.

(b) Information regarding program and financial operations of a NEW Program administered by a Public Law 102-477 Tribe will be captured through the existing Public Law 102-477 reporting system.

**§ 287.170 What are the data collection and reporting requirements for a Tribe that operates both the NEW Program and a Tribal TANF program?**

Tribes operating both NEW and Tribal TANF programs must adhere to the separate reporting requirements for each program. NEW Program reporting requirements are specified in §§ 287.150-287.170.

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