Office of Family Assistance, ACF, HHS

§ 233.100 Dependent children of unemployed parents.

(a) Requirements for State Plans. If a State wishes to provide AFDC for children of unemployed parents, the State plan under title IV-A of the Social Security Act must:

(1) Include a definition of an unemployed parent who is the principal earner which shall apply only to families determined to be needy in accordance with the provisions in §233.20. Such definition must include any such parent who:

(i) Is employed less than 100 hours a month; or

(ii) Exceeds that standard for a particular month, if the work is intermittent and the excess is of a temporary nature as evidenced by the fact that he or she was under the 100-hour standard for the prior 2 months and is expected to be under the standard during the next month; except that at the option of the State, such definition need not include a principal earner who is unemployed because of participation in a labor dispute (other than a strike) or by reason of conduct or circumstances which result or would result in disqualification for unemployment compensation under the State’s unemployment compensation law.

(2) Include a definition of a dependent child which shall include any child of an unemployed parent (as defined by the State pursuant to paragraph (a)(1) of this section) who would be, except for the fact that his parent is not dead,
absent from the home, or incapacitated, a dependent child under the State’s plan approved under section 402 of the Act.

(3) Provide for payment of aid with respect to any dependent child (as defined by the State pursuant to paragraphs (a)(2) of this section) when the conditions set forth in paragraphs (a)(3) (i), (ii), (iii), and (vii) of this section are met:

(i) His or her parent who is the principal earner has been unemployed for at least 30 days prior to the receipt of such aid.

(ii) Such parent has not without good cause, within such 30-day period prior to the receipt of such aid, refused a bona fide offer of employment or training for employment. Before it is determined that such parent has refused a bona fide offer of employment or training for employment without good cause, the agency must make a determination that such an offer was actually made. (In the case of offers of employment made through the public employment or manpower agencies, the determination as to whether the offer was bona fide, or whether there was good cause to refuse it, will be made by that office or agency.) The parent must be given an opportunity to explain why such offer was not accepted. Questions with respect to the following factors must be resolved:

(a) That there was a definite offer of employment at wages meeting any applicable minimum wage requirements and which are customary for such work in the community;

(b) Any questions as to the parent’s inability to engage in such employment for physical reasons or because he has no way to get to or from the particular job; and

(c) Any questions of working conditions, such as risks to health, safety, or lack of worker’s compensation protection.

(iii) Such parent (a) has six or more quarters of work (as defined in paragraph (a)(3)(iv) of this section), within any 13-calendar-quarter period ending within 1 year prior to the application for such aid, or (b) within such 1-year period, received unemployment compensation under an unemployment compensation law of a State or of the United States, or was qualified under the terms of paragraph (a)(3)(v) of this section for such compensation under the State’s unemployment compensation law.

(iv) A “quarter of work” with respect to any individual means a period (of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31) in which he or she received earned income of not less than $50 (or which is a “quarter of coverage” as defined in section 213(a)(2) of the Act), or in which he or she participated in a community work experience program under section 409 of the Act or the work incentive program established under title IV-C of the Act.

(v) An individual shall be deemed “qualified” for unemployment compensation under the State’s unemployment compensation law if he would have been eligible to receive such benefits upon filing application, or he performed work not covered by such law which, if it had been covered, would (together with any covered work he performed) have made him eligible to receive such benefits upon filing application.

(vi)(A) The “parent who is the principal earner” means, in the case of any child, whichever parent, in a home in which both parents of such child are living, earned the greater amount of income in the 24-month period the last month of which immediately precedes the month in which an application is filed for aid under this part on the basis of the unemployment of a parent. If the State cannot secure primary evidence of earnings for this period, the State shall designate the principal earner, using the best evidence available. The earnings of each parent are considered in determining the principal earner regardless of when their relationship began. The principal earner so defined remains the principal earner for each consecutive month for which the family receives such aid on the basis of such application. This requirement applies to both new applicants and current AFDC unemployed parent families who were eligible and receiving aid prior to October 1, 1981.

(B) If both parents earned an identical amount of income (or earned no income) in such 24-month period, the
State shall designate which parent shall be the principal earner.

(vii) The parent who is the principal earner (unless exempt under §240.14) has met the requirements for participation in an employment search program under part 240 of this chapter.

(4) Provide for entering into cooperative arrangements with the State agency responsible for administering or supervising the administration of vocational education to assure maximum utilization of available public vocational education services and facilities in the State to encourage the retraining of individuals capable of being retrained.

(5) Provide for the denial of such aid to any such dependent child or the relative specified in section 406(a)(1) of the Act with whom such child is living.

(i) If and for so long as such child’s parent, unless exempt under §224.20, is not currently registered for the work incentive program or if exempt under §224.20(b)(6), is not currently registered with a public employment office in the State, except that in a State with an approved JOBS plan under §250.20, such child’s parent, unless exempt under §250.30(b), must be currently participating (or available for participation) in a program under part 250, or, if he is exempt under §250.30(b)(5), must be registered with a public employment office in the State, and

(ii) With respect to any week for which such child’s parent qualifies for unemployment compensation under an unemployment compensation law of a State or of the United States, or was qualified (under the terms of paragraph (a)(3)(v) of this section) for such compensation under the State’s unemployment compensation law; and

(iii) If the parent who is the principal earner (unless exempt under §240.14) fails to meet the requirements for participation in a program of employment search established under part 240 of this chapter.

(6) Provide that within 30 days after the receipt of such aid, unemployed principal earners will be certified for participation in the Work Incentive program under part 224 or, if the State IV-A agency has an approved JOBS plan pursuant to §250.20, will participate or apply for participation in a program under part 250 unless the program is not available in the area where the parent is living.

(b) [Reserved]

(c) Federal financial participation. (1) Federal financial participation is available in payments authorized in accordance with the State plan approved under section 402 of the Act as aid to families with dependent children with respect to a child.

(i) Who meets the requirements of section 406(a)(2) of the Act;

(ii) Who is living with any of the relatives specified in section 406(a)(1) of the Act in a place of residence maintained by one or more of such relatives as his (or their) own home;

(iii) Who has been deprived of parental support or care by reason of the fact that his or her parent who is the principal earner is employed less than 100 hours a month; or exceeds that standard for a particular month if his or her work is intermittent and the excess is of a temporary nature as evidenced by the fact that he or she was under the 100-hour standard for 2 prior months and is expected to be under the standard during the next month.

(iv) Whose parent who is the principal earner (a) has six or more quarters of work (as defined in paragraph (a)(3)(iv) of this section) within any 13-calendar-quarter period ending within 1 year prior to the application for such aid, (b) within such 1-year period, received unemployment compensation under an unemployment compensation law of a State or of the United States, or was qualified (under the terms of paragraph (a)(3)(v) of this section) for such compensation under the State’s unemployment compensation law; and

(v) Whose parent who is the principal earner (a) is currently registered with the WIN program unless exempt or is registered with the public employment office in the State if exempt from WIN registration under §224.20(b)(6) or because there is no WIN program in which he can effectively participate; and (b) has not refused to apply for or accept unemployment compensation with respect to any week for which such child’s parent qualifies for unemployment compensation under an unemployment compensation law of a State or of the United States.
(2) The State may not include in its claim for Federal financial participation payments made as aid under the plan with respect to a child who meets the conditions set forth in paragraph (c)(1) of this section, where such payments were made.

(i) For any part of the 30-day period specified in paragraph (a)(3)(i) of this section;

(ii) For such 30-day period if during that period the parent refused without good cause a bona fide offer of employment or training for employment;

(iii) For any period beginning with the 31st day after receipt of aid, if and for as long as no action is taken during the period to certify the parent for participation in the Work Incentive program under part 224, or if the State IV-A agency has an approved JOBS plan pursuant to §250.20, no action is taken during the period to undertake appropriate steps directed toward the participation of such parent in a program under part 250; and

(iv) For any part of the sanction period imposed under §240.22 (for failure to meet the requirements for participation in the employment search program).

(d) For all States (other than Puerto Rico, American Samoa, Guam, and the Virgin Islands) the provisions of this section are suspended through September 30, 1998. For Puerto Rico, American Samoa, Guam, and the Virgin Islands, the provisions of this section are suspended from October 1, 1992, through September 30, 1998.

§ 233.101 Dependent children of unemployed parents.

(a) Requirements for State Plans. Effective October 1, 1990 (for Puerto Rico, American Samoa, Guam, and the Virgin Islands, October 1, 1992), a State plan must provide for payment of AFDC for children of unemployed parents.

1. Include a definition of an unemployed parent who is the principal earner which shall apply only to families determined to be needy in accordance with the provisions in §233.20 of this part. Such definition must have a reasonable standard for measuring unemployment and, at a minimum, include any such parent who:

   (i) Is employed less than 100 hours a month; or

   (ii) Exceeds that standard for a particular month, if the work is intermittent and the excess is of a temporary nature as evidenced by the fact that he or she was under the 100-hour standard for the prior 2 months and is expected to be under the standard during the next month; except that at the option of the State, such definition need not include a principal earner who is unemployed because of participation in a labor dispute (other than a strike) or by reason of conduct or circumstances which result or would result in disqualification for unemployment compensation under the State’s unemployment compensation law.

2. Include a definition of a dependent child which shall include any child of an unemployed parent (as defined by the State pursuant to paragraph (a)(1) of this section) who would be, except for the fact that his parent is not dead, absent from the home, or incapacitated, a dependent child under the State’s plan approved under section 402 of the Act.

3. Provide for payment of aid with respect to any dependent child (as defined by the State pursuant to paragraph (a)(2) of this section) when the conditions set forth in paragraphs (a)(3)(i), (a)(3)(ii), and (a)(3)(iii) of this section are met.

   (i) His or her parent who is the principal earner has been unemployed for at least 30 days prior to the receipt of such aid;

   (ii) Such parent has not without good cause, within such 30-day period prior to the receipt of such aid, refused a bona fide offer of employment or training for employment. Before it is determined that such parent has refused a bona fide offer of employment or training for employment without good cause, the agency must make a determination that such offer was actually