

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 270

RIN 0970-AB66

Bonus to Reward States for High Performance

AGENCY: Administration for Children and Families, HHS.

ACTION: Proposed rule.

SUMMARY: The Administration for Children and Families (ACF) is proposing both work and non-work measures and a funds allocation formula for awarding bonuses in FY 2002 and beyond to high performing States under the Temporary Assistance for Needy Families Block Grant (TANF program). We are proposing to award bonuses based on four work measures (substantially the same work measures currently in effect for the FY 1999 and FY 2000 awards) and three non-work measures. These are: One measure on family formation and family stability (increase in the number of children below 200 percent of poverty who reside in married couple families); and two measures that support work and self-sufficiency, i.e., participation by low-income working families in the Food Stamp Program and participation in the Medicaid and Children's Health Insurance Programs.

We are inviting public comment on both the proposed provisions and on the development and use of additional measures, data sources, and other provisions. Bonus funds of up to \$200 million each year are authorized for awards in fiscal years 1999 through 2003. The amount awarded to each high performing State may not exceed five percent of the State's family assistance grant. Earlier, we issued program guidance covering bonus awards in FY 1999 and FY 2000. Guidance will also be issued for the FY 2001 bonus awards.

DATE: You must submit comments by February 4, 2000.

ADDRESSES: You may mail comments to the Administration for Children and Families, Office of Planning, Research and Evaluation, 7th Floor West, 370 L'Enfant Promenade, SW, Washington, DC 20447. You may also transmit written comments electronically via the Internet. To transmit comments electronically, or download an electronic version of the proposed rule, you should access the ACF Welfare Reform Home Page at <http://www.acf.dhhs.gov/news/welfare/> and

follow any instructions provided. You may also hand-deliver comments at the street address below.

We will make all comments available for public inspection at the Office of Planning, Research and Evaluation, 7th Floor West, 901 D Street, SW, Washington, DC 20447, from Monday through Friday between the hours of 9 a.m. and 4 p.m. EST. (This is the street address, as opposed to the mailing address above.)

We will only accept written comments. In addition, all your comments should:

- Be specific;
- Address only issues raised by the proposed rule, not the law itself;
- Where appropriate, propose alternatives;
- Explain reasons for any suggestions, objections, or recommended changes; and
- Where possible, reference the specific section of the proposed rule that you are addressing.

We will not acknowledge the individual comments we receive. However, we will review and consider all comments that are germane and are received during the comment period.

FOR FURTHER INFORMATION CONTACT: Sean Hurley, Director, Division of Data Collection and Analysis, Office of Planning, Research and Evaluation, ACF, at 202-401-9297.

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.

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I. Legislative and Regulatory Background

A. The Temporary Assistance for Needy Families Program

Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, established the Temporary Assistance for Needy Families (TANF) program at title IV-A of the Social Security Act (the Act). TANF is a block grant program designed to make dramatic reforms in the nation's welfare system. Its focus is on moving recipients into work and turning welfare into a program of temporary assistance, preventing and reducing the incidence of out-of-wedlock births, and promoting stable two-parent families. Other key features of TANF include provisions that emphasize program accountability through financial penalties and rewards for high performance.

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

The new TANF program went into effect on July 1, 1997, except in States that elected to submit a complete plan and implement the program at an earlier date. We published a Notice of Proposed Rulemaking (NPRM) to implement the work, penalties, and data collection provisions of the TANF program in the **Federal Register** on November 20, 1997 (62 FR 62124). A final TANF rule was published April 12, 1999 (64 FR 17720). We have also published a number of other related regulations, including rules covering annual reports of State child poverty rates in relation to the TANF program (NPRM published September 23, 1998 (63 FR 50837) and bonuses to reward decreases in illegitimacy (final rule published April 14, 1999 (64 FR 18484)).

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

- Welfare reform should 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 noncustodial 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 these problems.
- The Federal government should place more emphasis on program results.

Under section 401(a)(1) of the Act, States (and certain Indian tribes) have the authority to use Federal welfare funds "in any manner that is reasonably calculated to accomplish the purpose" of the new program. It provides them broad flexibility to set eligibility rules and decide what benefits are most appropriate. In short, it offers States an opportunity to try new, far-reaching changes that can respond more effectively to the needs of families within their own unique environments.

B. Summary of the Statutory Provisions Applicable to the High Performance Bonus

Section 403(a)(4) of the Act requires the Secretary to award bonuses to "high performing States." (Indian tribes are not eligible for these bonuses.) The term "high performing State" is defined in section 403(a)(4)(E) to mean those States that are most successful in achieving the goals and purposes of the TANF program as specified in section 401(a) of the Act. These goals and purposes are to—

- (1) Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- (2) End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- (3) Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
- (4) Encourage the formation and maintenance of two-parent families.

Section 403(a)(4)(B) specifies that the bonus award for a fiscal year will be based on a State's performance in the previous fiscal year and may not exceed five percent of the State's TANF grant.

The statute at section 403(a)(4)(C) requires the Department to develop a formula for measuring State performance. This formula must be developed in consultation with the National Governors' Association (NGA) and the American Public Welfare Association, now the American Public Human Services Association (APHSA).

Section 403(a)(4)(D) requires the Secretary to use the formula developed to assign a score to each eligible State for the fiscal year preceding the bonus year and prescribe a performance threshold as the basis for awarding the bonus. Section 403(a)(4)(D) also specifies that \$1 billion (or an average total of \$200 million each year) will be awarded over five years, beginning in FY 1999.

C. External Consultation

As we have done with all regulations related to the TANF program, we implemented a broad consultation strategy prior to drafting these proposed regulations. In addition, as required by section 403(a)(4)(C), we consulted intensively with representatives of the NGA and the APHSA on the development of provisions for awarding high performance bonus funds. We met with staff of these two national organizations as well as staff of the National Conference of State Legislatures (NCSL) and approximately 30 representatives of States who participated by conference call hookup on a regular basis over a period of approximately nine months.

We want to express our appreciation to these national organizations and to the representatives of their State members who provided expert information, analysis, and in-depth programmatic knowledge. We also appreciated the commitment they displayed and their willingness to approach these discussions in such a collegial manner.

We also consulted with a number of other audiences: Researchers, data experts, and academics; other Federal and non-Federal agencies which had developed or were in the process of developing performance measures for their programs; and representatives of a broad range of non-profit, advocacy, and community-based programs.

These consultations were very useful in helping us identify key issues, evaluate policy options, develop the program guidance that will be used to award bonuses in FY 1999 and FY 2000,

and formulate the proposals set forth in this NPRM. (The program guidance for the awards to be made in FY 1999 is found in TANF-ACF-PI-98-1 and TANF-ACF-PI-98-5; the guidance for the FY 2000 awards is found in TANF-ACF-PI-99-1, March 3, 1999.)

We would like to emphasize that we are publishing these regulations as a proposed rule. Thus, all interested parties have the opportunity to state their views and react to the specific policies we are proposing for awards in FY 2002 and FY 2003 (and any subsequent fiscal years for which Congress authorizes and appropriates funds). We will review all comments we receive during the comment period and take them into consideration before issuing a final rule.

D. Reader-Friendly Regulations

In its latest Document Drafting Handbook, the Office of the Federal Register supports the efforts of the National Partnership for Reinventing Government to encourage Federal agencies to produce more reader-friendly regulations and to use plain language in developing all new documents and regulations. In drafting this proposed rule, we have paid close attention to this guidance and tried to draft a rule that achieves these goals.

II. Background: Increasing Use of Performance Measurement

The TANF provisions for a high performance bonus and a bonus to reward a decrease in State illegitimacy ratios represent only two recent examples of Administration and Congressional efforts to increase accountability and reward performance among federally-funded programs. These bonus provisions also reflect a growing interest in and movement toward the use of performance measurement by both the public and the private sector. The list below includes examples of such efforts and initiatives that we reviewed as a part of the development of this NPRM. It also provides historical and substantive context for public review of the measures we have proposed in the NPRM.

A. Federal Activities

- The National Performance Review (now the National Partnership for Reinventing Government), under the leadership of the Vice President, has emphasized customer service standards, benchmarking against the best in the business, and rewarding outstanding results achieved by Federal agencies and offices.

- In May 1997, the National Partnership for Reinventing Government identified 31 "Reinvention Impact Centers" (now "High Impact Agencies") to implement identified improvements. It selected the Administration for Children and Families (ACF) as one of 19 agencies to achieve measurable goals by October 2000. ACF's performance is being measured against four "high impact goals."

- Congress enacted the Government Performance and Results Act of 1993 (GPRA) to create a comprehensive strategic planning and performance measurement system for the Federal government. Under this law, all Federal agencies must develop multi-year strategies, identify long-term goals and objectives, and prepare annual performance plans on a program-by-program basis. To the extent feasible, the levels of performance and specific indicators must be objective, quantifiable, measurable, and focused on outcomes and accomplishments rather than activities and processes.

- One of the early GPRA pilot programs, the Office of Child Support Enforcement (OCSE) in ACF, worked with States to reach consensus on national goals and objectives, and OCSE then negotiated voluntary performance agreements with each State specifying intended program outcomes for establishing paternities and obtaining child support orders and collections.

- In the Welfare Indicators Act of 1994, Congress required the Department to measure and report annually on indicators of welfare receipt in three Federal means-tested programs: AFDC, Supplemental Security Income (SSI), and the Food Stamp program. The purpose of the report is to provide the public with generally accepted data in order to evaluate the progress of reducing the rate and duration of welfare receipt.

- Congress included in the Balanced Budget Act of 1997, Pub. L. 105-33, a provision authorizing the Department of Labor to award performance bonuses in the Welfare-to-Work program. (See Notice of Welfare-to-Work performance bonus criteria, published November 23, 1998 (63 FR 64832).) This legislation specified that 50 percent of funds for job placement contracts be held until an individual has been on the job for at least six months.

- Since 1982, the Job Training Partnership Act program has required States and local service agencies to report data on client outcomes and has provided corresponding incentives and sanctions on the basis of that outcome data.

- "Healthy People 2000," initiated in 1985, represents an early effort by DHHS to develop a national prevention strategy for improving the health of the American people. This strategic plan defines broad goals and targeted objectives in 22 priority areas and involves a national consortium of nearly 300 national membership organizations, all State Health Departments, and others working to achieve these goals. The Department is currently developing the next ten-year plan, "Healthy People 2010." We expect the new plan to include 26 national objectives.

- The Federal Interagency Forum on Child and Family Statistics, formally established by Executive Order in April 1997, issues an annual data report, "America's Children: Key National Indicators of Well-Being," that uses Federal statistical data to monitor the well-being of the Nation's children. Twenty-five key indicators cover a wide range of conditions that impact children, including economic security, health, behavioral and social environment, and education.

- The Department is using Public Health Performance Partnerships as a new way of managing grant relationships with States for programs within the Substance Abuse and Mental Health Services Administration and the Centers for Disease Control and Prevention. These Partnerships will identify performance measures to clarify program goals and objectives and document specific performance. They offer States increased flexibility in program management but require an account of the results achieved.

- Child Trends, Inc., a private research organization, prepares an annual report entitled "Trends in the Well-Being of America's Children and Youth" for the DHHS Office of the Assistant Secretary for Planning and Evaluation.

B. Non-governmental Activities

Non-governmental groups are also providing leadership in highlighting policy and program issues and pressing for accountability and performance measurement. For example—

- A national foundation, the Annie E. Casey Foundation, has provided funds since 1985 to create an annual data book on child and family well-being that focuses on indicators of State-level performance. The "KIDS COUNT DATA BOOK" enables States and others to compare the status of ten indicators of child well-being. The Casey Foundation also issues "CITY KIDS COUNT," a data book on the well-being of children in large cities.

- The United Way of America has established a resource network to assist local United Ways in implementing systems for measuring local program performance.

- A citizen's group in Los Angeles publishes the mortality rates for patients of individual physicians.

- In Florida, a taxpayer's organization regularly reports measures of productivity and performance by State agencies.

- Case Western Reserve University's Center on Urban Poverty and Social Change compiles community data from roughly 20 sources into a publicly-accessible database for the Cleveland, Ohio area.

- The Citizen's League of Greater Cleveland publishes "Rating the Region," which compares that metropolitan area with 25 others on a variety of measures, from the strength of its business climate to the quality of its education system and government. (Citizens groups in Jacksonville, Pittsburgh, St. Louis, Seattle, and Philadelphia have also published regional comparisons.)

C. State and Local Governmental Activities

- In the late 1980s and early 1990s, some States took the lead in developing State benchmarks or measurement goals to guide public policy and public expenditures. The "Oregon Option" and "Minnesota Milestones" are examples of State-wide efforts that include executive and legislative involvement as well as extensive citizen input.

- An August 1997 National Governors' Association report found that 20 States were establishing performance standards for their entire workforce development systems.

- Some State and local governments are innovators in their efforts to manage based on performance. For example, Ohio counties can select various consolidation of funding and spending options. "Partnership counties," for example, operate under an agreement that provides incentive funds for performance measures such as exceeding the all family or the two-parent participation rate or decreasing out-of-wedlock births.

- Several States are contracting with private organizations to provide employment-related assistance and services, basing payment on performance.

- The Wisconsin Works (W-2) program has established performance benchmarks for local welfare agencies and allows outside contractors and non-profit organizations to compete for service contracts in those cases where

local agencies fail to meet performance goals. The W-2 program also provides funding incentives. Counties receive 80 percent of their annual budget on a cost reimbursement basis. The balance of the funds is placed in a statewide pool from which counties are rewarded based on performance, e.g., the number of persons entering full-time employment.

- A recent report from Mathematica Policy Research, Inc., details the Pennsylvania Department of Welfare's early experiences with implementing the "Community Solutions" initiative, a set of voluntary programs operated throughout the State to provide pre-and post-employment services to TANF recipients. This initiative is performance based; contractors receive payment based on the number of clients who achieve specific employment goals such as placement in full-time employment, placement in a job that offers medical benefits within six months of hire, and continuous employment for at least 12 months after placement.

III. Major Issues in Developing Performance Measures

In implementing the high performance bonus provision, we faced a significant challenge in developing a performance measurement system for the new TANF program. Although there is considerable activity in this area in both the public and private sector, performance measurement is a field in the early stages of development. Currently, no single, agreed-upon approach for measuring performance exists. In addition, in relation to measuring performance in the TANF program, we identified a number of difficult and inter-related questions and issues. We have listed many of the major issues below and invite comment on how we have addressed them in the proposed rule.

A. General Approach

What is the purpose of the bonus award? What outcomes should we be trying to influence through performance bonuses? Should we reward accomplishment (comparing one State with another) or improvement (comparing one State with its own previous record) or both? Does the bonus represent only a reward for State achievement or does it also represent an incentive to other States for improved performance? Should we focus on awards for innovation and creativity? Should the system reward only a few States or a larger number of States?

B. Short-term vs Long-term Strategies

Should we approach our task with the idea of developing interim measures for the short-term and working on more rigorous (e.g., more refined, sophisticated, or specific) measures over time as we learn more about the nature of State TANF programs, as better data become available, and as we get more experience with the high performance bonus award process itself? Should we award \$200 million each year in bonuses or award less money in the initial years, rolling unused funds into increased awards in the out-years?

C. Formula and Distribution Issues

Should we develop a single, composite formula for awarding bonuses, or several formulae? Should the formula be designed to include several categories of performance? Should States be allowed to choose the categories in which they wish to compete? Should the formula include a pre-determined standard of performance with bonuses being awarded only if the State exceeds the standard? How can we avoid unintended effects or perverse consequences of a particular formula design? Should funds be divided equally among the measures? Since a State cannot receive a bonus greater than five percent of its Family Assistance Grant, how should funds be re-distributed if a State's award exceeds this amount? For what purposes may a State use bonus award funds?

D. Measures

What specific measures should we use? Should the measures address each of the goals in section 401 of the Act? If not, which goals should receive priority? Should we identify a broad set of measures or focus on a more limited set of key measures? Should we focus primarily on work-related measures—a major goal of TANF? Should individual measures be tied to the TANF population only or to the entire State population? Should the measures be quantifiable or should some measures be qualitative, e.g., patterned after the Baldrige Awards with a panel of judges selected from a mix of national organizations and looking at such criteria as leadership, collaboration, worker-client relationships, customer satisfaction? Should we propose a set of core measures against which all States would compete and a set of optional measures against which States could choose to compete? Should there be State-identified measures?

E. Data Sources

What data sources are available? How reliable, objective, and verifiable are

they? What would be the administrative burden associated with alternative data sources? Will the data be comparable across States? What data may be expected to be available in the future? Should all data be verified before awards are made? What data validation parameters should be undertaken? Should we limit the measures to those that could be reasonably validated or collected from "independent" sources? Should we limit the measures to those for which all States have data or reasonable access to data?

IV. FYs 1999, 2000, and 2001 Bonus Awards

We would have preferred to set the formula for all years through rulemaking. However, FY 1998 (and FY 1997 in relation to improvement measures) was the first year in which State performance would be measured in order to make first year bonus awards in FY 1999. We were not able to conduct adequate consultations and complete a formal rulemaking process in order to advise States, in a timely way, how we would be assessing their performance in FY 1998 and FY 1999 in order to make awards in FY 1999 and FY 2000. Therefore, we decided to issue program guidance covering the first two performance years without the benefit of a formal rulemaking process.

We issued two Program Instructions covering bonus awards for FY 1999. Following the extensive external consultation noted above, and consideration of comments received on draft proposals, we issued a Program Instruction to States on March 17, 1998 (TANF-ACF-PI-98-1), specifying the allocation formula and performance measures we would use to make FY 1999 bonus awards.

The first Program Instruction grew out of our consultations with NGA, APHSA, NCSL, and State representatives. From February through July 1997, we scheduled bi-weekly discussions with these groups covering the principles underlying a performance system, the viability of individual measures and data options, and the general allocation and distribution rules. In July 1997, we shared a "preliminary proposal" with our State partners and other interested parties, including advocates and technical and policy experts, on which we received wide-ranging and very helpful comments.

Based on the comments we received and further consultations, we incorporated a number of changes to our initial proposal, and issued the March 1998 Program Instruction. We made a few additional technical changes and clarifications before issuing the

reporting form (ACF-200) on August 13, 1998 (TANF-ACF-PI-98-5, OMB No. 1970-0180).

We issued program guidance for the FY 2000 bonus awards on March 3, 1999 (TANF-ACF-PI-99-1).

We plan to issue guidance for the bonuses to be awarded in FY 2001 since final rules will not be published until well into the performance years for these awards. (Awards in FY 2001 will be based on information from States for FY 2000 and FY 1999 (improvement measure).)

V. Discussion of the Regulatory Provisions

A. Principles for a High Performance Bonus System

Given the substantive and technical complexities associated with the development of high performance bonus measures, NGA and APHSA developed a set of principles they believed should apply to a high performance bonus system. We believed that these principles offered a positive approach to and useful criteria for developing a bonus award system while avoiding major pitfalls. We also found these principles helpful as we addressed specific issues in developing the NPRM.

The NGA/APHSA principles stated that a high performance bonus system should:

- Be simple, credible, quantifiable, understandable to the public, and consistent with the goals of the law;
- Focus on outcomes rather than process;
- Take varying State economic circumstances and policies into account and not impede the flexibility provided to States under Public Law 104-193;
- Minimize double jeopardy or reward. (For example, the law already provides bonuses for reducing out-of-wedlock births, a caseload reduction credit, and penalties and incentives related to child support enforcement and paternity establishment);
- Avoid additional data collection requirements and costs and build on existing systems;
- Avoid unintended consequences;
- Focus on positive rather than negative measures; and
- Reflect the strong emphasis on employment and self-sufficiency in the Federal law and in the States' implementation of the law. This emphasis should influence the measures included in the system and the distribution of bonus funds.

B. Section-by-Section Discussion of the Proposed Rule

We believe the central goal of the TANF program is to move welfare

recipients into work, and we are committed to specific work measures as a basis for awarding high performance bonuses. In addition, the law also works to ensure that the needs of low-income children and families are met. The Department has underway several studies to monitor changes in the situations of needy children and families after enactment of the TANF program, e.g., how certain children are affected by the provisions of the new law. The statute also requires us to track whether a State's child poverty rate increased as the result of the TANF program in the State and requires States to initiate corrective actions when such increases occur.

Bonus awards in FY 1999 and FY 2000 will be based solely on measures addressing the goal of work. However, the Department has been interested in developing a broader set of measures that more fully reflect other purposes and goals of the TANF program, as have the NGA, APHSA, NCSL, Congress, and others. We sought to develop measures that would address other purposes but, until recently, were unable to identify measures for which we had a reliable data source. In our consultations with States, Congress, national organizations, and experts, these groups have recommended the inclusion of other purposes and measures. Given the potential availability of a new data source, we are proposing both work and non-work measures in this NPRM to address three of the statutory purposes: work, child and family well-being, and family formation and family stability.

In summary, we are proposing to:

- Award bonuses beginning in FY 2002 based on four work measures (substantially the same work measures currently in use for FY 1999 and FY 2000 bonus awards);
- Award bonuses beginning in FY 2002 based on three non-work measures: one measure on family formation and family stability (increase in the number of children below 200 percent of poverty who reside in married couple families) and two measures that support work and self-sufficiency, i.e., participation by low-income working families in the Food Stamp Program and participation in the Medicaid and the Children's Health Insurance Program (CHIP);
- Use one of two alternative sources of data for the four work measures; we are exploring the possibility of using information from the National Directory of New Hires as one of the data sources;
- Use data from the Census Bureau's decennial and annual demographic programs as the data source for two of the three non-work measures. *i.e.*, the

measure on family formation and stability and the measure on participation in the Food Stamps Program; to measure performance on Medicaid/CHIP participation, States will match TANF data with data on Medicaid/CHIP enrollment;

- Award bonuses to the ten States with the highest scores in each measure;
- Specify an allocation of funds for each measure in FYs 2002 and FY 2003 (and beyond, if high performance bonus awards are subsequently authorized); we would award \$140 million to the work measures and \$60 million to the non-work measures;
- Create an annual review process, as needed, if future modifications and technical changes are necessary to these performance components; and
- Reiterate the requirement in § 265.3(d) of this chapter that, if a State wishes to receive a high performance bonus, it must file the information in Sections One and Three of the SSP-MOE Data Report.

We have taken this approach for several reasons. First, we continue to believe that, given the primary focus of the TANF program on work, we should reward States for their efforts in this area. Our funds allocation proposals also reflect the importance we place on measuring and rewarding State performance directed towards work. In addition, a potential new data source may be available (i.e., the National Directory of New Hires) that could serve as a research data source and would provide more comparable and reliable national data.

Second, as we noted earlier, we received strong encouragement in our external consultations to address the other purposes of the TANF program in addition to work. (The law explicitly ties the bonus to the four purposes in section 401(a) of the Act.) We believe States should be rewarded not only for their accomplishments in the area of work and self-sufficiency but also for their efforts in addressing other purposes, e.g., assisting needy families, promoting marriage, preventing and reducing the incidence of out-of-wedlock births, and encouraging two-parent families.

The non-work measures reflect our concern that the lives of children and families, particularly low-income children and families, should be a focus of attention in relation to the TANF program. We also believe that families are one of the strongest factors in developing and sustaining high levels of individual competence and functioning in our complex society. In addition, we believe that Medicaid and Food Stamps are critical supports for many working

families as they move towards self-sufficiency through employment. State performance to ensure that eligible families receive Food Stamps and Medicaid address two of the statutory goals of the TANF program: Providing assistance to needy families so that children may be cared for in their own homes and ending the dependence of needy parents on government benefits by promoting job preparation and work. Receipt of Medicaid and Food Stamps also helps make it possible for families to move off of welfare into employment and to progress on the job to eventual full independence.

We anticipate that national data may also be available to measure performance directed towards these goals, i.e., from the Census Bureau's decennial and annual demographic programs. We expect these data to be available in time to make bonus awards in FY 2002.

Finally, we have proposed an annual review process that reflects our concern that we have had very little experience with a high performance bonus system. We are aware that not all elements in the proposed bonus award process are fully established. We may need to make changes and adjustments after the final rule is published, and we believe we need to allow for an opportunity and mechanism to do this. We would use the review process, which might include consultations, as appropriate, a tool for making technical changes and issuing guidance, but not for changing the basic allocation of funds or adding new measures.

Our aim for future bonus awards is that they reflect the outcome goals of TANF, remain as simple as possible to understand and administer, and incorporate the best information available.

The preamble includes a section-by-section discussion of the NPRM and a discussion of other issues related to performance measurement including other measures and data sources that we considered but have not included in this NPRM. We welcome comment on our specific regulatory proposals, on the issues raised earlier in developing this NPRM, on the alternate measures and data sources we considered but did not include in our regulatory proposals, on provisions we may have overlooked, and on the policy options and questions we have raised throughout this preamble.

Following is a discussion of the regulatory provisions in this part, in the order of the regulatory text.

Section 270.1—What Does This Part Cover?

This section specifies the scope and content of part 270.

Section 270.2—What Definitions Apply to This Part?

In this section we are proposing definitions for terms used in this part. To the extent possible, we are proposing definitions that are consistent with those in other TANF rules.

We use the term "Act" to refer to the Social Security Act, as amended, e.g., by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), the Balanced Budget Act of 1997, and any future amendments.

We are proposing a definition of "bonus year" to mean the year in which bonus funds are awarded and to clarify the fiscal years covered by this NPRM, i.e., FYs 2002 and 2003 and any subsequent fiscal year for which Congress authorizes and appropriates bonus funds.

This definition differs from the statutory definition in section 403(a)(4)(E)(i) of the Act in that the statute specifies that bonuses will be awarded in each of the fiscal years 1999 through 2003. There are two reasons for the difference. First, the NPRM does not address FYs 1999 through 2001 because, as discussed earlier, we decided to make awards in these years based on program guidance so that States would have advance notice of the measures that would be used. Second, we have proposed, as a part of this definition, to cover future bonus years should Congress authorize and appropriate bonus funds. This will allow us to continue to use the provisions of this part in making future bonus awards.

We have proposed a definition of "comparison year" to mean the fiscal year preceding the "performance year," which we have also defined. We need this definition to clarify that, for two of the proposed work measures (the improvement measures), we are looking not only at data in the performance year, but also in the year that precedes the performance year, i.e., the "comparison year."

Because the terms "bonus year" and "performance year" are based on the fiscal year, we have included a definition of "fiscal year" for clarity.

We have proposed a definition of "performance year" to mean the fiscal year immediately preceding the "bonus year." This clarifies that the year for which we will measure performance is the year preceding the year in which we will award the bonus as specified in section 403(a)(4)(D) of the Act. (As

discussed earlier in the definition of "comparison year," we will base performance for two work measures (the improvement measures) on the degree of improvement in performance between the performance year and the comparison year.)

We include a definition of "separate State program" and "SSP-MOE Data Report" for clarity regarding reporting of data. The first definition is taken from the final TANF rule published April 12, 1999 (64 FR 17720). The second definition is self-explanatory.

We propose a definition of "State" to mean each of 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. This definition is consistent with the definition in section 419(a)(5) of the Act.

We have included a definition of the "Food Stamp Program" and have explained the following acronyms: "CHIP" is the Children's Health Insurance Program described in title XXI of the Social Security Act, "HCFA" is the Health Care Financing Administration, "Medicaid" is a State program of medical assistance operated in accordance with a State plan under title XIX of the Social Security Act, and "MSIS" is the Medicaid Statistical Information System. We also propose to use the acronym "TANF" for the Temporary Assistance for Needy Families program.

We use the term "we" throughout the regulatory text and preamble. The term "we" (and any other first person plural pronouns) means 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 Department of Health and Human Services, and the Administration for Children and Families.

Section 270.3—What Is the Annual Maximum Amount We Will Award and the Maximum Amount That a State Can Receive Each Year?

In paragraph (a), we propose to award \$200 million in bonus funds for each of fiscal years 2002 and 2003 and any subsequent years if Congress authorizes the continuation of the bonus awards and appropriates funds. Section 403(a)(4)(D)(ii)(I) of the Act states that "the average annual total amount of grants to be made under this paragraph for each bonus year equals \$200,000,000." We have interpreted this statement to mean that the actual amount of bonus funds awarded for

each bonus year could vary as long as a total of \$1 billion was awarded over the five year period. However, after consultation with interested parties, we believe that we would foster the positive effects of the bonus by aiming to award \$200,000,000 in each of these bonus years. We believe that a fixed, substantial award amount each bonus year provides States with a significant incentive that remains constant and promotes continuity of effort. Of course, the bonus amounts for fiscal years beyond FY 2003 will be determined based on any new authorizations and appropriations.

In paragraph (b) of this section, we specify that the amount payable to a State for a bonus year may not exceed five percent of the State's family assistance grant, as specified in section 403(a)(4)(B)(ii) of the Act. See the Appendix to this NPRM for a list of the potential maximum amounts that could be awarded to each State annually, based on the statutory limitation.

Section 270.4—On What Measures Will We Base the Bonus Awards?

In paragraph (a) of this section, we propose to base the high performance bonus awards on four work measures and three non-work measures.

These proposed provisions reflect the importance we place on work as a primary goal of TANF. They also reflect our concern that the lives of children and families in the State, particularly low-income children and families, should also be a focus of our attention in relation to the TANF program.

As discussed more fully below in § 270.6, States may select the work measures on which they wish to compete, and they will be ranked on these measures. Because we will be using Census Bureau data as the data source for the measure on family formation and family stability and the measure on participation in the Food Stamp Program, we will rank all eligible States on these measures. For the measure on participation in Medicaid/CHIP, we will obtain data from States based on matching records of individuals leaving TANF assistance with Medicaid/CHIP enrollment records. We will also rank all eligible States on this measure. We emphasize that, if a State wishes to be considered for a bonus in relation to any measure, it must submit the information in Sections One and Three of the SSP-MOE Data Report.

Work Measures

In paragraph (b), we propose that, beginning in FY 2002, we will measure State performance based on four work

measures. States may compete on one, any number of, or none of these work measures. We will score and rank competing States and award bonuses to the ten States with the highest scores in each measure.

We are proposing these four measures because we believe that work measures most directly promote the purpose of TANF as stated in section 401 of the Act, i.e., "increase the flexibility of States in operating a program designed to end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage * * *"

In addition, these work measures relate to three of the four statutory goals. While they relate most directly to goal two, (i.e., to "end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage)," they also address goal one indirectly, (i.e., to "provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives") as the provision of temporary cash assistance and other services leading to employment strengthens families and help keep them together. We also believe the work measures support the maintenance of families in goal four, (i.e., to "encourage the formation and maintenance of two-parent families") as a substantial body of evidence indicates that continued unemployment is associated with an increased incidence of marital break-up.

The four work measures are: Job Entry; Success in the Work Force (Job Retention and Earnings Gain); and improvement from the prior fiscal year in each of these measures.

We will use the proposed measures to measure State performance along three parameters of employment: the extent to which States are moving recipients into the work force, the degree to which recipients are able to remain in the work force, and the quality of the recipients' jobs. In different ways, all four measures reflect a State's success in moving families from welfare to work. Full success requires not only getting recipients into jobs, but also keeping them in jobs and increasing earnings in order to reduce dependency and enable families to support themselves over the long term. Our measures address all these aspects of success.

Overall, we believe these measures reflect the critical importance of and emphasis on work in the TANF program; are generally consistent with State data collection efforts; and reflect substantial agreement that, taken together, positive outcomes on these measures would be associated with

achievement of employment-based self-sufficiency.

In paragraph (b)(3), we propose that States have the option to compete on one, any number of, or none of the work measures specified in this section. The opportunity to compete for one or more work measures furthers Congressional intent to support State flexibility in the design and operation of their TANF programs. We also know that States are in different stages of implementing the TANF program, have diverse programmatic emphases, and vary in their current levels of performance. We believe that offering States the option to choose from a list of work measures allows States that have different work philosophies to compete fairly for bonuses and compete in the areas of their highest achievement. Compared to a single measure, multiple measures are less likely to distort State policy decisions or to cause unintended consequences.

We discuss our proposal to award the bonus to the ten States with the highest scores in each measure in the preamble discussion of § 270.6.

Measures for Supporting Working Families

One of the key goals of welfare reform is to support and sustain working families. Food Stamps and Medicaid are potentially essential supports during the period when families are working but are not yet earning at the level that will enable them to achieve full self-sufficiency. The Administration and others have expressed concern at the falling levels of coverage in these programs. Therefore, we have implemented a variety of strategies to prompt States to reach working families who are eligible.

• *Food Stamps*

Like child care, the Earned Income Tax Credit, and Medicaid, receipt of food stamps is an important support for working families. Our colleagues at U.S. Department of Agriculture (USDA) are committed to working with States to ensure that eligible families obtain food stamps. Families with incomes up to 130 percent of the poverty line, or \$17,748 for a family of three, can be eligible for food stamps. A typical family of three with a full time worker earning the minimum wage can get \$220 a month in food stamps.

In recent years, States have taken remarkable action to revolutionize the welfare system. A strong economy combined with innovative State policies and an unyielding commitment to helping families become self-sufficient as they move from welfare to work has

resulted in a dramatic decline in the number of families receiving cash assistance. Many more individuals are now working to support themselves and their families than ever before. Critical to their continued success, however, is their ability to feed their families adequately. Food stamps can help parents working full-time at minimum wage who are taking advantage of the maximum Earned Income Tax Credit to escape poverty. In some cases, these individuals may only be able to keep their jobs and feed their families because food stamps help make ends meet.

Participation in the Food Stamp Program, however, has decreased dramatically in recent years. Since March 1996, participation has fallen by over 7 million people. One group for which participation is especially low is the working poor; only 39 percent of individuals with earnings who are eligible for food stamps benefits participate in the Food Stamp Program, compared to a participation rate of 71 percent overall.

Food stamps can make the difference between living in poverty and moving beyond it. It is imperative to the success of welfare reform, and more fundamentally to the well-being of all Americans, that States devote attention to making sure that needed supportive services, in particular food stamps, are available to those families that have left welfare but remain poor.

The President recently announced a series of actions to help ensure working families access to food stamps, including: (1) Allowing States to make it easier for working families to own a car and still be eligible for food stamps; (2) simplifying food stamp reporting rules to reduce bureaucracy and encourage work; and (3) launching a nationwide public education campaign and a toll-free hotline to help working families know whether they're eligible for food stamps.

As part of this effort, USDA has published "The Nutrition Safety Net at Work for Families: A Primer for Enhancing the Nutrition Safety Net for Workers and Their Children," a companion piece to the DHHS Medicaid guide discussed below. This Food Stamps guide will assist State, local and community leaders in understanding Food Stamp Program access requirements. It also includes the following best practices for serving working families already implemented in some communities.

1. The State agency can take steps to inform low-income households about the availability, eligibility requirements, application procedures, and benefits of

the Food Stamp Program. For example, States could:

- Submit a Program Information Plan to the Food and Nutrition Service, as specified at Section 11(e) of the Food Stamp Act of 1977.
- Implement a toll-free telephone number for application and enrollment information.
- Place billboards and posters in places frequented by low-income families.
- Provide flyers or brochures to community organizations that work with low-income households.
- Produce public service announcements for radio and television.
- Develop partnerships with private sector entities such as retail grocers to display or distribute materials.

2. The State agency can take steps to simplify the Food Stamp application and recertification process for working families. For example, States could:

- Shorten application forms.
- Use joint Food Stamp-TANF-Medicaid applications.
- Increase the availability of application sites.
- Place Food Stamp workers in the community (hospitals, health centers, schools or one-stop centers) and in TANF sites for States where programs are administered separately.
- Adopt flexible, family-friendly hours so parents do not have to miss work for eligibility and redetermination interviews.
- Clarify inconsistencies by telephone or mail.
- Conduct staff training on the three programs.
- Encourage Food Stamp applications even if the TANF application halts.

3. The State agency can take advantage of the option to extend categorical eligibility to participants in programs that receive the majority of their funding from sources other than TANF.

4. The State agency can adopt income reporting waivers to ease the reporting burdens of working families. States may request to:

- Implement a quarterly reporting system for households with earnings, and allow quarterly reporting of unearned income for such households.
- Allow for 6-month recertifications.
- Increase the reporting threshold from \$25 to \$100.

5. The State agency can take steps to educate families receiving Food Stamps about possible continuous eligibility, regardless of discontinued TANF receipt. For example, States could:

- Advise families to report earnings instead of simply calling to have their case closed or not going through the redetermination process.

- Review closed TANF cases in which Food Stamps was not continued, and inform families with cases closed in error of their entitlement to restore benefits.

We believe States who use these best practices are likely to increase enrollment of eligible families, and therefore, to perform better on the outcome measure below. Along with encouraging and assisting States in using these best practice innovations to help ensure working families access to food stamps, USDA is also committed to vigorous enforcement of the food stamp law and will investigate complaints about State and local practices and pursue administrative and legal action as required.

• Medicaid/CHIP

Medicaid enrollment dropped by about 1 million from 1996 to 1997. Though there are many potential reasons for the decline, we do not have any definitive answers about why it has occurred. Improvements in earnings and employment resulting from the strong national economy have probably played an important role in this decline, making it possible for some low-income Medicaid families to find jobs that offer health insurance. It is also important to note that, while Medicaid enrollment has declined, the number of people under the poverty level who are uninsured has not increased in the last few years. Changes in attitudes toward public assistance may also be playing a role in falling TANF, Food Stamp, and Medicaid caseloads.

To help States navigate the opportunities and challenges inherent in providing Medicaid to all eligible families, DHHS developed and issued "Supporting Families in Transition: A Guide to Expanding Health Coverage in the Post-Welfare Reform World." This publication was sent to all State Medicaid Directors and other interested parties. We have a follow-up strategy that includes an educational component, aggressive outreach, and a proactive enforcement process. We are also undertaking research activities to promote increased participation of eligible individuals in these programs.

It is in this context that we are proposing performance measures related to Food Stamps and the Medicaid/CHIP programs that will reward State efforts to support work, self-sufficiency, and the well-being of low-income eligible families through rewarding States for year to year improvements. We believe that basing high performance bonus awards on these measures will provide another valuable strategy in the Administrations's efforts to advance the

goals of welfare reform, focus attention on these critical supports, assist working families, improve outcomes for children, and encourage States to take action to increase the likelihood that low-income families not receiving cash assistance will participate.

We have taken a similar approach in developing these two measures. Each is designed as an improvement measure; each measure will receive \$20 million in bonus funds. In addition, the food stamp and the Medicaid/CHIP measures are also similar in that we have proposed "qualifying conditions" in each measure. These conditions are ones a State must meet in order to be eligible to compete for the bonus. For both Food Stamps and Medicaid/CHIP, these conditions include requirements of law and regulation that States must meet. For Medicaid/CHIP, these conditions also include a number of options a State must take to maximize participation of those eligible for Medicaid and CHIP.

This difference in the design of the food stamp and the Medicaid/CHIP qualifying conditions reflects the nature of the two programs. The Medicaid law and regulations provide States considerable flexibility and makes a broad set of such programmatic options available to States. In contrast, the Food Stamp Program offers very little State option or flexibility in these areas because it has national standards of eligibility with many key service requirements mandated by statute. However, we invite comments on whether the decision to include qualifying conditions is appropriate, as well as whether the specific conditions and distinctions made between the programs are valid.

A. Measure of Participation by Low-Income Working Families in the Food Stamp Program

In paragraph (c)(1), we identify certain qualifying conditions, i.e., practices that a State must be in compliance with in order to compete for a high performance bonus related to food stamp participation:

(i) The State agency has issued policy instructions or regulations clearly specifying that, at first contact with the State agency which administers the Food Stamp Program, individuals must be informed of the opportunity to apply for food stamps in accordance with 7 CFR 273.2(c)(1).

(ii) The State agency has issued policy instructions or regulations clearly specifying that food stamp application forms are to be readily accessible and available upon request, in accordance with 7 CFR 273.2(c)(3).

(iii) As evidenced through policy instructions, regulations, and administrative reviews, the State agency is complying with application processing time frames and expedited service rules, as required by 7 CFR 273.2(g).

(iv) As evidenced through policy instructions, regulations, and administrative reviews, the State agency has taken steps to prevent inappropriate denials and terminations of eligible food stamp participants who have lost TANF eligibility, in accordance with 7 CFR 273.12(f). Since food stamp eligibility is not based on TANF eligibility, States may not deny food stamp eligibility to a family or family member simply because the family is ineligible for TANF.

These required qualifying conditions reflect food stamp policies that are required by statute or regulation. We do not believe that a State which is out of compliance with these requirements should be eligible for a bonus. The Food and Nutrition Service of the U.S. Department of Agriculture will determine whether a State is meeting these conditions through its ongoing oversight of the Food Stamp Program.

In paragraph (c)(2), we are proposing the outcome measure on which the bonus will be based. Beginning in FY 2002, we will measure the improvement in the number of low-income working families (i.e., families with children under the age of 18 who have an income of less than 130 percent of poverty and earnings equal to at least half-time, full-year employment at minimum wage) receiving food stamps as a percentage of the number of low-income families working in the State, using the same definition. For any given year, we will compare a State's performance on this measure to its performance in the previous year, beginning with a comparison of CY 2000 to CY 2001, based on Census Bureau data. We will rank all States and will award bonuses to the 10 States with the greatest percentage improvement in this measure.

We are proposing this outcome measure in order to reward States that have identified and implemented successful strategies to provide food stamps to eligible, low-income working families.

B. Measure of Participation of Low-Income Families in the Medicaid and CHIP Programs

In paragraph (d)(1), we identify certain qualifying conditions that a State must meet in order to compete for a high performance bonus related to the Medicaid and CHIP programs, based on

requirements in Medicaid law and regulation; in paragraph (d)(2), we propose that the State must document that it has adopted at least two of a list of seven State options, (i.e., programmatic policies or practices that are designed to facilitate Medicaid and CHIP enrollment and the retention of eligible children and families.) In paragraph (d)(3), we propose the specific outcome measure on which the bonus would be awarded.

We propose the following qualifying conditions in paragraph (d)(1):

(1) The State has issued policy instructions or regulations clearly specifying that, at first contact with the TANF agency (when the TANF agency is also the Medicaid agency), an individual must be given the opportunity to apply for Medicaid in accordance with 42 CFR 435.906;

(2) When eligibility under section 1931 of the Act is lost due to hours of, or earnings from, employment or loss of time-limited earning disregards, the State issues to the affected family a written notice that meets the requirements of section 1925(a)(2)(A) of the Act and a card or other evidence of the family's entitlement to assistance as required under section 1925(a)(2)(B) of the Act;

(3) The State has issued policy instructions or regulations clearly specifying that family members may not be terminated from Medicaid until it has been determined that they are not eligible under any other Medicaid group; and

(4) The State has fulfilled all data requirements under the law, including being up to date on all Medicaid and CHIP data submissions, and having the MSIS on-line and operating properly.

All of these programmatic criteria reflect State policy actions and processes that are mandated by Medicaid statute or regulation, and we do not believe that a State that is out of compliance with these requirements should be eligible for a bonus related to Medicaid and CHIP participation. We propose that, to be eligible for the bonus, States must fulfill these required conditions. HCFA will verify States' compliance through State documentation and the agency's ongoing oversight of the Medicaid/CHIP programs.

In addition to complying with these qualifying conditions, we propose that applicant States must meet at least two qualifying State options. These are programmatic options that are designed to maximize participation by those eligible for Medicaid and CHIP. We propose that a State that adopts at least two of the qualifying options below (in

addition to satisfying the required qualifying conditions described above) would be eligible to compete for the high performance bonus related to Medicaid and CHIP, based on the outcome measure in paragraph (d)(3). We propose that States provide documentation demonstrating that they have adopted two or more of these optional measures. HCFA will verify compliance through the agency's ongoing review of the Medicaid/CHIP programs. We believe States that exercise these options are likely to increase enrollment of eligible families, and therefore, to perform better on the outcome measure in paragraph (d)(3) as discussed below.

Programmatic Options:

(1) The State accepts mail-in or phone-in applications for Medicaid for families and children, which can be completed without a face-to-face interview;

(2) State Medicaid workers have been outstationed at locations in addition to the locations required under 42 CFR 435.904 (c)(1) and (c)(2);

(3) The State has expanded Medicaid eligibility for recipient and applicant families through the use of less restrictive methodologies, authorized by section 1931(b)(2) (B) and (C) of the Act;

(4) The State uses a definition of "unemployed parent" that includes parents who are employed more than 100 hours per month, as authorized under 45 CFR 233.101 and section 1931(d) of the Act;

(5) The State provides continuous Medicaid eligibility for children for a period of time without regard to changes in circumstances, as authorized by section 1902(e)(12) of the Act;

(6) The State provides a period of presumptive Medicaid eligibility for children, as authorized by section 1920A of the Act; or

(7) The State has simplified the enrollment and re-enrollment processes for children and low-income families by implementing such improvements as shortened application forms.

Once the States are identified as eligible for consideration, based on the qualifying conditions and options in paragraphs (d)(1) and (d)(2), we propose a specific outcome measure for determining which States would receive a bonus. The outcome measure we are proposing in paragraph (d)(3) would assess Medicaid and CHIP participation among persons leaving TANF assistance. The population whose Medicaid/CHIP participation would be measured is those individuals whose TANF assistance cases were closed in the calendar year who also were enrolled in Medicaid or CHIP at the

time of case closure. The measure of State performance would be the percentage of such individuals who are enrolled in Medicaid or CHIP six months after leaving TANF (and who are not currently receiving TANF assistance in that month).

We chose this approach because nearly all individuals leaving TANF are likely to be eligible for a minimum of six months of transitional Medicaid under section 1925 or to qualify for Medicaid under other eligibility groups (e.g., section 1931, poverty-related children) or to be eligible for CHIP. Continued health insurance coverage is a critical support to families making the transition from welfare to self-sufficiency, and we expect States to achieve a high rate of Medicaid and CHIP participation among this population in order to be considered high performers. We propose that bonuses would be awarded to the ten States with the largest percentage improvement in their Medicaid/CHIP participation rates.

The data for this measure will be submitted quarterly by States at an aggregate level for purposes of this evaluation. States will obtain these data by matching records of individuals leaving TANF assistance with Medicaid/CHIP enrollment data.

We also considered an outcome measure that would capture State performance in enrolling and retaining all eligible families and children in Medicaid and CHIP, regardless of their former or current welfare status. This measure would reward States for the Medicaid and CHIP participation of those families and children leaving TANF assistance, and also for the participation of eligible families and children who may not participate in, be diverted from, or may not have any contact with, the TANF program.

In operational terms, this measure would be based on data from the Census Bureau, supplemented with data from State MSIS data and HCFA Form 21-E.

After careful consideration, we proposed an outcome measure limited to individuals leaving TANF assistance because we believe that it better captures the mission and responsibility of the TANF agency to move families toward self-sufficiency. While the broader population measure would reflect a critical goal of expanding health coverage and also encourage States to enroll eligible individuals who are diverted from TANF assistance, the proposed measure is more directly related to the goals and purposes of TANF. We invite comments on this matter.

Measure of Family Formation and Stability

In paragraph (e), we propose that, beginning in FY 2002, we will measure the percentage increase in all children below 200 percent of poverty who reside in married couple families, based on a comparison of data between CY 2000 and CY 2001 from the Census Bureau. For any given subsequent year, we will compare a State's performance on this measure to its performance in the previous year. We will rank all States and award bonuses to the ten States with the greatest percentage increase in this measure, if they have filed the information in Sections One and Three of the SSP-MOE Data Report. Like the Food Stamps and Medicaid/CHIP measures, a total of \$20 million will be awarded for this improvement measure.

We are proposing this measure of family formation and family stability for several reasons: the law's emphasis on promoting marriage and encouraging the formation and maintenance of two-parent families (section 401(a) of the Act); our concern for the well-being of children and families, particularly low-income families; and our interest in stimulating successful State initiatives in this area. The number of parents living with a child is generally tied to the amount and quality of human and economic resources available to that child. Children who live in a household with one parent are five times more likely to have family incomes below the poverty line than are children who grow up in a household with two parents.

We also know that children who live with only one parent suffer more emotional, behavioral, and intellectual problems. They are at greater risk of dropping out of school, alcohol and drug use, adolescent pregnancy and childbearing, juvenile delinquency, mental illness, and suicide.

Using this measure would entail no new data collection responsibilities on the part of States, assuming the Census Bureau data are available.

Consideration of Other Measures

During the course of our consultations and internal discussions, we considered and evaluated a wide range of possible measures and data sources. We also tried to keep in mind the principles for a high performance bonus system developed by NGA and APHSA; sought to avoid additional data collection requirements and costs and to build on existing systems; tried to focus on positive rather than negative measures; and attempted to avoid unintended consequences. Specifically, we

considered a number of other measures related to the non-work purposes in the law. These included:

- *Child support*: The average monthly number of TANF families that have both earned income and child support paid within the same month.

- *Diversion*: The number of applicants with a financial payment diverted from the TANF cash assistance program divided by the number of newly approved cash assistance cases.

- *Out-of-wedlock births*: Measures of such births to TANF recipients, to all persons in the State as a whole, or in relation to the same standards and provisions as defined in the bonus to reward decrease in illegitimacy ratios (section 403(a)(2) of the Act).

- *Child poverty*: The reduction in the State's rate of child poverty for all families with children under age 18 and the reduction in the rate of child poverty for working families with children under age 18, i.e., families with earnings equivalent to half-time full year employment (parallel to the food stamp measure).

(See the following preamble section entitled "Discussion of Other Issues Related to Performance Measurement" in which we address other measures and data sources we also considered.)

For several reasons, we did not include a number of potential measures where there were other mechanisms in the statute for addressing them. First, we were concerned that inclusion of too many measures would spread the bonus funds too thinly and thereby weaken their ability to provide incentives to States to achieve the goals and purposes of TANF. Second, we believed the measures duplicated other measures for which performance funding is already in place, e.g., out-of-wedlock birth reduction and child support enforcement, or where there are other mechanisms to monitor and correct State performance (child poverty). Finally, we were particularly aware of the issue of diversity among States and how that diversity might impact the design and implementation of the high performance bonus award system. There was general agreement that the uneven resources and multiple differences in economic and demographic circumstances and program and caseload characteristics among States were serious complicating factors in designing a high performance bonus system. For example, a State with a stronger economy, a less disadvantaged caseload, or lower grant levels may be more successful in moving recipients into jobs and off welfare than the State with a weak economy, a more disadvantaged caseload, or a higher

grant level. Also, a State which began moving recipients into jobs several years before TANF was enacted and high performance was measured may have difficulty showing the same level of accomplishment in current years.

However, we would like to discuss our consideration of a child poverty measure in greater detail because it relates to two of the goals/purposes of TANF: promoting work and employment and strengthening child and family well-being by assisting needy children in their own homes or in the homes of relatives.

Several innovative States are already using child poverty as a measure of their efforts, and some States are using the resources and flexibility under TANF to address this issue. AFDC was limited in its ability to address child poverty in that the primary flexibility States had was in setting benefit levels. In contrast, the TANF program offers States the opportunity to utilize a wide range of investments to help families escape poverty while strengthening their commitment to work. These investments include:

- Increasing the stability of work through investments in the wages parents earn or the hours they work, such as employer partnerships that focus on the first job, on job advancement after the first job, or on combinations of work and training; mentoring and case management strategies; strategies that combine work, education, and training; and supported work for families with barriers to private sector employment;
- Utilizing well-known strategies to supplement work, such as more generous earning disregards, earnings supplements, and wage subsidies;
- Improving child support, such as increasing the amount of support collected from non-custodial parents that is passed through to children;
- Helping families during periods between jobs, such as quick re-employment services; and
- Providing employment assistance for other families, such as a child-only family where a caretaker relative is not receiving assistance.

In addition, there is empirical evidence from rigorous evaluations that several of these strategies can be effective in reducing poverty. For example, interim findings from the Minnesota Family Investment Program, which implemented generous earning disregards, nearly doubled the percentage of families above poverty; and a strongly employment-focused welfare-to-work program in Portland, Oregon, which stressed getting recipients higher paying jobs along with

higher quality, reliable child care, increased the number of families with above poverty income by nearly one quarter.

We encourage States to use the available flexibility and resources to pursue strategies that support working families and help move them out of poverty. However, after a full consideration of all factors, we chose not to include a child poverty measure in the proposed rule for the following reasons:

- A child poverty measure was duplicative of the requirements in section 413(i) of the Act for States to report on their child poverty rates and take corrective action where any increase in child poverty of five percent or more is attributable to the TANF program in the State; and
- Improvements in the proportion of families receiving food stamps and increases in employment and earnings both raise family income and thereby contribute to poverty reduction.
- Since the official poverty measure does not reflect income sources such as food stamps or EITC, it may not accurately reward State strategies to support working families.

In developing the NPRM, we also considered additional measures and various data sources, including the Current Population Survey (CPS), other Census Bureau surveys, the National Center on Health Statistics, Unemployment Insurance data, and State administrative data. Except for the Census Bureau's decennial and annual demographic programs, we identified problems with each of these measures and with the data sources considered, e.g., lack of State-reliable and comparable data; data collection burden; and, in some cases, lack of consistent definitions for the measure across the States. In other cases, we believed the measures duplicated other measures for which performance funding is already in place, e.g., out-of-wedlock birth reduction and child support enforcement.

For additional discussion of other issues related to performance measurement, including absolute performance, performance improvement, and other measures and data sources considered, please see the following preamble section entitled, "Discussion of Other Issues Related to Performance Measurement."

We are committed to work measures as a major component of the bonus award. However, we invite comment about whether we should make changes in these work measures and whether we should consider different options. We raise the following questions on the

work and non-work measures for public consideration:

1. Are the work measures proposed in § 270.4 the work measures we should be using?

2. Are there other measures and data sources we should consider?

3. Does the definition of "assistance" included in the final TANF rule affect the data captured in the work measures?

4. Should we consider other measures that address the first purpose of the TANF program, i.e., to assist needy families?

5. What data sources should we consider for the non-work measures if the Census Bureau data are not available for bonus awards in FY 2002?

6. Should we consider measures that would be duplicative or similar to measures used with other performance awards, e.g, a measure of out-of-wedlock births?

7. Should we consider State enforcement of the TANF non-displacement requirements in awarding bonuses and, if so, how?

Section 270.5 What factors will we use to determine a State's score on the work measures?

In this section, we propose the specific definitions for each of the work measures and an explanation of how we will calculate the percentage rate for the work measures, both for the absolute measures and for the improvement measures, and rank State performance.

In paragraph (a), we propose the specific definitions for each of the work measures as follows:

The *Job Entry Rate* means the unduplicated number of adult recipients who entered not fully subsidized employment for the first time in the performance year (job entries) as a percent of the total unduplicated number of adult recipients unemployed at some point in the performance year. Adult recipients in fully subsidized employment are not included in the numerator but are included in the denominator.

We are proposing an unduplicated count of adult recipients because we believe that allowing one individual to be counted more than once in the numerator would unfairly inflate a State's performance. We are proposing not to include in the numerator recipients in fully subsidized employment because that would mitigate against self-sufficiency. However, we are proposing to include them in the denominator because we believe they should be considered as part of the pool of unemployed recipients who potentially could be placed in unsubsidized employment

and, thus, could be an incentive to the State to help these recipients obtain a job that is not fully subsidized.

The *Success in the Work Force Rate* measure is composed of two submeasures defined as follows:

- The *Job Retention Rate* means the performance year sum of the unduplicated number of employed adult recipients in each quarter one through four who were also employed in the first and second subsequent quarters, as a percent of the sum of the unduplicated number of employed adult recipients in each quarter. (At some point, the adult might become a former recipient.) Adult recipients in fully subsidized employment are not included in either the numerator or the denominator; and
- The *Earnings Gain Rate* means the performance year sum of the gain in earnings between the initial and second subsequent quarter in each of quarters one through four for adult recipients employed in both these quarters as a percent of the sum of their initial earnings in each of quarters one through four. (At some point, the adult might become a former recipient.) Earnings gains of adult recipients in fully subsidized employment are not included in either the numerator or the denominator.

We believe these two submeasures are the two most important components for determining success in the workplace. We are proposing to give job retention a weight of two compared to one for earnings gain. We believe that earnings gain is dependent on job retention and, therefore, should be given a lesser weight.

We are proposing that job retention be measured in the initial quarter and the two consecutive subsequent quarters, because this is consistent with related measures of job retention in the Job Training Partnership Act, Welfare-to-Work, and Work Investment Act programs.

We propose to measure earnings gain from the initial quarter to the second subsequent quarter because we believe it is more reasonable to expect earnings gain at a later rather than earlier date. We considered measuring a longer period for success in the workplace and welcome comments from the public on whether we should measure job retention or earnings over a longer period of time.

The *Increase in the Job Entry Rate* means the positive difference between the performance year job entry rate and the comparison year job entry rate as a percent of the comparison year job entry rate.

The *Increase in Success in the Work Force Rate* means the positive difference

between the performance year success in the work force rate and the comparison year success in the work force rate as a percent of the comparison year success in the work force rate. It is composed of two submeasures defined as follows:

- The *Increase in the Job Retention Rate* means the positive difference between the performance year job retention rate and the comparison year job retention rate as a percent of the comparison year job retention rate; and
- The *Increase in the Earning Gain Rate* means the positive difference between the performance year earnings gain rate and the comparison year earnings gain rate as a percent of the comparison year earnings gain rate.

We are proposing that increase in the job entry rate and success in the work force be measured in the simplest and most straightforward way, i.e., a percentage increase from the comparison year to the performance year. However, we welcome comments on alternative ways of measuring improvement.

We believe these measures are the best measures of self-sufficiency, are measures based on readily available data, and are measures that will not create a heavy administrative burden on States.

In addition, these measures are consistent with both past and current legislation designed to measure performance in the work area. Section 106(a)(2) of the Job Training Partnership Act (JTPA) stated that "the basic return on the investment is to be measured by long-term economic self-sufficiency, increased employment and earnings, reductions in welfare dependency, and increased educational attainment and occupational skills." Section 106(b)(3) of JTPA listed several factors on which to base performance standards including: (A) Placement in unsubsidized employment; (B) retention for not less than 6 months in unsubsidized employment; and (C) any increase in earnings, including hourly wages.

Recent legislation, the Workforce Investment Act of 1998, authorizes a performance accountability system. Section 136 of this legislation specifies State performance measures including entry into unsubsidized employment, retention (in unsubsidized employment) six months after entry into unsubsidized employment, and earnings received (in unsubsidized employment) six months after entry into unsubsidized employment.

Another law enacted by Congress, the Balanced Budget Act of 1997, authorized Welfare-to-Work Grants to

States and local communities to provide transitional employment assistance that moves hard-to-employ welfare recipients and certain non-custodial parents into unsubsidized employment and economic self-sufficiency. The legislation authorizes the Department of Labor to award performance bonuses. Section 5001(a)(5)(E)(iii) of this legislation specifies that the formula for measuring State performance be based on certain factors including "(I) the success of States in placing individuals in private sector employment or in any kind of employment * * * (II) the duration of such placements; (III) any increase in earnings of such individuals * * * and such other factors as the Secretary of Labor deems appropriate * * *". The formula may also take into account general economic conditions on a State by State basis.

Finally, the work measures we have proposed are similar to those developed by the Department of Labor for the Welfare-to-Work performance bonus. See Notice of Welfare-to-Work performance bonus criteria, published November 23, 1998 (63 FR 64832).

In paragraph (b)(1), we propose to measure performance over the course of an entire fiscal year as specified in section 403(a)(4)(B) of the Act. We believe that measuring performance over an entire fiscal year (or fiscal years, in the case of improvement measures) will help ensure that a State's performance score is not unfairly deflated or inflated because of seasonal or other fluctuations in employment patterns.

In paragraph (b)(2), we explain that we will rank competing States on the measures for which they indicate they wish to compete and for which they submit the data specified in § 270.6 within the timeframes specified in § 270.11.

In paragraph (b)(3), we propose to rank States on their absolute performance (for the measures in paragraphs (a)(1) and (a)(2) of this section) and on their performance improvement from the previous fiscal year (on the measures in paragraphs (a)(3) and (a)(4) of this section). We believe that awarding bonuses for both absolute and improved performance provides a way to ensure a more objective and fair competition, i.e., States starting from a lower baseline would have a reasonable chance of competing for the bonus awards.

In addition, improvement measures serve as an added incentive to States to compete and excel. While it is conceivable that a State scoring high on an improvement measure might score very low on an absolute measure, we,

nevertheless, believe that a State which is a high performer relative to its past performance should be rewarded accordingly. The overall benefit to the TANF recipients served and the contribution to the success of the overall TANF program outweigh any concerns that absolute and improvement scores might appear inconsistent to some observers. We have included a discussion of alternate ways to structure the high performance bonus award system and questions for public comment on the issue of an objective and fair competition in the subsequent preamble section.

Paragraph (b)(3) also proposes that the scoring of the two measures (success in the work force rate and increase in success in the work force rate) will be a composite weighted score of the rank of the retention and earnings gain measures with the job retention rank having a weight of "2." We believe earnings gain is dependent on job retention, and job retention is the more familiar measure with a more substantial history.

In paragraph (b)(4), we propose how we will rank the States on the four work measures. Each State will be ranked from high to low with "1" being the rank for the State with the highest score. We will assign a rank to each State not competing or submitting data for a measure which is the number following the last rank for States that properly submitted data for that measure on a timely basis and notified us of their interest in competing.

In paragraph (b)(5), we propose that, if we identify more than ten States due to a tie in score for a measure, we will calculate the rate to as many decimal points as necessary to eliminate the tie. Since we are proposing that no more than ten States can receive a bonus award for each measure, we believe that this calculation is the fairest and least controversial procedure.

For clarity, we propose in paragraph (c) a definition of *Improvement Rate* to mean the positive percentage change between the performance year and the comparison year for each measured rate (job entry, retention, earnings gain).

We have included additional discussion on absolute performance, performance improvement, and other issues relating to performance measurement in the subsequent preamble section.

We also raise the following questions for public consideration:

1. Should we allow States to select the measures on which they wish to compete?
2. Should we require all States to compete on certain "core" or

"mandatory" measures as a condition of receiving a bonus?

3. If we require "core" measures, should we allow States to compete on other measures at their option?

4. Should we base some measures on absolute performance and others on performance improvement as proposed in this part?

5. Should we consider a longer employment period as the retention rate in future years, e.g., one year, 18 months?

6. Should the definitions and/or specifications for these work measures be modified, e.g., to include fully subsidized work, minimum hours of earnings? (See also § 270.6 for a discussion of the data that must be reported.)

Section 270.6 What Data for the Work Measures Must the State Report to Us?

We have not included the option to submit sample data under these proposed rules. Sampling adds a significant level of complexity and raises data precision questions without significant cost savings.

In paragraph (a), we propose that, if a State wishes to compete on any or all of the work measures in § 270.5(a), it must report one of two alternative sets of data, as specified by the Secretary, either:

(1) An unduplicated list of all adult recipients by name, social security number, and date of birth for each quarter of the semi-annual reporting period; adult recipients in fully subsidized employment must be included in the list but identified separately; or

(2) Certain information based on a match between the State's adult recipient identification data and the Unemployment Insurance (UI) employment data, also for each quarter of the semi-annual reporting period. Adult recipients in fully subsidized employment must be excluded from this data match but must be included in the count of unemployed recipients.

We are proposing these two different sets of data for several reasons. First, we wish to obtain public comment on the content and desirability of each alternative. Second, in relation to the first alternative, we are exploring the possibility of using the National Directory of New Hires (NDNH) on an ongoing basis. We would match the recipient identifying information in paragraph (a)(1), with the data in the NDNH to determine the State's scores for the work measures.

The NDNH is one of two databases managed by the Federal Parent Locator Service (FPLS) in the Office of Child

Support Enforcement, ACF. The FPLS is a computerized network, established pursuant to section 453 of the Act, through which States may request and receive information to find noncustodial parents and/or their employers for purposes of establishing paternity and securing support. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 required the Secretary to develop an expanded FPLS to improve States' ability to locate child support obligors, establish and enforce child support orders, and for other specified purposes in the Act.

The expanded FPLS includes the NDNH, which was implemented on October 1, 1997, and a Federal Case Registry. The purpose of the NDNH is to develop a repository of information on newly-hired employees and on the earnings and unemployment compensation claims data of employees to enable States to quickly locate information on the address of, employment of, and unemployment compensation being paid to, parents with child support obligations who are residing or working in other States.

This data reporting alternative would be our preference for several different reasons. We would envision using the State data in paragraph (a)(1) along with the NDNH data not only for purposes of determining eligibility for high performance bonus awards, but, more importantly, for research purposes. We believe these data will provide an unparalleled source of objective, national, and comparable data on the TANF program. We would be able to gain insight into such areas as national trends in job entry, employment retention and earnings, and the impact of State policy choices on employment outcomes. Additional research might provide information on the relationships between outcome levels (low employment, retention, and earnings gain) and economic conditions; the effects on employment and earnings when individuals reside in one geographic area and work in another; and the extent to which welfare recipients enter employment that is not covered by the UI system, such as Federal government employment.

The NDNH also has the most comprehensive data on both Federal and State employment. As such, it would allow tracking of employment across State lines as well as identifying Federal government employment, something the UI system does not allow. We estimate that the NDNH would provide us with at least 90 percent of the job entries for TANF and former TANF recipients. It would also give us a single data source against which State

performance would be measured. Bonus awards would not be dependent on the States' ability to obtain the information and would allow us more easily to measure performance and success as well as reduce the burden on States. Also, having specific recipient identifying information would permit the use of the data for a variety of additional research purposes.

Since the availability of the NDNH data has not yet been determined, we are proposing an alternative data source in paragraph (a)(2), i.e., a State would submit data based on matches of its adult recipient data with its Unemployment Insurance (UI) employment data. This information would be submitted as follows to facilitate the calculation of the scores for each work measure:

(i) The cumulative number of unduplicated adult recipients who, by the end of the quarter, were unemployed recipients at some point during the performance year. (Adult recipients in fully subsidized employment are considered unemployed and should be included in this count. This includes employed recipients, who in the same quarter, became unemployed and then entered new employment for the first time in the performance year.);

(ii) The total number of unduplicated adult recipients employed at any time during the quarter;

(iii) The total number of employed adult recipients in paragraph (a)(2)(ii) of this section who, as a recipient in each quarter, entered employment for the first time this performance year. (This includes employed recipients, who in the same quarter, became unemployed and then entered new employment for the first time in the performance year.);

(iv) The total number of employed adult recipients in paragraph (a)(2)(ii) of this section who were also employed in the following quarter;

(v) The total number of adult recipients in paragraph (a)(2)(ii) of this section who were also employed in the second following quarter;

(vi) The total amount of earnings in the quarter of all employed adult recipients in paragraph (a)(2)(v) of this section; and

(vii) The total amount of earnings in the second following quarter of all employed adult recipients in paragraph (a)(2)(v) of this section.

We understand that some States might prefer this second alternate way of reporting data for various reasons, such as having an established working relationship with the UI agency, or because they do not want to submit the necessary identifying information on

recipients for a match with the NDNH. However, we note that these data are already required by the TANF final rule. On the other hand, the State UI database has the same limitations as the NDNH database, plus it lacks information on Federal and out-of-State employment. Employment data for individuals living in one State and working in another are generally not available unless a special data matching agreement has been implemented.

Nevertheless, some States may have developed procedures for overcoming these obstacles. In addition to comments on the use of these proposed data sources, we also invite comment on any other data sources for the work measures we might have overlooked or rejected. See the subsequent preamble section for additional discussion of data sources we considered but did not propose to use.

You will note that, in paragraph (a)(1), we are proposing that when States report information on all adult recipients (TANF and SSP-MOE recipients), they must identify in their report to us those recipients in fully subsidized employment. Using this information from the State and the NDNH data, we will be able to calculate the State scores for the various work measures.

In contrast, in paragraph (a)(2), we are proposing that the State exclude all adult TANF and SSP-MOE recipients in fully subsidized employment from their calculation before submitting their data to us. However, the State must include all recipients in fully subsidized employment in the count of unemployed recipients.

Workfare programs, in the context of the TANF program, are generally considered to be work experience and community service programs; individuals participating in workfare programs are not considered as employed and are, therefore, used only in the denominator in the calculation of this bonus.

We propose to clarify in paragraph (b) that the data required in paragraph (a) must be submitted for both adult TANF recipients and adult Separate State Program—Maintenance-of-Effort (SSP-MOE) recipients for whom the State would be required to complete Sections One and Three of the SSP-MOE Data Report.

In paragraph (c), we cross-reference the requirement in § 265.3(d) of this chapter (see the TANF final TANF rule published on April 12, 1999 (64 FR 17720) that, if a State wishes to receive a high performance bonus, it must file the information in Sections One and Three of the SSP-MOE Data Report. We

believe that in order to measure the full impact or success of the TANF program or the rate of improvement in the program in moving adult recipients toward self-sufficiency, it is essential that we know what adults are receiving assistance in the separate State program(s) and what is happening to them in the areas of job entry, job retention, and earnings.

As we stated in the preamble to the TANF NPRM, published on November 20, 1997, and in the final rule, published on April 12, 1999, information on SSP-MOE programs is needed for several reasons including to "help ensure that State decisions to establish such programs do not undermine the work provisions of the new law." Regarding the work measures, for example, a State could score well on a work measure by moving certain families, e.g., families with multiple employment barriers, to a separate State program where they receive no self-sufficiency services. Because this State would then be able to work intensively with the easier to serve TANF recipients, it might receive a high score on a work performance measure(s). In reality, however, it would not be performing as well as a State which achieved a similar, or even a lower, score while serving all families in its TANF program.

We will analyze the nature of benefits provided in the separate State programs as well as the information we receive from the SSP-MOE Data Report to assess how and whether to adjust a State's TANF performance data. If a State has been identified as having moved its hard-to-serve population to a separate State program, for example, we would adjust the State's high performance bonus score, if appropriate, or find the State ineligible for a bonus.

We welcome comments on the criteria that should be used to determine whether such a transfer has occurred and whether any adjustment to State high performance bonus scores is appropriate. We also welcome comments on ways in which we might make additional use of these SSP-MOE data.

In paragraph (d), we propose to require a State to inform us of the work measures on which it chooses to compete in that bonus year. It is important that a State provide this information so that we will know in advance how many States are competing in each of the measures in order to plan accordingly. We need to know the measures on which a State chooses to compete so that we can allocate the necessary time and resources to rank the States within a reasonable time frame

that permits us to award the bonus funds as soon as possible and before the end of the bonus year.

We raise the following questions for public consideration:

1. Should the bonus awards in FY 2002 and beyond be based only on measures that use national or standardized data?
2. Should we permit States to file sampled data for bonus awards and, if so, what would be the rationale and what sampling specifications should be used?

Section 270.7 What Data Will We Use To Measure Performance on the Non-Work Measures?

We have proposed to base two of the three non-work measures entirely on the data from the Census Bureau. We propose to use these data to measure State performance related to the measure on family formation and stability and the measure on participation by low-income working families in the Food Stamp program. The data for the third non-work measure—participation in the Medicaid/CHIP program—will be provided by the States, based on a match between TANF data and Medicaid enrollment data.

The Census Bureau's decennial and annual demographic programs will provide uniform objective and reliable State-level data. We have proposed to award bonuses in FY 2002 and beyond based on these data for CY 2000 and CY 2001. In addition, if a State wishes to receive a high performance bonus, it must report the data in Sections One and Three of the SSP-MOE Data Report. We welcome comments on alternate measures and data sources and on whether States should have the option to compete on these non-work measures.

Section 270.8 How Will We Allocate Bonus Award Funds?

We propose in paragraph (a) of this section a funds allocation formula for FY 2002 and beyond. We considered a number of ways to design a high performance bonus award system. We rejected an approach that would have more strictly limited the number of awards, developed a formula to calculate a single numerical score for each State, or set performance or threshold levels, i.e., numerical scores which a State must exceed in order to receive a bonus.

First, we believe that a major purpose of the bonus award is to offer an incentive to States to implement programs to meet the goals and purposes of the TANF program.

Therefore, in order to encourage State participation, we propose to award bonuses to a reasonable number of States rather than just a few States. We believe that proposing to award bonuses to the 10 States with the highest scores in each measure constitutes a reasonable number, i.e., a number which is large enough to reward several States, but small enough so that the performance will reflect reasonably high performance and the amount of the bonus will be a clear incentive. We also believe that awarding bonuses to the ten States with the highest scores for each measure will help to avoid the problems associated with reallocation of funds, given the limitation in the statute on the amount of a State's total bonus award, i.e., five percent of the State's family assistance grant.

Second, we believe an approach that consists of several measures, focused on different aspects of program success, and that rewards the top ten performers in each of these measures, is less complex and offers States more opportunity to demonstrate program success. Also, we did not want to set a numerical threshold based on absolute level of performance given the absence of baseline data.

We solicit the public's view on whether this approach may be more appropriate in the early days of implementing the TANF program and whether a different design may be appropriate in later years.

Specifically, in paragraph (a), we propose how we will divide \$140 million in FY 2002 and beyond among the four work measures. In general, we have based this allocation formula on what we believe are the relative importance and impact of each measure. We are proposing to give more weight to absolute measures than improvement measures because scores for absolute measures will generally reflect a higher outcome than the scores for improvement measures. In addition, we believe that job entry and increase in job entry should be given more weight than the other two measures, i.e., success in the work force and increase in success in the work force. The success in the work force measures clearly are dependent on job entry, i.e., a recipient must first get a job before achieving job retention or earnings gain.

In paragraph (b), we propose to allocate \$20 million to each of the three non-work measures, a total of \$60 million or 30 percent of the \$200 million to be awarded annually. We believe that the largest percentage of funds (70 percent or \$140 million), however, should be designated for the work measures, given the importance of

work in the program. We welcome comments on and supporting rationale for alternative allocations of funds.

In paragraph (c), we explain that we will distribute the dollars allocated to each measure based on each State's percentage of the total SFAG (State family assistance grant) of the ten States that will receive a bonus. We considered other methods of allocating the bonus funds, such as allocating the amount of the bonus based on a State's rank, but we concluded that the bonus award should be in proportion to the size of the State and perhaps the number of persons potentially affected. In that context, we also considered allocating funds based on the number of children in poverty in the State, but we were concerned that this allocation method might foster unintended consequences. Therefore, we have proposed an allocation formula based on the size of the TANF grant.

We believe this to be a proportional and equitable way to allocate these funds, consistent with and a logical extension of section 403(a)(4)(B)(ii) of the Act. (This section limits the total amount payable to a State in a bonus year to no more than five percent of the State's SFAG.) Under this method, both the amount of the State's award for each measure and the maximum overall amount payable to a State would be proportional to the SFAG.

In the next section of the preamble, we include additional discussion related to measurement and allocation of funds. In light of that discussion and the provisions in this section, we raise the following questions for consideration:

1. How should the funds be distributed to the high performing States?
2. What criteria should we use to establish the distribution of funds among the various measures?
3. Should we use the criterion "the ten States with the highest score in each measure" as a way of distributing funds?
4. Should the percent of funds distributed between the absolute measures and the improvement measures be changed?
5. If additional measures and data sources are recommended, what percentage of funds should they receive?
6. How should we handle the situation where more than one State has the tenth highest score?
7. Should we consider setting a numerical threshold for each measure that each State would need to exceed in order to be eligible for a bonus award on that measure?

8. Should we consider other thresholds, such as not awarding a bonus to a State subject to a work participation penalty or other non-compliance penalties?

9. Should the amount of the bonus for each State be weighted by the State's ranking or score, in addition or as an alternative to the size of its State family assistance grant?

Section 270.9 How Will We Redistribute Funds If That Becomes Necessary?

In this section, we propose a method to reallocate any undistributed amount of the annual \$200 million high performance bonus funds. Full distribution might not occur, for example, if the funds cannot be awarded because of the limitation on the amount payable to a State for a bonus year to no more than 5 percent of a State's family assistance grant. This section clarifies what we will do if we cannot award the full \$200 million.

We propose two steps. We would first reallocate the remaining funds among the measures listed in § 270.4. If any funds still cannot be distributed within the bonus year, they will remain available for distribution in the next bonus year.

We raise the following questions for public consideration:

1. How should we redistribute funds when a qualifying State cannot be awarded the full amount of the bonus because of the limitation of the bonus to no more than five percent of its TANF grant?
2. How should we redistribute funds that cannot be distributed within a bonus year?

Section 270.10 How Will We Annually Review the Award Process?

We have proposed in this section an annual review process, as needed, to address any future circumstances or events that we cannot predict but that we anticipate may occur and for which we will need to make modifications, adjustments, or technical changes to the high performance bonus specifications. We are still learning from State experience in competing for the first year bonus awards, including the process of gathering and reporting data in FY 1999 for State performance in FY 1998. Because the high performance bonus system is new for both the States and the Federal government, we think that it is critical to be able to continue to refine our award system based on what we learn from that award process.

We also know that State TANF programs are changing and that the field of performance measurement continues

to evolve. States and others are in the forefront of these activities, and we are learning from their experiences. We believe that taking these changes into account in making future awards will strengthen the process greatly. In addition, in anticipation of events occurring over which we have no control, we believe it is important that States know, to the extent possible before the measurement year, the measures, data sources, and other provisions on which we would base the bonus awards.

We propose in § 270.10 to allow for certain changes, modifications, and technical corrections. We would add new measures or make changes in the allocation formula only through regulations. We want to use this NPRM to determine if there is support for retaining some flexibility in order that we could take advantage of new developments, such as the emergence of new national data sources, to adjust to changes in external events such as lack of available data from the Census Bureau, or changes in the amount of funding available for bonus awards. We have proposed external consultation with interested parties as well as the criteria we would use to make these decisions. We welcome comments on the efficacy of this approach; we also welcome suggestions for the criteria under which such flexibility should be exercised.

Section 270.11 When Must the States Report the Adult Recipient Data and Other Information Related to Work Measures?

In paragraph (a), we propose that each State must collect quarterly the data specified in § 270.6(a) and (b) and report them semi-annually (by February 28 and August 31 of the bonus year) for the performance year (and for the comparison year if the State is competing on a work improvement measure). We propose that States collect data quarterly so that any problems that might occur in data reporting can be addressed by the State early in the bonus year. However, we are proposing to require reporting only semi-annually to minimize administrative burden.

We propose in paragraph (b) that each State must collect quarterly and submit the information in the SSP-MOE Data Report, as specified in § 270.6(c), either:

- At the same time as it submits its quarterly TANF Data Report; or
- At the time it seeks to be considered for a high performance bonus as long as it submits the required data for the full period for which this determination will be made.

These options for filing the SSP–MOE Data Report are the same as those contained § 265.3(d) of this chapter.

We are proposing in paragraph (c) to require that each State submit the list of work measures on which it is competing, as specified in § 270.6(c), by February 28 of the bonus year. This date is the same as the date proposed in paragraph (b) for the submission of the first semi-annual data report. We believe that by this date States will have determined on which measures they wish to compete and consistency of reporting dates will benefit both States and ACF.

Section 270.12 Must States File the Data Electronically?

In order to compete for a high performance bonus, we are proposing that each State must submit data electronically on the work measures and on the Medicaid/CHIP outcome measure to be included in the final rule. ACF will specify the reporting format and specifications for the work measures in program guidance after publication of a Paperwork Reduction Act (PRA) package. HCFA will also specify any specific reporting requirements.

We are proposing electronic submission for several reasons. For each collection of information, OMB regulations at 5 CFR 1320.8 require Federal agencies to evaluate whether the burden on respondents can be reduced by use of automatic, electronic, mechanical, or other technological collection techniques. This Department has for many years encouraged programs and grantees to use such non-paperwork approaches to meet data collection requirements.

With respect to the work measures, all States currently report the Emergency TANF Data Report in an electronic format that we have specified. In external consultation meetings, State representatives supported electronic submission of data reports. Therefore, we believe that electronic submission of the high performance bonus data will not be a burden on States, will reduce paperwork and administrative costs, be less expensive and time-consuming, and be more efficient for both States and the Federal Government.

Section 270.13 What do States Need To Know About the Use of Bonus Funds?

In the context of the flexibility provided to States under the TANF program, we decline to specify how States must use bonus award funds. States have the same flexibility in the use of these funds that they have in the use of TANF block grant funds.

We propose in paragraph (a) that a State must use the bonus award funds in accordance with two sections of the Act: Section 401 (Purpose) and section 404 (Use of Grants). We propose in paragraph (b) that the bonus funds are also subject to the statutory requirements and limitations in section 404 (Use of Grants) and section 408 (Prohibitions; Requirements) of the Act. In paragraph (c), we propose that, if the State uses bonus funds to provide assistance as defined in § 260.31 of this chapter, § 263.11 of this chapter also applies.

Grants made to a State under section 403 of the Act—whether TANF block grant funds, bonus award funds, or Welfare-to-Work grants—are subject to these limitations and requirements. For example, if a State uses bonus funds to provide assistance (as defined in § 260.31 of this chapter), the prohibitions against providing assistance to certain individuals in section 408 will apply. If the State does not use bonus funds to provide such assistance, these prohibitions are not applicable.

Finally, some of the general requirements in sections 404 and 408 of the Act will apply regardless of how the States choose to use these funds. For example, the 15 percent limitation on the use of TANF grant funds for administrative purposes (section 404(b) of the Act) means that any bonus award funds will be added to the State's total amount of TANF funds and the administrative cost percentage will be computed based on the total.

We propose in paragraph (d) to add, for clarity, the statutory provision that, for Puerto Rico, Guam, the Virgin Islands, and American Samoa, the bonus award funds are not subject to the mandatory ceilings on funding established in section 1108(c)(4) of the Act.

VI. Discussion of Other Issues Related to Performance Measurement

In this section of the preamble, we discuss and raise questions concerning issues relating to absolute performance, performance improvement, threshold levels, and alternative ways to ensure an objective and fair competition. We also include a list of measures and data sources that we believe do not merit further consideration at this time, although we welcome comment on this conclusion.

A. Consideration of Issues Relating to Absolute Performance, Performance Improvement, and Threshold Levels

It is easy to understand absolute performance; whoever receives the

highest or best score is the winner. However, such measures can reward high performers without additional effort on their part, and it can also discourage low performers who would need to make extraordinary progress in order to compete.

Measuring improvement, on the other hand, allows a wider range of States to compete successfully and encourages low performers to invest in greater efforts. It also recognizes that States work in different environments and that success needs to be measured in more than one way. However, use of such measures could allow a low performer to register a significant improvement while still remaining a low performer. It might also be difficult for a high performing State to compete successfully over time because it would need to continue to sustain high levels of improvement or even to maintain the same level of performance year to year.

Because these bonuses are intended for “high performing” States, we decided it would be appropriate to set some levels of performance. We had several options available in establishing these levels. We have proposed the threshold level as the “top ten States” competing in each measure. Another option would be to establish a numerical score which could be absolute, e.g., 75 percent or another score which a State would need to meet or exceed in order to be eligible to receive a bonus in a certain category, or a score tied to self-sufficiency such as one related to above poverty-level wages. A third option was to establish individually negotiated targets with each State. This last option provides the greatest flexibility to States in setting performance outcomes and competing for bonuses. However, it could be perceived as inconsistent with statutory intent and with the public's understanding of high performance. It would also entail a greater workload for States and the Department. A final option would be to raise the score each year, e.g., a 75 percent score must be achieved in FY 2002, an 80 percent score in FY 2003.

B. Consideration of Alternate Ways To Structure the High Performance Bonus To Ensure an Objective and Fair Competition: The Impact of External Factors

We believe that competition for the high performance bonus should primarily reflect a State's welfare and work strategies and should be a competition among States that is objective and fair. We can achieve this goal, to some extent, in our use of common measures and uniform, reliable

data sources, allowing for measures of both absolute and improved performance. However, there are factors over which the State has little control, such as the health of the State's economy, the demographics of its TANF caseload and its resident population, and State population growth. As a result, many individuals would like us to incorporate some adjustments for these external factors. However, the inclusion of multiple adjustment factors in some type of weighting scheme poses serious methodological problems. Such a scheme might create a more equitable starting point, but it could also lead to misunderstandings, challenges, and contentious debates.

In light of this discussion, we raise the following questions:

1. Should we attempt to develop adjustment factors in order to ensure an objective and fair competition?

2. If so, what adjustment factors should we consider and how should they be used?

3. Should we consider the use of the State's employment rate or changes in State caseloads as adjustment factors?

C. Other Measures and Data Sources Considered

We considered and evaluated a wide range of possible measures and data sources in developing this NPRM. As noted earlier in our discussion of § 270.4, one of the factors we were particularly aware of was the issue of diversity among States and how that diversity might impact the design and

implementation of the high performance bonus award system. For example, under AFDC, each State defined its standard of need for assistance, set its own benefit levels, and established (within Federal limitations) income and resource limits. As a result, there were sizeable differences from State to State in the definitions used in these programs, in the level of assistance families received, and in the types of families served. Waivers from Federal requirements used by some States to test the effect of changes in certain rules increased these differences. The table below illustrates the range in State AFDC caseload sizes, case characteristics, benefit levels, employment levels, and program costs for fiscal year 1996.

| Category | Range | |
|---|--------|-----------|
| | Lowest | Highest |
| Number of families | 4,700 | 896,000 |
| Number of adults | 3,700 | 821,000 |
| Number of Children | 9,100 | 1,805,000 |
| Percent of families headed by one adult | 57.0 | 83.8 |
| Percent of families headed by two (or more) adults | 0.4 | 18.5 |
| Percent of families headed by no adult recipient** | 7.6 | 38.5 |
| Average monthly benefit per family | \$118 | \$731 |
| Average monthly benefit per recipient | \$44 | \$247 |
| Percent of recipient adults (male and female) with employment (full or part-time) | 1.1% | 27.3% |
| Average monthly earnings of families with earnings | \$127 | \$505 |
| Average monthly administrative expenses per family | \$13 | \$128 |
| Average monthly administrative expenses per recipient | \$5 | \$49 |

** "No adult recipient" means that the children are living with parents or adult caretakers who are not receiving AFDC due to a wide variety of reasons.

Since States now have even greater flexibility in designing their TANF programs, we believe this diversity across States will continue to grow. We noted some examples of these differences in a review of State TANF plans:

- (1) Although assistance under the TANF statute is limited to 5 years, only 25 States have a five year limit;
- (2) About half the States plan not to provide extra payments to families that have an additional child while on welfare (sometimes called a "family cap"); and
- (3) Thirty States operate or allow counties to operate "up-front" diversion programs. These generally involve a one-time cash payment to meet immediate needs.

Because of these differences, as we evaluated performance measures related to work, we chose not to include measures that were based solely on receipt of cash benefits or type of benefits. We believe such measures could have serious unintended effects. Instead, we focused on work measures which would gauge work and self-

sufficiency performance. We discussed our rationale for this choice earlier in the preamble.

We also considered using a number of national data sources, including:

1. The Current Population Survey (CPS).—The CPS contains detailed questions related to labor force participation (e.g., employment/unemployment status; hours and weeks worked throughout the past year; and reasons for non-participation, joblessness, and part-year/part-time employment) as well as questions on whether an individual/family/household received public assistance. We seriously considered using this database. However, the CPS has a limited data set and most importantly, a small sample size. Because of the sample size, State figures may vary widely which would restrict its usefulness for awarding the high performance bonus.

2. In addition to the CPS, the data sources listed below were also found to have various limitations including inconsistent definitions, non-

comparability across States, tangential relevance, and different sample populations. These databases included: Food Stamp Quality Control Data Internal Revenue Service Data (PSID) Panel Study of Income Dynamics (SIPP) The Survey of Income and Program Participation (NLSY) National Longitudinal Survey of Youth (NSFG) National Survey of Family Growth (YRBSS) Youth Risk Behavior Surveillance System (NCHS) National Center on Health Statistics (UI) Unemployment Insurance State administrative data

Below is a summary list of the major performance measures and data sources we considered but did not propose at this time for various reasons, including a lack of uniform national data availability, variation in definitions among States, and measures beyond the scope of the bonus.

Other Measures and Data Sources Considered:

| Variable | Source |
|---|--|
| Percent of caseload entering employment without a high school diploma. | CPS. |
| Percent of long-term caseload entering employment | State administrative data. |
| Work participation rate | State administrative data. |
| Percent of cases that reach time limit without job | State administrative data. |
| Percent of TANF teens attending school or working | State administrative data. |
| Percent of TANF teens not attending school and not working | State administrative data. |
| Number of out-of-wedlock births | State administrative data; NCHS. |
| Recidivism rate | No data source identified. |
| Average length of stay on assistance | State administrative data. |
| Cases with transitional benefits | State administrative data. |
| Receipt of TANF benefit | State administrative data. |
| Number of applicants diverted from the TANF cash assistance program | No data source identified. |
| Reduction in dependence | State administrative data. |
| Increase in number of persons in training/non-traditional employment under Welfare-to-Work program. | Department of Labor data. |
| Percent of children living in households with no adult male ages 21 and over. | CPS. |
| Educational attainment | CPS. |
| Improvement in immunization | No data source identified. |
| Proportion of recipients who receive domestic violence services | No data source identified. |
| Percent of current/former recipients receiving subsidized child care | State administrative data. |
| Quality child care | No data source identified. |
| Percent of caseload with paternity established | State administrative data. |
| Number of TANF families that have both earned income and child support paid. | State administrative data. |
| Percent of caseload married | State administrative data. |
| Percent of caseload leaving welfare for marriage | State administrative data. |
| Administrative cost per work placement | State administrative data. |
| Marriage/Divorce rates statewide | Vital statistics. |
| Number of children entering foster care | Adoption and Foster Care Analysis and Reporting System (AFCARS). |
| Percent of children in poverty | Census Bureau data. |
| Services to the harder to serve population | No data source identified. |

We welcome comments on any of the measures or data sources we considered but rejected.

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 proposed rule is consistent with these priorities and principles. This proposed rulemaking implements statutory authority based on broad consultation and coordination.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. Section 403(a)(4) of the Act also requires the Department to consult with the National Governors' Association and the American Public Human Services Association in the development of a system for awarding high performance bonuses. As described elsewhere in the preamble, ACF consulted extensively with State and local officials and their representative organizations as well as a broad range of advocacy groups, researchers, and others to obtain their views. These proposed rules reflect the discussions

with and the concerns of the groups with whom we consulted.

This rule is a significant regulatory action that will have an annual effect on the economy of \$100 million or more, according to section 3(F)(1) of the Executive Order. This rule will determine how \$200 million will be awarded to high performing States to be used to benefit the recipients of State TANF programs and will have the additional effect of improving States' efforts in implementing welfare reform. High performing States could see their State family assistance grants increase by as much as five percent. We believe the cost of competing for a high performance bonus award should be minimal since competition for these awards will be based, to the extent possible, on existing data sources.

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 the 50 States, the District of Columbia, and

certain territories. Therefore, the Secretary certifies that this rule will not have a significant impact on small entities.

C. Assessment of the Impact on Family Well-Being

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 Appropriations Act of 1999. The high performance bonus awards proposed in this NPRM are a component part of the TANF program and are designed to reward State efforts in strengthening the economic and social stability of families and carrying out other purposes in the statute. The NPRM does not limit State flexibility to design programs to serve these purposes.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), no persons are required to respond to a collection of information unless it displays a valid OMB control number. As required by this Act, we have submitted the proposed data collection requirements to OMB for review and approval. We are concurrently using this NPRM as a vehicle for seeking comment from the public on these and any additional

information collection activities that they believe should be added as a part of the bonus award process.

This NPRM proposes to award bonuses, in FY 2002 and beyond, based on four work measures and three non-work measures. No reporting burden would fall on the States for two of the non-work measures for which we will use Census Bureau decennial and annual demographic program data as the data source, i.e., food stamp participation measure and measure on family formation and stability. To measure Medicaid/CHIP participation, States must match TANF data with Medicaid/CHIP enrollment data, using the information from HCFA's MSIS system and the HCFA Form 21-E.

We have computed the burden based only on the work measures and the measure of Medicaid/CHIP participation specified in § 270.4. If additional measures are added or additional reporting is required in the final rule, we will solicit comments on the increased burden of reporting through a Paperwork Reduction Act Notice.

Burden Estimate for the Work Measures

The NPRM proposes two alternative reporting mechanisms for the work measures, i.e., either the information specified in § 270.6(a)(1) or the data specified in § 270.6(a)(2). After a consideration of public comments, the Secretary's decision will be reflected in the final rule. Under both alternatives, the State must collect information quarterly and report it semi-annually for both the adult TANF recipients and the adult SSP-MOE recipients for whom the State reports data in the SSP-MOE Data Report.

If the State wishes to receive a high performance bonus, it must report the data in Sections One and Three of the SSP-MOE Data Report as required in § 265.3(d) of this chapter. (The burden

for this reporting requirement was previously estimated in the TANF final rule, published April 12, 1999 (64 FR 17720).) We will specify the reporting format for these proposed requirements.

We estimate the burden for the first reporting alternative in § 270.6(a)(1) as 1,728 hours, based on the requirement that States report the name, birth date, and social security number of all adult TANF and SSP-MOE recipients and identify those in fully subsidized employment. Our estimate of the burden is as follows: 16 hours per response, times 54 respondents, times two (semi-annual reporting).

Because the four work measures proposed in this NPRM are substantially the same as the work measures on which we will award bonuses in FY 1999 and FY 2000, we estimate the burden for the second reporting alternative in § 270.6(a)(2) to be the same as the current number in the OMB PRA Inventory of 8,640 hours. This current number represents the annual burden estimate of collecting data from 54 respondents, responding quarterly, at 40 hours per response. (See ACF-Form 200, OMB No. 0970-0180.) The actual burden may be less since we are proposing to require that States submit quarterly data twice a year. On the other hand, the burden may be the same because the primary burden is the quarterly collection of the data rather than the semi-annual reporting of the data.

We estimate the total burden of the two reporting alternatives is 10,368 hours (1,728 plus 8,640). We realize that this number is an over-estimate, reflecting the total burden of two proposed alternatives in the NPRM, only one of which will be included in the final rule.

We believe the burden of reporting the information on work measures will be minimal, particularly if we are able

to use the NDNH. In addition, States already have experience in extracting case/individual identifying information from their electronic data bases for matching purposes, including the Income and Eligibility Verification System (IEVS) matches required by statute.

Burden Estimate for the Measures on Medicaid/CHIP Participation

The Medicaid/CHIP performance measure at § 270.4(d) consists of qualifying conditions and an outcome measure. The qualifying conditions will be evaluated by HCFA based on State documentation and HCFA oversight of the Medicaid/CHIP programs. There is no new burden associated with these process measures.

The outcome measure in § 270.4(d)(4) is based on quarterly reporting of the data from a match of TANF data and Medicaid enrollment data. Because this activity is similar to State activity in matching TANF data and UI data (see § 270.6(a)(2)), we estimate that the burden will be approximately the same, i.e., 8,640 hours, excluding start-up costs. We understand that some States may not have social security numbers for CHIP recipients. In that instance, there may be an additional burden.

The total annual burden estimate includes the development of a one-time extraction program (based on our specifications), computer run-time to execute the program, the creation of an extract data file, and transmitting the information.

We estimate that the 50 States, the District of Columbia, Guam, Puerto Rico, and the United States Virgin Islands will be respondents. (Currently, American Samoa has not applied to implement the TANF program.)

The annual burden estimate for this data collection is:

| Instrument or requirement | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|--|-----------------------|------------------------------------|-----------------------------------|--------------------|
| High Performance Bonus Report: WORK MEASURES (total of two alternative measures) | 54 | 2 | 96 | 10,368 |
| High Performance Bonus Report: MEDICAID/CHIP MEASURE | 54 | 4 | 40 | 8,640 |
| Estimated Total Annual Burden Hours | | | | 19,008 |

We encourage States, organizations, individuals, and other parties to submit comments regarding the information collection requirements to the Administration for Children and Families, Office of Information Services, Office of Information Resource

Management Services, 370 L'Enfant Promenade SW., Washington, DC 20447, Attention: Reports Clearance Officer.

To ensure that public comments have maximum effect in developing the final regulations and the data collection instrument, we urge that each comment

clearly identify the specific section or sections of the proposed rule or Appendices.

We will consider comments by the public on these proposed collections of information in:

- Evaluating whether the proposed 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 proposed 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.

OMB is required to make a decision concerning the collection of information contained in these proposed rules between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is assured of having its full effect if OMB receives it within 30 days of publication. This OMB review schedule does not affect the deadline for the public to comment to ACF on the proposed rules. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3208 New Executive Office Building, 725 17th Street, NW, Washington, DC 20503, Attention: Desk Officer for ACF.

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 proposed rule.

We have determined that the proposed 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

This proposed rule is a major rule as defined in 5 U.S.C., Chapter 8.

List of Subjects in 45 CFR Part 270

Grant Programs (Social Programs); Public Assistance Programs (Welfare Programs); Recordkeeping and Reporting Requirements.

(Catalogue of Federal Domestic Assistance Programs; No. 93.558 Temporary Assistance for Needy Families (TANF) Program; State Family Assistance Grants; Tribal Family Assistance Grants; Assistance Grants to Territories; Matching Grants to Territories; Supplemental Grants for Population Increases; Contingency Fund; High Performance Bonus; Decrease in Illegitimacy Bonus)

Dated: November 17, 1999.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Approved: November 19, 1999.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, we propose to amend 45 CFR chapter II by adding part 270 to read as follows:

PART 270—HIGH PERFORMANCE BONUS AWARDS

Sec.

- 270.1 What does this part cover?
 270.2 What definitions apply to this part?
 270.3 What is the annual maximum amount we will award and the maximum amount that a State can receive each year?
 270.4 On what measures will we base the bonus awards?
 270.5 What factors will we use to determine a State's score on the work measures?
 270.6 What data for the work measures must a State report to us?
 270.7 What data will we use to measure performance on the non-work measures?
 270.8 How will we allocate the bonus award funds?
 270.9 How will we redistribute funds if that becomes necessary?
 270.10 How will we annually review the award process?
 270.11 When must the States report the adult recipient data and other information related to the work measures?
 270.12 Must States file the data electronically?
 270.13 What do States need to know about the use of bonus funds?

Authority: 42 U.S.C. 603(a)(4)

§ 270.1 What does this part cover?

This part covers the regulatory provisions relating to the bonus to reward high performing States in the TANF program, as authorized in section 403(a)(4) of the Social Security Act.

§ 270.2 What definitions apply to this part?

The following definitions apply under this part:

Act means the Social Security Act, as amended.

Bonus year means each of the fiscal years 2002 and 2003 in which TANF bonus funds are awarded, and any subsequent fiscal year for which Congress authorizes and appropriates bonus funds.

CHIP is the Children's Health Insurance Program as described in title XXI of the Social Security Act.

Comparison year means the fiscal year preceding the performance year.

Fiscal year means the 12-month period beginning on October 1 of the preceding calendar year and ending on September 30.

Food Stamp Program means the program administered by the United States Department of Agriculture pursuant to the Food Stamp Act of 1977, U.S.C. 2011 et seq.

HCFA is the Health Care Financing Administration.

Medicaid is a State program of medical assistance operated in accordance with a State plan under title XIX of the Act.

MSIS is the Medicaid Statistical Information System.

Performance year means the fiscal year in which a State's performance is measured, i.e., the fiscal year immediately preceding the bonus year.

Separate State program (SSP) means a program operated outside of TANF in which the expenditure of State funds may count for TANF maintenance-of-effort (MOE) purposes.

SSP-MOE Data Report is the report containing disaggregated and aggregated data required to be filed on SSP-MOE recipients in separate State programs as specified in § 265.3(d).

State means each of 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.

We (and any other first person plural pronouns) means 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 Department of Health and Human Services, and the Administration for Children and Families.

§ 270.3 What is the annual maximum amount we will award and the maximum amount that a State can receive each year?

(a) Except as provided in § 270.9, we will award \$200 million in bonus funds annually, subject to Congressional authorization and the availability of the appropriation.

(b) The amount payable to a State in a bonus year may not exceed five percent of a State's family assistance grant.

§ 270.4 On what measures will we base the bonus awards?

(a) *Performance measures: General.* We will base the high performance bonus awards on four work measures; one measure of family formation and family stability; and two measures that support work and self-sufficiency, i.e., participation by low-income working families in the Food Stamp Program and participation in the Medicaid and CHIP programs.

(b) *Work Measures.*

(1) Beginning in FY 2002, we will measure State performance on the following work measures:

- (i) Job entry rate;
- (ii) Success in the work force rate;
- (iii) Increase in the job entry rate; and
- (iv) Increase in success in the work force rate.

(2) For any given year, we will score and rank competing States and award bonuses to the ten States with the highest scores in each work measure.

(3) Each State has the option to compete on one, any number of, or none of the work measures specified in this paragraph.

(c) *Measure of participation by low-income working families in the Food Stamp Program—(1) Qualifying conditions.* In order to compete on the Food Stamp outcome measure in paragraph (c)(2) of this section, States must meet all the following qualifying conditions. The Food and Nutrition Service of the U.S. Department of Agriculture will determine whether a State is meeting these conditions through its ongoing oversight of the Food Stamp Program.

(i) The State agency has issued policy instructions or regulations clearly specifying that, at first contact with the State agency which administers the Food Stamp Program, individuals must be informed of the opportunity to apply for food stamps in accordance with 7 CFR 273.2(c)(1).

(ii) The State agency has issued policy instructions or regulations clearly specifying that application forms are to be readily accessible and available upon request, in accordance with 7 CFR 273.2(c)(3).

(iii) As evidenced through policy instructions, regulations, and administrative reviews, the State agency is complying with application processing time frames and expedited service rules, as required by 7 CFR 273.2(g).

(iv) As evidenced through policy instructions, regulations, and administrative reviews, the State agency has taken steps to prevent inappropriate denials and terminations of eligible food stamp participants who have lost TANF eligibility. Since food stamp eligibility is not based on TANF eligibility, States may not deny food stamp eligibility to a family or a family member simply because the family is ineligible for TANF.

(2) *Outcome measure.* (i) Beginning in FY 2002, we will measure the improvement in the number of low-income working families (i.e., families with children under age 18 who have an income less than 130 percent of poverty and earnings equal to at least half-time, full-year minimum wage) receiving food stamps as a percentage of the number of low-income working families (as defined in this subparagraph) in the State.

(ii) For any given year, we will compare a State's performance on this measure to its performance in the previous year, beginning with a comparison of CY 2000 to CY 2001, based on Census Bureau decennial and annual demographic program data.

(iii) We will rank all States that meet the conditions in paragraph (c)(1) of this section and will award bonuses to the 10 States with the greatest percentage improvement in this measure.

(d) *Measure of participation by low-income families in the Medicaid/CHIP Programs—(1) Qualifying conditions.* In order to compete on the Medicaid/Children's Health Insurance Program (CHIP) outcome measure in paragraph (d)(3) of this section, a State must meet all of the following qualifying conditions:

(i) The State has issued policy instructions or regulations clearly specifying that, at first contact with the TANF agency, an individual must be given the opportunity to apply for Medicaid in accordance with 42 CFR 435.906;

(ii) When eligibility under section 1931 of the Act is lost due to hours of, or earnings from, employment or loss of the time-limited earning disregards, the

State issues to the affected family a written notice that meets the requirements of section 1925(a)(2)(A) of the Act, and a card or other evidence of the family's entitlement to assistance, as required under section 1925(a)(2)(B) of the Act;

(iii) The State has issued policy instructions or regulations clearly specifying that family members may not be terminated from Medicaid until it has been determined that they are not eligible under any other Medicaid group; and

(iv) The State has fulfilled all data requirements under the law, including being up to date on all Medicaid and CHIP data submissions and having the MSIS system on-line and operating properly.

(2) *Qualifying options.* In addition, in order to compete on the outcome measure in paragraph (d)(3) of this section, the State must have implemented at least two of the following qualifying State options:

(i) The State accepts mail-in or phone-in applications for Medicaid for families and children which can be completed without a face-to-face interview;

(ii) State Medicaid workers have been outstationed at locations in addition to the locations required under 42 CFR 435.904 (c)(1) and (c)(2);

(iii) The State has expanded Medicaid eligibility for recipient and applicant families through the use of less restrictive methodologies, authorized by section 1931(b)(2) (B) and (C) of the Act;

(iv) The State uses a definition of "unemployed parent" that includes parents who are employed more than 100 hours per month, as authorized under 45 CFR 233.101 and section 1931(d) of the Act;

(v) The State provides continuous Medicaid eligibility for children for a period of time without regard to changes in circumstances, as authorized by section 1902(e)(12) of the Act;

(vi) The State provides a period of presumptive Medicaid eligibility for children, as authorized by section 1920A of the Act; or

(vii) The State has simplified the enrollment and reenrollment processes for children and low-income families by implementing such improvements as shortened application forms.

(3) *Outcome Measure.* (i) Beginning in FY 2002, we will measure the improvement in the percentage of individuals receiving TANF benefits who are also enrolled in Medicaid or CHIP, who leave TANF in a calendar year and are enrolled in Medicaid or CHIP in the sixth month after leaving TANF assistance (and are not receiving TANF assistance in the sixth month).

(ii) For any given year, we will compare a State's performance on this measure to its performance in the previous year, beginning with a comparison of CY 2000 to CY 2001, based on a quarterly submission by the State of the above percentage as determined by matching individuals (adults and children) who have left TANF assistance and are not receiving it in the sixth month with Medicaid/CHIP enrollment data.

(iii) We will rank the performance on this measure of all States that meet the conditions in paragraphs (d)(1) and (d)(2) of this section and will award bonuses to the 10 States with the greatest percentage improvement in this measure.

(e) Measure of family formation and stability. (1) Beginning in FY 2002, we will measure the increase in the percent of children below 200 percent of poverty in each State who reside in married couple families, beginning with a comparison of data between CY 2000 and CY 2001, based on Census Bureau decennial and annual demographic program data. For any given subsequent year, we will compare a State's performance on this measure to its performance in the previous year.

(2) We will rank all States and will award bonuses to the ten States with the greatest percentage improvement in this measure.

§ 270.5 What factors will we use to determine a State's score on the work measures?

(a) *Definitions.* The work measures are defined as follows:

(1) The *Job Entry Rate* means the unduplicated number of adult recipients who entered not fully subsidized employment for the first time in the performance year (job entries) as a percent of the total unduplicated number of adult recipients unemployed at some point in the performance year. Adult recipients in fully subsidized employment are not included in the numerator but are included in the denominator.

(2) The *Success in the Work Force Rate* is composed of two submeasures defined as follows:

(i) The *Job Retention Rate* means the performance year sum of the unduplicated number of employed adult recipients in each quarter one through four who were also employed in the first and second subsequent quarters, as a percent of the sum of the unduplicated number of employed adult recipients in each quarter. (At some point, the adult might become a former recipient.) Adult recipients in fully subsidized

employment are not included in either the numerator or the denominator; and

(ii) The *Earnings Gain Rate* means the performance year sum of the gain in earnings between the initial and second subsequent quarter in each of quarters one through four for adult recipients employed in both these quarters as a percent of the sum of their initial earnings in each of quarters one through four. (At some point, the adult might become a former recipient.) Earnings gains of adult recipients in fully subsidized employment are not included in either the numerator or the denominator.

(3) The *Increase in the Job Entry Rate* means the positive difference between the performance year job entry rate and the comparison year job entry rate as a percentage of the comparison year job entry rate; and

(4) The *Increase in Success in the Work Force Rate* means the positive difference between the performance year success in the work force rate and the comparison year success in the work force rate as a percent of the comparison year success in the work force rate. It is composed of two submeasures defined as follows:

(i) The *Increase in the Job Retention Rate* means the positive difference between the performance year job retention rate and the comparison year job retention rate as a percent of the comparison year job retention rate; and

(ii) The *Increase in the Earnings Gain Rate* means the positive difference between the performance year earnings gain rate and the comparison year earnings gain rate as a percent of the comparison year earnings gain rate.

(b) *Ranking of States.* (1) We will measure State performance in the work measures over the course of an entire fiscal year both for the performance year and the comparison year, if applicable.

(2) We will rank the competing states on the work measures for which they:

(i) Indicate they wish to compete; and

(ii) Submit the data specified in § 270.6 within the timeframes specified in § 270.11.

(3) We will rank the States on absolute performance in the case of the two work measures in paragraphs (a)(1) and (a)(2) of this section. For the two work measures in paragraphs (a)(3) and (a)(4) of this section, we will rank States based on the percentage increase in their improvement rate in the performance year compared to the comparison year. The rank of the performance in paragraphs (a)(2) and (a)(4) of this section will be a composite weighted score of the rank of the retention and the earnings gain

measures with the job retention rank having a weight of two.

(4) The rates for States submitting data for each work measure in this section will be ranked from high to low, with "1" being the rank for the State with the highest score. We will assign to each State not competing or submitting data for a work measure a rank that is the number following the last rank for States that properly submitted data on a timely basis and notified us of their interest in competing.

(5) We will calculate the percentage rate for each work measure to two decimal points. If we identify more than ten States due to a tie in the rate for a specific work measure, we will calculate the rate to as many decimal points as necessary to eliminate the tie.

(c) *The Improvement Rate.* The Improvement Rate means the positive percentage change between the performance year and the comparison year for each measured rate (job entry, retention, earnings gain).

§ 270.6 What data for the work measures must a State report to us?

(a) If a State wishes to compete on any of the work measures specified in § 270.5(a), it must report one of the following alternative sets of data, as specified by the Secretary. The State must collect quarterly and report semi-annually for the performance year and, if the State chooses to compete on an improvement measure, the comparison year, either:

(1) An unduplicated list of all adult recipients by name, social security number, and date of birth for each quarter; adult recipients in fully subsidized employment must be included in this list but identified separately; or

(2) Based on a match between the State's adult recipient identification data and the Unemployment Insurance employment data, the following information:

(i) The cumulative number of unduplicated adult recipients who, by the end of each quarter, were unemployed recipients at some point during the performance year. (Adult recipients in fully subsidized employment must be excluded from this data match but must be included in the count of unemployed recipients; employed adult recipients who became unemployed and entered new employment for the first time in the same quarter must also be included.);

(ii) The total number of unduplicated adult recipients employed at any time during the quarter;

(iii) The total number of employed adult recipients in paragraph (a)(2)(ii) of this section who, as a recipient in each quarter, entered employment for the first time this performance year;

(iv) The total number of employed adult recipients in paragraph (a)(2)(ii) of this section who were also employed in the following quarter;

(v) The total number of adult recipients in paragraph (a)(2)(ii) of this section who were also employed in the second following quarter;

(vi) The total amount of earnings in each quarter of all employed adult recipients in paragraph (a)(2)(v) of this section; and

(vii) The total amount of earnings in the second following quarter of all employed adult recipients in paragraph (a)(2)(v) of this section.

(b) Each State must submit the information in paragraph (a) of this section for both adult TANF recipients and adult SSP–MOE recipients for whom the State would report the data described in paragraph (c) of this section.

(c) Each State must file the information in Sections One and Three of the SSP–MOE Data Report as specified in § 265.3(d) of this chapter.

(d) Each State must specify to ACF the measures on which it is competing in each bonus year.

§ 270.7 What data will we use to measure performance on the non-work measures?

(a) We will use data from the Census Bureau's decennial and annual demographic programs to rank State performance on the measure of family formation and stability and the Food Stamp outcome measure.

(b) We will measure State performance on the Medicaid/CHIP outcome measure based on quarterly data submitted by States as determined by matching individuals who are no longer receiving TANF assistance with Medicaid/CHIP enrollment data.

§ 270.8 How will we allocate the bonus award funds?

(a) In FY 2002 and beyond, we will allocate and award \$140 million to the ten States with the highest scores for each work measure as follows, subject to reallocation as specified in § 270.9:

- (1) Job Entry Rate—\$56 million
- (2) Success in the Work Force—\$35 million
- (3) Increase in Job Entry Rate—\$28 million
- (4) Increase in Success in the Work Force—\$21 million;

(b) In FY 2002 and beyond, we will allocate and award \$60 million to the ten States with the greatest improvement in the non-work measures as follows, subject to reallocation as specified in § 270.9:

- (1) Food Stamp Measure—\$20 million
- (2) Medicaid/CHIP Measure—\$20 million
- (3) Family Formation/Stability—\$20 million

(c) We will distribute the bonus dollars for each measure based on each State's percentage of the total amount of the State family assistance grants of the 10 States that will receive a bonus.

§ 270.9 How will we redistribute funds if that becomes necessary?

(a) If we cannot distribute the funds as specified in § 270.8, due to the statutory limit on the amount of each State's bonus award, we will reallocate any undistributed funds among the measures listed in § 270.4.

(b) If funds still cannot be distributed within the bonus year, they will remain available for distribution in the next bonus year.

§ 270.10 How will we annually review the award process?

(a) *Annual determination.* Annually, as needed, we will review the measures, data sources, and funding allocations specified in this part to determine if modifications, adjustments, or technical changes are necessary. We will add new measures or make changes in the funding allocations for the various measures only through regulations.

(b) *Criteria.* We will determine if any modifications, adjustments, or technical changes need to be made based on:

- (1) Our experience in awarding high performance bonuses in previous years; and
- (2) The availability of national, State-reliable, and objective data.

(c) *Consultation.* We will consult with the National Governors' Association, the American Public Human Services Association, and other interested parties before we make our final decisions on performance components for the bonus awards in FY 2002 through 2003 (and beyond) and will notify States of our decisions through annual program guidance. We will also post this information on the Internet.

§ 270.11 When must the States report the adult recipient data and other information related to the work measures?

(a) Each State must collect quarterly and submit semi-annually during the bonus year the data specified in § 270.6(a) and (b) as follows:

(1) The data must be submitted by February 28 of the bonus year for the first and second quarters of the performance year and, if a State chooses to compete on an improvement measure, the first and second quarters of the comparison year.

(2) The data must be submitted by August 31 of the bonus year for the third and fourth quarters of the performance year and, if a State chooses to compete on an improvement measure, the third and fourth quarters of the comparison year.

(b) Each State must collect quarterly its SSP–MOE Data Report as specified in § 270.6(c) and submit it:

(1) At the same time as it submits its quarterly TANF Data Report; or

(2) At the time it seeks to be considered for a high performance bonus as long as it submits the required data for the full period for which this determination will be made.

(c) Each State must submit the list of work measures on which it is competing, as specified in § 270.6(d), by February 28 of the bonus year.

§ 270.12 Must States file the data electronically?

Each State must submit the data required to compete for the high performance bonus work measures and the Medicaid/CHIP outcome measure electronically in a manner that we and HCFA will specify.

§ 270.13 What do States need to know about the use of bonus funds?

(a) A State must use bonus award funds to carry out the purposes of the TANF block grant as specified in section 401 (Purpose) and section 404 (Use of Grants) of the Act.

(b) As applicable, these funds are subject to the requirements and limitations of sections 404 and 408 (Prohibitions; Requirements) of the Act.

(c) If the State uses bonus award funds to provide assistance, as defined in § 260.30 of this chapter, the provisions of § 263.11 of this chapter also apply.

(d) For Puerto Rico, Guam, the Virgin Islands, and American Samoa, the bonus award funds are not subject to the mandatory ceilings on funding established in section 1108(c)(4) of the Act.

Note: The following Appendix will not appear in the Code of Federal Regulations:

Appendix

STATE FAMILY ASSISTANCE GRANTS UNDER PRWORA

| State | State family assistance grant ¹ | State family assistance grant times 5 percent |
|-----------------------|--|---|
| Alabama | \$93,315,207 | \$4,665,760 |
| Alaska | 63,609,072 | 3,180,454 |
| Arizona | 222,419,988 | 11,120,999 |
| Arkansas | 56,732,858 | 2,836,643 |
| California | 3,733,817,784 | 186,690,889 |
| Colorado | 136,056,690 | 6,802,835 |
| Connecticut | 266,788,107 | 13,339,405 |
| Delaware | 32,290,981 | 1,614,549 |
| District of Col. | 92,609,815 | 4,630,491 |
| Florida | 562,340,120 | 28,117,006 |
| Georgia | 330,741,739 | 16,537,087 |
| Hawaii | 98,904,788 | 4,945,239 |
| Idaho | 31,938,052 | 1,596,903 |
| Illinois | 585,056,960 | 29,252,848 |
| Indiana | 206,799,109 | 10,339,955 |
| Iowa | 131,524,959 | 6,576,248 |
| Kansas | 101,931,061 | 5,096,553 |
| Kentucky | 181,287,669 | 9,064,383 |
| Louisiana | 163,971,985 | 8,198,599 |
| Maine | 78,120,889 | 3,906,044 |
| Maryland | 229,098,032 | 11,454,902 |
| Massachusetts | 459,371,116 | 22,968,556 |
| Michigan | 775,352,858 | 38,767,643 |
| Minnesota | 267,984,886 | 13,399,244 |
| Mississippi | 86,767,578 | 4,338,379 |
| Missouri | 217,051,740 | 10,852,587 |
| Montana | 45,534,006 | 2,276,700 |
| Nebraska | 58,028,579 | 2,901,429 |
| Nevada | 43,976,750 | 2,198,838 |
| New Hampshire | 38,521,261 | 1,926,063 |
| New Jersey | 404,034,823 | 20,201,741 |
| New Mexico | 126,103,156 | 6,305,158 |
| New York | 2,442,930,602 | 122,146,530 |
| North Carolina | 302,239,599 | 15,111,980 |
| North Dakota | 26,399,809 | 1,319,990 |
| Ohio | 727,968,260 | 36,398,413 |
| Oklahoma | 148,013,558 | 7,400,678 |
| Oregon | 167,924,513 | 8,396,226 |
| Pennsylvania | 719,499,305 | 35,974,965 |
| Rhode Island | 95,021,587 | 4,751,079 |
| South Carolina | 99,967,824 | 4,998,391 |
| South Dakota | 21,893,519 | 1,094,676 |
| Tennessee | 191,523,797 | 9,576,190 |
| Texas | 486,256,752 | 24,312,838 |
| Utah | 76,829,219 | 3,841,461 |
| Vermont | 47,353,181 | 2,367,659 |
| Virginia | 158,285,172 | 7,914,259 |
| Washington | 404,331,754 | 20,216,588 |
| West Virginia | 110,176,310 | 5,508,816 |
| Wisconsin | 318,188,410 | 15,909,421 |
| Wyoming | 21,781,446 | 1,089,072 |
| State Total | 16,488,667,235 | 824,433,362 |

¹ Grants are based on the Federal share of expenditures for FY 94, FY 95 or the average of FYs 92-94, whichever is greatest.

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