

2. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: September 20, 2006.

**Susan Parker Bodine,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

[FR Doc. E6–15854 Filed 9–26–06; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### 45 CFR Part 263

RIN 0970–AC15

#### Cost Allocation Methodology Applicable to the Temporary Assistance for Needy Families Program

**AGENCY:** Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

**ACTION:** Proposed rule.

**SUMMARY:** The Administration for Children and Families proposes to regulate the cost allocation methodology to be used in the Temporary Assistance for Needy Families (TANF) program. The proposed rule would require States to use the “benefiting program” cost allocation methodology required by OMB Circular A–87 (2 CFR Part 225) and previously required under HHS’ Office of Grants and Acquisition Management (OGAM) Action Transmittal (AT) 98–2.

**DATES:** We will consider all comments received on or before November 27, 2006.

**ADDRESSES:** You may download an electronic version of the proposed rule at either of the following two Web Sites.

You may submit comments, identified by Regulatory Information Number (RIN) 0970–AC, by the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>.
- *Agency Web Site:* <http://www.regulations.acf.hhs.gov>. Follow the instructions for submitting comments.
- *Mail:* Administration for Children and Families, Office of Family Assistance (OFA), 5th Floor East, 370 L’Enfant Promenade, SW., Washington, DC 20447.
- *Hand Delivery/Courier:* Office of Family Assistance/ACF, 5th Floor East, 901 D St., SW., Washington, DC 20447.

*Instructions:* All comments received, including any personal information provided, will be posted without change to <http://www.regulations.acf.hhs.gov>. Comments will be available for public inspection Monday through Friday 8:30 a.m. to 5 p.m. at 901 D St., SW., 5th Floor, Washington, DC.

#### FOR FURTHER INFORMATION CONTACT:

Robert Shelbourne, Director, State TANF Policy Division at (202) 401–5150, [rshelbourne@acf.hhs.gov](mailto:rshelbourne@acf.hhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Statutory Authority

We are issuing this proposed regulation under the authority granted to the Secretary of Health and Human Services (HHS) by 42 U.S.C. 1302(a). Section 1302(a) authorizes the Secretary to make and publish such rules as may be necessary for the efficient administration of functions with which he is charged under the Social Security Act.

The statute at 42 U.S.C. 617 limits the authority of the Federal government to regulate State conduct or enforce the TANF provisions of the Social Security Act, except as expressly provided. We interpret this provision to allow us to regulate the use of a permissible cost allocation methodology because States and the Territories need to know what they may and may not do to avoid potential misuse of funds penalties at 42 U.S.C. 609(a)(1).

Pursuant to 42 U.S.C. 609(a)(1), we may impose a financial penalty whenever a State misuses Federal TANF funds. The TANF regulations at 45 CFR 263.11 address the proper and improper uses of Federal TANF funds. Section 263.11(b) sets forth the circumstances that constitute misuse of Federal funds. Use of Federal TANF funds in violation of any of the provisions in OMB Circular A–87 is one such circumstance. We are accordingly specifying that the “benefiting program” cost allocation methodology is the only allowable

methodology for the proper use of Federal TANF funds.

We are issuing the proposed rule in light of a decision of the Circuit Court of Appeals for the District of Columbia in *Arizona v. Thompson*, 281 F.3d 248 (DC Cir. 2002). The Appeals Court invalidated HHS’ Office of Grants and Acquisition Management (OGAM) Action Transmittal (AT) 98–2, dated September 30, 1998, which required States to allocate costs to each “benefiting program” in accordance with OMB Circular A–87.

##### II. Background

The Office of Management and Budget (OMB) has issued government-wide standards for allocating the costs of government programs. Specifically, OMB Circular A–87, “Cost Principles for State, Local and Indian Tribal Governments,” provides that “A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.” Thus, costs that benefit multiple programs may not be allocated to a single program. An illustrative way to determine whether multiple programs benefit from costs is to ask, for example: In the absence of the TANF program, would another program still have to undertake the function? If the answer is yes, there is a benefit to each program and the costs should be allocated using the “benefiting programs” cost allocation method.

The “benefiting program” cost allocation method applies to all Federal programs, unless there is a statutory or OMB-approved exception. Prior to enactment of the TANF program, HHS allowed States and the Territories to charge the common administrative costs of determining eligibility and case maintenance activities for the Food Stamp and Medicaid programs to the AFDC program—a so-called “primary program” allocation method. This exception to the “benefiting program” cost allocation requirement of OMB Circular A–87 was consistent with Conference Committee language indicating AFDC might pay for these common costs because families who were eligible for AFDC (the primary program) were also automatically eligible for Medicaid and met the categorical, but not necessarily the income, requirements of Food Stamps.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub. L. 104–193) was enacted on August 22, 1996. Title I of PRWORA repealed the AFDC program and replaced it with the TANF program. Unlike AFDC, TANF eligibility no

longer automatically makes a family eligible for Medicaid, and eligibility for certain TANF services and benefits do not lead to categorical eligibility for Food Stamps.

As a result, HHS issued guidance prohibiting States from continuing to use the "primary program" allocation methodology. On September 30, 1998, the Office of Grants and Acquisition Management (OGAM) in HHS issued OGAM Action Transmittal (AT) 98-2 which required States to allocate costs to each "benefiting program" in accordance with the provisions in OMB Circular A-87. According to the instructions and rationale in OGAM AT 98-2, "Cost shifting (to a primary program) is not permitted by most program statutes, except where there is a specific legislative provision allowing such cost shifting. While the former AFDC program allowed such an exception, the TANF legislation that replaced AFDC does not permit it being designated as the sole benefiting or primary program." All States submitted revised cost allocation plans to comply with this policy and since then have continued to allocate Medicaid, Food Stamp and TANF costs in accordance with a "benefiting" methodology.

Six States filed suit in District Court to prevent HHS from enforcing OGAM AT 98-2 (*State of Arizona, et al., v. Tommy G. Thompson*). The States alleged that they incur common administrative costs that benefit the TANF, Medicaid, and Food Stamp programs and contended that the "grandfather provision" under 42 U.S.C. 604(a)(2) permits them to use TANF grants as they did under the AFDC program. Section 604(a)(2) provides that States may use Federal TANF funds in any manner that the State was authorized to use Federal funds received under the State's former AFDC program, the Job Opportunities and Basic Skills Training (JOBS) program or the Emergency Assistance program in effect as of either September 30, 1995 or August 21, 1996, whichever date the State has elected.

The District Court upheld the Department's position. However, the States appealed to the U.S. Court of Appeals for the District of Columbia Circuit (Court of Appeals). The Court of Appeals decided, on March 5, 2002, that the TANF legislation does not require HHS to conclude that States are prohibited from using the "primary program" cost allocation methodology. The Appeals Court found: "the background against which Congress enacted welfare reform included both Circular A-87's general principle of benefiting program allocation and its

well-recognized exception for the AFDC program." However, the Court left open the possibility that HHS could, in the exercise of its rulemaking discretion, prospectively prescribe that States use the "benefiting program" method to allocate common costs among programs. (281 F.3d 248 (DC Cir. 2002)).

### III. Discussion of Regulatory Provisions

We propose to add the following new section to Part 263, Subpart B of the TANF regulations.

#### *Section 263.14 What methodology shall a State use to allocate Federal TANF costs?*

In light of the Appeal Court's decision that PRWORA does not preclude a State's use of "primary program" cost allocation, we propose to require that States, the District of Columbia and the Territories (hereinafter referred to as the "States") shall use only the "benefiting program" cost allocation methodology. Requiring a "benefiting program" cost allocation methodology is consistent with the TANF final rules which make the TANF program subject to 45 CFR Part 92 and includes the cost principles of OMB Circular A-87.

One of the fundamental Federal appropriation principles at 31 U.S.C. 1301(a) states that appropriations can only be used for the purposes for which they were appropriated, unless otherwise provided by law. OMB Circular A-87 reflects this principle by requiring "benefiting program" cost allocation. The overall purpose of OMB Circular A-87 is to achieve more efficient and uniform administration of Federal awards and to provide the foundation for greater uniformity in the costing procedures of non-Federal governments. Without an explicit legislative provision permitting "primary program" cost allocation, we believe it would be inconsistent with and contrary to these appropriation principles to allow TANF funds to be used to pay for costs allocable to other programs.

Since the decision of the Appeals Court, no State has submitted a revised "primary program" cost allocation plan for allocating the common costs of determining eligibility or case maintenance for TANF, Food Stamps and Medicaid to HHS for approval. These were the primary common costs previously claimed and allowed under a "primary program" cost allocation methodology under the former AFDC program. We believe these are the common costs that could be claimed under the "grandfather" provision of 42 U.S.C. 604(a)(2), if a "primary program" cost allocation method were allowed.

Because TANF eligibility no longer automatically makes a family eligible for Medicaid, and eligibility for certain TANF services and benefits do not lead to categorical eligibility for Food Stamps, the common costs of eligibility among the three programs also is now limited. This and the 15 percent administrative cost cap under the TANF block grant severely restricts the value of using a "primary program" cost allocation methodology. Therefore, we are exercising the Secretary's discretion to require a "benefiting program" cost allocation methodology under TANF in accordance with OMB Circular A-87. This proposed rule, if finalized, will require States to make no changes to their TANF cost allocation plans, but instead will affirm and lock in place current cost allocation practice.

Under the President's Management Agenda of improved accountability, each program needs to know its full costs using consistent and comparable data to assess program trends and measure performance. Appropriate program and funding decisions, both now and in the future, must be based on the knowledge and accounting of total program costs, including those costs incurred under a consistent benefiting program methodology. Under the proposed rule, we would no longer permit an exception to the benefiting program cost allocation methodology generally required under OMB Circular A-87 (as permitted for the AFDC program prior to the enactment of the TANF program). Thus, HHS will disapprove any TANF cost allocation amendments proposing a "primary program" cost allocation methodology.

### IV. Paperwork Reduction Act of 1995

This proposed rule contains no new information collection activities that are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, codified at 44 U.S.C. 3507.

### V. Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this rule will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments. State governments are not considered small entities under the Regulatory Flexibility Act.

### VI. Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined

that this rule is consistent with these priorities and principles. This rule is considered a "significant regulatory action" under the Executive Order, and therefore has been reviewed by the Office of Management and Budget.

Since all States should be using a "benefiting program" cost allocation methodology under TANF, we believe the impact of this proposed rule is minimal. We do not believe the proposed policy will have a significant negative impact or reduce potential Federal reimbursement. Funding for TANF is a fixed block grant amount that is not affected by the allocation method.

We welcome comments on our analysis and other circumstances that could impact on States and urge States to consider the interaction of the proposed policy on their operations. We will carefully consider these comments as we finalize the regulations.

#### VII. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 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.

The Department has determined that this rule would not impose a mandate that will 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.

#### VIII. Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. Chapter 8.

#### IX. Assessment of Federal Regulation and Policies on Families

Section 654 of The Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. These regulations will not have an impact on family well-being as defined in the legislation.

#### X. Executive Order 13132

Executive Order 13132 "Federalism" requires that Federal agencies consult with State and local government officials in the development of regulatory policies with Federalism implications. We solicit and welcome

comments from State and local government officials on this proposed rule, consistent with Executive Order 13132.

#### List of Subjects in 45 CFR Part 263

Grant programs—Federal aid programs, Penalties, Public assistance programs—Welfare programs.

Dated: July 5, 2006.

**Wade F. Horn,**

*Assistant Secretary for Children and Families.*

Approved: July 7, 2006.

**Michael O. Leavitt,**

*Secretary of Health and Human Services.*

For the reasons set forth in the preamble, the Administration for Children and Families proposes to amend 45 CFR chapter II to read as follows:

#### PART 263—EXPENDITURES OF STATE AND FEDERAL TANF FUNDS

1. The authority citation for 45 CFR part 263 continues to read as follows:

**Authority:** 42 U.S.C. 604, 607, 609, and 862a.

2. Add section 263.14 to subpart B to read as follows:

##### § 263.14 What methodology shall a State or Territory use to allocate TANF costs?

A State or Territory shall use a benefiting program cost allocation methodology consistent with the general requirements of OMB Circular A-87 to allocate TANF costs.

[FR Doc. E6-15852 Filed 9-26-06; 8:45 am]

**BILLING CODE 4184-01-P**

#### FEDERAL COMMUNICATIONS COMMISSION

##### 47 CFR Part 64

[CG Docket No. 03-123; FCC 06-106]

##### Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; correction.

**SUMMARY:** This document corrects a proposed rule published in the **Federal Register** of September 13, 2006, regarding Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities. This correction clarifies text that was revised or omitted when previously published in the **Federal Register**.

**DATES:** Comments are due on or before October 30, 2006. Reply comments are due on or before November 13, 2006. Written Paperwork Reduction Act (PRA) comments on the proposed information collection requirements should be submitted on or before November 13, 2006.

#### FOR FURTHER INFORMATION CONTACT:

Thomas Chandler, Consumer & Governmental Affairs Bureau, Disability Rights Office at (202) 418-1475 (voice), (202) 418-0597 (TTY), or e-mail at [Thomas.Chandler@fcc.gov](mailto:Thomas.Chandler@fcc.gov).

#### Correction

In proposed rule FR Doc. E6-14901, beginning on pages 54009 and 54010 in the issue of September 13, 2006, make the following corrections:

1. On page 54009, in the 2nd column, correct the **ADDRESSES** section as follows:

**ADDRESSES:** You may submit comments, identified by [CG Docket number 03-123 and/or FCC Number 06-106], by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone (202) 418-0539 or TTY: (202) 418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. In addition, you may submit your PRA comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to [PRA@fcc.gov](mailto:PRA@fcc.gov), and to Allison E. Zaleski, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to [Allison\\_E.Zaleski@omb.eop.gov](mailto:Allison_E.Zaleski@omb.eop.gov), or via fax at (202) 395-6466. To submit your comments by U.S. postal mail, mark it to the attention of Leslie F. Smith, Federal Communications Commission, 445 12th Street, SW., Room 1-C216, Washington, DC 20554.

2. On page 54010, in the 2nd and 3rd columns, where it reads Initial Paperwork Reduction Act of 1995 Analysis, correct as follows: