

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### 45 CFR Parts 286 and 287

RIN 0970-AB78

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

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

**ACTION:** Proposed rule.

**SUMMARY:** The Administration for Children and Families (ACF) proposes to issue regulations to implement key Tribal provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and the Balanced Budget Act of 1997, Pub. L. 105-33. PRWORA established the Tribal Temporary Assistance for Needy Families program and a tribal work program which we have named the Native Employment Works (NEW) program at the suggestion of some Indian tribes. The Balanced Budget Act of 1997 made technical corrections to PRWORA.

**DATES:** You must submit comments by September 21, 1998.

**ADDRESSES:** You may mail or hand-deliver comments to the Administration for Children and Families, Office of Community Services, Division of Tribal Services, 5th Floor, 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.

We will make all comments available for public inspection on the 5th Floor, 901 D Street, SW, Washington, DC 20447, from Monday through Friday between the hours of 9 a.m. and 4 p.m. Eastern time, except for holidays. For additional information, see

**SUPPLEMENTARY INFORMATION** section of the preamble.

**FOR FURTHER INFORMATION, CONTACT:** John Bushman, Director, Division of Tribal Services, Office of Community Services, ACF, at 202-401-2418, Raymond Apodaca, at 202-401-5020 or Ja-Na Oliver, NEW Team Leader at 202-401-5713.

Deaf and hearing-impaired individuals may call the Federal Dual

Party Relay Service at 1-800-877-8339 from Monday through Friday between the hours of 8 a.m. and 7 p.m., Eastern time.

#### SUPPLEMENTARY INFORMATION:

##### Comment Procedures

We will not consider comments received beyond the 60-day comment period in developing the final rule. Because of the large volume of comments we anticipate, we will accept written comments only. In addition, your comments should:

- Be specific;
- Address issues raised by the proposed rule;
- Where appropriate, propose alternatives;
- Explain reasons for any objections or recommended changes; and
- Reference the specific section of the proposed rule that you are addressing.

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

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

On August 22, 1996, President Clinton signed the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996" (PRWORA) into law. The first title of this new law (Pub. L. 104-193) establishes a comprehensive welfare reform program which is designed to change the nation's welfare system. The new program is called Temporary Assistance for Needy Families, or TANF, in recognition of its

focus on moving recipients into work and time-limited assistance.

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

The new law reflects agreement on several key principles:

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

The new law provides federally-recognized Indian tribes, or consortia of such Tribes, the opportunity to apply for funding under section 412 of the Social Security Act (or the Act), as amended by PRWORA, to operate their own TANF programs beginning July 1, 1997.

Indian tribes that choose to administer a Tribal TANF program have been given broad flexibility to set TANF eligibility rules and to decide what benefits are most appropriate for their service areas and populations. Tribes may try new, far-reaching approaches that can respond more effectively to the needs of families within their own unique environments. The TANF program challenges Tribal governments to foster positive changes in the culture of the welfare system and to take responsibility for program results and outcomes.

Under the new statute, TANF funding and assistance for families comes with new expectations and responsibilities. Adults receiving assistance are expected to engage in work activities and develop the capability to support themselves and their families before their time-limited assistance runs out. Tribes who take on the responsibility for administering a TANF program will be expected to

assist recipients making the transition to employment. Tribal TANF grantees also will be expected to meet work participation rates and other critical program requirements in order to avoid penalties and maintain their Federal funding.

In meeting these expectations, Tribes need to examine the needs of their service areas and service populations, identify the causes of long-term underemployment and dependency, and work with families, communities, businesses, and other social service agencies in resolving employment barriers.

In addition to establishing the Tribal TANF program, PRWORA authorizes funding, to the former Tribal JOBS grantees, for a tribal program "to make work activities available \* \* \*". Based upon Tribal recommendations, we have designated this tribal work activities program as the Native Employment Works (NEW) program. Tribes are encouraged to focus the NEW program on work activities and on services which support participation in work activities. In addition, Tribes are encouraged to create and expand employment opportunities when possible.

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

## II. Regulatory Framework

### A. Consultations

In the spirit of both regulatory reform and PRWORA, and consistent with the Secretary's policy on consultation with Indian tribes, we implemented a broad consultation strategy prior to drafting this Notice of Proposed Rulemaking (NPRM). We had discussions with a number of different audiences, including representatives of Tribal, State, and local governments. We solicited both written and oral comments and worked to ensure that concerns raised during this process were shared with both the staff working on individual regulatory issues and key policy-makers.

The purpose of these efforts was to gain a variety of informational perspectives about the potential benefits

and pitfalls of various regulatory approaches.

The discussions and written comments were very useful in helping us identify key issues and evaluate policy options. However, we would like to emphasize that, although we used this early input to draft the proposed rules, this is not the only opportunity to provide comments. All interested parties now have the opportunity to comment on specific policy proposals contained in this NPRM. We will review all comments submitted during the comment period and will take them into consideration before issuing a final rule.

### B. Related Regulations Under Development

This NPRM addresses the provisions of the Tribal TANF and NEW; the NPRM on the State TANF program was published in the **Federal Register** on November 20, 1997. This NPRM addresses, but does not contain proposed rules for the Alaska TANF comparability criteria, which the Secretary will develop in consultation the State of Alaska and the Alaska Native entities eligible to operate TANF. We will publish the Alaska TANF comparability criteria at a later date. There are no other regulations related to the Tribal TANF or NEW program under development.

This NPRM does not include the provisions for the new Tribal Welfare-to-Work (WTW) program at section 412(a)(3) of the Act, as created by section 5001(c) of Pub. L. 105-33. The Secretary of Labor is responsible for issuing rules for this program.

### C. Statutory Context

These proposed rules reflect PRWORA, as enacted, and the amendments contained in Pub. L. 105-33.

Pub. L. 105-33 created the new Welfare-to-Work (WTW) program, made a few substantive changes to the TANF and NEW program, and made numerous technical corrections to the TANF statute. Throughout the preamble discussion and the appendices, you will note references to the amendments made by this legislation. However, as previously mentioned, this NPRM includes only a limited number of changes related to the new WTW provisions. The Department of Labor has primary responsibility for administering the program and issuing the WTW regulations. We have responsibility for issuing rules on the WTW data collection requirements, but will do that at a subsequent date.

### D. Regulatory Reform

In its latest *Document Drafting Handbook*, the Office of the Federal Register supports the efforts of the National Performance Review and encourages Federal agencies to produce more reader-friendly regulations. In drafting this proposed rule, we have paid close attention to this guidance. Individuals who are familiar with our existing welfare regulations should notice that this package incorporates a distinctly different, more readable style.

### E. Scope of This Rulemaking

Because there are no existing Tribal TANF or NEW regulations, this package is intended to cover the proposed rules as they relate to the provisions of the Tribal TANF and NEW programs (including definitions of common and frequently used terms).

### F. Applicability of the Rules

A Tribe may operate its TANF and/or NEW program under a reasonable interpretation of the statute prior to publication of final rules. Thus, in determining whether a Tribe is subject to a penalty under TANF or a disallowance under the NEW program, we will not apply regulatory interpretations retroactively. However, Tribes are bound by any Policy Announcements issued by ACF, including those issued in advance of final regulations.

## III. Principles Governing Regulatory Development

### A. Tribal Flexibility

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

To ensure that our rules support the legislative goals of PRWORA, we are also committed to gathering information on how Tribes are responding to the new opportunities available to them. We reserve the right to revisit some issues, either through proposed legislation or regulation, if we identify situations where our rules are not furthering the objectives of the Act.

### B. Regulatory Authority

Early consultation input from Indian tribes suggested that the intent of Congress to provide for program flexibility should limit the extent to which we regulate Tribal TANF and NEW programs. However, Congress gave us more authority to regulate the Tribal TANF and NEW programs than State TANF programs.

Unlike the process for reviewing and accepting plans for State TANF, the statute requires us to approve Tribal TANF plans. While we propose maximum flexibility in program design and procedures, we believe that it is important for us to set forth, in regulations, the process for the submission and approval of plans and other program requirements.

Tribal TANF programs must meet minimum work participation rates, and Tribal TANF recipients are subject to maximum time limits for the receipt of assistance as well as penalties for failure to meet program requirements. While these requirements are specified in PRWORA for State TANF programs, we will establish these for each Tribal program with Tribal input. Although the proposed rules suggest flexibility in how these requirements are established, we believe that it is important for us to lay out, in regulations, the criteria that we propose to use.

Although Tribes that operate TANF programs are subject to some of the same statutory requirements as are States, there are some requirements that do not apply to Tribes, such as the prohibitions in section 408. At the same time, the statute provides options to States such as the option to exempt families from applicable time limits due to hardship, that we propose to make available to Tribes, unless precluded by other legal authority. Thus, since the statute does not treat Tribes and States in the same way, we believe the Tribal TANF regulations should reflect this.

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

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

While we have proposed rules on data collection and reporting requirements

for State TANF programs, this Notice of Proposed Rulemaking lays down our proposal specific to the Tribal programs. This is because the Tribal TANF programs will not be subject to the final rules for the State TANF programs. Thus, we need to ensure that there is a clear understanding of the data collection and reporting requirements as they apply to Tribes.

### IV. Discussion of Individual Regulatory Provisions

The following is a discussion of all the regulatory provisions we have included in this package. The discussion follows the order of the regulatory text, addressing each part and section in turn.

#### A. PART 286—TRIBAL TANF PROGRAM PROVISIONS

##### Subpart A—General Tribal TANF Provisions

##### *What does this part cover? (§ 286.1)*

This part contains our proposed rule for the implementation of section 412 of the Social Security Act, except for section 412(a)(2) which is covered in part 287. Section 412 allows federally-recognized Indian tribes, certain specified Alaska Native organizations and Tribal consortia to submit plans for the administration of a Temporary Assistance for Needy Families (TANF) program.

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

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

In this proposed rule the terms “Tribal Family Assistance program” or “TFAP” and “Tribal TANF program” are used interchangeably.

##### *What definitions apply to this part? (§ 286.5)*

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

In drafting this section of the proposed rule, we chose not to define

every term used in the statute and in these proposed regulations. We understand that excessive definitions may unduly and unintentionally limit Tribal flexibility in designing programs that best serve their needs.

For example, we have not defined “Indian family” or “service population.” Each Tribe administering its own Tribal TANF program is permitted by the statute to define its service population. Because funding for the Tribal TANF program is based on State expenditures of Federal funds on Indian families during fiscal year 1994, we believe the Tribal TANF program was intended to serve primarily Indian families. However, in order to provide flexibility to Tribes and States, Tribes may define service population and have the option of including only a portion of the Tribal enrollment, only Tribal members, all Indians, or even non-Indians residing in the service area. It will be up to each Tribe submitting a TANF plan to define the service population that the plan covers. The service population definition provided by a Tribe in turn determines what data the State would be asked to provide to calculate the amount of the Tribal TANF grant. Note that at § 286.65(d)(2) if a Tribe chooses to include non-Indian families in its service population definition, the Tribe is required to demonstrate State agreement with the inclusion of that portion of the Tribe’s service population.

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

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

Readers should also note that we use the term “Tribe” throughout the regulation and preamble. The term “Tribe” means federally-recognized Indian tribes, consortia of such Indian tribes, and the 13 entities in the State of Alaska that are eligible to administer a Tribal Family Assistance program, under an approved plan. It also refers to

the Indian tribes and the Alaska Native organizations that are eligible to administer a NEW program because they operated a Tribal JOBS program in fiscal year 1995.

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

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

Federal requirements related to the expenditures of Federal grant funds necessitate the use of precise definitions. An example of such a definition is that used for the term "administrative costs" which triggers particular Federal grant requirements (see § 286.40).

**Assistance.** The terms "assistance" and "families receiving assistance" are used in the PRWORA in many critical places that affect the Tribal TANF program, including: (1) In the numerator and denominator of the work participation rates in section 407(b); and (2) the data collection requirements of section 411(a). Largely through reference, the term also affects the scope of the penalty provision in section 409(a)(1). Thus, it is important that Tribes have a definition of "assistance." For the purposes of the Tribal TANF program, we propose to adopt the same definition of assistance as developed and included in the NPRM for the State TANF program.

Because PRWORA is a block grant, a Tribe may provide some forms of support under TANF that would not commonly be considered public assistance. Some of this support might resemble the types of short-term, crisis-oriented support that were provided previously by the States under the EA program. Other forms might be more directly related to the work objectives of the Act and not have a direct monetary value to the family. We are proposing to exclude some of these forms of support from the definition of assistance.

The general legislative history for this title indicates that Congress meant that this term encompass more than cash

assistance (H.R. Rep. No. 725, 104 Cong., 2d Sess (1996)). Therefore, as we suggested in our January policy announcement (TANF-ACF-PA-97-1) for State TANF programs, the definition of assistance should encompass most forms of support. However, we recognized two basic forms of support that would not be considered welfare and proposed to exclude them from the definition. In brief, the two exclusions were: (1) Services that had no direct monetary value and did not involve direct or indirect income support; and (2) one-time, short-term assistance.

In the proposed rule, we are clarifying that child care, work subsidies, and allowances that cover living expenses for individuals in education or training are included within the definition of assistance. For this purpose, child care includes payments or vouchers for direct child care services, as well as the value of direct child care services provided under contract or a similar arrangement. It does not include child care services such as information and referral or counseling, or child care provided on a short-term, ad hoc basis. Work subsidies include payments to employers to help cover the costs of employment or on-the-job training.

We are also proposing to define one-time, short-term assistance as assistance that is paid no more than once in any twelve-month period, is paid within a 30-day period, and covers needs that do not extend beyond a 90-day period. In response to the policy announcement, we received a number of questions about what the term "one-time, short-term" meant. Based on our experience with the EA program, we realized that a wide range of interpretations was possible, and we were concerned that "short-term" or "one-time" could be defined to encompass many situations where assistance was of a significant and ongoing nature. We believe our proposal will give Tribes the flexibility to meet short-term and emergency needs (such as an automobile repair), without invoking too many administrative requirements and undermining the objectives of the Act. We welcome comments on whether the proposed policy achieves this end.

Under the policy announcement and this proposed rule, we define the minimum types of services and benefits that must be included as assistance. Based on comments we received, we considered allowing Tribes to include additional kinds of benefits and services, at their option. However, we were concerned that varying Tribal definitions would create additional comparability problems with respect to data collection and penalty

determinations. Also, we were concerned that an expanded definition might have undesirable program effects.

If Tribes expanded their definitions of assistance, they would have to apply that same definition under all provisions of the regulations. Thus, if something fell within the definition of assistance, the family receiving that type of benefit would be subject to work requirements, and Federal time limits; and the family would have to be included in the Tribe's data collection and reporting.

In response to the policy announcement, we received a number of questions about the treatment of TANF assistance under the child support enforcement program. The Office of Child Support Enforcement will issue guidance on the distribution of child collections under PRWORA; this guidance will explain the treatment of TANF assistance under the new distribution rules.

For those concerned about the inclusion of child care in the definition of assistance, we would point out the child care expenditures made under the Child Care Development Fund program are not subject to TANF requirements, including time limits for the receipt of assistance.

As a part of the Tribal TANF Financial Report that is being developed, we will propose to collect data on how much of the program expenditures are being spent on different kinds of "assistance" and "non-assistance." If the data that will be collected show that large portions of the program resources are being spent on "non-assistance," we would have concerns that the flexibility in our definition of "assistance" is undermining the goals of the legislation. We would then look more closely at the "non-assistance" being provided and try to assess whether work requirements, time limits and case-record data would be appropriate for those cases. If necessary, we would consider a change to the definition of "assistance" or other remedies.

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

collection and reporting. Please refer to § 286.150 for more information on the Alaska comparability requirement.

Finally, we would like to note that § 286.5 contains a definition of "administrative costs." This definition is important because we are proposing, at § 286.40, to limit to 20 percent the amount of Tribal TANF funds that a Tribe may use for administrative costs.

*Who is eligible to operate a Tribal TANF program? (§ 286.10)*

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

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

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

#### Subpart B—Tribal TANF Funding

*How is the amount of a Tribal Family Assistance Grant determined? (§ 286.15)*

*How will we resolve disagreements over the State-submitted data used to determine the amount of a Tribal Family Assistance Grant? (§ 286.20)*

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

PRWORA requires the Secretary to pay TFAGs to federally-recognized Indian tribes with approved 3-year Tribal Family Assistance Plans. To determine the amount of a TFAG, we must use data submitted by the State or States in which the Indian tribe is located. Section 412(a)(1)(B) specifies the data that we will use. The statute provides that, for each fiscal year 1997–2002, an Indian tribe that has an approved Tribal Family Assistance Plan will receive an amount equal to the Federal share (including administrative expenditures, which would include systems costs) of all expenditures (other than child care expenditures) by the State or States under the AFDC and Emergency Assistance (title IV–A) programs, and the JOBS (title IV–F) program for fiscal year (FY) 1994 for Indian families residing in the service area(s) identified in the Tribal Family

Assistance Plan. For Tribes that operated a Tribal JOBS program in FY 1994, the State title IV–F expenditures (including administrative costs) used in the calculation of the TFAG would be for expenditures made by the State on behalf of non-member Indians and non-Indians, if either or both are included in the Tribal TANF population and are living in the designated Tribal TANF service area(s). Any expenditures by the State for Tribal members who were served by the State JOBS program will also be included in the determination.

Section 412(a)(1)(B)(ii)(II) of the statute allows Tribes the opportunity to disagree with State-submitted data and to submit additional information relevant to our determination of the TFAG amount. We believe Tribes should have an opportunity to submit relevant information in instances in which the State has failed to submit requested data on a timely basis. However, we believe the lack of State-submitted data will be a very rare occurrence.

We will request State data based on the Tribe's identified service area and population, which may include areas outside the reservation and non-Indian families. We will allow States 21 days from the date of our request to submit the requested data before notifying the affected Tribe of its option under section 412(a)(1)(B)(ii)(II) of PRWORA to submit its own data. This time frame should allow States adequate time to gather and submit the data. However, in order for us to notify the State of any reduction in its grant not later than three months before payment of any quarterly installment, as specified by section 405(b), we will use the best available data to determine the amount of the TFAG, if the State has not submitted the specified data at the end of the 21-day period. Our experience to date has shown that we need time to resolve any issues related to determining the amount of a TFAG in order to meet the statutory requirement for notification to the State of the reduction in the amount of their State TANF grant.

We also believe a Tribe should have a reasonable period of time in which to review the State-submitted data and make a determination as to whether or not it concurs with the data. We have determined that a twenty-one (21) day period should be sufficient for this activity. Therefore, we propose to allow a Tribe 21 days from when it receives the State-submitted data from us to notify us of its concurrence or non-concurrence with the data.

Once we receive State data, we will share it with the Tribe. We will also

facilitate any meeting or discussions between the Tribe and the State to answer any questions the Tribe has about the submitted data. Any meetings or discussions to answer the Tribe's questions about the data need to be held within the proposed 21-day period for Tribal concurrence. We believe it is in the best interests of both the Tribe and the State to reach a consensus on the State data. However, if the Tribe finds it cannot concur with the State data and has notified us to this effect, we will provide the Tribe an additional 21 days to submit additional relevant information. It will then be our responsibility under section 412(a)(1)(B)(ii)(II) to make the final determination as to the amount of the TFAG after review of the information submitted by the Tribe.

In instances in which the State has not submitted the requested data within the time period given, we will notify the Tribe. We will give the Tribe 21 days from the date of our notification to submit relevant data. This 21-day time frame is the same time frame we have proposed for Tribes to submit information if they disagree with State-submitted data. In the absence of State-submitted data, we propose to use relevant Tribe-submitted data to determine the amount of the TFAG.

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

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

*What is the process for retrocession of a Tribal Family Assistance Grant? (§ 286.25)*

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

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

In providing for the retrocession of a Tribal TANF program, we recognize several needs. Thus, the proposed specified time frame is intended to ensure that: (1) There is minimal disruption of services to families in need of assistance; (2) a Tribe makes an informed decision in determining whether or not to cease operating the Tribal TANF program; and (3) a State is provided adequate notice to ensure continuity of program services.

A Tribe that decides to terminate its Tribal TANF program must notify the Secretary in writing of its decision and the reason(s) for retrocession at least 120 days prior to the effective date of the termination. The effective date must coincide with the end of the grant period (i.e., September 30). This deadline reflects our intention to notify the State no later than 90 days prior to the effective date of the termination. We believe this will give the State ample time to implement services for the families who had been served by the Tribal TANF program.

For Tribes that retrocede, the provisions of 45 CFR part 92 will apply with regard to closeout of the grant. The Tribe must return all unobligated funds to the Federal government. The appropriate SFAG will be increased by the amount of the TFAG.

Tribes that retrocede the program may be eligible to operate a Tribal TANF program at a later date. However, in the proposed rule we state that we will not approve another TFAP until the Tribe can demonstrate that the reasons for the earlier retrocession no longer exist and that all outstanding penalty amounts have been repaid. We will not return the TANF program to the Tribe unless and until we are certain that it has resolved any outstanding problems.

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

responsible for any penalties resulting from audits covering the period up to the effective date of retrocession. Please refer to § 286.170 for the discussion on penalties.

*What are proper uses of Tribal Family Assistance Grant funds? (§ 286.30)*

Section 412 of the Act does not specify the particular purposes for which a TFAG may be used. However, under these proposed rules any such use must be consistent with section 401(a) of the Act. We believe the Tribes should have the same flexibility as the States in their use of TANF funds. Therefore, we propose at § 286.30 that the Tribal TANF grantees will be able to use their TFAGs for the same purposes as States may use their TANF funds as specified in section 404(a) of the Act.

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

In determining whether a welfare-related service or activity may be funded with its TFAG, a Tribe should refer to the purposes of TANF, as described in section 401 of the Act, as well as to section 404(a). Tribes should be aware that TANF funds may be used only for welfare-related services or activities reasonably calculated to accomplish the purposes of part IV-A of the Act. TANF funds are not authorized to be used to contribute to or otherwise support non-TANF programs. Use of TANF funds to support non-TANF programs or other unauthorized purpose shall give rise to penalties under section 409(a)(1) of the Act (made applicable to Tribes by section 412(g)).

*What uses of Tribal Family Assistance Grant funds are improper? (§ 286.35)*

Just as section 412 of the Act does not specify the particular purposes for which Tribal Family Assistance Grant funds may be used, it does not specify any prohibitions or restrictions on the use of TFAG funds in a Tribal TANF program. As we are proposing rules for the uses of Tribal Family Assistance Grants, we believe it is important to indicate in this proposed rule what would not be a proper use of a TFAG. Section 401 of the Act makes clear that TFAG funds are restricted to the operation and administration of the TANF program. Tribal TFAG funds may not be used to contribute to or to subsidize non-TANF programs. Any use

of TFAG funds to contribute to or otherwise support non-TANF programs will be considered an improper use of TANF funds and subject to penalties under § 286.170.

We propose to restrict the use of a TFAG to providing welfare-related services and assistance to families that include either a minor child who resides with a custodial parent or other adult caretaker relative of the child or a pregnant individual. In addition, we propose that a TFAG may be used to provide welfare-related services or assistance for no more than the number of months specified in a Tribe's approved TFAP.

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

*Non-Citizens*

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

*Construction and Purchase of Facilities*

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

*Program Income*

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

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

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

*Is there a limit on the percentage of a Tribal Family Assistance Grant that can be used for administrative costs? § 286.40*

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

In our deliberations on whether to propose a limit on administrative expenditures, we considered various options. One was to follow the statute and be silent on the issue. The second option was to apply the same limit placed on States. The third option was to set a limit that recognizes the special needs of Tribes mentioned above. In whatever option we choose, we felt it necessary to ensure that most of a Tribal TANF grant would be available to carry out the primary objective of the TANF statute.

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

that the major portion of a Tribal TANF grant goes to assisting needy families.

We will respond to the fact that Tribes do not have the same level of experience operating welfare programs as do the States. In addition, we want to recognize that Tribes will need to expend a larger portion of their grant funds on administration than States because they cannot take advantage of economies of scale. Therefore, at § 286.40 we propose to limit Tribal TANF administrative expenditures during any grant period to 20 percent of a Tribal TANF grant.

Thus, each Tribal TANF grantee will be required to expend at least 80 percent of its grant on direct program services (and technology) during the grant period.

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

If a Tribe's administrative costs exceed the 20 percent limit, the penalty for misuse of funds (refer to § 286.170) will apply. The penalty will be the amount spent on administrative costs in excess of 20 percent. We will take an additional penalty in the amount of 5 percent of the adjusted TFAG if we find that a Tribe has intentionally exceeded the 20 percent limit.

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

*What types of costs are subject to the administrative cost limit on Tribal Family Assistance Grants? (§ 286.45)*

Of particular interest to our Tribal partners and other interested parties will be the definition of the costs that are included as administrative costs because of the proposed rule at § 286.40 that places a limit on administrative expenditures. In the development of the NPRM for the State TANF program, we consulted with State and local representatives and other parties and organizations on the extent to which we should define administrative costs.

Just as with the State TANF program, we considered not proposing a Federal

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

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

We thought that it was very important that any definition be flexible enough not to unnecessarily constrain Tribal choices on how they deliver services. We believe a traditional definition of administrative costs would be inappropriate because the TANF program is unique, and we expect TANF to evolve into something significantly different from its predecessors and from other welfare-related programs. Specifically, we expect TANF to be a more service-oriented program, with substantially more resources devoted to case management and fewer distinctions between administrative activities and services provided to recipients.

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

portion of the worker's time can be charged as program costs.

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

We have not included specific language in the proposed rule about treatment of costs incurred by subgrantees, contractors, community service providers, and other third parties. Neither the statute nor the proposed regulations make any provision for special treatment of such costs. Thus, the expectation is that administrative costs incurred by these entities would be part of the total administrative cost cap. In other words, it is irrelevant whether costs are incurred by the TANF agency directly or by other parties.

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

We welcome comments on how to deal with this latter dilemma, as well as comments on our overall approach to the definition of administrative costs.

*Must Tribes obligate all Tribal Family Assistance Grant funds by the end of the fiscal year in which they are awarded? (§ 286.50)*

Section 404(e) of the statute does not apply to Tribal TANF or NEW programs. Section 404(e) allows States to reserve amounts paid to the State for any fiscal year for the purpose of providing TANF assistance without fiscal year limitation. Section 412 is silent on an obligation period for Tribal TANF or NEW program funds. However, Federal

Appropriations Law (at 31 U.S.C. 1301(c)) states "An appropriation in a regular, annual appropriation law may be construed to be permanent or available continuously only if the appropriation— (1) is for rivers and harbors, lighthouses, public buildings, or the pay of the Navy and Marine Corps; or (2) expressly provides that it is available after the fiscal year covered by the law in which it appears." This statutory provision precludes us granting to Tribes the authority to reserve TFAGs grants paid to them without fiscal year limitation. Therefore, Tribes must obligate their TFAGs by the end of the fiscal year in which they are awarded. In accordance with the authority granted to us by 45 CFR 92.23(b), we propose to extend to 12 months the period of time when unliquidated obligations must be liquidated by Tribes.

#### Subpart C—Tribal TANF Plan Content and Processing

*How can a Tribe apply to administer a Tribal TANF program? (§ 286.55)*

Any eligible Indian tribe or Alaska Native regional non-profit corporation or intertribal consortium that wishes to administer a Tribal TANF program must submit a three-year Tribal Family Assistance Plan to the Secretary of the Department of Health and Human Services. This requirement extends to those Tribes that are operating a Pub. L. 102-477 employment and training program (please refer to § 286.140 for information on this).

*Who submits a Tribal Family Assistance Plan? (§ 286.60)*

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

We recognize that changes in the leadership of a Tribe or some other event may cause a participating Tribe to rethink its participation in the

consortium and/or in Tribal TANF. If, for example, a subsequently elected Council decided to terminate participation in the consortium and in TANF, that decision might create a need for time to reintegrate a Tribal program or a part of the Tribal program into the State program. Thus, we propose at § 286.60(c) that, when one of the participating Tribes in a consortium wishes to withdraw from the consortium for purposes of either withdrawing from Tribal TANF altogether or to operate its own Tribal TANF program, that the Tribe needs to notify both the consortium and us of this fact at least 120 days prior to the planned effective date. This notification time frame is especially applicable if the Tribe was withdrawing from Tribal TANF altogether and the Tribe's withdrawal will cause a change to the service area or population of the consortium.

A Tribe withdrawing from a consortium for purposes of operating its own program must, in addition to the notification specified in the previous paragraph, submit its own Tribal TANF plan that meets the plan requirements at § 286.65 and the time frames specified at § 286.140.

*What must be included in the Tribal Family Assistance Plan? (§ 286.65)*

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

#### *Approach to Providing Welfare-Related Services*

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

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

The description of general eligibility requirements consists of the Tribe's definition of "eligible family," including income and resource limits that make a family "needy," and the Tribe's definition of "Tribal member family" or "Indian family". The description of the services and

assistance to be provided includes whether the Tribe will provide cash assistance, and what other assistance and services will be provided.

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

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

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

As TANF focuses on outcomes, we believe a TFAP needs to identify the Tribe's goals for its TANF program and indicate how it will measure progress towards those goals. We believe this will help focus efforts on achieving positive outcomes for families. Progress can be measured longitudinally over time or over the short term, but should be clearly targeted on those being served by the Tribal TANF program. For example: The incidence of teen pregnancy will be reduced by approximately X % over the three-year period of the TFAP, or educational achievement by teen parents receiving TANF assistance will experience an

overall gain of at least one grade level over the three year-period of the TFAP.

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

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

#### *Child Support Enforcement*

Just as the enactment of PRWORA created opportunities for Tribes to operate their own TANF programs, it provided new opportunities to ensure that Tribal families receive child support from responsible parents. The relationship between TANF and child support enforcement programs is important, regardless of whether the State or Tribe operates one or both of these programs. In addition, the relationship between self-sufficiency and child support becomes extremely important for TANF families because of the time-limited nature of TANF assistance.

Under PRWORA, in order to receive a TANF block grant, a State must certify

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

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

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

Under PRWORA, requirements for State/Tribal cooperative agreements, as

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

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

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

Tribes that have entered into, or will enter into, cooperative agreements with their States on child support matters have decided that child support is a critical issue for families. Likewise, Tribes that will decide, after regulations have been issued, to operate their own child support enforcement programs know the importance of child support. We invite comments from readers as to whether Tribes should be required to condition Tribal TANF eligibility on cooperation with child support enforcement efforts if they either operate their own child support enforcement programs or have cooperative agreements with their States.

#### *Provision of Services*

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

of the program. The lead agency is required to administer the Tribal TANF plans, submit the Tribal TANF Family Assistance Plan, coordinate Tribal TANF services with other Tribal and State programs, and collect and submit required data. Although not required by statute, we are proposing at § 286.65(b) to require Tribes to identify the lead agency in the TFAP because of its importance in the overall administration of and responsibility for the Tribal TANF program. The plan must also include a description of the administrative structure for supervision of the Tribal TANF program, including the designated unit responsible for the program and its location within the Tribal government.

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

#### *Population/Service Area*

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

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

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

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

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

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

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

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

Likewise, for Tribes in Oklahoma, if the Tribe defines its service area as other than just its "tribal jurisdiction statistical area" (TJSA), the Tribe must include an agreement with the appropriate Tribal government reflecting that Tribe's agreement to the service area. TJSA's are areas delineated for each federally-recognized Tribe in

Oklahoma without a reservation by the Census Bureau.

#### *Duplicative Assistance*

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

#### *Employment Opportunities*

Section 412(b)(1)(E) requires that Tribes identify in their TFAPs the employment opportunities in and near the service area or areas of the Indian tribe. Section 286.65(g) of the proposed rule reiterates this requirement. The employment opportunities within and near the Tribal TANF service area will greatly impact the service population's ability to obtain and maintain employment. In designing the Tribal TANF program, Tribes should consider current unemployment rates, public and private sector employment opportunities, and education and training resources. These factors should provide a basis for the Tribe's proposed work activities, work participation requirements, penalties against individuals, and time limits.

Section 412(b)(1)(D) also requires that TFAPs identify the manner in which the Indian tribe will cooperate and participate in enhancing employment opportunities for TANF recipients consistent with any applicable State standards. At § 286.65(g)(2) we reiterate the statutory requirement that the TFAPs describe how the Tribe will enhance employment opportunities for their TANF recipients. Tribes should consider the best means by which they can work with other Tribal or State agencies, and other private and public sector entities on or near the reservation, to enhance employment opportunities. These efforts may be through memoranda of understanding or other public-private partnerships. These activities should also be consistent with any State employment standards (for example, a State minimum wage requirement).

#### *Fiscal Accountability*

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

#### *Establishing Minimum Work Participation Requirements, Time Limits for the Receipt of Welfare-Related Services and Penalties Against Individuals*

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

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

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

individuals for each Tribal TANF grantee.

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

Thus, we propose that each Tribe specify its proposal for minimum work participation requirements, time limits for the receipt of welfare-related services, penalties against individuals who refuse to participate in work activities as required, and related policies in its Tribal TANF plan. In addition, the Tribe must include a rationale for its proposals and related policies in the plan. The rationale should address how the Tribe's proposal is consistent with the purposes of TANF and is consistent with the economic conditions and resources available to the Tribe. In addition, for its proposal for penalties against individuals, the rationale should indicate how they are similar to the requirements applicable to States as specified at section 407(e) of the Act.

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

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

Minimum work participation requirements are further detailed at §§ 286.70–105 of the proposed regulation. The proposed rules at §§ 286.110–120 contain additional information on time limits. Information on penalties against individuals is outlined at §§ 286.125–135.

*What information on minimum work participation requirements must a Tribe include in its Tribal Family Assistance Plan? (§ 286.70)*

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

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

In providing flexibility in establishing work participation requirements, Congress recognized that Tribal economies and resources will vary and affect a Tribal TANF family's and program's ability to meet the work requirements imposed upon State TANF recipients and State TANF programs. Since the statutory language requires that the work requirements take into consideration the economic conditions and resources available to each Tribe, we cannot establish across-the-board minimum work requirements that would be applied to all Tribes. Additionally, written and verbal feedback from Tribes indicated overwhelming support for negotiating on a case-by-case basis with each individual Tribe (as opposed to applying an across-the-board minimum) that will reflect the differences among Tribal economies and resources.

In order to have the information needed to establish minimum work participation requirements for each Tribal grantee, we propose at § 286.70 that each Tribe specify in its TFAP: (1) The targeted participation rates for each of the fiscal years covered by the plan; (2) the minimum number of hours families will be required to participate in work activities for each of the fiscal years covered by the plan; (3) the work activities that count towards the work requirement; (4) any limitations and special rules related to work requirements; and (5) if the targeted rates, the minimum number of required hours, or the work activities are

different from those required of State TANF programs, the rationale for the Tribe's proposed work requirements, including how they are consistent with the purposes of TANF and with the economic conditions and resources available to the Tribe.

Considering that many Tribal families reside in remote areas and lack of adequate transportation is a major concern, the proposed regulation at § 286.70(b)(2)(i) allows a Tribe to include reasonable transportation time to and from the activity site in determining the number of hours of participation. Counting transportation time may be indicative of the economic conditions and resources available to a Tribe, and transportation is an economic resource.

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

As discussed above, the Tribe's rationale for its proposed work participation requirements could include, but is not limited to: Poverty, unemployment, jobless and job surplus rates; education levels of adults in the service area; availability and/or accessibility to resources (educational facilities, transportation) to help families become employable and find employment; and employment opportunities on and near the service area.

We are proposing not to require an explanation for any element of a Tribe's minimum work participation requirements proposal if a Tribe chooses to adopt the requirements, the limitations or special rules related to work requirements applicable to the State TANF programs. There would be no need for us to negotiate on this element; we would, in these cases, defer to the Tribe's decision to target the requirements/limitations/special rules established for States. However, as noted above, any Tribe proposing to include reasonable transportation time as part of its proposal on minimum hours of participation will have to include a rationale for this decision.

*What additional information on minimum work participation rates must be included in a Tribal Family Assistance Plan? (§ 286.75)*

We recognize that the statute requires two separate participation rate targets that State TANF programs must meet; one for all families and a separate one for two-parent families. However, the statute pertaining to Tribal TANF programs does not stipulate that there be two separate Tribal TANF participation rates to meet; rather, we interpret the flexibility in negotiating work requirements with Tribes pursuant to section 412(c) of the statute to include whether there should be one or more participation rates. We propose at § 286.70(c)(1) that it will be at the Tribe's option to propose one rate for all families; a rate for all families and two-parent families (the two rates States are subject to); or two separate rates for one-parent families and two-parent families. A Tribe that proposes more than one rate would be held accountable for achieving both rates; failing either could result in the participation rate penalty. A Tribe that proposed only the overall rate would be held accountable for only one. We invite the reader's comments to these proposals.

We have decided not to reiterate in this proposed rule the work participation rates for State TANF programs; Tribes should refer to section 407(a) of the Act for this information. Tribes can use these rates as a guide in determining their own proposal for participation rate targets. The proposed rule at § 286.75(a) requires a rationale from the Tribe if it proposes work participation rates other than those required of State TANF programs.

The proposed regulation at § 286.75(b) suggests, but does not require, that Tribes propose rates that increase over time. While the Act does not specify that rates increase over time, we believe that, consistent with the intent of the statute, increasing rates reflect the need to ensure that increasing numbers of families are progressively engaged in necessary activities before they reach their time limit.

We recognize that many Tribes may not have experience in operating a welfare program that emphasizes placing a significant portion of the caseload into work activities. Consequently, establishing realistic participation rates may initially be a Tribe's "best guess." Additionally, we recognize that resources available to Tribes as well as Tribal economies may change significantly from year to year. We are, therefore, proposing at § 286.75(c) to allow Tribes the opportunity to renegotiate rates in advance of each year's target.

*How will we calculate the work participation rates? (§ 286.80)*

Similar to the calculations for State participation rates, the proposed regulations at § 286.80 indicate that the yearly participation rate will be the average of the monthly participation rates. Monthly rates, for each rate approved in the Tribe's TANF plan, will be determined by a ratio with the numerator and denominator defined as follows:

**Numerator:** The number of families receiving assistance (including minor heads-of-household) engaged in work activities as defined in the Tribe's approved TANF plan for the required number of hours.

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

This calculation will be appropriately modified depending upon whether the Tribe chooses to target (1) an all-family rate, (2) an all-family rate and a two-parent rate, or (3) a one-parent rate and a two-parent rate.

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

#### *Exclusions From Work Participation Rate Calculations*

The PRWORA does not specify exclusions from the participation rate calculations for Tribal TANF programs. However, consistent with the flexibility provided State TANF programs, we are proposing at § 286.80(c)(2) to allow Tribes to exclude from the total number of TANF families (the denominator): (1) those families who have a child under the age of one if the Tribe opts to exempt these families from participating in activities (and so specified in the Tribe's TANF plan); and (2) on a limited basis, those families who are sanctioned for non-compliance.

The statute at section 407(b)(1)(B)(i)(II) precludes States from excluding families sanctioned for non-compliance with the work participation requirements from the denominator if the families have been sanctioned for more than three months out of a twelve-month period. We considered whether to apply the same restriction to Tribal TANF work participation rate calculations. We were concerned that if we did not apply the same restriction and allowed Tribes to exclude sanctioned families indefinitely, then

we would be inadvertently encouraging Tribes to discontinue their efforts in bringing those families into compliance and working towards self-sufficiency. Therefore, we are proposing at § 286.80(c)(2)(A) that families sanctioned for non-compliance with the work participation requirements are to be excluded from the denominator only if they have not been sanctioned for more than three months (whether or not consecutively) out of the last twelve months.

The proposed regulations do not provide for any other exclusions in calculating the Tribal TANF participation rate. However, in light of the Secretary's authority to negotiate work participation requirements that reflect economic conditions and resources available to a Tribe, we welcome comments about whether there should be additional exclusions.

We considered whether we should negotiate exclusions from the work participation rate calculations on a case-by-case basis with each individual Tribe. We rejected this approach because we believe a uniform method for calculating Tribal TANF work participation rates will help ensure that penalties are applied equitably across Tribes administering a TANF program. Additionally, since the rates themselves will be negotiated with each individual Tribe, such negotiations will already take into account unique circumstances which may make it difficult for certain families to participate in work activities. However, we welcome comments about whether exclusions should be negotiated on a case-by-case basis.

#### *Two-Parent Families*

Section 407(b)(2) of the Act, as amended by the Balanced Budget Act of 1997, requires a State to not consider as a two-parent family a family in which one of the parents is disabled for purposes of the work participation rate. Thus, a two-parent family in which one of the parents is disabled will be treated as a single-parent family for purposes of calculating the work participation rate. We propose at § 286.80(e) to make this provision applicable to Tribal TANF programs as well.

*How many hours per week must an adult or minor head-of-household participate in work-related activities to count in the numerator of the work participation rate? (§ 286.85)*

For Tribal TANF programs the statute does not specify the minimum number of hours individuals must participate in order to be counted for participation rate calculations. The Act gives us the authority to negotiate these requirements with Tribes. The draft

regulation at § 286.85 proposes that the minimum average number of hours per week for State TANF families presumptuously applies to Tribal TANF families as well. However, unlike the State requirements, we propose to provide Tribes the opportunity to rebut this presumption. Tribes will be permitted to establish fewer minimally required hours for families if a Tribe provides appropriate justification in its TANF plan. For example, the availability and accessibility of resources may not enable Tribal individuals to participate at the minimum number of hours per week required of State TANF recipients.

*What, if any, are the special rules concerning counting work for single custodial parents, caretaker relatives and two-parent families? (§ 286.90)*

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

The Balanced Budget Act of 1997 amended section 407(c)(1)(B)(i) of the Act to allow both parents in a two-parent family to share the number of hours required to be considered as engaged in work for purposes of meeting State TANF work requirements. The proposed regulation at § 286.90 indicates that Tribal TANF programs will also be able to apply this policy.

*What activities count towards the work participation rate? (§ 286.95)*

PRWORA does not specify the work activities required of Tribal TANF recipients but instead authorizes the establishment of minimum work participation requirements, which include work activities, for each Tribal grantee. The overwhelming feedback we received in discussions with Tribes suggested that the work activities identified for States in the statute be considered activities that count toward a Tribal TANF participation rate with two caveats: (1) That they not be limited to those activities; and (2) that they not be further defined in the regulations. Therefore, at § 286.95 we are listing the same activities found at section 407(b) of the Act. In addition, we are providing Tribes further flexibility to identify additional activities that they would consider acceptable and necessary in helping families work towards self-sufficiency. For example, a Tribe may identify subsistence activities or substance abuse treatment as activities the Tribe believes necessary to help families achieve self-sufficiency.

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

*What limitations concerning vocational education, job search and job readiness assistance exist with respect to the work participation rate? (§ 286.100)*

Comments we received recommended that Tribal TANF work activities not be subject to the same restrictions on vocational training as are placed on State TANF programs by statute (i.e., not be limited to 12 months). Because Tribal families may have minimal work skills and experience, and Tribal work opportunities may be much more limited, Tribes should have the flexibility to engage Tribal families in more extensive training. Therefore, the proposed regulation at § 286.100(a) does not impose the same limitation that is imposed upon States.

However, with respect to the job search/job readiness limitation required of State TANF programs, we believe that Tribal TANF families should also not simply be asked to job search or participate in job readiness activities as their sole activity for lengthy periods of time. Therefore, the proposed regulation at § 286.100(b) is similar to the provision found at section 407(c)(2)(A)(i) that limits to six weeks in a fiscal year the length of time that a State can consider participation in job search/job readiness in a fiscal year by any individual to be considered engaged in work.

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

However, unlike for State TANF programs, we are proposing at § 286.100(c) that if job search is conducted on an ancillary basis as part of another activity, then time spent in job search activities can count without limitation. We believe that as long as a family is engaging in activities in addition to job searching, then including hours spent in job search as part of their other activities is consistent with the intent of the law, to help families reach their goal of achieving self-sufficiency as soon as possible.

*What safeguards are there to ensure that participants in Tribal TANF work activities do not displace other workers? (§ 286.105)*

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

#### *Time Limits*

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

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

*What information on time limits for the receipt of welfare-related service must a Tribe include in its Tribal Family Assistance Plan? (§ 286.110)*

As part of its plan, a Tribe will propose a time limit for receipt of Tribal

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

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

If a Tribe proposes to use the 60-month time limit that applies under State TANF programs, we would not expect a detailed explanation of the rationale. However, if the Tribe proposes to provide assistance for longer than 60 months, it should explain how that time limit was determined. As mentioned earlier, examples of the information that we would expect to be included to illustrate the Tribe's proposal include, but are not limited to: Poverty, unemployment, jobless and job surplus rates; education levels of adults in the service area; availability of and/or accessibility to resources (educational facilities, transportation) to help families become employable and find employment; and employment opportunities on and near the service area.

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

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

Section 408(a)(7) of the Act provides that States may not use Federal funds to provide assistance to a family that includes an adult who has received assistance for more than five years. In other words, if a family does not include

any adults who are receiving assistance (i.e., only the children receive assistance), then the time limit does not apply. We propose to make the Tribal TANF requirements consistent with the State requirements in this area. The intent of Congress is that families should achieve self-sufficiency through employment. It does not seem reasonable to apply the time limit requirement to cases where only children are receiving assistance, and employment is not an option.

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

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

Section 407(a)(7)(D) of the Act, as amended by the Balanced Budget Act of 1997, requires that Tribes and States disregard as a month of assistance any month during which an adult lived in Indian country or an Alaskan Native village in which at least 50 percent of the adults were not employed. To determine whether 50 percent of the adults were not employed, the statute allows the use of any reliable data with respect to the month. This would allow the use of the Labor Force Report, which is issued every two years by the Bureau of Indian Affairs, Department of Labor Unemployment Data, or any other reliable data source or combination of data sources.

*Can Tribes make exceptions to the established time limit for families? (§ 286.115)*

For State TANF programs, section 408(a)(7)(C) of the Act allows for two hardship exceptions from the 60-month time limit: (1) Families that meet the State's definition of "hardship"; and (2) families that include an individual who has been battered or subjected to

extreme cruelty. A State may exempt no more than 20 percent of its average monthly caseload under these exceptions.

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

Although the proposed regulations include the same definition of "battered or subjected to extreme cruelty" as is set forth in section 408(a)(7)(C)(iii) for State TANF, we request comments as to whether there are additional situations particular to Tribes that should be included in this proposed definition. We also invite comments on whether this exception should be defined in regulations at all or left to each Tribe to define.

*Does the receipt of TANF assistance under a State or other Tribal TANF program count towards a Tribe's TANF time limit? (§ 286.120)*

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

#### *Penalties Against Individuals*

As stated earlier, the PRWORA promotes self-sufficiency and independence by providing people with more work opportunities while holding individuals to a higher standard of personal responsibility for the support of their children. The legislation expands the concept of mutual responsibility, introduced under the Family Support Act of 1988, that income assistance to families with able-bodied adults should be transitional and conditioned upon their efforts to become self-sufficient. As Tribes focus

on helping adults get work and earn paychecks quickly, parents are also expected to meet new, tougher work requirements. We will expect Tribes to ensure that parents understand what is required of them, and to develop proposals for penalties against individuals that reflect the importance of those requirements.

*What information on penalties against individuals must be included in a Tribal Family Assistance Plan? (§ 286.125)*

*What is the penalty if an individual refuses to engage in work activities? (§ 286.130)*

*Can a family, with a child under age 6, be penalized because a parent refuses to work because (s)he cannot find child care? (§ 286.135)*

This proposed rule combines the discussions of these three sections of this part because of the inter-relationship among them.

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

As discussed earlier, we propose to use the Tribal TANF plan process to establish the requirements related to penalties against individuals and related policies that will become a part of the Tribal TANF program. In addition, the Tribe must include a rationale for its proposal and related policies in the plan. The rationale needs to address how the Tribe's proposal is: Consistent with the purposes of section 412 of the Act; consistent with the economic conditions and resources available to the Tribe; and similar to the requirements applicable to States as specified at section 407(e) of the Act.

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

In addition, a State may establish, pursuant to section 407(e)(1) of the Act, good cause exceptions to penalties for failure to engage in work as required. We believe that Tribes must also be able to establish reasonable good cause exceptions because penalties against individuals established for each Tribal

TANF grantee must be comparable to those specified at section 407(e). A Tribe must include a rationale for its good cause exceptions. The rationale should address how the good cause exceptions are reasonable and how they relate to the goals of the Tribe's TANF program.

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

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

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

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

There may be other reasons a Tribe may want to impose a penalty on an individual who refuses to cooperate with program requirements other than work activity requirements. For example, a Tribe may want to impose a penalty on a custodial parent who refuses to cooperate with a child support enforcement program.

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

- (1) Will the Tribe impose a pro rata reduction, or more at Tribal option, or will it terminate assistance to a family which includes an adult or minor head-

of-household that refuses to engage in work as required?

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

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

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

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

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

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

Because the Tribe will have the authority to determine whether the individual has adequately demonstrated an inability to obtain needed child care, we expect the Tribe to provide families with the criteria that it will use to implement the exception and the means by which a parent can demonstrate such an inability. In providing these criteria, each Tribe needs to define the following terms: "Appropriate child care," "reasonable distance," "unsuitability of

informal care," and "affordable child care arrangements." In the proposed CCDF rule, we require the Lead Agency for child care to coordinate with the TANF agency in order to understand how the TANF agency defines and applies the terms of the statute regarding the exception to the penalty and to include those definitions and criteria in the CCDF plan.

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

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

#### *Tribal TANF Plan Processing*

*What are the applicable time frames and procedures for submitting a Tribal Family Assistance Plan? (§ 286.140)*

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

As mentioned in the discussion on determining the amount of a Tribal Family Assistance Grant, our experience to date has indicated that we need sufficient time to request data from the State, receive and process it, and resolve any issues, prior to making official notice to the State. We have outlined time frames at § 286.15 for requesting State data and resolving any issues concerning the data. In order to meet these time frames and meet the requirement for a three-month notice to the State, the proposed regulation at § 286.140 requires a Tribe to submit to us a letter of intent, unless the Tribes have already requested, received and resolved any issues regarding the State-

supplied data. We will use the letter of intent to request the data from the State and thus will need to specify the Tribe's proposed implementation date and proposed service area and population. We have proposed time frames for the submission of the letter of intent at § 286.140(a).

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

minimum of 120 days to accomplish these actions for Tribes who propose to implement a program on the first day of a calendar quarter. Therefore, the proposed regulation at § 286.140(a) requires the formal submission of a Tribal TANF plan to us based on the dates specified in the table below.

A Tribe will be able to implement a Tribal TANF program on the first day of any month. However, due to the requirement for a three-month notification to the State of its adjusted quarterly SFAG amount, a Tribe who

wishes to implement a TANF program on other than the first day of a calendar quarter, i.e., January 1, April 1, July 1 or October 1, will need to submit both its letter of intent and its formal plan as if the proposed implementation date was the first day of a calendar quarter. The following table illustrates, based on implementation dates, when a Tribe needs to submit its letter of intent and formal plan in order for us to meet the statutory requirement for notification to the State.

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

We had considered whether to establish a format or preprint for the Tribal TANF plans. In discussions with Tribes, we heard from some Tribes that did not want us to dictate plan format. Yet we also heard from some Tribes that indicated they would appreciate having a preprint, similar to the one that was used for the Tribal JOBS program. We invite additional comments from readers as to whether to develop and require the use of a specific format or preprint for use by Tribes in submitting TFAPs. One option would be to develop an optional plan preprint.

As noted above, the Secretary has explicit authority to approve Tribal TANF plans. In exercising this authority, we plan to work with each Tribe that submits a TFAP to ensure that plans contain the information required by statute and regulation. A Tribe may make revisions to its plan during the review process. In instances where we disapprove a plan, the proposed regulation at § 286.140(e) provides an appeal process.

#### Public Law 102-477

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

The PRWORA requires the Secretary to review and approve all TFAPs for Tribes seeking to operate a Tribal TANF Program. Those requirements are found at section 412(a). Section 5 of Pub. L. 102-477 states "the programs that may

be integrated in a demonstration project \* \* \* shall include any program under which an Indian tribe is eligible for receipt of funds." In order to receive a Tribal Family Assistance Grant, Tribes must first have approved Tribal TANF plans. Therefore, the proposed regulation at § 286.140(f) indicates that a Tribe must have separate approval of its TFAP from the Secretary before it can integrate the Tribal TANF program into a Pub. L. 102-477 plan.

#### How is a Tribal Family Assistance Plan amended? (§ 286.145)

Section 412 of the statute does not address amendments to Tribal TANF plans. We believe that Tribes need to have an opportunity, during the period covered by a plan, to amend the plan. Thus, the proposed regulation at § 286.145 allows Tribes to amend TFAPs.

In addition, the proposed regulation establishes the procedure for the submission, review and implementation of a Tribal TANF plan amendment. We propose to require the submission to the Secretary of a plan amendment no later than thirty (30) days prior to the implementation of the amendment. The implementation date for an approved amendment will be the first day of any month. We will take action to approve or disapprove the proposed amendment within fourteen (14) days. If we disapprove a plan amendment, the Tribe will be given an opportunity to appeal the decision. Use of TANF funds for services or activities under an amendment cannot be made until the implementation date of the approved amendment.

#### Specials Provisions for Alaska

*What special provisions apply to Alaska? (§ 286.150)*

*What is the process for developing the comparability criteria that are required in Alaska? (§ 286.155)*

*What happens when a dispute arises between the State of Alaska and the Tribal TANF eligible entities in the State related to the comparability criteria? (§ 286.160)*

*If the Secretary, in the State of Alaska, or any of the Tribal TANF eligible entities in the State of Alaska want to amend the comparability criteria, what is the process for doing so? (§ 286.165)*

Section 412(i) of the Act requires the Tribal TANF eligible entities in the State of Alaska to operate a program in accordance with requirements comparable to the State of Alaska's TANF program. In response to this provision in the statute, we sponsored a meeting in Anchorage on November 15, 1996, to begin discussions on welfare reform and the Alaska-specific comparability issue. During that meeting a group formed, consisting of representatives from each of the Tribal TANF eligible entities, as defined in section 417(4)(B) of the Act, the Alaska State Department of Health and Social Service and ACF. This "Single Points of Contact (SPOC)" group has met regularly to discuss welfare reform issues unique to Alaska and worked on developing an initial comparability criteria document. This process, developed in the absence of any written Federal guidance, continues to further the communication among the Federal Government, the State and the 13 eligible Tribal TANF eligible entities in the State. The 13 eligible entities have

agreed to submit Tribal TANF plans for implementation no sooner than July 1, 1998, and thus, the comparability criteria document will continue to be refined until such time as an eligible entity submits the first Alaska Tribal TANF plan.

Because of the extensive work being done by the SPOC group, and the consultation that continues to take place, we have decided not to regulate either the specific comparability criteria or the process by which the comparability criteria will be developed. We believe that the SPOC group has a well-developed process for working on the Alaska-specific challenges of welfare reform and that allowing the greatest level of flexibility possible for this group will achieve the best results. However, we have chosen to include regulations on how to settle disputes that cannot be resolved through this process, as well as regulations on how to amend the comparability criteria. Based on the comments we received during the preconsultation process, we determined that regulations would be helpful in these two areas.

#### Subpart D—Accountability and Penalties

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

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

##### *What penalties will apply to Tribes? (§ 286.170)*

The four penalties that apply to Tribes are as follows:

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

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

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

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

As specified in section 409(a)(3), the participation rate penalty amount will depend on whether the Tribe was under a penalty for this reason in the preceding fiscal year. If a penalty was not imposed on the Tribe in the preceding year, the penalty reduction will be a maximum of five percent of the TFAG in the following year. If a penalty was imposed in the preceding year, the penalty reduction will be increased by 2 percent per year, up to a maximum of 21 percent. We will take into consideration the severity of the failure in determining the amount of the penalty. In our consultation with Tribes, we have been advised that it will be difficult to satisfy the participation rates because of economic conditions (e.g., high unemployment rates) in Tribal service areas. Although these conditions will be considered in establishing the minimum participation rates for each TFAG program, we recognize that it may still be difficult for Tribes to meet this requirement. For this reason, we propose to take into consideration the following two factors in determining the amount of the penalty: (1) Increases in the unemployment rate in the Tribe's service area, and (2) changes in TFAG caseload (e.g., increases in the number of families receiving services).

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

##### *Failure To Repay a Federal Loan*

Section 406 permits Tribes to borrow funds to operate their TANF programs. Tribes must use these loan funds for the same purposes as apply to other Federal TANF funds. In addition, the statute also specifically provides that Tribes

may use such loans for welfare anti-fraud activities and for the provision of assistance to Indian families that have moved from the service area of a State or other Tribe operating a Tribal TANF program. Tribes have three years to repay loans and must pay interest on any loans received. We will be issuing a program instruction notifying Tribes and States of the application process and the information needed for the application.

Section 409(a)(6) establishes a penalty for Tribes that do not repay loans provided under section 406. We will penalize Tribes for failing to repay a loan provided under section 406 (see § 286.170(a)(4) and § 286.185). A specific vehicle for determining a Tribe's compliance with this requirement is unnecessary. In our loan agreements with Tribes, we will specify due dates for the repayment of the loans and will know if payments are not made.

##### *Outstanding Penalties and Retrocession*

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

##### *Replacement of Penalty Amounts*

Section 409(a)(12) of the Act requires a State to expend its own funds to replace any reduction in its SFAG due to the imposition of a penalty. This is to prevent recipients from also being penalized for the State's failure to administer its program in accordance with the requirements of the Act. We believe that a similar failure by a Tribe should not cause Tribal TANF recipients to be penalized. For this reason, in the same fiscal year as a penalty is imposed, at § 286.170(c)(1) we propose to require a Tribe to expend Tribal funds to replace any reduction in the TFAG resulting from penalties that have been imposed. The Tribe must document compliance with this provision on its TANF Financial Report.

As amended by the Balanced Budget Act of 1997, section 409(a)(12) states that failure of a State to replace any reduction in its SFAG amount due to penalties may result in a penalty of not more than 2 percent of the SFAG, plus the amount that was required to be replaced. However, we do not want to

subject Tribes to a penalty that is so severe that services to recipients are jeopardized. Therefore, we propose at § 286.170(c)(2) to impose a similar, but not the same, penalty on Tribes. We stipulate in the proposed rule that we may impose a penalty of not more than 2 percent of the TFAG if a Tribe fails to expend its own funds to replace any reduction in the TFAG due to penalties.

We invite comments on our decision to impose this requirement.

*How will we determine if Tribal Family Assistance Grant funds were misused or intentionally misused? (§ 286.175)*

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

*Misuse of Funds*

The penalty at § 286.170(a)(1) and § 286.175(a) provides that if a Tribe has been found to have used funds in violation of title IV-A through an audit conducted under the Single Audit Act (31 U.S.C. Chapter 75), as referenced in section 102(f) of the Indian Self-Determination Act Amendments of 1994 (Pub. L. 103-413), the Tribe is subject to a penalty in the amount misused. This is the only penalty for which Congress identified a method for determining a penalty.

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

The single audit is an organization-wide audit that reviews Tribal performance in many program areas. We implemented the Single Audit Act through use of Office of Management and Budget (OMB) Circular A-128, "Audits of State and Local Governments." Because of amendments

made to the Single Audit Act in 1996, OMB recently revised this circular and a similar circular for non-profit organizations, A-133. Effective June 30, 1997, A-128 has been rescinded, with the result that the revised A-133 now includes the single audit requirements for States, local governments, Indian tribes and non-profit organizations.

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

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

... a Federal agency may conduct, or arrange for additional audits which are necessary to carry out its responsibilities under Federal law or regulation. The provisions of this chapter do not authorize any non-Federal entity (or subrecipient thereof) to constrain, in any manner, such agency from carrying out or arranging for such additional audits, except that the Federal agency shall plan such audits to not be duplicative of audits of Federal awards.

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

*Intentional Misuse of Funds*

Where a penalty is determined for the misuse of funds, we may apply a second penalty if we determine that the Tribe has intentionally misused its TFAG. The proposed criteria for determining "intentional misuse" are found at § 286.175(c). We propose that the single audit should be the primary means for determining this penalty as it is linked to the penalty for misuse of funds. However, as with the use of the single audit for misuse of funds, we may also conduct other reviews and audits in

response to complaints from individuals and organizations or other indications which signal problems with compliance with TANF program requirements. These additional reviews and audits may be the basis for assessing a penalty under this section.

*Additional Single Audit Discussion*

Although we propose that the single audit be the primary means to determine the specific penalties for misuse and intentional misuse of TFAG funds, we will not ignore other single audit findings such as Tribal non-compliance with the minimum participation rate requirement. Where the single audit is used to determine a penalty for failure to satisfy the minimum participation rate, the penalty that will apply is the percentage reduction described at § 286.170(a)(3), not the dollar-for-dollar penalty at § 286.170(a)(1) for misuse of funds.

The single audit may also reveal Tribal non-compliance with the negotiated time limit requirements (see § 286.110). Since Tribes are not subject to the State penalty at section 409(a)(9) for failure to comply with the time limit provisions, the question arose as to whether the Tribe's failure should be treated as a misuse of funds. Because the penalty for misuse of funds is equal to the amount that was spent incorrectly, the Tribal penalty could potentially be higher than the 5 percent penalty for States. As a result, a Tribe could be subject to a higher penalty by comparison. To avoid disparate treatment of States and Tribes in this area, we propose to limit any potential penalty for failure to comply with the Tribal time limits to a maximum of 5 percent.

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

*How will we determine if a Tribe fails to meet the minimum work participation rate(s)? (§ 286.180)*

Tribal compliance with the minimum work participation rates under § 286.80 will be primarily monitored through the information required by section 411(a) of the Act. The proposed rule at § 286.70 provides additional information on minimum work participation requirements.

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

determining this penalty. Our ability to meet our program management responsibilities may also mean that we will conduct reviews in the future to verify the data submitted by Tribes, particularly in this area where a fiscal penalty is applicable.

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

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

*What is the penalty for a Tribe's failure to repay a Federal loan? (§ 286.185)*

If the Tribe fails to repay its loan, plus any accumulated interest, in accordance with its agreement with ACF, we will reduce the Tribe's TFAG for the immediately succeeding fiscal year by the outstanding loan amount, plus any interest owed. Neither the reasonable cause provisions at § 286.200 of this chapter nor the corrective compliance plan provisions at § 286.205 of this chapter apply when a Tribe fails to repay a Federal loan. Please refer to § 286.210 for more information on this penalty.

*When are the TANF penalty provisions applicable? (§ 286.190)*

Tribes may choose to implement the TANF program at different times, but no earlier than July 1, 1997. In our consultation with Tribes, we received several comments concerning the difficulties that Tribes will face in attempting to implement a TANF program. Unlike States that were operating AFDC and similar welfare programs prior to implementing TANF, Tribes may not have this past history on which to build. We received several recommendations to provide for a grace

period for implementation before we begin to assess any Tribal penalties.

Section 116(a)(2) of PRWORA delays the effective dates of some provisions for States, and we propose to apply a similar rule for Tribes. States are generally held accountable for meeting the requirements of the Act from the first day that the program is implemented. However, Congress delayed the effective dates of some provisions because it recognized that States may need some lead time in implementing certain requirements. In a number of instances it provided that the related penalty requirements will not apply for six months after the State implements a TANF plan. Similarly, while Tribes will be held accountable for the penalties for misuse and intentional misuse of funds from the date of implementation of TANF, the penalty for failure to satisfy minimum participation rates will not apply until six months after the date of implementation of the Tribal TANF program.

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

*What happens if a Tribe fails to meet TANF requirements? (§ 286.195)*

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

*Reasonable Cause and Corrective Compliance Plan*

Provisions at sections 409(b) of the Act state that we can excuse or reduce certain penalties if we determine that the Tribe has reasonable cause for

failing to comply with certain requirements that are subject to a penalty. At § 286.200 Tribes will have the opportunity to demonstrate reasonable cause upon receipt of a written notification of a proposed penalty.

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

*How may a Tribe establish reasonable cause for failing to meet a requirement that is subject to application of a penalty? (§ 286.200)*

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

PRWORA did not specify any definition of reasonable cause or indicate what factors we should use in determining a reasonable cause exceptions for a penalty. We propose to consider only certain, limited factors when we decide whether or not to excuse a penalty for reasonable cause.

During our deliberations on reasonable cause factors, we considered the opinions presented during our consultation process as well as the need to support the commitment of Congress, the Administration, States, and Tribes to the objectives of the TANF program, including program accountability. In keeping with these objectives, we propose a limited number of reasonable cause factors with an emphasis on corrective solutions. These are the same reasonable cause factors that we propose for State programs.

We propose factors which would be applicable to all penalties for which the reasonable cause provision applies and, in the case of the penalty for failure to satisfy the minimum participation rates, one additional factor only applicable to that specific penalty.

General reasonable cause may include the following: (1) Natural disasters and other calamities (e.g., hurricanes, tornadoes, earthquakes, fires, floods, etc.) whose disruptive impact was so significant that the Tribe failed to meet a requirement; (2) formally issued Federal guidance which provided incorrect information resulting in the

Tribe's failure, or guidance that was issued after a Tribe implemented the requirements of the Act based on a different but reasonable interpretation of the Act; and (3) isolated, non-recurring problems of minimum impact that are not indicative of a systemic problem.

We are also proposing one additional specific reasonable cause factor for a Tribe's failure to satisfy minimum work participation rates. Under the proposed rule at § 286.200(b), a Tribe may demonstrate that its failure is due to its granting of good cause to victims of domestic violence. In this case, the Tribe must show that it would have achieved the work participation rate(s) if cases with good cause were removed from both parts of the calculation (i.e., from the denominator and the numerator described in § 286.80). In addition, a Tribe must show that it granted good cause in accordance with policies approved in the Tribe's Family Assistance Plan (refer to § 286.125).

We understand that limited employment opportunities in many Tribal service areas may affect a Tribe's ability to satisfy the participation rates. However, as explained in § 286.95, the work participation requirements established for each Tribe will take into consideration the Tribe's economic conditions and resources. We invite comments on the additional reasonable cause factor for failure to meet work participation requirements, as well as whether there are other factors we should consider for determining reasonable cause.

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

*What if a Tribe does not have reasonable cause for failing to meet a requirement? (§ 286.205)*

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

The corrective compliance plan must identify the action steps, outcomes, and time frames for completion that the Tribe believes will fully and adequately correct the violation. We recognize that each plan will be specific to the violation (or penalty) and that each Tribe operates its TANF program in a unique manner. Thus, we will review

each plan on a case-by-case basis. Our determination to accept a plan will be guided by the extent to which the Tribe's plan indicates that it will correct the situation leading to the penalty.

In instances where a Tribe used its TFAG in a manner that is prohibited (see § 286.175 on misuse of funds), we will expect that it will remove this expenditure from its TANF accounting records and provide steps to assure that such a problem does not recur.

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

Therefore, we are considering a proposal to limit the period covered by a corrective compliance plan to 6 months, i.e., the plan period ends 6 months from the date we accept a Tribe's compliance plan. We believe that, for most violations, Tribes will have some indication prior to our notice that a problem exists and will be able to begin addressing the problem prior to submitting the corrective compliance plan. Therefore, we think it fair and reasonable that the corrective compliance plan period begin with our acceptance of the plan, giving the Tribe sufficient time to correct or terminate the violation(s). We would like to hear comments from Tribes and other interested parties on this proposal on the appropriate time period for a corrective compliance plan.

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

#### *Corrective Compliance Plan Review*

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

will obligate the Tribe to initiate the corrective actions specified in that plan.

We may either accept the Tribe's corrective compliance plan within the 60-day period that begins on the date the plan is received by us, or reject the plan during this same period. If a Tribe does not agree to modify its plan as we recommend, we may reject the plan. If we reject the plan, we will immediately notify the Tribe that the penalty is imposed. The Tribe may appeal this decision in accordance with the provisions of section 410 of the Act and the proposed regulations at § 286.215. If we have not taken an action to reject a plan by the end of the 60-day period, the plan is accepted, as required by section 409(c)(1)(D) of the Act.

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

#### *Process*

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

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

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

#### *Due Dates*

The Tribe's response to our notification that it has failed to meet a requirement under section 409(a) of the Act, either including its reasonable cause justification and/or its corrective compliance plan, must be postmarked within 60 days of the receipt of our notification letter to the Tribe. Also, if a Tribe believes that our determination is incorrect, any documentation supporting its position should be submitted within 60 days of the date of the receipt of our notice.

If, upon review of the Tribe's submittal, we find that we need additional information, the Tribe must provide the information within two weeks of the date of our request. This is to make sure we are able to respond timely.

#### *Imposing the Penalty*

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

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

#### *What penalties cannot be excused? (§ 286.210)*

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

outstanding loan amount or the interest owed on the outstanding amount.

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

#### *How can a Tribe appeal our decision to take a penalty? (§ 286.215)*

Section 410 of the Act provides that within five days after the date the Secretary takes any adverse action under this part with respect to a State, the Secretary shall notify the chief executive officer of the State of the adverse action. We believe that it is reasonable to make these same appeal provisions, including the time frames in section 410, available for Tribes. Thus, within 60 days after the date a Tribe receives notice of such adverse action, the Tribe may appeal the action, in whole or in part, to the Board by filing an appeal with the Board. Where not inconsistent with section 410(b)(2), a Tribes's appeal to the Board will be subject to our regulations at 45 CFR part 16.

By inclusion in this rule, section 410(b)(2) provides that the Board shall consider an appeal filed by the Tribe on the basis of documentation the Tribe may submit, along with any additional information required by the Board to support a final decision. In deciding whether to uphold an adverse action or any portion of such action, the Board shall conduct a thorough review of the issues and make a final determination within 60 days after the appeal is filed.

Finally, a Tribe may obtain judicial review of a final decision by the Board by filing an action within 90 days after the date of the final decision with the district court of the United States in the judicial district where the Tribe or TFAG service area is located. The district court shall review the final decision of the Board on the record established in the administrative proceeding, in accordance with the standards of review prescribed by subparagraphs (A) and (E) of section 706(2) of title 5, U.S.C. The review will be on the basis of the documents and supporting data submitted to the Board.

#### *Subpart E—Data Collection and Reporting Requirements*

##### *General Approach*

Section 412(h) of the Act makes section 411, regarding the data collection and reporting requirements for States, applicable to Tribes. The requirements for States are addressed separately under the proposed State TANF regulations published November 20, 1997. Although the reporting

requirements stipulated under the proposed State TANF regulations are also required of Tribes under the statute, some of the particular data elements are not applicable. In order to minimize misunderstandings about what data elements are applicable to Tribes, we separately address the Tribal data collection and reporting requirements in this proposed rule.

Based on comments we received prior to our developing these proposed regulations, Tribes generally view the section 411 requirements as very difficult to meet. A barrier most often cited was the need for sophisticated automated tracking systems. The National Congress of American Indians conducted an extensive survey of Tribes, the results of which support the view that automated systems capabilities necessary for collecting and reporting the data required of the Act are sorely lacking on most reservations.

As another challenge in fulfilling the reporting requirements, Tribes cited the difficulties in obtaining current and accurate data from other program sources that are not administered by Tribes and that may not be readily available to Tribal TANF program operators. For example, Tribes do not generally administer programs such as Food Stamps, Medicaid, subsidized housing, Child Support Enforcement, and State-administered child care programs, yet the specified data elements require such information. Tribes expressed concern that obtaining these data would entail developing costly mechanisms to gather accurate information on a monthly basis from States.

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

#### *Summary of the Proposed Data Collection and Reporting Provisions*

There are a substantial number of specific data reporting requirements on Tribes and States under the TANF program. Some of these reporting requirements are explicit, primarily in section 411(a); others are implicit, e.g., Tribes and States represent the source of information for reports that the Secretary must submit to Congress and for the determination of penalties.

These data requirements support two complementary purposes: (1) They enable determinations about the success of TANF programs in meeting the purposes described in section 401; and (2) they assure Tribal accountability for key programmatic requirements. In particular, they ensure accurate measurement of Tribal performance in

achieving established work participation rates and other objectives of the Act.

Some of these purposes can only be achieved if data are comparable across Tribes and over time. At section 411(a)(6), the TANF statute provides that, to the extent necessary, the Secretary shall provide definitions of the data elements required in the reports mandated by section 411(a).

With respect to the first purpose, measuring the success of TANF programs, the data requirements of section 411(a) reflect particular features of the TANF program. States have collected and reported similar data on the characteristics, financial circumstances, and assistance received by families served by the AFDC and JOBS programs for many years. By requiring the collection of similar data under TANF, the statute enables the Congress, the public, Tribes and States to observe how welfare reform changes the demographic characteristics and the financial circumstances of, and the self-sufficiency services received by, needy families. In so doing, it promotes better understanding of what is happening nationwide—how Tribes and States are assisting needy families; how they are promoting job preparation and work; and what kinds of support two-parent families are receiving.

With respect to ensuring accurate measurement of work participation, section 411(a)(1)(A)(xi) specifically requires reporting on the “information necessary to calculate participation rates.” Given the significance of the work rates for achieving the objectives of TANF and for determining whether Tribes face penalties, this is an area where accurate and timely measurement is particularly important.

Our goal in implementing the data collection and reporting requirements of the Act is to collect the data required and necessary to monitor program performance. A secondary goal is to give Tribes clear guidance about what these requirements entail and the consequences of failing to meet the requirements.

At the same time, however, we are sensitive to the issue of paperwork burden and committed to minimizing the reporting burden on Tribes, consistent with the TANF statutory framework. We welcome comments on whether these proposed rules, and appendices, are consistent with our interest in both minimizing reporting burdens and meeting TANF requirements.

Under this NPRM, Tribes must submit two quarterly reports (the TANF Data Report and the TANF Financial Report)

and two annual reports (a program and performance report for the annual report to Congress and, as an addendum to the fourth quarter Financial Report, Tribal definitions and other information).

Most of the information we propose to collect is required by section 411(a). We do not have the authority to permit Tribes to report only some of the data required in section 411(a), and our authority to require expanded data reporting is limited. We are, however, proposing to require some additional data elements necessary to ensure accountability under section 409(a) (i.e., for penalties) and meet other requirements.

Before we discuss each of the quarterly and annual reports in detail, we present an overview of the major provisions of this part.

The following is a summary of the major proposed data collection and reporting provisions for Tribes.

We propose that each Tribe—

- Collect and report the disaggregated case record information on individuals and families and other data, as required in section 411(a) of the Act. “Disaggregated” case record information refers to reporting characteristics for each family and, for some characteristics, for every individual member of the family.
- Collect and report information to monitor compliance with the work requirements in section 407, as authorized by section 411(a)(1)(A)(xi).
- Collect and report aggregate fiscal data related to administrative costs and program expenditures, as required by sections 411(a)(2), (a)(3), and (a)(5) of the Act. This includes expenditures for transitional services (i.e., services to help employed, former Tribal TANF families remain self-sufficient).
- “Aggregated” data refers to reporting selected monthly totals for all families receiving benefits under the program.
- Collect and report a minimum number of items as break-outs of the data elements specified in section 411(a), such as citizenship status, educational level, and earned and unearned income; and a few additional items necessary to the operation of a data collection system, including Social Security Numbers. (Social Security Numbers are common personal identifiers that provide a means to track time limits and to ensure that duplicative TANF assistance is not received.)
- Collect and report a minimum number of data elements related to child care.
- Collect and report monthly aggregate data on non-custodial parents

participating in work activities as required by section 411(a)(4) of the Act.

- Submit an annual report to assist us in preparing the Annual Report to Congress as required by section 411(b) of the Act.

We also propose a definition for “scientifically acceptable sampling method” which Tribes must use if they wish to submit data on a sample basis.

We propose to reduce the reporting burden on Tribes by—

- Giving Tribes the option of recording the amount received in the previous month if updated information has not been obtained for the following: (a) Subsidized housing, (b) Medicaid and/or (c) Food Stamps. If any of these programs are administered by the Tribe (either directly or through a contract), then we expect the current monthly data to be supplied.
- Requiring Tribes to report only on the demographic and financial characteristics of families applying for assistance whose applications are approved; and
- Allowing Tribes to report on work activities as defined in their TANF plans.

Readers should note that Appendices E, F and G of the proposed State TANF regulations require data on persons provided assistance by States under separate State programs and are inapplicable to Tribes. They are not included in the proposed Tribal TANF regulations.

Finally, in order to provide an opportunity for maximum review and public comment on the Tribal reporting requirements, we have attached the proposed Tribal TANF Data Report forms (including the specific data elements) as Appendices to the proposed part 286. We will revise these instruments following the comment period on the NPRM and will issue them to Tribes through the ACF policy issuance system. As mentioned earlier, we will not re-publish these appendices as part of the final rule.

We have submitted copies of this proposed rule and the proposed data reporting requirements that are included in this package to OMB for its review of the information collection requirements. We encourage Tribes, States, organizations, individuals, and others to submit comments regarding the information collection requirements to ACF (at the address above) and to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, Washington, DC 20503, ATTN: Laura Oliven, Desk Officer for ACF.

*What data collection and reporting requirements apply to Tribal TANF programs? (§ 286.220)*

This section describes the general scope and purpose of this subpart as it applies to Tribal TANF data collection and reporting. Paragraph (a) also makes clear that section 412(h) of the Act requires that the same reporting requirements of section 411 of the Act be applied to Tribal TANF Programs. We have modified the proposed State regulatory requirements in order to collect from Tribal TANF programs only the data required based on section 411(a) of the Act—quarterly reporting requirements; and section 411(b)—report to Congress, and section 412(c)—work participation requirements. One reason for the modification is that Tribes do not have a maintenance-of-effort (MOE) requirement; thus there is no need for data related to MOE. (Section 411(a)(1)(A)(xii) authorizes the collection of information that is necessary for calculating participation rates.)

The proposed regulation at § 286.230(a) also makes clear that Tribes will be required to submit: (1) Disaggregated data for two types of families: Those receiving assistance and those no longer receiving assistance; and (2) aggregated data for three categories of families: Those receiving assistance, those applying for assistance, and those no longer receiving assistance.

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

*What definitions apply to this subpart? (§ 286.225)*

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

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

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

We do not expect coverage and family eligibility definitions to be comparable across Tribes and States. Therefore, we

have proposed a definition that will enable us to better understand the different Tribal and State programs and their effects. We are proposing that the definition of “TANF family” start with the persons in the family who are actually receiving assistance under the Tribal TANF program. (Any non-custodial parents participating in work activities will be included as a person receiving assistance in an “eligible family” since Tribes may only serve non-custodial parents on that basis.) We, then, would include three additional categories of persons living in the household, if they are not already receiving assistance. These three additional categories are:

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

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

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

- We need information on minor siblings in order to understand the impact of “family cap” provisions.
- We also need information on other persons whose income or resources are considered in order to understand the paths by which families avoid dependence.

We considered alternative terms on which to base TANF data collection such as the “TANF assistance unit” or “TANF reporting unit.” However, as participants in the external consultation process pointed out, these terms no longer have a commonly understood meaning, particularly as Tribes and States re-design their assistance and service programs.

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

gather data for their own purposes and for which information will be directly relevant to administration of the TANF program.

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

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

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

*What quarterly reports must the Tribe submit to us? (§ 286.230)*

We propose that each Tribe file two reports on a quarterly basis—the TANF Data Report and the Tribal TANF Financial Report. You will find the proposed Data Report in its entirety in the Appendices to this Part.

*TANF Data Report*

The proposed TANF Data Report consists of three sections (Appendices A, B, and C), two of which provide disaggregated case information. The third section provides aggregated data. The contents of each section are discussed below.

*Disaggregated Data*

We propose that each Tribe collect monthly and file quarterly disaggregated case information on: (1) Families receiving TANF assistance; and (2) families no longer receiving TANF assistance. (See Appendices A and B for the specific data elements.)

The data to be collected includes identifying and demographic information; the types and amount of assistance received under the TANF program and reason for and amount of any reduction in assistance; data on

adults, including the Social Security Number, educational status, citizenship status, work participation activities, employment status, earned and unearned income; and data on children, including the Social Security Number, educational status, and child care information.

We propose to reduce the burden on Tribes of reporting "demographic and financial characteristics of families applying for assistance, families receiving assistance, and families that become ineligible to receive assistance" as needed for the Annual Report to Congress. In interpreting this requirement in section 411(b)(2) of the Act, we propose to collect information, not on all families who apply, but only on those receiving assistance.

We took this position because the question of "what is an application" and "what is a denied application" (as opposed to a referral or diverted family, for example) is often very difficult to determine. If we were to require data on all applications, we believe that considerable portions of the demographic and financial data would be incomplete or entirely missing. We also believe that there would be extraordinary variability in the information provided across Tribes. This would have an adverse impact on the quality of the estimates made based on these data, and on our ability to interpret these data. Finally, data collection on all applicants could be very burdensome on Tribes as they would need to create an additional sample frame to select samples for all applications.

#### *Data Administration*

The following are items not required by statute but are necessary to, and implicit in, the administration of a data collection system:

1. Tribal Code
2. Reporting Month
3. Stratum
4. Family case number
5. Disposition

We received suggestions from a small number of Tribes that we should also include a Tribal enrollment identifier. We would appreciate further comments from more Tribes about whether a Tribal enrollment identifier would be helpful and for what purpose we might use such information.

Specifically, we would like to know whether collecting and reporting a Tribal enrollment identifier (1) is feasible for all Indians that a Tribal TANF program may serve; (2) should be collected for the aided adult(s) only, or for the aided children also; and (3) will

be useful, i.e., what purpose would the Tribal enrollment data serve. We would also like to know whether obtaining Tribal enrollment information for all Tribal TANF recipients would be information a Tribe would generally include as part of its application process so that the burden of collecting and reporting the information would not outweigh its usefulness.

#### *Non-Statutory Elements*

We propose to request the following additional data that are not explicitly required by statute:

1. *ZIP Code:* This information is readily available and is needed for geographical coding and rural/urban analyses.

2. *Family Affiliation:* This information is needed to identify which persons are in the Tribe-defined family in order to monitor work participation, receipt of assistance, and time limits. However, since we propose that the Tribes be required to submit data for individuals who are only in the Tribe's definition of eligible family, Tribes will use only one code for this element: "member of the Tribe-defined eligible family."

3. *Social Security Number:* We propose to require that Social Security Numbers be reported to provide a means for tracking time limits that are applicable to TANF recipients as well as for ensuring non-duplicative assistance.

4. *Gender:* This is a standard demographic data element. The information could be collected under a relationship element (e.g., father, mother, brother). However, by using this single element, the coding is simpler; it is easier to report; and, thus, is less burdensome.

5. *Child Care:* These data are similar to data required under the Child Care Development Fund. TANF child care data is necessary for assessing program performance and the total financial commitment Tribes are making to achieve the work objectives of the Act.

6. *Child Support:* We propose to include two data elements related to child support. The amount of child support is a break-out of the data element "unearned income" required in section 411(a) of the Act. However, Tribes that do not administer the Child Support Enforcement program can leave this element for amount of child support received blank if they are unable to collect this data. The second data element, "cooperation with child support," is asked to implement the penalty provision in section 409(a)(5). Since section 409(a)(5) is not applicable to Tribal TANF programs, Tribes will have the option to leave this element

blank should data for this element not be available.

#### *Aggregated Data*

We propose that each Tribe also collect monthly and file aggregate caseload data quarterly. (See Appendix C for the list of data elements.)

The proposed data elements in this section of the report cover families receiving, applying for, and no longer receiving TANF assistance. They include total figures on the number of approved and denied applications; the number of no-parent, one-parent, and two-parent families; the number of child and adult recipients; the number of teen heads-of-household; the number of births; the number of out-of-wedlock births; and the number of closed cases. (One item of expenditure data is requested: The total amount of TANF assistance provided.)

This section of the TANF Data Report incorporates data elements of sections 411(a) and 411(b). The data are also needed to test the reliability of the estimates and the representativeness of the disaggregated sample data as well as to calculate monthly participation rates.

#### *Alternative Approach*

As much as possible, the TANF Data Report, as it applies to Tribes, only requires data elements which are required by section 411 of the Act. While we remain confident that the analyses of the data from the TANF Report could be useful to Tribes, we recognize that Tribes may not have the resources to develop sophisticated data collection systems and/or will need ample time to develop such systems capable of gathering the information required in section 411.

Although the Act does not impose upon Tribes a penalty for non-reporting, we also recognize that non-reporting may indirectly result in a penalty because the TANF Data Report includes data necessary for calculating participation rates. Therefore, we are considering whether to develop a separate report to collect the information for participation rate purposes until the pc-based data collection and reporting system we plan to develop for Tribes is completed and accessible to all Tribes. Such a report would include monthly aggregate counts of TANF families with an adult or minor head-of-household receiving assistance and the number of TANF families with adults or minor heads-of-household who participated in work activities at least the minimum number of hours per week. In this way, Tribes will be assured that they will not be penalized for not meeting participation

rate targets simply because their systems capabilities for reporting the disaggregated and aggregated data are under development. If, however, a Tribe submits the data required of the TANF Report, we do not propose to require the additional participation report because it would be unnecessary. We invite any reactions the reader may have to this alternative approach.

#### *TANF Financial Report*

We are proposing that each Tribe file a Tribal TANF Financial Report on a quarterly basis. This report will be designed to serve multiple purposes: (1) To gather data under section 411, i.e., administrative costs, program expenditures, and expenditures related to transitional services for families who are no longer receiving assistance; and (2) to monitor expenditures and close out TANF grants for a fiscal year in accordance with the financial reporting requirements under 45 CFR 92.41.

The Tribal TANF Financial Report itself is not included in this proposed rule, but will be issued separately.

#### *May Tribes use sampling and electronic filing? (§ 286.235)*

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

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

At a later date, we will issue the TANF Sampling and Statistical Manual

which will contain instructions on the approved procedures and more detailed specifications for sampling methods applicable to both Tribal and State TANF programs.

We also propose to offer Tribes the opportunity to file quarterly reports electronically. We plan to develop a pc-based software package that will facilitate data entry and create transmission files for each report. The transmission files created by the system will be the standard file format for electronic submission to us. We also plan to provide some edits in the system to ensure data consistency. We invite Tribes to comment on what kinds of edits they would like in the system.

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

#### *When are quarterly reports due? (§ 286.240)*

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

Section 116(a) of PRWORA indicates that the effective date for title IV-A of the Social Security Act as amended by PRWORA is July 1, 1997. This would seem to indicate that Tribal TANF grantees would need to begin collecting

the required TANF data as of the implementation date of their Tribal TANF program. However, section 116(a)(2) states that the provisions of section 411(a) are delayed for States to the later of July 1, 1997, or the date that is 6 months after the date that the Secretary of Health and Human Services receives a complete State plan.

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

We also propose to apply section 116(a)(2) of the Act to Tribes. Section 116(a)(2) gives States a six-month reprieve from data reporting requirements upon initial implementation of their TANF programs. We received a number of comments from Tribes and other organizations that emphasized the need to recognize that, unlike States, most Tribes have never operated an AFDC-type program, and considerable time and effort will be needed to start up the Tribal TANF program. We believe that providing Tribes with a six-month time period before data needs to begin to be collected and submitted will aid Tribes in the initial program implementation stage.

Therefore, we propose that the effective date of a Tribe's first TANF Data Report and Tribal TANF Financial Report will be for the period beginning six months after the implementation date of its TANF program.

For example—

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

*What happens if the Tribe does not satisfy the quarterly reporting requirements? (§ 286.245)*

As previously discussed, section 412(h) of the Act requires Tribes to report on certain data in accordance

with section 411. Unlike for States, the Act does not impose fiscal penalties on Tribes that do not submit the reports.

However, in the proposed § 286.245(b), we caution Tribes that by not submitting complete and accurate reports, which include the data necessary for calculating participation rates, they are liable for penalties associated with failure to meet the established participation targets.

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

*What information must Tribes file annually? (§ 286.250)*

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

In addition, in order to obtain and reflect the most current and accurate information about Tribal TANF programs in the Secretary's Annual Report to Congress, we propose that each Tribe file an annual program and performance report. The content of this report will address the provisions of section 411(b) and the concerns of Congress and others about the implementation of the Tribal TANF program.

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

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

*When are annual reports due? (§ 286.255)*

We propose at § 286.255(a) that the annual reports be filed 90 days after the close of the Federal fiscal year. This deadline is consistent with the deadline

for most annual reports under DHHS grant programs.

We also propose at § 286.255(b) that Tribes implementing TANF during fiscal year 1997 will not be required to file data for the fiscal year 1997 annual report. We considered whether to require Tribes to submit an annual report for fiscal year 1997 as is requested of States. We rejected this because the few Tribes implementing the program during fiscal year 1997 will have had only three months of experience to report on. Additionally, since these regulations will not be finalized until after fiscal year 1997, gathering the data retroactively may be too burdensome. The proposed rule provides Tribes implementing TANF on July 1, 1997, with some relief in order to focus their efforts on implementing their programs.

*How do the data collection and reporting requirements affect Public Law 102-477 Tribes? (§ 286.260)*

Pub. L. 102-477, the Indian Employment and Training and Related Services Demonstration Act of 1992, affords Tribes an opportunity to consolidate certain programs into one grant. In paragraph (a) of this section we propose to require Tribes desiring to include TANF in their Pub. L. 102-477 plan to obtain approval to operate a Tribal TANF program first through the Tribal TANF plan submission process outlined in these regulations. (See § 286.140 regarding the Tribal TANF plan approval process).

While Pub. L. 102-477 enables Tribes to prepare one consolidated report regarding the programs included in the plan, it does not provide for waivers of statutory requirements. Because the Tribal TANF data collection and reporting requirements are statutory, § 286.260(b) clarifies that Pub. L. 102-477 Tribes must continue to submit the specified data of the Act.

However, in § 286.260(c) we propose that the statutory data (both disaggregated and aggregated) can be submitted in a Pub. L. 102-477 consolidated report to the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), in a format negotiated with BIA. We considered whether we should require Pub. L. 102-477 Tribes to submit TANF reports directly to us, but rejected this idea on the basis that Pub. L. 102-477 specifically authorizes Tribes to consolidate data and make one report for all integrated programs in the plan. However, we propose to provide Pub. L. 102-477 Tribes with the option to report the required TANF data directly to us. We will work jointly with BIA in collecting the statutory data required.

## ***B. PART 287—THE NATIVE EMPLOYMENT WORKS (NEW) PROGRAM***

### ***Discussion of Selected Regulatory Provisions***

The following is a discussion of selected NEW regulatory provisions. It is divided into two sections. In the first section, we summarize each subpart of part 287 and provide background or additional explanatory information if it is helpful for clarification of the rules we are proposing. In the second section, we address these program areas in detail: client eligibility, work activities and coordination.

### ***Discussion of Subparts of Part 287***

#### ***Subpart A—General NEW Provisions***

Under this subpart, we explain that part 287 contains our proposed rule for implementation of section 412(a)(2) of the Act, as enacted by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). We emphasize that the statute provides flexibility to the Tribes in the implementation and operation of the NEW program, which is to provide work activities. Not only do we highlight this factor as an intent of the statute, we express that Tribes have the opportunity to create a program that will serve a Tribe's most vulnerable and needy population.

This is also the portion of the proposed rule where we indicate the start date and define terms in part 287 that have special meanings or need clarification to ensure a common understanding. Although a term may be defined in this subpart, we may choose to repeat the definition in a section if the term is uncommon or used in a special way. In drafting this section of the proposed rule, we chose not to define every term used in the statute and in these proposed rules. We believe that excessive definitions may unduly and unintentionally limit Tribal flexibility in designing programs.

#### ***Subpart B—Eligible Tribes***

Funding to operate a NEW program is only available to those grantees who are defined as "eligible Indian tribes" in the statute. An eligible Indian tribe is an Indian tribe or Alaska Native organization that operated a Job Opportunities and Basic Skills Training (JOBS) program in fiscal year (FY) 1995. When PRWORA was enacted, 76 Indian tribes and Alaska Native organizations comprised the universe of eligible Indian tribes.

A consortium of eligible Indian tribes may receive NEW program funding. Where the consortium operated a JOBS

program in FY 1995, the Tribes may apply again as a consortium for NEW program funds or a Tribe that is a member of the consortium may apply for individual funding.

If a consortium should break up or any Tribe withdraws from a consortium, remaining funds and future grants must be divided among the Tribes that were members of the consortium, if each individual Tribe obtains ACF approval to continue to operate a NEW program.

Public Law 102-477 allows Tribal governments to coordinate federally funded programs that provide employment, training and related services into a single, comprehensive program. The 102-477 grantees may include the NEW program in their plan.

#### Subpart C—NEW Program Funding

With the creation of the TANF block grant, the JOBS programs, including Tribal JOBS, were terminated. However, funding was continued to those Tribes who operated a Tribal JOBS program in fiscal year 1995 for the purpose of providing work activities. The NEW program provides funding for Tribes and inter-tribal consortia to administer NEW programs in FYs 1997 through 2002. The funding level is set by the statute to remain at \$7,633,287 for each FY, the FY 1994 Tribal JOBS funding level. This is the sole basis for the funding amounts. The FY 1994 JOBS grant amounts were originally based on agreements between Tribal JOBS grantees and their respective States regarding the ratio of Tribe to State adult AFDC recipients. Recipient counts and agreements are not now required, since the NEW program grants are fixed amounts. There are no matching fund requirements for NEW. To apply for funding, an eligible grantee must submit a plan that establishes it will operate a program in accordance with the statute.

We note in this subpart that the only restriction in determining if expenditures of NEW program funds is appropriate is whether the expenditures are made for work activities or support services for the designated service population. PRWORA does not define work activities or support services for the NEW program and we are not proposing a regulatory definition.

Some Tribes expressed an interest in being able to carry forward any unexpended NEW funds to the next year. Section 404(e) of the Act allows States to reserve amounts paid to the State for any FY for the purpose of providing TANF assistance without FY limitation. This section 404(e) of the statute is not applicable to Tribal TANF or NEW programs. Section 412(a)(2) is silent on an obligation period for NEW

program funds. The absence in the statute of a specific provision authorizing carryover of NEW program funds means that such carryover is not permissible. Carryover authority may not be implied, but must be specifically granted by Congress. Unauthorized carryover of appropriated funds violates 31 U.S.C. 1301(c)(2) which states that an appropriation may be construed to be permanent or available continuously only if the appropriation expressly provides that it is available after the fiscal year covered by the law in which it appears.

#### Subpart D—Plan Requirements

The submission of a NEW plan is to document the establishment and operation of a Tribe's NEW program. Through this document the Tribe requests funding for its program, as outlined. The requirement for submission of a NEW program plan also applies to a Tribe if it operates a Tribal TANF program.

For operation of a NEW program for the first year in which funds were available, FY 1997, we required a one year interim preprint. This allowed Tribes the opportunity to structure their initial NEW program around a shorter planning cycle. Guidance for preprint submittal to operate a FY 1997 NEW program was issued in the document entitled, "Native Employment Works Program: Abbreviated Preprint." Issued through a program instruction (NEW-ACF-PI-97-1, dated July 17, 1997), it also included instructions for Tribes operating Pub. L. 102-477 programs.

After the first year of operation, a Tribe will be able to develop a long range planning document that takes into consideration the positive and negative aspects of the interim preprint. We will require the ongoing plan, including certifications, to cover a three year period. The requirement that a NEW program plan cover a three year period is consistent with the Tribal TANF plan requirement. We will issue program instructions to provide guidance for submission and approval of future NEW plans and any subsequent modifications.

In general, Tribes who had previously consolidated their JOBS program into a Pub. L. 102-477 plan submitted a letter indicating that the NEW program was incorporated into their 102-477 plan where there were no substantive changes between the Tribal JOBS program and the NEW program. However, a 102-477 plan modification will be required if substantive changes are made in the future.

We considered a number of factors in deciding on the funding period for the

NEW program. We noted that PRWORA first made funds available on July 1, 1997, for the operation of the NEW program. Yet, the law refers to funding the program for FYs and defines FY in the usual manner. We believe a correct interpretation of the statute is to have the NEW program begin on July 1 of each year and run through June 30 of the following year.

#### Subpart E—Program Design and Operations

In this subpart, we require Tribes to indicate who the program will serve, what activities and services will be provided, the coordination required to promote program effectiveness and program outcomes. Each Tribe will have to give careful consideration to the populations most in need of services to help them avoid long-term dependency and chronic unemployment. Opportunities for work may not be readily available on reservations and the surrounding economic conditions vary greatly. Consequently, we are allowing grantees the option of using program funds to encourage economic development initiatives leading to job creation. Additionally, we support the alternative of encouraging traditional subsistence and other culturally relevant activities.

Generally, the need for services exceeds the demand. Consequently, an intake prioritization procedure may need to be instituted to determine the order of serving clients. NEW programs should be tailored to fit the needs of its designated population and can be designed to serve a variety of clients, including General Assistance, TANF clients, other target groups such as teen parents, non-custodial parents, seasonal workers, unemployed parents and veterans, ex-offenders, etc.

It is not only important to coordinate with other tribal programs to develop a comprehensive service delivery system, but State programs, social service agencies, non-profit organizations, private industry and any other entity which can provide resources or opportunities for the benefit of NEW clients and their families. It is common practice to combine activities and services from different programs to provide seamless services to individual clients and their families. This may be very appropriate in the delivery of services to TANF clients who are obligated to participate in prescribed work activities. NEW program activities may supplement TANF work activities in order to meet TANF work requirements. In some cases States are counting NEW program participation in

fulfillment of participation rate requirements, where possible.

By allowing Tribes flexibility in determining measures of program outcome, we do not intend to imply that this is not an important area. Because each NEW program grantees' goals, objectives, population and economic conditions will be different, we anticipate that Tribes will develop different program standards and measures to realistically reflect achievable outcomes and evaluate program performance.

It is crucial for NEW program grantees to establish at the outset of program operations their goals, expected outcomes, and outcome measures. Only with such information will program administrators be able to reasonably evaluate to what extent a NEW program is successful.

#### Subpart F—Data Collection and Reporting Requirements

Although not specified in PRWORA for the NEW program, it is necessary to outline the minimum data gathering and reporting obligations for any grantee receiving Federal funding. The particular nature of the program services offered within the NEW program require the granting authority to set forth some uniform standards for appropriate accountability and service definitions and to insure the availability of information necessary for public oversight and evaluation.

Through considerable consultation and discussion with advocacy groups and many eligible Tribes, the Secretary has elected to develop minimum reporting and data collection requirements. This minimum reporting requirement will be evident in the shift from quarterly reporting, which was required under the Tribal JOBS program, to annual program and fiscal reporting. We expect NEW grantees to simply maintain certain case information on file rather than regularly submitting formal reports of these records to the Federal government.

We have taken care to not overburden NEW program grantees with elaborate and detailed program and fiscal reporting obligations that ultimately offer little management value while creating time-consuming paperwork and filing activities.

We propose to require NEW program grantees to submit a report covering program operations and a report covering financial expenditures. These reports must also be submitted by NEW program grantees who operate a TANF program.

The program operations report will provide information essential for

monitoring and measuring program performance. It also includes data elements to assist management in evaluating program objectives, performance measures and allocation of resources.

We propose that the NEW program operations report be an annual report. The report will be due September 28, 90 days after the close of the NEW program year. The report is based on data collected from the current program year. The report must be submitted to the appropriate ACF Regional Administrator and a copy forwarded to the ACF, Office of Community Services, Division of Tribal Services, Attention: Data Reporting Team.

Under the Pub. L. 102-477 initiative, all services are integrated under a single 102-477 program plan; funds from the programs are commingled under a single budget; and activities are reported under a single reporting system. In general, the 102-477 Tribes deal only with the lead Federal agency, the Bureau of Indian Affairs (BIA). The report is submitted annually to BIA and shared with the Departments of Health and Human Services and Labor.

The program operations report was developed by the Secretary in consultation with NEW program grantees, and other interested parties. We identified the data elements that Tribes must collect on the proposed report and have submitted it to OMB for clearance. For simplicity and consistency the NEW report was formatted very similar to the 102-477 report.

For Tribes that operate both the NEW and TANF programs, we considered developing a single reporting instrument. However, we believe that a single report is not feasible nor would it reduce the amount of reporting. There are TANF reporting requirements in the law which are not required for NEW program grantees. Also, the reporting cycles could be different for a Tribe operating TANF and NEW programs and to report program operations with different reporting periods on a single form could be more complicated and confusing than if separate reports were used. In addition, we may obtain data which is not comparable if we require Tribes who operate only a NEW program to report one set of data while requiring Tribes that operate TANF and NEW programs to report on different or fewer data elements.

We propose that grantees report NEW financial activities annually on a Standard Form SF-269A. This form is required for reporting NEW program expenditures if a Tribe operates both NEW and TANF programs. 102-477

grantees also report financial data on the SF-269A.

#### Discussion of Program Areas

Consultation with our Tribal partners and other stakeholders indicate that these are the key areas which generate the most questions regarding the rules which we should develop to govern the NEW program.

#### Client Eligibility

Section 412(a)(2)(C) of the Act, as amended, allows for NEW grantees to define their population and service area(s) for the NEW program. This eligibility requirement is different and much broader than the Tribal JOBS Program, where the purpose was to provide Tribal members receiving AFDC with education, training and employment services.

There has been some discussion between ACF and the Tribes on how and who the NEW program should supplement or support. Should NEW be an adaptable, independent program addressing client needs; should it support the Tribal TANF program if a Tribe were to choose to operate its own TANF program; should it be a supplement to State TANF programs, acting as a safety net for those that don't qualify for TANF or who have met the TANF time limits; or should the program be a combination of these options? We believe each NEW grantee should make these determinations. For they are in the best position to respond to the needs of their reservation and to allocate Tribal program resources to meet those needs.

In light of scarce Tribal resources, unnecessary restrictions and rules may prevent Tribes from using their NEW programs as safety nets for families ineligible for other programs or who have met the time limits under TANF. Some Tribes are beginning to struggle with the issue of Tribal families having met the time limits in States where shorter time limits were established under waivers.

Moreover, the Indian and Native American Welfare-to-Work program, which all NEW grantees are eligible to apply for, makes available funding to serve categories of hard-to-employ TANF recipients. Duplication of services should be avoided. NEW grantees have the option of supplementing work activities and services provided by TANF and Welfare to Work programs to TANF clients or providing work activities and services to other needy clients. A grantee may also choose to serve both TANF and non-TANF clients. The decisions are left to

Tribal discretion and not dictated by these rules.

When an eligible Tribe elects to receive NEW program funds, but not to operate the Tribal TANF program, individuals receiving State TANF assistance must participate in State TANF work activities. If a NEW program elects to serve individuals who are State TANF recipients, then it should do so as an addition to or extension of the State TANF work activities to avoid duplication of services and provide maximum benefits to the families served. There will need to be close coordination between the TANF agency and the NEW program to provide comprehensive services to the families jointly served.

During our consultation phase, our Tribal partners overwhelmingly recommended that they be allowed maximum flexibility as reflected in PRWORA, including defining their service population and area(s) and designing and operating effective programs. Restrictive program rules on client eligibility and program expenditures would create barriers to providing comprehensive, seamless service delivery to needy Tribal families. Consequently, in keeping with the intent of the law and Tribal sovereignty, we have chosen to allow maximum flexibility in NEW client eligibility requirements, program design and operations.

#### *Work Activities*

Section 412(a)(2)(C) of the Act, as amended, describes the use of the NEW grant. Each Indian tribe to which a grant is made under this paragraph must use the grant for the purpose of operating a program *to make work activities available* to such population and service area(s) as the Tribe specifies.

ACF supports Tribal autonomy in defining what constitutes work activities. The statutory language for NEW contrasts notably with the statute for the now repealed Tribal JOBS program. JOBS required that Tribes have the following mandatory work components: Educational activity; job skills training; job readiness; and job development and job placement activity. In addition, a Tribe was required to have at least one of the following components: Group and individual job search; on-the-job training; community work experience; work supplementation; or alternative education, training and employment activities.

Section 407(d) defines work activities for the TANF program as: Unsubsidized employment; subsidized private or public sector employment; work

experience; on-the-job training; job search and job readiness; community service programs; vocational educational training; job skills training; education; satisfactory attendance; and provision of child care.

In order to determine how work activities should be defined under NEW, we reviewed allowable activities under JOBS, TANF and Welfare to Work. Again we consulted our Tribal partners and other interested parties regarding both the Tribal TANF and the NEW programs.

The first question posed was: "What relationship should there be between work activities as defined in section 407 of the Act and the work activity that is required to be made available by section 412(a)(2)?" The consensus was that NEW program grantees should define "work activities" and that section 407 should serve as a guideline for them. Tribes stated that they should be allowed to use culturally relevant activities to solve unique problems. In order to give Tribes as much flexibility, as possible we have included the activities listed in section 407 as examples of NEW work activities. In addition, we have added job creation, economic development, and traditional subsistence activities, such as hunting and fishing.

The second question posed was: "What is the interconnection between NEW work activities and work activity participation to the State or Tribal TANF program?" Some felt that requiring NEW programs to "mirror" TANF work activities would facilitate Tribe/State coordination and simplify program administration. However, certain educational and training assistance which may accrue to the clients would be lost in the process, possibly eliminating client options which are more practical, available or needed. NEW programs can provide work activities above and beyond what can be provided under TANF or WTW programs. Thus broadening the clients' opportunities and options.

States and Tribes should coordinate closely to ensure that NEW and TANF work activities are best arranged in a complimentary fashion to advance the TANF client's employability goals.

#### *Coordination*

The Family Support Act of 1988 created the opportunity for Indian tribes and Alaska Native organizations to conduct JOBS programs. Operating a Tribal JOBS program required coordination with State programs to ensure that the necessary interfaces between the Tribal JOBS programs and State title IV-A programs were in place.

It also required that a Tribe and a State be able to exchange information regarding such things as eligibility status, child care services, changes in employment status, and participation status.

Under the JOBS program, coordination was necessary in order to prevent duplication of services, assure the maximum level of services was available to participants and ensure that costs of other program services for which welfare recipients were eligible were not shifted to the JOBS program. Coordination between TANF and NEW is still needed for some of these same reasons.

All work activities required as a condition of eligibility to receive temporary public assistance are now prescribed by the TANF program administered by the States and, at their option, Tribes. There is some misunderstanding that NEW programs should serve all State tribal TANF recipients. With 74% of all NEW grants being below \$100,000, it is unrealistic to expect NEW programs to be able to meet such demands. The Tribe and State should negotiate an agreement if the Tribe plans to serve all Tribal TANF clients, which may necessitate the need for supplementary funding from the State. Additional State funds would allow Tribes to: Increase the availability of activities and services; provide additional activities and services so that clients could meet the State's participation rate; or serve more clients.

Congress did not replace the Tribal JOBS program with another tribal work program of identical focus. Individuals who receive TANF assistance, regardless of Native American or Alaska Native heritage, have to participate in work activities as prescribed by the State TANF program (unless the Tribe elects to operate its own TANF program) in order to continue to be eligible to receive TANF assistance. Under these circumstances then, what are the requirements for coordination between a NEW program and a State TANF program?

For participants in the NEW program, coordination efforts should be designed to best fulfill the participants' self-sufficiency goals. It is critical that any TANF client referred to NEW be placed in activities leading to fulfillment of their employment goal or a job as soon as possible. Otherwise the client may consume valuable time.

Since TANF is time limited any TANF client not able to receive immediate services should be sent back to the referring agency. Clients in work activities under a State TANF program may be required to participate for a

minimum number of hours per week to remain eligible for TANF assistance, and the State maintains responsibility for the costs of that participation. If a NEW program elects to serve individuals who are participating in State TANF work activities, it should do so as an addition or extension to the State TANF work activities. This will avoid duplication of services, extend the range of work activities and services provided, and assure that costs of State TANF work activities are not shifted inappropriately to the NEW program. In order to provide these assurances, initial and ongoing coordination between the NEW program and the State TANF agency will be necessary. Also, the responsibility of meeting the TANF reporting requirements must be coordinated when serving TANF clients.

Moreover, local NEW and TANF case workers need to be aware of each program's requirements and procedures to offer the best mix of services to joint clients. For example, bonuses, stipends, and performance awards are allowed under NEW. However, depending on the rules of a Tribal or State TANF program, such payments made from NEW program funds may be counted as income in determining and maintaining TANF eligibility. Rules of other need-based programs may also require that such payments be counted as income in the eligibility and payment determinations. NEW program operators would want to take such information into consideration when determining what services to provide and the affect on their clients' situations.

For a Tribe that previously operated a JOBS program and elects to also conduct a TANF program, many of the coordination and collaboration relationships will be internal within the Tribe. This would also be true if a grantee had responsibility for the JTPA or BIA employment programs. The importance of developing and maintaining those relationships are amplified by the additional responsibilities that come with operating a public assistance program. Many contracted work sites, for example, used by a State may also be available to Tribal TANF programs.

Section 407(b)(4) of the Act, as amended by the Balanced Budget Act of 1997, expands the State option to include individuals receiving assistance from a Tribal TANF program in the State's work participation rate calculation to also include individuals receiving assistance from a Tribal NEW program. Unlike the Tribal JOBS program, this is a State option, and as such Tribes do not have authority to exempt NEW/TANF program

participants from State TANF program work requirements. The statute is silent (exception at section 412(h) noted) regarding comparability of programs. However, the statute prescribes minimum work participation rates for State TANF programs and the minimum number of hours necessary to qualify as engaged in work, and we would expect that agreements on respective roles and responsibilities will be established between States and Tribes operating NEW programs.

## V. 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. As described elsewhere in the preamble, ACF consulted with Tribal, State, and local officials and their representative organizations, as well as a broad range of advocacy groups, researchers, and others to obtain their views prior to drafting these proposed rules.

We discuss the input received during the consultation process in the "Regulatory Framework" section of the preamble and in discussions of individual regulatory provisions. To a considerable degree, these proposed rules reflect the discussion and concerns of the groups with whom we consulted.

These proposed rules reflect the intent of PRWORA to achieve a balance between granting Indian tribes the flexibility they need to develop and operate effective and responsive programs and ensuring that the objectives of the program are met. In addition, these proposed rules recognize the differences that must and will exist between State and Tribal TANF programs.

Under the new law, Tribal flexibility is achieved by giving Tribes the opportunity to develop, design and administer their own TANF block grants; and for the NEW grantees, they have great flexibility in the design of their NEW programs. Ensuring that program goals are accomplished is achieved through the provisions on plan content, a number of Tribal TANF penalty provisions and data collection.

We support Tribal flexibility in various ways—such as by giving Tribes the ability to define key program terms; and supporting the negotiation of minimum work participation requirements and time limits for each Tribal TANF program. We support the achievement of program goals by ensuring that we capture key information on what is happening under both the Tribal TANF and NEW programs and maintaining the integrity of the work and other penalty provisions of the TANF program.

We take care to protect against negative impacts on needy families receiving assistance from Tribal TANF grantees by proposing three provisions not required by the statute, using the regulatory authority given to us by the statute. One of these provisions is the provision for retrocession; the second provision is the limit on administrative expenditures. Please refer to the preamble discussion at section § 286.25 for our decision to include a retrocession provision; the discussion on our decision to propose a limit on administrative expenditures can be found at § 286.40.

The third provision we have proposed to protect against negative impacts on needy families is the provision for the replacement of amounts withheld from a Tribal Family Assistance Grant due to the imposition of a penalty. We considered not proposing this provision; however, we believe that the benefits and protections this proposal brings to the needy families being served by a Tribal TANF program outweigh the potential cost to the Tribe.

One of our key goals in drafting the Tribal TANF penalty rules was to ensure Tribal performance in the key areas provided under statute—including work participation, the proper use of Federal funds and data reporting. The law specified that we should enforce Tribal actions in these areas and specified the penalty for each failure. Through the "reasonable cause" and "corrective compliance" provisions in the proposed rules we give some consideration to special circumstances within a Tribe to help ensure that the Tribe will not be unfairly penalized for circumstances beyond their control.

In the work and penalty areas of the Tribal TANF program, this rulemaking provides information to the Tribes that will help them understand our specific expectations and take the steps necessary to avoid penalties. These rules may ultimately affect the number and size of penalties that are imposed on Tribes, but the basic expectations on Tribes are statutory, and the effect of these rules is non-material.

The financial impacts to the Federal government of these proposed rules should be minimal for three reasons. First is that the level of funding provided for both the block grant and the NEW program is fixed. Secondly, the amount of a Tribe's TANF block grant is deducted from the State TANF block grant of the State in which the Tribe is located; thus, no additional Federal outlays are necessary beyond the amount needed for State Family Assistance Grants. And thirdly, Tribal TANF grantees are not eligible for either the contingency fund or performance bonuses; thus, there are no additional outlays required for these two items. (We expect Federal outlays for State Family Assistance Grants to amount to nearly \$15.6 billion in FY 1998; the annual outlay for the NEW program is fixed at \$7,633,287.)

A Tribe's TANF grant could be affected by the penalty decisions made under the law and these rules. Otherwise, we do not believe that the rulemaking will affect the overall level of funding or expenditures. However, it could have minor impacts on the nature and distribution of such expenditures.

These proposed rules could have a minimal financial impact on State governments. This is due to the statutory requirement that State data be used to determine the amount of a Tribal Family Assistance Grant. The actual impact to any one State is difficult to determine as it is not known how many Tribes will apply to administer a TANF program.

There are some States that have several federally-recognized Tribes within their borders; yet there are many that do not have any federally-recognized Tribes within their borders. (We estimate that the cost to a State to provide the needed data to determine the grant amount for one Tribe is less than \$1,000.)

In the area of TANF data collection, the statutory requirements are very specific and extensive—especially with respect to case-record or disaggregated data. These proposed rules include additional data reporting with respect to program expenditures. They expand upon the expenditure data explicitly mentioned by the statute in order to ensure that: Needy families continue to receive assistance and services; monies go for the intended purposes; and the financial integrity of the program is maintained.

The impacts of these rules on needy individuals and families will depend on the choices the Tribe makes in implementing the new law. We expect our proposed Tribal TANF data collection to enable tracking of these

effects over time and across Tribes. Overall, our assessment of these proposed rules indicates that they represent the least burdensome approach and that the impacts and consequences are non-material for individuals, Tribes, and other entities.

#### *B. Regulatory Flexibility Analysis*

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities. This rule will affect only federally-recognized Indian tribes and Alaska Native organizations. Therefore, the Secretary certifies that this rule will not have a significant impact on small entities.

#### *C. Paperwork Reduction Act*

This proposed rule contains information collection activities which are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (OMB has already approved an Interim Tribal TANF Data Report, Form ACF-343, Control No. 0970-0176). Under this Act, no persons are required to respond to a collection of information unless it displays a valid OMB control number. As required by the Paperwork Reduction Act, we have submitted the proposed Tribal TANF 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 information collection activities.

The proposed rule contains provisions covering two quarterly reports (one program data, the other financial) and one annual report for the Tribal TANF program. In order to provide an opportunity for maximum review and public comment on the Tribal TANF Data Report, we have attached the proposed quarterly report (including the specific data elements) as an Appendix. We will revise this instrument following the comment period on the NPRM and will issue it to Tribes through the ACF policy issuance system. We will not re-publish these appendices as a part of the final rule.

The two quarterly reports are the Tribal TANF Data Report (Appendices A through C) and the Tribal TANF Financial Report. The Tribal TANF Data Report consists of three sections. Two of these three sections consist of disaggregated case-record data elements,

and one consists of aggregated data elements.

We need this proposed information collection to meet the requirements of section 411(a) and to implement other sections, including sections 407 (work participation requirements), 409 (penalties), and 411(b) (Annual report to Congress).

The Tribal TANF Financial Report will consist of one form with an annual addendum to be submitted at the same time as the Tribal TANF Financial Report for the fourth quarter. We need this report to meet the requirements of sections 411(a)(2), 411(a)(3), and 411(a)(5), and to carry out our other financial management and oversight responsibilities. These include providing information that could be used in determining whether Tribes are subject to penalties under section 409(a)(1), tracking the reasonableness of our definition of "assistance," learning the extent to which recipients of benefits and services are covered by program requirements, and helping to validate the disaggregated data we receive on TANF cases.

We are also proposing an annual report in order to collect the data required by section 411(b). This report requires the submission of information about the characteristics of each Tribal program; the design and operation of the program; the services, benefits, and assistance provided; the Tribe's eligibility criteria; and the Tribe's definition of work activities. At its option, each Tribe may also include a description of any unique features, accomplishments, innovations, or additional information appropriate for inclusion in the Department's annual report to the Congress.

We will work with representatives of Tribes and others to identify the specific form that will be used for this report, building on the information currently being collected on the TANF program by research organizations and others. Before we issue a reporting form to gather this information and instructions for filing the report, we will give the public another opportunity to comment on its content and the burden imposed.

The respondents for the Tribal TANF Data Reports and the Reasonable Cause/Corrective Action documentation process are the Tribes that have approved Tribal TANF plans.

In providing these estimates of reporting burden, we would like to point out that this reporting burden will be new to the Tribes. Unlike States, many Tribes do not have the electronic capacity for meeting the reporting requirements. However, Tribal TANF programs will not be required to submit

all of the data required for State TANF programs because some provisions for which data are being collected apply only to States. In addition, the number of families on which the Tribal TANF grantees will have to report will be substantially lower than the number of families on which States will be reporting.

In calculating the estimates of the reporting burden, we assumed that not all Tribal TANF grantees would collect the data by means of a review sample because their caseloads will not support a valid sample. However, we believe that a number of Tribal TANF grantees will eventually choose to undertake the one-time burden and cost of developing or modifying their systems to provide the required data directly from their automated systems, thus substantially reducing or eliminating the ongoing annual burden and cost reflected in these estimates.

In a very limited number of cases, we have proposed collecting information quarterly where the statute only requires

annual reporting, or we have added elements not directly specified in the statute. We did this because one of our goals was to limit the number of reporting forms that Tribes would be required to complete.

Specifically, we believe that adding a data element like gender, that had been developed for other purposes such as Quality Control, would be useful to understanding the impact of the program and would not impose an additional burden. Similarly, while the reporting of the demographic and financial characteristics of families that become ineligible to receive assistance is only required annually, these data can be collected and reported more efficiently and without creating another form by inclusion in the quarterly TANF Data Report.

We realize the proposed reporting burden, required by the statute, represents a substantial burden. Nevertheless, we encourage Tribes and members of the public to comment and provide suggestions on how the burden

can be further reduced and whether we have taken the right course regarding frequency of reporting.

The annual burden estimates include any time involved pulling records from files, abstracting information, returning records to files, assembling any other material necessary to provide the requested information, and transmitting the information.

Prior to the development of the data collection instruments, we conducted extensive consultations on general data collection issues with representative groups such as the American Public Welfare Association (APWA), the National Governors' Association (NGA), and the National Conference of State Legislatures (NCSL). We also researched the burden estimates for similar OMB-approved data collections in our inventory and consulted with knowledgeable Federal officials.

#### **The annual burden estimates for these Tribal TANF data collections are:**

| Instrument or requirement  | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|--|-----------------------|------------------------------------|-----------------------------------|--------------------|
| Tribal TANF Data Report-§ 286.230(b) .....                       | 1 18                  | 4                                  | 451                               | 32,472             |
| Tribal TANF Annual Report-§ 286.255 .....                        | 2 18                  | 1                                  | 40                                | 720                |
| Reasonable Cause/Corrective Action Documentation-§ 286.200 ..... | 3 18                  | 1                                  | 60                                | 1,080              |

<sup>1</sup> We estimate that there will be 18 Tribes with approved Tribal TANF plans and that these Tribes will be respondents.

<sup>2</sup> We estimate that the Tribes with approved Tribal TANF plans will be respondents.

<sup>3</sup> We estimate that the Tribes with approved Tribal TANF plans will be respondents, though not necessarily all will elect to respond the first year.

Estimated Total Annual Burden Hours: 34,272.

We encourage Tribes, States, organizations, individuals, and other parties to submit comments regarding the information collection requirements to ACF (at the address above) and to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, 725 17th Street, Washington, DC 20503, ATTN: Laura Oliven, Desk Officer for ACF.

To ensure that public comments have maximum effect in developing the final regulations and the data collection forms, we urge that each comment clearly identify the specific section or sections of the proposed rule or data collection form that the comment addresses and follow the same order as the regulations and forms.

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 collections 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, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC. 20502, Attn: Ms. Wendy Taylor.

#### ***D. 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 1 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.

#### List of Subjects in 45 CFR Part 286

Administrative practice and procedure, Day Care, Employment, Grant programs—social programs, Indian tribes, Loan programs—social programs, Manpower training programs, Penalties, Public Assistance programs, Reporting and recordkeeping requirements, Vocational education. (Catalogue of Federal Domestic Assistance Programs: 93.558 TANF programs—Tribal Family Assistance Grants; 93.559—Loan Fund; 93.594—Native Employment Works Program; 93.595—Welfare Reform Research, Evaluations and National Studies)

Dated: February 18, 1998.

**Olivia A. Golden,**

*Assistant Secretary for Children and Families.*

Approved: April 13, 1998.

**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 parts 286 and 287 to read as follows:

### PART 286—TRIBAL TANF PROVISIONS

#### Subpart A—General Tribal TANF Provisions

- Sec.  
286.1 What does this part cover?  
286.5 What definitions apply to this part?  
286.10 Who is eligible to operate a Tribal TANF program?

#### Subpart B—Tribal TANF Funding

- 286.15 How is the amount of a Tribal Family Assistance Grant (TFAG) determined?  
286.20 How will we resolve disagreements over the State-submitted data used to determine the amount of a Tribal Family Assistance Grant?  
286.25 What is the process for retrocession of a Tribal Family Assistance Grant?  
286.30 What are proper uses of Tribal Family Assistance Grant funds?  
286.35 What uses of Tribal Family Assistance Grant funds are improper?  
286.40 Is there a limit on the percentage of a Tribal Family Assistance Grant that can be used for administrative costs?

- 286.45 What types of costs are subject to the administrative cost limit on Tribal Family Assistance Grants?  
286.50 Must Tribes obligate all Tribal Family Assistance Grant funds by the end of the fiscal year in which they are awarded?

#### Subpart C—Tribal TANF Plan Content and Processing

- 286.55 How can a Tribe apply to administer a Tribal Temporary Assistance for Needy Families (TANF) Program?  
286.60 Who submits a Tribal Family Assistance Plan?  
286.65 What must be included in the Tribal Family Assistance Plan?  
286.70 What information on minimum work participation requirements must a Tribe include in its Tribal Family Assistance Plan?  
286.75 What additional information on minimum work participation rates must be included in a Tribal Family Assistance Plan?  
286.80 How will we calculate the work participation rates?  
286.85 How many hours per week must an adult or minor head-of-household participate in work-related activities to count in the numerator of the work participation rate?  
286.90 What, if any, are the special rules concerning counting work for single custodial parents, caretaker relatives and two-parent families?  
286.95 What activities count towards the work participation rate?  
286.100 What limitations concerning vocational education, job search and job readiness assistance exist with respect to the work participation rate?  
286.105 What safeguards are there to ensure that participants in Tribal TANF work activities do not displace other workers?  
286.110 What information on time limits for the receipt of welfare-related service must a Tribe include in its Tribal Family Assistance Plan?  
286.115 Can Tribes make exceptions to the established time limit for families?  
286.120 Does the receipt of TANF benefits under a State or other Tribal TANF program count towards a Tribe's TANF time limit?  
286.125 What information on penalties against individuals must be included in a Tribal Family Assistance Plan?  
286.130 What is the penalty if an individual refuses to engage in work activities?  
286.135 Can a family, with a child under age 6, be penalized because a parent refuses to work because (s)he cannot find child care?  
286.140 What are the applicable time frames and procedures for submitting a Tribal Family Assistance Plan?  
286.145 How is a Tribal Family Assistance Plan amended?  
286.150 What special provisions apply in Alaska?  
286.155 What is the process for developing the comparability criteria that are required in Alaska?

- 286.160 What happens when a dispute arises between the State of Alaska and the Tribal TANF eligible entities in the State related to the comparability criteria?

- 286.165 If the Secretary, the State of Alaska, or any of the Tribal TANF eligible entities in the State of Alaska want to amend the comparability criteria, what is the process for doing so?

#### Subpart D—Accountability and Penalties

- 286.170 What penalties will apply to Tribes?  
286.175 How will we determine if Tribal Family Assistance Grant funds were misused or intentionally misused?  
286.180 How will we determine if a Tribe fails to meet the minimum work participation rate(s)?  
286.185 What is the penalty for a Tribe's failure to repay a Federal loan?  
286.190 When are the TANF penalty provisions applicable?  
286.195 What happens if a Tribe fails to meet TANF requirements?  
286.200 How may a Tribe establish reasonable cause for failing to meet a requirement that is subject to application of a penalty?  
286.205 What if a Tribe does not have reasonable cause for failing to meet a requirement?  
286.210 What penalties cannot be excused?  
286.215 How can a Tribe appeal our decision to take a penalty?

#### Subpart E—Data Collection and Reporting Requirements

- 286.220 What data collection and reporting requirements apply to Tribal TANF programs?  
286.225 What definitions apply to this subpart?  
286.230 What quarterly reports must the Tribe submit to us?  
286.235 May Tribes use sampling and electronic filing?  
286.240 When are quarterly reports due?  
286.245 What happens if the Tribe does not satisfy the quarterly reporting requirements?  
286.250 What information must Tribes file annually?  
286.255 When are annual reports due?  
286.260 How do the data collection and reporting requirements affect Public Law 102-477 Tribes?

Appendix A—Proposed TANF Disaggregated Data Collection for Families Receiving Assistance Under the TANF Program

Appendix B—Proposed TANF Disaggregated Data Collection for Families No Longer Receiving Assistance Under the TANF Program

Appendix C—Proposed TANF Aggregated Data Collection for Families Applying for, Receiving, and No Longer Receiving Assistance Under the TANF Program

Appendix D—Proposed Summary of Sampling Specifications

Appendix E—Statutory Reference Table for Appendix A

Appendix F—Statutory Reference Table for Appendix B

Appendix G—Statutory Reference Table for Appendix C

**Authority:** 42 U.S.C. 612.

#### § 286.1 What does this part cover?

Section 412 of the Social Security Act allows Indian tribes to apply to operate a Tribal Family Assistance program. This part implements section 412. It specifies:

- (a) Who can apply to operate a Tribal Family Assistance program;
- (b) The requirements for the submission and contents of a Tribal Family Assistance Plan;
- (c) The determination of the amount of a Tribal Family Assistance Grant; and
- (d) Other program requirements and procedures.

#### § 286.5 What definitions apply to this part?

The following definitions apply under this part:

*ACF* means the Administration for Children and Families.

*Act* means the Social Security Act, unless otherwise specified.

*Administrative cost* means costs necessary for the proper administration of the TANF program. It includes the costs for general administration and coordination of this program, including overhead costs. Examples of administrative costs include:

- (1) Salaries and benefits and all other indirect (or overhead) costs not associated with providing program services (such as diversion, assessment, work activities and post-employment services, and supports) to individuals;
- (2) Preparation of program plans, budgets, and schedules;
- (3) Monitoring of programs and projects;
- (4) Fraud and abuse units;
- (5) Procurement activities;
- (6) Public relations;
- (7) Services related to accounting,

litigation, audits, management of property, payroll, and personnel;

(8) Costs for goods and services required for administration of the program such as rental and purchase of equipment, utilities, office supplies, postage, and rental and maintenance of office space;

- (9) Travel costs incurred for official business;
- (10) Management information systems not related to the tracking and monitoring of TANF requirements (e.g., for a personnel and payroll system for Tribal staff); and
- (11) Preparing reports and other documents related to program requirements.

*Adult* means an individual who is not a "minor child", as defined below.

*Alaska Tribal TANF entity* means the twelve Alaska Native regional nonprofit

corporations in the State of Alaska and the Metlakatla Indian Community of the Annette Islands Reserve.

*Assistance* means every form of support provided to families under TANF (including child care, work subsidies, and allowances to meet living expenses), except: Services that have no direct monetary value to an individual family and that do not involve implicit or explicit income support, such as counseling, case management, peer support and employment services that do not involve subsidies or other forms of income support; and one-time, short-term assistance (i.e., assistance paid within a 30-day period, no more than once in any twelve-month period, to meet needs that do not extend beyond a 90-day period, such as automobile repair to retain employment and avoid welfare receipt and appliance repair to maintain living arrangements). This definition does not apply to the use of the term assistance at subpart E of this chapter.

*Assistant Secretary* means the Assistant Secretary for Children and Families, Department of Health and Human Services.

*Comparability* means similarity between State and Tribal TANF programs in the State of Alaska. Comparability, when defined related to services provided, does not necessarily mean identical or equal services.

*Consortium* means a group of Tribes working together for the same purpose and receiving consolidated TANF funding for that purpose.

*The Department* means the Department of Health and Human Services.

*Duplicative assistance* means the receipt of services/assistance from two or more TANF programs for the same purpose.

*Eligible families* means all families eligible for assistance under the Tribal TANF program funded under section 412(a), including:

- (1) All U.S. citizens who meet the Tribe's criteria for Tribal TANF assistance;
- (2) All qualified aliens, who meet the Tribe's criteria for Tribal TANF assistance, who entered the U.S. before August 22, 1996;
- (3) All qualified aliens, who meet the Tribe's criteria for Tribal TANF assistance, who entered the U.S. on or after August 22, 1996, who have been in the U.S. for at least 5 years beginning on the date of entry into the U.S. with a qualified alien status, are eligible for 5 years after the date of entry into the U.S. There are exceptions to this 5-year bar for qualified aliens who enter on or after August 22, 1996, and the Tribal TANF

program must cover these excepted individuals:

- (a) An alien who is admitted to the U.S. as a refugee under section 207 of the Immigration and Nationality Act;
- (b) An alien who is granted asylum under section 208 of such Act;
- (c) An alien whose deportation is being withheld under section 243(h) of such Act; and
- (d) An alien who is lawfully residing in any State and is a veteran with an honorable discharge, is on active duty in the Armed Forces of the U.S., or is the spouse or unmarried dependent child of such an individual;

(4) All permanent resident aliens who are members of an Indian Tribe, as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act;

(5) All permanent resident aliens who have 40 qualifying quarters of coverage as defined by Title II of the Act.

*Eligible Indian tribe* means any Tribe or intertribal consortium that meets the definition of Indian tribe in this section and is eligible to submit a Tribal TANF plan to ACF.

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

*FY* means fiscal year.

*Grant period* means the period of time that is specified in the Tribal TANF grant award document.

*Indian, Indian tribe and Tribal Organization* have the same meaning given such terms by section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), except that the term *Indian tribe* means, with respect to the State of Alaska, only the Metlakatla Indian Community of the Annette Islands Reserve and the following Alaska Native regional nonprofit corporations:

- (1) Arctic Slope Native Association;
- (2) Kawerak, Inc.;
- (3) Maniilaq Association;
- (4) Association of Village Council Presidents;
- (5) Tanana Chiefs Council;
- (6) Cook Inlet Tribal Council;
- (7) Bristol Bay Native Association;
- (8) Aleutian and Pribilof Island Association;
- (9) Chugachmuit;
- (10) Tlingit Haida Central Council;
- (11) Kodiak Area Native Association;

and

(12) Copper River Native Association.

*Indian country* has the meaning given the term in 18 U.S.C. Section 1151.

*Minor child* means an individual who:

- (1) Has not attained 18 years of age; or

- (2) Has not attained 19 years of age and is a full-time student in a secondary

school (or in the equivalent level of vocational or technical training).

*Minor Head-of-Household* means a child under age 18, or 19 and a full-time student in a secondary school, who is the custodial parent of a minor child.

*PRWORA* means the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

*Qualified Aliens* includes the following individuals:

(1) An alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act;

(2) An alien who is granted asylum under section 208 of such Act;

(3) A refugee who is admitted to the United States under section 207 of such Act;

(4) An alien who is paroled into the United States under section 212(d)(5) of such Act for a period of at least 1 year;

(5) An alien whose deportation is being withheld under section 243(h) of such Act (as in effect immediately before the effective date of section 307 of division C of Pub. L. 104-208) or section 241(b)(3) of such Act (as amended by section 305(a) of division C of Pub. L. 104-208;

(6) An alien who is granted conditional entry pursuant to section 203(a)(7) of such Act as in effect prior to April 1, 1980;

(7) Certain battered aliens as defined in section 431 of the PRWORA, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996;

(8) An alien who is a member of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act; or

(9) An alien who is a Cuban and Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980.

*Retrocession* means the process by which a Tribe voluntarily terminates and cedes back (or returns) a Tribal TANF program to the State which previously served the population covered by the Tribal TANF plan. Retrocession includes the voluntary relinquishment of the authority to obligate previously awarded grant funds before that authority would otherwise expire.

*Secretary* means the Secretary of the Department of Health and Human Services.

*Scientifically acceptable sampling method* means a probability sampling method in which every sampling unit has a known, non-zero chance to be included in the sample and the sample size requirements are met.

*SFAG or State Family Assistance Grant* means the amount of the block

grant funded under section 403(a) of the Act for each eligible State.

*SFAP or State Family Assistance Plan* is the plan for implementation of a State TANF program under PRWORA.

*State* means, except as otherwise specifically provided, the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa.

*TANF* means the Temporary Assistance for Needy Families Program which is authorized under title IV-A of the Social Security Act.

*TANF funds* mean funds authorized under section 412(a) of the Act.

*TFAG or Tribal Family Assistance Grant* means the amount of the block grant funded under section 412(a) of the Act for each eligible Tribe.

*TFAP or Tribal Family Assistance Plan* means the plan for implementation of the Tribal TANF program under section 412(b) of the Act.

*Title IV-A* refers to the title of the Social Security Act that now includes TANF, but previously included AFDC and EA. For the purpose of the TANF program regulations, this term does not include child care programs authorized and funded under section 418 of the Act, or their predecessors, unless we specify otherwise.

*Title IV-F* refers to the title of the Social Security Act that was eliminated with the creation of TANF and previously included the Job Opportunities and Basic Skills Training Program (JOBS).

*Tribal TANF expenditures* means expenditures of TANF funds, within the Tribal TANF program.

*Tribal TANF program* means a Tribal program subject to the requirements of section 412 of the Act that is funded by TANF funds on behalf of eligible families.

*We (and any other first person plural pronouns)* refers to The Secretary of Health and Human Services, or any of the following individuals or organizations acting in an official capacity on the Secretary's behalf: The Assistant Secretary for Children and Families, the Regional Administrators for Children and Families, the Department of Health and Human Services, and the Administration for Children and Families.

*Welfare-related services* means all activities, assistance and services funded under Tribal TANF provided to an eligible family. See definition of "Assistance" above.

#### **§ 286.10 Who is eligible to operate a Tribal TANF program?**

(a) An Indian tribe that meets the definition of Indian tribe given in

§ 286.5 is eligible to apply to operate a Tribal Family Assistance Program.

(b) In addition, an intertribal consortium of eligible Indian tribes may develop and submit a single TFAP.

#### **Subpart B—Tribal TANF Funding**

##### **§ 286.15 How is the amount of a Tribal Family Assistance Grant (TFAG) determined?**

(a) We will request and use data submitted by a State to determine the amount of a TFAG. The State data that we will request and use are State expenditures, including administrative costs (which includes systems costs), of Federal payments to the State for fiscal year 1994 under the former Aid to Families With Dependent Children, Emergency Assistance and Job Opportunities and Basic Skills Training programs, for Indian families residing in the service area or areas identified in the Tribe's letter of intent or Tribal Family Assistance Plan.

(1) When we request the necessary data from the State, the State will be requested to submit the data no later than 21 days from the date of the request.

(2)(i) If we do not receive the data requested from the State at the end of the 21-day period, we will so notify the Tribe.

(ii) The Tribe will have 21 days from the date of the notification in which to submit relevant information. Relevant information may include, but is not limited to, Census Bureau data, data from the Bureau of Indian Affairs, data from other Federal programs, and Tribal records. In such a case, we will use the data submitted by the Tribe to determine the amount of the TFAG.

(b) We will share the data submitted by the State under paragraph (a)(1) of this section with the Tribe. The Tribe must submit to the Secretary a notice as to the Tribe's agreement or disagreement with such data no later than 21 days after the date of our notice transmitting the data from the State. During this 21-day period we will help resolve any questions the Tribe may have about the State-submitted data.

(c) We will notify each Tribe that has submitted a TFAP of the amount of the TFAG. At this time, we will also notify the State of the amount of the reduction in its SFAG.

(d) We will prorate TFAGs that are initially effective on a date other than October 1 of any given Federal fiscal year, based on the number of days remaining in the Federal fiscal year.

**§ 286.20 How will we resolve disagreements over the State-submitted data used to determine the amount of a Tribal Family Assistance Grant?**

(a) If a Tribe disagrees with the data submitted by a State, the Tribe may submit additional relevant information to the Secretary. Relevant information may include, but is not limited to, Census Bureau data, data from the Bureau of Indian Affairs, data from other Federal programs, and Tribal records.

(1) The Tribe must submit any relevant information within 21 days from the date it notifies the Secretary of its disagreement with State submitted data under § 286.15(b).

(2) We will review the additional relevant information submitted by the Tribe, together with the State-submitted data, in order to make a determination as to the amount of the TFAG. Our goal will be to make the determination no later than 14 days after receipt of the information.

(b) [Reserved]

**§ 286.25 What is the process for retrocession of a Tribal Family Assistance Grant?**

(a) A Tribe that wishes to terminate its TFAG prior to the end of its three-year plan must notify the Secretary in writing of the reason(s) for termination 120 days prior to the effective date of the termination. The effective date of the termination must coincide with the end of the grant period indicated on the Notice of Grant Award.

(b)(1) For a Tribe that retrocedes, the provisions of 45 CFR part 92 will apply with regard to closeout of the grant.

(2) The Tribe must return all unobligated funds to the Federal government.

(c) We will increase the appropriate SFAG by the amount of the TFAG.

(d) We will not return a TANF program to a Tribe that has retroceded until the reasons for retrocession are no longer applicable and all outstanding funds and penalty amounts repaid.

(e) A Tribe which retrocedes a Tribal TANF program is:

(1) Responsible for:

(i) Complying with the data collection and reporting requirements and all other program requirements for the period before the retrocession is effective;

(ii) Any applicable penalties (see subpart D of this part); and

(iii) Any penalties resulting from audits for the period before the effective date of retrocession.

(2) Subject to the provisions of 45 CFR Part 92 and OMB Circulars A-87 and A-133, and other Federal statutes and regulations applicable to the TANF program.

**§ 286.30 What are proper uses of Tribal Family Assistance Grant funds?**

(a) Tribes may use TFAGs for expenditures that:

(1) Are reasonably related to the purposes of TANF, including to provide low income households with assistance in meeting home heating and cooling costs; or

(2) Was an authorized use of funds under Parts A or F of title IV of the Social Security Act, as such parts were in effect on September 30, 1995.

(b) [Reserved]

**§ 286.35 What uses of Tribal Family Assistance Grant funds are improper?**

(a) A Tribe may not use Tribal Family Assistance Grant funds to provide welfare-related services and assistance to:

(1) Families that do not include either a minor child who resides with a custodial parent or other adult caretaker relative of the child or a pregnant individual; or

(2) For more than the number of months as specified in a Tribe's TFAP; or

(3) Individuals who are not citizens of the United States and who do not meet the definition of "eligible families" at § 286.5.

(b) Tribal Family Assistance Grant funds may not be used to contribute to or to subsidize non-TANF programs.

(c) A Tribe may not use Tribal Family Assistance Grant funds for services or activities prohibited by OMB Circular A-87.

(d) All provisions in OMB Circular A-133 and in 45 CFR part 92 are applicable to the Tribal TANF program.

(e) Tribal TANF funds may not be used for the construction or purchase of facilities or buildings.

(f) Tribes must use program income generated by the Tribal Family Assistance grant for the purposes of the TANF program and for allowable TANF services, activities and assistance.

**§ 286.40 Is there a limit on the percentage of a Tribal Family Assistance Grant that can be used for administrative costs?**

A Tribe may not expend more than 20 percent of its Tribal Family Assistance Grant for administrative costs during any grant period.

**§ 286.45 What types of costs are subject to the administrative cost limit on Tribal Family Assistance Grant funds?**

(a) Activities that fall within the definition of "administrative costs" at § 286.5 are subject to the limit at § 286.40.

(b) Information technology and computerization for tracking and monitoring are not administrative costs for this purpose.

**§ 286.50 Must Tribes obligate all Tribal Family Assistance Grant funds by the end of the fiscal year in which they are awarded?**

(a) Yes, Tribes must obligate Tribal Family Assistance Grants by the end of the fiscal year in which they are awarded. They must return any unobligated funds to the Federal government.

(b) Tribes will have until the end of the next fiscal year to expend any unliquidated obligations. Any unliquidated obligations remaining at the end of this period must also be returned to the Federal government.

**Subpart C—Tribal TANF Plan Content and Processing**

**§ 286.55 How can a Tribe apply to administer a Tribal Temporary Assistance For Needy Families (TANF) Program?**

Any eligible Indian tribe, Alaska Native organization or intertribal consortium that wishes to administer a Tribal TANF program must submit a three-year TFAP to the Secretary of the Department of Health and Human Services. The original must be submitted to the appropriate ACF Regional Office with a copy to the ACF Central Office.

**§ 286.60 Who submits a Tribal Family Assistance Plan?**

(a) A TFAP must be submitted by the chief executive officer of the Indian tribe and be accompanied by a Tribal resolution supporting the TFAP.

(b) A TFAP from a consortium must be forwarded under the signature of the chief executive officer of the consortium and be accompanied by Tribal resolutions from all participating Tribes which demonstrate each individual Tribe's support of the consortium, the delegation of decision-making authority to the consortium's governing board, and the Tribe's recognition that matters involving operation of the Tribal TANF consortia are the express responsibility of the consortium's governing board.

(c) When one of the participating Tribes in a consortium wishes to withdraw from the consortium, the Tribe needs to both notify the consortium and us of this fact.

(1) This notification must be made at least 120 days prior to the effective date of the withdrawal.

(2) The time frame in paragraph (c)(1) of this section is applicable only if the Tribe's withdrawal will cause a change to the service area or population of the consortium.

(d) When one of the participating Tribes in a consortium wishes to withdraw from the consortium in order to operate its own Tribal TANF

program, the Tribe needs to submit a Tribal TANF plan that follows the requirements at § 286.65 and § 286.140.

**§ 286.65 What must be included in the Tribal Family Assistance Plan?**

(a) The TFAP must outline the Tribe's approach to providing welfare-related services for the three-year period covered by the plan, including:

(1) Information on the general eligibility criteria the Tribe has established, which includes a definition of "needy family," including income and resource limits and the Tribe's definition of "Tribal member family" or "Indian family."

(2) A description of the assistance, services and activities to be offered, and the means by which they will be offered. The description of the services, assistance and activities to be provided includes whether the Tribe will provide cash assistance, and what other assistance, services and activities will be provided.

(3) If the Tribe will not provide the same services, assistance and activities in all parts of the service area, the TFAP must indicate any variations.

(4) If the Tribe opts to provide different services to specific populations including: Teen parents and individuals who are transitioning off TANF assistance, the TFAP must indicate whether any of these services will be provided and, if so, what services will be provided.

(5) The Tribe's goals for its TANF program and the means of measuring progress towards those goals;

(6) Assurance that a 45-day public comment period on the Tribal TANF plan concluded prior to the submission of the TFAP.

(7) Assurance that the Tribe has developed a dispute resolution process to be used when individuals or families want to challenge the Tribe's decision to deny, reduce, suspend, sanction or terminate assistance.

(b) The TFAP must identify which Tribal agency is designated by the Tribe as the lead agency for the overall administration of the Tribal TANF program along with a description of the administrative structure for supervision of the TANF program.

(c) The TFAP must indicate whether the services, assistance and activities will be provided by the Tribe itself or through grants, contracts or compacts with inter-Tribal consortia, States, or other entities.

(d) The TFAP must identify the population to be served by the Tribal TANF program.

(1) The TFAP must identify whether it will serve Tribal member families

only, or whether it will serve all Indian families residing in the Tribal TANF service area.

(2) If the Tribe wishes to serve any non-Indian families (and thus include non-Indians in its service population), an agreement with the State TANF agency must be included in the TFAP. This agreement must provide that, where non-Indians are to be served by Tribal TANF, these families are subject to Tribal TANF program rules.

(e) The TFAP must include a description of the geographic area to be served by the Tribal TANF program, including a specific description of any "near reservation" areas, as defined at 45 CFR 20.1(r), or any areas beyond "near reservation" to be included in the Tribal TANF service area.

(1) In areas beyond those defined as "near reservation", the TFAP must demonstrate the Tribe's administrative capacity to serve such areas and the State(s)', and if applicable, other Tribe(s)' concurrence with the proposed defined boundaries.

(2) A Tribe cannot extend its service area boundaries beyond the boundaries of the State(s) in which the reservation and BIA near-reservation designations are located.

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

(f) The TFAP must provide that a family receiving assistance under the plan may not receive duplicative assistance from other State or Tribal TANF programs and must include a description of the means by which the Tribe will ensure duplication does not occur.

(g) The TFAP must identify the employment opportunities in and near the service area and the manner in which the Tribe will cooperate and participate in enhancing such opportunities for recipients of assistance under the plan, consistent with any applicable State standards. This should include:

(1) A description of the employment opportunities available, in both the public and private sector, within and near the Tribal service area; and

(2) A description of how the Tribe will work with public and private sector employers to enhance the opportunities available for Tribal TANF recipients.

(h) The TFAP must provide an assurance that the Tribe applies the

fiscal accountability provisions of section 5(f)(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450c(f)(1)), relating to the submission of a single-agency audit report required by chapter 75 of title 31, United States Code.

**§ 286.70 What information on minimum work participation requirements must a Tribe include in its Tribal Family Assistance Plan?**

(a) To assess a Tribe's level of success in meeting its TANF work objectives, a Tribe that submits a TFAP must negotiate with us minimum work participation requirements that will apply to the adults and minor heads of household receiving assistance from the Tribal TANF program.

(b) A Tribe which submits a TFAP must include in the plan the Tribe's proposal for minimum work participation requirements, which includes the following:

(1) For each fiscal year covered by the plan, the Tribe's proposed participation rate(s) for all families, for all families and two-parent families, or for one-parent families and two-parent families;

(2) For each fiscal year covered by the plan, the Tribe's proposed minimum number of hours per week that adults and minor heads of household will be required to participate in work activities;

(i) If the Tribe elects to include reasonable transportation time to and from the site of work activities in determining the hours of work participation, it must so indicate in its TFAP along with a definition of "reasonable" for purposes of this subsection, along with:

(A) An explanation of how the economic conditions and/or resources available to the Tribe justify inclusion of transportation time in determining work participation hours; and

(B) An explanation of how counting reasonable transportation time is consistent with the purposes of TANF;

(3) The work activities that count towards these work requirements;

(4) Any exemptions, limitations and special rules being established in relation to work requirements; and

(5) The Tribe's rationale for the above if the Tribe's proposal differs from that required of State TANF programs (refer to section 407(a) of the Act for the participation rate targets for States, section 407(c)(1)(A) of the Social Security Act for the minimum number of hours per week required of State TANF families, and § 286.95 for the work activities applicable to State TANF programs).

(i) The rationale must address how the proposed work requirements are

consistent with the purposes of TANF and with the economic conditions and resources of the Tribe.

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

**§ 286.75 What additional information on minimum work participation rates must be included in a Tribal Family Assistance Plan?**

(a) A Tribe's proposed rates may reflect increases over the life of the Tribal TANF plan.

(b) Tribes will be given the opportunity to propose revisions to their targeted participation rates for subsequent years.

**§ 286.80 How will we calculate the work participation rates?**

(a) Work participation rate(s) will be the percentage of families with an adult or minor head-of-household receiving TANF assistance from the Tribe who are participating in a work activity approved in the TFAP for at least the minimum number of hours approved in the TFAP.

(b) The participation rate for a fiscal year is the average of the Tribe's participation rate for each month in the fiscal year.

(c) A Tribe's participation rate for a month is expressed as the following ratio:

(1) The number of families receiving TANF assistance that include an adult or a minor head-of-household who is participating in activities for the month (numerator), divided by

(2) The number of families that include an adult or a minor head-of-household receiving TANF assistance during the month excluding:

(i) Families that were penalized for non-compliance with the work requirements in that month as long as they have not been sanctioned for more than three months (whether or not consecutively) out of the last 12 months; and

(ii) Families with children under age one, if the Tribe chooses to exempt these families from participation requirements.

(d) If a family receives assistance for only part of a month or begins participating in activities during the month, the Tribe may count it as a

month of participation if an adult or minor head-of-household in the family is participating for the minimum average number of hours in each full week that the family receives assistance or participates in that month.

(e) Two-parent families in which one of the parents is disabled are considered one-parent families for the purpose of calculating a Tribe's participation rate.

**§ 286.85 How many hours per week must an adult or minor head-of-household participate in work-related activities to count in the numerator of the work participation rate?**

During the month, an adult or minor head-of-household must participate in work activities for at least the minimum average number of hours per week specified in the Tribe's approved Tribal Family Assistance Plan.

**§ 286.90 What, if any, are the special rules concerning counting work for single custodial parents, caretaker relatives and two-parent families?**

(a) A single custodial parent or caretaker relative with a child under age 6 will count as engaged in work if (s)he participates for an average of at least 20 hours per week.

(b) Parent in a two-parent family may share the number of hours required to be considered as engaged in work.

**§ 286.95 What activities count towards the work participation rate?**

(a) Activities that count toward a Tribe's participation rate may include, but are not limited to, the following:

- (1) Unsubsidized employment;
- (2) Subsidized private sector employment;
- (3) Subsidized public sector employment;
- (4) Work experience;
- (5) On-the-job training (OJT);
- (6) Job search and job readiness assistance; (see § 286.100)
- (7) Community service programs;
- (8) Vocational educational training; (see § 286.100)
- (9) Job skills training directly related to employment;
- (10) Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;
- (11) Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, if a recipient has not completed secondary school or received such a certificate;
- (12) Providing child care services to an individual who is participating in a community service program; and
- (13) Other activities that will help families achieve self-sufficiency.

(b) [Reserved]

**§ 286.100 What limitations concerning vocational education, job search and job readiness assistance exist with respect to the work participation rate?**

(a) Tribes are not required to limit vocational education for any one individual to a period of 12 months.

(b) There are two limitations concerning job search and job readiness:

(1) Job search and job readiness assistance only count for 6 weeks in any fiscal year.

(2) If the Tribe's unemployment rate in the Tribal TANF service area is at least 50 percent greater than the United States' total unemployment rate for that fiscal year, then an individual's participation in job search or job readiness assistance counts for up to 12 weeks in that fiscal year.

(c) If job search or job readiness is an ancillary part of another activity, then there is no limitation on counting the time spent in job search/job readiness.

**§ 286.105 What safeguards are there to ensure that participants in Tribal TANF work activities do not displace other workers?**

(a) An adult or minor head-of-household taking part in a work activity outlined in § 286.95 cannot fill a vacant employment position if:

(1) Any other individual is on layoff from the same or any substantially equivalent job; or

(2) The employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction in its work force in order to fill the vacancy with the TANF participant.

(b) A Tribe must establish and maintain a grievance procedure to resolve complaints of alleged violations of this displacement rule.

(c) This regulation does not preempt or supersede Tribal laws providing greater protection for employees from displacement.

**§ 286.110 What information on time limits for the receipt of welfare-related services must a Tribe include in its Tribal Family Assistance Plan?**

(a) The TFAP must include the Tribe's proposal for:

(1) Time limits for the receipt of Tribal TANF benefits;

(2) Any exceptions to these time limits; and

(3) The percentage of the caseload to be exempted from the time limit due to hardship or if the family includes an individual who has been battered or subjected to extreme cruelty.

(b) The Tribe must also include the rationale for its proposal in the plan.

The rationale must address how the proposed time limits are consistent with the purposes of TANF and with the economic conditions and resources of the Tribe.

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

(c) We may require that the Tribe submit additional information about the rationale before we approve the proposed time limits.

(d) Tribes must not count towards the time limit:

(1) Any month of receipt of assistance by an individual when the individual was a minor who was not the head-of-household or married to the head-of-household; and

(2) Any month of receipt of assistance by an adult during which the adult lived in Indian country or in an Alaskan Native Village in which at least 50 percent of the adults were not employed.

(e) A Tribe must not use any of its TFAG to provide assistance (as defined in § 286.5) to a family that includes an adult or minor head-of-household who has received assistance beyond the number of months (whether or not consecutive) that is negotiated with the Tribe.

#### **§ 286.115 Can Tribes make exceptions to the established time limit for families?**

(a) Tribes have the option to exempt families from the established time limits for the following reasons:

(1) Hardship, as defined by the Tribe, and

(2) The family includes someone who has been battered or has been subject to:

(i) Physical acts that resulted in, or treated to result in, physical injury to the individual;

(ii) Sexual abuse;

(iii) Sexual activity involving a dependent child;

(iv) Being forced as the caretaker relative of a dependent child to engage in non-consensual sexual acts or activities;

(v) Threats of, or attempts at, physical or sexual abuse;

(vi) Mental abuse; or

(vii) Neglect or deprivation of medical care.

(b) If a Tribe elects this option, the Tribe must specify in its TFAP the maximum percent of its average monthly caseload of families on assistance that will be exempt from the established time limit.

(1) If the Tribe proposes to exempt more than 20 percent of the caseload, the Tribe must include a rationale in the plan.

(2) [Reserved]

#### **§ 286.120 Does the receipt of TANF benefits under a State or other Tribal TANF program count towards a Tribe's TANF time limit?**

Yes, the Tribe must count prior months of TANF assistance funded with TANF block grant funds, except for any month that was exempt or disregarded by statute or regulation.

#### **§ 286.125 What information on penalties against individuals must be included in a Tribal Family Assistance Plan?**

(a) The TFAP must include the Tribe's proposal for penalties against individuals who refuse to engage in work activities. The Tribe's proposal must address the following:

(1) Will the Tribe impose a pro rata reduction, or more at Tribal option, or will it terminate assistance to a family?

(2) After consideration of the provision specified at § 286.135, what will be the proposed Tribal policies related to a single custodial parent, with a child under the age of 6, who refuses to engage in work activities because of a demonstrated inability to obtain child care?

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

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

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

(b)(1) The Tribe's rationale for its proposal must also be included in the TFAP. The rationale must address how the proposed penalties against individuals are consistent with the purposes of TANF, consistent with the economic conditions and resources of the Tribe, and how they are similar to the requirements of section 407(e) of the Act.

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

(c) We may require a Tribe to submit additional information about the rationale before we approve the proposed penalties against individuals.

#### **§ 286.130 What is the penalty if an individual refuses to engage in work activities?**

If an individual refuses to engage in work activities in accordance with the minimum work participation requirements specified in the approved TFAP, the Tribe must apply to the individual the penalties against individuals that were established in the approved TFAP.

#### **§ 286.135 Can a family, with a child under age 6, be penalized because a parent refuses to work because (s)he cannot find child care?**

A family must not be penalized if a custodial parent refuses to engage in work activities because (s)he cannot find child care and the Tribe's established exception due to inability to locate child care is satisfied.

#### **§ 286.140 What are the applicable time frames and procedures for submitting a Tribal Family Assistance Plan?**

(a) A Tribe must submit a Tribal TANF letter of intent and/or a TFAP to the Secretary according to the following time frames:

| Implementation date:                 | Letter of intent due:            | Formal plan due:                   | Notification to the State:  |
|--------------------------------------|----------------------------------|------------------------------------|-----------------------------|
| January 1, February 1 or March 1 ..  | July 1 of previous year .....    | September 1 of previous year ..... | October 1 of previous year. |
| April 1, May 1 or June 1 .....       | October 1 of previous year ..... | December 1 of previous year .....  | January 1 of same year.     |
| July 1, August 1 or September 1 ...  | January 1 of same year .....     | March 1 of same year .....         | April 1 of same year.       |
| October 1, November 1 or December 1. | April 1 of same year .....       | June 1 of same year .....          | July 1 of same year.        |

(b) A Tribe which has requested and received data from the State and has resolved any issues concerning the data more than 6 months before its proposed implementation date, is not required to submit a letter of intent.

(c) The effective date of the TFAP must be the first day of any month.

(d) The original TFAP must be sent to the appropriate ACF Regional Administrator, with a copy sent to the Division of Tribal Services, Office of Community Services, Administration for Children and Families.

(e) A Tribe that submits a TFAP or an amendment to an existing plan that cannot be approved by the Secretary will be given the opportunity to make revisions in order to make the TFAP, or an amendment, approvable. If a plan is disapproved, the Tribe may appeal the decision to the Departmental Appeals Board (the Board) within 60 days after such party receives notice of determination. The party's appeal to the Board should follow the provisions of the rules under this section and those at 45 CFR part 16, where applicable.

(f) Tribes operating a consolidated Pub. L. 102-477 program must submit a TFAP plan to the Secretary for review and approval prior to the consolidation of the TANF program into the Pub. L. 102-477 plan.

#### **§ 286.145 How is a Tribal Family Assistance Plan amended?**

(a) An amendment to a TFAP is necessary if the Tribe makes any substantial changes to the plan, including those which impact an individual's eligibility for Tribal TANF services or participation requirements, or any other program design changes which alter the nature of the program.

(b) A Tribe must submit a plan amendment(s) to us no later than 30 days prior to the proposed implementation date. Proposed implementation dates shall be the first day of any month.

(c) We will review and either approve or disapprove the plan amendment(s) within 14 days of receipt.

(d) Approved plan amendments are effective 30 days after date of submission.

(e) A Tribe whose plan amendment is disapproved may appeal our decision to the Departmental Appeals Board no later than 60 days from the date of the disapproval. This appeal to the Board should follow the provisions of the rules under this subpart and those at 45 CFR part 16, where applicable.

#### **§ 286.150 What special provisions apply in Alaska?**

A Tribe in the State of Alaska that receives a TFAG must use the grant to

operate a program in accordance with program requirements comparable to the requirements applicable to the State of Alaska's Family Assistance program. Comparability of programs must be established on the basis of program criteria developed by the Secretary in consultation with the State of Alaska and the Tribes in Alaska. The State of Alaska has authority to waive the program comparability requirement based on a request by an Indian tribe in the State.

#### **§ 286.155 What is the process for developing the comparability criteria that are required in Alaska?**

We will work with the Tribes in Alaska and the State of Alaska to develop an appropriate process for the development and amendment of the comparability criteria.

#### **§ 286.160 What happens when a dispute arises between the State of Alaska and the Tribal TANF eligible entities in the State related to the comparability criteria?**

(a) If a dispute arises between the State of Alaska and the Tribes in the State on any part of the comparability criteria, we will be responsible for making a final determination and notifying the State of Alaska and the Tribes in the State of the decision.

(b) Any of the parties involved may appeal our decision, in whole or in part, to the HHS Departmental Appeals Board (the Board) within 60 days after such party receives notice of determination. The party's appeal to the Board should follow the provisions of the rules under this section and those at 45 CFR part 16, where applicable.

#### **§ 286.165 If the Secretary, the State of Alaska, or any of the Tribal TANF eligible entities in the State of Alaska want to amend the comparability criteria, what is the process for doing so?**

(a) At such time that any of the above parties wish to amend the comparability document, the requesting party should submit a request to us, with a copy to the other parties, explaining the requested change(s) and supplying background information in support of the change(s).

(b) After review of the request, we will make a determination on whether or not to accept the proposed change(s).

(c) If any party wishes to appeal the decision regarding the adoption of the proposed amendment, they may appeal using the appeals process pursuant to § 286.140.

### **Subpart D—Accountability and Penalties**

#### **§ 286.170 What penalties will apply to Tribes?**

(a) Tribes will be subject to fiscal penalties and requirements as follows:

(1) If we determine that a Tribe misused its Tribal Family Assistance Grant funds, including providing assistance beyond the Tribe's negotiated time limit under § 286.110, we will reduce the TFAG for the following fiscal year by the amount so used;

(2) If we determine that a Tribe intentionally misused its TFAG for an unallowable purpose, the TFAG for the following fiscal year will be reduced by an additional five percent;

(3) If we determine that a Tribe failed to meet the minimum work participation rate(s) established for the Tribe, the TFAG for the following fiscal year will be reduced. The amount of the reduction will depend on whether the Tribe was under a penalty for this reason in the preceding year. If not, the penalty reduction will be a maximum of five percent. If a penalty was imposed on the Tribe in the preceding year, the penalty reduction will be increased by an additional 2 percent, up to a maximum of 21 percent. In determining the penalty amount, we will take into consideration the severity of the failure and whether the reasons for the failure were increases in the unemployment rate in the TFAG service area and changes in TFAG caseload size during the fiscal year in question; and

(4) If a Tribe fails to repay a Federal loan provided under section 406, we will reduce the TFAG for the following fiscal year will be reduced by an amount equal to the outstanding loan amount plus interest.

(b) In calculating the amount of the penalty, we will add together all applicable penalty percentages and the total is applied to the amount of the TFAG that would have been payable if no penalties were assessed against the Tribe. As a final step, we will subtract other (non-percentage) penalty amounts.

(c) When imposing the penalties in paragraph (a) of this section, we will not reduce an affected Tribe's grant by more than 25 percent. If the 25 percent limit prevents the recovery of the full penalty imposed on a Tribe during a fiscal year, we will apply the remaining amount of the penalty to the TFAG payable for the immediately succeeding fiscal year.

(1) If we reduce the TFAG payable to a Tribe for a fiscal year because of penalties that have been imposed, the Tribe must expend additional Tribal funds to replace any such reduction. The Tribe must document compliance

with this provision on its TANF expenditure report.

(2) We will impose a penalty of not more than 2 percent of the amount of the TFAG on a Tribe that fails to expend additional Tribal funds to replace amounts deducted from the TFAG due to penalties. We will apply this penalty to the TFAG payable for the next succeeding fiscal year and this penalty cannot be excused (see § 286.210).

(d) If a Tribe retrocedes the program, the Tribe will be liable for any penalties incurred for the period the program was in operation.

**§ 286.175 How will we determine if Tribal Family Assistance Grant funds were misused or intentionally misused?**

(a) We will use the single audit or Federal review or audit to determine if a Tribe should be penalized for misusing Tribal Family Assistance Grant funds under § 286.170(a)(1) or intentionally misusing Tribal Family Assistance Grant funds under § 286.170(a)(2).

(b) If a Tribe uses the TFAG in violation of the provisions of the Act, the provisions of 45 CFR part 92, OMB Circulars A-87 and A-133, or any Federal statutes and regulations applicable to the TANF program, we will consider the funds to have been misused.

(c) The Tribe must show, to our satisfaction, that it used the funds for purposes that a reasonable person would consider to be within the purposes of the TANF program (as specified at § 286.30) and the provisions listed in § 286.35.

(d) We will consider the TFAG to have been intentionally misused under the following conditions:

(1) There is supporting documentation, such as Federal guidance or policy instructions, indicating that TANF funds could not be used for that purpose; or

(2) After notification that we have determined such use to be improper, the Tribe continues to use the funds in the same or similarly improper manner.

(e) If the single audit determines that a Tribe misused Federal funds in applying the negotiated time limit provisions under § 286.110, the amount of the penalty for misuse will be limited to five percent of the TFAG amount.

**§ 286.180 How will we determine if a Tribe fails to meet the minimum work participation rate(s)?**

(a) We will use the Tribal TANF Data Reports required under § 286.230 to determine if we will assess the penalty under § 286.170(a)(3) for failure to meet the minimum participation rate(s) established for the Tribe.

(b) The information from the Tribe's Tribal TANF Data Reports needed to determine the Tribe's work participation rate(s) must be timely, complete and accurate under § 286.230. The accuracy of the reports are subject to validation by us.

(1) If the Tribe fails to submit, on a timely basis, the Tribal TANF Data Report, we may apply the penalty under § 286.170(a)(3).

(2) If we find reports to be so significantly incomplete or inaccurate that we seriously question whether the Tribe has met its participation rate, we may apply the penalty under § 286.170(a)(3).

(c) If the single audit determines that the Tribe failed to meet the minimum participation rate, we may assess the penalty under § 286.170(a)(1).

**§ 286.185 What is the penalty for a Tribe's failure to repay a Federal loan?**

(a) If a Tribe fails to repay the amount of principal and interest due at any point under a loan agreement:

(1) The entire outstanding loan balance, plus all accumulated interest, becomes due and payable immediately; and

(2) We will reduce the TFAG payable for the immediately succeeding fiscal year quarter by the outstanding loan amount plus interest.

(b) Neither the reasonable cause provisions at § 286.200 nor the corrective compliance plan provisions at § 286.205 apply when a Tribe fails to repay a Federal loan.

**§ 286.190 When are the TANF penalty provisions applicable?**

(a) A Tribe may be subject to penalties, as described in § 286.170(a)(1), § 286.170(a)(2) and § 286.170(a)(4), for conduct occurring on and after the first day of implementation of the Tribe's TANF program.

(b) A Tribe may be subject to penalties, as described in § 286.170(a)(3), for conduct occurring on and after the date that is six months after the Tribe begins operating the TANF program.

(c) We will not apply the regulations retroactively. To the extent that a Tribe's failure to meet the requirements of the penalty provisions is attributable to the absence of Federal rules or guidance, Tribes may qualify for reasonable cause, as discussed in § 286.200.

**§ 286.195 What happens if a Tribe fails to meet TANF requirements?**

(a) If we determine that a Tribe is subject to a penalty, we will notify the Tribe in writing. This notice will:

(1) Specify what penalty provision(s) are in issue;

(2) Specify the amount of the penalty;

(3) Specify the reason for our determination;

(4) Explain how and when the Tribe may submit a reasonable cause justification under § 286.200 and/or a corrective compliance plan under § 286.205(d) for those penalties for which reasonable cause and/or corrective compliance plan apply; and

(5) Invite the Tribe to present its arguments if it believes that the data or method we used were in error or were insufficient, or that the Tribe's actions, in the absence of Federal regulations, were based on a reasonable interpretation of the statute.

(b) Within 60 days of receipt of our written notification, the Tribe may submit a written response to us that:

(1) Demonstrates that our determination is incorrect because our data or the method we used in determining the penalty was in error or was insufficient, or that the Tribe acted prior to [effective date of final regulations], on a reasonable interpretation of the statute;

(2) Demonstrates that the Tribe had reasonable cause for failing to meet the requirement(s); and/or

(3) Provides a corrective compliance plan as discussed in § 286.205.

(c) If we find that the Tribe was correct and that a penalty was improperly determined, or find that a Tribe had reasonable cause for failing to meet one or more requirements, we will not impose that penalty and so notify the Tribe in writing.

(d) If we determine that the Tribe's arguments that our original determination was incorrect or that it had reasonable cause are not persuasive, we will notify the Tribe of our decision in writing.

(e) If we request additional information from a Tribe, it must provide the information within two weeks of the date of our request.

**§ 286.200 How may a Tribe establish reasonable cause for failing to meet a requirement that is subject to application of a penalty?**

(a) We will not impose a penalty against a Tribe if it is determined that the Tribe had reasonable cause for failure to meet the requirements listed at § 286.170(a)(1), § 286.170(a)(2) or § 286.170(a)(3). The general factors a Tribe may use to claim reasonable cause include but are not limited to the following:

(1) Natural disasters and other calamities (e.g., hurricanes, earthquakes, fire) whose disruptive impact was so significant that the Tribe failed to meet a requirement.

(2) Formally issued Federal guidance which provided incorrect information resulting in the Tribe's failure, or guidance that was issued after a Tribe implemented the requirements of the Act based on a different, but reasonable, interpretation of the Act.

(3) Isolated, non-recurring problems of minimal impact that are not indicative of a systemic problem.

(b) In addition to the general reasonable cause criteria specified in paragraph (a) of this section, a Tribe may also submit a request for a reasonable cause exemption from the requirement to meet its work participation requirements in the following situation:

(1) We will consider that a Tribe has reasonable cause if it demonstrates that its failure to meet its work participation rate(s) is attributable to its provisions with regard domestic violence as follows:

(i) To demonstrate reasonable cause, a Tribe must provide evidence that it achieved the applicable work rates, except with respect to any individuals receiving good cause waivers of work requirements (i.e., when cases with good cause waivers are removed from the calculation in § 286.80; and

(ii) A Tribe must grant good cause in domestic violence cases appropriately, in accordance with the policies in the Tribe's approved Tribal Family Assistance Plan.

(2) [Reserved]

**§ 286.205 What if a Tribe does not have reasonable cause for failing to meet a requirement?**

(a) To avoid the imposition of a penalty under § 286.170(a)(1), § 286.170(a)(2) or § 286.170(a)(3), under the following circumstances a Tribe must enter into a corrective compliance plan to correct the violation:

(1) If a Tribe does not claim reasonable cause for failing to meet a requirement; or

(2) If we found that a Tribe did not have reasonable cause.

(b) A Tribe that does not claim reasonable cause will have 60 days from receipt of the notice described in § 286.195(a) to submit its corrective compliance plan to us.

(c) A Tribe that unsuccessfully claims reasonable cause will have 60 days from receipt of the second notice described in § 286.195(d) to submit its corrective compliance plan to us.

(d) In its corrective compliance plan the Tribe must outline:

(1) Why it failed to meet the requirements;

(2) How it will correct the violation in a timely manner; and

(3) What actions, outcomes and time line it will use to ensure future compliance.

(e) During the 60-day period beginning with the date we receive the corrective compliance plan, we may, if necessary, consult with the Tribe on modifications to the plan.

(f) A corrective compliance plan is deemed to be accepted if we take no action to accept or reject the plan during the 60-day period that begins when the plan is received.

(g) Once a corrective compliance plan is accepted or deemed accepted, we may request reports from the Tribe or take other actions to confirm that the Tribe is carrying out the corrective actions specified in the plan.

(1) We will not impose a penalty against a Tribe with respect to any violation covered by that plan if the Tribe corrects the violation within the time frame agreed to in the plan.

(2) We must assess some or all of the penalty if the Tribe fails to correct the violation pursuant to its corrective compliance plan.

**§ 286.210 What penalties cannot be excused?**

(a) The penalties that cannot be excused are:

(1) The penalty for failure to repay a Federal loan issued under section 406.

(2) The penalty for failure to replace any reduction in the TFAG resulting from other penalties that have been imposed.

(b) [Reserved]

**§ 286.215 How can a Tribe appeal our decision to take a penalty?**

(a) We will formally notify the Tribe that we will reduce the Tribe's TFAG within five days after we determine that a Tribe is subject to a penalty and inform the Tribe of its right to appeal to the Departmental Appeals Board (the Board) established in the Department of Health and Human Services.

(b) Within 60 days of the date it receives notice of the penalty, the Tribe may file an appeal of the action, in whole or in part, to the Board.

(c) The Tribe's appeal must include all briefs and supporting documentation for its case when it files its appeal. A copy of the appeal must be sent to the Office of General Counsel, Children, Families and Aging Division, Room 411-D, 200 Independence Avenue, SW, Washington, DC 20201.

(d) ACF must file its reply brief and supporting documentation within 30 days after the Tribe files its appeal.

(e) The Tribe's appeal to the Board must follow the provisions of this section and those at §§ 16.2, 16.9, 16.10, and 16.13 through 16.22 of this title.

(f) The Board will consider an appeal filed by a Tribe on the basis of the documentation and briefs submitted, along with any additional information the Board may require to support a final decision. In deciding whether to uphold an adverse action or any portion of such action, the Board will conduct a thorough review of the issues and make a final determination within 60 days after the appeal is filed.

(g)(1) The filing date shall be the date materials are received by the Board in a form acceptable to it.

(2) If the Board requires additional documentation to reach its decision, the 60 days will be tolled for a reasonable period, specified by the Board, to allow production of the documentation.

(h)(1) A Tribe may obtain judicial review of a final decision by the Board by filing an action within 90 days after the date of such decision with the district court of the United States in the judicial district where the Tribe or TFAG service area is located.

(2) The district court will review the final decision of the Board on the record established in the administrative proceeding, in accordance with the standards of review prescribed by 5 U.S.C. 706(2). The court's review will be based on the documents and supporting data submitted to the Board.

**Subpart E—Data Collection and Reporting Requirements**

**§ 286.220 What data collection and reporting requirements apply to Tribal TANF programs?**

(a) Section 412(h) of the Act makes section 411 regarding data collection and reporting applicable to Tribal TANF programs. This section of the regulations explains how we will collect the information required by section 411 of the Act and information to implement section 412(c) (work participation requirements).

(b) Each Tribe must collect monthly and file quarterly data on individuals and families as follows:

(1) Disaggregated data collection and reporting requirements in this part apply to families receiving assistance and families no longer receiving assistance under the Tribal TANF program; and

(2) Aggregated data collection and reporting requirements in this part apply to families receiving, families applying for, and families no longer receiving assistance under the Tribal TANF program.

(c) Each Tribe must file in its quarterly TANF Data Report and in the quarterly TANF Financial Report the specified data elements.

(d) Each Tribe must also submit an annual report that contains specified information.

(e) Each Tribe must submit the necessary reports by the specified due dates.

**§ 286.225 What definitions apply to this subpart?**

(a) Except as provided in paragraph (b) of this section, the general TANF definitions at § 286.5 apply to this subpart.

(b) For data collection and reporting purposes only, *TANF family* means:

- (1) All individuals receiving assistance as part of a family under the Tribe's TANF program; and
- (2) The following additional persons living in the household, if not included under paragraph (b)(1) of this section:
  - (i) Parent(s) or caretaker relative(s) of any minor child receiving assistance;
  - (ii) Minor siblings of any child receiving assistance; and
  - (iii) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

**§ 286.230 What quarterly reports must the Tribe submit to us?**

(a) *Quarterly reports.* Each Tribe must collect on a monthly basis, and file on a quarterly basis, the data specified in the Tribal TANF Data Report and the Tribal TANF Financial Report.

(b) *Tribal TANF Data Report.* The Tribal TANF Data Report consists of three sections. Two sections contain disaggregated data elements and one section contains aggregated data elements.

(1) *TANF Data Report: Disaggregated Data—Sections one and two.* Each Tribe must file disaggregated information on families receiving TANF assistance (section one) and families no longer receiving TANF assistance (section two).<sup>1</sup> These two sections specify identifying and demographic data such as the individual's Social Security Number; and information such as the type and amount of assistance received, educational level, employment status, work participation activities, citizenship status, and earned and unearned income. These reports also specify items pertaining to child care and child support. The data requested cover adults (including non-custodial parents who are participating in work activities) and children.

(2) *TANF Data Report: Aggregated Data—Section three.* Each Tribe must file aggregated information on families receiving, applying for, and no longer

receiving TANF assistance.<sup>2</sup> This section of the Report asks for aggregate figures in the following areas: The total number of applications and their disposition; the total number of recipient families, adult recipients, and child recipients; the total number of births, out-of-wedlock births, and minor child heads-of-households; the total number of non-custodial parents participating in work activities; and the total amount of TANF assistance provided.

(c) *The Tribal TANF Financial Report.*

(1) Each Tribe must file quarterly expenditure data on the Tribe's use of Tribal Family Assistance Grant funds, any Tribal contributions, and State contributions. The report must be submitted on a form prescribed by ACF.

(2) In addition, each Tribe must file annually with the fourth quarter Tribal TANF Financial Report definitions and descriptive information on the Tribe's TANF program.

(3) If a Tribe makes a substantive change in its definition of work activities, its description of transitional services provided to families no longer receiving assistance due to employment under the Tribal TANF program, or how it reduces the amount of assistance when an individual refuses to engage in work, as specified in § 286.130, it must file a copy of the changed definition or description with the next quarterly report. The Tribe must also indicate the effective date of the change.

**§ 286.235 May Tribes use sampling and electronic filing?**

(a)(1) Each Tribe may report disaggregated data on all recipient families (universal reporting) or on a sample of families selected through the use of a scientifically acceptable sampling method. The sampling method must be approved by ACF in advance of submitting reports.

(2) Tribes may not use a sample to generate the aggregated data.

(b) "Scientifically acceptable sampling method" means a probability sampling method in which every sampling unit has a known, non-zero chance to be included in the sample, and the sample size requirements are met.

(c) Each Tribe may file quarterly reports electronically, based on format specifications which we will provide. Tribes who do not have the capacity to submit reports electronically may submit quarterly reports on a disk or in hard copy.

**§ 286.240 When are quarterly reports due?**

(a) Each Tribe must submit (ie., postmarked) its Tribal TANF Data Report and Tribal TANF Financial Report, including the addendum to the fourth quarter Financial Report, within 45 days following the end of quarter. If the 45th day falls on a weekend or national holiday, the reports are due no later than the next business day.

(b) The first reports required to be submitted must cover the period that begins six months after the date of implementation of the Tribal TANF program.

**§ 286.245 What happens if the Tribe does not satisfy the quarterly reporting requirements?**

(a)(1) If we determine that a Tribe has not submitted to us a complete and accurate Tribal TANF Data Report within the time limit, the Tribe risks the imposition of a penalty at § 286.180 related to the work participation rate targets since the data from the Tribal TANF Data Report is required to calculate participation rates.

(2) Non-reporting of the Tribal TANF Financial Report may give rise to a penalty under § 286.175—use of TANF funds in violation of part IV—A of the Act.

(b) [Reserved]

**§ 286.250 What information must Tribes file annually?**

(a) Each Tribe must file annually, as an addendum to the fourth quarter Tribal TANF Financial Report, the following definitions and information with respect to the Tribal TANF program for that year:

(1) The number of families excluded from the calculations at §§ 286.80 and 286.110 of this chapter because of the Tribe's definition of families receiving assistance, together with the basis for such exclusions;

(2) The Tribe's definition of each work activity;

(3) A description of the transitional services provided to families no longer receiving assistance due to employment; and

(4) A description of how a Tribe will reduce the amount of assistance payable to a family when an individual refuses to engage in work without good cause.

(b) Each Tribe must file an annual program and performance report that provides information about the characteristics and achievements of the Tribal program; the design and operation of the program; the services, benefits, assistance provided; the eligibility criteria; and the extent to which the Tribe has met its goals and objectives for the program. Each Tribe

<sup>1</sup> See Appendices A and B to this part for the specific data elements we are proposing.

<sup>2</sup> See Appendix C to this part for the specific data elements we are proposing.

may also include a description of any unique features, accomplishments, innovations, or additional information appropriate for the Department's annual report to Congress.

**§ 286.255 When are annual reports due?**

(a) The annual report of Tribal definitions and expenditures required by § 286.250 is due (i.e., postmarked) at the same time as the fourth quarter Tribal TANF Financial Report.

(b) The annual program and performance report to meet the requirements of section 411(b) of the Act (report to Congress) is due 90 days after the end of the fiscal year. The first report, covering FY 1998, is due December 30, 1998.

**§ 286.260 How do the data collection and reporting requirements affect Public Law 102-477 Tribes?**

(a) A Tribe that consolidates its Tribal TANF program into a Public-Law 102-477 plan is required to comply with the TANF data collection and reporting requirements of this section.

(b) A Tribe that consolidates its Tribal TANF program into a Public-Law 102-477 plan may submit the Tribal TANF Data Reports and the Tribal TANF Financial Report to the BIA, with a copy to us.

**Appendix A—Tribal TANF Data Report—Section One; Disaggregated Data Collection for Families Receiving Assistance Under the TANF Program**

**Instructions and Definitions**

General Instruction: The Tribal grantee should collect and report data for each data element, unless explicitly instructed to leave the field blank.

1. *State FIPS Code:* Tribal grantees should leave this field blank.

2. *County FIPS Code:* Tribal grantees should leave this field blank.

3. *Tribal Code:* Tribal grantees should enter the three-digit Tribal code that represents your Tribe. (A complete listing of Tribal Codes will be furnished to Tribes.)

4. *Reporting Month:* Enter the four-digit year and two-digit month code that identifies the year and month for which the data are being reported.

**5. Stratum:**

Guidance: All TANF families selected in the sample from the same stratum must be assigned the same stratum code. Valid stratum codes may range from "00" to "99." Tribes with stratified samples should provide the ACF Regional Office with a listing of the numeric codes utilized to identify any stratification. If a Tribe that could sample but opts to provide data for its entire caseload, enter the same stratum code (any two-digit number) for each TANF family.

Instruction: Enter the two-digit stratum code.

**Family-Level Data**

Definition: For reporting purposes, the TANF family means (a) all individuals

receiving assistance as part of a family under the Tribe's TANF Program; and (b) the following additional persons living in the household, if not included under (a) above:

(1) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(2) Minor siblings (including unborn children) of any child receiving assistance; and

(3) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

**6. Case Number—TANF:**

Guidance: If the case number is less than the allowable eleven characters, a Tribe may use lead zeros to fill in the number.

Instruction: Enter the number assigned by the Tribal grantee to uniquely identify the case after formal approval to receive assistance.

7. *ZIP Code:* Enter the five-digit ZIP code for the TANF family's place of residence for the reporting month.

8. *Funding Stream:* For Tribes that bifurcate their caseloads, enter the appropriate code for the funding stream used to provide assistance to this TANF family. If the Tribe does not bifurcate its caseload, enter code "1."

1 = Funded, in whole or in part, with Federal TANF block grant funds

2 = Funded entirely from State-only funds which are subject to TANF rules.

**9. Disposition:**

Guidance: A family that did not receive any assistance for the reporting month but was listed on the monthly sample frame for the reporting month is "listed in error." Tribes are to complete data collection for all sampled cases that are not listed in error.

Instruction: Enter one of the following codes for each TANF sampled case.

1 = Data collection completed

2 = Not subject to data collection/listing in error

**10. New Applicant:**

Guidance: A newly-approved applicant means the current reporting month is the first month for which the TANF family has received TANF assistance (and thus has had a chance to be selected into the TANF sample). This may be either the first month that the TANF family has ever received assistance or the first month of a new spell on assistance. A TANF family that is reinstated from a suspension is not a newly-approved applicant.

Instruction: Enter the one-digit code that indicates whether or not the TANF family is a newly-approved applicant.

1 = Yes, a newly-approved application

2 = No

11. *Number of Family Members:* Enter two digits that represent the number of members in the family receiving assistance under the Tribe's TANF Program during the reporting month.

**12. Type of Family for Work Participation:**

Guidance: This data element will be used to identify the type of family (i.e., the number of parents or care-taker relatives in the family receiving assistance) in order to calculate the all family and the two-parent family work participation rates. A family with a minor

child head-of-household should be coded as either a single-parent family or two-parent family, whichever is appropriate. A family that includes a disabled parent will not be considered a two-parent family for purposes of the work participation rate. A noncustodial parent, who lives in the State, may participate in work activities funded under the Tribal TANF Program and receive other assistance. In order for the noncustodial parent to participate in work activities and receive assistance, (s)he must be a member of the eligible family receiving assistance and be reported as part of the TANF family. However, for Tribes with both a one-parent and a two-parent work participation rate, it is up to the Tribe to consider whether a family with a non-custodial parent is a one-parent or two-parent family for the purposes of calculating the work participation rate.

Instruction: Enter the one-digit code that represents the type of family for purposes of calculating the work participation rates.

1 = Single-Parent Family for participation rate purposes

2 = Two-Parent Family for participation rate purposes

3 = No Parent Family for participation rate purposes (does not include parents, caretaker relatives, or minor child heads-of-household)

**13. Receives Subsidized Housing:**

Guidance: Subsidized housing refers to housing for which money was paid by the Federal, State, or Local government or through a private social service agency to the family or to the owner of the housing to assist the family in paying rent. Two families sharing living expenses does not constitute subsidized housing.

Instruction: Enter the one-digit code that indicates whether or not the TANF family received subsidized housing for the reporting month.

1 = Public housing

2 = HUD rent subsidy

3 = Other rent subsidy

4 = No housing subsidy

14. *Receives Medical Assistance:* Enter "1" if, for the reporting month, any TANF family member is eligible to receive (i.e., a certified recipient of) medical assistance under a State plan approved under Title XIX or "2" if no TANF family member is eligible to receive medical assistance under a State plan approved under Title XIX.

1 = Yes, is eligible to receive medical assistance

2 = No

**15. Receives Food Stamps:**

If the TANF family received Food Stamps for the reporting month, enter the one-digit code indicating the type of Food Stamp assistance. Otherwise, enter "4."

1 = Yes, Food Stamp coupon allotment

2 = Yes, cash

3 = Yes, wage subsidy

4 = No

**16. Amount of Food Stamp Assistance:**

Guidance: For situations in which the Food Stamp household differs from the TANF family, code this element in a manner that

most accurately reflects the resources available to the TANF family.

Instruction: Enter the TANF family's authorized dollar amount of Food Stamp assistance for the reporting month.

**17. Receives Subsidized Child Care:**

Guidance: For the purpose of coding this data element, Subsidized Child Care funded under the Child Care and Development Fund with funds that were transferred from the State TANF Program should be coded as "2."

Instruction: If the TANF family receives subsidized child care for the reporting month, enter code "1", "2", "3", or "4", whichever is appropriate. Otherwise, enter code "5."

- 1 = Yes, funded under the Tribal or State TANF Program
- 2 = Yes, funded under the Child Care and Development Fund
- 3 = Yes, funded under another Federal program (e.g., SSBG)
- 4 = Yes, funded under a Tribal, State, or local program
- 5 = No

**18. Amount of Subsidized Child Care:**

Guidance: Subsidized child care means a grant by the Federal, State or Local government to a parent (or care-taker relative) to support, in part or whole, the cost of child care services provided by an eligible provider to an eligible child. The grant may be paid directly to the parent (or care-taker relative) or to a child care provider on behalf of the parent (or care-taker relative).

Instruction: Enter the dollar amount of subsidized child care that the TANF family has received for services in the reporting month. If the TANF family did not receive any subsidized child care for the reporting month, enter "00."

**19. Amount of Child Care Disregard:** Enter the total dollar amount of the TANF family's actual disregard allowed for child care expenses during the reporting month. If there is no child care disregard, enter "0" as the amount.

**20. Amount of Child Support:** Enter the total dollar value of child support received on behalf of the TANF family in the reporting month, which includes arrearages, recoupments, and pass-through amounts whether paid to the Tribe, the State or the family.

**21. Amount of the Family's Cash**

**Resources:** Enter the total dollar amount of the TANF family's cash resources for the reporting month.

**Amount of Assistance Received and the Number of Months that the Family Has Received Each Type of Assistance under the Tribal TANF Program:**

Guidance: Assistance means every form of support provided to TANF families under the Tribal TANF Program (including child care, work subsidies, and allowances to meet living expenses), except for the following:

(1) Services that have no direct monetary value to an individual family and that do not involve implicit or explicit income support, such as counseling, case management, peer support and employment services that do not involve subsidies or other forms of income support; and

(2) One-time, short-term assistance (i.e., assistance paid within a 30-day period, no

more than once in any twelve-month period, to meet needs that do not extend beyond a 90-day period, such as automobile repair to retain employment and avoid welfare receipt and appliance repair to maintain living arrangements).

Instruction: For each type of assistance provided under the Tribal TANF Program, enter the dollar amount of assistance that the TANF family received or that was paid on behalf of the TANF family for the reporting month and the number of months that the TANF family has received assistance under the Tribe's TANF program. If, for a "type of assistance", no dollar amount of assistance was provided during the reporting month, enter "0" as the amount. If, for a "type of assistance", no assistance has been received (since the Tribe began its TANF Program) by the TANF eligible family, enter "0" as the number of months of assistance.

**22. Cash and Cash Equivalents:**

- A. Amount
- B. Number of Months

**23. Educational:**

- A. Amount
- B. Number of Months

**24. Employment Services:**

- A. Amount
- B. Number of Months

**25. Work Subsidies:**

- A. Amount
- B. Number of Months

**26. TANF Child Care:**

Guidance: Include only the child care funded directly by the Tribal TANF Program. Do not include child care funded under the Child Care and Development Fund, even though some of the funds were transferred to the CCDF from the TANF program.

- A. Amount
- B. Number of Months

**27. Transportation:**

- A. Amount
- B. Number of Months

**28. Other Supportive Services and Special Needs, including Assistance with Meeting Home Heating and Air Conditioning Costs:**

- A. Amount
- B. Number of Months

**29. Transitional Services:**

- A. Amount
- B. Number of Months

**30. Contributions to Individual Development Accounts:**

- A. Amount
- B. Number of Months

**31. Other:**

- A. Amount
- B. Number of Months

**Reason for and Amount of Reduction in Assistance**

For each reason for which the TANF family received a reduction in assistance for the reporting month, enter the dollar amount of the reduction in assistance. Otherwise, enter "0."

**32. Work Requirements Sanction.**

**33. Family Sanction for an Adult with No High School Diploma or Equivalent.**

**34. Sanction for Teen Parent not Attending School.**

**35. Non-Cooperation with Child Support.**

**36. Failure to Comply with an Individual Responsibility Plan.**

**37. Other Sanction.**

**38. Recoupment of Prior Overpayment.**

**39. Family Cap.**

**40. Reduction Based on Family Moving into Tribe's Service Area from Another TANF Program (Tribal or State).**

**41. Reduction Based on Length of Receipt of Assistance.**

**42. Other, Non-sanction.**

**43. Waiver Evaluation Research Group:**

Guidance: Tribal grantees should leave this field blank.

**44. Is the TANF Family Exempt from the Federal Time Limit Provisions:**

Guidance: Under Tribal TANF rules, an eligible family that does not include an adult (or minor child head-of-household) recipient, who has received assistance for the maximum number of months approved in the Tribe's TANF plan, may continue to receive assistance. A countable month is a month of assistance for which the adult (or minor child head-of-household) is not exempt from the Federal time limit provisions. Proposed Tribal TANF rules provide for two categories of exceptions. First, a family which does not include an adult (or minor child head-of-household) who has received the maximum number of months of countable assistance approved in the Tribe's TANF plan may be exempt from the accrual of months of assistance (i.e., clock not ticking). Second, a family with an adult (or minor child head-of-household), who has received the maximum months of countable assistance approved in the Tribe's TANF plan may be exempt from termination of assistance. Exemptions from termination of assistance include a hardship exemption which allows up to 20% of the families to receive assistance beyond the approved time limit.

Instruction: If the TANF family has no exemption from the Tribe's approved time limit, enter code "1." If the TANF family does not include an adult (or minor child head-of-household) who has received assistance for the maximum number of countable months and is exempt from accrual of months of assistance under the Tribe's approved time limit for the reporting month, enter "2", "3", or "4", whichever is appropriate. Tribe's should not enter "5".

If the TANF family includes an adult (or minor child head-of-household) who has received assistance for the maximum number of countable months and the family is exempt from termination of assistance, enter code "6", "7", "8" or "9", whichever is appropriate. Tribe's should not enter "10" or "11".

01=Family is not exempt from Tribe's approved time limit.

*Family does not include an adult (or minor child head-of-household) who has received assistance for the maximum number of countable months.*

02=Yes, family is exempt from accrual of months under the Tribe's approved time limit for the reporting month because no adult or minor child head-of-household in eligible family receiving assistance.

03=Yes, family is exempt from accrual of months under the Tribe's approved time limit for the reporting month because assistance to family is funded entirely from State-only funds.

04=Yes, family is exempt from accrual of months under the Tribe's approved time limit for the reporting month because the family is living in Indian country or in an Alaska Native village in which at least 50 percent of whose adults are not employed.

05=Yes, family is exempt from accrual of months under the Federal five-year time limit for the reporting month based on an approved waiver policy.

*Family includes an adult (or minor child head-of-household) who has received assistance for the maximum number of countable months under the Tribe's approved time limit.*

06=Yes, family is exempt from termination of assistance under the Tribe's approved time limit for the reporting month because assistance to family is funded entirely from State-only funds.

07=Yes, family is exempt from termination of assistance under the Tribe's approved time limit for the reporting month due to a temporary good cause domestic violence waiver (and an inability to work).

08=Yes, family is exempt from termination of assistance under the Tribe's approved time limit for the reporting month due to a hardship exemption for reason other than domestic violence.

09=Yes, family is exempt from termination of assistance under the Tribe's approved time limit for the reporting month because the adult's (minor child head-of-household's) residence is in Indian country or in an Alaska Native village in which at least 50 percent of whose adults are not employed.

10 = Yes, family (including adults) is exempt from termination of assistance under the Federal five-year time limit for the reporting month in accordance with extension policies prescribed under approved waivers.

11 = Yes, the children in the family are receiving assistance beyond the 60 countable months and the family is exempt from termination of assistance under the Federal five-year time limit for the reporting month in accordance with extension policies prescribed under approved waivers (i.e., adult-only time limit).

#### *Person-Level Data*

Person-level data has two sections: the adult and minor child head-of-household characteristic section and the child characteristics section. Section 419 of the Act defines adult and minor child. An adult is an individual that is not a minor child. A minor child is an individual who (a) has not attained 18 years of age or (b) has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training.)

#### *Adult and Minor Child Head-of-Household Characteristics*

This section allows for coding up to six adults (or a minor child who is either a head-of-household or married to the head-of-household and up to five adults) in the TANF

family. A minor child who is either a head-of-household or married to the head-of-household should be coded as an adult and will hereafter be referred to as a "minor child head-of-household." For each adult (or minor child head-of-household) in the TANF family, complete the adult characteristics section. If a noncustodial parent is participating in work activities funded under the Tribal TANF Program for the reporting month, the noncustodial parent must also be reported in this section as a member of the family receiving assistance.

If there are more than six adults (or a minor child head-of-household and five adults) in the TANF family, use the following order to identify the persons to be coded: (1) The head-of-household; (2) parents in the eligible family receiving assistance; (3) other adults in the eligible family receiving assistance; (4) Parents not in the eligible family receiving assistance; (5) caretaker relatives not in the eligible family receiving assistance; and (6) other persons, whose income or resources count in determining eligibility for or amount of assistance of the eligible family receiving assistance, in descending order the person with the most income to the person with least income.

#### *45. Family Affiliation:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the one-digit code that shows the adult's (or minor child head-of-household's) relation to the eligible family receiving assistance.

1 = Member of the eligible family receiving assistance

*Not in eligible family receiving assistance, but in the household.*

2 = Parent of minor child in the eligible family receiving assistance

3 = Caretaker relative of minor child in the eligible family receiving assistance

4 = Minor sibling of child in the eligible family receiving assistance

5 = Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance

#### *46. Noncustodial Parent Indicator:*

Guidance: A noncustodial parent means a parent who does not live with his/her child(ren). A noncustodial parent, who lives in the State, may participate in work activities funded under the Tribal TANF Program. In order for the noncustodial parent to participate in work activities, (s)he must be a member of the eligible family receiving assistance and be reported as part of the TANF family.

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) noncustodial parent status.

1 = Yes, a noncustodial parent

2 = No

47. *Date of Birth:* Enter the eight-digit code for date of birth for the adult (or minor child head-of-household) under the Tribal TANF Program in the format YYYYMMDD.

48. *Social Security Number:* Enter the nine-digit Social Security Number for

the adult (or minor child head-of-household) in the format nnnnnnnnn.

49. *Race:* Enter the one-digit code for the race of the TANF adult (or minor child head-of-household).

1 = White, not of Hispanic origin

2 = Black, not of Hispanic origin

3 = Hispanic

4 = American Indian or Alaska Native

5 = Asian or Pacific Islander

6 = Other

9 = Unknown

50. *Gender:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) gender.

1 = Male

2 = Female

#### *Receives Disability Benefits*

The Act specifies five types of disability benefits. For each type of disability benefits, enter the one-digit code that indicates whether or not the adult (or minor child head-of-household) received the benefit.

#### *51. Receives Federal Disability Insurance*

*Benefits:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received Federal disability insurance benefits for the reporting month.

1 = Yes, received Federal disability insurance

2 = No

52. *Receives Benefits Based on Federal Disability Status:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received benefits based on Federal disability status for the reporting month.

1 = Yes, received benefits based on Federal disability status

2 = No

#### *53. Receives Aid Under Title XIV-APDT:*

Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XIV for the reporting month.

1 = Yes, received aid under Title XIV-APDT

2 = No

#### *54. Receives Aid Under Title XVI-AABD:*

Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XVI-AABD for the reporting month.

1 = Yes, received aid under Title XVI-AABD

2 = No

#### *55. Receives Aid Under Title XVI-SSI:*

Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XVI-SSI for the reporting month.

1 = Yes, received aid under Title XVI-SSI

2 = No

56. *Marital Status:* Enter the one-digit code for the adult's (or minor child head-of-household's) marital status for the reporting month.

1 = Single, never married

2 = Married, living together

3 = Married, but separated

4 = Widowed

5 = Divorced

#### *57. Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-

household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the two-digit code that shows the adult's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or as determined by the Tribe, (i.e., the relationship to the principal person of each person living in the household). If minor child head-of-household, enter code "01."

- 01 = Head of household
- 02 = Spouse
- 03 = Parent
- 04 = Daughter or son
- 05 = Stepdaughter or stepson
- 06 = Grandchild or great grandchild
- 07 = Other related person (brother, niece, cousin)
- 08 = Foster child
- 09 = Unrelated child
- 10 = Unrelated adult

**58. Teen Parent With Child In the Family:**

Guidance: A teen parent is a person who is under 20 years of age and that person's child is also a member of the TANF family.

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) teen parent status.

- 1 = Yes, a teen parent
- 2 = No

**Educational Level**

Educational level is divided into two parts: The highest level of education attained and the highest degree attained.

**59. Highest Level of Education Attained:**

Enter the two-digit code to indicate the highest level of education attained by the adult (or minor child head-of-household).

- 00 = No formal education
- 01-12 = Grade level completed in primary/secondary school including secondary level vocational school or adult high school

**60. Highest Degree Attained:** If the adult (or minor child head-of-household) has a degree(s), enter the one-digit code that indicates the adult's (or minor child head-of-household's) highest degree attained. Otherwise, leave the field blank.

- 0 = No degree
- 1 = High school diploma, GED, or National External Diploma Program
- 2 = Awarded Associate's Degree
- 3 = Awarded Bachelor's Degree
- 4 = Awarded graduate degree (Master's or higher)
- 5 = Other credentials (degree, certificate, diploma, etc.)

**61. Citizenship/Alienage:**

Guidance: As described in TANF-ACF-PA-97-1, States have the flexibility to: (1) Use State MOE funds to serve "qualified" aliens, including those who enter on or after August 22, 1996; (2) use Federal TANF funds to serve "qualified" aliens who arrived prior to the enactment of the PRWORA on August 22, 1996 (such aliens who arrived after enactment are barred from receiving Federal TANF funds for five years from the date of entry, except for certain aliens such as refugees and asylees); (3) use State MOE funds to serve legal aliens who are not

"qualified"; and (4) use, under section 411(d) of PRWORA, State MOE funds to serve aliens who are not lawfully present in the U.S., but only through enactment of a State law, after the date of PRWORA enactment, which "affirmatively provides" for such benefits.

The citizenship/alienage is divided into four groups: Individuals eligible (for the TANF Program based on citizenship/alienage), individuals eligible at Tribal/State option, individuals not eligible, and status unknown.

Instruction: Enter the two-digit code that indicates the adult's (or minor child head-of-household's) citizenship/alienage.

**Individuals Eligible for the TANF Program**

- 01 = U.S. citizen, including naturalized citizens
- 02 = Permanent resident who has worked forty qualifying quarters; alien who is a veteran with an honorable discharge from the U.S. Armed Forces or is on active duty in the U.S. Armed Forces, or spouse or unmarried dependent children of such alien
- 03 = Qualified alien accorded refugee, Cuban or Haitian entrant, or Amerasian immigrant status (INS Form I-94) who has resided in the U.S. five years or less
- 04 = Qualified alien granted political asylum five or less years ago; qualified alien granted a withholding of deportation by INS (under sec. 243(h) or sec. 241(b)(3) of the INA) five or less years ago.

**Individuals Eligible for the TANF Program at Tribal Option**

- 05 = Qualified alien, (including immigrant accorded permanent resident status ("green card"), parolee granted parole for at least one year under sec. 212(d)(5) of the INA, and certain battered aliens and their children who are determined to be qualified), who arrived in the U.S. prior to enactment (August 22, 1996) or who arrived in the U.S. on or after enactment and has resided in the U.S. more than five years
- 06 = Qualified alien accorded refugee, Cuban or Haitian entrant, or Amerasian immigrant status (INS Form I-94) who has resided in the U.S. more than five years
- 07 = Qualified alien granted political asylum or granted withholding of deportation by INS (under sec. 243(h) or sec. 241(b)(3) of the INA) more than five years ago;

**Individuals Not Eligible for the TANF Program**

- 08 = Qualified alien (other than a refugee, Cuban or Haitian entrant, Amerasian immigrant, asylee, or alien whose deportation has been withheld under sec. 243(h) or sec. 241(b)(3) of the INA) who arrived in the U.S. on or after enactment and has resided in the U.S. less than 5 years.
- 09 = Any alien who is not a qualified alien.

**Status Unknown**

- 99 = Unknown

**62. Number of Months Countable toward Tribe's Approved Federal Time Limit in Own**

**Tribe:** Enter the number of months countable toward the adult's (or minor child head-of-household's) Federal time limit based on assistance received from the Tribe.

**63. Number of Months Countable toward Federal Time Limit in Other Tribes or States:** Enter the number of months countable toward the adult's (or minor child head-of-household's) Federal time limit based on assistance received from other Tribes or States.

**64. Number of Countable Months**

**Remaining Under Tribe's Time Limit:** Enter the number of months that remain countable toward the adult's (or minor child head-of-household's) Tribal time limit.

**65. Is Current Month Exempt from the Tribe's Time Limit:** Enter the one-digit code that indicates the adult's (or minor child head-of-household's) current exempt status from Tribe's time limit.

- 1 = Yes, adult (or minor child head-of-household) is exempt from the Tribe's time limit for the reporting month
- 2 = No

**66. Employment Status:** Enter the one-digit code that indicates the adult's (or minor child head-of-household's) employment status.

- 1 = Employed
- 2 = Unemployed, looking for work
- 3 = Not in labor force (i.e., unemployed, not looking for work, includes discouraged workers)

**67. Work Participation Status:**

Guidance: Disregarded from the participation rate means the TANF family is not included in the calculation of the work participation rate.

Exempt means that the individual will not be penalized for failure to engage in work (i.e., good cause exception); however, the TANF family is included in the calculation of the work participation rate.

Instruction: Enter the two-digit code that indicates the adult's (or minor child head-of-household's) work participation status. Tribes should not enter codes xxx.

- 01 = Disregarded from participation rate, single custodial parent with child under 12 months
- 02 = Disregarded from participation rate because all of the following apply: Required to participate, but not participating, sanctioned for the reporting month, but not sanctioned for more than 3 months within the preceding 12-month period
- 03 = Disregarded, family is part of an ongoing research evaluation (as a member of a control group or experimental treatment group) approved under Section 1115 of the Social Security Act
- 04 = Disregarded from participation rate, is participating in a Tribal Work Program, and State has opted to exclude all Tribal Work Program participants from its work participation rate
- 05 = Exempt, single custodial parent with child under age 6 and unavailability of child care
- 06 = Exempt, disabled (not using an extended definition under a State waiver)
- 07 = Exempt, caring for a severely disabled child (not using an extended definition under a State waiver)

- 08 = A temporary good cause domestic violence waiver (not using an extended definition under a State waiver)
- 09 = Exempt, State waiver
- 10 = Exempt, other
- 11 = Required to participate, but not participating, sanctioned for the reporting month and sanctioned for more than 3 months within the preceding 12-month period
- 12 = Required to participate, but not participating, sanctioned for the reporting month but not sanctioned for more than 3 months within the preceding 12-month period
- 13 = Required to participate, but not participating and not sanctioned for the reporting month
- 14 = Deemed engaged in work, teen head-of-household who maintains satisfactory school attendance
- 15 = Deemed engaged in work, single parent with child under age 6 and parent engaged in work activities for at least 20 hours per week
- 16 = Required to participate, participating but not meeting minimum participation requirements
- 17 = Required to participate, and meeting minimum participation requirements
- 99 = Not applicable (e.g., person living in household and whose income or resources are counted in determining eligibility for or amount of assistance of the family receiving assistance, but not in eligible family receiving assistance)

#### Adult Work Participation Activities

Guidance: To calculate the average number of hours per week of participation in a work activity, add the number of hours of participation across all weeks in the month and divide by the number of weeks in the month. Round to the nearest whole number.

Some weeks have days in more than one month. Include such a week in the calculation for the month that contains the most days of the week (e.g., the week of July 27–August 2, 1997 would be included in the July calculation). Acceptable alternatives to this approach must account for all weeks in the fiscal year. One acceptable alternative is to include the week in the calculation for whichever month the Friday falls (i.e., the JOBS approach.) A second acceptable alternative is to count each month as having 4.33 weeks.

During the first or last month of any spell of assistance, a family may happen to receive assistance for only part of the month. If a family receives assistance for only part of a month, the Tribe may count it as a month of participation if an adult (or minor child head-of-household) in the family (both adults, if they are both required to work) is engaged in work for the minimum average number of hours for the full week(s) that the family receives assistance in that month.

Special Rules: Each adult (or minor child head-of-household) has a life-time limit for vocational educational training. Vocational educational training for each adult or minor child head-of-household may only count as a work activity for a total of 12 months unless the Tribe has been approved for either no limit or some other limit. For any adult (or

minor child head-of-household) that has exceeded the limit, enter "0" as the average number of hours per week of participation in vocational education training, even if (s)he is engaged in vocational education training. The additional participation in vocational education training may be coded under "Other."

Limitations: The four limitations concerning job search and job readiness are: (1) Job search and job readiness assistance only count for 6 weeks in any fiscal year; (2) An individual's participation in job search and job readiness assistance counts for no more than 4 consecutive weeks; (3) If the Tribe's total unemployment rate for a fiscal year is at least 50 percent greater than the United States' total unemployment rate for that fiscal year, then an individual's participation in job search or job readiness assistance counts for up to 12 weeks in that fiscal year; and (4) A State may count 3 or 4 days of job search and job readiness assistance during a week as a full week of participation, but only once for any individual.

For each week in which an adult (or minor child head-of-household) exceeds any of these limitations, use "0" as the number of hours in calculating the average number of hours per week of job search and job readiness, even if (s)he may be engaged in job search or job readiness activities.

Instruction: For each work activity in which the adult (or minor child head-of-household) participated during the reporting month, enter the average number of hours per week of participation, except as noted above. For each work activity in which the adult (or minor child head-of-household) did not participate, enter zero as the average number of hours per week of participation.

68. *Unsubsidized Employment.*
69. *Subsidized Private Sector Employment.*
70. *Subsidized Public Sector Employment.*
71. *Work Experience.*
72. *On-the-job Training.*
73. *Job Search and Job Readiness Assistance.*
74. *Community Service Programs.*
75. *Vocational Educational Training.*
76. *Job Skills Training Directly Related to Employment.*
77. *Education Directly Related to Employment for Individuals with no High School Diploma or Certificate of High School Equivalency.*
78. *Satisfactory School Attendance for Individuals with No High School Diploma or Certificate of High School Equivalency.*
79. *Providing Child Care Services to an Individual Who Is Participating in a Community Service Program.*
80. *Additional Work Activities Permitted Under Waiver Demonstration.*

Instruction: Not applicable to Tribal TANF programs.

#### 81. Other Work Activities.

Guidance: Tribes should complete this element only if they have approved work activities that are other than the above.

#### 82. Required Hours of Work Under Waiver Demonstration:

Guidance: Not applicable to Tribal TANF programs.

#### Amount of Earned Income

Earned income has two categories. For each category of earned income, enter the dollar amount of the adult's (or minor child head-of-household's) earned income.

#### 83. Earned Income Tax Credit (EITC):

Guidance: Earned Income Tax Credit is a refundable tax credit for families and dependent children. EITC payments are received either monthly (as advance payment through the employer), annually (as a refund from IRS), or both.

Instruction: Enter the total dollar amount of the earned income tax credit actually received, whether received as an advance payment or a single payment (e.g., tax refund), by the adult (minor child head-of-household) during the reporting month. If the Tribe counts the EITC as a resource, report it here as earned income in the month received. If the Tribe assumes an advance payment is applied for and obtained, only report what is actually received for this item.

#### 84. Wages, Salaries, and Other Earnings:

#### Amount of Unearned Income

Unearned income has four categories. For each category of unearned income, enter the dollar amount of the adult's (or minor child head-of-household's) unearned income.

85. *Social Security:* Enter the dollar amount of Social Security that the adult in the Tribal TANF family has received for the reporting month.

86. *SSI:* Enter the dollar amount of SSI that the adult in the Tribal TANF family has received for the reporting month.

87. *Worker's Compensation:* Enter the dollar amount of Worker's Compensation that the adult in the Tribal TANF family has received for the reporting month.

#### 88. Other Unearned Income:

Guidance: Other unearned income includes (but is not limited to) RSDI benefits, Veterans benefits, Unemployment Compensation, other government benefits, housing subsidy, contribution/income-in-kind, deemed income, Public Assistance or General Assistance, educational grants/scholarships/loans, other. Do not include Social Security, SSI, Worker's Compensation, value of Food Stamps assistance, the amount of the Child Care subsidy, and the amount of Child Support.

Instruction: Enter the dollar amount of other unearned income that the adult in the Tribal TANF family has received for the reporting month.

#### Child Characteristics

This section allows for coding up to ten children in the TANF family. A minor child head-of-household should be coded as an adult, not as a child. The youngest child should be coded as the first child in the family, the second youngest child as the second child, and so on. If the needs of an unborn child are included in the amount of assistance provided to the family, code the unborn child as one of the children. Do this by entering the Date-of-Birth as "99999999" and leave the other Child Characteristics fields blank.

If there are more than ten children in the TANF family, use the following order to identify the persons to be coded: (1) Children

in the eligible family receiving assistance in order from youngest to oldest; (2) minor siblings of child in the eligible family receiving assistance from youngest to oldest; and (3) any other children.

**89. Family Affiliation:**

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the one-digit code that shows the Child's relation to the eligible family receiving assistance.

1 = Member of the eligible family receiving assistance

*Not in eligible family receiving assistance, but in the household.*

2 = Parent of minor child in the eligible family receiving assistance

3 = Caretaker relative of minor child in the eligible family receiving assistance

4 = Minor sibling of child in the eligible family receiving assistance

5 = Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance

**90. Date of Birth:** Enter the eight-digit code for date of birth for this child under the Tribal TANF Program in the format YYYYMMDD.

**91. Social Security Number:** Enter the nine-digit Social Security Number for the child in the format nnnnnnnnn.

**92. Race:** Enter the one-digit code for the race of the TANF child.

1 = White, not of Hispanic origin

2 = Black, not of Hispanic origin

3 = Hispanic

4 = American Indian or Alaska Native

5 = Asian or Pacific Islander

6 = Other

9 = Unknown

**93. Gender:** Enter the one-digit code that indicates the child's gender.

1 = Male

2 = Female

**Receives Disability Benefits**

The Act specifies five types of disability benefits. Two of these types of disability benefits are applicable to children. For each type of disability benefits, enter the one-digit code that indicates whether or not the child received the benefit.

**94. Receives Benefits Based on Federal Disability Status:** Enter the one-digit code that indicates the child received benefits based on Federal disability status for the reporting month.

1 = Yes, received benefits based on Federal disability status

2 = No

**95. Receives Aid Under Title XVI-SSI:** Enter the one-digit code that indicates the child received aid under a State plan approved under Title XVI-SSI for the reporting month.

1=Yes, received aid under Title XVI-SSI

2=No

**96. Relationship to Head-of-Household:**

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the two-digit code that shows the child's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or as determined by the Tribe, (i.e., the relationship to the principal person of each person living in the household.)

01=Head-of-household

02=Spouse

03=Parent

04=Daughter or son

05=Stepdaughter or stepson

06=Grandchild or great grandchild

07=Other related person (brother, niece, cousin)

08=Foster child

09=Unrelated child

10=Unrelated adult

**97. Teen Parent With Child In the Family:**

Guidance: A teen parent is a person who is under 20 years of age and that person's child is also a member of the TANF family.

Instruction: Enter the one-digit code that indicates the child's teen parent status.

1=Yes, a teen parent

2=No

**Educational Level**

Educational level is divided into two parts: The highest level of education attained and the highest degree attained.

**98. Highest Level of Education Attained:**

Enter the two-digit code to indicate the highest level of education attained by the child.

00=no formal education

01-12=Grade level completed in primary/secondary school including secondary level vocational school or adult high school

**99. Highest Degree Attained:**

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: If the child has a degree(s), enter the one-digit code that indicates the child's highest degree attained. Otherwise, leave the field blank.

0=No degree

1 = High school diploma, GED, or National External Diploma Program

2=Awarded Associate's Degree

3=Awarded Bachelor's Degree

4=Awarded graduate degree (Master's or higher)

5=Other credentials (degree, certificate, diploma, etc.)

9=Not applicable

**100. Citizenship/Alienage:** Enter the two-digit code that indicates the child's citizenship/alienage. The coding for this data element is the same as for item number 56.

**101. Cooperation with Child Support:** Enter the one-digit code that indicates this child's

parent has cooperated with child support for this child.

1 = Yes, child's parent has cooperated with child support

2 = No

3 = Not applicable

**Amount of Unearned Income**

Unearned income has two categories. For each category of unearned income, enter the dollar amount of the child's unearned income.

**102. SSI:** Enter the dollar amount of SSI that the child in the Tribal TANF family has received for the reporting month.

**103. Other Unearned Income:** Enter the dollar amount of other unearned income that the child in the Tribal TANF family has received for the reporting month.

**Child Care Reporting Section**

Complete this section for each child in the TANF family for which a TANF child care subsidy is received (i.e., funded under the Tribal TANF Program). If child care is provided by more than one provider, enter the child care data for the greatest number of hours on the Primary Care line, and the next highest number of child care hours on the Secondary Care line.

**104. Type of Child Care:**

Definition: Provider types are divided into two broad categories of licensed/regulated and legally operating (no license category available in Tribe, State or locality). Under each of these categories are four types of providers: In-home, family home, group home, and centers. A relative provider is defined as one who is at least 18 years of age and who is a grandparent, great-grandparent, aunt or uncle, or sibling living outside the child's home.

Instruction: Enter the two-digit code indicating the type of care for each child. The following codes specify who cared for the child and where such care took place during the reporting month.

01 = Licensed/regulated in-home child care

02 = Licensed/regulated family child care

03 = Licensed/regulated group home child care

04 = Licensed/regulated center-based child care

05 = Legally operating (no license category available in Tribe, State or locality) in-home child care provided by a non-relative

06 = Legally operating (no license category available in Tribe, State or locality) in-home child care provided by a relative

07 = Legally operating (no license category available in Tribe, State or locality) family child care provided by a non-relative

08 = Legally operating (no license category available in Tribe, State or locality) family child care provided by a relative

09 = Legally operating (no license category available in Tribe, State or locality) group child care provided by a non-relative

10 = Legally operating (no license category available in Tribe, State or locality) group child care provided by a relative

11 = Legally operating (no license category available in Tribe, State or locality) center-based child care

- A. *Primary*  
B. *Secondary*

105. *Total Monthly Cost of Child Care:* For each child receiving child care, enter the total dollar amount (round to the nearest dollar) that the provider charges for the service. Include both the fee the family pays and the child care subsidy.

- A. *Primary*  
B. *Secondary*

106. *Total Monthly Hours of Child Care Provided During the Reporting Month:* Enter the three-digit number for the total monthly number of child care hours provided for the reporting month.

Tribes may use their own formula to estimate the number of child care hours provided. If the Tribal or State payment system is based on daily or part day rates, the calculated number of hours of service would be based on the number of full or part days given in each week (as defined by the Tribe or State) multiplied by the number of hours for the full or part day. The calculated number should be reported as the actual number of hours provided.

#### Example

Full day = 8 hours

Part day = 5 hours

Care given = 3 full days and 2 part days

Actual hours of care provided =  $(3 \times 8 + 2 \times 5)$   
= 34

- A. *Primary*  
B. *Secondary*

### Appendix B—Tribal TANF Data Report—Section Two Disaggregated Data Collection for Families No Longer Receiving Assistance Under the TANF Program

#### Instructions and Definitions

General Instruction: The Tribal grantee should collect and report data for each data element, unless explicitly instructed to leave the field blank.

1. *State FIPS Code:* Tribal grantees should leave this field blank.

2. *County FIPS Code:* Tribal grantees should leave this field blank.

3. *Tribal Code:* Tribal grantees should enter the three-digit Tribal code that represents your Tribe. (A complete listing of Tribal Codes will be furnished to Tribes.)

4. *Reporting Month:* Enter the four-digit year and two-digit month code that identifies the year and month for which the data are being reported.

#### 5. *Stratum:*

Guidance: All families selected in the sample from the same stratum must be assigned the same stratum code. Valid stratum codes may range from "00" to "99." Tribes with approved stratified samples should provide the ACF Regional Office with a listing of the numeric codes utilized to identify any stratification. If a Tribe uses a non-stratified sample design or opts to provide data for its entire caseload even though it is eligible to sample, enter the same stratum code (any two-digit number) for each family.

Instruction: Enter the two-digit stratum code.

#### Family-Level Data

Definition: For reporting purposes, the TANF family means (a) all individuals receiving assistance as part of a family under the Tribe's TANF Program; and (b) the following additional persons living in the household, if not included under (a) above:

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

#### 6. *Case Number—TANF:*

Guidance: If the case number is less than the allowable eleven characters, a Tribe may use lead zeros to fill in the number.

Instruction: Enter the number that was assigned by the Tribal grantee to uniquely identify the TANF family.

7. *ZIP Code:* Enter the five-digit ZIP Code for the family's place of residence for the reporting month.

8. *Disposition:* Enter one of the following codes for each TANF family.

- 1 = Data collection completed
- 2 = Not subject to data collection/listing in error

#### 9. *Reason for Closure:*

Guidance: A closed case is a family whose assistance was terminated for the reporting month, but received assistance under the Tribe's TANF Program in the prior month. A temporally suspended case is not a closed case. If there is more than one applicable reason for closure, determine the principal (i.e., most relevant) reason. If two or more reasons are equally relevant, use the reason with the lowest numeric code.

Instruction: Enter the one-digit code that indicates the reason for the TANF family no longer receiving assistance. Tribe's should not enter "7".

- 1 = Employment
- 2 = Marriage
- 3 = Time Limit
- 4 = Sanction
- 5 = Tribal policy
- 6 = Minor child absent from the home for a significant time period
- 7 = Transfer to Separate State MOE Program
- 8 = Other

10. *Number of Family Members:* Enter two digits that represent the number of members in the family, which received assistance under the Tribe's TANF Program.

#### 11. *Receives Subsidized Housing:*

Guidance: Subsidized housing refers to housing for which money was paid by the Federal, State, or Local government or through a private social service agency to the family or to the owner of the housing to assist the family in paying rent. Two families sharing living expenses does not constitute subsidized housing.

Instruction: Enter the one-digit code that indicates whether or not the TANF family received subsidized housing for the reporting month.

- 1 = Public housing
- 2 = HUD rent subsidy
- 3 = Other rent subsidy
- 4 = No housing subsidy

12. *Receives Medical Assistance:* Enter "1" if, for the reporting month, any TANF family member is eligible to receive (i.e., a certified recipient of) medical assistance under a State plan approved under Title XIX or "2" if no TANF family member is eligible to receive medical assistance under a State plan approved under Title XIX.

1 = Yes, is eligible to receive medical assistance

2 = No

13. *Receives Food Stamps:* If the TANF family received Food Stamps for the sample month, enter the one-digit code indicating the type of Food Stamp assistance. Otherwise, enter "4."

1 = Yes, Food Stamp coupon allotment

2 = Yes, cash

3 = Yes, wage subsidy

4 = No

#### 14. *Amount of Food Stamp Assistance:*

Guidance: For situations in which the Food Stamp household differs from the TANF family, code this element in a manner that most accurately reflects the resources available to the TANF family.

Instruction: Enter the TANF family's authorized dollar amount of Food Stamp assistance for the reporting month.

#### 15. *Receives Subsidized Child Care:*

Guidance: For the purpose of coding this data element, subsidized child care funded under the Child Care and Development Fund with funds that were transferred from the State TANF Program should be coded as "2."

Instruction: If the TANF family receives subsidized child care for the reporting month, enter code "1", "2", "3", or "4", whichever is appropriate. Otherwise, enter code "5."

1 = Yes, funded under the Tribal TANF Program

2 = Yes, funded under the Child Care and Development Fund

3 = Yes, funded under another Federal program (e.g., SSBG)

4 = Yes, funded under a Tribal, State, or local program

5 = No

#### 16. *No Amount of Subsidized Child Care:*

Guidance: Subsidized child care means a grant by the Federal, Tribal, State or local government to a parent (or care-taker relative) to support, in part or whole, the cost of child care services provided by an eligible provider to an eligible child. The grant may be paid directly to the parent (or care-taker relative) or to a child care provider on behalf of the parent (or care-taker relative).

Instruction: Enter the dollar amount of subsidized child care that the TANF family has received for services in the reporting month. If the TANF family did not receive any subsidized child care for the reporting month, enter "00."

#### Person-Level Data

Person-level data has two sections: the adult and minor child head-of-household characteristic section and the child characteristics section. Section 419 of the Act defines adult and minor child. An adult is an individual that is not a minor child. A minor child is an individual who (a) has not attained 18 years of age or (b) has not

attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training.)

#### *Adult and Minor Child Head-of-Household Characteristics*

This section allows for coding up to six adults (or a minor child head-of-household and up to five adults) in the TANF family. A minor child head-of-household should be coded as an adult. For each adult (or minor child head-of-household) in the TANF family, complete the adult characteristics section. If a noncustodial parent is participating in work activities funded under the Tribal TANF Program for the reporting month, the noncustodial parent must also be reported in this section as a member of the family receiving assistance.

If there are more than six adults (or a minor child head-of-household and five adults) in the TANF family, use the following order to identify the persons to be coded: (1) The head-of-household; (2) parents in the eligible family receiving assistance; (3) other adults in the eligible family receiving assistance; (4) Parents not in the eligible family receiving assistance; (5) caretaker relatives not in the eligible family receiving assistance; and (6) other persons, whose income or resources count in determining eligibility for or amount of assistance of the eligible family receiving assistance, in descending order the person with the most income to the person with least income.

#### *17. Family Affiliation:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the one-digit code that shows the adult's relation to the eligible family receiving assistance.

1 = Member of the eligible family receiving assistance

*Not in eligible family receiving assistance, but in the household.*

2 = Parent of minor child in the eligible family receiving assistance

3 = Caretaker relative of minor child in the eligible family receiving assistance

4 = Minor sibling of child in the eligible family receiving assistance

5 = Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance

18. *Date of Birth:* Enter the eight-digit code for date of birth for this adult (or minor child head-of-household) under TANF in the format YYYYMMDD.

19. *Social Security Number:* Enter the nine-digit Social Security Number for the adult (or minor child head-of-household) in the format nnnnnnnnn.

20. *Race:* Enter the one-digit code for the race of the TANF adult (or minor child head-of-household).

1 = White, not of Hispanic origin

2 = Black, not of Hispanic origin

3 = Hispanic

4 = American Indian or Alaska Native

5 = Asian or Pacific Islander

6 = Other

9 = Unknown

21. *Gender:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) gender.

1 = Male

2 = Female

#### *Receives Disability Benefits*

The Act specifies five types of disability benefits. For each type of disability benefits, enter the one-digit code that indicates whether or not the adult (or minor child head-of-household) received the benefit.

22. *Receives Federal Disability Insurance Benefits:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received Federal disability insurance benefits for the reporting month.

1 = Yes, received Federal disability insurance

2 = No

23. *Receives Benefits Based on Federal Disability Status:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received benefits based on Federal disability status for the reporting month.

1 = Yes, received benefits based on Federal disability status

2 = No

24. *Receives Aid Under Title XIV-APDT:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XIV for the reporting month.

1 = Yes, received aid under Title XIV-APDT

2 = No

25. *Receives Aid Under Title XVI-AABD:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XVI-AABD for the reporting month.

1 = Yes, received aid under Title XVI-AABD

2 = No

26. *Receives Aid Under Title XVI-SSI:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XVI-SSI for the reporting month.

1 = Yes, received aid under Title XVI-SSI

2 = No

27. *Marital Status:* Enter the one-digit code for the marital status of the recipient.

1 = Single, never married

2 = Married, living together

3 = Married, but separated

4 = Widowed

5 = Divorced

28. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the two-digit code that shows the adult's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or as determined by the Tribe, (i.e., the relationship to the principal person of each

person living in the household.) If a minor child head-of-household, enter code "01."

01 = Head of household

02 = Spouse

03 = Parent

04 = Daughter or son

05 = Stepdaughter or stepson

06 = Grandchild or great grandchild

07 = Other related person (brother, niece, cousin)

08 = Foster child

09 = Unrelated child

10 = Unrelated adult

#### *29. Teen Parent With Child In the Family:*

Guidance: A teen parent is a person who is under 20 years of age and that person's child is also a member of the TANF family.

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) teen parent status.

1 = Yes, a teen parent

2 = No

#### *Educational Level*

Educational level is divided into two parts: the highest level of education attained and the highest degree attained.

#### *30. Highest Level of Education Attained:*

Enter the two-digit code to indicate the highest level of education attained by the adult (or minor child head-of-household).

00 = No formal education

01-12 = Grade level completed in primary/secondary school including secondary level vocational school or adult high school

31. *Highest Degree Attained:* If the adult (or minor child head-of-household) has a degree(s), enter the one-digit code that indicates the adult's (or minor child head-of-household's) highest degree attained. Otherwise, leave the field blank.

0 = No degree

1 = High school diploma, GED, or National External Diploma Program

2 = Awarded Associate's Degree

3 = Awarded Bachelor's Degree

4 = Awarded graduate degree (Master's or higher)

5 = Other credentials (degree, certificate, diploma, etc.)

#### *32. Citizenship/Alienage:*

Guidance: As described in TANF-ACF-PA-97-1, States have the flexibility to: (1) Use State MOE funds to serve "qualified" aliens, including those who enter on or after August 22, 1996; (2) use Federal TANF funds to serve "qualified" aliens who arrived prior to the enactment of the PRWORA on August 22, 1996 (such aliens who arrived after enactment are barred from receiving Federal TANF funds for five years from the date of entry, except for certain aliens such as refugees and asylees); (3) use State MOE funds to serve legal aliens who are not "qualified"; and (4) use, under section 411(d) of PRWORA, State MOE funds to serve aliens who are not lawfully present in the U.S., but only through enactment of a State law, after the date of PRWORA enactment, which "affirmatively provides" for such benefits.

The citizenship/alienage is divided into four groups: individuals eligible (for the TANF Program based on citizenship/

alienage), individuals eligible at State option, individuals not eligible, and status unknown.

Instruction: Enter the two-digit code that indicates the adult's (or minor child head-of-household's) citizenship/alienage.

#### *Individuals Eligible for the TANF Program*

- 01 = U.S. citizen, including naturalized citizens
- 02 = Permanent resident who has worked forty qualifying quarters; alien who is a veteran with an honorable discharge from the U.S. Armed Forces or is on active duty in the U.S. Armed Forces, or spouse or unmarried dependent children of such alien
- 03 = Qualified alien accorded refugee, Cuban or Haitian entrant, or Amerasian immigrant status (INS Form I-94) who has resided in the U.S. five years or less
- 04 = Qualified alien granted political asylum five or less years ago; qualified alien granted a withholding of deportation by INS (under sec. 243(h) or sec. 241(b)(3) of the INA) five or less years ago.

#### *Individuals Eligible for the TANF Program at State Option*

- 05 = Qualified alien, (including immigrant accorded permanent resident status ("green card"), parolee granted parole for at least one year under sec. 212(d)(5) of the INA, and certain battered aliens and their children who are determined to be qualified), who arrived in the U.S. prior to enactment (August 22, 1996) or who arrived in the U.S. on or after enactment and has resided in the U.S. more than five years
- 06 = Qualified alien accorded refugee, Cuban or Haitian entrant, or Amerasian immigrant status (INS Form I-94) who has resided in the U.S. more than five years
- 07 = Qualified alien granted political asylum or granted withholding of deportation by INS (under sec. 243(h) or sec. 241(b)(3) of the INA) more than five years ago;

#### *Individuals Not Eligible for the TANF Program*

- 08 = Qualified alien (other than a refugee, Cuban or Haitian entrant, Amerasian immigrant, asylee, or alien whose deportation has been withheld under sec. 243(h) or sec. 241(b)(3) of the INA) who arrived in the U.S. on or after enactment and has resided in the U.S. less than 5 years.
- 09 = Any alien who is not a qualified alien.

#### *Status Unknown*

- 99 = Unknown

33. *Number of Months Countable toward Tribe's Time Limit in Own Tribe:* Enter the number of months countable toward the adult's (or minor child head-of-household's) Federal five-year time limit based on assistance received from the Tribe.

*Number of Months Countable toward Tribe's Time Limit in Other Tribes or States:* Enter the number of months countable toward the adult's (or minor child head-of-household's) Tribal time limit based on assistance received from other Tribes or States.

*Number of Countable Months Remaining Under Tribe's Time Limit:* Enter the number of months that remain countable toward the adult's (or minor child head-of-household's) Tribal time limit.

36. *Employment Status:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) employment status.

- 1 = Employed
- 2 = Unemployed, looking for work
- 3 = Not in labor force (i.e., unemployed, not looking for work, includes discouraged workers)

#### *Amount of Earned Income*

For each category of earned income, enter the amount of the adult's (or minor child head-of-household's) earned income.

#### 37. *Earned Income Tax Credit (EITC):*

Guidance: Earned Income Tax Credit is a refundable tax credit for families and dependent children. EITC payments are received either monthly (as advance payment through the employer), annually (as a refund from IRS), or both.

Instruction: Enter the total dollar amount of the earned income tax credit actually received, whether received as an advance payment or a single payment (e.g., tax refund), by the adult (minor child head-of-household) during the reporting month. If the Tribe counts the EITC as a resource, report it here as earned income in the month received. If the Tribe assumes an advance payment is applied for and obtained, only report what is actually received for this item.

#### 38. *Wages, Salaries, and Other Earnings:*

#### *Amount of Unearned Income*

39. *Unearned Income:* Enter the amount of the adult's (or minor child head-of-household's) unearned income.

#### *Child Characteristics*

This section allows for coding up to ten children in the TANF family. A minor child head-of-household should be coded as an adult, not as a child. The youngest child should be coded as the first child in the family, the second youngest child as the second child, and so on. If the needs of an unborn child are included in the amount of assistance provided to the family, code the unborn child as one of the children. Do this by entering the Date-of-Birth as "99999999" and leave the other Child Characteristics fields blank.

If there are more than ten children in the TANF family, use the following order to identify the persons to be coded: (1) Children in the eligible family receiving assistance in order from youngest to oldest; (2) minor siblings of child in the eligible family receiving assistance from youngest to oldest; and (3) any other children.

#### 40. *Family Affiliation:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the one-digit code that shows the Child's relation to the eligible family receiving assistance.

- 1 = Member of the eligible family receiving assistance

*Not in eligible family receiving assistance, but in the household.*

- 2 = Parent of minor child in the eligible family receiving assistance
- 3 = Caretaker relative of minor child in the eligible family receiving assistance
- 4 = Minor sibling of child in the eligible family receiving assistance
- 5 = Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance

41. *Date of Birth:* Enter the eight-digit code for date of birth for this child under TANF in the format YYYYMMDD.

42. *Social Security Number:* Enter the nine-digit Social Security Number for the child in the format nnnnnnnnn.

43. *Race:* Enter the one-digit code for the race of the TANF child.

- 1 = White, not of Hispanic origin
- 2 = Black, not of Hispanic origin
- 3 = Hispanic
- 4 = American Indian or Alaska Native
- 5 = Asian or Pacific Islander
- 6 = Other
- 9 = Unknown

44. *Gender:* Enter the one-digit code that indicates the child's gender.

- 1 = Male
- 2 = Female

#### *Receives Disability Benefits*

The Act specifies five types of disability benefits. Two of these types of disability benefits are applicable to children. For each type of disability benefits, enter the one-digit code that indicates whether or not the child received the benefit.

45. *Receives Benefits Based on Federal Disability Status:* Enter the one-digit code that indicates the child received benefits based on Federal disability status for the reporting month.

- 1 = Yes, received benefits based on Federal disability status
- 2 = No

46. *Receives Aid Under Title XVI-SSI:* Enter the one-digit code that indicates the child received aid under a State plan approved under Title XVI-SSI for the reporting month.

- 1 = Yes, received aid under Title XVI-SSI
- 2 = No

#### 47. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the two-digit code that shows the child's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or as determined by the Tribe, (i.e., the

relationship to the principal person of each person living in the household.)

- 01 = Head of household
- 02 = Spouse
- 03 = Parent
- 04 = Daughter or son
- 05 = Stepdaughter or stepson
- 06 = Grandchild or great grandchild
- 07 = Other related person (brother, niece, cousin)
- 08 = Foster child
- 09 = Unrelated child
- 10 = Unrelated adult

**48. Teen Parent With Child In the Family:**

Guidance: A teen parent is a person who is under 20 years of age and that person's child is also a member of the TANF family.

Instruction: Enter the one-digit code that indicates the child's teen parent status.

- 1 = Yes, a teen parent
- 2 = No

**Educational Level**

Educational level is divided into two parts: the highest level of education attained and the highest degree attained.

**49. Highest Level of Education Attained:**

Enter the two-digit code to indicate the highest level of education attained by the child.

- 00 = No formal education
- 01–12 = Grade level completed in primary/secondary school including secondary level vocational school or adult high school

**50. Highest Degree Attained:**

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: If the child has a degree(s), enter the one-digit code that indicates the child's highest degree attained. Otherwise, leave the field blank.

- 0 = No degree
- 1 = High school diploma, GED, or National External Diploma Program
- 2 = Awarded Associate's Degree
- 3 = Awarded Bachelor's Degree
- 4 = Awarded graduate degree (Master's or higher)
- 5 = Other credentials (degree, certificate, diploma, etc.)
- 9 = Not applicable

**51. Citizenship/Alienage:** Enter the two-digit code that indicates the child's citizenship/alienage. The coding for this data element is the same as for item number 27, on page xxx.

**52. Cooperation with Child Support:** Enter the one-digit code that indicates whether this child's parent has cooperated with child support for this child.

- 1 = Yes, child's parent has cooperated with child support
- 2 = No, child's parent has not cooperated with child support
- 3 = Not applicable

**53. Unearned Income:** Enter the dollar amount of the child's unearned income.

**Appendix C—Tribal TANF Data Report—Section Three Aggregated Data Collection for Families Applying for, Receiving, and No Longer Receiving Assistance Under the TANF Program**

**Instructions and Definitions**

1. **State FIPS Code:** Enter your two-digit State code. Tribal grantees should leave this field blank.

2. **Tribal Code:** For Tribal grantees only, enter the three-digit Tribal code that represents your Tribe. (A complete listing of Tribal Codes will be furnished to Tribes.)

3. **Calendar Quarter:** The four calendar quarters are as follows:

First quarter—January–March

Second quarter—April–June

Third quarter—July–September

Fourth quarter—October–December

Enter the four-digit year and one-digit quarter code (in the format YYYYQ) that identifies the calendar year and quarter for which the data are being reported (e.g., first quarter of 1997 is entered as "19971").

**Applications**

Guidance: The term "application" means the action by which an individual indicates in writing to the agency administering the Tribal TANF Program his/her desire to receive assistance.

Instruction: All counts of applications should be unduplicated monthly totals.

4. **Total Number of Applications:** Enter the total number of approved and denied applications received for each month of the quarter. For each month in the quarter, the total in this item should equal the sum of the number of approved applications (in item #5) and the number of denied applications (in item #6).

- A. First Month:
- B. Second Month:
- C. Third Month:

5. **Total Number of Approved Applications:** Enter the number of applications approved during each month of the quarter.

- A. First Month:
- B. Second Month:
- C. Third Month:

6. **Total Number of Denied Applications:** Enter the number of applications denied (or otherwise disposed of) during each month of the quarter.

- A. First Month:
- B. Second Month:
- C. Third Month:

**Active Cases**

For purposes of completing this report, include all TANF eligible cases receiving assistance (i.e., cases funded under the TANF block grant as cases receiving assistance under the Tribal TANF Program. All counts of families and recipients should be unduplicated monthly totals.

7. **Total Amount of Assistance:** Enter the dollar value of all assistance (cash and non-cash) provided to TANF families under the Tribal TANF Program for each month of the quarter. Round the amount of assistance to the nearest dollar.

- A. First Month:
- B. Second Month:

**C. Third Month:**

8. **Total Number of Families:** Enter the number of families receiving assistance under the Tribal TANF Program for each month of the quarter. The total in this item should equal the sum of the number of two-parent families (in item #9), the number of one-parent families (in item #10) and the number of no-parent families (in item #11).

- A. First Month:
- B. Second Month:
- C. Third Month:

9. **Total Number of Two-parent Families:** Enter the total number of 2-parent families receiving assistance under the Tribal TANF Program for each month of the quarter.

- A. First Month:
- B. Second Month:
- C. Third Month:

10. **Total Number of One-Parent Families:** Enter the total number of one-parent families receiving assistance under the Tribal TANF Program for each month of the quarter.

- A. First Month:
- B. Second Month:
- C. Third Month:

11. **Total Number of No-Parent Families:** Enter the total number of no-parent families receiving assistance under the Tribal TANF Program for each month of the quarter.

- A. First Month:
- B. Second Month:
- C. Third Month:

12. **Total Number of Recipients:** Enter the total number of recipients receiving assistance under the Tribal TANF Program for each month of the quarter. The total in this item should equal the sum of the number of adult recipients (in item #13) and the number of child recipients (in item #14).

- A. First Month:
- B. Second Month:
- C. Third Month:

13. **Total Number of Adult Recipients:** Enter the total number of adult recipients receiving assistance under the Tribal TANF Program for each month of the quarter.

- A. First Month:
- B. Second Month:
- C. Third Month:

14. **Total Number of Child Recipients:** Enter the total number of child recipients receiving assistance under the Tribal TANF Program for each month of the quarter.

- A. First Month:
- B. Second Month:
- C. Third Month:

15. **Total Number of Non-Custodial Parents Participating in Work Activities:** Enter the total number of non-custodial parents participating in work activities under the Tribal TANF Program for each month of the quarter.

- A. First Month:
- B. Second Month:
- C. Third Month:

16. **Total Number of Minor Child Heads-of-Household:** Enter the total number of minor child head-of-household families receiving assistance under the Tribal TANF Program for each month of the quarter.

- A. First Month:
- B. Second Month:
- C. Third Month:

17. **Total Number of Births:** Enter the total number of births for families receiving

assistance under the Tribal TANF Program for each month of the quarter.

- A. First Month:
- B. Second Month:
- C. Third Month:

18. *Total Number of Out-of-Wedlock Births:* Enter the total number of out-of-wedlock births for families receiving assistance under the Tribal TANF Program for each month of the quarter.

- A. First Month:
- B. Second Month:
- C. Third Month:

#### Closed Cases

19. *Total Number of Closed Cases:* Enter the total number of closed cases for each month of the quarter.

- A. First Month:
- B. Second Month:
- C. Third Month:

### Appendix D—Sampling Specifications

#### 1. Sample Methodology

The sample methodology must conform to principles of probability sampling, i.e., each family in the population of interest must have a known, non-zero probability of selection and computational methods of estimation must lead to a unique estimate. The Tribe must construct a sample frame for each month in the annual sample period and must select approximately one-twelfth of the required minimum annual sample size from each monthly sample frame.

The recommended method of sample selection is stratified systematic random sampling.

#### 2. Sample Frame Requirements for

a. *families receiving assistance under the Tribal TANF Program (i.e., the active TANF sample) are:*

The monthly TANF sample frame must consist of an unduplicated list of all families who receive assistance under the Tribal TANF Program for the reporting month by the end of the reporting month. Only families

with a minor child who resides with a custodial parent or other adult relative or a pregnant woman may receive assistance.

b. *families no longer receiving assistance under the Tribal TANF Program (i.e., the closed TANF sample) are:*

For closed cases, the monthly TANF sample frame must consist of an unduplicated list of all families who received assistance under the Tribal TANF Program who were terminated for the reporting month (do not include families whose assistance was temporarily suspended), but received assistance under the Tribe's TANF Program in the prior month.

#### 3. Sample Size Requirement

a. *for families receiving assistance under the Tribe's TANF Program are:*

The minimum required annual sample size for families receiving assistance is 3000 families, of which 600 families must be newly, approved applicants. Of the 2400 families that have received ongoing assistance approximately 25% (600 families) must be two-parent TANF families. We established the minimum required sample sizes to provide reasonably precise estimates (e.g., a precision of about plus or minus 2 percentage points at a 95% confidence level) for such proportions as the work participation rates for all families and for two-parent families, as well as for demographic and case characteristics of newly, approved TANF families and all TANF families.

b. *for families no longer receiving assistance under the Tribe's TANF Program are:*

The minimum required annual sample size for the sample of families no longer receiving assistance (i.e., closed cases) is 800 families.

#### What Must Tribes Submit to ACF?

Each Tribe that meets the sampling criteria and opts to sample its caseloads must submit the following:

a. Each Tribe must submit for approval its annual sampling plan or any changes to its currently approved sampling plan at least sixty (60) calendar days before the start of the annual period. If the Tribe's sampling plan is unchanged from the previous year, the Tribe is not required to resubmit the sampling plan. The sampling plan must satisfy the requirements for plan approval as specified in Section 1300 of the TANF Sampling and Statistical Methods Manual and includes the following:

- i. Documentation of methods for constructing and maintaining the sample frame(s), including assessment of frame completeness and any potential problems associated with using the sample frame(s);
- ii. Documentation of methods for selecting the sample cases from the sample frame(s); and
- iii. Documentation of methods for estimating case characteristics and their sampling errors, including the computation of weights, where appropriate.

b. Each Tribe must submit the estimated average monthly caseload for the annual sample period and the computed sample interval (if applicable) to the ACF Regional Administrator thirty (30) calendar days before the beginning of the annual sample period, i.e., by September 1 for the October sample selection. Tribes must submit the monthly list of selected sample cases (including reserve pool cases, if applicable) within 10 days of the date of selection specified in the Tribe's sampling plan.

c. Each Tribe must submit the total number of families receiving assistance under the Tribe's TANF Program by stratum for each month in the annual sample period and the total number of families no longer receiving assistance under the Tribe's TANF Program (if stratified, by stratum) for each month in the annual sample period. This data is required for weighting the sample results in order to produce estimates for the entire caseload.

### APPENDIX E.—STATUTORY REFERENCE TABLE FOR APPENDIX A

| Data elements                                   | Justification  |
|---|--|
| 1. State FIPS Code .....                        | N/A for Tribal TANF programs.  |
| 2. County FIPS Code .....                       | 411(a)(1)(A)(i).   |
| 3. Tribal Code .....                            | Implicit in administering data collection system.  |
| 4. Reporting Month .....                        | Implicit in administering data collection system.  |
| 5. Stratum .....                                | Implicit in administering data collection system.  |
| Family Level Data .....                         | Items 6–44.  |
| 6. Case Number .....                            | Implicit in administering data collection system.  |
| 7. ZIP Code .....                               | Needed for geographic coding (and rural/urban analyses) and is readily available.  |
| 8. Funding Stream .....                         | 411(a)(1)(A)(xii): Use in calculation of participation rate.   |
| 9. Disposition .....                            | Implicit in administering data collection system.  |
| 10. New Applicant .....                         | 411(b), requires the Secretary to report to Congress on families applying for TANF assistance. This element identifies applicants that are newly approved families receiving assistance. |
| 11. Number of Family Members .....              | 411(a)(1)(A)(iv).  |
| 12. Type of Family for Work Participation ..... | 411(a)(1)(A)(xii): Use in calculation of participation rate.   |
| 13. Receives Subsidized Housing .....           | 411(a)(1)(A)(ix).  |
| 14. Receives Medical Assistance .....           | 411(a)(1)(A)(ix).  |
| 15. Receives Food Stamps .....                  | 411(a)(1)(A)(ix).  |
| 16. Amount of Food Stamp Assistance .....       | 411(a)(1)(A)(ix).  |
| 17. Receives Subsidized Child Care .....        | 411(a)(1)(A)(ix).  |
| 18. Amount of Subsidized Child Care .....       | 411(a)(1)(A)(ix).  |

## APPENDIX E.—STATUTORY REFERENCE TABLE FOR APPENDIX A—Continued

| Data elements   | Justification  |
|---|--|
| 19. Amount of Child Care Disregard .....  | The CCDF sample will not capture children whose child care is funded by TANF. The data element is collected here because it is required under CCDF and this is the most cost-effective way to capture TANF Child Care information. (See Sec. 658K (a)(2)(C)).  |
| 20. Amount of Child Support .....   | 411(a)(1)(A)(xiv): break-out of unearned income.   |
| 21. Amount of the Families' Cash Resources .....  | 411(b), requires the Secretary to report to Congress on financial circumstances of families receiving TANF assistance. Items 22—31 are types of assistance.  |
| Amount of Assistance Received and Number of Months the Family Received Assistance by Type under the Tribal TANF Program.    |  |
| 22. Cash and Cash Equivalents .....   | 411(a)(1)(A)(x)&(xiii).  |
| 23. Educational .....   | 411(a)(1)(A)(x)&(xiii).  |
| 24. Employment Services .....   | 411(a)(1)(A)(x)&(xiii).  |
| 25. Work Subsidies .....  | 411(a)(1)(A)(x)&(xiii).  |
| 26. TANF Child Care .....   | 411(a)(1)(A)(x)&(xiii).  |
| 27. Transportation .....  | 411(a)(1)(A)(x)&(xiii).  |
| 28. Other Supportive Services and Special Needs, Including Assistance with Meeting Home Heating and Air Conditioning Costs. | 411(a)(1)(A)(x)&(xiii).  |
| 29. Transitional Services .....   | 411(a)(1)(A)(x)&(xiii).  |
| 30. Contributions to Individual Development Accounts .....  | 411(a)(1)(A)(x)&(xiii).  |
| 31. Other .....   | 411(a)(1)(A)(x)&(xiii).  |
| Reason for and Amount of Reduction in Assistance .....  | Items 32—42 are the reasons for reduction in assistance.   |
| 32. Work Requirements Sanction .....  | 411(a)(1)(A)(xiii).  |
| 33. Family Sanction for an Adult with No High School Diploma or Equivalent.   | 411(a)(1)(A)(xiii).  |
| 34. Sanction for Teen Parent Not Attending School .....   | 411(a)(1)(A)(xiii).  |
| 35. Non-Cooperation with Child Support .....  | 411(a)(1)(A)(xiii).  |
| 36. Failure to Comply with an Individual Responsibility Plan .....  | 411(a)(1)(A)(xiii).  |
| 37. Other Sanction .....  | 411(a)(1)(A)(xiii).  |
| 38. Recoupment of Prior Overpayment .....   | 411(a)(1)(A)(xiii).  |
| 39. Family Cap .....  | 411(a)(1)(A)(xiii).  |
| 40. Reduction Based on Family Moving into Tribe From Another State or Tribal TANF Program.                                  | 411(a)(1)(A)(xiii).  |
| 41. Reduction Based on Length of Receipt of Assistance .....  | 411(a)(1)(A)(xiii).  |
| 42. Other, Non-sanction .....   | 411(a)(1)(A)(xiii).  |
| 43. Waiver Evaluation Research Group .....  | 411(a)(1)(A)(xii): Use to calculate the participation rate for States with an ongoing waiver evaluation for impact analysis purposes. N/A to Tribal TANF programs.   |
| 44. Is the TANF Family Exempt from the Federal Time Limit .....   | 409(a)(9).   |
| Adult Characteristics .....   | Items 45—88.   |
| 45. Family Affiliation .....  | 411(a)(1)(A)(iv) and 411(b): Needed to identify persons in eligible family receiving assistance and other individuals living in the household.   |
| 46. Noncustodial Parent Indicator .....   | 411(a)(4): Report on Non-custodial Parents requires the number of non-custodial Parents. To provide assistance to non-custodial parents under the Tribal TANF Program, Tribes must include them in the family. Data could be collected under the element Relationship to Head-of-Household. Element was broken out to make the coding cleaner and easier for Tribes to report. |
| 47. Date of Birth .....   | 411(a)(1)(A)(iii): Age—Date of birth gives the same information but is a constant.   |
| 48. Social Security Number .....  | This information is also readily available. We need this information also for research on the circumstances of children and families as required in section 413(g) of the Act (i.e., to track individual members of the TANF family).  |
| 49. Race .....  | 411(a)(1)(A)(vii).   |
| 50. Gender .....  | Data could be collected under the element Relationship to Head-of-Household (e.g., husband, wife, daughter, son, etc.). Element was broken out to make the coding cleaner and easier for Tribes to report. Used the Secretary's Report to the Congress.  |
| Receives Federal Disability Benefits .....  | Items 51—55.   |
| 51. Receives Federal Disability Insurance Benefits .....  | 411(a)(1)(A)(ii) as revised by P.L. 105—33.  |
| 52. Receives Benefits Based on Federal Disability Status .....  | 411(a)(1)(A)(ii) as revised by P.L. 105—33.  |
| 53. Receives Aid Under Title XIV-APDT .....   | 411(a)(1)(A)(ii) as revised by P.L. 105—33.  |
| 54. Receives Aid Under Title XVI-AABD .....   | 411(a)(1)(A)(ii) as revised by P.L. 105—33.  |
| 55. Receives Aid Under Title XVI-SSI .....  | 411(a)(1)(A)(ii) as revised by P.L. 105—33.  |
| 56. Marital Status .....  | 411(a)(1)(A)(vi).  |
| 57. Relationship to Head-of-Household .....   | 411(a)(1)(A)(iv) as revised by P.L. 105—33.  |
| 58. Teen Parent with Child in the Family .....  | 411(a)(1)(A)(xvii) as revised by P.L. 105—33.  |
| Adult Educational Level .....   | Items 59 and 60.   |
| 59. Highest Level of Education Attained .....   | 411(a)(1)(A)(vii).   |
| 60. Highest Degree Attained .....   | 411(a)(1)(A)(vii).   |
| 61. Citizenship/Alienage .....  | 411(a)(1)(A)(xv): We have updated our prior coding of citizenship status to reflect the complexity of TANF; also 409(a)(1).  |

## APPENDIX E.—STATUTORY REFERENCE TABLE FOR APPENDIX A—Continued

| Data elements   | Justification   |
|---|---|
| 62. Number of Months Countable toward Federal Time Limit in Own Tribe.  | 409(a)(9).  |
| 63. Number of Months Countable toward Federal Time Limit in Other States or Tribes.   | 409(a)(9).  |
| 64. Number of Countable Months Remaining Under Tribe's Time Limit   | 409(a)(9).  |
| 65. Is Current Month Exempt from the Tribe's Time Limit .....   | 409(a)(9).  |
| 66. Employment Status .....   | 411(a)(1)(A)(v).  |
| 67. Work Participation Status .....   | 411(a)(1)(A)(xii): Needed to calculate the work participation rate.   |
| Adult Work Participation Activities .....   | Items 68—81 are the work participation activities and are needed to calculate the work participation rate.  |
| 68. Unsubsidized Employment .....   | 411(a)(1)(A)(xi)(III).  |
| 69. Subsidized Private Sector Employment .....  | 411(a)(1)(A)(xi)(III).  |
| 70. Subsidized Public Sector Employment .....   | 411(a)(1)(A)(xi)(IV).   |
| 71. Work Experience .....   | 411(a)(1)(A)(xi)(IV).   |
| 72. On-the-job Training .....   | 411(a)(1)(A)(xi)(VI).   |
| 73. Job Search and Job Readiness Assistance .....   | 411(a)(1)(A)(xi)(V).  |
| 74. Community Service Programs .....  | 411(a)(1)(A)(xi)(IV).   |
| 75. Vocational Educational Training .....   | 411(a)(1)(A)(xi)(VII).  |
| 76. Job Skills Training Directly Related to Employment .....  | 411(a)(1)(A)(xi)(VI).   |
| 77. Education Directly Related to Employment for Individuals with no High School Diploma or Certificate of High School Equivalency. | 411(a)(1)(A)(xi)(I).  |
| 78. Satisfactory School Attendance for Individuals with no High School Diploma or Certificate of High School Equivalency.           | 411(a)(1)(A)(xi)(I).  |
| 79. Providing Child Care Services to an Individual who is Participating in a Community Service Program.                             | 411(a)(1)(A)(xi).   |
| 80. Additional Work Activities Permitted Under Waiver .....   | 411(a)(1)(A)(xii): Use to calculate work participation rate, when approved 1115 waiver permits other work activities.   |
| 81. Other Work Activities .....   | Related to 411(a)(1)(A)(xii) and 409(a)(3).   |
| 82. Required Hours of Work Under Waiver .....   | 411(a)(1)(A)(xii): Use to calculate the Work participation rate, when approved 1115 waiver permits a different number of hours of work participation to count as engaged in work.   |
| Adult Earned Income .....   | Items 83 and 84 break out earned income.  |
| 83. Earned Income Tax Credit (EITC) .....   | 411(a)(1)(A)(v).  |
| 84. Wages, Salaries, and Other Earnings .....   | 411(a)(1)(A)(v).  |
| Adult Unearned Income .....   | Items 85 and 88 break out Unearned income.  |
| 85. Amount of Social Security .....   | 411(a)(1)(A)(xiv).  |
| 86. Amount of SSI .....   | 411(a)(1)(A)(xiv).  |
| 87. Amount of Worker's Compensation .....   | 411(a)(1)(A)(xiv).  |
| 88. Amount of Other Unearned Income .....   | 411(a)(1)(A)(xiv).  |
| Child Characteristics .....   | Items 89—109.   |
| 89. Family Affiliation .....  | 411(a)(1)(A)(iv) and 411(b): Needed to identify persons in eligible family receiving assistance and other individuals living in the household.  |
| 90. Date of Birth .....   | 411(a)(1)(A)(iii): Age—Date of birth gives the same information but is a constant.  |
| 91. Social Security Number .....  | This information is also readily available. We need this information also for research on the circumstances of children and families as required in section 413(g) of the Act (i.e., to track individual members of the TANF family).                   |
| 92. Race .....  | 411(a)(1)(A)(viii).   |
| 93. Gender .....  | Data could be collected under the element Relationship to Head-of-Household (e.g., husband, wife, daughter, son, etc.). Element was broken out to make the coding cleaner and easier for Tribes to report. Used the Secretary's Report to the Congress. |
| Receives Federal Disability Benefits .....  |   |
| 94. Receives Benefits Based on Federal Disability Status .....  | 411(a)(1)(A)(ii) as revised by P.L. 105–33.   |
| 95. Receives Aid Under Title XVI—SSI .....  | 411(a)(1)(A)(ii) as revised by P.L. 105–33.   |
| 96. Relationship to Head-of-household .....   | 411(a)(1)(A)(iv) as revised by P.L. 105–33.   |
| 97. Teen Parent with Child in the Family .....  | 411(a)(1)(A)(xvii) as revised by P.L. 105–33.   |
| Child Educational Level .....   | Items 101 and 102.  |
| 98. Highest Level of Education Attained .....   | 411(a)(1)(A)(viii).   |
| 99. Highest Degree Attained .....   | 411(a)(1)(A)(viii).   |
| 100. Citizenship/Alienage .....   | 411(a)(1)(A)(xv): We have updated our prior coding of citizenship status to reflect TANF; also 409(a)(1).   |
| 101. Cooperation with Child Support .....   | 409(a)(5).  |
| Child Unearned Income .....   | Items 105 and 106.  |
| 102. Amount of SSI .....  | 411(a)(1)(A)(xiv).  |
| 103. Amount of Other Unearned Income .....  | 411(a)(1)(A)(xiv)—rather than breaking out unearned income into its parts, we ask for an indicator that the recipient has certain types of unearned income.   |
| Child Care Reporting Section .....  | Items 107–109.  |

## APPENDIX E.—STATUTORY REFERENCE TABLE FOR APPENDIX A—Continued

| Data elements   | Justification  |
|---|--|
| 104. Type of Child Care .....   | The CCDF sample will not capture children whose child care is funded by TANF. The data element is collected here because it is required under CCDF and this is the most cost-effective way to capture TANF Child Care information. See Sec. 658K (a)(2)(C).  |
| 105. Total Monthly Cost of Child Care .....                                 | The CCDF sample will not capture children whose child care is funded by TANF. The data element is collected here because it is required under CCDF and this is the most cost-effective way to capture TANF Child Care information. (See Sec. 658K (a)(2)(C)). The Total Amount of the Child Care Subsidy (required by 411 (a)) may be derived from this item and the total Monthly cost of child Care. |
| 106. Total Monthly Hours of Child Care Provided During the Reporting Month. | The CCDF sample will not capture children whose child care is funded by TANF. The data element is collected here because it is required under CCDF and this is the most cost-effective way to capture TANF Child Care information. See Sec. 658K (a)(2)(C).  |

## APPENDIX F.—STATUTORY REFERENCE TABLE FOR APPENDIX B

| Data elements  | Justification   |
|--|---|
| 1. State FIPS Code .....                                       | N/A for Tribal TANF programs.   |
| 2. County FIPS Code .....                                      | 411(b): Use to construct comparable statistics based on 411 (a) (1) (A), for families receiving assistance.   |
| 3. Tribal Code .....   | Implicit in administering data collection system.   |
| 4. Reporting Month .....                                       | Implicit in administering data collection system.   |
| 5. Stratum .....   | Implicit in administering data collection system.   |
| Family Level Data .....  | Items 6–16.   |
| 6. Case Number .....   | Implicit in administering data collection system.   |
| 7. ZIP Code .....  | Needed for geographic coding (and rural/urban analyses) and is readily available.   |
| 8. Disposition .....   | Implicit in administering data collection system.   |
| 9. Reason for Closure .....                                    | 411(a) (1) (A) (xvi).   |
| 10. Number of Family Members .....                             | 411(b): Use to construct comparable statistics based on 411 (a) (1) (A), for families receiving assistance.   |
| 11. Receives Subsidized Housing .....                          | 411(b): Use to construct comparable statistics based on 411 (a) (1) (A), for families receiving assistance.   |
| 12. Receives Medical Assistance .....                          | 411(b): Use to construct comparable statistics based on 411 (a) (1) (A), for families receiving assistance.   |
| 13. Receives Food Stamps .....                                 | 411(b): Use to construct comparable statistics based on 411 (a) (1) (A), for families receiving assistance.   |
| 14. Amount of Food Stamp Assistance .....                      | 411(b): Use to construct comparable statistics based on 411 (a) (1) (A), for families receiving assistance.   |
| 15. Receives Subsidized Child Care .....                       | 411(b): Use to construct comparable statistics based on 411 (a) (1) (A), for families receiving assistance.   |
| 16. Amount of Subsidized Child Care .....                      | 411(b): Use to construct comparable statistics based on 411 (a) (1) (A), for families receiving assistance.   |
| Adult Characteristics .....                                    | Items 17–39.  |
| 17. Family Affiliation .....                                   | Needed to identify persons in Tribe-defined family and other individuals living in the household.   |
| 18. Date of Birth .....  | 411(b): Use to construct comparable statistics based on 411 (a) (1) (A), for families receiving assistance.   |
| 19. Social Security Number .....                               | This information is also readily available. We need this information also for research on the circumstances of children and families as required in section 413(g) of the Act (i.e., to track individual members of the TANF family).                   |
| 20. Race .....   | 411(b): Use to construct comparable statistics based on 411 (a) (1) (A), for families receiving assistance.   |
| 21. Gender .....   | Data could be collected under the element Relationship to Head-of-Household (e.g., husband, wife, daughter, son, etc.). Element was broken out to make the coding cleaner and easier for Tribes to report. Used the Secretary's Report to the Congress. |
| Receives Federal Disability Benefits .....                     | Items 22–26.  |
| 22. Receives Federal Disability Insurance Benefits .....       | 411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.  |
| 23. Receives Benefits Based on Federal Disability Status ..... | 411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.  |
| 24. Receives Aid Under Title XIV—APDT .....                    | 411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.  |
| 25. Receives Aid Under Title XVI—AABD .....                    | 411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.  |
| 26. Receives Aid Under Title XVI—SSI .....                     | 411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.  |

## APPENDIX F—STATUTORY REFERENCE TABLE FOR APPENDIX B—Continued

| Data elements   | Justification   |
|---|---|
| 27. Marital Status .....  | 411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.  |
| 28. Relationship to Head-of-Household .....   | 411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.  |
| 29. Teen Parent with Child in the Family .....                                      | 411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.  |
| Adult Educational Level .....   | Items 30 and 31.  |
| 30. Highest Level of Education Attained .....                                       | 411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.  |
| 31. Highest Degree .....  | 411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.  |
| 32. Citizenship/Alienage .....  | 411(b): Use to construct comparable statistics based on 411(a)(1)(A) and 409(a)(1), for families receiving assistance.  |
| 33. Number of Months Countable toward Federal Time Limit in Own Tribe.              | 411(b): Use to construct comparable statistics based on 409(a)(9), for families receiving assistance.   |
| 34. Number of Months Countable toward Federal Time Limit in Other Tribes or States. | 411(b): Use to construct comparable statistics based on 409(a)(9), for families receiving assistance.   |
| 35. Number of Countable Months Remaining Under Tribe's Time Limit                   | 411(b): Use to construct comparable statistics based on 409(a)(9), for families receiving assistance.   |
| 36. Employment Status .....   | 411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.  |
| Adult Earned Income .....   | Items 37 and 38 break out earned income.  |
| 37. Earned Income Tax Credit (EITC) .....   | 411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.  |
| 38. Wages, Salaries, and Other Earnings .....                                       | 411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.  |
| 39. Unearned Income .....   | 411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.  |
| Child Characteristics .....   | Items 40–52.  |
| 40. Family Affiliation .....  | Needed to identify persons in Tribe-defined family and other individuals living in the household.   |
| 41. Date of Birth .....   | 411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.  |
| 42. Social Security Number .....  | This information is also readily available. We need this information also for research on the circumstances of children and families as required in section 413(g) of the Act (i.e., to track individual members of the TANF family).                   |
| 43. Race .....  | 411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.  |
| 44. Gender .....  | Data could be collected under the element Relationship to Head-of-Household (e.g., husband, wife, daughter, son, etc.). Element was broken out to make the coding cleaner and easier for Tribes to report. Used the Secretary's Report to the Congress. |
| Receives Federal Disability Benefits .....  | Items 45–49.  |
| 45. Receives Benefits Based on Federal Disability Status .....                      | 411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.  |
| 46. Receives Aid Under Title XVI—SSI .....  | 411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.  |
| 47. Relationship to Head-of-Household .....   | 411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.  |
| 48. Teen Parent with Child in the Family .....                                      | 411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.  |
| Child Educational Level .....   | Items 52 and 53.  |
| 49. Highest Level of Education Attained .....                                       | 411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.  |
| 50. Highest Degree .....  | 411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.  |
| 51. Citizenship/Alienage .....  | 411(b): Use to construct comparable statistics based on 411(a)(1)(A) and 409(a)(1), for families receiving assistance.  |
| 52. Cooperation with Child Support .....  | 411(b): Use to construct comparable statistics based on 409(a)(5), for families receiving assistance.   |
| 53. Unearned Income .....   | 411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.  |

## APPENDIX G.—STATUTORY REFERENCE TABLE FOR APPENDIX C

| Data elements             | Statutory basis                                   |
|---------------------------|---|
| 1. State FIPS Code .....  | N/A for Tribal TANF programs.                     |
| 2. Tribal Code .....      | Implicit in administering data collection system. |
| 3. Calendar Quarter ..... | Implicit in administering data collection system. |

## APPENDIX G.—STATUTORY REFERENCE TABLE FOR APPENDIX C—Continued

| Data elements   | Statutory basis  |
|---|--|
| 4. Total Number of Applications .....                                       | 411 (b): Use in Report to Congress.  |
| 5. Total Number of Approved Applications .....                              | 411 (a): Implicit in use of samples. Needed to weight sample data report for the newly, approved applicants portion of the sample.<br>411 (b): Use in Report to Congress.  |
| 6. Total Number of Denied Applications .....                                | 411 (b): Use in Report to Congress.  |
| 7. Total Amount of Assistance .....   | 411 (a) (6) as revised by P.L. 105–33.   |
| 8. Total Number of Families .....   | 411 (a) (6) as revised by P.L. 105–33.<br>407 (b) (3): Use in calculation of caseload reduction for adjusting the participation rate standard.<br>411 (a): Implicit in use of samples to weight Tribe data to national totals. |
| 9. Total Number of Recipients .....   | 411 (a) (6) as revised by P.L. 105–33.   |
| 10. Total Number of Adult Recipients .....                                  | 411 (a) (6) as revised by P.L. 105–33.   |
| 11. Total Number of Child Recipients .....                                  | 411 (a) (6) as revised by P.L. 105–33.   |
| 12. Total Number of Two-Parent Families .....                               | 411 (a) (6) as revised by P.L. 105–33.<br>407 (b) (3): Use in calculation of caseload reduction for adjusting the participation rate standard.   |
| 13. Total Number of One-Parent Families .....                               | 411 (a) (6) as revised by P.L. 105–33.   |
| 14. Total Number of No-Parent Families .....                                | 411 (a) (6) as revised by P.L. 105–33.   |
| 15. Total Number of Non-custodial Parents Participating in Work Activities. | 411 (a) (4).   |
| 16. Total Number of Minor Child Heads-of-Household .....                    | Used to test the reliability and representativeness of the sample.<br>411 (b): Use in Report to Congress.  |
| 17. Total Number of Births .....  | 413 (e): Needed to calculate the Annual Ranking of States related to Out-of-Wedlock Births. N/A for Tribal TANF programs.  |
| 18. Total Number of Out-of-Wedlock Births .....                             | 413 (e): Needed to calculate the Annual Ranking of States related to Out-of-Wedlock Births. N/A for Tribal TANF programs.  |
| 19. Total Number of Closed Cases .....                                      | 411 (a): Implicit in use of samples. Needed to weight sample data report for families no longer receiving assistance.  |

## PART 287—THE NATIVE EMPLOYMENT WORKS (NEW) PROGRAM

### Subpart A—General NEW Provisions

Sec.

- 287.1 What does this part cover?  
287.5 What is the purpose and scope of the NEW program?  
287.10 What definitions apply to this part?

### Subpart B—Eligible Tribes

- 287.15 Which Tribes are eligible to apply for NEW program grants?  
287.20 May a Public Law 102–477 Tribe operate a NEW program?  
287.25 May Tribes form a consortium to operate a NEW program?  
287.30 If an eligible consortium breaks up, what happens to the NEW program grant?

### Subpart C—NEW Program Funding

- 287.35 What grant amounts are available under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) for the NEW program?  
287.40 Are there any matching funds requirements with the NEW program?  
287.45 How can NEW program funds be used?  
287.50 What are the funding periods for NEW program grants?  
287.55 What time frames and guidelines apply regarding the obligation and liquidation periods for NEW program funds?  
287.60 Are there additional financial reporting and auditing requirements?

- 287.65 What OMB circulars apply to the NEW program?

### Subpart D—Plan Requirements

- 287.70 What are the plan requirements for the NEW program?  
287.75 When does the plan become effective?  
287.80 What is the process for plan review and approval?  
287.85 How is a NEW plan amended?  
287.90 Are Tribes required to complete any certifications?  
287.95 May a Tribe operate both a NEW program and a Tribal TANF program?  
287.100 Must a Tribe that operates both NEW and Tribal TANF programs submit two separate plans?

### Subpart E—Program Design and Operations

- 287.105 What provisions of the Social Security Act govern the NEW program?  
287.110 Who is eligible to receive assistance or services under a Tribe's NEW program?  
287.115 When a NEW grantee serves TANF recipients, what coordination should take place with the State or Tribal TANF agency?  
287.120 What work activities may be provided under the NEW program?  
287.125 What supportive and job retention services may be provided under the NEW program?  
287.130 Can NEW program activities include job market assessments, job creation and economic development activities?

- 287.135 Are bonuses, rewards and stipends allowed for participants in the NEW program?

- 287.140 With whom should the Tribe coordinate in the operation of its work activities and services?

- 287.145 What measures will be used to determine NEW program outcomes?

### Subpart F—Data Collection and Reporting Requirements

- 287.150 Are there data collection requirements for Tribes who operate a NEW program?  
287.155 What reports must a grantee file with the Department about its program operations?  
287.160 What reports must a grantee file regarding financial operations?  
287.165 What are the data collection and reporting requirements for Public Law 102–477 Tribes that consolidate a NEW program with other programs?  
287.170 What are the data collection and reporting requirements for a Tribe that operates both the NEW program and a Tribal TANF program?

**Authority:** 42 U.S.C. 612.

### Subpart A—General NEW Provisions

#### § 287.1 What does this part cover?

(a) The regulations in this part prescribe the rules for implementing section 412(a)(2) of the Social Security Act, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)

(Pub. L. 104–193) and the Balanced Budget Act of 1997 (Pub. L. 105–33).

(b) Section 412(a)(2), as amended, authorizes the Secretary to issue grants to eligible Indian tribes to operate a program that makes work activities available to “such population and such service area or areas as the tribe specifies.”

(c) We call this Tribal work activities program the Native Employment Works (NEW) program.

(d) These regulations specify the Tribes who are eligible to receive NEW program funding. They also prescribe requirements for: Funding; program plan development and approval; program design and operation; and data collection and reporting.

#### **§ 287.5 What is the purpose and scope of the NEW program?**

(a) The purpose of the NEW program is to provide eligible Indian tribes, including Alaska Native organizations, the opportunity to provide work activities and services to their needy clients in a flexible manner.

(b) The NEW programs will assist Indian tribes in achieving self-sufficiency for their clients, and in reducing and ending dependency of Tribal families on government benefits.

#### **§ 287.10 What definitions apply to this part?**

The following definitions apply to this part:

*ACF* means the Administration for Children and Families;

*Act* means the Social Security Act, unless we specify otherwise;

*Alaska Native organization* means an Alaska Native village, or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), that is eligible to operate a Federal program under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450);

*Consortium* means a group of Tribes working together for the same purpose and receiving consolidated NEW funding for that purpose.

*Department* means the Department of Health and Human Services;

*Division of Tribal Services (DTS)* means the unit in the Office of Community Services within the Department's Administration for Children and Families that has as its primary responsibility the administration of the Tribal family assistance program, called the Tribal Temporary Assistance for Needy Families (TANF) program, and the Tribal work program, called the Native

Employment Works (NEW) program, as authorized by section 412(a);

*Eligible Indian tribe* means an Indian tribe, a consortium of Indian tribes, or an Alaska Native organization that operated a Tribal Job Opportunities and Basic Skills Training (JOBS) program in fiscal year 1995 under section 482(i), as in effect during that fiscal year;

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

*FY* means fiscal year;

*Indian, Indian tribe, and Tribal organization*—The terms “Indian”, “Indian tribe”, and “Tribal organization” have the meaning given such terms by section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b);

*Native Employment Works Program* means the Tribal work program under section 412(a)(2) of the Act;

*NEW* means the Native Employment Works Program;

*Program Year* means, for the NEW program, the 12-month period beginning on July 1 of the calendar year and ending on June 30;

*PRWORA* means the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193;

*Public Law 102–477* refers to the Indian Employment, Training and Related Services Demonstration Act of 1992, whose purpose is to provide for the integration of employment, training and related services to improve the effectiveness of those services;

*Secretary* means the Secretary of the Department of Health and Human Services;

*State* means, except as otherwise specifically provided, the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa;

*TANF* means the Temporary Assistance for Needy Families Program;

*Temporary Assistance for Needy Families Program* means a family assistance grant program operated either by a Tribe under section 412(a)(1) of the Act or by a State under section 403 of the Act;

*Tribal TANF program* means a Tribal program subject to the requirements of section 412 of the Act which is funded by TANF funds on behalf of eligible families;

*We (and any other first person plural pronouns)* refers to The Secretary of Health and Human Services, or any of the following individuals or

organizations acting in an official capacity on the Secretary's behalf: The Assistant Secretary for Children and Families, the Regional Administrators for Children and Families, the Department of Health and Human Services, and the Administration for Children and Families.

#### **Subpart B—Eligible Tribes**

##### **§ 287.15 Which Tribes are eligible to apply for NEW program grants?**

To be considered for a NEW Program grant, a Tribe must be an “eligible Indian tribe.” An eligible Indian tribe is an Indian tribe or Alaska Native organization that operated a Job Opportunities and Basic Skills Training (JOBS) program in FY 1995.

##### **§ 287.20 May a Public Law 102–477 Tribe operate a NEW program?**

Yes, if the Tribe is an “eligible Indian tribe.”

##### **§ 287.25 May Tribes form a consortium to operate a NEW program?**

(a) Yes, as long as each Tribe forming the consortium is an “eligible Indian tribe.”

(b) To apply for and conduct a NEW program, the consortium must submit a plan to ACF.

(c) The plan must include a copy of a resolution from each Tribe indicating its membership in the consortium and authorizing the consortium to act on its behalf in regard to administering a NEW program.

##### **§ 287.30 If an eligible consortium breaks up, what happens to the NEW program grant?**

(a) If a consortium should break up or any Tribe withdraws from a consortium, it will be necessary to allocate unobligated funds and future grants among the Tribes that were members of the consortium, if each individual Tribe obtains ACF approval to continue to operate a NEW program.

(b) Each withdrawing Tribe must submit to ACF a copy of the Tribal resolution that confirms the Tribe's decision to withdraw from the consortium and indicates whether the Tribe elects to continue its participation in the program.

(c) The allocation can be accomplished by any method that is recommended and agreed to by the leaders of those Tribes.

(d) If no recommendation is made by the Tribal leaders or no agreement is reached, the Secretary will determine the allocation of funds based on the best available data.

**Subpart C—NEW Program Funding****§ 287.35 What grant amounts are available under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) for the NEW program?**

Each Tribe shall receive a grant in an amount equal to the amount received by the Tribe in FY 1994 under section 482(i) (as in effect during FY 1994).

**§ 287.40 Are there any matching funds requirements with the NEW program?**

No, Tribal grantees are not required to match NEW Federal funds.

**§ 287.45 How can NEW program funds be used?**

(a) NEW grants are for making work activities available to such population as the Tribe specifies.

(b) NEW funds can be used for work activities as defined by the Tribal grantee.

(c) Work activities may include supportive services necessary for assisting NEW program participants in preparing for, obtaining and/or retaining employment.

**§ 287.50 What are the funding periods for NEW program grants?**

NEW program funds are for operation of the NEW program for a 12-month period from July 1 through June 30.

**§ 287.55 What time frames and guidelines apply regarding the obligation and liquidation periods for NEW program funds?**

(a) NEW program funds provided for a FY are for use during the period July 1 through June 30 and must be obligated no later than June 30. Carry forward of an unobligated balance of NEW funds is not permitted. An unobligated NEW fund balance as of June 30 will be returned to the Federal government through the issuance of a negative grant award. Unobligated funds are to be reported on the SF-269A which Tribes must submit within 30 days after the funding period, i.e., no later than July 30.

(b) A Tribe must liquidate all obligations incurred under the New program grant awards not later than one year after the end of the obligation period, i.e., no later than June 30 of the following FY. An unliquidated balance at the close of the liquidation period will be returned to the Federal government through the issuance of a negative grant award. Unliquidated obligations are to be reported on the SF-269A which Tribes must submit within 90 days after the liquidation period, i.e., by September 28.

**§ 287.60 Are there additional financial reporting and auditing requirements?**

(a) The reporting of expenditures are generally subject to the requirements of 45 CFR 92.41.

(b) NEW program funds and activities are subject to the audit requirement of the Single Audit Act of 1984 (45 CFR 92.26).

(c) A NEW program grantee must comply with all laws, regulations and Departmental policies that govern submission of financial reports by recipients of Federal grants.

(d) Improper expenditure claims under this program are subject to disallowance.

(e) If a grantee disagrees with the Agency's decision to disallow funds, the grantee may follow the appeal procedures at 45 CFR Part 16.

**§ 287.65 What OMB circulars apply to the NEW program?**

NEW programs are subject to the following OMB circulars: A-87 "Cost Principles for State, Local, and Indian Tribal Governments" and A-133 "Audits of States and Local Governments."

**Subpart D—Plan Requirements****§ 287.70 What are the plan requirements for the NEW program?**

(a) To apply for and conduct a NEW program, a Tribe must submit a plan to ACF.

(b) The plan must identify the agency responsible for administering the NEW program and include a description of the following:

- (1) Population to be served;
  - (2) Service area;
  - (3) Client services to be provided;
  - (4) Work activities to be provided;
  - (5) Supportive and job retention services to be provided;
  - (6) Anticipated program outcomes; and
  - (7) Coordination activities conducted and expected to be conducted with other programs and agencies.
- (c) The plan must also describe how the Tribe will deliver work activities and services.
- (d) The format is left to the discretion of each NEW Tribal grantee.

**§ 287.75 When does the plan become effective?**

(a) The Secretary required Tribes to submit an interim Tribal preprint, the "Native Employment Works Program Abbreviated Preprint", if they were offering NEW program services effective July 1, 1997. The preprint became operative July 1, 1997 and remained in effect to the end of the program year, June 30, 1998. Subsequent plans are three-year plans.

(b) The three-year plans must be submitted to the Secretary by a deadline to be established.

(c) The 1998 plan will cover program years 1998, 1999, and 2000. An approved plan for program year 1998 becomes operative on July 1, 1998, or upon approval by the Secretary, if later than July 1, 1998.

**§ 287.80 What is the process for plan review and approval?**

(a) A Tribe must submit its plan to the ACF Regional Office, with a copy sent to the Division of Tribal Services, Office of Community Services, Administration for Children and Families, Attention: Native Employment Works Team.

(b) To receive funding by the beginning of the NEW program year (July 1), a Tribe must submit its plan by the established due date.

(c) ACF will complete its review of the plan within 45 days of receipt.

(d) After the plan review has occurred, ACF will approve the plan, certifying that the plan meets all necessary requirements. If the plan is not approvable, the Regional Office will notify the Tribe regarding additional action needed for plan approval.

**§ 287.85 How is a NEW plan amended?**

(a) If a Tribe makes substantial changes in its NEW program plan or operations, it must submit an amendment for the changed section(s) of the plan to the appropriate ACF Regional Office for review and approval, with a copy sent to the Division of Tribal Services, Office of Community Services, Administration of Children and Families, Attention: Native Employment Works Team. The review will verify consistency with section 412(a)(2) of the Act.

(b) A substantial change is a change in the agency administering the NEW program, a change in the designated service area and/or population, or a change in work activities provided.

(c) A substantial change in plan content or operations must be reported to us no later than 45 days prior to the proposed implementation date.

(d) ACF will complete the review of the amended plan within 45 days of receipt.

(e) An amended plan becomes effective when it is approved by the Secretary.

**§ 287.90 Are Tribes required to complete any certifications?**

Yes. A Tribe must include in its NEW program plan any additional certifications that the Secretary prescribes in the planning guidance.

**§ 287.95 May a Tribe operate both a NEW program and a Tribal TANF program?**

Yes. However, the Tribe must adhere to statutory and regulatory requirements of the individual programs.

**§ 287.100 Must a Tribe that operates both NEW and Tribal TANF programs submit two separate plans?**

Yes. Separate plans are needed to reflect different program and plan requirements as specified in the statute and in plan guidance documents issued by the Secretary for each program.

**Subpart E—Program Design and Operations****§ 287.105 What provisions of the Social Security Act govern the NEW program?**

NEW programs are subject only to those requirements at section 412(a)(2) of the Act, as amended by PRWORA, "Grants for Indian Tribes that Received JOBS Funds."

**§ 287.110 Who is eligible to receive assistance or services under a Tribe's NEW program?**

(a) A Tribe must specify in its NEW program plan the population and service area to be served. In cases where a Tribe designates a service area for its NEW program that is different from its Bureau of Indian Affairs (BIA) service area, an explanation must be provided.

(b) A Tribe must include eligibility criteria in its plan and establish internal operating procedures that clearly specify the criteria to be used to establish an individual's eligibility for NEW services. The eligibility criteria must be equitable and defensible in event of a legal challenge.

**§ 287.115 When a NEW grantee serves TANF recipients, what coordination should take place with the State or Tribal TANF agency?**

The Tribe should coordinate with the State or Tribal TANF agency on:

- (a) Eligibility criteria for TANF recipients to receive NEW program services;
- (b) Exchange of case file information;
- (c) Changes in client status that result in a loss of cash assistance, food stamps, Medicaid or other medical coverage;
- (d) Identification of work activities that may meet State work participation requirements;
- (e) Resources available from the State or Tribal TANF agency to ensure efficient delivery of benefits to the designated service population;
- (f) Policy for exclusions from the TANF program (e.g., criteria for exemptions and sanctions);
- (g) Termination of TANF assistance when time limits become effective;

(h) Use of contracts in delivery of TANF services;

(i) Prevention of duplication of services to assure the maximum level of services is available to participants;

(j) Procedures to ensure that costs of other program services for which welfare recipients are eligible are not shifted to the NEW program; and

(k) Reporting data for TANF quarterly and annual reports.

**§ 287.120 What work activities may be provided under the NEW program?**

(a) The Tribe will determine what work activities are to be provided.

(b) Examples of allowable activities include, but are not limited to: Educational activities, alternative education, post secondary education, job readiness activity, job search, job skills training, training and employment activities, job development and placement, on-the-job training (OJT), employer work incentives related to OJT, community work experience, innovative approaches with the private sector, pre/post employment services, job retention services, unsubsidized employment, subsidized public or private sector employment, community service programs, entrepreneurial training, management training, job creation activities, economic development leading to job creation, and traditional subsistence activities.

**§ 287.125 What supportive and job retention services may be provided under the NEW program?**

The NEW program grantee may provide, pay for or reimburse expenses for supportive services, including but not limited to transportation, child care, traditional or cultural work related services, and other work or family sufficiency related expenses that the Tribe determines are necessary to enable a client to participate in the program.

**§ 287.130 Can NEW program activities include job market assessments, job creation and economic development activities?**

(a) A Tribe may conduct job market assessments within its NEW program. These might include the following:

- (1) Consultation with the Tribe's economic development staff or leadership that oversees the economic and employment planning for the Tribe;
- (2) Consultation with any local Job Training Partnership Act (JTPA) program, Private Industry Council or planning agencies that have undertaken economic and employment studies for the area in which the Tribe resides;
- (3) Communication with any training, research or educational agencies that have produced economic development

plans for the area that may or may not include the Tribe; and

(4) Coordination with any State or local governmental agency pursuing economic development options for the area.

(b) The Tribe's NEW program may engage in activities and provide services to create jobs and economic opportunities for its participants. These services should be congruous with any available local job market assessments and may include the following:

- (1) Tribal Employment Rights Office (TERO) services;
- (2) Job creation projects and services;
- (3) Self-employment;
- (4) Self-initiated training that leads a client to improved job opportunities and employment;
- (5) Economic development projects that lead to jobs, improved employment opportunities, or self-sufficiency of program participants;
- (6) Surveys to collect information regarding client characteristics; and
- (7) Any other development and job creation activities that enable Tribal members to increase their economic independence and reduce their need for benefit assistance and supportive services.

**§ 287.135 Are bonuses, rewards and stipends allowed for participants in the NEW program?**

Bonuses, stipends, and performance awards are allowed. However, such allowances may be counted as income in determining eligibility for some TANF or other need-based programs.

**§ 287.140 With whom should the Tribe coordinate in the operation of its work activities and services?**

The administration of work activities and services provided under the NEW program must ensure that appropriate coordination and cooperation is maintained with the following entities operating in the same service areas as the Tribe's NEW program:

- (a) State, local and Tribal TANF agencies;
- (b) Any other agency whose programs impact the service population of the NEW program, including employment, training, placement, education, child care, and social programs.

**§ 287.145 What measures will be used to determine NEW program outcomes?**

Each grantee will develop performance standards and measures to ensure accountability for its program results. A Tribe's program plan must identify planned program outcomes and the measures the Tribe will use to determine them. ACF will compare

planned outcomes against outcomes reported in the Tribe's annual reports.

#### **Subpart F—Data Collection and Reporting Requirements**

##### **§ 287.150 Are there data collection requirements for Tribes that operate a NEW program?**

(a) Yes, the Tribal agency or organization responsible for operation of a NEW program must collect data and submit reports as specified by the Secretary.

(b) A NEW program grantee must establish and maintain efficient and effective record-keeping systems to provide accurate and timely information regarding its service population.

(c) Required reports will provide Tribes, the Secretary, Congress, and other interested parties with information to assess the success of the NEW program in meeting its goals. Also, the reports will provide the Secretary with information for monitoring program and financial operations.

##### **§ 287.155 What reports must a grantee file with the Department about its NEW program operations?**

(a) Each eligible Tribe must submit an annual report that provides a summary of program operations.

(b) The Secretary has developed an annual operations report, which is in OMB clearance. It will specify the data elements on which grantees must report, including elements that provide information regarding the number and characteristics of those served by the NEW program. This report will be in addition to any financial reports required by law, regulations, or Departmental policies.

(c) The report form and instructions for its use will be distributed through ACF's program instruction system.

(d) The program operations report will be due September 28, 90 days after the close of the NEW program year.

##### **§ 287.160 What reports must a grantee file regarding financial operations?**

(a) Grantees will use SF-269A to make an annual financial report of expenditures for program activities and services.

(b) Annual financial reports will be due to the appropriate Regional Office no later than September 28, 90 days after the end of the NEW program year.

##### **§ 287.165 What are the data collection and reporting requirements for Public Law 102-477 Tribes that consolidate a NEW program with other programs?**

(a) Currently, there is a single reporting system for all programs

operated by a Tribe under Public Law 102-477. This system includes a program report, consisting of a narrative report, a statistical form, and a financial report.

(1) The program report is required annually and submitted to BIA, as the lead Federal agency and shared with DHHS and DOL.

(2) The financial report is submitted on a SF-269A to BIA.

(b) Information regarding program and financial operations of a NEW program administered by a Public Law 102-477 Tribe will be captured through the existing Public Law 102-477 reporting system.

##### **§ 287.170 What are the data collection and reporting requirements for a Tribe that operates both the NEW program and a Tribal TANF program?**

Tribes operating both NEW and Tribal TANF programs must adhere to the separate reporting requirements for each program. NEW program reporting requirements are specified in §§ 287.150—287.170.

[FR Doc. 98-19007 Filed 7-21-98; 8:45 am]

BILLING CODE 4184-01-U