

I. Licensed Project Matters

- P-1: Project No. 3688-000, Washington County Hydro Development Associates
- P-2: Project Nos. 4229-000, 4893-000 and 001, city of Redding, California
- P-3: Project Nos. 2930-004 and 005, Idaho Power Company
- P-4: Project No. 2854-006, city of Vidalia, Louisiana

II. Electric Rate Matters

- ER-1: Docket No. ER84-554-000, Holyoke Water Power Company and Holyoke Power & Electric Company
- ER-2: Docket No. ER84-359-002, Montana Power Company
- ER-3: Docket No. ER82-579-004, Southern Company Services, Inc.
- ER-4: Docket No. EF84-2021-007, United States Department of Energy—Bonneville Power Administration

Miscellaneous Agenda

- M-1: Reserved
- M-2: Reserved
- M-3: Docket Nos. RM84-6-000, RM84-6-001 and RM84-6-002, Refunds Resulting From BTU Measurement Adjustments

Gas Agenda**I. Pipeline Rate Matters**

- RP-1: Omitted
- RP-2: Docket No. RP82-125-010, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
- RP-3: Docket No. RP84-78-002, Bayou Interstate Pipeline System
- RP-4: Docket No. CP84-343-001, Arkansas Louisiana Gas Company, a Division of Arkla, Inc.
- RP-5: Docket No. RP84-76-001, Alabama-Tennessee Natural Gas Company
- RP-6: Omitted
- RP-7: Omitted

II. Producer Matters

- CI-1: Reserved

III. Pipeline Certificate Matters

- CP-1: Docket Nos. RP83-14-001, RP83-81-000, CP83-254-000, CP83-254-006, CP83-335-000 and CP83-335-006, Montana-Dakota Utilities Company
- CP-2: Docket No. CP82-342-000, Consolidated Gas Company of Florida, Inc. v. Florida Gas Transmission Company
- CP-3: Omitted
- CP-4: Docket Nos. G-2569-001, G-2569-002, CI64-612-001 and CI64-612-002, Aminoil, Inc.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-23906 Filed 9-6-84; 10:19 am]
BILLING CODE 6717-01-M

5**NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE**

DATE AND TIME: October 3 & 4, 1984, 9:00 a.m. to 5:00 p.m.

PLACE: Capitol Holiday Inn, Apollo Room (second floor), 550 C Street, SW., Washington, D.C.

STATUS: Closed. October 3, 1984, 9:00 a.m. to 10:00 a.m., Sec. 1703.202 (2) and (6) of the Code of Federal Regulations, 45 CFR, Part 1703. Open.

MATTERS TO BE DISCUSSED:

Chairman's Report
Approval of Minutes
Executive Director's Report
NCLIS Summary Report FY 84
Guest Speakers, Warren J. Haas, Council on Library Resources
Discussion, Commission Programs for FY 1985 & FY 1986
Update, Networking Section of NCLIS National Program Document
Presentation, NABRIN Draft Report, Ernie Matthias, Dept. of Agriculture
Discussion, NCLIS Program on Information and Productivity
Progress Report, IFLA 1985 Committee and Model Information Center
Presentation, COSLA (Chief Officers of State Library Agencies)

CONTACT PERSON FOR MORE

INFORMATION: Toni Carbo Bearman,
NCLIS Executive Director.

August 21, 1984.

[FR Doc. 84-23937 Filed 9-6-84; 1:44 pm]

BILLING CODE 7527-01-M

6**NATIONAL SCIENCE BOARD**

DATE AND TIME: September 20, 1984, 2:15 p.m., Closed Session; 2:30 p.m., Open Session.

PLACE: Cornell University, Ithaca, New York.

STATUS: This is primarily a site visit by the Board members to the facilities at Cornell University. A brief meeting, most of which will be open to the public, will be held to conduct standard Board business. Part of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED AT THE CLOSED SESSION:

Thursday, September 20, 1984—2:15 p.m.

1. Minutes—August 1984 Meeting
2. NSB and NSF Staff Nominees

MATTERS TO BE CONSIDERED AT THE OPEN SESSION:

Thursday, September 20, 1984—2:30 p.m. to 3:15 p.m.

3. Minutes—August 1984 Meeting
4. Chairman's Report
5. Director's Report
6. Other Business
7. Next Meetings

Margaret L. Windus,
Executive Officer.

[FR Doc. 84-23959 Filed 9-6-84; 2:57 pm]

BILLING CODE 7555-01-M

7**OVERSEAS PRIVATE INVESTMENT CORPORATION**

Meeting of the Board of Directors

TIME AND DATE: 9 a.m. (closed portion), 9:30 a.m. (open portion). Tuesday, September 18, 1984.

PLACE: Offices of the Corporation, seventh floor Board Room 1129 20th Street NW., Washington D.C.

MATTERS TO BE CONSIDERED: (Closed to the public 9 a.m. to 9:30 a.m.).

1. Finance Project in African Country.
2. Finance Project in East Asian Country.
3. Insurance Project in Middle East Country.
4. OPIC War Reinsurance.

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 9:30 a.m.).

1. Confirmation of Scheduled Board Meetings.
2. General Policy and Guidelines: Insurance—Eligibility of Short Term Loans.
3. President's Report.

CONTACT PERSON FOR INFORMATION: Information with regard to this meeting may be obtained from the Secretary of the Corporation at (202) 653-2925.

Elizabeth A. Burton,
Corporate Secretary.

September 6, 1984.

[FR Doc. 84-23883 Filed 9-6-84; 8:45 am]

BILLING CODE 3210-01-M

8**TENNESSEE VALLEY AUTHORITY**

(Meeting No. 1337)

TIME AND DATE: 10:15 a.m. (EDT), Wednesday, September 12, 1984.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda Items

Approval of minutes of meeting held on July 29, 1984.

Discussion Item

1. Results of Valley-wide groundwater assessment.

Action Items

A—Budget and Financing

- A1. Short-term borrowing from the U.S. Treasury.

A2. Amendment to Fiscal Year 1985 Capital Budget for the Power Program—Interim office buildings at Browns Ferry Nuclear Plant.

C—Power Items

C1. Form agreement covering participation by distributors in TVA's expanded Energy Saver Home Program.

C2. Supplement to contract No. TV-61104A between TVA and Cottrell Environmental

Sciences for Spray Dryer/E-Beam Project at Shawnee Scrubber Test Facility.

C3. New power contract with The Mead Corporation, Stevenson, Alabama.

E—Real Property Transactions

E1. Modification of deed affecting 0.12 acre of Chickamauga Reservoir land in Rhea County, Tennessee, to permit construction of habitable structures—Tract No. XCR-170.

F—Unclassified

F1. Contribution rate to the TVA Retirement System for fiscal year 1985.

F2. Letter agreement No. TV-65062A with the Corps of Engineers, Memphis District,

U.S. Department of the Army, providing for TVA to perform field surveys and laboratory analyses of selected aquatic habitats at specified sites within the floodplain areas of the Mississippi River.

F3. Memorandum of understanding between TVA and the U.S. Army Corps of Engineers providing for flood control operation of Kentucky Reservoir during floods on the lower Ohio and Mississippi Rivers.

F4. Supplement to interagency agreement between TVA and Agency for International Development (AID) covering arrangements for TVA's assistance to AID's Bioenergy Program.

CONTACT PERSON FOR MORE

INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: September 5, 1984.

W.F. Willis,

General Manager.

[FR Doc. 84-23938 Filed 9-6-84; 11:50 pm]

BILLING CODE 8120-01-M

Federal Register

Monday
September 10, 1984

Part II

Federal Emergency Management Agency

44 CFR Part 9

**Floodplain Management and Protection of
Wetlands; Final Rule**

**FEDERAL EMERGENCY
MANAGEMENT AGENCY****44 CFR Part 9****Floodplain Management and
Protection of Wetlands**

AGENCY: Federal Emergency
Management Agency.

ACTION: Final rule.

SUMMARY: This regulation makes changes to the Federal Emergency Management Agency (FEMA) regulations implementing Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands, 44 CFR Part 9. FEMA has decided to expand the categories of exclusions for these regulations. Certain disaster assistance actions will no longer be subject to the regulations. The changes will allow more effective and efficient use of the resources of FEMA and applicants for disaster assistance.

DATE: These regulations are effective October 10, 1984.

FOR FURTHER INFORMATION CONTACT: John Scheibel, Associate General Counsel, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, D.C. 20472, Telephone 202/287-0380.

SUPPLEMENTARY INFORMATION: On May 24, 1977, Executive Order 11988 was issued for the following purposes:

(a) To avoid to the extent possible the long- and short-term adverse impacts associated with the occupancy and modification of floodplains; and

(b) To avoid direct or indirect support of floodplain development wherever there is a practicable alternative. This Executive Order applies to federal agencies for all actions involving:

(1) Acquiring, managing and disposing of Federal land and facilities;

(2) Providing federally undertaken, financed or assisted construction and improvements; and

(3) Conducting Federal activities and programs affecting land use, including resources planning, regulating, and licensing activities.

The United States Water Resources Council (WRC) published guidelines for implementing E.O. 11988 in the Federal Register on February 10, 1978 (43 FR 6030). These regulations follow closely the WRC guidelines in setting forth policy and procedures for floodplain management relating to disaster planning, response, recovery, and hazard mitigation for all actions taken by FEMA. The main emphasis of these regulations is on compliance with Executive Order 11988, Floodplain

Management. However, in cases where Executive Order 11990, Protection of Wetlands, would apply, these regulations also set forth policy and procedures to implement that Executive Order.

FEMA recognizes floodplains and wetlands as unique and vital natural resources. Both ecological systems possess many natural values and carry on numerous functions that are of great benefit to all of us. Because wetlands frequently lie within floodplains, they constitute a natural and beneficial value of floodplains. Thus, where a wetland is in a floodplain, the more restrictive terms of Executive Order 11988 apply.

The rule previously contained a list of actions exempt from the regulation. Included in this list were those repairs to public facilities costing less than \$5,000 performed on damaged structures or facilities. This exemption did not apply to actions in a floodway or coastal high hazard areas or to new or substantially improved structures and facilities. Statistical data was kept on FEMA's disaster assistance actions as a means of determining which projects offered meaningful opportunities for floodplain management and hazard mitigation.

In December 1981 after 15 months of operating experience with the final regulation, a study was undertaken by FEMA to evaluate the effectiveness of then current procedures for floodplain management. With the large number of public assistance actions being taken it was felt necessary to determine if the resources of FEMA were being used efficiently and effectively.

The study solicited comments from FEMA field personnel who had experience in applying the floodplain regulations to disaster assistance actions. The regional offices also relayed the comments of applicants and other Federal agencies who had concerns about the regulations. Although the period encompassed by the study had less disaster activity than normal, there were nearly 4,000 public assistance actions in the data base. The data base included one large disaster (California) and seven smaller disasters so that a cross section of different size and type disasters was obtained.

One underlying thought which came out in the responses to the questionnaire was that FEMA should concentrate its mitigation efforts on the more important projects which have the potential to impact floodplains and wetlands. Very frequently the small projects do not offer opportunities for mitigation measures. This is especially true for those which would relocate facilities outside the floodplain. The final disposition of the

small projects is typically the performance of minor work on the facility to make it more resistant to damage (minimization). However, since the beginning of implementation of the Disaster Relief Act of 1974 there has been a means for such measures to be taken in the restoration of the facility. These measures, called disasterproofing, have been used frequently when the work can be made an integral part of the repair which is being federally funded. Therefore, it is anticipated that the recommended mitigation measures will be accomplished without application of the formal 8-step decision-making process.

In the period immediately following a disaster FEMA's efforts are directed toward assisting local governments to recover as quickly as possible. The great majority (65% to 70%) of projects for which assistance is requested are minor repairs to roads, utilities, drainage structures and a small number of buildings. The repairs typically involve only a small portion of a larger facility or system. For this reason it is usually not possible to make changes in the repair work for hazard mitigation purposes. Any measure incorporated into the repaired portion would not achieve meaningful mitigation for the facility as a whole. Further, each damage location must be inspected by a Federal inspector who makes a cost estimate of the needed repairs. The inspector's report must then be reviewed by FEMA personnel. The review of these small projects for compliance with the executive orders only serves to delay the delivery of disaster assistance without achieving the goals of the orders.

With the objective of making more effective use of the inspectors' and reviewers' time, the data was examined to determine if the number of actions requiring review could be reduced. A parallel objective was to continue to achieve the goals of the executive orders—minimization of harm to and within floodplains and wetlands. These same objectives had been set and were partially achieved by the selective exemption of projects costing less than \$5,000, a provision which was added to the final rule in September 1980. As noted earlier FEMA kept data on these exempted projects as well as other projects costing less than \$5,000 which underwent the floodplain review. The following results were obtained.

Of the total number of actions in the floodplain costing less than \$5,000, only 3% of them, accounting for 3.5% of the cost of all actions costing less than \$5,000, had sufficient opportunity for

mitigation for FEMA to make mitigation a requirement of the grant. This figure includes measures which were required not only as a result of the floodplain management review, but by compliance with existing hazard mitigation regulations as well (44 CFR Part 205, Subpart M). By demonstrating the very limited opportunities for applying hazard mitigation to these actions, especially in light of the effort necessary to process the other 97% of the actions, this information supports the proposal to exempt these small projects from the review process.

The 4,000 disaster recovery actions were categorized by dollar value, type of facility, location in floodplain, degree of damage and final disposition. Comparisons were made of the effect of modifying the applicability of the 8-step process to various categories of actions. The two most significant factors which were watched during these comparisons were workload on inspectors and applicants and the opportunities for mitigation measures. The opportunities for mitigation did not appear to depend upon the type of facility, i.e., roads, buildings or utilities. The location of a facility in the floodway or coastal high hazard area, however, did have an impact on opportunities for mitigation. The dollar value of the repairs and percentage of damages as related to the total value also affected the mitigation opportunities. There were more opportunities for mitigation on those projects located in a floodway or coastal high hazard area, especially relocation opportunities. The higher cost projects also had more opportunities for mitigation because the repairs involved a greater investment of Federal funds. In choosing those projects which would be reviewed, the above factors for enhanced mitigation opportunities were considered carefully.

It was therefore decided to exclude all those actions under section 402 of the Disaster Relief Act of 1974 costing less than \$5,000 from the 8-step review process. Those actions which are in the 100 yr. floodplain (or 500 yr. floodplain for critical actions), costing between \$5,000 and \$25,000, will also be partially exempt except (1) those actions in a floodway or coastal high-hazard area, or (2) those actions which constitute new construction or substantial improvement (repairs cost more than 50% of the total value of the facility) or (3) when the facility or structure has previously sustained structural damage in a major flooding disaster. For those projects costing between \$5,000 and \$25,000 which will be partially exempt from review, FEMA will carry out the

requirements of identifying the hazard and the risk to the structure or facility, and will minimize this risk (§§ 9.7, 9.10 and 9.11). This approach will significantly reduce the number of actions to be reviewed by applying the 8-step decision-making process for floodplain management. Fifty-six percent fewer actions will be reviewed than under the current policies. This will conserve the already strained personnel resources of FEMA. It will also expedite the delivery of disaster assistance, especially to the smaller applicants which are more severely impacted by the disaster. However, this alternative will have only a minor effect on the objective of minimizing harm to and within the floodplains and wetlands. As noted before, the policy of disasterproofing already results in significant hazard mitigation without the application of the 8-step decision-making process.

The list of exemptions also included several forms of assistance to individuals, such as unemployment assistance, certain disaster-related needs and expenses (i.e., medical), and certain forms of temporary housing for those whose homes have been made uninhabitable. This rule will add "use of existing resources for temporary housing, except that Step 1 shall be carried out" to the list of non-reviewable actions under § 9.5(c). The other steps will not be required prior to temporarily housing someone in a rental unit or government-owned (i.e., existing) undamaged housing unit. The work group examining this issue determined that the reviews delay the provision of temporary housing because of the difficulty of locating (in a timely way) resources which are suitable for family size and composition. Using other rental units already existing in the area, and which are not damaged, is appropriate, especially when the need for temporary housing is immediate.

Other reasons for excluding existing resources from the full eight-step process include:

1. The use of more expensive forms of housing (i.e., mobile homes) is forced if existing resources are determined impracticable, and if they are withdrawn from the resource pool while being reviewed.
2. FEMA's use of existing resources in a floodplain does not cause degradation of the floodplain. Any such condition was already present.
3. There is little justification for moving families into other forms of temporary housing if the existing resources are undamaged and are available for use in the community.

An argument against excluding existing resources from the review process is that FEMA may subject people to some additional flood risk if the resources used are in a floodplain. However, based on statistics from the Federal Insurance Administration concerning the risk of repeated flooding and on the short average stay of a family in an existing resource (approximately 9 months), that risk appears low.

Given the emergency nature of temporary housing, FEMA is making the following changes: Only Step 1 (determining the location of the resource in relation to the floodplain) is to be carried out; any housing unit (i.e., existing resource) located in a floodplain would be placed at the bottom of the existing resource list, to be used only when other forms of temporary housing were not available. A statement will be provided to each temporary housing occupant indicating that the resource is in the floodplain, and warning of possible risk.

Summarizing briefly, the exclusions will now exempt from the 8-step process public assistance actions costing less than \$5,000. Those public assistance actions costing between \$5,000 and \$25,000 are exempt from the requirements to avoid the floodplain unless it is the only practicable location and to notify the public, provided: (1) They are not in a floodway or coastal high hazard area; (2) they do not constitute new construction or substantial improvement and (3) the structure or facility has not suffered structural damage from a prior major flooding disaster. Even if an action satisfies the three conditions, all necessary mitigation will be required for those excluded actions costing between \$5,000 and \$25,000. The use of existing resources for temporary housing will be excluded from the 8-step process except that existing resources in the floodplain will be used only when other existing resources were not available.

On October 26, 1983, FEMA published a proposed rule in the *Federal Register* (48 FR 49876-49879) proposing changes to 44 CFR Part 9. Comments were due on or before December 27, 1983, but were accepted after that date.

Comments

We received 11 comments on the proposed changes, including Federal, State and local government agencies and one conservation group. Two comments were made concerning subjects outside the scope of these regulation changes. One dealt with problems of obtaining flood maps and

the other concerned requirements for flood insurance in the Temporary Housing Program. These questions will be handled directly with the commenting agency. Four of the respondents agreed that the changes will be beneficial to the goals of floodplain management and to the delivery of disaster assistance. Some of the other comments resulted from a misunderstanding concerning the requirements for those projects where repair costs will range between \$5,000 and \$25,000. Two comments expressed the view that exemption of these projects will result in continued damages that might have been prevented by mitigation measures. One suggested that the upper limit of the exemption be lowered and another suggested requiring floodproofing of all facilities to the base flood elevation.

In fact, these actions costing between \$5,000 and \$25,000 are not exempt from the floodplain management review process. First, those actions in the floodway or coastal high hazard area or where the repair constitutes new construction or substantial improvement, or where the structures or facility has suffered damage in a prior major flooding disaster, must undergo the floodplain management review as provided in § 9.5(d). This review considers alternative sites and actions and an evaluation of impacts and ways to minimize any adverse impacts. Second, except for those actions costing under \$5,000, all other public assistance actions are subject to impact analysis and minimization as provided in §§ 9.10 and 9.11. Minimization for both sets of actions may include floodproofing.

Two comments suggested that FEMA consider the cumulative cost of repairs over past disasters for the determination of "substantial improvement." The commenters felt that this would better ensure that hazard mitigation measures would be required as a condition of disaster assistance. FEMA feels that facilities which have suffered structural damage from a prior major flooding disaster should undergo the full 8-step review and a provision is included to that effect.

By this provision, FEMA will require consideration of alternative sites and actions and no action and will require appropriate public notice for actions involving projects which have previously sustained structural damage from flooding due to a major disaster or emergency.

FEMA's Hazard Mitigation Regulations and the Eligibility Regulations also require consideration of other sites when a facility is subject to repetitive damages. The Hazard

Mitigation Regulations, 44 CFR Part 205, Subpart M, require that hazards in the disaster area be evaluated and appropriate measures be taken by the applicant. Avoidance, or relocation, is one of the measures to be considered. The Eligibility Regulations, 44 CFR Part 205, Subpart E, permit the Regional Director to deny funding for reconstruction at the original site when the facility is subject to repetitive heavy damage. In such cases, reconstruction at an alternate site under a grant-in-lieu may be eligible. For those grants involving a critical action, the standards are higher. A critical action is one which involves a facility for which even a slight chance of flooding is too great. For critical actions, the review for mitigation measures will be based on the impact of the 500 year frequency flood. Although they are not subject to the full 8-step decision-making process, FEMA is nevertheless required to assess the impacts of the project and minimize harm to and within the floodplain.

Another comment took the opposite view from the previous suggestion. It noted that projects in the floodway which cost less than \$5,000 were subject to the floodplain review and suggested that the threshold be raised to \$25,000 for flood control facilities. First of all, no review is required for any project under \$5,000 except in unusual circumstances. Secondly, FEMA's experience has shown that there are mitigation measures which often should be incorporated into the repair of projects costing between \$5,000 and \$25,000; and therefore the review required of these projects is appropriate.

One comment recommended that more emphasis be placed on floodproofing and existing procedures such as those contained in the Hazard Mitigation Regulations. The commenter expressed concern about threats which may accumulate slowly and may cause damages from small incidents which do not result in major disaster declarations. Disaster proofing measures such as floodproofing may be approved by the Regional Director under the eligibility regulations (44 CFR Part 205, Subpart E). These measures may also be required by the Regional Director as a condition for a grant under hazard mitigation regulations (44 CFR Part 205, Subpart M). For those problems which may accumulate slowly or may not be related to specific repair projects, Subpart M requires evaluation of all natural hazards and implementation of appropriate measures. FEMA feels that the subject is adequately treated and no further change to the Floodplain Management Regulations is needed.

One comment suggested that Step 7 of the decision-making process, Final Public Notice, should be retained for all actions. This rule change makes no change in the actions for which Step 7 is required. The basic regulation, 44 CFR Part 9, exempts certain actions from the requirements of Step 7 and the Supplementary Information section of the final regulation, published September 9, 1980, at 45 FR 59520-59537 explains the rationale for that provision.

A question was raised as to the effect on the executive orders of exempting those projects under \$5,000 from the review process. These represent 67 percent of the total disaster assistance projects. The FEMA study examined those projects costing less than \$5,000 which were still required to be reviewed through the eight-step process. It found that in only 3 percent of those projects was there an opportunity for mitigation measures. That group of projects represented only 3.5 percent of the value of all repair or replacement projects costing less than \$5,000. Furthermore, at least half of those projects had mitigation required as a result of other regulations than Floodplain Management. Therefore, the proposed change will affect less than 1 percent of all disaster assistance projects.

The same commenter suggested that reduction of the workload for FEMA personnel should not be used as a criterion not to comply with the Executive Order. This was by no means the primary reason for the change. It is a byproduct of the determination that the opportunities for mitigation on the projects exempted from review are very few. For those few projects the Regional Director may still require completion of the eight-step decision-making process when he or she determines it appropriate.

One comment claimed that the specific exemptions in these regulations are tied to a statutory exemption from review under the National Environmental Policy Act of 1969. This is not the case. Section 405 of Pub. L. 93-288 does exempt most disaster assistance actions from the requirement for an environmental assessment or impact statement. However, the review under Executive Order 11988 is not a NEPA requirement and the justifications for exemptions contained in these regulations stand entirely on their own. The commenter also expressed concern that the natural values of floodplains and wetlands would not be protected in the granting of assistance for small projects. As explained above, there are almost no opportunities to take mitigation actions on repair projects

costing less than \$5,000. FEMA's other regulations contain adequate requirements for those projects where mitigation of any adverse impacts is practicable. Lastly, a comment was made that the Executive Order requires consideration of alternative sites for those projects between \$5,000 and \$25,000 and that the proposed rule will not require that. This class of projects is included in a larger group of projects which was exempted from the alternative site requirement when the original regulation was published on September 9, 1980. This exemption did not apply to projects in the floodway or coastal high hazard area or where substantial improvement was involved. Those same criteria still apply to the projects costing from \$5,000 to \$25,000.

Environmental Considerations.

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 and the implementing regulations of the Council on Environmental Quality (49 CFR Parts 1500-1508), FEMA has prepared an environmental assessment of the issuance by FEMA of the proposed change to the regulations on Floodplain Management and Protection of Wetlands. A discussion of that assessment is contained in the Supplementary Information section of the proposed rule. A Finding of No Significant Impact resulted from that assessment.

Executive Order 12291, "Federal Regulations." This rule is not a "major rule" within the context of Executive Order 12291. It will not have an annual effect on the economy of \$100 million or more.

The rule will not have a significant economic impact on small entities, within the meaning of 5 U.S.C. 605 (the Regulatory Flexibility Act). Therefore, no regulatory analysis will be prepared.

This rule does not call for the collection of any information.

Authority: This rule is issued under authority of section 601 of the Disaster Relief Act of 1974 (Pub. L. 93-288), as amended by Pub. L. 96-446 and Executive Orders 11988, "Floodplain Management," and 11990, "Protection of Wetlands."

List of Subjects in 44 CFR Part 9

Floodplains.

PART 9—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS

Accordingly, Part 9 of Title 44 is amended as follows:

1. In § 9.5 paragraph (c) is amended by revising the introductory paragraph and paragraphs (c)(10)-(12) and by adding a new paragraph (c)(13) to read as follows:

§ 9.5 Scope.

(c) *Decision-making involving certain categories of actions.* The provisions set forth in this regulation are *not applicable* to the actions enumerated below except that the Regional Directors shall comply with the spirit of the Order to the extent practicable. For any action which is excluded from the actions enumerated below, the full 8-step process applies (see § 9.6) (except as indicated at paragraphs (d), (f) and (g) of this section regarding other categories of partial or total exclusions). The provisions of these regulations do not apply to the following (all references are to the Disaster Relief Act of 1974, Pub. L. 93-288, as amended):

(10) Use of existing resources in the temporary housing assistance program [Section 404(a)], except that Step 1 (§ 9.7) shall be carried out;

(11) Minimal home repairs [Section 404(c)];

(12) Debris removal [Section 403], except those grants involving non-emergency disposal of debris within a floodplain or wetland;

(13) Repairs or replacements under Section 402, of less than \$5,000 to damaged structures or facilities.

2. In § 9.5 the introductory text of paragraph (d) is revised as follows:

§ 9.5 Scope.

(d) For each action enumerated below, the Regional Director *shall apply steps 1, 2, 4, 5 and 8* of the decision-making process (§§ 9.7, 9.8, 9.10 and 9.11, see § 9.6). Steps 3 and 6 (§ 9.9) shall be carried out except that alternative sites outside the floodplain or wetland need not be considered. After assessing impacts of the proposed action on the floodplain or wetlands and of the site on the proposed action, alternative actions to the proposed action, if any, and the "no action" alternative shall be considered. The Regional Director may also require certain other portions of the decision-making process to be carried out for individual actions as is deemed necessary. For any action which is excluded from the actions listed below, (except as indicated in paragraphs (c), (f) and (g) of this section regarding other categories of partial or total exclusion), the full 8-step process applies (see § 9.6). The references are to the Disaster Relief Act of 1974, Pub. L. 93-288, as amended.

3. In § 9.5 paragraph (e) is revised as follows:

§ 9.5 Scope.

(e) Other categories of actions. Based upon the completion of the 8-step decision-making process (§ 9.6), the Director may find that a specific category of actions either offers no potential for carrying out the purposes of the Orders and shall be treated as those actions listed in § 9.5(c), or has no practicable alternative sites and shall be treated as those actions listed in § 9.5(d), or has no practicable alternative actions or sites and shall be treated as those actions listed in § 9.5(g). This finding will be made in consultation with the Federal Insurance Administration and the Council on Environmental Quality as provided in section 2(d) of E.O. 11988. Public notice of each of these determinations shall include publication in the *Federal Register* and a 30-day comment period.

4. In § 9.5, a new paragraph (g) is added as follows:

§ 9.5 Scope.

(g) For the action listed below, the Regional Director *shall apply steps 1, 4, 5 and 8* of the decision-making process (§§ 9.7, 9.10 & 9.11). For any action which is excluded from the actions listed below, (except as indicated in paragraphs (c), (d) and (f) of this section regarding other categories of partial or total exclusion), the full 8-step process applies (See § 9.6). The Regional Director may also require certain other portions of the decision-making process to be carried out for individual actions as is deemed necessary. The references are to the Disaster Relief Act of 1974, Pub. L. 93-288. The above requirements apply to repairs, under Section 402, between \$5,000 and \$25,000 to damaged structures or facilities except for:

(1) Actions in a floodway or coastal high hazard area; or

(2) New or substantially improved structures or facilities; or

(3) Facilities or structures which have previously sustained structural damage from flooding due to a major disaster or emergency.

5. In § 9.6, the introductory text of paragraph (b) is revised as follows:

§ 9.6 Decision-making process.

(b) Except as otherwise provided in § 9.5 (c), (d), (f), and (g) regarding categories of partial or total exclusion when proposing an action, the Agency shall apply the 8-step decision-making process. FEMA shall:

6. In § 9.11, the introductory text of paragraph (d) is revised as follows:

§ 9.11 Mitigation.

* * * * *

(d) *Minimization Standards.* In its implementation of the Disaster Relief Act of 1974, the Agency shall apply at a minimum, the following standards to its actions to comply with the requirements of paragraphs (b) and (c), of this section,

(except as provided in §§ 9.5 (c), (d), and (g) regarding categories of partial or total exclusion). Any Agency action to which the following specific requirements do not apply, shall nevertheless be subject to the full 8-step process (§ 9.6) including the general requirement to minimize harm to and within floodplains:

* * * * *

§ 9.13 [Amended]

7. In § 9.13 paragraph (c) is amended by removing and reserving paragraph (1).

Dated: July 17, 1984.

Louis O. Giuffrida,
Director.

[FR Doc. 84-23803 Filed 9-7-84; 8:45 am]

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Monday
September 10, 1984

Part III

**Department of
Health and Human
Services**

**Social Security Administration
Office of Child Support Enforcement**

**45 CFR Parts 205, 206, 232, 233, 234,
238, 239, and 240**

**Aid to Families With Dependent Children;
Interim Final Rules**

45 CFR Part 302

**Child Support Enforcement Program;
Disregard of Child Support Payments;
Interim Final Rules**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

45 CFR Parts 205, 206, 232, 233, 234, 238, 239, and 240

Aid to Families With Dependent Children

AGENCY: Social Security Administration, HHS.

ACTION: Interim final rules.

SUMMARY: These interim final regulations implement changes in the Aid to Families with Dependent Children (AFDC) program by the Deficit Reduction Act of 1984 (DRA), Pub. L. 98-369. The statutory changes are effective October 1, 1984, unless otherwise specified. The statutory changes implemented by these regulations fall within four basic categories:

- (1) Eligibility.
- (2) Countable income and resources.
- (3) Work programs.
- (4) Program administration.

For a detailed discussion of these categories see Supplementary Information.

DATES: The interim final rules are effective October 1, 1984, except § 233.20(a)(3) (xix), (xx), and (11)(vi) effective June 1, 1984; §§ 233.20(a)(3)(ii) (D) and (F) clarification of lump sum income, (6)(iii), (7)(ii), (11)(i), 238.18, 238.20, 238.50, 239.14, 239.24, 239.58, 239.82 effective September 10, 1984. Comments will be considered if we receive them no later than November 9, 1984.

ADDRESSES: Comments should be submitted in writing to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Md. 21203, or delivered to the Office of Family Assistance, Social Security Administration, Room B-428, Transpoint Building, 2100 Second Street, SW., Washington, D.C. 20201, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara M. Levering, Room B-442, Transpoint Building, 2100 Second Street, SW., Washington, D.C. 20201, (202) 245-2637.

SUPPLEMENTARY INFORMATION: The following is a summary of the changes implemented by the regulations.

These interim final regulations implement changes in the Aid to

Families with Dependent Children (AFDC) program by the Deficit Reduction Act of 1984 (DRA), Pub. L. 98-369. The statutory changes are effective October 1, 1984, unless otherwise specified. The statutory changes implemented by these regulations fall within four basic categories:

(1) Eligibility:

—Permits States to recalculate the period of ineligibility due to receipt of a lump sum under certain circumstances;

—Increases the gross income limit to 185 percent of the State's standard of need;

—Provides States greater flexibility in disregarding the earned income of a dependent child who is a full-time student; and

—Makes aliens sponsored by an agency or organization ineligible for assistance for three years from the date of entry into the United States, unless the sponsoring agency is no longer in existence or has become unable to meet the alien's needs.

(2) Countable income and resources:

—Specifies that certain individuals living in the same household with the dependent child must file for assistance and have their income and resources considered;

—Requires States to consider the income of the parent(s) or legal guardian(s) of a minor parent or legal guardian available to the minor and the dependent child on whose behalf the minor files for assistance;

—Requires States to disregard the first \$50 per month of the current monthly support obligation of any child support collected on the family's behalf or received directly by the family in determining AFDC eligibility and payment amounts;

—Continues a \$30 earned income disregard after the expiration of the \$30 and one-third earned income disregard for an additional 8 months (for a total of 12 months);

—Exempts from countable resources burial plots and funeral agreements for members of the assistance unit. Also, for a limited time, exempts real property the family is making a good-faith effort to sell, provided the family agrees to repay the AFDC benefits received during that time;

—Requires States to count the earned income credit (EIC) only when actually received;

—Extends the \$75 standard work expense disregard to part-time workers;

—Provides Medicaid coverage for 9 months (with 6 additional months at State option) for families that become ineligible for AFDC due to loss of the \$30 or the \$30 and one-third earned income disregards; and

—Clarifies and reaffirms that the \$75 standard work expense disregard is applied against gross earnings.

(3) Work programs:

—Permits States to operate grant diversion programs in all or part of the State;

—Permits Federal agencies to host Community Work Experience Program (CWEP) participants. The State must provide the same workers' compensation and tort claims protection to such participants as it provides to other CWEP participants in the State;

—Allows greater Federal financial participation (FFP) for expenses incurred by States in reimbursing CWEP participants for transportation and child care expenditures.

(4) Program administration:

—Requires monthly reporting and retrospective budgeting only for recipients with earned income or recent work histories, permits States to use prospective budgeting for non-monthly reporting cases, and allows the Secretary to grant no-cost waivers of these requirements for States to enable them to conform AFDC monthly reporting and retrospective budgeting requirements to those of the Food Stamp program;

—Permits States to continue to make payments on behalf of the remaining members of the assistance unit to a parent or other caretaker who fails to comply with certain work or child support requirements if, after all reasonable efforts have been made, the State is unable to identify a suitable protective payee;

—Allows States to not undertake the recovery of overpayments based on cost effective criteria and dollar limitations as established by the Secretary; and

—Permits States to disclose to State and local law enforcement officers the current address of AFDC recipients who are fugitive felons.

Regulatory Procedures

Justification for Dispensing With Notice of Proposed Rulemaking

Unless otherwise provided, these interim final regulations are effective October 1, 1984, the effective date required by DRA. This legislation was signed into law on July 18, 1984. One provision, section 2642, which concerns the disregard of certain income of full-time students, has an effective date of June 1, 1984. Five provisions are effective on enactment. These provisions are: Section 2624, work transition for families who lose AFDC because of earned income; section 2625, clarification of earned income; section

2632(b)(2), clarification of the lump sum provision; section 2638, modification of the requirements for the Work Supplementation Program; and section 2641, Community Work Experience Program work in Federal agencies. In order to provide uniform and essential guidance of States implementing these changes, rules must be issued as soon as possible and prior to the October 1, 1984, effective date. It would not have been possible to issue a Notice of Proposed Rulemaking, provide a public comment period, analyze the comments received, and publish a final regulation within the extremely short period of time between the date of enactment of the statute and the effective date of the provisions implemented by this regulation.

While Notice of Proposed Rulemaking is being waived, we are extremely interested in comments and advice regarding changes which should be made to these interim final rules. We will review any comments on these rules which we receive on or before November 9, 1984, and will publish final rules with any necessary changes.

Consultation

Prior to the publication of these interim final regulations, we solicited comments on the legislation and suggestions for the regulations from interested parties. These parties included governors and State legislative associations, State and county welfare administrators, legal services groups, professional and labor organizations, welfare advocacy groups, public assistance-related organizations, and other Federal agencies. The views of these parties were considered in the development of the regulations and will continue to be sought during the comment period.

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be performed for any rule that is a major rule. A major rule is one that: Has an annual effect on the economy of \$100 million or more; results in a major increase in costs or prices; or has significant adverse effects on competition, employment, investment, productivity, or innovation.

The legislation and regulations considered here may have an annual effect of more than \$100 million. A number of provisions result in increased costs which total approximately \$200 million. Three of the provisions account for about 80 percent of the total: (1) The \$50 child support payment disregard; (2) the \$75 standard work expense deduction; and (3) the continuation of medicaid benefits during the work

transition period. Other provisions result in offsetting reductions which account for about 90 percent of the total: (1) The requirement that family members living together file as an AFDC unit; and (2) the requirement to count the income of parents of minor parents when determining AFDC eligibility and benefit level.

For the most part these program costs and savings are the direct result of the Deficit Reduction Act and not the discretionary latitude of the Secretary. Therefore these regulations do not constitute a "major rule" and an impact analysis describing potential benefits of the regulations and alternative approaches and their costs and benefits is not required.

Paperwork Reduction Act

The Office of Management and Budget has determined that the State Plan requirements are subject to review and approval under the Paperwork Reduction Act of 1980 (Pub. L. 96-511). The Office of Management and Budget has approved all information collection requirements and assigned OMB approval number 0960-0260.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96-354) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each particular rule we must publish an initial analysis describing the rule's impact on small business. This analysis should indicate the purpose and reason for the rule, the number of small businesses to which it would apply, anticipated reporting and recordkeeping requirements, possible overlap and conflict with other Federal rules, and a description of possible alternative means of accomplishing the stated objectives which would minimize the impact on small businesses.

The primary impact of these regulations is on State governments and individuals. We certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations affect only benefits to individuals and payments to States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

Discussion of Major Provisions

Five provisions of DRA which affect the AFDC program are not included in this regulation. Section 2630 of DRA permits the Secretary of Health and Human Services to fund three to five pilot projects to demonstrate the use of

integrated service delivery systems for human services programs. Because this provision involves demonstration projects of limited duration and is self-implementing, no regulations will be published. However, a notice regarding how to apply for these grants will be published in the *Federal Register*. Section 2638 of DRA amends the Internal Revenue Code to clarify the eligibility of employers who participate in work supplementation or on-the-job training programs for the Targeted Jobs Tax Credit. Further information about this tax credit may be obtained from the Internal Revenue Service, the agency responsible for implementing the Internal Revenue Code. Section 2651 of DRA requires States to have in effect an income and eligibility verification system which includes the use of wage information reported to State unemployment compensation agencies and income information reported to the Social Security Administration and the Internal Revenue Service. This provision affects several programs in addition to AFDC and is effective April 1, 1985. It is not, therefore, included in this interim regulation. A Notice of Proposed Rulemaking concerning this provision will be published shortly. Section 2639 of DRA extends the disregard of support and maintenance under section 402(a)(36) of the Social Security Act until October 1, 1987. Because this section also amends section 1612(b)(13) of the Social Security Act (the Act) affecting the Supplemental Security Income Program, implementing regulations will be issued separately. Finally, section 2631 of DRA exempts pregnant women from work registration and participation beginning with the sixth month of pregnancy. Since the regulations implementing this provision are not within the jurisdiction of the Social Security Administration, regulations will be published by the Department of Labor and the Office of Human Development Services, Department of Health and Human Services.

Three of the provisions included in this regulation also require complementary amendments to regulations not within the jurisdiction of the Social Security Administration. Two of these provisions, section 2634 (exceptions to requirements for protective payments) and section 2638 (modification of requirements for work supplementation program), require revisions to regulations under the jurisdiction of the Department of Labor and the Office of Human Development Services, Department of Health and Human Services. An interim final rule

concerning these provisions will be published shortly. The third provision, section 2640(b) (disregard of child support payments), affects regulations within the jurisdiction of the Office of Child Support Enforcement, Department of Health and Human Services. Regulations implementing this provision are being published concurrently with this regulation.

In response to the consultation request, we received several questions asking whether the new rules affecting eligibility and/or payment are effective with the budget month or the payment month. In order to facilitate the efficient implementation of these changes, we have decided that these changes are effective with respect to the payment for any payment months beginning on or after the effective date specified. For example, in a State using a calendar-month, two-month budgeting cycle, the standard \$75 work expense disregard for part-time workers (as discussed below at § 233.20(a)(11)(i)(B)) will be applied to the October payment month both for eligibility (using October income) and for payment (using August income).

Provision by State Agencies of Information Regarding Fugitive Felons (§ 205.50 of Interim Regulations)

Under prior law, section 402(a)(9) of the Act prohibited disclosure by a State of information concerning applicants or recipients except under limited circumstances. Section 2636 of DRA adds a new provision to section 402(a)(9) of the Act to permit the State or local agency responsible for the administration of the State plan in the locality to disclose the current address of any recipient to a State or local law enforcement officer if such officer so requests and furnishes the agency with the recipient's name and social security number and demonstrates that: (1) Such recipient is a fugitive felon; (2) the location or apprehension of such felon is within the officer's official duties; and (3) the request is made in the proper exercise of those duties. For purposes of implementing this provision, a State must define a fugitive felon. The State may use the definition under State law or under Federal law (for example, the Fugitive Felon Act, 18 U.S.C. 1073) or a combination of both. This provision applies only to current AFDC recipients. A State need not enact legislation in order for this provision to be effective as is required under section 618 of the Revenue Act of 1951 (also known as the Jenner Amendment), which also is codified in § 205.50.

Individuals Who Must File for Assistance as a Unit (§ 206.10 of the Interim Regulations)

Under prior law, family members who lived together were not required to file for AFDC benefits as a unit; a parent filing for a dependent child could choose to include or exclude himself or herself and other potentially eligible children from the assistance unit. This allowed the family to maximize the AFDC benefit and family income. States were not able to count either income or resources of excluded individuals in determining need and payment for the eligible child, except that income of a parent was considered available to children under 21, and income of a spouse was considered available to the other spouse.

Section 2640 of DRA, which adds section 402(a)(38) to the Act, requires that an application on behalf of a dependent child must include as applicants certain eligible relatives living in the same household as the dependent child. Any income and resources of these relatives is counted in making the determination under section 402(a)(7).

Section 402(a)(38) of the Act requires that the following individuals, if living in the same household as the dependent child and otherwise eligible, be included in the assistance unit:

- The parent(s) of a dependent child;
- Brothers and sisters of the dependent child who are themselves dependent children within the age limit set by the State.

Notwithstanding the above, certain parents and siblings must be excluded from the assistance unit because they are not eligible for assistance under other provisions of the Act. For example:

- Individuals who receive SSI benefits;
- Aliens who would be included but for the citizenship and alienage requirements at section 233.50;
- Aliens who would be included but are ineligible due to the deemed income or resources of their sponsors, or due to sponsorship by an agency or organization pursuant to section 233.51;
- Sanctioned individuals; and
- Individuals ineligible due to receipt of lump sum income.

These provisions are discussed in detail below.

Individuals Who Must Be Included in the Assistance Unit

First, any parent who is living in the same household as the dependent child must be included in the unit. "Parent", as defined in § 233.90(a)(1), includes a

natural or adoptive parent, and a stepparent in States with laws of general applicability holding them legally responsible to the same extent as a natural parent. In cases of eligibility due to incapacity or, in States with an AFDC-UP program, unemployment of the principal earner, both parents must be included in the assistance unit if otherwise eligible under the Act.

Second, blood-related or adoptive brothers and sisters who are living in the same household as the dependent child and who meet the age and deprivation requirements must also be included in the unit. We have not required stepbrothers and stepsisters to be included because the conference report in addressing the issue of "brothers and sisters" clearly indicates as intent to exclude stepbrothers and stepsisters. Moreover, in States without laws of general applicability, the income of a stepparent living in the household is counted as available to the assistance unit, after applying the disregards at § 233.20(a)(3)(xiv), which include amounts to meet the needs of his dependents living with them. Thus, the Act already accounts for the needs of stepbrothers and stepsisters of an AFDC child whenever the stepparent's income is counted. Finally, if stepbrothers and stepsisters were required to be included, it would also require the inclusion of the stepparent since section 402(a)(38) requires parents of dependent children to be included. Such a result would circumvent section 402(a)(31) which specifies a particular method of counting a stepparent's income.

As an example, in States without laws of general applicability, if a dependent child's household consists of his mother, stepfather and stepbrother, under the new law the assistance unit must include the dependent child and his mother. His stepfather's income would be considered available to the assistance unit after application of the stepparent income disregards (at § 233.20(a)(3)(xiv)), which would include an amount for the support of his child. Of course, if application is made on the stepbrother's behalf, he and his natural parent would be included in the assistance unit, if otherwise eligible. In states with laws of general applicability, the stepparent must be included in the assistance unit; however, stepbrothers and stepsisters of the dependent child need not be included in the assistance unit.

All of the income and resources of the individuals required to be included in the assistance unit must be considered in determining eligibility and payment for the assistance unit. In this

connection, the statute specifically provides for the inclusion of title II benefits, notwithstanding section 205(j). When title II benefits are paid to a representative payee on behalf of a member of the assistance unit and the payee lives in the same household as the assistance unit, the title II benefits must be counted as income. When the representative payee does not live in the household, the title II benefits are included only to the extent that the payee makes them available for the support of the beneficiary. Conforming changes in the title II regulations will be published shortly.

Current AFDC policy, as stated in State Letter 1088, which permits the exclusion of a child receiving title II benefits and his title II income, is no longer valid and is revoked.

Parents and Siblings Who Must Not Be Included in the Assistance Unit

Under the new statute, parents and siblings must be included in the assistance unit, unless they are ineligible to receive AFDC under another provision of the Act. Some examples of individuals in this group are:

- Parents and siblings who receive SSI benefits. Section 402(a)(24) of the Act provides that an individual who is receiving benefits under title XVI cannot be considered as a member of the assistance unit nor have his income or resources considered for purposes of determining need or payment;

- Parents and siblings who are aliens and are ineligible for AFDC because they have been sponsored by an agency or organization or because of the application of sponsor-to-alien deeming provisions in accordance with section 415 of the Act and § 233.51;

- Parents and siblings who are aliens and are ineligible for AFDC because they do not meet the citizenship and alienage requirements at section 402(a)(33) of the Act and § 233.50;

- Parents and siblings who are ineligible for AFDC as the result of the imposition of a sanction; and

- Parents and siblings previously entitled to AFDC who are ineligible due to receipt of lump sum income.

When any of the above individuals are no longer ineligible to receive AFDC, i.e., the sanction ends, the State must include them in the assistance unit in accordance with the budgetary methods specified in § 233.31.

Regulations implementing these requirements are contained in § 206.10.

Discussion of Other Changes Related to This Provision

The new rules regarding inclusion of family members require several revisions to past policy and procedures. Section 402(a)(10) of the Act, which provides that all individuals wishing to make application for AFDC shall have the opportunity to do so, had also been interpreted as granting caretaker relatives the right to include or exclude family members from the assistance unit as they chose. This interpretation, to the extent it conflicts with the new statutory provision on who must be included in the assistance unit, is no longer valid. With respect to persons not required to be included in the assistance unit under section 402(a)(38), the caretaker relative retains the right to choose who is included or excluded from the unit. Section 402(a)(10) continues to be interpreted to mean that State agencies may not deprive any individual of the opportunity to apply for assistance, for example, by establishing waiting lists or by setting up other barriers to application.

Under the new statutory provision, eligibility of the assistance unit is based on a review of the total income and resources of all the persons required to be included in the assistance unit. Therefore, the caretaker relative must submit an application for assistance which covers all the required persons. The failure to include an individual who is required to be in the assistance unit or to provide information necessary for determining eligibility and payment amount, except as provided in §§ 232.11 and 232.12, makes the entire assistance unit ineligible for assistance. Otherwise, the State will not have sufficient information to be able to determine the eligibility of the entire family as required by the statute. Any payment made to such an ineligible assistance unit is an overpayment and must be corrected in accordance with § 233.20(a)(13).

Parents and siblings now included in the assistance unit must also comply with all requirements of the Act. For example, these individuals are applicants or recipients for purposes of the WIN program. Thus, they must register for manpower services, training, employment, and employment-related activities unless exempt pursuant to section 402(a)(19)(A) and § 224.20.

The revised regulations at § 206.10(a)(1)(vii) are effective October 1, 1984 for all current recipients as well as for new applications made on or after that date. In addition, the income and resources of parents and siblings joining an assistance unit after the effective

date of the legislation will be included effective with the month the individual begins living in the household.

Disregard of Child Support Payments §§ 232.20 and 233.20(a)(4) of Interim Regulations

Under prior law, support collected periodically on the monthly support obligation was reported to the IV-A agency by the IV-D agency for the purpose of determining eligibility. Under section 2640 of DRA, section 457(b) of the Act is amended to require that the first \$50 collected which represents monthly support payments is paid to the assistance unit. In addition, section 402(a)(8)(A) of the Act is amended to provide that this amount, not to exceed \$50, be disregarded in determining need and the amount of the assistance payment.

Under regulations published concurrently with this regulation, § 302.51(b)(1) is reinstated and amended to provide that the first \$50 per assistance unit per month of the support collected on the monthly support obligation for the assistance unit be paid to them. Section 232.20 has been amended to provide for payment of this amount to the family by the IV-A agency. A new § 232.20(a)(1) has been added to define the terms "support collection", "monthly collections", and "support amounts for a month" as used in that regulation. These three terms all mean the assigned amount that the support enforcement agency collects on behalf of an AFDC family as payment on the required support obligation in the month in which the support was collected, less the sum paid to the assistance unit under § 302.51(b)(1). Under this definition, the IV-A agency cannot count the sum paid under § 302.51(b)(1) in the determination of eligibility under § 232.20(b)(1) (formerly § 232.20(a)(1)). In addition, a new § 232.20(d) has been added to require the IV-A agency promptly to pay the family the sum under § 302.51(b)(1). The IV-A agency may either issue this payment as part of the monthly assistance payment or separately from it. In either case, the notice and hearing requirements at § 205.10 do not apply to this payment since it merely represents a pass-through of support collected by the IV-D agency.

For example, if the State chooses to make these payments as part of the monthly assistance payment and the amount of that combined payment is reduced solely because the IV-A agency did not receive notice of any amount collected by the IV-D agency, then the notice and hearing requirements do not

apply. On the other hand, if the amount of the combined payment includes a reduction in the monthly assistance payment, the notice and hearing requirements at § 205.10 apply to that reduction. Any question from an assistance unit regarding the amount of child support collected on its behalf by the IV-D agency is to be referred to the IV-D agency.

In addition, we have determined that the cost of issuing these pass-through payments aids the proper and efficient administration of the IV-A program and therefore should be viewed as a IV-A administrative cost subject to Federal matching under section 403(a)(3)(C) of the Act.

Section 233.20 has been amended to revise § 233.20(a)(4)(ii)(j) to provide that the amount, not in excess of \$50, that the IV-A agency sends to the AFDC recipient be disregarded as income and resources for purposes of determining eligibility and payment amount. That subparagraph provides that in States that count support received directly by the family as income (rather than make these payments subject to recovery by IV-D), the IV-A agency must disregard the first \$50 which represents monthly support paid by the absent parent in the determination of need and the amount of need and the amount of the assistance payment. This policy also applies to voluntary support payments. However, the total amount of support that is disregarded cannot exceed \$50 per month per assistance unit.

Exclusion of Burial Plots, Funeral Agreements, and Certain Real Property From Resource Test (§ 233.20(a)(3) of the Interim Regulations)

Under prior law, a family was considered ineligible for any month it had resources over \$1,000 (or such lower amount set by the State). Excluded from consideration were only: the equity value of a car up to \$1,500 (or a lower amount set by the State); the value of a home owned and occupied by the family; and, at State option basic items essential to day-to-day living, such as clothing, furniture, and other essential items of limited value.

Sections 2626 of DRA amended section 402(a)(7)(B) to require States to exclude from consideration as a resource, in accordance with regulations prescribed by the Secretary, funeral agreements covering family members, and one burial plot for each family member. To allow States flexibility to establish definitions and limits which conform to State laws and regulations, the Secretary has placed no limit on the type of funeral agreements to be excluded. However, consistent with the

policy in the SSI program, we have established a maximum equity value of \$1,500 per family member for bona fide funeral agreements. States may set a lower amount, just as they may with the basic resource limit or the equity value of a car as described above. In addition, the Secretary has delegated to the State the authority to define the term "burial plots" for purposes of this exclusion. Such definitions and limits must be specified in the State plan. For purposes of this discussion, "family member" means a member of the assistance unit.

Section 2626 of DRA also provides for the exclusion, for a period of time prescribed by the Secretary, of otherwise non-excludable real property which the family is making a good faith effort to sell. Eligibility for assistance during this period is conditioned on disposal of such property. Any payments made during the period are considered overpayments at the time of disposal, to the extent that payments would not have been made had disposal occurred at the beginning of the period.

In determining the time period for disposal of non-excludable real property, we considered the committee report for this provision, which indicates that Congress intended AFDC policy to be similar to SSI policy. For this reason, we have determined that the time period for disposal is six months, with an additional three month extension at State option. In addition we have required that, as in SSI, the applicant must agree, in writing, to dispose of the property, and to make repayment of any AFDC benefits that would not have been received had disposal occurred at the beginning of the period.

After this agreement is executed, the excess resources to be disposed of are then excluded in determining eligibility for payments for up to the prescribed disposition period. At the time of disposal, any payments made since the agreement was entered into are overpayments to the extent they would not have been paid had disposal occurred at the beginning of the period. The amount to be recovered cannot exceed the amount of the net proceeds from the disposition of the property. However, if the net proceeds from the sale of the property, together with all other resources at the beginning of the disposal period, are under the State's resource limit, no overpayment would exist. If the family becomes ineligible for other reasons during the disposal period, or if disposal is not completed within the specified time period, eligibility for continuing payments ceases immediately and all payments made during the period are overpayments which the State must recover pursuant

to § 233.20(a)(13) of the regulation. Under the regulation, the State is delegated the authority to define a "good faith effort" to sell property.

This provision applies to both applicants and current recipients. It does not change the longstanding policy to permit States to establish provisions governing transfer of assets prior to application and placement of liens on real property.

Earned Income of Full-Time Students (§ 233.20(a)(3) and (11) of Interim Regulations)

This regulation implements section 2642 of DRA which amended sections 402(a)(18) and (a)(8) of the Act. Section 2642(a) amended section 402(a)(18) to permit States to exclude for up to six months all or any part of earned income of a dependent child who is a full-time student in the determination of whether the family's income exceeds 185 percent of the State's standard of need (150 percent of the State's standard of need from June 1 to September 30, 1984). Section 2642(b) of DRA amended section 402(a)(8)(A) of the Act by adding a new clause (vii) which permits States to disregard all or any part of the earned income of a dependent child who is a full-time student and is applying for AFDC in the determination of need under section 402(a)(7) of the Social Security Act, but only to the extent the State disregards such income in determining whether the family's gross income exceeds 185 percent of the State's need standard.

The legislative history of this provision indicates that Congress intended to allow States the authority to disregard, in the determination of eligibility under the gross income limit, earned income which is received by an AFDC child who is a full-time student but who is not participating in a program under the Job Training Partnership Act of 1982 (JTPA). As in the case of earnings derived from participation in a program under the JTPA, States may exclude all or a portion of the earned income of a dependent child for up to six months.

The regulation provides that States must specify in their State plans what portion, if any, of the earned income will be disregarded under this new disregard provision and the length of time the disregard will be applied (up to six months). Consistent with the JTPA regulations, the six month limitation is per calendar year (see interim final rules published July 15, 1983, 48 FR 32346-32350).

The full-time student disregard in section 2642(a) of DRA does not

override the six month limitation on the disregard of earned income derived from participation in JTPA programs provided in section 402(a)(8)(A)(v). Thus, earned income of a dependent child who is a full-time student and who is participating in a JTPA program may be disregarded in the determination of eligibility under the gross income limit for a maximum of six months per calendar year, not for 12 months. However, if a full-time student secures employment unrelated to JTPA participation, a second six calendar month period could be established by the State under the new provision. Thus, up to 12 months of disregard are available, but no more than 6 months is for JTPA-related employment and another 6 months for non-JTPA related employment. Where the State disregards, under the JTPA disregard provision, only a portion of the dependent child's JTPA earnings received for a month or none of the JTPA income, any portion of the income which was not disregarded under the JTPA disregard provision for that month may be disregarded under the new full-time student disregard provision.

Application of the Disregard

The disregards in this regulation are applicable only to the earned income of dependent children who are full-time students. Earned income of other children is treated as any other earned income and disregarded to the extent required or permitted under other provisions of section 402(a)(8) of the Social Security Act, and regulations at § 233.20(a)(11).

The AFDC program has a two step process for determining financial eligibility—the 185 percent gross income limitation (150 percent until October 1, 1984) and the determination of need in accordance with the State standard of need. The amendment to section 402(a)(18) affects only the first step and the amendment to section 402(a)(8)(A) affects only the second.

Gross Income Limitation

First, the family's total income is measured against 185 percent of the State's standard of need. In making this determination, when a dependent child who is a full-time student has earned income which the State elects to disregard under this regulation, the amount to be disregarded is not counted in determining whether the family's total income (without benefit of other disregards in section 402(a)(8) of the Act except, at State option, section 402(a)(8)(A)(v)) is in excess of 185 percent of the standard of need for a family of the same size (including

special needs). If the family's income exceeds that amount, the family is ineligible for assistance. If the family's total income does not exceed 185 percent of the standard of need, the eligibility process continues.

Determination of Need

The second step in the eligibility process is to measure the family's income, after appropriate disregards, against the standard of need. Currently, in determining need, only the earned income of full-time students who are recipients is disregarded. The new legislation adds a new clause 402(a)(8)(A)(vii) to the Act. This clause permits States also to disregard the earned income of a dependent child who is applying for AFDC in making the determination of need if the child is a full-time student. However, in order to elect to disregard this income in determining need, the State must also have elected to disregard it in determining whether the family's gross income exceeds 185 percent of the State's standard of need. If the family's income, after application of appropriate disregards, exceeds the State's standard of need, the family is ineligible for assistance. However, if the family's countable income does not exceed the standard of need, the process continues by determining the amount of the assistance payment. In making this determination, the earned income of a dependent child who is a full-time student is disregarded indefinitely in accordance with section 402(a)(8)(A)(i) of the Social Security Act and regulations at section 233.20(a)(11) (i)(A) and (ii)(A) which require that all the earned income of a dependent child who is a full-time student receiving AFDC be disregarded.

The regulations implementing these provisions are effective upon publication. The statutory provision was effective upon enactment.

Recalculation of Ineligibility Caused by Lump Sum Income (§ 233.20(a)(3)(ii)(F) of Interim Regulation)

The current provision at section 402(a)(17) of the Act requires non-recurring lump sum income received in a month to be considered available in the month it is received and also in future months. Thus, if such income, along with other income received in that month, exceeds the standard of need, the family is ineligible in that month, or at State option, ineligible not later than the corresponding payment month. In addition, any amount of the remaining income that exceed the initial month's need standard is divided by the monthly need standard, and the family is

ineligible for aid for the number of additional months resulting from that calculation. The statute contained no specific provision for shortening the period of ineligibility.

The existing regulation at § 233.20(a)(3)(ii)(D) permits a State to shorten the period of ineligibility, but only of a life threatening circumstance, e.g., a medical emergency, fire, flood or other natural disaster, occurred prior to the expiration of the period of ineligibility which required the assistance unit to expend part or all of the lump sum income to meet such a circumstance. The period of ineligibility could be shortened under the following specified conditions: (1) The family must have used its lump sum money to meet essential needs, (2) the family must have had no other income or resources available, and (3) the family must have expended or would expend some of the remaining lump sum in connection with the life-threatening circumstance.

Section 2632 of DRA amends section 402(a)(17) of the Act to provide for three situations where the State may, at its option, shorten the period of ineligibility. The three situations are:

(1) *An event occurs which would have affected the amount payable if the family was receiving aid.* Although many events occur which can affect the amount payable, i.e., the grant, the period of ineligibility caused by the lump sum can only be recalculated when the event also affects the need standard. This is the case because the method of calculation of the period of ineligibility is not changed by DRA. Under section 402(a)(17) of the Act, in order to calculate the number of months of ineligibility, the total income is divided by the need standard. Thus, the only way the number of months can be reduced is if that divisor, i.e., the need standard, is increased. Therefore, a decrease in the income of the family would not in and of itself cause a recalculation. The need standard must also be affected.

Examples of events which could result in a recalculation include: an increase in family expenses, such as rent, in a State where a portion of the need standard, e.g., shelter, is based on actual costs; eligibility for a special need item; and any general increase in the need standard. As in the past, when a child is born to a family whose members are ineligible due to prior receipt of a lump sum, the child is treated as a separate assistance unit. We view the option in the statute of shortening the period of ineligibility as only applying to persons who are already ineligible due to a prior receipt of a lump sum.

(2) *The lump sum or a portion of the lump sum becomes unavailable to the family for a reason that is beyond the family's control.* In order to provide States with maximum flexibility in implementing this provision, we have left the definitions of "unavailable" and "beyond the family's control" to the States. Examples might include loss or theft of income, or a life-threatening circumstance. The recipient must show that the factors creating the need for the expenditure were beyond the family's control. States that elect this option must develop guidelines for determining when a lump sum becomes unavailable to a family for reasons beyond its control and must substantiate such a finding in the case record.

(3) *A family member incurs and pays for medical expenses, as approved by the State, in a month during the period of ineligibility caused by receipt of a lump sum.* A State choosing this option must specify in its plan which medical expenses are allowable under this provision. For recalculations due to medical expenses, States need not initiate the recalculation until the total medical expenses equal or exceed the amount of any remaining income left after determining the number of months of ineligibility. This is because the number of months of ineligibility will not change until income is reduced by that amount.

Based on the statutory language, the recalculation in the first situation above is done as of the month the event occurs. In doing the recalculation, the amount of funds that should be available in that month based on the previous calculation is divided by the standard of need applicable to that month. For example, assume a family with no other income receives a lump sum of \$2,000 on April 1. The need standard is \$400. The family is ineligible for 5 months, May through September (assuming the State elects to begin the period of ineligibility in May rather than April). In July, the need standard is increased to \$500. The recalculation, done in July, would be done with the assumption that \$1,200 of the lump sum was still available, since the family should have budgeted \$400 for May and June. The \$1,200 is divided by the increased standard of need of \$500. The family is ineligible for July and August; \$200 would be counted as income in September.

This provision is effective October 1, 1984. For periods of ineligibility arising from lump sum income received prior to that date, any recalculation resulting from this provision is effective no earlier than October 1, 1984.

Other Provisions

Section 2632 of DRA also amended section 402(a)(17) of the Act to make two clarifications. The legislative history (statement in the Congressional Record entitled "Clarification of Section 2632, Deficit Reduction Act of 1984", S 10644, August 10, 1984, by Senator Dole, Chairman of the Senate Finance Committee) shows that the purpose of this provision of DRA is to clarify the original intent of Congress as to the applicability of the lump sum provision. Senator Dole states that because some courts have interpreted the lump sum provision as enacted in the Omnibus Budget Reconciliation Act of 1981 to apply only to families that have earned income at the time they receive a lump sum, the intent of section 2632(b) of DRA is to clarify that the 1981 lump sum provision was always intended by Congress to apply to all families, not just those with earned income. Therefore, the statute now specifies that the lump sum provision applies to all applicants and recipients, and any person whose need a State considers in determining family income, regardless of whether they have any other income, or whether their other income is earned or unearned. This includes essential persons and stepparents in States with laws of general applicability. (This provision does not apply to stepparents in States without laws of general applicability who are not applying for or receiving AFDC. In these States, the lump sum income of a stepparent is counted in accordance with § 233.20(a)(3)(xiv) of the regulation.)

In addition, the statute specifies that the lump sum income may be either earned or unearned income. This last clarification was effective upon enactment of the legislation. Accordingly, the corresponding regulatory provision is effective upon publication.

Clarification of Earned Income Provision (§ 233.20(a)(3)(ii)(D), (6)(iii), (7)(ii), and (11)(i) of Interim Regulations)

In OBRA, section 402(a)(8) of the Act was amended to standardize the work expense disregard (\$75 per month) and cap dependent care costs (\$160 per month per dependent), for full-time employment and less for part-time employment. However, there have been conflicting court decisions concerning whether to apply that work expense disregard to gross income or income remaining after deduction of mandatory payroll expenses.

Section 2625 of DRA adds section 402(a)(8)(C) to the Act to clarify that the

State agency shall apply the \$75 work expense disregard against gross earned income and not to net income after deductions for taxes or for any other purposes.

Section 233.20(a)(6)(iii), which defines "earned income", is amended to clarify that earned income means gross earned income prior to any deductions for taxes or for any other purposes. Sections 233.20(a)(7)(ii) and (a)(11)(i) are also amended to clarify that for AFDC the standard \$75 work expense disregard is subtracted from gross earned income and is meant to recognize *all* work expenses (including tax deductions), other than dependent care, which the applicant or recipient may incur. In addition, since the term "net income" was misinterpreted to mean earned income remaining after mandatory payroll deductions, § 233.20(a)(3)(ii)(D) is further revised to delete the term "net income" and refer instead to "income after application of disregards" to more clearly reflect the statute. We have also clarified that the general provision on the availability of income and resources at § 233.20(a)(3)(ii)(D), which requires the taking into account of income and resources only when actually available, applies only where it is not inconsistent with another more specific provision governing the treatment of income or resources, such as the use of gross income or the deeming of stepparent income.

These regulatory changes affect the AFDC program only. The Territories, in administering the adult assistance programs, must still disregard all expenses reasonably attributable to the earning of income.

As Congress clearly indicated that this provision merely clarifies the statute, rather than changing it, this provision was effective on enactment (July 18, 1984). Therefore, this regulation is effective upon publication rather than on October 1, 1984.

Gross Income Limitation (§ 233.20(a)(3)(xiii) of Interim Regulations)

OBRA limited AFDC eligibility to families whose gross income was 150 percent or less of the State's need standard. This limit was established in order to target AFDC benefits to those most in need.

Section 2621 of DRA amends section 402(a)(18) of the Act to increase this limit on gross income to 185 percent of the State's standard of need. Accordingly, § 233.20(a)(3)(xiii) is amended to embody this change. We have also made a technical revision in this section to only reflect those

disregards which are not applied in determining eligibility under this section.

Counting the Income of Parents of Minor Parents (§ 233.20(a)(3)(viii) of Interim Regulations)

Under prior law, a minor could file for benefits solely on behalf of his needy child who then received aid without consideration of the income of the minor's parents. If the minor parent filed for benefits as well, his own parents' income could be considered under certain circumstances. Section 2640 of DRA requires that the minor parent must be part of the assistance unit. This section also adds section 402(a)(39) to the Act which requires that the income of a minor's parent(s) or legal guardian(s) be considered in determining eligibility and payment, subject to the stepparent disregards in section 402(a)(31), if such individual(s) lives in the same household as the assistance unit. For purposes of this section, a minor is one who is under the State's age limit for dependent children. For example, where a minor mother applies for AFDC for her child and both live with the minor's parents, the assistance unit would consist of the minor mother and her child. The income of the minor mother's parents would be considered available to the assistance unit, subject to applicable disregards described below. This provision also applies to the income of the parent(s) or legal guardian(s) of a minor legal guardian who files for assistance for a dependent child. Of course, if all these people file together (i.e., dependent child, his parent who is also a dependent child, and that child's parents) then all their need and income is considered as part of a single assistance unit.

Applying Disregards to This Income

The new section of the statute provides that the income of a minor parent's parent(s) or legal guardian(s) will be included only to the extent that the income of a stepparent would be included, pursuant to section 402(a)(31) of the Act. This means that in counting such parent's or legal guardian's income, the State must disregard all of the following income:

(a) \$75 for work expenses for each parent or legal guardian working full-time (or a lesser amount in the case of an individual not engaged in full-time work or not employed throughout a month). Although the statutory provision is not specific as to whether there should be only one exclusion or one for each employed parent or legal guardian, we have determined that in the case of

more than one working parent or legal guardian, each should be given the benefit of the disregard because if each has a job, each has such expenses. This is consistent with existing provisions which provide separate work expense disregards to each working member of the assistance unit.

(b) An amount equal to the State's standard of need for a group with the following members:

(1) The parent(s) or legal guardian(s) living in the home; and

(2) Any other individuals living in the home who are not in the assistance unit, but who are dependents of the parent(s) or legal guardian(s). Thus, if there are two adult parents and a sibling of the minor mother living in the same household as the minor mother and her dependent child, the State would disregard an amount equal to the State's standard of need for three people.

(c) Amounts paid by the parent(s) or legal guardian(s) to support individuals outside the home who could be claimed as dependents; and

(d) Payments by the parent(s) or legal guardian(s) of child support and alimony to individuals outside the home.

We had to consider three additional issues in writing these regulations:

First, whether the minor must meet the school attendance requirements in a State that provides assistance to dependent children through age 18 provided they are expected to graduate before age 19. Based on the language of the statute which refers only to age and not to the school attendance portion of the requirement, we have decided that in such States the provision applies to such minors up to age 19, regardless of school attendance.

Second, whether we should define legal guardian in the regulation. There is no standard Federal definition of legal guardian; therefore, we are requiring States to use appropriate State definitions.

Third, whether a legal guardian is a specified relative for purposes of establishing AFDC eligibility. Since the statute does not amend section 406(a)(1) of the Act, we do not believe Congress intended to broaden the definition of specified relative through this income provision.

Treatment of Earned Income Credit in Determining Countable Income (§ 233.20(a)(6)(ix) of Interim Regulations)

Under prior law, States were required to count as earned income the amount of earned income credit (EIC) advance payments an individual was eligible to receive, regardless of whether the individual actually received the

payments. States were also required to make adjustments where the amount of EIC advance payments counted during the tax year was more or less than the actual amount of the credit. Section 2629 of DRA amended section 402(d)(1) of the Social Security Act to provide that only EIC payments actually received are counted as earned income. The requirement of counting the EIC that a recipient was eligible for, but did not receive, has been deleted. The regulation at § 233.20(a)(6)(ix) is amended accordingly.

States continue to be required to make adjustments where the amount of EIC advance payments a recipient received was more or less than the actual amount of the credit due that individual. Accordingly, if the recipient received EIC advance amounts in excess of the amount of the actual credit due, the State must return to the recipient the amount of any AFDC benefits lost. If the recipient received EIC advance amounts which were less than the amount of the actual credit, the additional EIC payment received at the end of the tax year is counted as earned income in the month received. If the individual does not file for advance payments but instead receives the EIC on an annual basis, the EIC payment is counted as earned income in the month received.

Work Expense Deduction (§ 233.20(a)(11)(i)(B) of Interim Regulations)

Under prior law, a \$75 standard work expense disregard was subtracted from the gross earned income of full-time workers in lieu of actual work-related expenses. However, the statute specified that an amount less than \$75 (as prescribed by the Secretary) would be subtracted for workers who were employed part-time or were not employed throughout the month.

Section 2622 of DRA extends the full \$75 standard work expense disregard to all employed applicants or recipients whether working part-time or full-time. Section 233.20(a)(11)(i)(B) is amended accordingly.

Continuation of \$30 Disregard from Earned Income (§ 233.20(a)(11)(i)(D) and (ii)(B) of Interim Regulations)

Under prior law, application of the \$30 and one-third earned income disregard to a recipient's earned income was limited to four consecutive months. This disregard was not available again until 12 consecutive months had passed during which the individual had not received AFDC.

Under section 2623 of DRA, the application of the \$30 and one-third

disregard is still limited to four consecutive months. However, after the \$30 and one-third disregard has been applied in four consecutive months, a \$30 disregard continues to be available for eight additional months. After this time, the disregards are not available again until 12 consecutive months have passed during which the person did not receive AFDC. The amendments to section 402(a)(8) of the Act made by this section of DRA are extremely complex. After careful review, the position taken in these regulations is the only reasonable interpretation that gives effect to all parts of the provision.

Under the regulation, the \$30 and one-third disregard is applied to a recipient's earned income for four consecutive months. If any part of this disregard is applied, the person is considered to have received the disregard for that month. After the fourth consecutive month that the \$30 and one-third disregard has been applied, the person is eligible to receive the \$30 disregard for eight additional months.

This eight month period begins with the month following the fourth consecutive month in which the \$30 and one-third disregard was applied, and ends with the eighth consecutive month regardless of whether the \$30 disregard is actually applied to the person's earned income. For example, if a recipient becomes employed in January and receives the \$30 and one-third disregard for the income received in January, February, March and April, he would be entitled to a \$30 disregard for income earned in May through December. However, even if the recipient loses his job in July and no longer has any earned income, the eight month period nonetheless continues to run. If the recipient becomes re-employed in September, the \$30 disregard would be applied for September through December.

Where a person becomes ineligible for AFDC after receiving the \$30 and one-third disregard for four consecutive months, but before eight additional months of the \$30 disregard have been available, the person is eligible for the remaining months of the \$30 disregard if he returns to the AFDC rolls during that time. This \$30 disregard is available to recipients and even to individuals who lost eligibility because of the \$30 and one-third disregard and become applicants during this eight month period, even if such applicants were not recipients during one of the four prior months. In the case of a person who does not receive assistance during the eight additional months, we believe that Congress did not intend that a family

must be off the rolls for 20 months after the loss of the \$30 and one-third disregard before being eligible again for the \$30 and one-third disregard. Therefore, we have kept the rule at § 233.20(a)(11)(ii)(B) which provides that the \$30 and one-third disregard is available after 12 consecutive months during which the individual is not a recipient of AFDC. Using the above example, if the recipient lost eligibility for May because with only the \$30 disregard his income was too high and remained off the rolls for 12 consecutive months, the \$30 and one-third disregard would be available to him in May of the following year, just as under prior law. If, however, he retained eligibility after April through use of the \$30 disregard but lost eligibility for July and remained off the rolls for 12 consecutive months, the \$30 and one-third disregard would be available to him in July of the following year. Finally, with respect to implementation on October 1, 1984, this provision only applies to recipients who have not already received the \$30 and one-third disregard for four consecutive months prior to October 1, 1984 (unless they have been ineligible for AFDC for 12 consecutive months).

Waiver of Overpayment Recoupment When Cost of Collection Would Exceed Amount Due (§ 233.20(a)(13) (i) and (vi) of Interim Regulations)

Prior to the enactment of DRA, section 402(a)(22) of the Social Security Act required that States correct all overpayments made under the State's plan. Section 2633 of DRA amends this statute to permit States not to recover overpayments for individuals no longer receiving aid, except for cases involving fraud, when the cost to collect the overpayment would equal or exceed the amount of the overpayment based on the Secretary's criteria for determining cost-effectiveness and dollar limitations. The new statute also makes explicit that a State must recover from a current recipient the amount of an overpayment that the recipient received during a prior period of eligibility. The Secretary, for purposes of implementing this section, by regulation has established the following criteria and dollar limitations.

For individuals no longer receiving aid who have outstanding overpayments, States may elect not to take action to recover overpayments less than \$35. Where the overpayments total is \$35 or more, a reasonable effort by the State must be made to collect the overpayment. At a minimum, the State must attempt to notify the individual no longer receiving aid about the amount of and reason for the overpayment and request that repayment be made. After

that effort, the State may elect at which point to no longer pursue recovery if it determines that such action would not be cost-effective. However, the State must currently maintain information for three years concerning former recipients who received overpayments, so that if one or more of those individuals begins receiving assistance again, the State agency would be required to make the recovery (including overpayments less than \$35). Since States are already required under existing regulations to maintain case records, this is not a new recordkeeping requirement.

For two principal reasons, \$35 was chosen as the amount below which a State, if it so chooses, can forego any recovery effort from former recipients for cost-effectiveness. First, this is the dollar amount currently being used to constitute cost-effectiveness of overpayment recovery action in the Food Stamp Program. Choosing the same standard promotes consistency and reduces administrative complexity between the two programs. Second, the \$35 standard is consistent with congressional intent as expressed in the conference report. The Secretary will periodically review this figure to determine whether this amount should be adjusted.

Notwithstanding these criteria, the State must make every effort, including referral for prosecution, to recover overpayments caused by recipient fraud. The definition of fraud, for purposes of this section, will be determined in accordance with State law.

This provision is effective on October 1, 1984 and applies to overpayments which are uncollected or undiscovered as of that date as well as to overpayments made after the effective date.

Finally, the \$35 amount does not represent a tolerance level for overpayments.

Work Transition in the Case of Certain Families Who Lose AFDC Benefits Because of Earned Income (§ 233.20(a)(14) of Interim Regulations)

Under prior law, if a family lost eligibility for AFDC solely because of the four-month limitation on the \$30 and one-third disregard, the family also lost categorical Medicaid eligibility at the same time.

Section 2624 of DRA specifies that in any case where a family has ceased to receive AFDC solely because a member of the family is no longer eligible for either the \$30 and one-third or \$30 disregard, the family is deemed, but only for purposes of Medicaid eligibility, to be receiving AFDC for a period of nine

months after the last month of AFDC benefits (regardless of whether the family continues to meet other eligibility conditions). Moreover, at State option, an additional period of up to six months of Medicaid coverage may be provided but only for so long as the family would be eligible for AFDC if the \$30 and one-third or \$30 disregards were applied.

This provision becomes effective October 1, 1984 for current recipients. However, under certain conditions, families which ceased to receive AFDC between October 1, 1981 (the effective date of the Omnibus Budget Reconciliation Act of 1981) and October 1, 1984 because a member of the family exhausted his or her eligibility for the \$30 and one-third disregards are entitled to extended Medicaid coverage, beginning with the month in which they apply for such coverage. Medicaid coverage is available beginning with the month of application to these families that became ineligible for AFDC prior to October 1, 1984 under the following conditions:

- The family must apply for Medicaid no later than the end of the sixth month after the month in which these regulations implementing section 402(a)(37) of the Social Security Act are published;

- The family must be one that, if the \$30 and one-third disregard had been applied, would have been continuously eligible for AFDC (without regard to section 402(a)(37) of the Act) from the time the family ceased to receive AFDC to the time the unit applies for Medicaid. In order to be continuously eligible, a family must demonstrate to the satisfaction of the State agency that it would have been eligible for each month beginning from the month in which the family lost eligibility. For example, after October 1, 1984, if the family would be ineligible because of the income of a sibling who had not previously been part of the assistance unit, based on section 2640 of DRA, the family would not be considered to be continuously eligible. In addition, both before and after October 1, 1984, a family would not be continuously eligible if, for example, the family's income exceeded the gross income limit or the only child reached the age limit set by the State; and

- The family must fully disclose in its application any health insurance coverage which is in effect for members of the family.

In implementing this provision, States should make all reasonable efforts to notify former recipients who may be eligible under this provision through contacts with local media, posters in public areas or other appropriate means.

Monthly Reporting and Retrospective Budgeting (§§ 233.20(b)(2), 233.31, 233.35, 233.36 and 233.38 of Interim Regulations)

Under prior law, States required all recipients, unless exempt under an approved State waiver, to submit monthly reports to the State agency. States were required to use these monthly reports to determine eligibility prospectively and the amount of the payment retrospectively. Section 2628 of DRA amends section 402(a)(14) of the Act to limit the categories of recipients who are subject to mandatory monthly reporting and amends section 402(a)(13) of the Act to eliminate mandatory retrospective budgeting for recipients who are not subject to monthly reporting. It also permits waivers, under certain circumstances, of AFDC monthly reporting requirements and retrospective budgeting to make requirements under the AFDC and Food Stamp programs compatible.

Monthly Reporting

Under the new law, the only categories of recipients for which the State must require monthly reports are recipients with earned income and recipients with a recent work history. Categories of recipients, for purposes of mandatory monthly reporting, include recipients who have earned income deemed to them from individuals living with them who have earned income or a recent work history. For purposes of this provision, we have amended § 233.31 to include a minimal definition of recent work history which covers recipients who received some earnings during at least one of the two months prior to the payment month. The State must continue to require applicants and recipients with recent work histories to file monthly reports for at least three months. For example, under this requirement a recipient with some earnings in March would be required to file a monthly report for March in April, for April in May, and for May in June.

In defining a minimal standard for recent work history, we considered the recommendations of a monthly reporting study funded by the Department of Health and Human Services, which proposed that a recipient be required to file a monthly report for the two months following the last month in which the case received earnings. Furthermore, the proposed definition is consistent with the definition used by most States. States may, of course, establish a longer period in defining recent work history, provided it is so specified in their State plan.

Section 2628 of DRA also provides that States may, with prior approval of

the Secretary, exempt recipients with earned income or with a recent work history from monthly reporting.

The Secretary will approve exemptions for a period up to one year, at the end of which time the State may request a continuation of the exemption. Approval of these exemptions will be based on evidence provided by the State that not requiring these cases to file monthly reports is cost effective. Since Congress has given the Secretary the discretion to determine whether an exemption is appropriate, the Secretary's decision on a request for an exemption is not appealable.

Under the new law, States may continue to require all or other categories of recipients to report monthly.

Retrospective Budgeting

Section 233.31 is also amended to specify that, for recipients who are not required to file a monthly report, States have the option of computing payments either retrospectively or prospectively.

For those who are required either by Federal regulation or at State option to report monthly, the payment amount is determined using retrospective budgeting (except as provided in § 233.34 for their initial months of assistance).

For a State opting to compute payments prospectively for cases exempt from monthly reporting, a transition from prospective budgeting to retrospective budgeting and vice versa will be necessary when a case becomes required to report or is no longer required to report. Thus, the regulations provide that the question of whether to use prospective or retrospective budgeting for any payment month is dependent on whether the assistance unit was or should have been required to file a monthly report for the corresponding budget month used under retrospective budgeting. For example, if a recipient begins working and receives income in March in a two-month retrospective budgeting State, the payments for March and April will be computed prospectively since no monthly reports were required for the corresponding budget months of January and February. The payments for May, June and July will be computed retrospectively. Conversely, if the recipient's last earnings are received in March, prospective budgeting will begin with the August payment since the recipient, as a recent earner (under the Federal minimal definition), must file monthly reports for March, April, and May and no monthly report is required for June, the budget month

corresponding to the August payment month. To avoid double-counting of income, the transition from prospective to retrospective budgeting should be treated as specified at § 233.35(b), i.e., as if the first month in which the recipient received earnings was the initial month of eligibility. In this situation, the State shall not count income from the budget month already considered for any month determined prospectively which is not of a continuous nature.

In any event, regardless of the method used to determine eligibility and payment amount, if the State subsequently receives information which alters the amount to which the assistance unit was entitled for a month, the payment made is an incorrect payment which the State must correct pursuant to § 233.20(a)(13).

Waivers for Compatibility with Food Stamps

These rules add a § 233.38 which provides that States may request waivers of Federal regulations on monthly reporting and retrospective budgeting methods in §§ 233.31-233.37 to make AFDC compatible with the reporting and budgeting requirements of the Food Stamp Act of 1977, as amended. Approval of waiver requests by the Secretary will be based on information provided by the State that documents the need for the waiver and explains how the waiver would simplify administration of both programs. In addition, the rules provide, consistent with congressional intent as expressed in the conference report, that the Secretary will not approve any waiver request that would result in a net cost to the Federal government. The Secretary will grant waivers under this provision for a period up to one year, at the end of which time the State may request an extension of the waiver.

Congress has given the Secretary discretionary authority to determine whether any waivers should be granted. Therefore, a decision not to grant a waiver is not appealable.

Eligibility Requirements for Aliens (§§ 233.51, 233.52, and 233.20(a)(3)(xv) of the Interim Regulations)

Section 415 of the Social Security Act, which was added by OBRA, concerns the AFDC eligibility of aliens who are sponsored by an individual as a condition of entry into the United States. That legislation did not address the eligibility of aliens who were sponsored by public or private agencies or organizations. Section 2635 of DRA, however, amends section 415 of the Social Security Act to provide that any alien whose sponsor is a public or

private agency or organization is ineligible for assistance for three years from the date of the alien's entry into the United States, unless the State agency determines that the sponsoring public or private agency or organization is either no longer in existence or has become unable to meet the alien's need. This determination is based on such criteria as the State specifies in the State plan. States may require aliens to submit such documentary evidence as is reasonably available to facilitate this determination. In such a case, as a condition of eligibility, the alien is required to cooperate with the State agency by providing necessary information and documentation pertaining to the sponsoring public or private agency or organization as is reasonably available.

Certain aliens who are refugees, parolees, political asylees, or Cuban/Haitian entrants are exempt from this provision. This provision is effective on October 1, 1984 and applies to aliens sponsored by private or public agencies or organizations who apply for or are currently receiving assistance within three years of the time they entered the United States for permanent residence. States must review the cases of aliens currently receiving assistance to determine whether they were sponsored by a public or private agency or organization and if so, whether such aliens are now ineligible as a result of the application of this section.

This regulation amends §§ 233.51 and 233.52 to implement the new provision. It also includes a technical amendment to § 233.20(a)(3)(xv) to reflect the statutory requirement at section 415(a) of the Social Security Act that both income and resources be considered for deeming to a sponsored alien pursuant to § 233.51.

Exceptions to Requirements for Protective Payments (§§ 234.60 (a)(12) and (a)(13); and 240.22 (a)(1) and (b)(1) of Interim Regulations)

Under prior law, States were required to provide for protective payments under the AFDC program when a caretaker relative was sanctioned for failure to meet program requirements in WIN, employment search, or CWEP, as well as for failure to assign rights to support or cooperate in establishing paternity and securing support. The caretaker relative who failed to fulfill these requirements not only had his/her needs removed from the grant, but was also replaced as the payee by a protective payee appointed by the State agency.

Section 2634 of DRA amends sections 402(a)(19)(F) and 402(a)(26)(B) of the Act to allow States to continue AFDC

payments to the sanctioned caretaker relative for the remaining members of the assistance unit if, after making all reasonable efforts, the State agency is unable to locate an appropriate individual to whom such protective payments can be made. We are, therefore, amending the regulations at §§ 234.60 (a)(12) and (a)(13) and 240.22 (a)(1) and (b)(1) accordingly. In addition, the WIN regulations at 45 CFR 224.51 and 29 CFR 56.51 will be amended by publishing regulations shortly to reflect this new provision. These changes do not apply to mismanagement cases.

Federal Matching for Expenses Incurred by States in Reimbursing AFDC Recipients for Transportation and Day Care Costs Attributable to Participation in CWEP (§§ 238.01, 238.16, and 238.20 of Interim Regulations)

Under prior law, section 409(a)(1)(F) of the Act required that provision be made for transportation and other costs, not in excess of an amount established by the Secretary, which are reasonably necessary and directly related to participation in the CWEP program. Under regulations at section 238.16, States were required to reimburse participants for all necessary expenses which they incurred. However, Federal matching was only available for the first \$25 per month of costs incurred by each participant.

Section 2627 of DRA amends section 409(a)(1)(F) to specify the terms under which the Federal government matches payments by States to AFDC recipients participating in CWEP for transportation and day care costs directly related to their CWEP participation, in cases where the State agency is unable to provide services directly to the participant. Reimbursement for transportation costs is limited to the amount it would cost to travel by the most appropriate means of transportation, as determined by the State. Day care costs are reimbursed in amounts that the State agency determines to be reasonable, necessary, and cost-effective, but cannot exceed the amount allowed as an earned income disregard for child care costs under section 402(a)(8)(A)(iii) of the Act. These changes are incorporated in § 238.16.

For expenses other than transportation and child care, the provisions of prior law are still in effect. Therefore, States are still required to provide full reimbursement for such other expenses. However, we have reduced the cap on Federal matching of these expenses from \$25 to \$10 because the two major expenses (transportation

and day care) are now handled separately and experience has shown that other costs incurred are minimal.

In § 238.01, the language has been amended to clarify that States must furnish necessary transportation, day care and other related services or reimburse CWEP participants for those costs in accordance with § 238.16.

CWEP Work for Federal Agencies (§§ 238.18, 238.20 and 238.50 of Interim Regulations)

Under prior law, it was not clear whether Federal offices or agencies could serve as Community Work Experience Program (CWEP) sponsors in light of the Anti-Deficiency Act, 31 U.S.C. 1342, which prohibits Federal agencies from accepting voluntary services or services beyond those authorized by law. The services provided by CWEP participants to their sponsors could be viewed as voluntary since their sponsors do not pay for them. Also, since section 409 of the Social Security Act didn't specifically mention Federal sponsorship, it wasn't clear that section 409 contemplated placing CWEP participants with Federal agencies.

Section 2641 of DRA clarifies that Federal offices or agencies may act as sponsors for CWEP participants. The section also specifies that CWEP participants working for the Federal government will not be considered Federal employees, and that the State agency will be required to provide worker's compensation and tort claims protection to the same extent as available for other participants.

While not explicit in the statute, we believe that it is consistent with the intent of the statute to include the Federal courts and Congressional offices in the definition of Federal offices or agencies along with the Executive branch of government. Since Congress and the Federal courts are Federal entities, for purposes of this provision, they also may be viewed as Federal offices or agencies. This interpretation is also consistent with a General Accounting Office opinion in 1977 which concluded that the Anti-Deficiency Act applied to Congressional offices.

The regulations implementing this provision are at §§ 238.18, 238.20 and 238.50, and are effective upon publication.

Modification of Requirements for Work Supplementation Program (§§ 239.14, 239.24, 239.58, and 239.82 of Interim Regulations)

Under prior law, OBRA, States could operate Work Supplementation Programs (WSP), to provide jobs as an alternative to AFDC. Under WSP, AFDC

funds could be spent on payments to employers who provided jobs to AFDC recipients. WSP jobs could be in the public sector, in private non-profit settings, or in proprietary day care centers. Acceptance of jobs was voluntary. The State could determine the categories of recipients eligible to participate in WSP and could establish different need standards for these categories. Also, WSP could be operated on a statewide basis or only in certain sections of the State. Individuals receiving AFDC grants were not excused from WIN or IV-A work requirements merely because the State elected such a program. The amount of Federal funds available for Federal financial participation (FFP) was limited based on the State's May 1981 AFDC plan and subsequent Federal law changes.

Section 2638 of DRA makes several significant modifications to the WSP. It expands the potential employment opportunities available under the program by authorizing placements with any employer. It excuses participants in WSP from WIN registration and participation and IV-A work requirements while employed under the program.

In addition it provides States an option to extend the \$30 and one-third and the \$30 earned income disregards to participants for up to 9 months, notwithstanding the 4 and 12 month limitations which exist. It also makes some significant changes to the ceiling on Federal funding. It places a limit on Federal funding for payments made to individuals and employers under the program. This limit is calculated as the amount that would otherwise have been payable to the State if the family of each participant in the program was eligible to receive the maximum amount of aid payable to such a family with no income. This Federal funding would be available for a time period equal to the lesser of 9 months or the number of months employed under the program.

These changes in this section were effective upon the date of enactment (July 18, 1984). The regulations are effective on publication.

Earned Income Disregards for WSP Participants

Under DRA, States which decide to operate WSP retain the option whether or not to reduce or eliminate earned income disregards available to different categories of individuals. However, DRA amends section 414(b)(6) of the Act to give States a new option to exempt WSP participants from the limitations on receipt of the \$30 and one-third and the \$30 disregards at section

402(a)(8)(B)(ii)(II) during one or more of the first 9 months of employment in WSP. This change is incorporated in § 239.58.

Other Work Requirements

The statute at section 414(h) and regulations at § 239.24 still provide that individuals receiving grants shall not be excused from other work requirements by reason of the fact that States have chosen to operate a WSP. However, DRA amends section 414(h) to specify that individuals who are actually employed in such a program are excused from all work requirements of the AFDC program under parts A and C of title IV for so long as they remain employed in the program. This change is reflected in § 239.24. Under this regulation, participants in WSP would not have to register with WIN, or to meet WIN, Community Work Experience or Employment Search requirements.

Types of Jobs

We have revised § 239.14 to remove the restrictions on the types of employment which may be supported under this program. Prior to these changes, the only proprietary entity which could participate in the program was a provider of child or day care services.

Federal Funding

We have revised the regulations on the availability of Federal financial participation in the WSP (§ 239.82) to incorporate the changes provided in section 414(d) of the Act. First, the revised regulations clarify that the new ceiling applies only to payments to employers in the program and to individuals employed in the program. (The prior cap, based on expenditures under the May 1981 State plan, covered all WSP expenditures.) With the DRA changes, Federal funds for WSP payments to individuals and employers are based on the maximum amount the State could have paid if the family of each participant received the maximum amount of AFDC benefits payable to such a family with no income. Under these regulations States may use the amount which would have been payable for a month at the time of placement in the program rather than the amount payable during each month of participation (for up to 9 months). They do not have to recompute every month. Allowing States to freeze the amount available for payments to employers and individuals in WSP is consistent with the language at section 414(b)(2), which gives States very broad discretion in establishing the terms and conditions

under which they operate WSP. Allowing States to freeze this amount also eases administration of the program. Section 414(c)(2) bases eligibility to participate in WSP upon the individual's eligibility at the time of placement. Especially in cases where WSP participants do not receive a residual grant, States may find it easier to freeze the amount available for a wage pool at the same time as they freeze eligibility to participate. Finally, it is consistent with the intent of Congress, as expressed in the conference committee report, that "a State would be permitted to develop its own method by which AFDC grants are converted to wages."

The regulations also specify that Federal matching is limited to expenditures actually made by the State on such payments to employers, WSP participants and their families. This policy is based upon the language in section 403 of the Act which provides Federal matching funds for State "expenditures." Also, expenditures or payments to employers are matchable only to the extent that they cover periods of actual employment in WSP by eligible individuals. Payments to employers for other individuals or for other periods of time are not considered payments to employers under the program.

Administrative costs are not included in the cap discussed above. The State may also claim matching for appropriate administrative costs under section 403 of the Act to WSP participants which are consistent with the proper and efficient administration of the plan. To meet this requirement, administrative costs for WSP claimed by the State must be reasonable, necessary and directly related to either the operation of a WSP or to employment under the WSP. Examples of acceptable administrative costs would be costs of developing contracts with WSP employers, costs of managing a wage pool, and costs of providing orientation to WSP participants. Also, as with other Title IV-A expenditures, claims for such costs must meet the requirements of Parts 74 and 95 of Title 45.

Additional Information

The following supplemental information addresses questions of interpretation which have arisen about provisions of WSP which were not directly affected by DRA. It is designed to assist States which are interested in implementing WSP, but want guidance in interpreting these provisions.

Section 414(a) provides that, under WSP, jobs may be made available "as an alternative to aid otherwise provided

under the State plan approved under this part." Prior to the amendment which extends the \$30 and one-third and \$30 disregards to WSP participants, we had interpreted this language to mean that WSP participants could not receive aid and would therefore not be considered AFDC recipients. However, with this new amendment, the better view is to consider all WSP participants to be recipients of AFDC. WSP should be viewed as an alternative means of providing assistance under the AFDC program rather than as an alternative program to AFDC. This interpretation is strongly supported by two factors. First, payments for administrative costs made under the WSP program are matchable as AFDC administrative expenditures under section 403 of the Act. Also, the language in section 414(d) (regarding the cap on Federal matching for payments to individuals and employers in WSP) essentially equates the maximum amount payable under AFDC to the payments made to individuals and employers under WSP. Second, the new modifications clearly specify that earned income disregards are available to WSP participants. Under section 402(a)(8)(A), such disregards are only available to individuals who are "applying for or receiving AFDC." Unless otherwise provided, therefore, WSP participants should be treated as AFDC recipients. Their eligibility for residual AFDC grants should be based on the same considerations as other individuals receiving assistance, and they are subject to the same conditions for eligibility. For example, WSP participants must assign child support rights and cooperate in establishing paternity. However, in many situations, WSP provides or allows specific special treatment. Examples are the availability of the \$30 and one-third and \$30 disregards and the exemption from WIN and IV-A work program requirements. Also, States have discretion whether or not to apply the same need standards and earned income disregards to WSP participants as they do for other recipients. Finally, the statute at section 414(g) allows that any WSP participants "may be deemed eligible for AFDC for the purposes of establishing Medicaid eligibility." Since we have determined that all WSP participants should be viewed as AFDC recipients, we interpret this provision to mean that States have discretion to decide that WSP participants are not eligible for Medicaid, even though they are considered recipients for other purposes. One reason why States might wish to adopt such a policy would be to ensure that individuals accepting subsidized employment through WSP are not

treated more favorably than those individuals accepting regular employment.

States have also asked for guidance in interpreting the existing requirements at section 414(a) of the Act and § 239.01 of the regulations that acceptance of WSP jobs must be voluntary. Specifically, they wanted to know if continuous participation in WSP following a decision to enter must also be voluntary. WSP rules do not require a completely voluntary program, they merely require that the decision to enter be voluntary. Consistent with our policies in CWEP and employment search, States may establish what the terms for participation by volunteers will be and what the penalties will be when voluntary participants fail to meet those terms, if any. States must inform eligible individuals of their rights and responsibilities under the program as well as the terms of participation.

In developing job opportunities with private sector employers, States should be careful to avoid entering into subsidies of job situations where the WSP participant is already an employee, since the goal of WSP is to create new job opportunities rather than to subsidize existing ones.

The asterisks used throughout the regulatory text represent material within a codified paragraph or section that is not being amended by these interim final regulations.

List of Subjects

45 CFR Part 205

Administrative practice and procedure, Aid to families with dependent children, Family assistance, Grant programs-social programs, Public assistance programs, Reporting requirements.

45 CFR Part 206

Aid to families with dependent children, Family assistance, Grant programs-social programs, Public assistance programs.

45 CFR Part 232

Aid to families with dependent children, Child support, Child welfare, Family assistance, Grant programs-social programs.

45 CFR Part 233

Aid to families with dependent children, Aliens, Family assistance, Grant programs-social programs, Public assistance programs, Reporting requirements.

45 CFR Part 234

Aid to families with dependent children, Family assistance, Grant programs-social programs, Health facilities, Public assistance, Public housing.

45 CFR Part 238

Aid to families with dependent children, Family assistance, Grant programs-social programs, manpower training programs.

45 CFR Part 239

Work supplementation program.

45 CFR Part 240

Employment search program.

These regulations are issued under the authority of Section 1102 of the Social Security Act, as amended, 49 Stat. 647, as amended; 42 U.S.C. 1302.

[Catalog of Federal Domestic Assistance Programs No. 13.808 Public Assistance Maintenance Assistance (State Aid)]

Dated: August 16, 1984.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: August 23, 1984.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

Part 205 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

1. Section 205.50(a)(1) is amended by adding a new paragraph (v) to read as follows:

§ 205.50 Safeguarding information for the financial assistance programs.

(a) *State plan requirements.* * * *

(1) * * *

(v) The State or local agency responsible for the administration of the State plan has authority to disclose the current address of a recipient to a State or local law enforcement officer at his or her request. Such information is disclosed only to law enforcement officers who provide the name and Social Security number of the recipient and satisfactorily demonstrate that:

(A) The recipient is a fugitive felon (as defined by the State);

(B) The location or apprehension of such felon is within the law officer's official duties; and

(C) The request is made in the proper exercise of those duties.

PART 206—APPLICATION, DETERMINATION OF ELIGIBILITY AND FURNISHING ASSISTANCE—PUBLIC ASSISTANCE PROGRAMS

Part 206 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

2. Section 206.10 is amended by adding a new paragraph (a)(1)(vii) to read as follows:

§ 206.10 Application, determination of eligibility and furnishing of assistance.

(a) *State plan requirements.* * * *

(1) * * *

(vii) For AFDC only, in order for the family to be eligible, an application with respect to a dependent child must also include, if living in the same household and otherwise eligible for assistance:

(A) Any natural or adoptive parent, or stepparent (in the case of States with laws of general applicability); and

(B) Any blood-related or adoptive brother or sister.

* * * * *

PART 232—SPECIAL PROVISIONS APPLICABLE TO TITLE IV-A OF THE SOCIAL SECURITY ACT

Part 232 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

3. Section 232.20 is amended by redesignating existing paragraphs (a) and (b) as (b) and (c), respectively; by revising newly redesignated paragraphs (b), introductory text, and (c); and adding new paragraphs (a) and (d), to read as follows:

§ 232.20 Treatment of child support collections made in the Child Support Enforcement Program as income and resources in the Title IV-A Program.

(a) *Definition.* For purposes of this section, notwithstanding any other regulations in this chapter, support collections, monthly collections and support amounts for a month mean the assigned amount that the support enforcement agency collects from an absent parent or spouse on a monthly support obligation, less the disregarded sum under § 305.51(b)(1).

(b) The State plan must provide that in any case in which support payments are collected for a recipient of AFDC with respect to whom an assignment under § 232.11 is effective:

* * * * *

(c) From any amounts of assistance payments which are reimbursed by support collections made by the IV-D agency, the IV-A agency shall pay the Federal government its share of the collections made, after the incentive payments, if any, have been made

pursuant to § 302.52 of Chapter III of this title.

(d) The State plan must provide that the IV-A agency, on behalf of the IV-D agency, will promptly pay to the family the sum disregarded under § 305.51(b)(1).

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

Part 233 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

4. Section 233.20 is amended by revising paragraphs (a)(3)(i) (A) and (B), (a)(3)(ii)(D), (a)(3)(xiii), (a)(3)(xv), (a)(4)(ii) introductory text and (j), (a)(6)(iii), (a)(6)(ix), (a)(7)(ii), (a)(11)(i) introductory text, (a)(11)(i)(B), (a)(11)(i)(D), (a)(11)(ii)(B), (a)(13)(i)(A)(i), and (b)(2) and by adding new paragraphs (a)(3)(ii)(F), (a)(3)(xviii), (a)(3)(xix), (a)(3)(xx), (a)(11)(vi), (a)(13)(vi), and (a)(14) to read as follows:

§ 233.20 Need and Amount of Assistance.

(a) *Requirements for State Plans.* * * *

(3) *Income and resources.* (i) (A) OAA, AB, APTD, AABD, Specify the amount and types of real and personal property, including liquid assets, that may be reserved, i.e., retained to meet the current and future needs while assistance is received on a continuing basis. In addition to the home, personal effects, automobile and income producing property allowed by the agency, the amount of real and personal property, including liquid assets, that can be reserved for each individual recipient shall not be in excess of two thousand dollars. Policies may allow reasonable proportions of income from businesses or farms to be used to increase capital assets, so that income may be increased; and (B) in AFDC—The amount of real and personal property that can be reserved for each assistance unit shall not be in excess of one thousand dollars equity value (or such lesser amount as the State specifies in its State plan) excluding only:

(1) The home which is the usual residence of the assistance unit;

(2) One automobile, up to \$1,500 of equity value or such lower limit as the State may specify in the State plan; (any excess equity value must be applied towards the general resource limit specified in the State plan);

(3) One burial plot (as defined in the State plan) for each member of the assistance unit;

(4) Bona fide funeral agreements (as defined and within limits specified in the State plan) up to a total of \$1,500 of

equity value or such lower limit as the State may specify in the State plan for each member of the assistance unit;

(5) Real property for a period of six months (or at the option of the State, nine months) which the family is making a good faith effort (as defined in the State plan) to sell subject to following provisions. The family must sign an agreement to dispose of the property and to repay the amount of aid received during such period that would not have been paid had the property been sold at the beginning of such period, but not to exceed the amount of the net proceeds of the sale. If the property has not been sold within the specified time period, or if eligibility stops for any other reason, the entire amount of aid paid during such period will be treated as an overpayment; and

(6) At State option, basic maintenance items essential to day-to-day living such as clothes, furniture and other similarly essential items of limited value.

(ii) * * *

(D) Income after application of disregards, except as provided in paragraph (a)(3)(xiii) of this section, and resources available for current use shall be considered. To the extent not inconsistent with any other provision of this chapter, income and resources are considered available both when actually available and when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance.

(E) * * *

(F) When the AFDC assistance unit's income, after applying applicable disregards, exceeds the State need standard for the family because of receipt of nonrecurring earned or unearned lump sum income, the family will be ineligible for aid for the full number of months derived by dividing the sum of the lump sum income and other income by the monthly need standard for a family of that size. Any income remaining from this calculation is income in the first month following the period of ineligibility. The period of ineligibility shall begin with the month of receipt of the nonrecurring income or, at State option, as late as the corresponding payment month. For purposes of applying the lump sum provision, family includes all persons whose needs are taken into account in determining eligibility and the amount of the assistance payment. A State may shorten the remaining period of ineligibility when: the standard of need increases and the amount the family would have received also changes; the lump sum income or a portion thereof becomes unavailable to the family for a

reason beyond the control of the family; or the family incurs and pays for medical expenses. If the State chooses to shorten the period of ineligibility, the State plan shall:

(1) Identify which of the above situations are included;

(2) In the case of situations involving the increase in the need standard and changes in the amount that have been paid to the family, specify the types of circumstances which will be included;

(3) In the case of situations involving the unavailability of the lump sum income, include a definition of unavailability, and specify what reasons will be considered beyond the control of the family;

(4) In the case of situations involving the payment of medical expenses, specify the types of medical expenses the State will allow to be offset against the lump sum income.

* * * * *

(xiii) Under the AFDC plan, provide that no assistance unit is eligible for aid in any month in which the unit's income (other than the assistance payment) exceeds 185 percent of the State's need standard (including special needs) for a family of the same composition (including special needs), without application of the disregards in paragraph (a)(11)(i) (except to the extent provided for under paragraph (a)(3)(xix)) and (ii) of this section.

* * * * *

(xv) For AFDC, provide for the consideration of the income and resources of an alien's sponsor who is an individual as provided in § 233.51.

* * * * *

(xviii) For AFDC, in the case of a dependent child whose parent or legal guardian (as defined under State law) is a minor, i.e. under the age selected by the State pursuant to § 233.90(b) (without regard to school attendance), the State shall count as income to the assistance unit the income, after appropriate disregards, of such minor's own parent(s) or legal guardian(s) living in the same household as the minor and dependent child. The disregards to be applied are the same as are applied to the income of a stepparent pursuant to paragraph (a)(3)(xiv) of this section. However, in applying the disregards, each employed parent or legal guardian will receive the benefit of the work expense disregard in paragraph (a)(3)(xiv)(A) of this section.

(xix) In the case of AFDC, if the State chooses to disregard monthly earned income of dependent children who are full-time students in the determination of whether the family's income exceeds the limit under § 233.20(a)(3)(xiii) of this

section, provide that the State plan shall specify what amounts will be disregarded and the length of time the disregard will be applicable (up to six months per calendar year) except that earned income derived from participation in a program under the JTPA may only be disregarded under this paragraph, paragraph (a)(3)(xvii) or a combination of both paragraphs for a total of 6 months per calendar year.

(xx) In the case of AFDC, if the State chooses to disregard in the determination of eligibility the monthly earned income of dependent children applying for AFDC who are full-time students, provided that the State plan shall:

(A) Specify the amount that will be disregarded, and

(B) Provide that the disregard shall only apply to the extent that the earned income is also disregarded pursuant to paragraph (a)(3)(xix) of this section.

(4) *Disregard of income in OAA, AFDC, AB, APTD, or AABD.* * * *

(ii) Provide that in determining eligibility for public assistance and the amount of the assistance payment, the following will be disregarded as income and resources: * * *

(j) For AFDC, the amount paid to the family by the IV-A agency under § 232.20(d) or, in a State that treats direct support payments as income under § 233.20(a)(3)(v)(B), the first \$50 received by the assistance unit which represents a current monthly support obligation or a voluntary support payment; but in no case shall the total amount disregarded exceed \$50.00 per month assistance unit;

* * * * *

(6) *Disregard of earned income; definition.* * * *

(iii) The term earned income encompasses income in cash or in kind earned by an individual through the receipt of wages, salary, commissions, or profit from activities in which he is engaged as a self-employed individual or as an employee. For AFDC, "earned income" means gross earned income prior to any deductions for taxes or for any other purposes, except as provided in paragraph (a)(6)(v). Such earned income may be derived from his own employment, such as a business enterprise, or farming; or derived from wages or salary received as an employee. It includes earnings over a period of time for which settlement is made at one given time, as in the instance of sale of farm crops, livestock, or poultry. For OAA, AB, APTD and AABD only, in considering income from farm operation, the option available for reporting under OASDI, namely the

"cash receipts and disbursements" method, i.e., a record of actual gross, of expenses, and of net, is an individual determination and is acceptable also for these assistance programs.

(ix) In the case of an applicant or recipient of AFDC, "earned income" for any month shall include the amount of the earned income credit, including advance payments, which the individual receives in that month. In any case where the amount of the advance payments which a recipient received exceeds the amount of the credit due, the State agency shall adjust the benefits of an individual who is a current recipient to provide payment of the amount equal to the amount of AFDC benefits lost. Such adjustment shall be made with reasonable promptness. In any case where the amount of the advance payments a recipient received is less than the credit due, the State agency shall count as earned income in the month received any earned income credit payment received by the individual at the end of the taxable year.

(7) *Disregard of earned income; method.* * * *

(ii) In applying the disregard of income under paragraph (a)(11)(ii)(B) of this section to an applicant for AFDC, there will be a preliminary step to determine whether the assistance unit in which he or she is a member is eligible without the application of any AFDC provisions for the disregard in (a)(11)(ii)(B) by applying the unit's gross earnings (less the disregards in (a)(11)(i) and (a)(11)(iv)) and all other income to the State's standard of need. This preliminary step does not apply if the assistance unit received assistance in one of the four months prior to the month of application.

(11) *Disregard of income and resources applicable only to AFDC.* (i) For purposes of eligibility determination, the State must disregard from the monthly earned income, i.e., earned income as defined in § 233.20(a)(6)(iii), of each individual whose needs are included in the eligibility determination:

(B) The first \$75.

(D) Where appropriate, an amount equal to \$30 plus one-third of the earned income not already disregarded under paragraphs (a)(11)(i), (a)(11)(v) and (a)(11)(vi) of this section of an individual who received assistance in one of the four prior months.

(ii) * * *

(B) Disregard from any other individual's earned income the amounts specified in paragraphs (a)(11)(i) (B) and (C) of this section, and \$30 plus one-third of his earned income not already disregarded, under paragraphs (a)(11)(ii) and (a)(11)(v) of this section. However, the State may not provide the one-third portion of the disregard to an individual after the fourth consecutive month (any month for which the unit loses the \$30 plus one-third disregard because of a provision in paragraph (a)(11)(iii) of this section, shall be considered as one of these months) it has been applied to his earned income and may not apply the \$30 disregard after the eighth month following the fourth consecutive month (regardless of whether the \$30 disregard was actually applied in those months) unless twelve consecutive months have passed during which he is not a recipient of AFDC. If income from a recurring source resulted in suspension or termination due to an extra paycheck, the month of ineligibility does not interrupt the accumulation of consecutive months of the \$30 and $\frac{1}{3}$ disregard, nor does it count as one of the consecutive months.

(vi) At State option, disregard all or part of the monthly earned income of any dependent child applying for AFDC, if the child is a full-time student, and that income has been disregarded for purposes of paragraph (a)(3)(xiii) of this section.

(13) *Recovery of overpayments and correction of underpayments for AFDC.* * * *

(i) * * *

(A) * * *

(1) Any recovery of an overpayment to a current assistance unit, including a current assistance unit or recipient whose overpayment occurred during a prior period of eligibility, must be recovered through repayment (in part or in full) by the individual responsible for the overpayment or recovering the overpayment by reducing the amount of any aid payable to the assistance unit of which he or she is a member, or both.

(vi) The State may elect not to attempt recovery of an overpayment from an individual no longer receiving aid where the overpayment amount is less than \$35. Where the overpayment amount owed by an individual no longer receiving aid is \$35 or more, the State can determine when it is no longer cost-effective to continue overpayment recovery efforts, provided it has made reasonable efforts to recover the overpayment from the individual.

Reasonable efforts must include notification of the amount of and reason for the overpayment and that repayment is required. States must also maintain information regarding uncollected overpayments as provided under paragraph (a)(13)(v) of this section, to enable the State to recover those overpayments if the individual subsequently becomes a recipient. In cases involving fraud, States must make every effort to recover the overpayment, regardless of the amount.

(14) For Medicaid eligibility only, pursuant to section 402(a)(37) of the Act:

(i) An assistance unit will be deemed to be receiving AFDC, but only for the purposes of this paragraph, for a period of nine months after the last month the family actually received aid if the loss of AFDC eligibility was solely because a member of the unit was no longer eligible due to the 4 and 12 month time limitations to have the \$30 and one-third or the \$30 disregard in paragraph (a)(11)(ii)(B) applied to his or her earned income. At State option, an additional period of Medicaid coverage for up to six months may be provided when the assistance unit would be eligible during such additional period to receive AFDC if the \$30 and one-third or the \$30 disregards were applied to the assistance unit's earned income.

(ii) An assistance unit which ceased to receive AFDC prior to October 1, 1984 because a member of the unit was no longer eligible due to the 4 month time limitation for the \$30 and one-third disregard is eligible to receive extended Medicaid coverage in accordance with paragraph (a)(14)(i) of this section beginning with the month of application under the following conditions:

(A) The unit applies for Medicaid no later than the end of the sixth month after the month in which final regulations implementing section 402(a)(37) of the Act are published;

(B) The unit demonstrates, to the satisfaction of the State that it is one that, if the \$30 and one-third disregard had been applied, would have been continuously eligible for AFDC (without regard to section 402(a)(37) of the Act) from the time the unit ceased to receive AFDC to the time the unit applies for Medicaid; and

(C) The unit fully discloses in its application for Medicaid any health insurance coverage in effect for members of the assistance unit.

(iii) Medicaid coverage for an assistance unit which ceased to receive AFDC prior to October 1, 1984 will begin with the month the unit applies for Medicaid and meets the conditions set

forth in paragraph (a)(14)(ii) of this section.

(b) * * *

(2) Federal participation is available within the maximums specified in the Federal law, when the payments do not exceed the amount determined to be needed under the statewide standard, and are made in accordance with the State method for determining the amount of the payments, as specified in § 233.31 for AFDC and in §§ 233.24 and 233.25 for OAA, AB, APTD, and AABD.

5. Section 233.31 is amended by revising paragraph (a) and by adding a new paragraph (b)(5) to read as follows:

§ 233.31 Budgeting methods for AFDC.

(a) *Requirements for State plans.* A State plan for AFDC shall specify that all factors of eligibility shall be determined prospectively and the amount of the assistance for any month for all assistance units required to file a monthly report for the month designated as the budget month under the State's retrospective budgeting procedures shall be determined using retrospective budgeting as provided in §§ 233.31-233.37 except as provided in § 233.34. The State plan shall specify whether the State uses prospective or retrospective budgeting to determine the amount of the assistance payments for recipients not required to report monthly. Budgeting methods for OAA, AB, APTD, and AABD are described in §§ 233.21-233.29.

(b) * * *

(5) "Recent work history" means the individual received earned income in any one of the two months prior to the payment month.

6. Section 233.35 is amended by revising the section title to read as follows:

§ 233.35 Computing the assistance payment under retrospective budgeting after the initial one or two months (AFDC).

7. Section 233.36 is amended by revising introductory text of paragraph (a) and paragraph (b) to read as follows:

§ 233.36 Monthly reporting (AFDC).

(a) Except as provided in paragraph (b) of this section, a State plan for AFDC shall require each assistance unit whose members have earned income or recent work history, each assistance unit which has income deemed to it from individuals living with the unit who have earned income or a recent work history and, at State option, other assistance units to submit a report form to the agency monthly on:

(b) A State may exempt categories of recipients otherwise required to report monthly from reporting each month with prior approval by the Secretary if the State can demonstrate that not requiring these cases to file monthly reports is cost effective. The Secretary will grant waivers under this provision for a period up to one year, at the end of which time the State may request an extension of the waiver. A decision by the Secretary not to approve a request for an exemption is not appealable. The plan shall include criteria for assuring (1) that exempted cases are unlikely to incur changes in circumstances from month to month which would impact their eligibility or amount of assistance and (2) that the administrative cost of requiring those categories to report monthly will be greater than the program savings which would accrue.

8. A new § 233.38 is added to read as follows:

§ 233.38 Waiver of monthly reporting and retrospective budgeting requirements; AFDC.

(a) States may request waivers of the requirements at §§ 233.31-233.37 to promote compatibility with monthly reporting and budgeting requirements of the Food Stamp Act of 1977 as amended.

(b) The Secretary will not approve requests for waivers unless the information documenting the need for the waiver shows that the waiver would simplify administration of both programs and would not result in a net cost to the Federal government. Approvals for waivers will be for periods up to one year, after which time the State may request an extension of the waiver.

(c) Any decision by the Secretary not to approve a request for a waiver is not appealable.

9. Section 233.51 is amended by revising the section title, the introductory text of paragraph (a), by revising paragraphs (a) and (b), by redesignating and revising paragraphs (e) and (f) as (g) and (h), and by adding new paragraphs (e) and (f) to read as follows:

§ 233.51 Eligibility of sponsored aliens.

Definition: Sponsor is any person who, or any public or private agency or organization that executed an affidavit(s) of support or similar agreement on behalf of an alien (who is not the child of the sponsor or the sponsor's spouse) as a condition of the alien's entry into the United States. Paragraphs (a) through (d) of this section apply only to aliens sponsored by individuals and who filed applications

for the first time after September 30, 1981. Paragraphs (e) and (f) apply only to aliens sponsored by public or private agencies or organizations with respect to periods after October 1, 1984. A State plan under title IV-A of the Act shall provide that:

(a) For a period of three years following entry for permanent residence into the United States, a sponsored alien who is not exempt under paragraph (g) of this section, shall provide the State agency with any information and documentation necessary to determine the income and resources of the sponsor and the sponsor's spouse (if applicable and if living with the sponsor) that can be deemed available to the alien, and obtain any cooperation necessary from the sponsor.

(b) The income and resources of a sponsor and the sponsor's spouse shall be deemed to be the unearned income and resources of an alien for three years following the alien's entry into the United States:

(e) For a period of three years following entry for permanent residence into the United States, any alien who is not exempt under paragraph (g) of this section and has been sponsored by a public or private agency or organization, shall be ineligible for assistance unless the State agency determines (in accordance with paragraph (f)) that the sponsor no longer exists or has become unable to meet the alien's needs.

(f) The State plan shall set forth the criteria the State agency will use in determining whether an agency or organization no longer exists or is unable to meet the alien's needs and the documentation the agency will require of the alien in making such determination. The sponsored alien shall provide the State agency with any information and documentation necessary for such determination and obtain any cooperation necessary from the sponsor.

(g) The provisions of this section shall not apply to any alien who is:

(1) Admitted as a conditional entrant refugee to the United States as a result of the application, of the provisions of section 203(a)(7) (in effect prior to April 1, 1980) of the Immigration and Nationality Act;

(2) Admitted as a refugee to the United States as a result of the application of the provisions of section 207(c) (in effect after March 31, 1980) of the Immigration and Nationality Act;

(3) Paroled into the United States as a refugee under section 212(d)(5) of the Immigration and Nationality Act;

(4) Granted political asylum by the Attorney General under section 208 of the Immigration and Nationality Act;

(5) A Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422); or

(6) The dependent child of the sponsor or sponsor's spouse.

(h) The Secretary shall make information necessary to make a determination under this section and supplied under agreement with the Secretary of State and the Attorney General, available upon request to a concerned State Agency.

10. Section 233.52 is amended by revising introductory text of section and introductory text of paragraph (c) to read as follows:

§ 233.52 Overpayment to aliens.

A State Plan under Title IV-A of the Social Security Act, shall provide that:

(c) An overpayment for which the alien or the sponsor and the alien are liable (as described in paragraphs (a) and (b) of this section) shall be repaid to the State or recovered in accordance with § 233.20(a)(13). If the agency is unable to recover the overpayment through this method, funds to reimburse the agency for the overpayment shall be withheld from future payments to which the alien or the alien and the individual sponsor are entitled under:

PART 234—FINANCIAL ASSISTANCE TO INDIVIDUALS

Part 234 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

11. Section 234.60 is amended by revising paragraphs (a)(12) and (a)(13) to read as follows:

§ 234.60 Protective, vendor and two-party payments for dependent children.

(a) *State plan requirements.* * * *

(12) In cases where an individual is sanctioned for failure to participate in WIN, employment search, or CWEP, the State plan must provide that when protective or vendor payments are made pursuant to § 224.51(a)(1), § 238.22, § 240.22(a)(1), and § 240.22(b)(1) of this chapter, only paragraphs (a)(7), (9)(ii), and (11) (i) and (ii) of this section will be applicable. Under these circumstances, when protective payments are made, the entire payment will be made to the protective payee; and when vendor payments are made, at least the greater part of the payment will be through this method. However, if after making all reasonable efforts, the State agency is

unable to locate an appropriate individual to whom protective payments can be made, the State may continue to make payments on behalf of the remaining members of the assistance unit to the sanctioned caretaker relative. Provision will be made for termination of protective payments, or payments to a person furnishing goods or services, with return to money payment status when adults who refused training, employment, or participation in employment search without good cause either accept training, employment, or employment search or agree to do so. In the case of continuing refusal of the relative to participate, payments will be continued for the children in the home in accordance with this paragraph.

(13) For cases in which a caretaker relative fails to meet the eligibility requirements of § 232.11 or § 232.12 of this chapter by failing to assign rights to support or cooperate in determining paternity and securing support, the State plan must provide that only the requirements of paragraphs (a)(7) and (9)(ii) of this section will be applicable. For such cases the entire amount of the assistance payment will be in the form of protective or vendor payments. These protective or vendor payments will be terminated, with return to money payment status, only upon compliance by the caretaker relative with the eligibility requirements of §§ 232.11 and 232.12 of this chapter. However, if after making all reasonable efforts, the State agency is unable to locate an appropriate individual to whom protective payments can be made, the State may continue to make payments on behalf of the remaining members of the assistance unit to the sanctioned caretaker relative.

PART 238—COMMUNITY WORK EXPERIENCE PROGRAM

Part 238 of Chapter II, title 45, Code of Federal Regulations is amended as set forth below:

12. Section 238.01 is revised to read as follows:

§ 238.01 Scope of this part.

General. States may operate community work experience programs (CWEP) which serve a useful public purpose, and require AFDC recipients to participate in them as a condition of AFDC eligibility. The purpose of these CWEP programs is to provide work experience for AFDC recipients. CWEP projects must meet appropriate standards for health and safety and may not displace persons currently employed or fill established unfilled vacancies.

Subject to the conditions specified at § 238.16, States must provide necessary transportation, day care, and other related services or reimburse CWEP participants for costs directly related to participation in the program. Allowable costs to operate CWEP (see Subpart D) are matched by the Federal government at the AFDC administrative match level (50%).

13. Section 238.16 is revised to read as follows:

§ 238.16 Participant reimbursement.

The State plan shall specify the amount and types of participation costs the State will reimburse to recipients. Under this requirement:

(a) Participants may not be required to use their assistance or their income or resources to pay participation costs which are within the limits specified as allowable in paragraph (b).

(b) In cases where the State is unable to provide necessary services directly to participants or through a third party, States must provide reimbursement for necessary transportation and day care costs that are incurred by the recipient and directly related to participation in CWEP.

(1) Participants shall be reimbursed for transportation costs directly related to their participation in amounts equal to the cost of transportation by the most appropriate means (as determined by the State agency); and

(2) Participants shall be reimbursed for day care costs in such amounts as are determined by the State agency to be reasonable, necessary, and cost-effective. However, in no event shall the reimbursement exceed the amounts allowed to a recipient working the same number of hours under § 233.20(a)(11)(i)(C) as a disregard from earned income.

(c) States must provide reimbursement for costs other than transportation and day care that the State determines are necessary and directly related to participation in CWEP incurred by the participant. For FFP purposes, this amount shall not exceed \$10 per month, per participant. (See Subpart D for FFP requirements.)

14. Section 238.18 is revised to read as follows:

§ 238.18 Participant protection.

States may provide worker's compensation or other comparable protection for their CWEP participants. The State agency shall provide such protection to those participants performing work for Federal offices or agencies, to the same extent as is provided to other CWEP participants in

the State. The cost of this protection shall be considered an administrative expense and matched accordingly.

15. Section 238.20 is amended by adding a new paragraph (e) to read as follows:

§ 238.20 Participation requirements.

(e) CWEP participants who perform work in the public interest for a Federal office or agency shall not be considered for any purpose as Federal employees.

16. Section 238.50 is revised to read as follows:

§ 238.50 Sponsor requirements.

The State agency will designate a sponsor to operate each project or, at the agency's option, more than one project. Only public agencies, which includes Federal offices or agencies, and nonprofit organizations may be sponsors. For purposes of this provision Federal offices or agencies include agencies of the Executive branch of the Federal government, Congressional offices, and Federal courts.

17. Section 238.60 is revised to read as follows:

§ 238.60 Allowable administrative costs.

Federal financial participation is available for administrative costs of the AFDC program for Community Work Experience program expenditures, when CWEP has been approved as part of the State plan under Title IV-A of the Act. Such costs include amounts paid to participants which are:

- (a) identified in the State plan; and
- (b) within the limits specified under § 238.16.

PART 239—WORK SUPPLEMENTATION PROGRAM

Part 239 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

18. Section 239.14 is revised to read as follows:

§ 239.14 Types of jobs.

A State may provide or subsidize any job position under the program as such State determines to be appropriate, but acceptance of any such position shall be voluntary. The job positions which may be provided for recipients of aid must be of the following general types:

(a) A job position provided to an eligible individual by the State or local agency administering the State plan under this part;

(b) A job position provided to an eligible individual by any other employer for which all or part of the

wages are paid by such State or local agency.

19. Section 239.24 is revised to read as follows:

§ 239.24 Participation in other work programs.

No individual receiving a grant under the State plan shall be excused, by reason of the fact that such State has a Work Supplementation Program, from any requirement of title IV-A or title IV-C relating to work requirements. However, individuals actually employed in a Work Supplementation Program shall be excused from such requirements for so long as they remain employed in the program.

20. Section 239.58 is revised to read as follows:

§ 239.58 Earned income disregard.

(a) A State operating a Work Supplementation Program under this part may reduce or eliminate the amount of earned income to be disregarded under the State plan as the State determines to be necessary and appropriate to further the purposes of the Work Supplementation Program.

(b) Notwithstanding the time limitations on the \$30 and one-third and the \$30 disregards in section 233.20(a)(11), a State may allow a participant employed under a Work Supplementation Program to receive the \$30 and one-third or the \$30 disregards for one or more of the first 9 months of such employment.

21. Section 239.82 is revised to read as follows:

§ 239.82 Availability of Federal financial participation.

Federal funds may be paid to a State under this part with respect to expenditures incurred in operating a Work Supplementation Program.

(a) The amount of payments to individuals and employers in the program subject to Federal matching as program expenditures shall not exceed:

(1) The monthly amount that would otherwise be payable under the State plan if the family of each individual employed in the program had received the maximum amount of aid payable to such a family with no income for a period of either 9 months or the length of the individual's employment in the program, whichever is less. (This amount is determined without regard to any adjustments made under subpart C of this part, and for each month of participation, may be based upon the maximum amount that would otherwise have been payable for a month at the time of placement in the program.)

(2) The amount expended on payments to employers and individuals employed under this program.

(b) The amount of administrative costs subject to Federal matching shall be those costs which are reasonable, necessary and directly related to the operation of a WSP or to employment under WSP.

PART 240—EMPLOYMENT SEARCH

Part 240 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

22. Section 240.22 is amended by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 240.22 Conditions of eligibility and sanctions.

(a) * * *

(1) If the individual is a caretaker relative receiving benefits (other than a principal earner), the State shall not take into account his needs in determining the assistance unit's need for assistance. The State shall provide assistance in the form of protective or vendor payments in accordance with § 234.60 of this chapter;

* * * * *

(b) * * *

(1) If the individual is a caretaker relative, the State shall not take into account his needs in determining the assistance unit's need for assistance. The State shall provide assistance in the form of protective or vendor payments in accordance with § 234.60 of this chapter;

* * * * *

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**Office of Child Support Enforcement
45 CFR Part 302**

**Child Support Enforcement Program;
Disregard of Child Support Payments**

AGENCY: Office of Child Support Enforcement (OCSE).

ACTION: Interim final rules.

SUMMARY: These interim rules implement the Deficit Reduction Act of 1984 (DRA) which amends the Social Security Act to require that the first \$50 collected on a monthly support obligation be paid to the Aid to Families with Dependent Children (AFDC) family. This amount will not affect the family's AFDC eligibility or the amount of assistance to which they are entitled.