Sunshine Act Meetings

Federal Register
Vol. 54, No. 197
Friday, October 13, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MARITIME COMMISSION

TIME AND DATE: 3:00 p.m.—October 16, 1989.

PLACE: Hearing Room One—1100 L Street NW., Washington, DC 20573–0001.

STATUS: Closed.

MATTER TO BE CONSIDERED:

1. Docket No. 89–16—Actions to Address Adverse Conditions Affecting United States Carriers in the United States/Taiwan Trade—Consideration of the Record.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 89–24370 Filed 10–11–89; 3:48 pm]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, October 18, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20 and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 11, 1989

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–24332 Filed 10–11–89; 11:41 am]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 54, No. 197
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This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 85-061]

Horse Quarantine Facility Standards; Collection of Fees at Animal Quarantine Facilties

Correction

In proposed rule document 89-20736 beginning on page 36986 in the issue of Wednesday, September 6, 1989, make the following correction:

§ 92.11 [Corrected]

On page 36995, in the first column, in § 92.11(e)(2)(B)(*2*), in the third line from the bottom of the paragraph, "contained" should read "continued".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180815; FRL 3634-3]

Emergency Exemptions

Correction

In notice document 89-19820 beginning on page 35059 in the issue of Wednesday, August 23, 1989, make the following corrections:

1. On page 35060, in the second column, in paragraph 24., in the fourth line, "beetles" was misspelled.

2. On the same page, in the same column, in paragraph 25., in the second line, "carboxin" was misspelled.

3. On the same page, in the third column, in paragraph 38., in the third line, "coffee" was misspelled.

4. On page 35061, in the first column, in paragraph 45., in the fourth line, "bulk" should read "bulb".

BILLING CODE 1505-01-D

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 60

RIN 3067-AB32

National Flood Insurance Program; Elevation Requirements for Manufactured Homes in Existing Manufactured Home Parks and Subdivisions

Correction

In rule document 89-22894 beginning on page 40278 in the issue of Friday, September 29, 1989, make the following correction:

§ 60.3 [Corrected]

On page 40283, in the second column, in § 60.3(c)(6)(iv), in the sixth line, "flood" should read "floor".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-09-4214-12;I-1639]

Partial Termination of Classification for Multiple Use Management; Idaho

Correction

In notice document 89-9187 beginning on page 15561 in the issue of Tuesday, April 18, 1989, make the following correction:

On page 15562, in the first column, under "T.21 N., R. 23 E.,", the second line should read "Sec. 4, NW¼, N½SW¼;".

BILLING CODE 1505-01-D

Federal Register

Friday
October 13, 1989

Part II

Department of Health and Human Services

Family Support Administration

45 CFR Part 205 etc.

Aid to Families With Dependent Children; Job Opportunities and Basic Skills Training Program and Child Care and Supportive Services; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Parts 205, 224, 233, 234, 238, 239, 240, 250, 255 and 256

RIN 0970-AA68

Aid to Families With Dependent Children; Job Opportunities and Basic Skills Training (JOBS) Program; Child Care and Supportive Services; Conforming Changes to Existing Regulations

AGENCY: Family Support Administration (FSA), HHS.

ACTION: Final rule.

SUMMARY: This final rule implements title II of the Family Support Act of 1988 (the Statute), Public Law 100-485, which creates the Job Opportunities and Basic Skills Training (JOBS) Program for recipients of Aid to Families with Dependent Children (AFDC). The JOBS program is designed to assist recipients to become self-sufficient by providing needed employment-related activities and support services.

This final rule also implements sections 301 and 302 of the Statute. Section 301 guarantees child care and provides other supportive services for JOBS participants and recipients who are in approved educational and training activities, and guarantees child care for those who are working. Section 302 guarantees child care for twelve months for certain individuals who have lost AFDC eligibility due to increased earnings, increased hours of work, or loss of the earned income disregard.

EFFECTIVE DATE: October 13, 1989. (For further explanation, please see "Overview of JOBS Program Implementation.")

FOR FURTHER INFORMATION CONTACT: Mark Ragan, Family Support Administration, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC, 20447, telephone (202) 252-5118.

SUPPLEMENTARY INFORMATION:

Background

Studies indicate that the average length of time an AFDC family receives assistance is about 2 years. Included in that average are many families who remain on assistance for a protracted period of time. Often, the parent (or parents) in these families lacks the necessary skills or basic education to find employment and become self-sufficient. In many cases, the parent began to receive assistance as a teenager, never finished high school, and has never developed the skills needed to find and keep employment.

Current Federal law and implementing regulations provide for a number of work and training programs for AFDC recipients—the Work Incentive (WIN) program, the Work Incentive Demonstration (WIN Demo) program, the community work experience program (CWEP), the employment search program, and the work supplementation program. However, since most of these work programs are optional, and State support for the programs has varied, implementation of work and training programs has been uneven among the States. A number of studies of possible factors fostering welfare dependence cite the need for reliable and affordable child care in order to obtain and maintain employment. Lack of other support services, such as transportation, has also been mentioned as hindering employment.

On October 13, 1988, the President signed the Family Support Act (the Statute), Public Law 100-485. Title II of the Statute establishes the Job Opportunities and Basic Skills Training (JOBS) program under title IV-F of the Social Security Act (the Act). The purpose of JOBS is to assure that needy families with children obtain the education, training, and employment that will help them avoid long-term welfare dependence. Title III provides child care and other services in support of employment and education and training activities.

Because the Statute affects programs administered by a number of Departments, we actively sought suggestions and comments from the Departments of Education, Interior, and Labor. We also considered letters received in the mail and comments at numerous meetings held with representatives of State IV-A agencies, Indian Tribes, Alaska Native organizations, welfare rights organizations, and other interested parties during the period in which the proposed regulations were being developed. In addition, we carefully reviewed over 700 comments which were received on various aspects of the regulations.

Discussion of the Regulations

In the final regulations, we have followed the format of the proposed regulations issued April 18, 1989 (54 FR 15638) with one exception. We have moved the definition of "participation" to a new § 250.78. We have written the preamble and final regulations so that they do not require reference back to the proposed regulations. Preamble language in the final regulations generally follows the same sequence as in the preamble to the proposed regulations, and we have interspersed comments and responses as appropriate. Regulatory language remains the same except when pertinent changes have been made. Some information about the WIN and IV-A work programs, which we had included as background for the proposed regulations, has been deleted from the preamble to the final regulations.

This discussion is divided into three parts. The first addresses all aspects of the JOBS program; the second addresses provisions regarding child care and other supportive services; and the third part describes changes to the existing regulations in the title IV-A program.

Provisions contained in title II of the Statute regarding workers' issues, such as working conditions, tort claims protection, workers' compensation, and displacement are included in a separate regulatory package developed jointly by the Department of Health and Human Services and the Department of Labor. Several related amendments affecting the AFDC program contained in the Statute, as well as changes to the title IV-D program, are included in separate regulations packages. Section 303, which provides for the extension of Medical Assistance under title XIX of the Social Security Act when a family loses AFDC eligibility, will be implemented under separate regulations to be published by the Health Care Financing Administration.

JOBS

Public Law 100-485 requires State IV-A agencies to have a JOBS program under a plan approved by the Secretary of HHS no later than October 1, 1990, or, at State option, as early as July 1, 1989. It further requires each State IV-A agency to make the program available in each subdivision of the State where it is feasible to do so by October 1, 1992. At least every 2 years, the State IV-A agency must review and update its JOBS plan and submit the updated plan to the Secretary for approval.

Sections 202(a) and 204 of the Statute provide for the repeal of the current WIN and WIN Demonstration programs upon State implementation of the JOBS program, which may be no later than October 1, 1990. JOBS program authority is under the new title IV-F of the Act.

Child Care and Other Supportive Services

Under the Statute, at the time that a State IV-A agency implements the JOBS program, the State IV-A agency must

provide funding for child care, or provide child care, if the State IV–A agency determines that it is necessary to accept or maintain employment, or to enable participation in a JOBS education or training program or another approved education or training program. It also requires that participants be assisted with transportation and other work-related supportive services. Under section 302, effective April 1, 1990, twelve months of child care (transitional child care) is guaranteed for former recipients who received AFDC in 3 of the 6 months prior to the loss of AFDC as the result of increased hours of work, increased earnings, or the loss of the earned income disregards. Child care fees (to partially offset the costs) must be charged on a sliding scale based on the family's ability to pay. The transitional child care provision is in effect until September 30, 1998.

Technical and Conforming Amendments

Section 202 of the Statute amends certain sections of title IV–A of the Act and repeals title IV–C. These changes are necessitated by the creation of the JOBS program and the close-out of the WIN and WIN Demo programs. They include, among others, the repeal of the community work experience, employment search and work supplementation programs as of October 1, 1990, unless the State IV–A agency is operating under an approved JOBS plan prior to that date.

Regulatory Procedures

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be performed for any "major rule." A major rule is one that:

—Has an annual effect on the national economy of $100 million or more;
—Results in a major increase in costs or prices for consumers, any industries, any government agencies, or any geographic region; or
—Has significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The increased expenditures authorized for JOBS and child care and other supportive services under the Statute are expected to have an annual effect on the national economy of over $100 million in each of the first five years of operation. The calculations for expenditures under the Statute are based on the anticipation of increased expenditures in work, training and education programs, and related supportive services (particularly child care), which will be partially offset by payment of child care fees by parents as well as reduced welfare costs in the long run. It is envisioned that required funding levels will decrease over time as a result of the impact of the JOBS program on long-term dependency and the number of families on AFDC.

We have determined that any economic impact in excess of $100 million per year is the result of section 201 of Public Law 100–485 (the Statute). The implementing regulations will not significantly affect expenditures. For this reason, an extensive analysis of the economic impact of these regulations is not required.

There may be increased administrative costs for State IV–A agencies due to the expansion of work programs and related support services, but such costs are not mandated by these regulations. State IV–A agency decisions concerning work programs and supportive services will affect administrative costs. Some increase in costs may be necessary because the Statute requires a minimum number of programs.

There is no evidence that competition, employment, investment, productivity, innovation or the United States' competitiveness will be affected adversely, as a result of these regulations.

Paperwork Reduction Act

Public reporting burden for the collections of information found at 45 CFR 250, 255, and 256 are estimated to average 22 hours for FSA 302, 12 hours for FSA 103, and 50 hours for FSA 104, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. These information collection requirements are subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980. Send comments regarding the burden estimates or any other aspect of these collections of information to the Family Support Administration, 370 L'Enfant Promenade, SW., Washington, DC 20447; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Regulatory Flexibility Act

The Secretary certifies, under 5 U.S.C. 605(b), enacted by Public Law 96–354, the Regulatory Flexibility Act, that these regulations, if promulgated, will not result in a significant impact on a substantial number of small entities because it primarily affects State governments and individuals. Certain small entities, such as providers of child care services, could receive a positive benefit from this program.

We received one comment requesting that we address economic impacts, whether they are positive or negative. The Department has traditionally taken the view that if the economic impact of a given action is expected to be positive, an economic impact statement under the Regulatory Flexibility Act is unnecessary. The additional spending on child care is expected to be a very small part of the total spending on child care in the United States. We have identified nothing in these regulations which have a direct economic effect on child care providers or other small businesses. Any economic impact would stem not from these regulations but, from the additional Federal funding appropriated by Congress to implement this Statute. These regulations merely ensure that the basic decisions on what services shall be provided and chosen will be made by the States, and parents of the children involved.

Therefore, we have concluded, and the Secretary has certified, that a regulatory impact analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required. These regulations are issued under the authority of section 1102 of the Social Security Act.

Federalism and Family Effects

We certify that this action has been assessed using the criteria and principles set forth in Executive Orders 12606 and 12612.

Analysis Required by Executive Order 12612 on Federalism

If a policy leads to Federal control over traditional State responsibilities or decreases the ability of a State to make policy decisions with respect to its own functions, that policy is determined to have a significant federalism effect.

The Statute requires that all State IV–A agencies implement a JOBS program by October 1, 1990. In addressing the problems of welfare dependency, which are national in scope, the Statute mandates certain JOBS activities, and requires State IV–A agencies to choose to implement two of four optional program activities (job search, on-the-job training, work supplementation, and community work experience programs).

Previously, State IV–A agencies were required to have a Work Incentive (WIN) or WIN Demonstration program and could elect to provide other work

programs. Under the work program option, the State IV–A agency chose which type of work programs to implement.

The Family Support Act is more specific than prior work program authorities regarding the activities which may be offered by State IV–A agencies and the population they are to serve under the various program authorities. However, within these limitations, the final regulations are written to allow the State IV–A agency considerable flexibility in the design and operation of its JOBS program. Moreover, title II of the Statute provides authority to Indian Tribes and Alaska Native organizations to operate autonomous programs.

HHS has consulted with State IV–A Directors, other State, County, Tribal and local representatives, welfare rights advocacy groups, labor unions, and similar organizations for their comments and suggestions in those areas of the program where options are available. In response to the Notice of Proposed Rulemaking published April 18, 1989, we received over 700 comment letters covering a number of areas in the regulations. The final regulations reflect consideration of those comments and suggestions.

The Statute mandates Federal support and technical assistance from the Departments of Health and Human Services and Labor in enhancing the flexibility and information resources of each State. Federal assistance is also required to be available to State IV–A agencies upon request for program assessment and to ensure that State IV–A agencies have adequate information both to carry out the program and to develop programs specifically fashioned to their demographic requirements.

The Statute calls for the development of performance standards by October 1993. The Department is directed to do so in consultation with the Secretary of Labor, Governors, State and local program administrators, community–based organizations, and similar groups. This permits participation by States through the entire development process. In its rulemaking, the Department has made a conscious effort to refrain from prematurely establishing standards but, based on section 487(b) of the Act, as added by section 203 of the Statute, the Department establishes certain uniform reporting requirements for performance standard purposes. We expect no State laws to be preempted.

Analysis Required by Executive Order 12606 on the Family

The JOBS program is expected to have an overall beneficial family impact. This analysis discusses this impact in terms of the criteria in the Executive Order.

(a) The objectives of the JOBS program, to provide training, education, job placement, and employment to end welfare dependency, will result in more secure and stable family units. For two-parent families, the Statute provides State options for the participation of both parents, thus enlisting each in the drive toward independence. The potential danger to family self-image, stability and marital commitment posed by welfare dependency increases as a family remains on welfare. The decrease in dependency and increase in self-sufficiency which the Statute is designed to achieve will help strengthen families and ameliorate the erosive effects of poverty.

(b) The Statute provides significant support for the nurture and supervision of children in the form of guaranteed child care, which will enable parents to work to achieve self-sufficiency and increase their earnings. Parents will continue to have supervision of their children as they would have in any working family, with options for choosing sources of child care. Federal financial support for child care services in no way changes the nature of that care, which may continue to be provided by relatives, friends and neighbors without State intrusion, except insofar as States and localities have already chosen, or may in the future choose, to regulate or license day care providers, or ensure that center-based care becomes subject to health and safety protections.

Some families may feel that control over their own destiny is diminished by the extension of mandatory requirements established by Congress to continue their education or seek employment while placing their children in child care. This is true in a limited sense, but it represents a positive compromise by a family in which a tradeoff is made between immediate autonomy and a better future through cooperation with the requirements under the JOBS program.

(c) The JOBS program does not substitute governmental activity for any of the functions of the family. It will help the family perform its nurturing functions. It will also provide support while the family attains economic independence.

(d) The JOBS program is specifically directed at increasing family earnings. Under JOBS and the other Family Support Act provisions for enhanced earned income disregards, supportive services, transitional child care and other benefits lasting beyond the period of AFDC eligibility, earnings are less apt to be offset by reductions of grants or loss of associated benefits.

(e) The JOBS options and services are to be designed and delivered by the non-Federal levels of government, i.e., States, localities, and Indian Tribes. The Federal government will not intrude upon family autonomy or decisions.

(f) The provisions in the Statute regarding the JOBS training program and the related child care and other supportive services emphasize that a strong family structure is critical for the nation's economic strength, and is an important source of values that promote the work ethic. Targeting families in economic crisis with supportive services and active help towards gaining (or regaining) strength and self-sufficiency, sends the message that all levels of government are getting involved in assisting families.

(g) Finally, the emphasis on achievement in the JOBS program should send the right message to young people about the rewards of self-reliance and the direct connection between responsible behavior and their own economic success.

Objectives of the Family Support Act and These Regulations

The Family Support Act embodies a new consensus that the well-being of children depends not only on meeting their material needs, but also on the parent's ability to become economically self-sufficient. The Statute assumes that self-sufficiency and family responsibility are necessary and achievable goals and makes education, training, and child care available to allow individuals to reach these goals. The Statute further recognizes the mutual obligations of parents, who are currently dependent, to work toward self-sufficiency through private employment, and of the government to support that effort.

These final regulations have been drafted to implement the objectives of the Statute and of the Administration of President Bush. Several key principles have guided their development:

—That the value of the Aid to Families with Dependent Children program should be measured not just by its ability to meet the income needs of individuals served, but also by its ability to help these individuals achieve independence;

—That parents have the primary responsibility for the support and welfare of their children and that programs should be designed to help parents meet these responsibilities;

—That women and their children represent the overwhelming proportion of AFDC recipients; that

within this group the most dependent are never-married mothers who did not complete high school and who had their first child at a young age; and that programs designed to reduce overall dependency must necessarily address this group;

—That consistent with individual responsibility is choice, and that parents be given a wide range of options for child care while participating in the program;

—That education (such as literacy and high-school equivalency) is one of the most important tools an individual needs to achieve full citizenship and independence, and that this should be an important JOBS component;

—That skills training can be an important element in an individual's reaching self-sufficiency;

—That JOBS programs be designed to prepare participants for private employment in jobs they can realistically be expected to obtain;

—That resources be maximized through the coordination of existing programs at all levels of government and in concert with community-based volunteer and business organizations; and

—That States be given maximum flexibility to design program components within the JOBS provisions of the Statute in order to tailor programs to meet local needs.

In the sections below, we discuss our overall plan for program implementation, and provide in-depth discussions of each section of the final regulations. In these discussions, we refer to the Family Support Act of 1988 as "the Statute," and the Social Security Act as "the Act." We also use the pronoun "she" when referring to applicants, recipients, and participants. Unless otherwise specified, "she" is a generic term meaning both she and he. This choice of terminology is appropriate because the great majority of adult caretakers in the AFDC program are women.

Overview of JOBS Program Implementation

Section 204 of the Family Support Act of 1988 permits State IV–A agencies to implement a JOBS program as of July 1, 1989, regardless of the publication of implementing regulations. Fifteen States implemented on July 1, 1989.

JOBS and Supportive Services plans for States, Indian Tribes and Alaska Native organizations implementing JOBS prior to publication of the final regulations must meet the requirements of the Statute.

We plan to provide preprints for JOBS and Supportive Services plans following publication of the final regulations. These preprints will provide for a description of the design and operation of States' JOBS programs and associated supportive services. Prior to issuance by the Department, these forms will be submitted for approval to the Office of Management and Budget.

For the purposes of the following discussion, we use the terms "interim plans" and "initial plans". Interim plans are plans submitted by a State IV–A agency in a format other than preprints. Initial plans are the first plans submitted by a State IV–A agency and can be either an interim plan or a preprinted plan, depending on when the plans are submitted. State IV–A agencies must submit initial JOBS and Supportive Services plans 45 days before planned implementation. When the plan preprint is made available, States which are operating a JOBS program under interim plans will be given 90 days to resubmit plans in the required format.

Federal financial participation (FFP) will not be available for expenditures incurred before the date that initial JOBS and Supportive Services plans are approved. More information regarding this issue, as well as the State JOBS and Supportive Services plan review process, is provided below.

The preamble discussion generally follows the sequence of the final regulations, with the exception that the description of conforming changes to the existing regulations is last, whereas the conforming changes precede the JOBS and Supportive Services sections in the final regulations.

PART 250—JOB OPPORTUNITIES AND BASIC SKILLS TRAINING PROGRAM

Subpart A—Purpose and Definitions

Purpose (§ 250.0 of the Final Regulations)

This section of the final regulations contains the goals of the JOBS Program and the regulatory objectives of Part 250.

Comment: Several commenters suggested that we use the purpose of the JOBS Program as stated in section 481(a) of the Act instead of the language from section 482(c) of the Act, which provides that the State agency "must ensure that all applicants for and recipients of aid to families with dependent children are encouraged, assisted, and required to fulfill their responsibilities to support their children by preparing for, accepting, and retaining such employment as they are capable of performing."

Response: We have decided to use the language from section 481(a) of the Act to describe the overall purpose of the JOBS Program. However, we have added the language from section 482(c) of the Act that emphasizes parental responsibility to the more specific list of program goals contained in this section. We believe that the goal of ensuring that parents have primary responsibility for the support of their children is fundamental to the entire purpose of the Family Support Act of 1988.

Definitions (§ 250.1 of the Final Regulations)

We have included a number of definitions in order to facilitate understanding of the regulations. These definitions are discussed below.

Terms Related to the JOBS Program

The term "adult recipient" is defined in accordance with section 403(k)(4) of the Social Security Act. The term "caretaker relative" is used in several places in the Act. However, we have not provided a definition in these regulations. Traditionally, States have established procedures for determining who the caretaker relative is for each assistance unit, and we have continued this practice. The term "target population" is defined to meet the requirements of sections 403(1)(2)(B) and 403(1)(2)(C) of the Act. The definition includes provision for any State to adjust the particular target populations if it satisfactorily justifies the change to the Secretary.

For purposes of convenient reference in the body of the regulations, we define a number of words and acronyms. These include standard references such as "Secretary" and "Department"; thus, any reference to the Departments of, or the Secretaries of, Education, Interior, or Labor is made specific. We define "component" as including all services and activities that a State may make available under §§ 250.44 through 250.48. We define a number of acronyms common to work and welfare programs, such as "CWEP," "OJT," and "UP." We include "FFP" for Federal financial participation. We include a definition of "MSA" since we require the use of defined Metropolitan Statistical Areas in assessing issues related to statewideness requirements in the legislation. We add several acronyms that are specific to JOBS, such as the "JOBS" acronym itself, and "JAS" as the reference for the JOBS Automated System for recordkeeping and reporting purposes.

Terms Related to Educational Programs, Services or Activities

The Family Support Act provides for extensive educational services, and sets certain requirements, such as that

participants "make satisfactory progress." We have defined the terms related to these services and requirements in accordance with Federal and State definitions when they are well understood, widely accepted, and feasible to use in connection with JOBS. For example, the definition of the term "institution of higher education" derives from the corresponding definition of the term found in section 481(a) and section 1201(a) of the Higher Education Act of 1965, as amended (20 U.S.C. 1088 and 1141).

Basic Literacy Level. The phrase "basic and remedial education to achieve a basic literacy level" is listed in the Act as one of the mandatory educational activities of JOBS. Also, section 482(d)(2) of the Act provides that the State agency shall include educational activities as a component of participation in JOBS if the individual does not have a high school diploma or the equivalent, unless her employability plan has a long-term employment goal that does not require high school education or she demonstrates a basic literacy level.

In the NPRM, we proposed that basic literacy level mean a basic literacy level that allows a person to function at the level of an individual who has successfully completed the eighth grade. Our basis for that proposal was the recently proposed regulations for implementing the Adult Education Act, which indicated both that adult basic education includes education through grade 8.9 and that "adult secondary education" includes instruction designed for an adult who "is literate and can function in everyday life, but is not proficient." We also considered that in the list of mandatory educational activities contained in the Act, "basic and remedial education to achieve a basic literacy level" is an item separate from "high school or equivalent education." Further, we took into account that these terms were characterized in the Act as "educational activities," and that "job skills training" and "job readiness activities to help prepare participants for work" were listed separately from the educational activities.

Comment: We received many letters containing comments on our proposed definition of basic literacy level. The majority of the commenters did not favor our proposal. Many of those commenters stated a preference for the level of completed high school. A few commenters said the proposed level of "successfully completed the eighth grade" is too high. A few commenters advocated the use of State or local literacy criteria. Some commenters did not approve of the concept of completion of a school grade level, preferring a competency based, functional definition. A few commenters did not object to completed eighth grade as a basic literacy level. One commenter suggested that the definition refer only to reading skills at the completed 8th grade level. Similarly, another commenter preferred a 10th grade reading skill definition.

While most commenters said the eighth grade is too low to promote self-sufficiency, some stated that the level is too high to be in harmony with the goals of JOBS and to take advantage of existing services with which JOBS is intended to be coordinated, e.g. JTPA programs. A committee of a State legislature observed that using the proposed level of literacy would increase costs and thereby reduce the number of educational assignments that could be made for JOBS participants. Another agency within the same State asked that if a grade level continued to be used, it should be no higher than the grade level proposed. An organization involved in serving AFDC clients approved of the definition, which it saw as being advantageous in coordinating with adult and alternative education programs. Some commenters did not view "successfully completed the eighth grade" as being as precise in meaning as "grade 8.9." Others stated that the definition did not convey adequately measured performance. They, therefore, suggested that the definition incorporate the use of a standardized testing tool to measure successful completion of the eighth grade.

One commenter pointed out that using only a grade level, as opposed to setting out the specific proficiencies that comprise basic literacy, posed problems in instances where criterion-referenced assessment measures are used. Many groups suggested focusing the definition on a list of those proficiencies, usually consisting of reading comprehension, written communication, verbal communication, computation, and problem-solving.

Many of the groups seeking to have basic literacy established at the completed high school level cited studies of workforce trends that indicate that most new jobs being created will require basic skills at the high school level or above. Some of them reasoned that the wording of the Act at section 482(d)(2), concerning participants age 20 or over, indicated Congress' intent that basic literacy would be equivalent with a high school level education. Some stated that the definition of basic literacy should be compatible with what they saw as the strong emphasis upon achieving a high school education for participants under the age of 20 contained in section 402(a)(19)(E) of the Act. It was the sense of some of the comments that the use of a lower than high school level in defining basic literacy would result in States choosing to deny participants the opportunity to earn a high school diploma or the equivalent.

Other commenters requested that the States be given flexibility in defining basic literacy levels for the purpose of JOBS, in view of regional differences in the skills needed by the labor force. However, one literacy group favored a national, functional standard, because it said that States vary in their views of the content of a particular grade level. Some stated that basic literacy should be determined by the particular occupational goal of the participant. Some commenters wanted "life skills" to be incorporated as part of the definition.

We also received views that indicated that the broader range of goals appropriate for participants under the Adult Education Act, many of which are not oriented toward employment, made it difficult to apply definitions designed for adult education programs to the JOBS program. We note that Congress has required the U.S. Department of Education to make a determination of the criteria for defining literacy. The results of that study will be available in 1990. Also, the Department of Labor has contracted for a study of JTPA program participation that will profile workplace literacy levels and produce a workplace literacy testing instrument by 1991. These two Federal studies are expected to produce useful information on literacy relative to JOBS.

Response: Since the comments on this issue did not yield clear guidance concerning establishing a definition of "basic literacy level," and since the results of the two important Federal studies are not yet available, we have decided that at this time we will maintain our proposed definition with two modifications made for the purpose of clarification. First, for purpose of precision, we now refer to grade 8.9, instead of successfully completed eighth grade. Second, we now indicate that the individual is expected to function "at least" at that level, emphasizing that States may define basic literacy at a higher level.

We did not choose to lower the grade level for this definition because the comments indicate a trend toward greater literacy needs in the workplace. Moreover, even though a few States said

they preferred a lower level than proposed in order to coordinate with JTPA, the Department of Labor commented that the basic literacy level should be defined as a literacy level above the 8th grade on a generally accepted standardized test or equivalent score on a criterion referenced test. Since our definition of basic literacy level does not prescribe the method of assessing the individual's educational achievement level, our reference to a grade level should not be interpreted to preclude use of equivalent scores in criterion-referenced assessment systems.

We recognize the trend toward a more literate workforce and strongly urge each State to adopt a definition of basic literacy level that will fulfill the aim of JOBS to reduce welfare dependency and foster self-sufficiency. The individual's educational skills, her skills that compose the concept of "job readiness," and appropriate job skills form a critical core of characteristics leading toward self-sufficiency. It would not serve any useful purpose under JOBS for a State to excuse an individual from educational activities on the basis of her performance at grade 8.9 if the local job market requires a higher level of educational competency to produce long-term self-sufficiency.

The issue of literacy impacts upon all aspects of life in the United States and has commanded the close attention of the administration of President Bush. Thus, our interest in the topic reaches far beyond literacy's relevance to welfare reform. We will continue to coordinate with the Departments of Education and Labor to reach an understanding of the basic literacy needs of this country. It is crucial to our economy and to the general well-being of our population that this country continue to strive to provide our citizens with appropriate educational opportunities—not only to achieve the goal of individual self-sufficiency but to fulfill the intellectual potential of each citizen. We urge all interested parties affected by the JOBS program to remain constantly attentive to literacy issues.

Comment: A few commenters asked that the definition of basic literacy level take into account the worth and potential of those who are learning disabled and do not have the ability to achieve an 8th grade literacy level.

Response: The regulations at § 250.44 provide for States to take into account those who are unable to achieve the basic literacy level. Specifically that section allows for placement in any educational activity below the postsecondary level that the State IV–A agency determines to be appropriate to the participant's employment goal. Moreover, § 250.32 provides appropriate opportunities for individuals of each of the age levels addressed in that section to be placed in educational activities other than those leading to high school level credentials or the basic literacy level defined in the regulations.

Limited English Proficiency

The definition of "limited English proficiency" is consistent with the manner in which the Department of Education's Office of Vocational and Adult Education uses the term. In the preamble to the NPRM we stated that a State IV–A agency would not have to provide instruction in English as a Second Language (ESL) if such instruction would not be necessary for an individual to become self-sufficient. As an example of an instance in which instruction in ESL might not be necessary for self-sufficiency, we cited the case of an employer who does not require English proficiency.

Many groups commented that they believed that these statements would discourage States from providing ESL education. Several commenters stated that limited English proficiency is one of the most significant barriers to true self-sufficiency, and that ESL instruction is mandated in the Act. One State labor department approved of the flexibility given to States regarding possible exceptions from ESL education but asked that the regulations require the State JOBS plan to give assurance that an individual will be excused from ESL education only if sufficient employment opportunities exist that meet the needs of the person's employability plan.

Education in English proficiency is listed as a mandatory component of JOBS in § 250.44 of these regulations. Our discussion in the preamble to the NPRM was intended to indicate that States have flexibility in selecting activities for the participant's employability plan that will best suit her needs to become self-sufficient. If the State IV–A agency determines that ESL instruction is not necessary for the participant to achieve self-sufficiency, other activities may be selected to help meet the goal. It is not our intent to diminish the use of ESL instruction when it is needed to help a participant achieve self-sufficiency.

Comment: One commenter from the adult literacy field observed that, while ESL instruction is highly important, JOBS should permit transitional bilingual educational programs in which the participant might receive instruction in fields such as mathematics and science in her first language.

Response: These regulations provide the States with the flexibility to place a JOBS participant in such a program, based upon her assessed needs and employability plan.

Comment: Some commenters found that the definition of "limited English proficiency" was not totally consistent with the reference to "education in English proficiency" located in § 250.44(a)(3). They asked that the terms be conformed.

Response: We agree with the commenters and have conformed the terms. We added "reading" to the list of limitations in English covered by the definition of "limited English proficiency." We added "understand" to the list of limitations in English to which § 250.44(a)(3) refers.

Comment: One commenter read the part of the definition of "limited English proficiency" that refers to the participant's family or community environment as a separate definition. The commenter observed that the wording might not serve to screen out those who lack proficiency in English. There were other comments that the final part of the definition was confusing.

Response: The definition should not be read as a two-part definition. We have revised the wording so that it is clear that the person's environment is considered along with her limited ability in English. The definition is compatible with the regulations recently proposed for implementing the Adult Education Act (20 U.S.C. 1201 et seq.)

Postsecondary Education. The term "postsecondary education" is defined to include a program of postsecondary instruction in the institutions captured in the definition of "institution of higher education," and a program of instruction in other institutions referenced by section 435(b) and section 435(c) of the Higher Education Act (20 U.S.C. 1085) as well as in any public institutions in the State that may not be covered by the Higher Education Act. The definition of postsecondary education: (1) allows a State to exercise a wide choice among educational activities, (2) includes private postsecondary schools among the institutions that the State might utilize to meet the educational needs of JOBS participants, (3) provides the protection concerning educational quality that is built into the Higher Education Act, and (4) permits States to select training from among any public postsecondary institutions that might not have been determined to meet the definitions in the Higher Education Act.

We wish to avoid uncertainty in applying the terms found in the Higher Education Act to the educational activities used in the JOBS program.

Therefore, our definitions provide that the State IV–A agency use the determinations that result from the Secretary of Education's process for certifying institutional eligibility to apply for the Higher Education Act student financial assistance programs. This provision does not appear to be burdensome, nor is it an unrealistic way of securing a decision regarding a postsecondary institution's compliance with the definition, since we anticipate that welfare recipients who enroll in postsecondary education or activities will have the benefit of Federal student financial aid, such as Pell Grants and Guaranteed Student Loans.

Comment: One State commented that the inclusion of "vocational school" as part of the definition of "postsecondary education" was confusing, since the term "vocational training" appears in § 250.44(b) as part of a self-contained definition of "job skills training," which is listed as one of the mandatory components of JOBS. The State's interpretation was that the similar terms would therefore make postsecondary vocational education a mandatory part of JOBS, and they sought clarification of this point.

Response: The position of the commenter is not accurate. The Act identifies postsecondary education as a separate, optional JOBS activity. The unavoidable similarity of terms must not be used to blur the distinction between mandatory and optional activities.

Remedial Education. Since the term "remedial" appears within the clause, "basic and remedial education to achieve a basic literacy level," in section 482(d)(1)(A)(i) of the Act, we invited comment as to whether the distinction of remedial education from basic education can be an operationally useful distinction. All who commented on this issue indicated that a distinction of remedial education from basic education is artificial, unnecessary, and potentially confusing. Therefore, we have decided to delete the definition of remedial education from § 250.44(a)(2) and will consider "basic and remedial education" as a term not requiring an operational distinction.

Terms Related to Making Good or Satisfactory Progress in Educational Activities

The definition of "make good progress" and "making satisfactory progress" affects a participant's involvement in educational activities in two specific places. First, in section 402(a)(19)(E) of the Act, a State IV–A agency may require an 18 or 19-year-old custodial parent who lacks a high school diploma or its equivalent to accept a job or training—instead of enrolling in educational activities— if the participant "fails to make good progress in successfully completing such educational activities." Second, in section 402(a)(19)(F) of the Act, a State IV–A agency may accept, as satisfactory participation in the JOBS program, a participant's attendance in good standing in an "institution of higher education," or in a "school or course of vocational or technical training," if the participant is "making satisfactory progress."

The concept of satisfactory progress should be used in connection with other educational activities whenever a State IV–A agency performs a reassessment of a participant, in order to help determine whether the participant has been appropriately placed in an educational activity. It should be used to determine whether to continue to provide supportive services, pursuant to § 255.2 of the final regulations. If a State elects to allow educational activities for unemployed parent under 25 in lieu of the work requirement at § 250.33, the unemployed parent meets the requirement if she is making satisfactory progress, as defined in § 250.1, in the educational activity. However, as indicated in our discussion related to participation in education at § 250.32, making satisfactory progress in an educational activity is not a factor in defining participation, for the purposes of participation rates under § 250.74 of the regulations.

Our definition of "make good progress" and "making satisfactory progress" is consistent with the *Federal Student Financial Aid Handbook* of the U.S. Department of Education, which is available in most schools and public libraries. The definition requires that a standard include both a qualitative element (e.g., grade point average or performance on a criterion referenced test) and a quantitative element (e.g., time limit for completion of the program or course of study). The final regulations permit the standard to provide that a participant may be considered to be making satisfactory progress during a probationary period or due to mitigating circumstances.

The regulations provide that a standard be used that was developed by the educational institution or program and approved by both the State or local education agency, and the State IV–A agency or Indian Tribe or Alaska Native organization. We believe that the institution or program offering the education should be involved in devising the standard, because of wide diversity among educational programs. Furthermore, the practice is compatible with Department of Education student financial assistance guidelines.

In order to assure that participation in educational components is meaningful and productive, we sought comments on the issue of including time standards where the educational activity is not part of an established educational program, such as high school. The examples that we gave were average hours per week or limits on the time period permitted to make specified educational gains.

Comment: A few commenters, including two postsecondary institutional membership organizations, specifically stated that they approved of the satisfactory progress definition for educational activities. A State education agency, for example, specifically noted the appropriateness of involving the State IV–A agencies and the State education agencies in approving the institutional definition, but at the same time the commenter asked that satisfactory progress be based solely upon attendance and grades. One organization, however, favored simply using existing Federal definitions where available and measuring literacy program progress by "satisfactory participation" and effort. Another commenter recommended that the State IV–A agency's definition prevail over any institutional, programmatic, or provider policy. A few commenters favored individualized plans for each participant. Some groups said that the definition should be used only for purposes of reassessing a participant and not for purposes of determining participation rates or continued receipt of supportive services. Several groups applauded the concept of a probationary period and recognition of mitigating circumstances, but they asked that a probationary period clearly be made mandatory.

More groups opposed the requirement for a qualitative component in the standard or asked for refinement of that requirement. Although grade point average was cited in the preamble of the NPRM as an example of the qualitative aspect of the standard, most commenters seemed to see it as the only qualitative measure permitted. They said a grade average is not applicable to nontraditional educational programs, such as adult education activities. One of the commenters specifically asked that the definition be adjusted to incorporate alternate ways to measure progress, e.g., criterion-referenced tests. One commenter suggested adding "improvement of basic skill competencies" as a specific example of a qualitative measure of a participant's

progress. Another stated that promotion to a higher grade, particularly for young parents, should override other satisfactory progress requirements.

Some of these commenters said that the participant who faithfully attends an educational activity should not be penalized for failing to make progress according to an institution's standard. Some commenters pointed out that participants who are in adult education activities are more likely than the normal population to be learning disabled and therefore would progress more slowly. They feared that the definition would discourage the placement of those who are the most in need of education into educational activities. Some of them observed that an individualized definition of satisfactory progress might be needed. A few groups suggested that interim participation measures are too cumbersome, and some of them said that those measures should be replaced by outcome measures.

Concerning the issue posed in the NPRM as to whether to establish minimum hours for those who were in educational activities outside of regular high school, the comments were evenly divided between those in favor and those opposed. Of those opposed to a Federal requirement, one commenter stated that its experience was that time standards are not good measures of progress. One commenter noted that since those programs were likely to enroll people with learning disabilities, time is an inappropriate factor. One State asked that the States be allowed to establish their own standards. Another commenter said that States would purposefully underestimate time needed to complete an activity.

Response: We have decided to retain the definition essentially as proposed, because we believe that it provides adequate flexibility to accommodate the concerns of those who commented. (However, we will no longer use the concept for defining participation under § 250.78.) Since students who are participating in a wide variety of Federal financial aid programs are accountable for qualitative and quantitative progress, we believe that the JOBS population should not be exempted from accountability in these areas. At the same time we do allow for the State IV–A agency to take into account any special characteristics of the JOBS population. Therefore, for the purpose of assuring maximum flexibility, we have decided to delete the reference to the satisfactory progress definitions of accrediting bodies recognized by the U.S. Secretary of Education. Also, we will not require that minimum hours be established for those who are in programs, such as evening adult educational activities, that are outside of traditional educational settings.

While we give examples of qualitative and quantitative measures, these are not intended to be limiting. The State IV–A agency, therefore, has the flexibility to work with educational institutions or programs to develop standards that take into account the special needs of the JOBS population. While we do not see the need to mandate provisions for mitigating circumstances, our definition clearly allows for a probationary period relative to JOBS, and we encourage States to be sensitive to the issue.

We further note that, insofar as JOBS participants are enrolled in postsecondary education and are receiving loans and grants under the Higher Education Act, continued receipt of those loans and grants will be governed by the institution's provisions regarding satisfactory progress relative to the Higher Education Act, regardless of whether the State IV–A agency has accepted a more lenient definition of "good progress" or "satisfactory progress" from the provider for the purpose of JOBS.

Making Good or Satisfactory Progress in Training Programs. The Act does not include a qualitative measure of making good or satisfactory progress for training programs under JOBS, such as OJT and skills training. However, after consultation with the Department of Labor, we decided to expand the definition of making good or satisfactory progress to apply to OJT and skills training. We do so to assure that training offered through JOBS results in an increase in participants' skills and competencies, and that such progress be monitored by the State IV–A agency.

Operationally, this will require that qualitative measures be developed by the provider and approved by the State education agency and the State IV–A agency or Indian Tribe or Alaska Native organization. If such measures already exist for a training program, then they can be applied with the agreement of the State IV–A agency. If they do not exist, the State IV–A agency should secure appropriate measures as a condition of including such training in a JOBS component. States will have flexibility concerning measures of good or satisfactory progress because there will be a great deal of variation in the types of training programs which States will choose to offer. However, we strongly urge the State IV–A agency to consult with the appropriate State employment and training agency in developing such measures.

The measure of good or satisfactory progress should be used by the State IV–A agency to determine whether a participant should continue in a particular training activity and whether to continue to provide supportive services, pursuant to § 255.2 of the final regulations.

We considered whether to apply the concept of making satisfactory progress in measuring participation rates for OJT and skills training. However, we sought comments on the issue because we were concerned that including such measures in training components for purposes of the participation standards could discourage a State from setting meaningful standards if the standards would affect the State's ability to meet the participation rates.

We also considered precluding FFP for the costs of training activities for individuals not making good or satisfactory progress. However, we sought comments on the issue because we were concerned that this might discourage States from including training components in their JOBS programs.

Comment: Those who commented on using a standard of good or satisfactory progress for training programs observed that the Act does not require such a standard for training programs. Most of these commenters did not favor applying the concept to training programs relative to continuing supportive services or determining participation; therefore, they did not discuss the content of the definition. Other commenters discussed the issue of satisfactory progress in training along with the issue of satisfactory progress in education or did not differentiate between the two, since they had the same concerns with both, such as whether the definitions would discourage placement of those most in need of the education or training into such activities.

However, we received about a dozen comments specifically related to the proposed definition of satisfactory progress in training activities. Some of the commenters had concerns about how well qualitative standards could be constructed for training programs. Some commenters stated that performance based contracting and outcomes would accomplish what was intended by imposing standards of satisfactory progress. A few commenters observed that the standard posed problems for coordination with JTPA programs. One of these commenters said that subcontracts with JTPA providers are outcome-oriented, that the monitoring

aspect of the definition would be burdensome, and that the definition unfairly called for a standard for all participants in a single activity which did not take into account differing ability levels.

One commenter noted no objection to using qualitative measures of satisfactory progress in training as long as they did not discourage placement of the difficult to serve, but they stated that States have to be given time to develop the standards. A few groups did not object to the concept of satisfactory progress in training but recommended that the definition allow maximum flexibility and reliance upon training providers. One commenter highlighted the necessity to differentiate between the kinds of qualitative measures that would be used in determining satisfactory progress in educational activities from those measures that would be used to measure progress in job skills training and OJT. They suggested progress should be tracked through a sequence of learning objectives, related curriculum, and pre- and post-assessment.

Response: We are retaining our definition of "making good progress" and "making satisfactory progress" in training to help assure that the training results in an increase in the skills and competencies of JOBS participants. Periodic assessment of the participant's progress while she is in the program is preferable to determining at the program's conclusion that the participant did not profit from it, either because the placement was inappropriate or because the participant did not make an adequate effort to learn from the activity.

Our definition provides broad flexibility concerning the measures and time periods that can be used. Since there is such a variety of training programs, our definition allows for the provider to participate in setting the standard. Moreover, very short programs that do not meet the time increments established by the State IV-A agency for monitoring progress need not be subject to the policy.

In deference to those commenters who asked for time in which to develop standards of satisfactory progress in training activities, we will not require State IV-A agencies to use the definition until October 1, 1992, the second full JOBS cycle, although we encourage States to employ such standards before then if they are available. We believe that the two-year grace period will allow State IV-A agencies to work with providers and employment and training agencies, as well as to amass some initial experience in the area, in the development of definitions for programs that lack such standards.

Terms Related to Participation

We have moved the definition of participation to the new § 250.78.

Subpart B—Administration

State IV-A Agency Administration (§ 250.10 of the Final Regulations)

Section 482(a)(2) of the Social Security Act identifies the State IV-A agency as the State agency responsible for the administration or supervision of the JOBS program. Similar provisions apply to the AFDC and Adult Assistance programs (see sections 2(a)(3), 402(a)(3), 1002(a)(3), 1402(a)(3), and 1602(a)(3) (Aid to Aged, Blind, and Disabled) of the Social Security Act). Longstanding Federal policy construing these latter requirements has interpreted them to mean that the State IV-A agency must maintain overall responsibility for the design and operation of the program and may not delegate to other than its own officials functions involving discretion in the overall administration or supervision of the program (see § 205.100).

However, section 485 of the Act provides States with contract authority to administer the JOBS program (see § 250.13 and related preamble). Accordingly, in view of both sections 482(a)(2) and 485, we believe that certain JOBS functions and activities which involve decision-making with regard to individual participants may be performed by entities other than the State IV-A agency, so long as there are specific rules and regulations issued by the State IV-A agency governing their implementation. For example, the State IV-A agency may contract out a wide range of functions—such as orientation, literacy testing, and JOBS component activities and services.

A number of questions have arisen regarding the effect of the single State agency requirement on the delivery of JOBS services to individual participants. Questions regarding this issue were raised in the comments to the NPRM, as well as through review of the State JOBS plans of the fifteen States which implemented the program on July 1, 1989. Longstanding policy with regard to State IV-A agency administration has required that decision-making and other functions which affect individual eligibility for and the amount of the AFDC benefit must be performed by an office of the State IV-A agency, or through the local welfare agency under the supervision of the State IV-A agency. We have said that such activities as processing applications, determining eligibility, providing hearings, and imposing sanctions must be performed by the State IV-A agency. This policy derives from congressional expressions of intent—e.g., section 402(a)(7) (the State agency is to determine need), and section 402(a)(4) (hearings are to be before the State agency).

Many States have questioned the effect of this policy on JOBS services to be provided under contract or agreement—e.g., assignment of an individual to a particular component. Others have asked if such functions as assessment and case management could be contracted out. Some States have asked if entire components could be provided by agreement with other State agencies. Other States have submitted plans in which overall program administration, including planning and control of the program, as well as the delivery of services, would be performed by another agency. In some plans it was clear that the States intended to make few changes to the existing service delivery system and would simply call the existing system "JOBS".

We believe that the State IV-A agency should have maximum flexibility to administer its programs within the requirements of the Act. We recognize that in many States, other agencies—such as Job Training Partnership Act (JTPA) agencies, the State education agency, the State employment security agency and community-based organizations—have been effectively performing a range of educational, training and employment-related functions for welfare recipients. Rather than requiring a State IV-A agency to train or expand in-house staff to perform similar JOBS functions which do not directly involve discretionary judgment, the final regulations provide the State IV-A agency with the flexibility to determine how it can most effectively use all potential State resources.

It is also clear that Congress intended to expand the variety of services available to assist families in achieving self-sufficiency. Many of these services involve decision-making. To be consistent with section 482(a), delivery of these services must be directed by the IV-A agency, both at the State and local level. However, in view of section 485, we believe that States may generally contract out such functions if they wish.

Therefore, certain JOBS functions and activities which involve decision-making with regard to individual participants may be performed by entities other than the IV-A agency, but only according to policies, rules and regulations of the State IV-A agency. In doing so, such entities must not have the authority to

review, change, or otherwise substitute their judgment for that of the IV–A agency.

Accordingly, if the State IV–A agency develops specific criteria under which the decision-making regarding a participant is carried out by the contractor, then such functions can be performed by the contractor. Such activities might include assessment, priority determinations, provision of component services, case management, and conciliation. If a situation arises that is not covered by the general policies of the IV–A agency, then the contractor must make recommendations to the IV–A agency, which has final authority for all decision-making regarding the participant. Alternatively, if the State does not have specific criteria for an activity, the State may utilize a contractor for the sole purpose of making recommendations in individual cases to the State IV–A agency.

This policy does not extend to AFDC activities under title IV–A traditionally performed by title IV–A staff, such as determining the amount of the AFDC payment, which must continue to be performed by title IV–A staff. Related JOBS functions under title IV–F affecting eligibility for and the amount of the AFDC payment must be performed by title IV–A staff. These functions include determining exemption status, determining good cause for failure or refusal to participate, providing notice of case actions, implementing sanctions, and holding hearings. We have amended the final regulations to clarify the circumstances under which the State IV–A agency may contract out for services and activities.

Comment: One State questioned the applicability of § 205.100(b), describing the single State agency concept, to the State IV–A agency administration of the JOBS program.

Response: Section 482(a)(2) of the Act requires that "[t]he State agency that administers or supervises the administration of the State's plan approved under section 402 shall be responsible for the administration or supervision of the administration of the State's program." A principal purpose of the single State agency provision is to assure that there is a central point of responsibility in the State, i.e. the State IV–A agency, with adequate legal authority, to which the Federal Government can look for the carrying out of the approved State plan and with which it can deal in all matters related to the grants, and that the State functions not be so fragmented as to preclude effective administration. The single State agency principle does not preclude the purchase of services from other State agencies, nor is it designed to set aside the cooperative relationships that are normal and proper within a State. Purchase of services and working cooperatively with other agencies are, however, different from delegating administrative responsibility for performance of functions required under State and Federal laws to other agencies or individuals. The State may make use of the expertise of other agencies as long as the State IV–A agency does not delegate administrative decision-making authority.

Comment: Several commenters asked what single State agency administration meant in terms of the responsibilities of the State IV–A agency for overall management of the program.

Response: The State IV–A agency must submit the State JOBS and Supportive Services plan to the Department for approval. It must have sole responsibility for promulgating rules, regulations, and guidelines that govern the operation of the program. It must be responsible for program design decisions, including, but not limited to: (1) optional provisions, such as lowering the age of the youngest child that qualifies an individual for an exemption; (2) what optional components will be offered; (3) definition of failure to participate and good cause for failure to participate; and (4) the minimum requirements for conciliation.

Limits on Contracting

Before a State IV–A agency contracts for any JOBS service or activity, it must ensure that such service or activity is not otherwise available to JOBS participants on a non-reimbursable basis. This requirement is discussed in detail in § 250.13 and related preamble on contracting and in § 250.72 and related preamble concerning maintenance of effort.

Requirement for a Statewide Program (§ 250.11 of the Final Regulations)

Section 482(a)(1)(D) of the Social Security Act requires that by no later than October 1, 1992, a State IV–A agency must make the JOBS program available in each subdivision of the State where it is feasible to do so, taking into account the number of prospective participants, the local economy, and other relevant factors. The regulation at § 250.11(a) describes this requirement, and specifies that the State must operate a JOBS program, including all components described in § 250.44 and two of the components in § 250.45, in each political subdivision of the State, unless the State determines that it is not feasible to do so.

If the State IV–A agency determines that the program will not be made available in all political subdivisions, it must provide appropriate information regarding the extent of the State JOBS program to the Secretary in its JOBS plan. In order to determine whether a State IV–A agency needs to submit additional justification for less than statewide operation, we will apply the criteria described in § 250.11(c)(1). If a State meets these criteria, then no additional justification will be required. If these criteria are not met and additional justification is necessary, the Secretary will disapprove the plan if the justification is inadequate.

It is expected that the State IV–A agencies will make a serious and determined effort to implement programs throughout all local jurisdictions to the maximum extent possible, so that eligible families will have an opportunity to benefit from the new services that are authorized under the legislation.

In determining how specific to be in the regulations, we considered the statements in the Conference Report (H. R. Rep. No. 100–998, 100th Cong., 2d Sess. 112 (1988)). The conferees intended that the program be provided to as many recipients as possible. Specifically, section 482(d)(1)(A)(i)(I) of the Act requires that the State JOBS plan include educational activities, such as high school or equivalent education, and basic literacy and English proficiency training. The conferees noted (H. R. Rep. No. 100–998, 100th Cong., 2d Sess. 141 (1988)) that there would be those for whom enrollment in regular school programs would be inappropriate, and consequently suitable alternatives would have to be identified or developed. We believe that at least some of these educational activities are available in the majority of political subdivisions in all States, and they, therefore, should be made available, as appropriate, to AFDC recipients.

However, State resources may not permit the inclusion of the same optional components, listed in section 482(d)(1)(A)(ii) of the Act, in all political subdivisions. To allow maximum State flexibility in designing State JOBS programs, a State IV–A agency will not be required to implement the same optional components in all political subdivisions in which it operates a JOBS program. Further, the State need not operate components in the same manner in each political subdivision.

Criteria for Determining Whether Further Justification is Necessary

First, a "minimal" JOBS program should be available to most adult recipients in a State. A minimal program includes high school or equivalent education, as specified at section 482(d)(1)(A)(i)(I) of the Act, one optional component from among those specified at section 482(d)(1)(A)(ii) of the Act, and information and referral to non-JOBS employment services. In determining whether a JOBS program is statewide, we will first determine whether a minimal program is available in a number of political subdivisions in which 95 percent of adult recipients reside.

Second, a "complete" JOBS program should be available to a large proportion of adult recipients. A complete program includes, but is not limited to, all mandatory and any two optional components, pursuant to section 482(d)(1)(A) of the Act. For the purposes of meeting this criterion, a complete program should be available in all Metropolitan Statistical Areas (MSAs) in the State, as well as in a number of political subdivisions in which 75 percent of adult recipients reside.

The use of MSA boundaries is a nationally recognized system for distinguishing among economically different areas of States. The 75 percent requirement is included because the number of adult recipients living in MSAs is relatively low in many rural States.

In the NPRM, we proposed the criteria set forth above as an alternative to requiring a justification for less than statewide operation in all circumstances when a State would not offer a JOBS program in all areas of the State. Based on the number and content of comments regarding the criteria, it is clear that further clarification is necessary.

In general, commenters appear to have read the above criteria as requirements. Many commenters complained that the criteria are too restrictive, do not allow for variation between States, and would require that resources be spread too thin. However, some commenters felt that use of the criteria was inappropriate because it would mean that some areas of a State might not have a JOBS program.

The statutory requirement that the program be available in each political subdivision where it is feasible to do so, as well as the requirement that a justification be provided when a State would not provide the program in all political subdivisions indicates congressional intent that the program be available to as many potential participants as possible.

However, it is also clear that Congress recognized that economic and demographic factors would affect States' ability to provide the program to all potential participants. We expect, therefore, that many States will not provide an identical program throughout the State, but rather will provide different levels of service in some areas, and no program in others. In this case, a justification would be required. However, in order to ease the administrative burden for these States, we have provided the criteria described in § 250.11 for the purposes of our review of this requirement.

We emphasize that States are not precluded from operating a JOBS program that does not meet the criteria. If a State JOBS program does not meet the criteria, then a justification, as required by the Statute and described in the following discussion, must be provided as part of the State's JOBS plan. We believe that the alternative to these criteria—to require a justification for all State JOBS programs that would not be absolutely statewide—would be extremely burdensome.

Comment: In the NPRM, we proposed that a minimal program include high school or equivalent education. A number of commenters felt that other educational activities listed in section 482(d)(1)(A)(i)(I) of the Act should be included in the definition of a minimal program, in order to provide additional flexibility for States. Some commenters indicated that literacy levels in their States were relatively high, and that considering only high school for purposes of the criteria was too restrictive.

Response: We have not expanded the criteria to include any of the other educational activities listed in section 482(d)(1)(A)(i)(I) of the Act, such as basic and remedial education, and education for individuals with limited English proficiency. We believe the statutory emphasis is on high school education in the JOBS program. If the characteristics of a State AFDC population are such that inclusion of high school as a mandatory component in most political subdivisions is not appropriate, the State should request waiver of the statewideness requirement.

Comment: In the NPRM, we indicated that because high school is generally available in all political subdivisions of a State, job search is relatively inexpensive to operate, and referral to public employment services is a simple method for directing recipients to potential employment, implementation of a minimal JOBS program in most areas of a State was a reasonable expectation. Many commenters felt that it was unreasonable to expect States, particularly those States with a largely rural population, or with limited resources, to provide even a minimal program to such a large percentage of the AFDC population. They felt that resources would be spread too thin in order to meet this criterion.

Response: The criteria are provided for the purpose of the review of the statewideness requirement. They are not absolute lower limits. States are free to design and implement JOBS programs that do not meet these criteria, so long as an acceptable justification is included in their approved JOBS plan.

Comment: A number of commenters felt that our use of the term "political subdivision" in these criteria was too restrictive, since services are often provided through program service delivery areas that may not coincide with political subdivisions. They felt that States should be free to define political subdivision for the purposes of this provision.

Response: The term political subdivision, which is contained in section 482(a)(1)(D)(i) of the Act, has longstanding meaning for the AFDC program, and is defined by each State. Typically, this includes counties, parishes, or other political jurisdictions in a State. Since JOBS is integrally related to the AFDC program, we see no basis for defining the term differently for purposes of the JOBS program. For this reason, we have retained the term "political subdivision" but eliminated any specificity as to types of political subdivisions in the final regulations.

Nevertheless, States are free to provide services in areas defined geographically in terms other than political subdivisions, such as JTPA service delivery areas. In order to maximize use of available resources, a State might include services provided at a site other than a local welfare office, perhaps in a neighboring county. The service would nevertheless be considered available to all potential participants. However, in the State JOBS plan, the State must describe component services provided under an alternative scheme in terms of political subdivisions.

Comment: One commenter was concerned that by including one mandatory component as well as one optional component in the criteria for a minimal program, we would discourage States from providing other mandatory components, choosing instead the

optional component in order to meet the criteria.

Response: States are free to determine the mix of services and the location of such services. If the program will not meet the criteria for a minimal program, the State would then need to provide a justification for less than statewide operation.

Comment: One commenter asked why we included high school as the mandatory component in a minimal program to the exclusion of job skills training, job readiness, or other educational activities.

Response: The focus on educational activities, particularly high school, is based on the statutory emphasis on education. The Act contains specific educational requirements for custodial parents under 20 years of age. States must include educational activities in the employability plan of certain custodial parents who are 20 years of age or older and who do not have a high school diploma or equivalent. Educational activities are an alternative to the work requirement in the AFDC–UP program for parents under 25 years of age. It is, therefore, appropriate to expect such activities to be included in a JOBS program in almost all areas of the State, particularly in light of the general availability of such activities.

Comment: Some commenters felt that by including only one mandatory and one optional component in the definition of a minimal program, we would limit State program design. They felt that States might design programs merely to satisfy the criteria. Others felt that because the definition of a minimal program includes an optional component, which would then be available in most areas, States would include job search or CWEP, rather than another optional component that might be more expensive to operate.

Response: These criteria have been included to ease the burden for States by reducing the necessity to provide a justification for less than statewide operation, as well as to facilitate review of this requirement. We do not intend or expect States to design programs merely to meet these criteria. We encourage the design of programs that will meet the unique needs of the individual States.

There may also be some misunderstanding of the criteria as they relate to the mix of services that might be available. A State need not have the same optional component available in the number of political subdivisions in which 95 and 75 percent, respectively, of adult recipients reside. For example, for purposes of meeting the criterion for a minimal program, a State might make a CWEP program available in part of the State, and job search activities available in other areas.

Comment: A few commenters asked whether, for purposes of these criteria, the program should "serve" 95 and 75 percent, respectively, of adult recipients, or whether it should "be available" to these percentages. One commenter discussed phasing in the program in counties that currently do not operate work programs, in considering the statewideness requirement. The discussion related to the level of service, particularly the number of people who could be served during the phase-in of the program.

Response: For purposes of these criteria, a "minimal" and "complete" JOBS program must be available in a number of political subdivisions in which 95 and 75 percent, respectively, of potential participants reside. The program need not be capable of actually serving these percentages. The requirement related to actually serving individuals is the participation rate requirement at § 250.74. We have revised the language of § 250.11(c)(1) in order to clarify this point.

Comment: Another commenter asked whether the percentages would be measured in each political subdivision—that is, whether in a county with a minimal program, JOBS components must be available to 95 percent of the potential participants in the county.

Response: For purposes of these criteria, percentages will be measured on the State level, rather than at the political subdivision level. For example, JOBS components need not be available to 95 percent of potential participants within a county for it to be considered to have a minimal program.

Comment: A few commenters asked how implementation of Tribal JOBS programs would affect computation of the percentages in the criteria.

Response: For the purposes of these criteria, members of Indian Tribes and Alaska Native organizations to be served by Tribal JOBS programs will not be included in computing percentages. The regulations at § 250.11(c)(1)(iv) now include language to this effect.

Justification for Less Than Statewide Operation

Section 250.11(c) provides the basis for our review of the statewideness requirement. If a State JOBS program will not be available in a number of political subdivisions sufficient to meet the criteria of § 250.11(c)(1), the justification to the Secretary will include the information identified in § 250.11(c)(2).

The factors listed in § 250.11(c)(2) expand on the items identified in section 482(a)(1)(D) of the Act, which specifies two factors—i.e., the number of prospective participants and the local economy. We have added one additional item: whether a State IV–A agency will, even with the proposed areas excluded, fully expend all JOBS funds available to it for the period covered by the plan. This additional information will help in determining whether a State IV–A agency is proposing to concentrate services on specific geographic areas identified as particularly critical to reducing long-term dependency, and as a consequence, is unable to implement a statewide program.

We do not believe that depressed local market conditions would necessarily make a JOBS program infeasible. For example, even in areas of high unemployment, there are generally job opportunities because of job turnover and segmented job markets. However, in a rural area where the sole employer has recently closed its plant, a State IV–A agency might be justified in not operating a JOBS program, or in operating a minimal program. A State IV–A agency should consider these types of distinctions, and include this information in the justification for less than statewide operation.

In designing a State JOBS program that will be less than statewide, a State should assure that political subdivisions not be excluded on the basis of ethnic, racial or religious characteristics.

Because the statewideness requirement is not effective until October 1, 1992, phased implementation of the program will be permitted. As a consequence, an initial State JOBS plan may not reflect a level of component availability sufficient to meet the statewideness requirement. We would therefore expect that, no later than the first biennial review, for the plan period beginning October 1, 1992, the State JOBS plan and the State Supportive Services plan (pursuant to § 255.1) will be updated to reflect either sufficient program availability to meet this requirement, or a justification for less than statewide implementation.

Comment: A number of commenters felt that the additional information requested for the justification—whether the State will fully expend available Federal funding—will disadvantage States that are unable to secure the additional funding necessary to draw down all available Federal matching. One commenter, on the other hand, asked for clarification of the "automatic denial" when a State has "sought its full capped entitlement."

Response: The additional information will be used in assessing whether a State should be permitted to operate a JOBS program on less than a statewide basis. Drawing down all available Federal matching may be an indication that the State is targeting resources to specific areas. However, drawing down all available Federal matching will not, in and of itself, result in waiver of the statewideness requirement. This factor will be considered in light of other information provided by the State in determining whether the requirement should be waived.

Comment: Other commenters felt that the lack of State resources should be included as a factor in the justification for less than statewide program operation.

Response: We believe that by providing additional funding under the JOBS program, Congress intended that States include a wider range of services than are currently available in order to provide the opportunity to achieve self-sufficiency to as many recipients as possible. Failure of a State to provide funding to operate an adequate JOBS program should not be a basis for waiving the statewideness requirement. Section 482(a)(1)(D)(i) of the Act bases feasibility of statewide operation on the number of prospective participants, local economic conditions, and other relevant factors, which in our view do not include availability of State resources. Congress explicitly included availability of State resources in other sections of the Act. Because it did not include similar language in describing the statewideness requirement, we conclude that this factor should not be considered in determining whether a JOBS program is statewide.

Comment: A number of commenters asked that the regulations contain specific criteria to be used in determining whether a request for waiver of the statewideness requirement should be approved.

Response: We do not believe that it would be appropriate to provide specific criteria. The reaction of commenters to the criteria described above is an indication of the general opposition to such specific language. Each State program will differ, and must be viewed in light of the unique demographic and economic factors in the State.

Coordination and Consultation (§ 250.12 of the Final Regulations)

Section 402(g) and section 483 of the Social Security Act contain a number of provisions designed to assure coordination of the JOBS program, including child care and supportive services pursuant to § 255.3(h) of the regulations, with other education, training, and employment programs available in a State. The purpose of this coordination is to provide comprehensive, quality services to meet the multifaceted needs of welfare recipients in the most effective and efficient manner.

At the Federal level, the Department is working closely with the Departments of Labor, Education, and Interior, and expects State and local IV–A agencies to promote coordination among their counterpart agencies. The Department has had discussions with the Department of Agriculture on ways to insure coordination between JOBS and Food Stamp work programs and with the Department of Housing and Urban Development to develop linkages between JOBS and supportive services in public housing projects. The JOBS program should be coordinated with providers such as Job Training Partnership Act (JTPA) agencies, the Employment Service, vocational education, adult basic education, Head Start and preschool programs under chapter I of the Education, Consolidation and Improvement Act of 1981, school and nonprofit child care programs, public housing agencies, and other human development programs.

Congress intended that agencies identify existing resources to prevent duplication of services and to assure that other program services are available to JOBS participants. Such coordination is necessary to assure that costs for services for which welfare recipients have been eligible are not shifted to the JOBS program. The final regulations preclude such shifts in costs, as described in the maintenance of effort provisions in § 250.72.

Section 483 of the Act requires coordination with JTPA agencies, since one of JTPA's major goals is reducing welfare dependency. The JTPA requires that AFDC recipients be served in at least equal proportion to their incidence within the eligible population.

At the State level, the JOBS plan must be consistent with JTPA coordination criteria and must be reviewed by the State job training coordinating council (SJTCC) prior to submission to the Secretary. We strongly encourage the State IV–A agency to meet regularly with the SJTCC regarding the planning and implementation of the JOBS program to identify common JOBS–JTPA activities and services, and to develop an integrated strategy which ensures that eligible AFDC recipients receive training and employment services in an effective, non-duplicative manner.

At the local level, the welfare agency must consult with private industry councils (PICs) on the development of arrangements and contracts under JOBS and to identify and obtain advice on the types of jobs that are available, or are likely to become available, in the area. These provisions reflect congressional concern that JOBS resources not be used inefficiently, i.e., provided to ineffective service providers or expended on training for jobs which are not available to participants.

The local relationship between the welfare agency and the PIC is crucial to assure that welfare recipients receive the JTPA services for which they are eligible. Thus, we strongly urge local welfare administrators to be represented on the PIC or, at a minimum, to become actively involved in PIC meetings, as appropriate.

Initial and ongoing coordination between the State IV–A agency and local State and educational systems will enable the State IV–A agency to access needed expertise in this new area of welfare agency involvement, to avoid duplication of services and to assure that welfare recipients receive the necessary educational services for which they are eligible. Welfare agencies should meet regularly with their State or local educational counterparts to ensure that educational providers are involved in the planning and delivery of the JOBS program at all levels.

Section 250.21 of the final regulations requires State IV–A agencies to describe in the JOBS plans efforts to coordinate with other agencies including but not limited to JTPA, basic and adult education programs, programs under the Carl D. Perkins Vocational Education Act and other vocational services, and other human development programs.

Furthermore, the final regulations at § 250.20 specifically provide that State IV–A agencies make the proposed JOBS plan available to members of federally-recognized Indian Tribes and Alaska Native organizations during the public comment period. This segment of the population is highlighted to assure that a Tribal entity eligible to operate a separate JOBS program, pursuant to § 250.91 of the regulations, has sufficient opportunity to coordinate with the State in the planning of JOBS.

Coordination is necessary whether the Tribe or organization operates an independent program or receives services from the State, but is particularly important if a Tribal entity does operate a separate program. While a Tribal grantee will have responsibility for JOBS, the State IV–A agency will maintain responsibility for the basic AFDC program and for child care

services, including transitional child care services. Given this interrelationship, §§ 250.12 and 250.93(b)(1) of the regulations require that the State IV–A agency and the Tribal applicant exchange all available information on adult Tribal AFDC recipients necessary to determine a Tribe's or organization's JOBS funding level. In addition, the requirements in § 250.94 concerning Tribal JOBS administration and in § 250.95 regarding child care elaborate on the need for the State and Tribal grantee to develop mutually agreed upon procedures and methodologies to assure that Tribal participants receive equitable treatment under the AFDC and JOBS programs.

Comment: Some commenters objected to the provision that JOBS provide training only for the types of jobs which are, or are likely to become, available in the area, because the local area may be economically depressed.

Response: Section 250.12(d)(2) implements section 485(e) of the Act which requires that the State IV–A agency (1) consult with PICs on the types of jobs available or likely to become available in the Service Delivery Area (SDA) and (2) ensure that the State program provides training in any area for jobs of a type which are, or are likely to become, available in the area.

We believe that the requirement of consultation with PICs is meant to give the State IV–A agency a broad picture of the labor market in the State. There are over 600 service delivery areas nationwide, many serving geographical areas that constitute one labor market. State and local IV–A agencies may have to coordinate with PICs in several different SDAs to serve its JOBS clientele. We do not believe that Congress meant to be so limiting as to bar training for a job that happens to be in an adjacent service delivery area. Rather, we interpret the "shall ensure" language of section 485(e) to require that at a minimum a State must provide training in an area for jobs that are or likely to become available in the area—not that it may not do more.

Comment: One State suggested that the requirement at § 250.12(d)(1) that State IV–A agencies consult with private industry councils on the development of arrangements and contracts promotes a conflict of interest since PICs with private, non-profit (rather than public) status might compete for contracts for which they had provided prior consultation.

Response: State rules on procurement must be observed. We do not believe that Congress intended to impede contracting with private industry councils when it adopted the provision for consultation on the development of arrangements and contracts. To the extent that prior consultation would prohibit a private industry council from competing for a contract to provide services, the State IV– A agency should limit consultation with private industry councils to subjects that would not result in conflict of interest.

Comment: One State recommended consulting with the Employment Service agency for labor market information rather than with private industry councils.

Response: Consultation with the private industry councils on labor market information is required by section 485(e) of the Family Support Act of 1988. However, in § 250.12 of the regulations, we specifically provide for consultation and coordination with several other organizations, including the State Employment Service agency. Such consultation could include labor market information, but it does not substitute for the statutorily required PIC consultation.

Contracting Authority (§ 250.13 of the Final Regulations)

Section 485 of the Social Security Act grants the State IV–A agency broad contracting authority, which is reflected in § 250.13 of the final regulations. At the same time, however, the Act requires administration of the JOBS program by the single State IV–A agency.

Comment: Many commenters asked for clarification about which activities and services can be contracted out under JOBS.

Response: We have addressed the question of what activities and services can be contracted out in § 250.10 and in the accompanying preamble on what administration by the State IV–A agency means in terms of the JOBS program.

Comment: One commenter asked for flexibility in contracting and in determining the wide range of methods used to purchase services.

Response: As discussed in the preamble to § 250.10 on State IV–A agency administration, States have broad authority to contract for services. Some of the methods that may be used include but are not limited to fixed price, cost reimbursement, and performance-based contracts.

Selection of Providers

Section 250.13 incorporates the requirements of section 485 of the Act regarding the factors which must be taken into consideration in selecting service providers and the prohibition against contracts for services which are otherwise available on a non-reimbursable basis. Regarding the issue of provider selection, the requirement for consultation with private industry councils is described in § 250.12 on coordination and consultation.

Comment: One State asked that the consulting role of the private industry councils be limited to providing labor market information and not include consulting on the development of contracts for JOBS.

Response: Section 485(c) of the Act requires that the State IV–A agency consult with private industry councils on the development of arrangements and contracts for the JOBS program. The only exception is discussed in the preamble to § 250.12 and involves the situation in which such consultation could result in a conflict of interest if the private industry council is also a competitor for contracts.

The statutory prohibition against contracts for services which would be otherwise available on a non-reimbursable basis reflects congressional concern that costs of services for which welfare recipients have been eligible not be shifted to the JOBS program. Since it is so closely connected to the provisions on maintenance of effort (section 482(a)(3) of the Act), we elaborate on its interpretation in § 250.72 of the regulations and preamble.

Before a State contracts for services under JOBS, we expect that it will carefully identify those services which have traditionally been available to welfare recipients at no cost, as well as community-based or volunteer programs that may provide competent services at minimal or no cost. The statutory language clearly intends that the State IV–A agency fully utilize all resources otherwise available to serve JOBS participants on a non-reimbursable basis. For instance, other programs have paid for many educational services provided to AFDC recipients, including those available under the Adult Education Act (20 U.S.C. 1201 *et seq.*), the Higher Education Act (20 U.S.C. 1001 *et seq.*) and the Carl D. Perkins Vocational Education Act (20 U.S.C. 2301 *et seq.*) Similarly, through JTPA, the State employment security agency, State employment and training programs and the Community Services Block Grant program, extensive employment and training services—such as job counseling, job development and placement, job skills training, and on-the-job training—have been offered to eligible low income individuals, many of whom are AFDC recipients.

Segregation of Costs by Matching Rate

For the purposes of FFP, the State IV–A agency must segregate costs according to applicable matching rates, as defined at § 250.73(b)(1), in any contract or arrangement under the JOBS program. This means that contracted services will qualify for Federal matching funds at the same rate as those services which the State IV–A agency provides directly. This provision is included to assure that State IV–A agency decisions on contracting will be based upon the efficient administration of the program and that consistent Federal matching will be available to the State IV–A agency regardless of the method used to provide services.

Comment: Several commenters said that segregation of costs would be extremely burdensome. They pointed out that the definitions in JOBS might not be compatible with other programs, such as JTPA. They said that it might cause some providers not to do business with JOBS, or that it would drive up the cost of the contracts with no benefit to participants.

Response: The Act does require different matching rates for different activities, and we maintain our position that State agency decisions about contracting not be driven by available matching rates.

However, based on all the comments we received, we have amended § 250.73 as to what activities are eligible for the different matching rates. A full discussion of these changes appears in the preamble to § 250.73. The effect of these changes is that more of the costs of providing services directly to participants will be eligible for enhanced match, whether the service is provided by the State IV–A agency or another entity. Therefore, it is less likely that segregation of costs will be required. However, we have not amended § 250.13 in the final regulations since there may be some contracts which will still require segregation of costs because of the nature of the activities.

Other Applicable Regulations

In addition to the specific contracting requirements in this section, contracted services under JOBS are subject to the requirements of Part 92 with the following exception. We have excluded the provisions under § 92.30(d)(4). These provisions, which require prior Federal approval of contracts, appear to be inconsistent with congressional intent since they would severely limit a State IV–A agency's contracting authority under section 485 of the Act.

State IV–A agencies are subject to the procurement requirements of only paragraph (a) of § 92.36. This means that the State IV–A agency is required to assure that JOBS contracts follow State and local laws, regulations, and procedures regarding procurement. Indian Tribes and Alaska Native organizations, however, are subject to the Federal procurement requirements of § 92.36(b) through (i).

Subpart C—State Jobs Plan Requirements and Content

Requirement for a State JOBS Plan (§ 250.20 of the Final Regulations)

The JOBS provisions are found in title II of the Family Support Act, which includes changes to Part A and creates Part F in title IV of the Social Security Act. State implementation of these provisions will be covered under a new State plan for JOBS (the JOBS plan). The requirements for that plan and the procedures for its submission are discussed below. Title III of the Statute also requires that States provide child care and other necessary supportive services. These services will be covered under a Supportive Services plan, to be developed and submitted with the JOBS plan. A discussion of the Supportive Services plan and related requirements is at § 255.1.

We believe that it is appropriate to include the new statutory requirements in section 402(a)(19) of the Social Security Act as well as all requirements of title IV–F in a separate JOBS plan. This position is supported by the language of section 482(a)(1)(A) of the Social Security Act, which requires the JOBS plan to meet "all of the requirements of this part and section 402(a)(19)."

Section 482(a)(2) of the Act provides that the State IV–A agency will be responsible for the administration or supervision of the State's JOBS program. Based on this provision, the final regulations provide that the State IV–A agency is responsible for the submission of the State JOBS and Supportive Service plans, after completion of all coordination requirements and review by the Governor.

Comment: Several commenters asked why we require separate JOBS and Supportive Service plans when they are so integrally connected and must be submitted concurrently.

Response: Child care under section 402(g) of the Act is a part of title IV–A, and, therefore, we believe, it would be inappropriate for it to be included in the IV–F (or State JOBS) Plan. A fuller discussion of the Supportive Services plan is contained in the preamble to § 255.1. We have carefully refrained from requiring any duplicate information in both plans. Since the same regulations for submission and approval govern both the JOBS Plan and the Supportive Services Plan, we do not believe that treating them as separate plans is burdensome on States. Furthermore, any State which has not implemented JOBS as of April 1, 1990 will have to submit a Supportive Services plan for transitional child care at that time.

Plan Approval Prior to Implementation

Section 250.20(a)(2) of these regulations requires States to submit the initial JOBS and Supportive Services plans for approval 45 days prior to implementation.

The Family Support Act does not directly address the question of whether a State's JOBS plan must be submitted and approved prior to a State's implementation of the program. However, the statutory language best supports the position that the JOBS plan should be approved prior to a State's implementation. In several places the Statute references JOBS programs operated and funded under *approved* plans; the implication is that programs could not be operated and funded unless a JOBS plan had been approved. Specifically, the statutory language includes the following: (1) Section 482(a)(1)(A) of the Social Security Act states, "As a condition of its participation in the program of aid to families with dependent children under part A, each State shall establish and operate a job opportunities and basic skills training program * * * under a plan *approved by the Secretary* * * *."; (2) Section 403(k)(1) provides that "Each State *with a plan approved under part F* shall be entitled to payments * * *."; and (3) Section 403(l)(1)(A) provides, "In lieu of any payment under subsection (a), the Secretary shall pay to each State *with a plan approved under section 482(a)* * * *." (emphasis added).

Submission of Initial JOBS Plans 45 Days Before Anticipated Implementation

This timeframe is not found in the Family Support Act. We have adopted the 45-day period for the initial submission as we proposed in the NPRM, because we believe this will provide a reasonable period of time within which to conduct an orderly and responsible review of a State's submission. We received no comments to the contrary.

Comment: Several commenters asked that we establish a timeframe in the

regulations by which the Secretary would act to formally approve or disapprove a State JOBS Plan.

Response: We see no need for establishing a time frame. The Department is committed to acting expeditiously on all State JOBS and Supportive Services plans that are submitted timely, as evidenced by the fact that all fifteen plans submitted for July 1, 1989 start dates were approved before July 1.

Interim Plans

Initial State JOBS and Supportive Services plans submitted prior to the issuance of plan preprints have been and will continue to be approved as interim plans. States with interim plans will be required to submit new JOBS and Supportive Services plans 90 days after the issuance of a preprint form by the Secretary. An approved interim plan shall remain in force until action is taken by the Secretary to approve or disapprove the preprint. Although described as a new plan, a State's first JOBS plan preprint following its interim plan will not be subject to the requirement for review by the SJTCC before submission to the Secretary, unless there are substantial changes.

Comment: Several commenters said that the 60-day period for resubmission of the plan on the preprint form issued by the Secretary is too short, especially if State legislative action is necessary prior to resubmission.

Response: We have amended the final regulations at § 250.20(d)(2)(i) to provide that States will have 90 days after the publication of the State plan preprints to submit them to the Department for approval. Interim plans will remain in effect until the Secretary acts to approve or disapprove the new plans.

Comment: One commenter asked that the interim plan remain in effect in the event the final plan is disapproved.

Response: The regulations provide that the interim plan remains effective until the Secretary acts to approve or disapprove a State's final plan. Section 250.20(g) of the final regulations provides for an opportunity to make revisions to any plan prior to final disapproval. However, once the Secretary does issue a formal disapproval of a plan, there is no provision for continuation of an interim plan.

Resubmission of State Plans: Biennial Update

Section 482(a)(1)(A) of the Act requires that the State submit its State plan not less often than every two years to the Secretary for approval. Under these regulations, the biennial update shall be considered a new plan, which must be submitted for approval 90 days prior to the date it is to become effective. The biennial update must be available for public review and comment in accordance with the provisions of § 250.20(c).

We recognize that this process is very different from existing title IV–A plan amendment procedures. However, we believe that there are several compelling reasons to treat the biennial update as a new plan for which approval by the Secretary is required: (1) the specific requirement that it be resubmitted (not less than every two years) distinguishes it from the regular title IV–A plan amendment process at § 201.3, which requires only that plan amendments be submitted by the end of the calendar quarter of implementation; (2) the requirements for coordination and consultation, including the requirement that the State plan be submitted to the SJTCC for review and comment, would be significantly lessened if it were only required once prior to JOBS implementation and never thereafter; and (3) the nature of the information that section 482 of the Act requires be in the State plan makes it an "operational plan." Much of it is specific to the period which the plan covers, such as the number of persons to be served and the extent to which other services will be available by provider and type of service. Such information must be updated for each new period in order to make the plan a useful document.

Content of Biennial Update

The State plan update will consist of four parts: (1) assurances regarding those parts of the State JOBS plan and Supportive Services plan that remain unchanged; (2) a description of any changes in program operations, including but not limited to, changes in the mix of components or target populations to be served; (3) specific information for the period of the update regarding estimates of persons to be served and the availability of services provided by the State IV–A agency as well as other providers; and (4) an assurance that the State JOBS plan is consistent with the coordination criteria specified in the current Governor's Coordination and Special Services Plan required under section 121 of the JTPA. The State plan preprint shall be the vehicle for the update.

Comment: Several commenters asked that we reduce the requirements for the biennial update. One suggested that if it were considered a new plan, it would trigger the consultation requirements which could result in the plan being disapproved for technical reasons. Another asked that only changes be submitted.

Response: In the NPRM, we outlined several reasons for our approach in considering the update a new plan. We have restated them in the final regulations because we find them no less compelling after review of the comments we received. Congress could have easily mandated that the same procedure that governs amendments for the AFDC program apply to JOBS. Instead it required an update at least every two years which must be submitted to the Secretary for approval. The conference report (H. R. Rep. No. 100–998, 100th Cong., 2d Sess. 113 (1988)) specifically describes the State plan as an "operational plan" which would describe how the State planned to operate the JOBS program during the period covered by the plan. We regard the requirement for consultation and coordination to be an on-going one.

Our regulations do not require the State to submit an entire plan as its biennial update. Section 250.20(e)(2)(i) simply requires assurances regarding those parts of the State JOBS plan and Supportive Services plan that remain unchanged. We do require the State to submit a description of any changes to program operation and estimates of the number of persons to be served by the program during the next biennium. The State plan preprint will be the vehicle for submitting this information.

Submission of First Biennial Update

All plans submitted between the issuance of the preprints and October 1, 1990, (whether resubmission of interim plans or initial plans), if approved, will remain in force until the Secretary acts to approve or disapprove the first biennial update. To ease the administrative burden, the first biennial update for all States will be due on July 1, 1992 for the period beginning October 1, 1992. However, States may submit plans on April 1, 1992 to be effective July 1, 1992 if this would be administratively easier because it would coincide with either the State fiscal year or the program year under the Job Training Partnership Act or the Carl D. Perkins Vocational Act.

Comment: Several commenters asked that we make the biennial update submission consistent with the program period under JTPA and Carl D. Perkins Vocational Act by moving the submittal date back to April 1, 1992 for the period beginning July 1, 1992.

Response: In the NPRM, we proposed October 1, 1992 as the start date for the first biennium because it coincided with the date on which all States will have to

have statewide programs, and we believed that it would ease the administrative burden to put all plans on the same schedule.

However, we are persuaded that for some States it would be advantageous to have the program period coincide with either the State fiscal year or the program period for other employment and training programs. Therefore, we have amended the final regulations to give States the option of submitting the first biennial update either on April 1, 1992 for the period beginning July 1, 1992 or on July 1, 1992 for the period beginning October 1, 1992. If a State, which does not have a statewide JOBS program, submits a plan for the period beginning July 1, 1992, the State plan must explain how the program will be statewide as of October 1, 1992.

Amendments

A State IV–A agency may submit amendments to an approved plan, if necessary, prior to the required resubmission described below. The current process for submission and review of amendments, as described at § 201.3(f) and § 201.3(g), will apply. Submission of plan amendments does not relieve the State of the obligation to resubmit its plan to the Secretary for approval every two years.

Comment: One commenter asked that we specify what circumstances would require a plan amendment.

Response: Amendments are required when the State IV–A agency changes its program in two circumstances: (1) it makes changes which would affect eligibility for services or the requirements to participate. These would include, but are not limited to, reducing the age of the youngest child exemption from 3 to 1, redefining "good cause" for failure to participate, and changing the criteria for excusing those under 18 from school attendance requirements; and (2) it makes changes in program design that alter the nature of the program. These would include, but not be limited to, expanding the geographical coverage (prior to October 1, 1992), adding or dropping any of the optional components including any other education, training, or employment activities pursuant to § 250.47, or proposing to change the target groups specified in § 250.1. We have renumbered § 250.20(f) to designate the existing language as paragraph (f)(1) and added paragraph (f)(2) to describe when an amendment to the JOBS or Supportive Services plan is required.

Public and Inter-Agency Review of State JOBS Plans

The Act requires that the State agency submit its JOBS plan to the State Job Training Coordinating Council (SJTCC) 60 days before submission to the Secretary. The final regulations require submission of the plan to the State education agency, based on the extensive required and optional educational activities under JOBS, and the general coordination requirements in section 483 of the Act related to State and local education agencies.

In accordance with section 483(a)(1) of the Act, the content of the plan, where it relates to job training and work preparation, must be consistent with the coordination criteria specified in the Governor's coordination and special services plan required by section 121 of the Job Training Partnership Act.

The Statute also requires that the State JOBS plan be made available for public review and comment 60 days prior to submission to the Secretary. All public and State agency comments on the plan shall be resolved at the State level. It was noted that if this were not made clear, the State efforts to resolve disagreements could become a problem, since commenters might choose to press their view at the Federal level rather than at the appropriate State level.

Comment: Several commenters said that the final regulations should require the State IV–A agency to submit any comments it receives during the 60-day review period to the Secretary as part of its JOBS Plan.

Response: We see no practical reason for requiring submission of comments to the Secretary. The fact that the Act requires the comments of the SJTCC to be submitted to the Governor supports our position that disagreements should be resolved at the State level and not submitted to the Secretary.

Comment: Several commenters asked that the initial plan submitted after the preprint is issued be subject to the 60-day comment and review period prior to submittal to the Department.

Response: We have carefully reviewed the changes that we have made in the final regulations to determine whether there would be any reason to require States with approved interim JOBS plans to go through the public comment and review period when they submit their initial plans using the preprint. We conclude that the changes are not so substantial as to automatically require another comment and review period for all States. However, we have maintained the provision that if the State makes substantial changes in its program, the plan should be submitted for review and comment. We have amended the regulations to provide for an abridged review and comment period of 30 days.

Comment: One commenter pointed out that the proposed regulations omitted the statutory language "made reasonably available to the general public through local news facilities and public announcements * * *"

Response: The final regulations have been revised to contain the provisions of the statutory language which were inadvertently left out of the proposed regulations.

State Plan Content (§ 250.21 of the Final Regulations)

Section 250.21 lists the information required in the JOBS plan. We will provide a preprint which will elicit all necessary information in a standardized format. The preprint will guide States in submitting the JOBS plan and will expedite review. It will also provide a basis for comparison of State programs.

In the NPRM preamble, we said that some of the requirements for the JOBS plan were included in other sections of the proposed regulations (54 Fed. Reg. 15647). In the final regulations, we have collected all of those requirements and listed them in § 250.21. We have also made some changes in the order of items in this section in response to comments.

Comment: Several commenters requested that § 250.21(a)(1)(ii) be reworded to reflect the statutory provision that a recipient may only be required to participate when that recipient is guaranteed child care, rather than when child care is available "in the political subdivision," as stated in the NPRM.

Response: We clarified our language in the final regulations to meet these commenters' concern.

Comment: Several commenters requested that we clarify and expand paragraph (f) to ensure that the statutory requirements for consultation and coordination are carried out. Some commenters suggested that we require descriptions of State efforts in this area to ensure the most efficient and effective coordination of services possible.

Response: We agree with these commenters that the integration of JOBS with other programs serving those in need is essential to the success of the program. The consultation and coordination requirements of § 250.12 are intended to ensure this extremely important function is carried out. We have clarified and expanded paragraph (e) to require that the State plan include the specific results of any coordination

and consultation that the State undertakes.

Comment: Some commenters asked us to soften our required descriptions of assessment techniques employed by States, claiming that requiring descriptions of the techniques used by each political subdivision was too burdensome.

Response: We do not wish to be unnecessarily burdensome in our requirements and have removed the requirement to describe assessment techniques in the State JOBS plan.

Comment: Similarly, some commenters believed the required descriptions of case management were too burdensome.

Response: To meet these concerns, we have amended the final regulations to provide for a general description of case management, including what entity will be responsible for providing the service and, if not used statewide, a description of methods by which individuals will be assigned a case manager.

Comment: Several commenters asked us to employ better assurances that the statutorily identified target groups would only be replaced if they were infeasible to serve, and that any alternative target groups would meet the statutory requirements.

Response: We have included a new paragraph (b)(5) in § 250.21 to meet this concern. Section 403(l)(2)(C) of the Act requires a State to demonstrate, to the satisfaction of the Secretary, that serving the statutorily identified target groups is infeasible and to define alternative target groups. Any alternative target groups must meet the statutory criteria of being populations of long-term or potentially long-term recipients.

Comment: Several commenters requested that we include under this section other information that § 250.35(d) and § 250.72(e) require in State plans.

Response: We have collected other State plan requirements and included them in this section. We added § 250.21(d)(12), requiring States to set forth in their State plans additional grounds for good cause selected by the State, as required by § 250.35(d). We added an assurance at § 250.21(a)(7) because § 250.72(e) requires the State to certify that services provided by the State IV–A agency are not otherwise available on a nonreimbursable basis.

Comment: Some commenters believed the State plan requirements were too extensive and structured and did not provide States with enough flexibility.

Response: We disagree. The Statute requires States to submit a plan and describe how the JOBS program will operate in the State. It also provides the Secretary with the authority to require additional information necessary for the proper administration of the program. We have tried to give States maximum flexibility, and our final regulations reflect that philosophy.

Comment: Some commenters asked us to require States to describe how they will decide who will receive JOBS services, including how they will give priority to volunteers.

Response: We do not believe this kind of detail is necessary in the State plan. We do not believe we must approve a process in order to ensure that volunteers are served according to the Statute and the regulations.

Comment: Some commenters asked us to use the term "basic skills assessment" instead of "literacy tests." Other commenters asked that we require an assurance that recipients will not be discriminated against on the basis of literacy.

Response: We have removed the requirement to describe the types of assessment tools a State will use. As for discrimination, since one of the principal goals of the program is to reach those recipients most in need, the provisions designed to assure that State programs strive toward those goals should prevent any discrimination against those in need of literacy training, since they are a population most in need.

Comment: Some commenters requested that, in States opting for an alternative hearing process, the State plan contain assurances that participants in these States who request use of the normal State hearing process will not be subject to delay or prejudice due to that request.

Response: If a State establishes a separate hearing process for JOBS as an alternative to the IV–A hearing process, as provided by section 482(h) of the Act, the participant does not have the option to pursue her case through the IV–A hearings process. The State is only required to insure that whatever hearing process it establishes meets the requirements of *Goldberg* v. *Kelly*.

Comment: Some commenters believe that the provisions under §§ 250.21(d) and (g)(3) (now subsection (f)) regarding estimates of numbers of people to be served and ways of serving them were too specific, while other commenters did not believe they were specific enough.

Response: The information asked for is required by section 482(a)(1)(B) of the Act. We believe that it is useful for planning purposes. We have not gone beyond the statutory requirements in these areas.

Comment: Some commenters asked us to require States to describe, in their State plan, how child care will be provided for parents under age 20.

Response: The Supportive Services plan covers methods of providing child care. We do not believe these questions need to be addressed in the JOBS plan.

Comment: Some commenters asked us to require States to describe, in the State plan, the circumstances under which assignment to each JOBS component is appropriate.

Response: We do not believe this type of specificity is needed in the State plan. We are unaware of any need for federally approved procedures.

Comment: Some commenters asked us to require States to state whether they will allow unemployed parents under age 25 to meet the 16-hour participation requirement in § 250.33 through education.

Response: Section 250.21(c)(6) requires a State to describe whether it will allow a parent under age 25 to meet the unemployed parent program 16-hour work requirement by participating in educational activities.

Comment: Some commenters asked us to delete "education" from the § 250.21(n) State plan requirement that the State describe its actions to assure that education and training be directed to jobs in the area.

Response: We declined to adopt this suggestion. We believe education under the JOBS program should have the same goals as the training components—to provide necessary skills for self-sufficiency. Preparing participants for jobs available, or likely to become available, in the State is a primary means of assisting in the achievement of self-sufficiency, and provides enough latitude to include education. This provision, however, has been renumbered as § 250.21(e)(4) in the final regulations.

Comment: Some commenters asked us to require States to describe how they will ensure recipients will not be required to take a job that would result in a net loss of income.

Response: We have added a provision at § 250.21(c)(5) that provides that a State must describe what necessary and reasonable expenses it uses to calculate "net loss of cash income."

Comment: Some commenters asked us to require States to state in the plan any other priorities that could affect the order of participation in or access to the program.

Response: We believe that requiring this kind of detail is not appropriate. States must retain the flexibility to make some program assignments on a case-by-case basis, without having federally-

approved procedures to follow in making every decision.

Comment: Some commenters asked us to require a medical assessment of all participants to determine whether or not they are handicapped, and then to require a handicapping assessment for those found to be handicapped, for the purpose of measuring residual functional capacity to assist in planning appropriate participation.

Response: We believe that requiring a medical assessment of all participants would be unduly burdensome. However, when a State does identify a participant as handicapped, we would expect it to provide her with the necessary services to insure meaningful participation.

Comment: Some commenters asked that we include vocational rehabilitation service organizations as a listed example of possible contractors under § 250.21(g)(4)(i).

Response: In the final regulations, we have elected not to list any specific kinds of providers with which a State might contract. As a result, we have not incorporated vocational rehabilitation service providers. This section has been renumbered as § 250.21(b)(3)(iii) in the final regulations.

Comment: Some commenters asked us to amend § 250.21(n) to require that the State plan provide that participants must be trained for jobs "in demand," rather than jobs which "will become available."

Response: We decline to make this change. JOBS is intended to provide skills for long-term self-sufficiency. This is not limited to jobs presently in demand, but must include jobs that will become available in the future. We do not necessarily want to place JOBS participants just in slots presently in demand, which may be limited in many areas, but to prepare them to compete in the workforce for jobs that are appropriate for them. This provision has been renumbered as § 250.21(e)(4) in the final regulations.

Subpart D—Participation Requirements, Exemptions and Requirements for Individual Participation and Exemptions

(§ 250.30 of the Final Regulations)

Section 402(a)(19)(C) of the Act provides for exemptions from participation in JOBS that are similar to those that exist under WIN. The exemptions are contained at § 250.30 and are discussed below.

Child Under 16

A child who is under 16 or is attending full-time an elementary, secondary, vocational or technical school is exempt.

Comment: Several commenters said that the designation in the NPRM of a minor parent as an adult for purposes of exemption determination is beyond the scope of the Statute. They contend that the statutory exemption applies to any child under 16. They further say that the fact that minor parents fall within the definition of "adult recipient" in section 403(k)(4) of the Act has no relevance to their exemption status; many other non-exempts are counted as "adult recipients" for the purposes of the funding formula.

Response: We have amended the final regulations to remove the exception for minor parents under age 16 because of the statutory exemption. However, we are concerned that this could result in these young parents being out of school for a very long time, and we, therefore, encourage States to help these young women to complete their educations.

Comment: One commenter asked whether a child, who did not qualify for this exemption because she was not in school, and is required to return to school as a required JOBS activity, would then qualify for the exemption for attending school.

Response: If a child is required by the State agency to participate in JOBS because the child was not attending school full-time (and thus did not qualify for this exemption), such participation could consist of required full-time school attendance. The regulations clarify that such school attendance, as a required JOBS activity, does not then trigger the exemption.

Advanced Age

We define "advanced age" for the purposes of this exemption to mean age 60 or older. This is consistent with the upper age exemption in the Food Stamp Program and should ease the administrative burden on State agencies.

Remoteness

Section 402(a)(19)(C)(vii) of the Act also provides an exemption for remoteness. This exemption is for the individual who lives in a political subdivision that has a JOBS program, but who resides so far away from a JOBS activity that participation is not feasible.

Comment: One State commented that the exemption for remoteness was changed in the Act to permit exemption only in the areas where the program is not available, and that the proposed regulations went beyond the exemption provided in the Act in the definition of remoteness.

Response: We do not agree. Section 402(a)(19)(B)(i) of the Act provides that the State will require participation by all recipients to the extent that the JOBS "program is available in the political subdivision involved" (and the individual is not otherwise exempt.) Thus, in a subdivision that does not have a JOBS program, there is no requirement to participate. In order to give meaning to the exemption at section 402(a)(19)(C)(vii), there must be circumstances in which even in a subdivision with a JOBS program, an individual would be so "remote" from services as to consider the services to be unavailable.

Comment: Several commenters suggested that the travel standard applied in the determination of remoteness (taken from prior WIN regulations) may have been reasonable when persons with children under six were exempt, but does not acknowledge the different circumstances of parents with very young children. They suggested the calculation of reasonable travel time should include child care travel time.

Response: We believe that remoteness in this context means physical distance from a JOBS office or activity. The amount of time it takes to get from home to the site can be objectively calculated if one knows distance and mode of travel.

On the other hand, the amount of time it takes to deliver a child to a caregiver is a very individual determination, and every working parent must factor in the time involved in delivering a child to a caregiver when determining the duration of her commute. We believe that calculating the commute for JOBS participants should be no different than calculating it for any working parent.

Working More Than 30 Hours per Week

Section 402(a)(19)(C)(iv) of the Act retains the exemption for working 30 hours or more per week. Currently, under WIN, § 224.20 provides a Federal standard for this exemption: the job has to be unsubsidized and expected to last at least 30 days. The Federal standard was designed to insure that the employment is bona fide and likely to lead to self-sufficiency for the family. However, in consultation with States, we have heard that the Federal definition does not provide States with enough flexibility to require participation by individuals who are working sporadically at very low wages.

Therefore, the final regulations allow State IV–A agencies to establish their own standards for the type of "work" that qualifies for this exemption. For example, such a standard might require that the job pay at least minimum wage.

The standards must be included in the State JOBS plan as provided at § 250.21.

Comment: One State suggested that the regulations allow those averaging 30 hours of work per week to be considered exempt from participation.

Response: We believe the regulations, as written, leave it open for States to "establish minimum standards in its JOBS plan for work that qualifies an individual for this exemption." The State JOBS plan would have to define the period over which the averaging would be calculated.

Comment: One State asked if States are allowed to develop a policy for self-employed people for the purposes of the 30 hour work exemption.

Response: States are given maximum flexibility to establish their own standards for the type of work that qualifies for this exemption as long as it is contained in the State JOBS plan.

Pregnancy

Currently, a pregnant woman in her third trimester is exempt based on the pregnancy. Section 402(a)(19)(C)(vi) of the Act exempts pregnant women during the second and third trimesters based on the pregnancy.

However, we strongly encourage States to urge pregnant women to volunteer to participate in the program, particularly those who are not yet 20 years of age and are without a high school education.

Comment: One commenter objected to our urging States to encourage young pregnant women to participate, saying that singling out these exempt individuals for special pressure to volunteer subverted the intent of the Act.

Response: We do not see it as singling them out for pressure. We believe that it is important that these young women stay in school for their own sake and that of their children. A six-month absence from school is almost the equivalent of missing an entire year of school. We recognize the statutory exemption, but we believe these young women would be better served by continuing in educational activities. We decline to change the preamble.

Age of the Youngest Child

Section 402(a)(19)(C)(iii) of the Act provides that a parent or other relative of a child under 3 (or an age less than 3, but not less than 1, if the State plan so provides) is exempt if the parent or relative is personally caring for the child. It also provides that the parent or relative of a child under 6 is exempt if personally caring for the child unless the State IV–A agency assures the necessary child care and that participation in the program will not be required for more than 20 hours per week. However, both of these exemptions are superseded by the requirement at section 402(a)(19)(E) of the Act that custodial parents under age 20 attend educational activities if they have not finished high school and child care is otherwise available. A more complete discussion of this requirement is contained in the preamble for § 250.32.

The child care exemption is limited to one parent or caretaker relative per case. This is consistent with section 402(a)(19)(D) of the Act which specifically allows only one such exemption in a two-parent unemployed parent case. We believe that by analogy it is a reasonable interpretation to apply the same requirement in an AFDC case and, therefore, where there is more than one person who can qualify for the exemption, only one person may be exempt. We also believe that this policy is consistent with the language that the individual must be "personally providing care."

Exemptions in Unemployed Parent (UP) Cases

Section 402(a)(19) of the Act does not exempt a parent in an AFDC–UP family from JOBS participation due to the other parent's participation in JOBS. Accordingly, the second parent must participate unless he or she meets another exemption criterion such as caring for a young child. However, section 402(a)(19)(D) of the Act also allows a State to require both parents to participate, notwithstanding the exemption for personally providing care for a young child, if child care is guaranteed in accordance with section 402(g) of the Act.

If the State IV–A agency does not elect this option, section 402(a)(19)(D) of the Act provides that only one parent may be exempt for personally caring for a young child. We allow a State to establish policy on whether the principal earner is eligible for the exemption for caring for a child under age 3.

Comment: One State commented that the final regulations should clearly specify that if one parent in an AFDC–UP case is participating, the second parent is not required to participate unless the State IV–A agency chooses to require his or her participation.

Response: The State's interpretation is incorrect. Section 402(a)(19)(C) of the Act contains no exemption for the second parent in a two-parent family. The second parent is required to participate unless he or she meets another exemption criterion such as caring for a young child. This is a change from prior law at section 402(a)(19)(A)(viii) of the Act which exempted the second parent in an AFDC–UP case from participation if the principal earner was participating.

Comment: Two commenters asked if the option for States to require both parents in an AFDC–UP case to participate, notwithstanding the exemption for having a young child, means that the parents can be required to participate if their child is one day old.

Response: The commenters are correct. The statutory option to require both parents to participate specifically makes section 402(a)(19)(C)(iii) inapplicable to the parents. It does provide that child care must be guaranteed. However, as we explain in the preamble on the incapacity exemption, a woman who has recently given birth may qualify for an exemption for incapacity.

Incapacity

Section 402(a)(19)(C)(i) of the Act provides an exemption for incapacity. We do encourage State IV–A agencies not to automatically exempt someone as incapacitated if the individual could be served or employed if reasonable accommodation for the person's condition were made.

Comment: One commenter asked that we delete the language in the NPRM which provided that the State could take an individual's age into account in determining whether an incapacity prevented her from participating in employment or training. The commenter was concerned that this could result in age discrimination.

Response: We have deleted the language "by itself or in conjunction with age."

Comment: One commenter said the standards for verifying incapacity seem unreasonably strict.

Response: We do not regard the requirements of verification of incapacity to be so onerous as to require modification. The law distinguishes between exemptions for illness and incapacity, and our regulations provide different standards of verification. In the case of illness, which we define to include injury, the regulations require medical evidence or some other sound basis for verifying the illness. The commenter's example of a broken leg would clearly fall into this category, and the cast on the leg could provide evidence for a temporary exemption for illness. In the case of an incapacity, the regulations require verification by a physician or a licensed or certified psychologist. Since incapacity must be

something other than a short-term illness, we believe that the verification standards are appropriate.

Comment: Several commenters pointed out that section 402(a)(19)(E) of the Act, requiring young custodial parents to participate in educational activities without regard to the age of the youngest child, does not provide for any period of "bonding" or recovery after a young mother gives birth. These commenters suggested that we add an exemption which allows a teen parent to stay home with her child for a "bonding period." Suggestions for the length of the bonding period varied from eight weeks to one year in duration.

Response: We agree with the comments that it is very important for young children to establish an early and firm bond with their mothers and that the mothers should spend sufficient time nurturing their children. Research seems to indicate that both the age of the child when separation begins and the amount of time of separation are critical to the normal development of young children. Infants who are placed in part-time, non-maternal care do not seem to suffer deleterious effects from separation. We believe, therefore, that it is important for the agency staff working with young mothers to design program options which are sensitive to the needs of both the mothers and their children. This could include working with school systems to encourage in-school programs for teen mothers and their children, including courses in parenting skills.

We also believe that the mother's physician is in the best position to determine when the mother is incapable of participating in educational activities after childbirth. The State IV–A agency may exempt her as "incapacitated" for an appropriate period of recuperation prescribed by her physician.

Other Exemptions

Other exemptions provided in section 402(a)(19)(C) of the Act, including caring for another ill or incapacitated individual in the household, are implemented in the final regulations and follow the language of the current WIN regulations, which implement identical exemptions.

Comment: One commenter suggested that we include in the final regulations an exemption for VISTA volunteers pursuant to the Domestic Volunteer Service Act Amendments of 1979 (Pub. L. 96–143) which provides that "a person enrolled for full-time service as a volunteer under title I of * * * [the Domestic Volunteer Service Act of 1973] who was otherwise entitled to receive assistance or services under any governmental program prior to such volunteer's enrollment shall not be denied such assistance or services because of such volunteer's failure or refusal to register for, seek, or accept employment or training during the period of such service."

Response: We agree. Section 250.30 of the final regulations has been amended to include a new § 250.30(b)(10).

Review of Exemptions

The final regulations require that the State IV–A agency regularly review the appropriateness of exemptions, especially those of a temporary nature. Such review must occur, at a minimum, at each redetermination for AFDC.

Comment: One State asked that the final regulations be amended to require that the IV–A agency promptly notify the recipient and the appropriate service provider of any change in exemption status.

Response: We agree. Since there is no longer a "registration" requirement compelling an affirmative step by either the State or the recipient to change a status, it is possible that, without the provision for notice, the individual's status could change without her knowledge. We also believe that it is appropriate to notify service providers if an individual's status changes. For example, an agency providing case management services should be notified. In § 250.30 of the final regulations, paragraph (c) has been redesignated as paragraph (c)(1) and a new paragraph (c)(2) has been added to include that notification requirement.

Volunteers (§ 250.31 of the Final Regulations)

Section 402(a)(19)(B)(i)(II) of the Act contains a general requirement that the State IV–A agency must allow applicants for and recipients of AFDC who are exempt under section 402(a)(19)(C) to participate in JOBS on a voluntary basis if the program is available in their area and State resources otherwise permit. However, section 402(a)(19)(B)(iv) of the Act specifically provides that a State IV–A agency need not allow or require participation of an individual if such participation would affect the State's rate of reimbursement pursuant to Section 403(l)(2) because the State could not expend 55 percent of its funds on individuals in the target groups. This provision is incorporated in the regulations at § 250.74(a)(3).

Section 402(a)(19)(B)(ii) of the Act contains a specific requirement that in determining priority of participation within the target groups defined in section 403(l)(2)(B) of the Act, the State IV–A agency shall give first consideration to applicants and recipients who volunteer. We interpret the use of the term "volunteer" to include both non-exempt and exempt applicants and recipients so that a State may elect to prioritize among volunteers and, if appropriate, give priority to non-exempt volunteers.

The statutory priority given to volunteers in target groups does not usurp the State IV–A agency's authority to determine the type of program it will offer. Several factors may affect a State's decision to provide services, including: (1) goals of the State program, (2) availability of resources, and (3) the effect of selection of individuals to participate on the States's ability to meet participation rate standards.

The regulations at § 250.31(b) describe the consequences for volunteers who stop participating in JOBS. For exempt individuals who stop participating in the program without good cause, their priority status to participate in the program is lost as long as other individuals are actively seeking to participate. For individuals who are not exempt but enter the program voluntarily, the regulations provide that if such an individual stops participating without good cause, the individual is subject to sanction as described in § 250.34. We believe that this approach provides fair and equitable treatment for all non-exempt participants and avoids the situation in which a non-exempt (mandatory) participant could avoid participating in JOBS by volunteering first and then dropping out without good cause. If the rule about volunteers losing priority status were applied in that situation, the non-exempt individual would become part of the group served after all others thereby avoiding her obligation to participate.

Comment: Many commenters felt that the preamble to the proposed regulations went beyond statutory intent by giving States discretion in determining whether to serve volunteers. Many felt that the JOBS programs would have a greater likelihood of success by including as many volunteers as possible, since volunteers are more likely to cooperate, and would require less administrative activity, such as conciliation. They therefore felt that the regulations should require States to serve all volunteers first. One commenter indicated that the statutory language "clearly stated that volunteers were to be served before the mandatory population." Others asked for clarification of the language regarding the treatment of volunteers.

Response: We reviewed the conference report as well as the language of the Family Support Act. Though earlier versions of the bill contained stronger language relating to the status of volunteers, we feel that our reading of the Act is correct. Although many commenters felt that the Act requires States to serve volunteers first, the actual language does not support this view.

The statutory language does not include an absolute requirement that all volunteers be given priority; the Act requires the State to make reasonable efforts to allow volunteers to participate. Only in the case of members of the target groups is the State required to treat volunteers differently than other participants. While it may be appropriate for some States to emphasize volunteering in the JOBS program, this may not be the case in other States. For these reasons, we have retained the language of the proposed regulations.

The language of section 402(a)(19)(B) of the Act and the implementing regulations at § 250.31 provide the State with the flexibility to give volunteers, including those outside the target groups, priority. The State is in the best position to determine the emphasis to be given to including volunteers in its JOBS program, while considering such factors as targeting and participation rate requirements.

The State must provide applicants and recipients with information about the JOBS program, and allow individuals who are not required to participate to volunteer. Decisions to serve volunteers should be made on the basis of such factors as availability of services, resource constraints, effect on the targeting and participation requirements, and program goals. The exception to this general approach involves individuals in the target groups. As required by section 402(a)(19)(B)(ii) of the Act, the State must give first consideration to volunteers within the target groups. But even for this group, Congress stopped short of absolutely requiring that such individuals be served first by using the term "give first consideration." This language indicates that even for this group, the State may exercise judgment in serving volunteers.

Comment: A number of commenters felt that the preamble and regulations should not permit a State to consider such factors as the availability of resources, program goals, and possible impact on the State's ability to meet the participation rate requirement in serving volunteers, particularly those in the target groups. One commenter argued that Congress explicitly included the qualification that a State need not serve volunteers if doing so would result in failure to meet the targeting requirement, but did not include a similar qualification regarding the participation rate requirement.

Response: We do not agree that the qualification in section 402(a)(19)(B)(iv) of the Act is the only factor which a State may consider in deciding whether to serve volunteers. We believe that a better reading of the Act requires consideration of all of the paragraphs of section 402(a)(19)(B) in harmony. Subparagraph (iv) qualifies the general participation requirement in subparagraph (i), as well as the provisions regarding volunteers. A State need not require individuals to participate, nor allow individuals to volunteer, if by doing so it would fail to meet the targeting requirement.

Comment: One commenter asked for clarification of the term "give first consideration" in § 250.31 of the proposed regulations.

Response: This phrase comes directly from section 402(a)(19)(B)(ii) of the Act. We interpret this language to mean that in determining priority in serving target group members, a State must first look to volunteers. However, the Act does not require that volunteers necessarily be served before others, regardless of the individual circumstances. Rather, a State must give priority to a volunteer over a non-volunteer when all relevant factors are equal.

Comment: A few commenters felt that there should be no penalty for volunteers who drop out of the program, and that an individual in a program which did not meet her long-term aspirations should be encouraged to drop out. One State felt that only non-exempt individuals who drop out should be penalized, and that the penalty should be loss of priority status. Another commenter felt that the penalty should be the same for all volunteers, regardless of their exemption status. Others felt that non-exempt volunteers should not be subject to possible sanction.

Response: Section 402(a)(19)(B)(ii) of the Act provides that exempt individuals who drop out of the program without good cause will lose their priority status. This section of the Act does not address non-exempt volunteers who drop out of the program. We believe that such individuals should be treated as other non-exempt participants for the purpose of the sanction requirements at section 402(a)(19)(G) of the Act, as described in § 250.34 of these regulations. To do as other commenters suggest—providing no penalty for non-exempt volunteers who drop out—would result in preferential treatment for non-exempt volunteers, since exempt volunteers who drop out lose priority status.

Comment: One State asked for clarification of the language in the regulations which provides that individuals who are not otherwise required by the State to participate, as well as those who are exempt, may volunteer. The commenter felt that the only individuals not required to participate are those who are exempt. One commenter asked that we not require staff to make determinations based on the apparent oxymoron of the "mandatory volunteer." Another asked for clarification of this term. Another asked that the term "volunteer" be defined in such a way as to exclude non-exempt individuals.

Response: Section 402(a)(19)(B)(i) of the Act specifies that a State require participation "to the extent the program is available in the political subdivision involved and State resources otherwise permit * * *" There will therefore be circumstances in which non-exempt individuals are not required by the State to participate. Individuals from this group who then volunteer are "mandatory (non-exempt) volunteers".

We do not believe that it would be appropriate to exclude this group from the requirement that a State allow individuals to volunteer for the program.

Comment: A number of commenters stated that the preamble language implied that a State would not have to serve volunteers if they would not participate in an activity for 20 hours per week. Another felt that not counting participation of less than 20 hours per week would discourage potential participants from volunteering and the State from serving them.

Response: Changes made to the definition of participation, now at § 250.78 of these regulations, will affect the State's decisions regarding volunteers. However, some discussion of the term "volunteer" is appropriate, as it was apparent from the comments that there are differences in the treatment of volunteers with respect to the services that are provided in various programs.

An individual can volunteer to participate in JOBS, and at that point, be accepted into the program as would any non-volunteer—that is, the State would perform an assessment, formulate an employability plan with input from the individual, and assign the individual to a component. On the other hand, many commenters apparently believe that volunteers tend to volunteer for specific

components and for a certain number of hours within a component.

While it may be possible to permit the flexibility of the latter type of "volunteering" in some State programs, other States will operate under the former. Once an individual volunteers, the components and activity level in their employability plan will be determined as for any non-volunteer. As indicated in § 250.41, the State has final authority for approval of the employability plan. We believe that both interpretations are acceptable and that the State should determine how volunteers will be served.

Comment: One commenter felt that it was inappropriate to permit States to prioritize among volunteers—for example, serving non-exempt volunteers first.

Response: The Act does not provide any incentives for serving non-exempt volunteers first. However, a State may determine that it would be more cost-effective to do so. In determining which volunteers to serve in circumstances in which not all can be served, the State is permitted to prioritize. For example, an individual may be exempt by reason of remoteness from an appropriate component site. The State might choose to serve an individual who is not exempt (e.g., one who is not remote) on the basis that there are limited funds available to provide for transportation for the exempt individual. We believe that the Act permits such flexibility, and we, therefore, have retained the language in question.

Comment: One commenter suggested that exempt volunteers be counted in determining participation rates.

Response: Exempt individuals living in JOBS areas of the State who participate will be included in determining State participation rates (but will not be included in the denominator pursuant to section 403(l)(3)(B)(iii)(II)of the Act).

Comment: One State suggested that in order to prevent children who are in school from requesting supportive services, such as reimbursement for transportation, by volunteering, we should specify that the provision applies only to adult recipients.

Response: We do not believe that there is a rational basis for making such a distinction. However, the State has final authority in determining the need for supportive services in individual cases.

Comment: Many commenters felt that volunteers, particularly those in target groups, should be provided child care.

Response: This subject is addressed in the revised preamble and regulations at § 255.2.

Participation Requirements for Education (§ 250.32 of the Final Regulations)

Congress recognized the importance of education to the achievement of long-term self-sufficiency, especially for young parents, and it addressed it in two ways in the Family Support Act. First, the Act requires the State IV–A agency to make available a range of educational activities which are described in the final regulations at § 250.44. Second, the Act requires that to the extent educational services are available and State resources permit, the State must (subject to certain exceptions described below) require a custodial parent under 20 who has not finished high school (or its equivalent) to participate in an appropriate educational activity.

Since teen mothers who drop out of school are prone to long-term welfare dependence, Congress specifically provided that a young parent under 20 years of age is not exempt from educational activities even if she has a child under 3 and gave the State IV–A agency the option to require that she attend full-time if it is in the pursuit of a high school diploma or its equivalent. This is a very important step in ensuring that the young parent remains in school and not be ignored until her youngest child turns 3. In addition, in section 403(l)(2)(B)(iii) of the Act, Congress designated custodial parents under 24 who have not completed high school and who are not enrolled in high school (or a high school equivalency course) at the time they apply for aid, as one of the four populations specifically targeted for services.

Section 402(a)(19)(E) of the Act provides the State IV–A agency with several options for young custodial parents. The State may establish criteria for excusing custodial parents under age 18 from the high school attendance requirements described above. We believe, however, that excusing custodial parents from high school attendance should be rare. Accordingly, the final regulations indicate that in such cases the State IV–A agency must provide for assignment to alternative educational activities or to training activities that are combined with education. Job Corps under Title IV of the Job Training Partnership Act is an example of an alternative program that has an educational component. All determinations must be based on an assessment of the individual's circumstances. The State agency's criteria may not excuse anyone from high school who is subject to the State's compulsory attendance requirements. The State may not categorically excuse someone because of the grade level she has completed. For example, it is not sufficient to say that a 17-year-old who has only finished 8th grade is excused automatically.

For custodial parents who are age 18 or 19, the State IV–A agency may require participation in training or work activities in lieu of educational activities if the individual is not making good progress in completing educational activities or, if an educational assessment, prior to assignment, determines that such educational activities are inappropriate for the individual.

The statutory reference to "custodial parent" in section 402(a)(19)(E) has prompted some to question whether 16- to 18-year-old individuals who are not parents are eligible for JOBS services. We want to be clear that they are. If they are not in school, they are mandatory participants because they do not meet the exemption criteria. In addition, if the individual is a member of a family in which the youngest child will lose eligibility within two years because of age, she is a member of one of the target groups described at § 250.1 earmarked for services. We believe that, like their counterparts who are parents, 16- to 18-year-old individuals should be encouraged and helped to remain in school or to participate in other educational or training activities.

For individuals 20 years of age or over, who have not earned a high school diploma (or its equivalent), section 482(d)(2) of the Act provides that if the State IV–A agency requires such an individual to participate, it must include educational activities consistent with her employment goals as a component in her employability plan. There are two exceptions: (1) if the individual demonstrates a basic literacy level, or (2) if the long-term employment goal identified in the individual's employability plan does not require a high school diploma (or its equivalent).

Comment: Concerning the proposed section in general, there were some groups that indicated approval for the strong emphasis upon education for those under 20 and stated that the emphasis upon education for those over 20 might not be strong enough.

Most of the comments were about § 250.32(a)(2), which sets forth the regulations for the State's criteria for excusing a custodial parent under age 18 from educational activities. The majority of these comments did not support the provisions, because the groups felt that the requirements exceeded congressional intent by only allowing

for placement in another educational activity, instead of the larger range of JOBS activities. Some commenters felt that the regulations overemphasized traditional high school as an educational activity for teen parents. They stated that the requirements deny a State the flexibility to address the needs of young AFDC parents in favor of an approach that is only experimental. They did not want these participants' benefits cut off if they are not in school. They sought more flexibility in the provisions, such as allowing the State to use categorical exemptions. One commenter noted, for example, such an exemption might be made for parents of children under the age of 2, in view of the high cost of child care for that age group.

Response: The conference report indicates that Congress gave careful consideration to the intended effect of educational activities upon reducing the welfare dependency of young parents. The stronger Senate amendment language concerning mandatory educational activities for young parents prevailed over the language in the House bill. We therefore believe that the emphasis upon placement of teen parents in educational activities is supported by the Act. Section 402(a)(19)(E) requires that, to the extent of program availability and State resources, the State agency must require a custodial parent under age 20 "who has not completed a high school diploma or its equivalent * * * to participate in an educational activity."

As to the issue of overemphasis upon full-time high school for teen parents, the regulations follow the Statute in indicating that the State IV–A agency "may require full-time participation (as defined by the educational provider) in educational activities directed toward the attainment of a high school diploma or its equivalent," and so we provide for the State to assign the participant to alternative educational activities following the full range of options outlined in the regulations at § 250.44(a) or into training activities that are combined with education. These options provide for flexibility within the congressionally mandated requirement that the teen parents be in an educational activity.

The Act provides for the State to establish criteria concerning exempting custodial parents under age 18 from educational activities "in accordance with regulations established by the Secretary." Since Congress placed such a clear emphasis upon educational services for this age group, we believe that allowing categorical exemptions, including completion of a certain grade level, would dilute the requirement to serve this special group of participants, which is highlighted in the Act.

Comment: A few commenters stated that, taken literally, the regulations at § 250.32 do not allow a young parent an adjustment period after childbirth. They asked that the section be revised to provide for a bonding period between the infant and parent, so that the parent is not sanctioned for failing to return to her educational activity the day after the child is born.

Response: We encourage State IV–A agencies to be sensitive to the need for fostering a healthy relationship between mother and child, such as through assignment to educational activities with on-site child care and by encouraging young mothers to devote sufficient time to nurturing their children. Moreover, the exemption at § 250.30(b)(3), concerning incapacity has been modified to specifically allow a period after childbirth prescribed by the mother's physician in which she is not required to participate in JOBS activities.

Comment: Some organizations said that States should be required to provide alternative educational programs and on-site child care for teen parents.

Response: The regulations provide for State flexibility in fashioning appropriate JOBS activities and do not mandate a particular method of delivering services. Neither this section nor § 250.44 on mandatory components would prohibit a State from using such alternative educational programs.

Comment: Some States and other groups expressed concern with what they saw as this section's emphasis upon achieving universal coverage, since they felt there were not enough resources for appropriate educational activities to meet the special needs of the participants.

Response: The regulations in § 250.32 repeat the statutory language regarding consideration for the availability of the program in the political subdivision and whether State resources otherwise permit. If the State does not have the capacity to meet the needs of the individual, as determined by the agency's assessment, she is not required to attend inappropriate activities.

Comment: A commenter asked for clarification of the participation of 16- to 18-year-old non-parents in JOBS.

Response: Sixteen to eighteen-year-old non-parents are subject to the mandatory JOBS participation requirements unless they meet one of the statutory exemptions such as being in school.

Comment: One commenter read the preamble regarding the proposed regulations for this section as meaning that 16-to-18-year-old individuals who are not parents are mandatory participants in education. The commenter stated that the Statute referred only to custodial parents relative to the educational requirements, and that the provisions conflict with State requirement regarding compulsory school attendance, and that undue pressures, perhaps leading to physical abuse, would be placed upon the affected children of families who would receive sanctions if their children do not cooperate and remain in school.

Response: Sixteen to eighteen-year-old individuals who are not parents are subject to the participation requirements of JOBS if they are not exempt pursuant to section 402(a)(19)(C) of the Act. The commenter is correct in saying that they are not required by Federal law to participate in educational activities. We encourage educational activities in keeping with the general emphasis upon education in the Act, but the State may determine that another activity is more appropriate.

Comment: Some commenters requested that we define or give examples of when participation in educational activities would be inappropriate for the 18 or 19-year-old parent, provided in § 250.32(a)(3)(ii).

Response: The provision concerning the determination of appropriateness for individuals in this age group is taken from the Act. The determination of appropriateness or inappropriateness of educational activities is to be made based upon both an educational assessment and employability plan. For example, a person not likely to benefit from additional available educational activities might profit from other component activities of JOBS. In another example, the individual might be capable of continuing with educational activities, but activities meeting her needs might not be available in her area due to lack of resources. Further, an individual's assessment coupled with her employability plan might indicate that JOBS component activities other than education might be more effective in helping the individual reach her long-term employment goal more quickly.

Comment: A group expressed alarm about the provision that individuals aged 18 or 19 could be placed in training or work activities if they failed to make good progress in successfully completing educational activities. They stated that rote adherence to such a standard would deprive those in this age group of

a chance for a renewed attempt at education.

Response: Our definition of making "satisfactory progress" or "good progress" provides for the State to adopt safeguards against this situation. It allows a State to use a probationary period or to consider mitigating circumstances. We encourage States to be sensitive to the special needs of the welfare population in educational activities. We also note the value of using the assessment of the individual's educational progress to reconsider educational placements. These regulations take account of Congress' great emphasis upon the education of young parents and should be applied in that spirit to those participants who are 18 or 19 years old.

Comment: A State education agency commented on the importance of the development of high quality basic education and remediation activities to serve the needs of JOBS participants. They asked that the regulations more clearly encourage the use of Federal funds to improve and expand such educational resources beyond typical local and State educational agency programs, in order to more directly serve the special needs of welfare recipients.

Response: When appropriate resources are not otherwise available, these regulations allow the development of special activities for JOBS participants to be directly administered by the IV–A agency, to be offered under contract, or to be offered through or in coordination with other Federal or State agencies. (See our comments regarding mandatory components of JOBS at § 250.44.)

Participation Requirements for Unemployed Parents (§ 250.33 of the Final Regulations)

Section 403(l)(4)(A)(i) of the Act provides that a State IV–A agency must require at least one parent in a family eligible for AFDC due to the unemployment of the principal earner in the family to participate for at least 16 hours a week in one of the following components of the JOBS program: work supplementation program, a community work experience program or other work experience program, on-the-job training, or a State-designed work program approved by the Secretary.

If a parent is under age 25 and has not completed high school or an equivalent course of education, section 403(l)(4)(A)(i) of the Act permits the State IV–A agency to require the parent to participate in educational activities directed at attaining a high school diploma (or equivalent) or in another basic education program. The Act does not specifically define minimum levels of participation for individuals in this category. In the NPRM, we proposed to define the minimum level of participation in educational activities for unemployed parents to be the same as we defined it for the purpose of determining the general participation rate. Although we no longer use "making satisfactory progress" as a standard for participation rates (see discussion at preamble to § 250.78), we have maintained the definition for other purposes, including determining whether an 18-or-19-year old custodial parent should be assigned to work or training activities in lieu of educational activities. (See § 250.32.) Since we have maintained the definition proposed in the NPRM of "making good or satisfactory progress," we believe that it is reasonable to use this standard in determining whether a parent under 25 who has not completed high school or its equivalent is meeting the educational requirements of section 403(l)(4)(A)(i) of the Act.

Section 403(l)(4)(A)(ii) of the Act provides that in the case of a parent participating in a community work experience program for the maximum number of hours as provided in § 250.63, such participation shall meet the requirements of this section even if it is less than 16 hours per week. On the other hand, nothing in this section relieves the parent of the obligation under § 250.63(d) to participate in CWEP for the maximum number of hours even if it exceeds the 16 hours per week provided in this section.

Sections 403(l)(4) (B) and (C) of the Act provide that, by FY 1994, each State IV–A agency must have 40 percent of its Unemployed Parent caseload participating at least 16 hours per week in a work component described in this section. This requirement increases by steps to 75 percent in FY 1997. The consequences of not meeting these rates are contained at § 250.74(c) and discussed further in the preamble to that section. We believe that it would be prudent for the State IV–A agency to incorporate programs designed to meet these requirements at the time that they implement JOBS (or as soon as they have a UP program). Early implementation of this provision will allow the State to increase the coverage of its program on an incremental basis so that it can be at 40 percent by FY 1994. In addition, by implementing concurrently with JOBS, the State IV–A agency will maintain a consistent approach to serving unemployed parents.

In addition, we have read this provision together with the technical amendments that section 202 of the Statute makes to the Unemployed Parent program. These amendments impose additional requirements on the State to require early participation by principal earners, and on principal earners to participate or apply for participation in JOBS within 30 days of receipt of aid. These provisions are discussed more fully in the preamble to the technical and conforming amendments. By establishing a work program in accordance with this section, the State IV–A agency would have in place a program to which it could promptly and easily assign principal earners.

Comment: Based on the many comments received there is confusion regarding the effective date of these provisions. Although the preamble acknowledges that participation rates are not effective until FY 1994, and § 250.74(c) discusses the fiscal sanctions for not satisfying the relevant standards beginning in FY 1994, the regulations in this section are silent. Several commenters suggested that it was more appropriate and less confusing to place the effective date in this section of the regulations rather than in the fiscal section.

Response: We recognize the concern for including the effective date in this section of the regulations. However, since sections 403(l)(4)(B) and (C) of the Act tie participation rates to fiscal penalties it is appropriate to include this provision in § 250.74(c) of the regulations.

Comment: There were several comments suggesting that as States do not have to implement the UP provisions until FY 1994, they should be allowed under the regulations to treat mandatory UP participants as they would any other mandatory participant until that time; i.e. allow the unemployed parent to participate in any JOBS activity without the constraints of the 16-hour requirement until FY 1994. Other commenters also proposed that a phase-in period for unemployed parents be allowed after a State implements JOBS.

Response: Until FY 1994 a State with an approved JOBS plan has the option to either phase-in the unemployed parent 16-hour work requirement provisions for participation rate purposes or serve the unemployed parents under the regular JOBS program requirements. For a State without an approved JOBS plan there are no requirements to change the services currently being provided. States should also review section 202 of the Statute which imposes additional

requirements on unemployed parents. Despite the several options available under these provisions we want to stress that States should consider implementing programs incorporating the unemployed parent requirements as early as possible to provide consistency of services for the unemployed parent population.

Comment: Section 250.33(a) explicitly provides that a State-designed work program may not substitute education or training activities for the work requirement. Several commenters suggested that there are many instances in which work involves training and education. By making a flat prohibition of training and education in the regulations many of the options available to States in assisting a UP client in finding work may be hampered.

Response: A work component such as CWEP or OJT may well contain a training component, and such activities, as part of the work assignment, would be appropriate. The prohibition in the regulations means that the State may not substitute an education or training component, such as a skills training course, for the work requirement. However, an education or training activity could certainly be offered in addition to the work requirement.

Comment: Several commenters also suggested that States be allowed to waive the 16-hour requirement when an assessment indicates that the client would be better served in another component requiring more time.

Response: Section 403(l)(4)(A)(i) of the Act requires that at least one parent in a UP household participate for a total of at least 16 hours per week in a work supplementation program, CWEP or other work experience program, on-the-job training, or a State-designed work program approved by the Secretary. This is a minimum requirement. If additional education or training is appropriate, based on the individual's assessment, the State may require the unemployed parent to participate in these activities as well.

Comment: Several commenters suggested that the "making satisfactory progress" requirement for those unemployed parents under 25 participating in an educational activity should be dropped. They suggested that these participants should be required to meet the same 16-hour participation requirements as unemployed parents assigned to work components.

Response: There is no statutory requirement that there be a 16 hours per week participation standard for educational activities. Moreover, we are unaware of any reason for imposing such a standard under general rulemaking authority.

Comment: One State asked if an unemployed parent could be required to participate for more than 16 hours per week in CWEP and, if so, when would they be expected to look for employment.

Response: Yes. There is nothing in section 403(l)(4)(A)(ii) of the Act which prohibits the unemployed parent from meeting the obligation of CWEP participation even if it exceeds the 16 hours per week requirement. In addition, the unemployed parent could be required to participate in a job search activity. However, this job search activity would not count towards meeting the 16 hours of work per week requirement.

Comment: One State asked if both parents are required to participate, are the hourly standards prorated among the two or is the requirement mandatory with only one of the parents.

Response: Section 403(l)(4)(A)(i) of the Act requires one parent in an AFDC–UP case to participate for at least 16 hours per week in a work activity. The requirement attaches to one parent designated by the State. There is no provision in the law for prorating the hour requirement between parents when the State requires both parents to participate in JOBS.

Comment: Several commenters asked if the 16-hour requirement would count towards meeting the JOBS participation standard. Others noted that as the 16-hour requirement does not count toward meeting the basic JOBS participation standard, States would be compelled to stretch the 16 hours of activity to 20 hours so that the unemployed parents participation could count.

Response: As we have redefined the participation standard to be an average of 20 hours of activity by the aggregate of participants, the 16 hours of UP activity could count in meeting the JOBS participation standard. However, there will need to be other activity occurring so that the established average can be met. For example, if an unemployed parent is meeting the 16 hours per week requirement, and another participant were active in a component for 24 hours per week, the 20-hour per week average would be met for these two individuals.

Comment: One commenter suggested that States should be allowed to design work programs for unemployed parents. They stated that workfare for large numbers of individuals for limited time periods is costly and not necessarily effective.

Response: Section 403(l)(4)(A) of the Act explicitly states the types of programs in which unemployed parents are required to participate. The State IV–A agency does have the option to develop its own work program which must be described in the State JOBS plan.

Sanctions (§ 250.34 of the Final Regulations)

Section 402(a)(19)(G) of the Act provides for sanctions if an individual who is required to participate in JOBS fails to participate in the program or refuses to accept employment without good cause.

Comment: One State pointed out that § 250.34(a)(1) of the regulations discusses sanctions for those who fail without good cause to participate in JOBS or refuse to accept employment, but does not include language contained in the similar provision from prior regulations at § 224.51, relating to termination of employment or reducing earnings without good cause. The State asked if the less expansive language of the JOBS regulations indicates an intentional change in the interpretation of what constitutes refusal to accept employment.

Response: The Act contains a sanction provision virtually identical in language to the former section 402(a)(19)(F) of the Act. The sanction provisions for WIN are spelled out in § 224.51. Where, as here, Congress enacts a new law incorporating language from a prior law, it is presumed to have been aware of the administrative interpretation of the prior law and to have ratified that interpretation.

The legislative history of the AFDC statute does not expressly mention terminating employment as a basis for imposing sanctions. However, Congress has repeatedly stated its intent to encourage welfare recipients to obtain and to maintain employment. In enacting the new JOBS program, the 100th Congress provided further incentives and opportunities designed to assist welfare recipients to become and to remain members of the workforce. Evidence of congressional intent can be found in section 482(c)(1) of the Act (Provision of Program and Employment Information): "The State agency must ensure that all applicants for and recipients of aid to families with dependent children are encouraged, assisted, and required to fulfill their responsibilities to support their children by preparing for, accepting, and retaining such employment as they are capable of performing."

Interpreting section 402(a)(19)(G) of the Act restrictively to authorize sanctions for refusing to take a job and

not for voluntarily refusing to continue employment would defeat the statutory purpose of encouraging recipients to obtain and maintain employment. Congress did not intend to create such a loophole in fashioning a program designed to encourage continued employment.

Omission of the phrase "terminates employment or reduces earnings without good cause" from the NPRM was an oversight. The final regulations at § 250.34(a)(1) have been amended to include this language.

Length of Sanctions

Section 402(a)(19)(G)(ii) of the Act sets forth the length of sanction periods for JOBS purposes. For the first failure to participate or accept employment, the sanction lasts until the failure to comply ceases. For the second failure, the sanction lasts until the failure to comply ceases or 3 months whichever is longer. For any subsequent failure, the sanction lasts until the failure to comply ceases or 6 months, whichever is longer.

Determining When "Failure to Comply Ceases"

Many States have indicated that it is difficult to determine when a "failure to comply ceases." Accordingly, the final regulations contain an option which allows the State IV–A agency to determine that the individual has actually demonstrated a willingness to participate in the program and, therefore, has ceased her non-compliance. A State may require an individual to engage in either the activity to which she was previously assigned, or in some other activity designed by the State to lead to full participation, for a period of up to two weeks in order to demonstrate willingness to participate. If the individual successfully participates in such activities, the sanction will cease as of the day she agreed to participate. If the State IV–A agency has no activity to which it can assign the individual, the sanction will cease on the day she agrees to participate. If the individual fails to participate, during the trial period, she remains in sanction status until such time as she successfully demonstrates a willingness to participate in the program and, therefore, ceases her non-compliance.

For instance, if a sanctioned individual says on Monday that she wants to participate, the State may require her to come in and develop an employability plan or attend a pre-employment orientation. If she successfully completes the assigned activity, her sanction shall be considered to have ended on Monday. However, if she fails to complete the assigned activity, she will remain in sanction status.

Comment: Several commenters suggested that we eliminate this option. They claim that it goes beyond the provisions of the Statute. Some commenters also asked why it only applied to the first sanction.

Response: We believe that providing States with the option to require a trial period in order to determine that the individual has demonstrated a willingness to participate in the program is consistent with section 402(a)(19)(G)(ii) of the Act. Therefore, the option is retained in the final regulations. We have amended the final regulations to clarify that, as a participant, the individual will be eligible for the child care and supportive services necessary to allow her to participate.

We have also determined that it was an oversight not to make the option to require a trial period applicable to the second and all subsequent sanctions since they also contain the provision "until the failure to comply ceases." We have amended § 250.34(b) of the final regulations to reflect this change.

Nature of Sanction

If a parent or other caretaker relative in a one-adult AFDC family fails or refuses to participate in the WIN program or accept employment, her needs are not taken into account in determining the family's need for assistance and the amount of the assistance payment. In addition, aid has to be paid to a third party in the form of protective or vendor payments unless the agency was unable to arrange such payments. Further, section 402(a)(19)(F)(iii) of the Act specifically provided that if the only dependent child in a family failed or refused to participate, the entire family would be ineligible for AFDC. Finally, if the parent who was designated as the principal earner, for purposes of section 407, failed or refused to participate, the entire family was sanctioned.

Section 402(a)(19)(G) of the Act makes several changes to the way the sanction is applied to the parent (or caretaker) and her family. The general rule is that the needs of the individual are not taken into account in determining need for assistance and the amount of the assistance payment.

Sanction When Only Dependent Child Fails to Participate

Aid is not denied to a family if the only dependent child fails to participate; the general rule applies to such a family, and only the needs of the dependent child are removed in determining the need for assistance and the amount of the assistance payment. Prior to the enactment of the Family Support Act, section 402(a)(19)(F)(iii) of the Social Security Act specifically provided that the entire family was sanctioned when the only dependent child failed to participate. The Family Support Act, in amending the Social Security Act, did not retain this provision. The specific provision was necessary to sanction the entire family because despite an only dependent child's failure to participate, she is still considered a "dependent child" under section 406(a) of the Act for the purpose of determining the eligibility of the family. We have added a provision at § 250.34(c)(3) that explicitly states the policy with regard to the only dependent child who fails or refuses to participate.

Comment: Two States suggested that the existing AFDC eligibility determination provisions must be amended to allow the parent to receive a grant while the only dependent child is under sanction.

Response: Section 406(a) of the Act defines "dependent child." Cooperation with the JOBS Program is not part of the definition. Therefore, a child remains a "dependent child" even if under sanction as long as she otherwise meets the definition in section 406(a). Thus the parent or caretaker relative may still receive benefits if she is otherwise eligible. We do not find that any change to existing AFDC eligibility determination regulations is required.

Sanctions in AFDC–UP Cases

Section 402(a)(19)(G)(i)(I) of the Act revises the sanctions for unemployed parent families who are eligible under section 407 of the Act. In addition to applying the general rule to the individual who fails or refuses to participate, the Act provides that the needs of his or her spouse will also not be taken into account in determining the family's eligibility for AFDC and the amount of its assistance payment if the spouse is not participating in the JOBS Program. The rest of the family will have its eligibility and payment amount determined without inclusion of the needs of the sanctioned parent (and spouse, if such spouse is not participating in JOBS).

Comment: Several commenters asked for clarification regarding the requirement to sanction the spouse of a noncomplying unemployed parent under section 402(a)(19)(G)(i)(II) of the Act.

Response: Section 402(a)(19)(G)(i)(II) of the Act provides that if the spouse of a noncomplying AFDC–UP parent is not

participating in the JOBS Program, the needs of the spouse shall also not be taken into account. This penalty is a lesser penalty than that imposed under the WIN Program, under which the entire family lost eligibility. We believe that the new penalty reflects the mutual obligations of both parents to support their children. Therefore, if one parent is not participating, the other is obliged to do so. At the time a State provides the program information to a participant required by § 250.40, it should provide information to both parents about their mutual obligations. If the second parent does not participate, his or her needs are not taken into account in making the determination of the family's eligibility for AFDC and the amount of the payment, whether or not the second parent would otherwise be exempt.

Comment: One commenter pointed out that the second parent in an unemployed parent case is not necessarily the "spouse" and use of the term "spouse" would result in unequal treatment of unemployed parent cases.

Response: We agree. We have revised the final regulations to use the term "second parent" in place of "spouse."

Protective or Vendor Payments

Section 402(a)(19)(G)(i)(I) of the Act retains the requirement for protective or vendor payments if the sanctioned individual is the parent or other caretaker relative, and the State can make such an arrangement. This applies to both one-parent and two-parent families. We have amended § 234.60(a)(12) to apply this provision to the JOBS Program.

3-Month Notice

Section 402(a)(19)(G)(iii) of the Act requires the State IV–A agency to notify an individual whose failure or refusal has continued for 3 months of the individual's option to end the sanction by terminating the failure. The regulations clarify that, in the case of the third and all subsequent sanctions, the notice must be sent after 3 months, but it must say that the individual cannot terminate the sanction until the full 6-month sanction has elapsed.

Comment: Several commenters asked for regulatory relief from the statutory provision that notice must be sent to the individual after 3 months even though she is under a 6-month sanction. One commenter suggested that the final regulations require that a notice be sent at 6 months to those individuals experiencing 6-month sanctions in order to remind them in a more timely fashion of their option to terminate the sanction promptly.

Response: Section 402(a)(19)(G)(iii) of the Act provides that the State shall promptly remind any individual whose failure to comply has continued for 3 months, in writing, of the individual's option to end the sanction by terminating such failure. We find no basis for not following the statutory requirement of a 3-month notice, nor do we find any basis for requiring a State to provide for an additional notice at 6 months. However, the State has the option to provide an additional reminder at 6 months, if it chooses, and providing such a notice would be an allowable cost under the JOBS Program.

Other Comments

Comment: Several States asked whether a work program sanction in progress at the time a State implements JOBS must be cancelled or allowed to run its course.

Response: Such a sanction was properly imposed under the rules of the program existing at the time it was imposed and must run its course. However, once a State implements the JOBS Program, all new sanctions must be imposed under the provisions of the Statute applicable to JOBS. This means that the first sanction imposed on any participant after a State adopts JOBS counts as the first sanction for JOBS purposes, and all previous sanctions under prior work programs are ignored.

Comment: Several commenters suggested that the sanction provisions of the regulations be stricken and States be allowed to operate all voluntary programs.

Response: Section 402(a)(19) of the Act requires that all non-exempt individuals participate in the program, and section 402(a)(19)(G) of the Act provides for specific sanctions for failure to participate. There is no provision for an all-volunteer program.

Good Cause (§ 250.35 of the Final Regulations)

Sections 402(a)(19) (G) and (H) of the Act provide that a sanction may only be imposed if the individual does not have good cause for failing to participate in JOBS or refusing to accept employment. The concept of "having good cause" covers a broad range of circumstances. Sometimes situations arise where an individual is unable to participate for a day or several days because of such things as illness or a breakdown in child care arrangements or transportation. These are often short-term situations resulting from events beyond her control. There are other circumstances in which good cause will give the individual an on-going reason for not participating (lack of available child care). Between these two, there will be circumstances in which an individual will have "good cause" for turning down a specific job or assignment ("net loss of cash income") but will be required to continue to participate.

Under the WIN program "good cause" was defined in the Federal WIN Handbook. Prior regulations for CWEP and employment search required the State to define good cause in the State IV–A plan. The Family Support Act includes several specific provisions that give an individual "good cause" for failing or refusing to participate or to accept employment. We have incorporated these requirements into the final regulations at § 250.35 and describe them as follows:

(1) If the individual is a parent or other relative personally providing care for a child under age 6 and the employment would require such individual to work more than 20 hours per week, the participant shall have good cause.

(2) For all individuals, good cause exists if child care (or day care for any incapacitated individual living in the same home as a dependent child) is necessary for an individual to accept employment or enter or continue in the program and such care is not available and the State agency fails to provide the care.

(3) If accepting a job would result in a net loss of cash income for an assistance unit pursuant to section 402(a)(19)(H) of the Act, good cause exists. However, if the State IV–A agency elects to make a supplemental payment to the family so that it does not experience a net loss of cash income, good cause does not exist.

In addition, the State IV–A agency must include in its State JOBS plan other reasons for good cause which encompass circumstances beyond a household's control. These could include such events as inclement weather, breakdown of transportation and/or child care arrangements, short-term illness not requiring a doctor's care, or a family emergency. While we believe that each State is in the best position to establish its own additional reasons for "good cause," we expect that States will develop standards that will insure the integrity of the JOBS program.

Comment: Many commenters recommended that the final regulations set minimum standards for good cause. Alternatively, several suggested that the regulations specify that a State must identify minimum standards and describe these standards in its State JOBS plan. Several suggestions were received for additional good cause circumstances. Several agencies

suggested that good cause should be granted for non-delivery and/or non-receipt of mail. The commenters indicated this is a pervasive problem in poor neighborhoods and housing projects and believed this problem should be acknowledged in the regulations. Another commenter suggested that the good cause definition for family emergencies should include psychological and psychosomatic behavioral emergencies of the children. One comment suggested that the lack of child care for a non-dependent child for whom the JOBS participant is responsible be considered good cause.

Response: Although we have received many comments supporting a minimal standard for good cause set by regulation, we have elected not to do so. We believe that the State is in the best position to establish policy regarding the additional circumstances about what constitutes "good cause" besides that set forth in the Act. However, we also believe that there are circumstances that are beyond a household's control and have amended the regulations at § 250.35(d) to specify that the State must have a definition of "good cause" in its State JOBS plan that at a minimum includes circumstances beyond the control of the participant.

Comment: Many commenters were concerned about the qualifying statement in the preamble on "good cause" that said that the State IV–A agency should determine if there are any other individuals in the home who are capable of providing the necessary child care in determining if good cause exists. Although there may be relatives or persons in the home who could be child care providers, the commenters raised serious concerns about a State forcing an unwilling or inappropriate household member into service as a child care provider with the recipient being sanctioned if she did not accept such care for her children.

Response: We believe that it is entirely appropriate for the State IV–A agency to discuss with the participant what care arrangements are available, as part of the assessment and employability plan. In general, the parent or caretaker makes the final decision about the necessity of care; however, if there are individuals in the assistance unit whose needs are met on the basis of their responsibility for caring for the child or they have legal responsibility for caring for the child, we would presume child care is not necessary.

Comment: One commenter asked if a waiver would be allowed of the age limit in the good cause provision found at § 250.35(a). This provision allows the client to refuse employment requiring her to work more than 20 hours per week, if she is personally providing care for a child under six.

Response: Section 1115 of the Social Security Act governs the granting of waivers for demonstration projects. In part, it provides that the Secretary may waive compliance with any of the requirements of section 402 to the extent and for the period he finds necessary to enable the State to carry out a project that is likely to assist in promoting the objectives of part A of title IV. Demonstration projects under section 1115 of the Act must include an evaluation component. We would be willing to consider waiver requests that meet the statutory requirements.

Calculating Net Loss of Cash Income

"Net loss of cash income" means that work-related expenses which would otherwise not be incurred must be subtracted from the gross income to determine whether the resulting net income is at least equal to the cash assistance received at the time the employment is offered. "Gross income" includes, but is not limited to, earnings, unearned income, and cash assistance. The calculation of the amount of cash assistance to be counted in "gross income" must be based on the current determination including the application of the appropriate earned income disregards. The need for and amount of a "supplemental payment" must be computed each month and include application of the appropriate earned income disregard.

Certain categories of expenses would logically be deducted from the gross salary, e.g., mandatory payroll deductions. However, other necessary expenses related directly to work must also be deducted. The final regulations provide that the State must use actual, reasonable work-related expenses in determining whether a "net loss of cash income" will occur. This calculation must be figured on an individual basis.

Comment: There were many comments on the "net loss of cash income" provision. One of the main issues centered on the definition and determination of necessary work-related expenses. Several commenters recommended that the net loss of income computation exclude work-related expenses.

Response: The Statute and legislative history do not specify what expenses are to be included in the calculation. The language of the Statute implies that Congress intended that a recipient's "disposable" income should not decrease. Certain categories of expenditures would thus logically be included in the work expense deduction. For example, for there to be "no net loss" mandatory payroll deductions must be deducted and net, disposable salary determined. However, there are other necessary, directly related work expenses that should be considered in the calculation. The State will be allowed to define these other expenses in its State JOBS plan.

Comment: One commenter recommended that States be allowed to define these expenses. Others asked that the work-related expenses be defined in the regulations and offered suggested definitions. These definitions ranged from limiting work-related expenses to standardized transportation costs and child care expenses (up to the local market rate) only for those individuals who would no longer receive AFDC benefits and not be eligible for transitional child care, to using standard disregards in lieu of actual expenses to reduce the administrative complexity of tracking actual expenses.

Response: We believe that a State is in the best position to define work-related expenses for its State and to determine the reasonableness of the expenses. Accordingly, we are not regulating in this area.

Comment: Another recommended that States be allowed to establish a flat rate work-expense standard with the client being able to document and receive reimbursement for actual expenses in excess of the standard.

Response: The use of actual expenses best serves the legislative purpose of ensuring that a participant who is required to accept a job is not penalized by having less income than was available while she was receiving assistance. The language of the Statute itself implies that the loss must be individually figured. This is also supported by the addition of the hearing process requirement, to the Senate version, to settle disputes. Disputes are most likely to arise when the permissible amount of expenses is debatable rather than when it is based on a reasonable allowance. In addition, the use of a flat-rate work-expense, while administratively simple, seems contrary to congressional intent insofar as Congress could have, but did not, specify such a flat rate work expense, as it did in section 402(a)(18)(A)(ii) of the Act.

Comment: One State asked for clarification on the inclusion of food stamp benefits as income for purposes of establishing net loss of cash income.

Response: Section 402(a)(19)(H) of the Act specifies that the State IV–A agency can require a participant to accept a job

only if that participant experiences "no net loss of cash income" (emphasis added). As the Act specifically notes "cash" income, we have interpreted that to mean any "in-kind" benefits, such as food stamps, are not to be considered as income in determining if a net loss of income has occurred.

Treatment of Supplemental Payments

Supplemental payments are treated as AFDC expenditures under sections 403(a)(1) or (2) of the Act. Families receiving such payments shall not be considered categorically eligible for AFDC and are not eligible for Medicaid as AFDC recipients.

Eligibility for extended Medicaid (or transitional benefits after April 1, 1990) will be determined as of the month the family becomes ineligible for AFDC as a result of increased hours of or earnings from employment, or the loss of the earned income disregards.

Comment: One commenter recommended that the language in the last sentence of the "Treatment of Supplemental Payments" subsection be changed to reflect that eligibility for extended medical benefits was not based solely on acceptance of employment, but also on increased hours of earnings or loss of earned income disregards.

Response: We agree, and the preamble has been revised to reflect this recommendation.

Comment: One State asked whether the supplemental payment should be considered a title IV–A or title IV–F expense.

Response: As stated above the supplemental payment is treated as an AFDC expenditure.

Application to Unemployed Parent Cases

The definition of "net loss of cash income" does not supersede the 100-hour rule as applied to unemployed parents (UPs). Since the Act does not allow for AFDC payments to two-parent families where deprivation does not exist (i.e., two-parent families where neither parent is incapacitated and in which the principal earner is working more than 100 hours per month), it follows that a supplemental cash payment may not be made to a UP family if the parent who is the principal earner is working more than 100 hours per month. Congress did recognize that the current definition of "unemployment" for the purposes of qualifying for aid under section 407 of the Act should be studied and authorized several demonstrations in which alternative definitions to the 100-hour rule could be tested.

Comment: Several commenters questioned the legal basis for not allowing supplemental payments to a principal earner working more than 100 hours per month. The Statute makes no distinction between AFDC families and AFDC–UP families in making the supplemental payment option available to States.

Response: Although the Statute does not make a distinction between AFDC and AFDC–UP families in providing a supplemental payment, a family whose principal earner is working over 100 hours, does not meet the definition of deprivation for purposes of AFDC eligibility. Similarly, a family that had no child that met the deprivation requirement would not be eligible for a supplemental payment. As the supplemental cash payment is considered an AFDC payment and deprivation does not exist, no such payment can be made.

Other Comments

Comment: One commenter suggested that the regulations make clear that it is up to the recipient to claim "good cause" upon her failure to participate in the program or refusal to accept employment. The State IV–A agency should be able to assume that there is no "good cause", unless otherwise informed by the recipient.

Response: The recipient is responsible for providing the necessary information so that a good cause determination can be made by the State IV–A agency. Without this information, the State IV–A agency is unable to determine that "good cause" exists.

Conciliation and Fair Hearings (§ 250.36 of the Final Regulations)

Conciliation

Prior to the Family Support Act, there was no statutory requirement for a conciliation process. However, Federal regulations at §§ 224.60, 224.62, and 224.63 outline procedures for dispute resolution and conciliation in the WIN Program.

Section 482(h) of the Act requires that a State IV–A agency establish a conciliation procedure for the resolution of disputes involving an individual's participation in the JOBS program. We believe that it was Congress' intent that the State have a conciliation procedure that is neither so short as to be meaningless nor so long as to undermine the mandatory nature of the program and the imposition of sanctions.

An effective conciliation process can resolve misunderstandings or disagreements before they get to the point of resulting in a sanction. For example, a conciliation process could be used to resolve disagreements over the employability plan. It could also be used when a participant's attendance at an assigned activity has been irregular but not yet sanctionable. Even if it appears that the failure to participate or refusal to accept employment is clear, the conciliation process can prevent the need to go to a hearing.

We believe that an effective conciliation process has the following features. Either the recipient or the agency can request conciliation. At some point in the conciliation, the individual's rights and responsibilities under the program should be clearly explained, and she should be informed of the consequences of her continued failure to participate. The conciliation should be time-limited, and the individual should be made aware of this. We recommend that the period be no more than 30 calendar days. The agency should attempt to schedule at least one face-to-face meeting between the individual and a representative of the agency. It may be appropriate for a disinterested third-party to participate in such a meeting. If the agency initiates the conciliation process and, after reasonable efforts to schedule and hold a conciliation meeting, the individual does not appear for such meeting, the agency may end the conciliation process. The State's efforts at conciliation should be well-documented in the case file.

Comment: Several commenters asked us to require, rather than simply suggest, that certain features be included in any conciliation process. These suggestions included some or all of the features we describe above or components from the present WIN conciliation process. Some commenters supported mandating the 30-day procedure we suggest, while others supported a longer period, such as 60 days. Other suggestions included the establishment of a rebuttable presumption of good cause, mandatory arbitration, providing for alternative arrangements, and mandating participation by the case manager. Some supported establishing a shorter conciliation process in cases of subsequent non-compliance. One commenter believed our approach would allow a State to use one phone call as its conciliation procedure.

Response: We decline to mandate additional standards in this area. We believe that this is an area where State flexibility is warranted as the variety of the comments suggested a wide range of ideas about what constitutes conciliation. Each State must explain its procedure in its State JOBS plan. While

we suggest some or all of the above features, we realize different circumstances in States warrant variations among States. Use of a telephone could be reasonable if agreed to by both parties.

Comment: Some commenters asked that in components administered by a contractor, we explicitly allow the contractor to be responsible for conciliation.

Response: Section 250.10 of the final regulations provides that a State may contract out various services, including conciliation, as long as the entity under contract follows the rules and regulations established by the State IV–A agency. Although another entity may perform the conciliation, the State IV–A agency must make the determination of whether the individual had good cause. In addition, the State IV–A agency should assure that any conciliation performed by a contractor be fair and impartial.

Comment: Some commenters asked that we not require States to provide for conciliation before giving any notice of intent to sanction and withhold the AFDC grant. These commenters cited the burden this extra procedure would place on local social service agencies.

Response: Section 482(h) of the Act requires the State to establish a conciliation process. Furthermore, we believe that conciliation can resolve disputes in an amicable and informal fashion before commencement of the formal hearing process. In fact, conciliation is itself a way to notify the recipient that there is a potentially sanctionable problem that can be solved.

Comment: Several commenters asked that we require that notice be given before conciliation, and some suggested that the notice be in writing so it would be documented in the case of a hearing.

Response: Conciliation begins when the State IV–A agency (or a contractor) or the recipient contacts the other party. This is, in effect, notice. A State's process may then involve the scheduling of a meeting between the recipient and the JOBS worker. Written documentation, including a written notice of the dispute, is one of the features of a conciliation process that we suggest States adopt.

Comment: Some commenters asked if the fair hearings office can be used to conduct conciliation, or if the State must create another level of hearing officers.

Response: The State has the flexibility to use any reasonable entity to conduct conciliation. We do not require that an additional administrative structure be created. The State must describe its conciliation process in its State JOBS plan.

Comment: Some commenters asked if a sanction can be lifted if the problem is resolved during conciliation or if the recipient cooperates during conciliation.

Response: Sanctions can not be instituted until after the conciliation process is complete. If conciliation solves the problem, sanctions will not be instituted, thereby making the issue of lifting them moot.

Comment: One State asked whether States have the option to stop a sanction from being applied if the client agrees to participate within the notice period provided in a notice of adverse action.

Response: Section 482(h) of the Act provides for a conciliation period during which an attempt is made to resolve any disputes. This is also the client's opportunity to try to resolve a dispute either by agreeing to cooperate or reaching some other solution. Once conciliation ends and the notice of adverse action has been issued, the individual may contest the proposed sanction through the fair hearing process. If she contests and loses, or does not contest, then a sanction will be imposed for the appropriate time period.

Fair Hearings

Under section 482(h) of the Act, the State IV–A agency must provide a hearing when the conciliation process does not resolve a dispute. The Act provides States with two options. The State may follow the hearing and notice procedures of § 205.10. As an alternative, the State may establish a separate hearing system. However, the State IV–A agency may not contract out the responsibility for providing a hearing to any other agency. An alternative hearing system could provide for a hearing only on the issues associated with JOBS disputes. It should be noted, however, that before an individual's grant could be reduced, suspended, discontinued, or terminated, she must be afforded an opportunity for a hearing that meets the standards of *Goldberg* v. *Kelly*, 397 U.S. 254 (1970).

Comment: Some commenters asked that a recipient be given notice prior to the imposition of a sanction, and that benefits not be terminated until after the hearing process is complete.

Response: Goldberg v. *Kelly* requires notice to clients prior to any action that would affect benefits and requires that clients be given an opportunity to request that benefits be continued until the hearing process is complete. Benefits can not be terminated during conciliation.

Comment: Some commenters suggested that we place an affirmative duty on the State to ascertain whether the State worker erred in not finding a legitimate basis for good cause, as part of the conciliation and hearing process.

Response: The conciliation and fair hearings processes are the proper ways for the participant to pursue a claim that a State worker erred in not finding "good cause." We expect that in the course of operating any program a State would regularly review decisions about "good cause" to determine that the policy was implemented correctly.

Subpart E—Operation of State Jobs Program/Program Components

Providing Program Information to AFDC Applicants and Recipients (§ 250.40 of the Final Regulations)

Section 482(c) of the Social Security Act requires the State IV–A agency to provide all AFDC applicants and recipients with information on the JOBS program including education, training, and employment opportunities; available supportive services, including child care and transitional child care, for which they are eligible; the State IV–A agency's obligations; and the participant's responsibilities.

Although the Act only requires that this information cover the JOBS program, the Conference Report (H.R. Rep. No. 100–998, 100th Cong., 2d Sess. 132 (1988)) indicates that it is also important that the information cover child support responsibilities. Thus, this section of the final regulations requires that the State IV–A agency provide information on securing child support and establishing paternity as well as related requirements.

The purpose of providing program information on JOBS and child support is to ensure that all applicants and recipients are encouraged, assisted and required to fulfill their responsibilities to support their children by preparing for and obtaining employment and by ensuring their cooperation in the establishment of paternity and enforcement of child support obligations.

To provide a State IV–A agency with the flexibility to administer its programs to accommodate variations in local resources and needs, the final regulations permit a State IV–A agency to develop the processes and methods for providing this information consistent with timeframes for phasing in the JOBS program. As the JOBS program is phased in by geographical area, a State IV–A agency must provide this program information to applicants at the time of application and to recipients at the time of the first redetermination after

implementation. There is no requirement to provide this information in areas without a JOBS program.

According to section 482(c)(5) of the Act, after the State IV–A agency provides a recipient with the information described above, it must, within one month, notify the recipient of the opportunity to indicate her desire to participate in JOBS. The agency must provide a clear description of how to enter the program. The Act does not, however, provide specifics regarding this notification process. To allow the State IV–A agency latitude in providing such notification to applicants, except those assigned to job search, this section permits the State IV–A agency to make such notification within one month of eligibility determination. Thus the State IV–A agency does not have to provide information to all applicants, many of whom may never become eligible. Following the language of the conference report, the regulations indicate that such notification must be in writing. H.R. Rep. No. 998, 100th Cong., 2nd Sess. 132 (1988).

Because the idea of participant preference can be confusing as it applies to non-exempt recipients, the regulations clarify that an indication by a non-exempt individual that she does not want to participate does not prevent a State IV–A agency from requiring that individual to participate. Alternately, consistent with other due process guarantees, a State IV–A agency may not interpret a lack of response or indication of a preference not to participate in JOBS by a non-exempt individual to constitute, by itself, failure to participate. Also, a State IV–A agency must inform a non-exempt participant before she decides to voluntarily enter the program that she would be subject to sanction if she stops participating in the program without good cause.

Comment: Several commenters sought clarification as to whether the explanation of the JOBS program and the written notice must be repeated at each redetermination. Two organizations recommended that States be required to repeat the process at each redetermination. Most State commenters felt this would be administratively burdensome. One State recommended that recipients not be informed at all, as it might generate an overwhelming number of volunteers.

Response: To the extent applicants and recipients have been notified of the program and given the opportunity to volunteer, the Act does not require that the process be repeated. However, there may be situations in which an individual who had qualified as a dependent child becomes a parent and establishes her own case or drops out of school and becomes a non-exempt participant. In such situations, the information and notice would have to be provided for those individuals, since the original explanation and opportunity to volunteer would have been given to her parent(s). We do, however, recommend that when the State IV–A agency reviews exemption status at redetermination, it use that opportunity to remind the recipient of the availability of JOBS services.

Comment: One commenter objected to combining information on securing child support with information on JOBS. Two others felt that the requirements to inform applicants and recipients of child care services and child support obligations should be moved to § 206.10, which addresses applications, determination of eligibility and furnishing assistance. One commenter thought the requirements under § 250.40 applied equally to the staff operating the JOBS program, if different from the title IV–A staff. As such, he felt it appropriate that should the JOBS staff discover relevant child support information, they should report it back to the income maintenance unit.

Response: The requirements under § 250.40 are responsibilities of the income maintenance unit insofar as they take place at application and redetermination of eligibility, and prior to participation in JOBS. On-going child support activities were not intended to be the responsibility of the JOBS program staff.

In regard to combining information on child support with information on JOBS, the discussion of child support obligations and cooperation at the time of application or redetermination is not new nor is a discussion of work programs or self-support. What is new is the intent of Congress to have both subjects discussed in the context of parental responsibility to support children. Although the means to achieve that end are embodied in two different programs, the purpose of each is to reinforce the notion of parental responsibility.

We do not believe that the requirements to provide information on child care and child support properly belong under § 206.10. The reason is technical rather than substantive. Section 206.10 relates to State plan requirements under title IV–A. Section 250.40 relates to State plan requirements under title IV–F, which we have incorporated in the final regulations at § 250.20. In any event, the requirements under both sections are binding on the State IV–A agency.

Comment: Three States wanted to do away with the written notice requirement found at § 250.40(c)(2). Another State wanted the timeframe for this requirement to extend to 45 days after the recipient is first informed of the JOBS program, rather than 30 days.

Response: Section 482(c)(5) of the Act requires the State IV–A agency to notify a recipient of the opportunity to indicate her desire to participate in the program and a description of how to enter the program "within one month" from the time the information is first provided to the recipient. Therefore, there is no basis for doing away with this provision of the regulations. Further, because the language specifies "one month," there is no basis for extending this period.

The conference report (H.R. Rep. No. 998, 100th Cong., 2nd Sess. 132 (1988)) indicates that it was the intent of Congress that the notice be in writing, and we believe that a "clear description" of how to enter the program can best be accomplished if it is in writing. Thus we have maintained the provision that the notice must be in writing.

Comment: One commenter said that the 30-day timeframe for the written notice represented a barrier to providing immediate service and asked that States be allowed to omit it.

Response: Section 250.40(c)(2) of the regulations states that the notice must be sent within one month of providing the information, meaning it can be sent anytime sooner than 30 days. Furthermore, § 250.40(c)(3) specifically provides that States are not prohibited from requiring non-exempt recipients, or applicants in the case of job search, from participating prior to the notice being sent.

Comment: One commenter recommended that a timetable be required for States to respond to a recipient's request to participate.

Response: While we feel that States should respond to such requests as expeditiously as possible, such a requirement would reduce State flexibility in operating programs. It will be in the State's best interest both in terms of running a credible program and serving interested participants to respond to positive inquiries in a timely manner.

Initial Assessment and Employability Plan (§ 250.41 of the Final Regulations)

Initial Assessment

The final regulations require the State IV–A agency to conduct an initial assessment of each participant's employability based on: (1) her

educational, child care and other supportive services needs; (2) the participant's proficiencies, skills deficiencies, and prior work experience; and (3) a review of the family circumstances, which may include the needs of any child of the participant.

The final regulations further provide that the initial assessment can be conducted through various methods including interviews, testing, counseling, and self-assessment instruments. Self-assessment instruments generally include check-off lists or survey forms designed to help the individual identify supportive service needs such as child care and transportation, and accomplishments such as educational level completed, prior work experience and skills acquired through employment, volunteer activities, or hobbies.

Appropriate assessment methodologies may vary among State IV–A and local programs due to differences in caseload size, program resources, and program philosophies. A State IV–A agency may also use different assessment methodologies to address individual recipient needs. For example, a State IV–A agency may find it cost-effective to do a limited, initial assessment for recipients, followed by a more in-depth assessment only as participant needs dictate. Since the Act does not provide specific details about assessment services and the conference report eliminated the requirement for testing literacy and reading skills, we believe Congress intended to give the State IV–A agency broad flexibility in this area.

We recommend that, where appropriate, State IV–A agencies use nationally recognized, standardized, or industry-developed tests to determine literacy levels and aptitude skills before assigning participants to specific educational and vocational training programs. Such testing may help the State IV–A agency assure that limited resources are used effectively and that participants are not placed in activities that are inappropriate for them.

The final regulations do not set forth timeframes (except for those individuals in job search pursuant to § 250.60) or establish a process for conducting the initial assessment. However, the final regulations provide that a State IV–A agency must conduct the initial assessment within a reasonable timeframe prior to participation.

Comment: Many commenters recommended that minimum standards be established for assessment. A few thought that periodic reassessments should be required. One commenter suggested different types of assessment, such as basic academic assessment, vocational assessment or self-assessment.

Response: We believe that the final regulations do contain minimum standards for the factors the State IV–A agency must consider in performing an initial assessment. However, there is nothing in the Act to suggest that there is one preferred method of conducting assessments. We think it would limit State flexibility to mandate periodic reassessments, and, therefore, have elected not to do so in the final regulations.

Employability Plan

Section 482(b) of the Act requires that the State IV–A agency develop an employability plan in consultation with the JOBS participant based on the initial assessment. It further specifies that the employability plan must contain an employment goal, describe the supportive services to be provided, and the JOBS activities to be undertaken. The final regulations follow the requirements of the Act as to the basic content of the employability plan but leave design and administration of the actual employability plan to the State IV–A agency.

Congress was particularly concerned that employability plans reflect the availability of jobs in the local job market so that JOBS resources would be expended efficiently. This concern is discussed in more detail in the preamble to § 250.12 on coordination.

The employability plan may identify services to be provided to address the needs of a participant's child, such as drug education or life skills planning courses. Many services for children are generally available to low-income community residents at no cost through local educational programs or volunteer services.

The employability plan should reflect a direct path to available employment. States might consider including a schedule of activities that would lead to employment by a specified date to achieve this goal. The employability plan should include activities which are selected to achieve self-sufficiency in an expeditious manner.

Section 482(b)(1)(B) of the Act provides that the employability plan must also take into account participant preferences as much as possible within the limits of the State's JOBS program. We interpret this to mean that in developing an individual's employability plan, the State IV–A agency must consider the needs and preferences of the participant in the context of agency goals and constraints (including program resources, available services and local employment opportunities). The final regulations specify that final determination of the contents of the employability plan rests with the State IV–A agency. This approval provision is particularly important in establishing the State IV–A agency's authority to determine the appropriateness of self-initiated activities as provided in § 250.48.

In developing employment goals and establishing appropriate participation requirements, the State IV–A agency should not limit a participant's options based upon traditional views of appropriate male and female roles. Such limitations would be inconsistent with the requirements on non-discrimination at section 484(a)(3) of the Act, and could contravene the self-sufficiency goals of the program.

Comment: Several commenters objected to the statement in the preamble that the employability plan should reflect a direct path to available employment. Some felt it undermined what they perceived to be the purpose of the Family Support Act, namely, the education, training and employment of recipients in order to avoid long-term dependency. Others felt the implication was to minimize training and emphasize low-paying, low-skill jobs.

Response: We do not think that suggesting that an employability plan reflect a direct path to available employment undermines the purpose of the Family Support Act. The statutory requirement that the employability plan contain an employment goal suggests that Congress expected that the education and training provided under JOBS would lead to employment. The final regulations define the content required for the employability plan. It should be based on an initial assessment and describe the supportive services to be provided and the JOBS activities to be undertaken. These are the real determinants of a participant's path to self-sufficiency.

Comment: Several commenters asked that we modify the requirement that the employment plan contain an employment goal. They said that, especially for young custodial parents who have not finished high school, establishing a specific employment goal in an employability plan would be premature.

Response: Section 482(b)(1)(B) of the Act requires that the employability plan "set forth an employment goal for the participant". We recognize that for the young custodial parent, this may not be a specific occupation. However, we do think that it is important that the participant understand that the ultimate goal is employment and that she can,

indeed, see a path to achieving that goal within a time certain. We further point out that the employment plan should not be a static document, and, particularly in the case of the young custodial parent, should be frequently reassessed to assure that it reflects the needs of the individual. We, therefore, decline to change the wording of the final regulation, in the belief that there is enough flexibility in the concept of an "employability plan" to allow for preliminary or tentative employment goals, especially for young participants.

Agency-Participant Agreement (§ 250.42 of the Final Regulations)

Section 482(b)(2) of the Act provides that, following the initial assessment and the development of the employability plan, the State IV–A agency may require the JOBS participant (or the adult caretaker in the family of which the participant is a member) to negotiate and enter into an agreement with the State IV–A agency.

This is not a new concept. Currently, some State IV–A agencies require WIN/WIN Demonstration participants to sign a written agreement or contract with the welfare agency. Usually, this agreement is included as part of the employability plan and specifies the actions the recipient will take to implement the plan and the agency services and resources to be made available to the recipient. Generally, the agreement or contract includes well-defined time lines and benchmarks for progress for both the recipient and the agency. Thus, the agency-participant agreement is viewed as the basic tool for outlining the mutual responsibilities, expectations and specific tasks of the recipient and the agency.

The final regulations follow the conference report and permit a State IV–A agency to consider the agreement a contract. H.R. Rep. No. 998, 100th Cong., 2nd Sess. 129 (1988). Such a contract is subject to applicable State laws and regulations.

This section of the regulations provides that the option need not be statewide. However, the State IV–A agency will be required to describe in its JOBS plan the types of participants for whom they will be used. Section § 250.21 contains the State JOBS plan content requirements.

Comment: Some commenters suggested that we require that participants sign any agreement under this section.

Response: We believe the States should retain flexibility as to whether to require participant signatures on agreements under this section, as they retain the flexibility to decide whether to have such agreements at all. We may question the utility of agreements that are not signed, but we can also envision circumstances where States could use these agreements as a way of clarifying how the employability plan will be implemented. In such cases signatures may not be necessary. We also note that if a State chooses to regard these agreements as contracts, State contract law may address whether signatures are required. We do not want to supersede State contract law by regulating in this area.

Comment: Some commenters suggested that contracts in this area should be generic in nature and not include specifics such as the number of hours of participation per week or the length of participation, due to the fluctuating nature of these numbers.

Response: Employment goals and the path to self-sufficiency should be set out in the employability plan. There is no need to repeat them here. The Act establishes these agreements as a means to explicitly set out the specific responsibilities of each party, in a manner that is straightforward and easily understood by both parties. It can serve as a daily or weekly guideline of responsibilities for the client, as well as a listing of services to be expected from the State. Whereas the employability plan addresses long-term self-sufficiency, we read the Act as requiring the agreement or contract to set out what must be done by each party in the present.

Comment: One State believed that regarding such an agreement as a contract would put the State at a disadvantage since its staff would draft the contract without the aid of an attorney.

Response: If a State is concerned about this, it should not regard the agreement as a contract. The Act and regulations clearly specify that this is a State option.

Comment: Some commenters believed that the Act requires agreements under this section to be regarded as contracts. These commenters also believed that if an agreement is not considered a contract, there would be a dubious distinction between it and the employability plan.

Response: Section 482(b) of the Act uses the term "agreement," while the Conference Report accepts the Senate amendment, which uses the term "contract." We believe there is a subtle, but important, difference between the two terms. A contract is enforceable in court against both parties under State contract law. A mere agreement is not. We believe Congress, in using both terms and making them at the option of the States, intended both to be State options. We also believe that an agreement that is not a contract can still be different from the employability plan. The employability plan contains long-term goals and could contain a sequence of several steps toward obtaining those goals. In more complex cases, States may wish to use agency-participant agreements to clearly spell out the mutual obligations of each step as it begins, without bringing on all the requirements of a legally-enforceable contract. States may also develop other uses for non-contractual agreements. We do not wish to limit States' options by requiring that all agreements be fully enforceable contracts.

Case Management (§ 250.43 of the Final Regulations)

Generally, a case management system is designed to support and strengthen the participant's capacity to become self-supporting and to help assure that participants and their families have access to the resources and opportunities required for self-support. Case management may be advocated on the grounds that the activities and services a recipient may need to progress to self-support are so scattered among programs and agencies that a case manager is needed so that progress is not delayed and frustrated.

Under the final regulations, a State IV–A agency that chooses to establish a case management system is given flexibility to design its case management services and procedures. Case management does not have to be offered in all political subdivisions that have a JOBS program. Section 250.21 provides that the State IV–A agency must describe in its JOBS plan its case management system, including how services will be delivered and by what entities and how the State will assign case managers to individuals.

Comment: Some commenters asked us to make case management a mandatory feature of a State's JOBS program. Some commenters also believed a State should not offer case management in only some areas or only to some individuals.

Response: We believe the Act is very clear on this matter. Case management is an option for the States and is not to be mandated. The Act also clearly provides that States may offer case management to some participants and not to others, as the State determines appropriate.

Comment: Some commenters, while recognizing that case management is optional, asked us to give States stronger encouragement to use it.

Response: We recognize that advocates of case management believe that it is a very effective tool for assisting participants to achieve self-sufficiency. However, we also realize that there are reasons that a State may not use case management or use it only in certain instances. Cost may be one such reason. We believe that each State can best decide the proper utilization of case management for the needs of that State.

Comment: Some commenters asked us to provide a detailed description of case management and noted the importance of training case managers in various skills. Some commenters offered detailed descriptions for us to adopt.

Response: We thank those commenters who provided an in-depth discussion of case management and urge them to share this information with the States. However, for the reasons stated above, we decline to mandate that specific features of case management be adopted or that case managers be required to receive specified training. We leave these matters to the discretion of the States.

Mandatory Components (§ 250.44 of the Final Regulations)

Education

Section 482(d)(1)(A)(i) of the Act provides that the required educational activities are: (1) high school education or its equivalent; (2) basic and remedial education to achieve a basic literacy level (our definition is discussed in § 250.1); and (3) education for individuals with limited English proficiency. The conference report (H.R. Rep. No. 998, 100th Cong., 2nd Sess. 142 (1988)) states that where enrollment in regular high school programs is deemed inappropriate, the State IV–A agency is expected to identify or develop alternative education activities to meet the needs of JOBS participants.

Many of the comments we received on the educational content of this section revolved around definitions of "basic literacy level" and "limited English proficiency" found in the regulations at § 250.1 and around the material in the preamble concerning those definitions. The definitions have been modified as indicated under § 250.1 and in the corresponding preamble. The regulations here have been revised in accordance with the changes made in the definitions. For example, the reference to education in English proficiency lists the same skills as are contained in the definition.

The regulations provide at § 250.32(b) that if a State requires participation in JOBS of an individual age 20 or over who has not completed high school, it must include educational activities consistent with her employment goal. There are two exceptions: if the individual demonstrates a "basic literacy level," or if her long-term employment goal does not require a high school level of education. In responding to these two requirements in the Act, we note that levels of education between "basic" education and "high school" are not explicitly specified. Nonetheless, they are clearly allowable as JOBS educational activities. Section 250.44(a) provides that the educational activity may include any activity below the postsecondary level, which means that an intermediate educational goal between basic education and high school is acceptable if the State IV–A agency concludes that it corresponds to the individual's long-term employment goal.

Comment: A few groups suggested that § 250.44 be revised to emphasize that the education offered to the JOBS participant should be appropriate to the individual's "long-term employability goal," instead of being appropriate to the participant's "employment goal."

Response: We will retain the phrase "employment goal," since the term is the same one used in § 250.41, which describes initial assessment and the employability plan. In that section, the "employability plan" must contain the "employment goal" of the JOBS participant. These are the terms that are used in the Act.

Comment: Two literacy groups suggested that the final regulations specifically recognize the services of the voluntary literacy community as providers of basic literacy services for JOBS.

Response: The regulations discuss the kinds of services appropriate for JOBS participants but do not address the types of providers, either to include or exclude groups. State IV–A agencies may choose to employ the services of the voluntary literacy community if they are appropriate to meet participant needs.

Comment: One group stated that § 250.44 should mandate "adult special education" for those 22 years of age and older who lack the necessary comprehensive ability to grasp basic training skills and that the section also should provide for "entrepreneurship activities."

Response: Terms for the mandatory activities under this section follow those used in the Act. However, "adult special education" would not be precluded from the activities a State may offer under this section. "Entrepreneurship activities" would fall under § 250.47 of these regulations.

Comment: A small number of commenters stated that they thought the list of the three educational activities included under § 250.44(a) (high school or equivalent, basic and remedial education, and education in English proficiency) was unnecessary or confusing. One of these entities said that the inclusion of "basic education" on the list, would, in view of our definition of "basic literacy level," mean that education not leading to completion of the eighth grade would not be eligible for JOBS funding.

Response: The three forms of education are listed because they are specifically listed in the Act as mandatory educational activities. We believe that the wording of § 250.44(a) clearly provides that all types of educational activities are covered under JOBS if they are less than the postsecondary level and if the State IV–A agency determines them to be appropriate to the participant's employment goal.

Comment: A research organization suggested that HHS encourage States to provide remedial education integrated into job skills training, rather than provide such activities sequentially.

Response: The regulations at § 250.44 provide that the States may combine several activities into a single program activity. We encourage the selection of activities that are appropriate to the individual's employability plan, whether they be integrated or sequential.

Work and Training Programs

The Family Support Act provides no definition for the required work and training programs. It does, however, require reporting of activities and of costs related to each selected program or activity. We, therefore, adopted functional definitions for the three remaining mandatory components of "job skills training," "job readiness activities," and "job development and placement."

We sought available definitions of these terms from the Department of Labor, principally with reference to definitions used by the State employment security agencies and the Job Training Partnership Act programs. Not all programs required by the Family Support Act, such as "job readiness activities," are defined in Department of Labor programs. Other programs or activities are defined differently, such as "job development" and "job placement", which are established in the Act as a single, combined, required program activity, but which are each defined

differently by JTPA and the Employment Service.

In a two-day meeting with selected State welfare agency directors and their work program directors, strong opinion was voiced that wherever possible, definitions of employment and training terms correspond with existing definitions used by the State agencies from whom State IV–A agencies would often be seeking both contracted and non-reimbursed services. While we have endeavored to be responsive to these State concerns in this regard, we had to choose between or combine definitions. We invited comment on the operational usefulness of the distinctions we proposed for such purposes as program design and data maintenance in case records. We received no comments in this area.

Job Readiness Activities

Under these regulations, "job readiness" centers on pre-employment preparation, and excludes activities that would readily fit within the scope of other defined components, such as vocational skills training. The Department of Labor advised us that "job readiness activities" are not defined by the Employment Service. However, employment security agencies define several closely related terms. Thus, a "non-job-ready" person is one who is deficient in work attitudes, behaviors or skills and is therefore unable to get and keep a job; a "job ready individual" is one who, among other things, has no physical, mental or job skill barriers that preclude employment; and "employability" is defined as, among other things, work behavior and attitudes that are necessary to compete successfully in the labor market. We agree with the Department of Labor observation, and in the regulations we provide that an activity related to removing such barriers would be defined as a job readiness activity.

Comment: One commenter thought the Act lacked a framework for the implementation and funding of critically needed job readiness activities.

Response: The Act and the regulations recognize the mandatory nature of job readiness activities. However, the regulations permit State flexibility in providing these services and encourage interagency cooperation in developing the JOBS program. State IV–A agencies should use available job readiness activities and seek appropriate advice on the development of additional activities when such resources do not already exist.

Job Skills Training

We adhere to what we believe is the commonly understood meaning of the term—pre-employment training in technical job skills. It would, for example, correspond approximately to what was understood in the WIN and WIN Demonstration programs as institutional training.

In order to assure that skills training offered through JOBS results in an increase in participants' skills and competencies, and that progress can be monitored by the State IV–A agency, we require that qualitative measures for "satisfactory progress" be developed for all skills training. Based upon the comments we received, we decided not to require measures of "satisfactory progress" in order to qualify a training program as a component activity under JOBS but to retain the concept with respect to reassessment and providing supportive services. This is discussed in more detail in § 250.1 in relation to the proposed definition of "making good or satisfactory progress in a training component."

Job Development and Job Placement

The final regulations define "job development and job placement" as agency activity on behalf of participants to create or discover openings, and to market participants for those openings. This is consistent with a longstanding approach in employment programs. We have followed that historical pattern as a means of distinguishing agency activity that is relatively intense on behalf of a participant, from a participant's intense activity in job search. Based on this distinction, we have excluded this component from the definition of "participation" found in § 250.78.

We also do not intend that this component should have any connection with the longstanding concept in employment security agencies of a "placement" as an outcome. The specialized meaning of this outcome measure for employment security agencies does not correspond to the requirements or expectations of JOBS.

Optional Components (§ 250.45 of the Final Regulations)

In addition to the four required components, the State IV–A agency must also offer at least two of the following four activities in its JOBS program:

(1) Group and individual job search;

(2) On-the-job training;

(3) Work supplementation; and

(4) Community work experience, or other approved work experience program.

Except for on-the-job training, these optional components are generally based on existing law and program regulations. The Act provides for a few changes to programmatic aspects of these components which are discussed in Subpart G. Otherwise, we have adopted as much of the existing regulations as possible. Since the Act establishes common sanctions, eligibility criteria, FFP guidelines, target populations and service area coverage for the JOBS program, the regulations governing the optional components will no longer have specific language addressing these areas as there was when they were discrete IV–A work programs.

Like the required components, the optional components need not be operated uniformly throughout the State. However, the additional State options do provide an opportunity for the State IV–A agency to develop a program meeting specific needs of individuals while recognizing State economic and environmental factors. Congressional conferees (H. R. Rep. No. 100–998, 100th Cong., 2d Sess. 141 (1988)) stressed the desirability of programs that respond to varying circumstances, including changes in the unemployment rate and different needs that exist in rural and urban areas. Our regulations seek to reflect this congressional intent.

Postsecondary Education (§ 250.46 of the Final Regulations)

We define postsecondary education in § 250.1. We interpret the language of section 482(d)(1)(B)(i) of the Act to mean that the offering of postsecondary education is an entirely optional matter for the State IV–A agency to address in its JOBS plan, except that we have limited such education to that which is directly related to the attainment of an individual's employment goal, i.e., to obtain useful employment in a recognized occupation. Within this occupational limitation, the State IV–A agency must set forth in its State JOBS plan the bases upon which it will determine whether postsecondary education is appropriate.

We believe that the restriction of postsecondary education to education related to the goal of obtaining useful employment in a recognized occupation is consistent with the intent of the JOBS program. The program's aim to reduce long-term welfare dependence would not be served by permitting a JOBS participant to embrace the broader, more general educational goals that also

fall within postsecondary education but that have a less well-defined occupational connection.

While we do not prohibit the use of JOBS funds for this activity, we are concerned about the potential cost. Thus, we encourage States to use resources that are otherwise available to fund postsecondary education for JOBS participants. A State should consider the wide range of other, in some cases less well funded, components which must be included in its JOBS program when determining whether to fund postsecondary education as well as the fact that most welfare recipients are considerably more educationally needy and less able to support their families than those who are ready to enter postsecondary education. We will monitor State expenditures in this area for the purpose of determining the extent to which investment in postsecondary education for JOBS participants produces more beneficial returns, such as longer term self-sufficiency, than are produced by other levels of education or training.

We exclude the costs of such education, including tuition, books and fees, from coverage as special needs under § 233.20(a)(2)(v). Since the Act now provides funding for this activity and places a specific cap on the overall JOBS funding, we would be circumventing the Act were we to allow additional funding under special needs.

Comment: Although there were few comments regarding the definition of "postsecondary education," many groups, including a number of postsecondary institutions, commented upon the statement in the preamble that encouraged States to limit expenditures of JOBS funds on postsecondary education. They saw the statement as discouraging the placement of participants into postsecondary programs and objected to having that area singled out for special monitoring of JOBS expenditures. Therefore, they asked that the final regulations not appear to discourage States from placing JOBS participants into postsecondary education, since the reports of recent studies indicate that most of the new jobs being created will require postsecondary education. Objecting to our preference for short-term programs leading to employment over postsecondary education, the commenters stated their belief that postsecondary education is more likely than lower levels of education to produce returns of long-term self-sufficiency.

Response: In view of the availability of State, Federal, and private grants and loans for postsecondary education, we do not believe that it is unreasonable to encourage States to take advantage of other means of support for postsecondary students who participate in JOBS. This will enable the program to serve more individuals and to use JOBS funds to bolster, where necessary, scarce resources needed to serve the great number of potential JOBS participants who are educationally disadvantaged through lack of basic and high school education, or those who can benefit from short-term programs designed to address job readiness, job skills, or training. Our discussion contained under § 250.32 points out the general consensus among those who commented that adequate resources are not available for those below the postsecondary level, particularly those for whom regular high school is not appropriate. While we encourage States to consider how they use limited resources and to serve as many individuals as possible under JOBS, the regulations do not prohibit States from placing JOBS participants into postsecondary educational programs.

Comment: Comments were mixed concerning the language that permits a State to refer a participant to postsecondary education when the education is linked to "meeting individual goals that are directly related to obtaining useful employment in a recognized occupation." Several groups stated their specific approval of the language, indicating that they saw the language as following the intent of the Statute. A couple of groups objected to relating such education "directly" to occupational goals. One of them said that the language would make States hesitant to use postsecondary education as a JOBS activity. Another said that the language of the Act is broad enough to offer a wide range of postsecondary educational activities that can improve employability. Some of the commenters observed that any kind of postsecondary education is relevant to employment.

Response: We are maintaining our original position that the relationship of postsecondary education to the participant's employment goal is consistent with the intent of JOBS. While we concur that broader, less job-related education can provide skills related to employability, we believe that a specific occupational linkage more readily assures that the postsecondary education will lead to the employment goal that the Act requires to be part of each participant's employability plan.

Comment: A few entities, including several States, did not approve of the exclusion of postsecondary education costs from FFP as special needs. Some of them also mentioned exclusion of supportive services from special needs funding. Some of them sought an explicit statement that the costs of postsecondary education are covered through JOBS.

Response: We continue to believe that the exclusion from special needs funding of postsecondary educational expenses (along with the costs of other education resulting from participation in JOBS) constitutes the best reading of the Act, since it now provides JOBS funding to be used for educational activities except in the case of self-initiated education or training as treated in § 250.48. JOBS funding can be used for such expenses as tuition, books, and fees, except in the case of self-initiated education or training. Supportive services such as child care now are provided to JOBS participants and certain other categories of individuals through the supportive services provisions of the Act. However, we encourage States to take advantage of the other resources that are available to support the postsecondary educational activities of JOBS participants.

Other Education, Training, and Employment Activities (§ 250.47 of the Final Regulations)

Section 482(d)(1)(B)(ii) of the Act provides that the Secretary may approve additional components not specified in the Act. Because public service employment was specifically considered as a potential optional component and finally rejected by the conferees, we have expressly excluded public service employment from the acceptable possibilities. By public service employment we mean what that term meant under the WIN and CETA programs: a fully subsidized job in a public agency.

Comment: One commenter applauded our decision to bar public service employment, while one commenter said that we should leave it as an option to the States.

Response: We are persuaded by the fact that public service employment was specifically considered as a potential optional component and finally rejected by the conferees. Furthermore, we note that section 141(p) of the Job Training Partnership Act (Pub. Law 97–300) specifically bars funding for public service employment under JTPA.

We also point out that if an appropriate job is available in the public sector, and the State IV-A agency wants to place an individual in the slot, it could use the OJT component. While 100% funding would not be available, our regulations at § 250.61 on OJT do

allow States to vary the rate of reimbursement to employers so that a higher rate could be offered at the beginning of the OJT as long as it averaged 50% over the period of the contract.

Comment: Another commenter said that we should define public service employment in the regulations so that States could propose alternatives under § 250.47 if the job would lead to full-time employment.

Response: We have decided to modify our definition of public service employment and include it in the final regulations. The modification is that we have dropped the phrase that the job "is not expected to convert to unsubsidized employment." Whether a public service job will lead to unsubsidized employment is not the controlling factor. Rather it is that subsidizing any employer at 100% is not an effective use of limited resources.

We are also concerned that routine costs of State and local governments would be inappropriately shifted to the Federal government under such a program.

Self-Initiated Education or Training (§ 250.48 of the Final Regulations)

This section describes State options, in areas of the State where the JOBS program is available, with regard to individuals already engaged in education or training at the time they would otherwise commence participation in JOBS. In the NPRM, this section referred only to self-initiated education or training that met the requirements of section 402(a)(19)(F) of the Act. As a result of comments we received and our further review of the language of the Statute, we have amended § 250.48 by adding paragraph (b) to address another group of participants: individuals who live in areas of the State where there is a JOBS program and are enrolled in a self-initiated activity that does not meet the requirements of section 402(a)(19)(F) of the Act at the time they would commence participation in JOBS.

We have also identified a third category: AFDC applicants and recipients who live in non-JOBS areas and are engaged in education or training for whom the State may provide child care and other supportive services pursuant to the State's approved Supportive Services plan. However, such education or training in non-JOBS area is not part of the JOBS program, and, therefore, is not covered by this section of the regulations. Approval of education or training in non-JOBS areas for the purpose of providing child care and supportive services necessary for participation is addressed in the preamble and regulations at §§ 255.1 and 255.2.

For purposes of this section, we will use the term "self-initiated education or training" to mean education or training that meets the requirements of section 402(a)(19)(F) of the Act, and which is described at § 250.48(a) of the final regulations. We will use the term "other education or training pursuant to § 250.48(b)" to mean a self-initiated activity that does not meet the requirements of section 402(a)(19)(F) of the Act but which the State may approve under the JOBS program. Finally, we will use the term "self-initiated activity" as a generic term to describe all such activities.

Self-Initiated Education or Training under Section 402(a)(19)(F) of the Act

Section 402(a)(19)(F) of the Act describes the circumstances in which the State IV–A agency may permit an individual who is in self-initiated education or training that meets certain requirements, at the time she would otherwise commence participation in JOBS, to continue such course of study. The final regulations at § 250.48(a) provide that: (1) the individual must be attending (in good standing) an institution of higher education (as defined by section 481(a) of the Higher Education Act of 1965, 20 U.S.C. 1088) or a school or course of vocational or technical training in a course of study that is consistent with her employment goals; (2) she must be attending at least half-time; (3) she must be making "satisfactory progress in such institution, school, or course"; and (4) she must meet the State's criteria for determining the appropriateness of the self-initiated education or training.

Comment: One commenter thought that we had narrowed the application of section 402(a)(19)(F) by referring to individuals who "would otherwise be required to commence participation" rather than using the statutory language "would otherwise commence participation." The commenter thought that such a provision would exclude persons not required to participate from being counted as participants.

Response: We did not intend this exclusion, and we have amended § 250.48(a) using the statutory language. Therefore, exempt and non-exempt individuals engaged in self-initiated education or training that meets the definition of section 402(a)(19)(F) are covered by § 250.48(a).

Half-time Attendance

While the wording of the Act could lead to an interpretation that the half-time attendance provision of section 402(a)(19)(F) pertains only to the school or course of vocational or technical training, this would leave a question as to the amount of time the participant would have to be in attendance at an institution of higher education. We see no reason to distinguish an "institution of higher education" from a "school or course of vocational or technical training" in applying a minimum attendance requirement. Rather, we see the application of the half-time attendance requirement to higher education as serving three beneficial purposes. First, it provides guidance as to minimal expectations of participation. Second, it serves as an indicator associated with making satisfactory progress in the institution, as defined in § 250.1. Third, the half-time requirement is consistent with such requirements for half-time attendance contained in certain student financial aid programs operated under the Higher Education Act. For example, the Guaranteed Student Loan Program requires a student to be enrolled at least half-time in order to receive aid from that program.

Vocational or Technical Training

The meaning of the term "vocational or technical training" is incorporated into § 250.48(a). The term includes vocational or technical training offered by postsecondary institutions. As a result of comments we received, the definition has been expanded to include such training offered by other entities such as secondary schools, and public and private agencies and organizations that offer adult vocational or technical education. The term refers to training that both leads to useful employment in a recognized occupation and results in other than a baccalaureate or advanced degree.

Comment: Two organizations objected to the exclusion of secondary vocational education from this section.

Response: Secondary vocational education is not excluded from JOBS by virtue of the provision at § 250.44(a), which provides that any educational activity below the postsecondary level that the State determines to be appropriate to the participant's employability plan falls within the mandatory educational components of JOBS. However, we realize from comments we received that there might be instances in which such training is self-initiated within the meaning of section 402(a)(19)(F) of the Act. Therefore, we have refined our definition of the term "school or course of vocational or technical training" at

§ 250.48(a) to include such education at the secondary level.

Assessment of Self-Initiated Education or Training

In supplying definitional information, the Department of Education stated that one of its primary concerns was "whether welfare recipients who are enrolled in postsecondary schools have the ability to benefit from the programs in which they are enrolled. The Division of Adult Education believes that the State should perform an educational assessment of the ability to benefit of any JOBS participant * * * before enrollment is considered satisfactory participation * * * ."

Other groups that we consulted in the regulations development process asserted that there is potential for abuse by some of the institutions cited in section 402(a)(19)(F) of the Act that would enroll welfare recipients as a means of securing indirect funding by means of student aid under the Higher Education Act. We believe that, in the case of this category of education or training which the State IV–A agency might find to be satisfactory for participation in the JOBS program, an educational assessment of the participant is crucial for the protection of both the participating student and Federal funds. Therefore, the regulations require an assessment and development of an employability plan before the State applies its criteria for determining the appropriateness of the individual's pre-existing education or training activity to her defined employment goal. In § 250.48(a) we now specifically refer to the State's criteria for determining appropriateness of self-initiated education or training, which were implicit in the NPRM.

Comment: There were a few commenters who did not approve of performing an assessment on an individual governed by § 250.48(a), or as full an assessment as would be performed on other individuals. They asked for State flexibility in assessing and preparing an employability plan for those in self-initiated education or training. Some of them stated that deference should be given to individual choice, since they believe that the person has taken considerable initiative in enrolling. They saw our concern with assessment of the individual's ability to benefit from the self-initiated education or training as demeaning the abilities and judgment of welfare recipients. A few commenters specifically stated their approval of the provision, however, fearing that the individual might have had an inadequate assessment by the enrolling institution. Some commenters specifically approved of the State's having final authority over the employability plan as provided by § 250.41 of the regulations.

Response: We maintain our position that the IV–A agency must perform an assessment that will enable a judgment to be made regarding the suitability of the self-initiated education or training in which the individual is enrolled. Our reasoning is based upon comments we received prior to the development of these regulations and is reinforced by those who commented on the NPRM in support of the use of assessment for those enrolled in self-initiated education or training. Some States have already seen what they believe are inappropriate recruitment of welfare recipients by for-profit institutions seeking to bolster their enrollments. It is our desire to encourage States to take measures that ensure that JOBS participants are engaged in education or training from which the individual can benefit and move toward self-sufficiency. The Department of Education is currently confronted with high student loan default rates associated with some educational institutions, many of which are for-profit trade schools. These defaults can be the result of the student's not being able to obtain employment after completing or dropping out of educational programs in which they have been inappropriately enrolled.

Comment: One State asked if a person meets the "attending" requirement of this section if she has enrolled but has not started attending classes.

Response: The regulations provide that the State may permit an individual who is attending self-initiated education or training at the time she would otherwise commence participation in the JOBS program to continue to attend if she meets the requirements established in the regulations at § 250.48(a). The regulations apply as well to individuals who have enrolled in an activity, but have not yet attended class. In either case the State must make a determination of the appropriateness of the education or training before approving it under § 250.48(a). For purposes of counting as participation pursuant to the requirements of § 250.78, the activity must have started.

State Restrictions on Approvable Activities

In order to maintain consistency with the regulations on postsecondary education found at § 250.46, we provide in § 250.48 that the State IV–A agency may place restrictions upon the self-initiated postsecondary education or training covered by section 402(a)(19)(F) of the Act. For example, the State IV–A agency might restrict such postsecondary education to a maximum of two years. Further, a State IV–A agency might choose to permit an individual who is within two years of completing a four-year program to complete it if the requirements of this section are otherwise fulfilled. We would encourage States in delineating restrictions to be mindful that the goal of self-initiated training should be to move the participant from welfare dependence within a reasonable time. Therefore, shorter programs leading to specific occupational goals are preferable to longer educational programs that may have far less specific employment goals.

Comment: A small number of commenters indicated that they did not support the statement in the preamble that encouraged States to restrict the length of self-initiated postsecondary education that would count towards participation in JOBS. One of them saw the preamble on this section encouraging even more stringent State restrictions on postsecondary education than the preamble on § 250.46, Postsecondary Education. One of them sought clarification as to whether self-initiated training could include the baccalaureate degree. Another State specifically supported having the authority to restrict such education.

Response: It is not our intention to suggest that the State's option to restrict self-initiated education should result in more stringent restrictions than it chooses to exercise regarding postsecondary education under § 250.46. The intent in both cases is to encourage the participant's attainment of an occupational goal within a reasonable period of time. The definitions associated with this section of the regulations do permit enrollment in a baccalaureate degree program if the program is offered by an "institution of higher education." However, in the case of such enrollment, the State could choose to restrict the period for which enrollment is approved and an individual is, therefore, eligible for supportive services.

Prohibition on FFP

Section 402(a)(19)(F) of the Act specifically states that the costs of "such school or training" shall not constitute federally reimbursable expenses under JOBS. The regulations on funding at § 250.75(a) define such costs to include tuition, books, fees, room, and board. The costs of necessary child care and other supportive services for participants in self-initiated education

or training are eligible for Federal reimbursement, as provided at § 255.4.

Comment: A few commenters said that self-initiated postsecondary education should be funded under JOBS. They noted that if it is not, the individual might decide to drop out of the educational program in order to re-enroll under JOBS.

Response: Section 402(a)(19)(F) of the Act states that the costs of such school or training shall not constitute federally reimbursable expenses under JOBS. Furthermore, in the preamble to these regulations, States are strongly urged in § 250.46, Postsecondary Education, to use resources other than JOBS funds to pay for a participant's postsecondary education. Also, supportive services under the Act are available to either category of student, self-initiated or State-assigned, as long as the activity is approved. Therefore, in many instances there should be no benefit in making such a change.

Comment: One State commented that the regulations restricting funding for self-initiated education would impede clients who will benefit from retraining offered by vocational rehabilitation.

Response: If the individual's vocational rehabilitation program meets the definitions applicable to paragraph (a), and if the other conditions of the paragraph are met, the individual could be considered a JOBS participant. The financial support for the individual's educational program, as is the case with support for other educational programs falling under the paragraph, would have to come from sources other than JOBS. It is also possible for the individual in self-initiated vocational rehabilitation to participate under components of JOBS as provided by paragraph (b) of this section. There appear to be no special problems associated with participation in a referral to vocational rehabilitation activities under JOBS.

Comment: A few groups objected to the exclusion of the use of special needs funds under § 233.20(a)(2)(v) to pay for supportive services for those in self-initiated activities. Some included books and fees as supportive services. One asked for clarification as to what supportive services were available under JOBS for this category of participants.

Response: Supportive services, such as child care and transportation, are otherwise available under title IV–A and JOBS respectively for this category of individuals, so these services are not available under special needs. As required by the Act, § 250.75 prohibits FFP for costs of self-initiated education or training, as provided at § 250.48(a). We define educational costs to include tuition, books, fees, room and board; they include items which are directly connected to educational activities and traditionally funded as educational assistance. Thus, these educational costs are distinguishable from such adjunct items as transportation, which are matchable as supportive services.

Non-Interference

The regulations state that, consistent with the Act, the State IV–A agency must not permit other JOBS activities to interfere with approved self-initiated education or training. However, a State may require an individual to accept employment if the State IV–A agency has notified her at the time it first approves the self-initiated education or training that it may periodically review the approval and make such a change.

Comment: One State asked that a bona fide job offer not be considered to be an activity that interferes with education or training, so that the State could require the individual to accept the job.

Response: While the Act and implementing regulations prohibit interference by other JOBS activities with a self-initiated education or training, they do not prohibit the State IV–A agency from reviewing and revising the individual's employability plan based on changed circumstances, such as an improved job market. In addition, only interference by other JOBS program activities is precluded. Employment, other than through the work supplementation or OJT programs, is not a JOBS program activity. Thus, States could require the individual to accept a job.

In so doing, the State should consider such factors as whether the job has the potential for leading to long-term self-sufficiency and whether the individual will be left with an educational loan to repay that will impact upon her economic status. The regulations have been revised to clarify that, at the time of preparation of the initial employability plan, the State IV–A agency must make certain that the JOBS participant is aware that her plan is subject to this kind of review and revision.

Other Education or Training Pursuant to § 250.48(b)

We have renumbered § 250.48 to clearly acknowledge that there will be AFDC applicants and recipients who will be enrolled in self-initiated activity that does not meet the requirements of section 402(a)(19)(F) of the Act. For example, the individual might not be attending at least half-time or the institution might not be covered by section 402(a)(19)(F) of the Act. Section 250.48(a) now refers to education or training that meets the requirements of section 402(a)(19)(F) of the Act, and § 250.48(b) refers to any other self-initiated activity that does not.

The State may approve other education or training pursuant to § 250.48(b) as a JOBS activity according to the regulations and State criteria applicable to similar JOBS component activities covered under §§ 250.44 through 250.47. The State must perform an assessment and develop an employability plan pursuant to § 250.41, as an individual is considered a JOBS participant if the State approves the activity. The costs of child care and of other supportive services for participants in approved other education or training pursuant to § 250.48(b) are eligible for Federal reimbursement pursuant to § 255.4.

Because other education or training pursuant to § 250.48(b) does not meet the requirements of section 402(a)(19)(F) of the Act, participants in such approved activities are not subject to the statutory provisions of that section. This means that such participants are not subject to the principle regarding non-interference with the self-initiated education or training that is contained in section 402(a)(19)(F)(iii) of the Act. However, it also means that the State may pay for other education or training pursuant to § 250.48(b), so long as the State approves the activity in accordance with the regulations and criteria that govern JOBS activities and observes the restrictions regarding non-supplantation and services otherwise available on a non-reimbursable basis.

Comment: One State asked if a person in self-initiated activity is considered to be in a JOBS component and also if such a person could be considered to be in a target population when the criteria are met.

Response: If the individual is participating in self-initiated education or training approved by the State IV–A agency, pursuant to § 250.48(a), she is considered to be in a JOBS component and in a target population if the criteria were met. Likewise an individual in approved other education or training pursuant to § 250.48(b) would be considered to be in a JOBS component and in a target population if the criteria were met. However, an individual in education or training in non-JOBS areas of the State is not a JOBS participant as there is no JOBS program (and title IV–F funds may not be expended on such education or training). Expenditures for supportive services for that individual, if she is in a target population, can be

included in the calculation of whether 55 percent of the State's expenditures was spent on the target populations.

Subpart G—Optional Components of State Jobs Programs

Job Search Program (§ 250.60 of the Final Regulations)

Section 482(g) of the Act provides for group and individual job search as an optional component under JOBS. Although we describe all mandatory and optional components in separate sections, we recognize that it will be appropriate for States to combine them for certain clients. Job search is an excellent example. While job search by itself is an appropriate activity for the job ready who have basic workplace skills, job search for those who are skills deficient should be coupled with other education and training activities.

The Act generally retains the provisions of the current law at section 402(a)(35) of the Act with some modifications. The first change is that Congress expressed its intent that job search be "intensive". We interpret this to mean that, in order to qualify as an optional component in which participation counts for the purposes of calculating participation rates pursuant to § 250.74, a job search program must be well-structured and include specific activities to be undertaken by the participant or the agency on behalf of the participant. Such activities must be described in the State JOBS plan.

Current law provides that a State IV–A agency may require an initial period of up to 8 consecutive weeks of job search which may begin at the time of application for aid. Some States have used this initial period to do a preliminary screening of the individual's employability prior to assessment and development of the employability plan. The Act amends this provision to provide that the State IV–A agency may not require an individual to participate in job search for longer than 3 weeks without performing an assessment as defined at § 250.41. The 3 weeks of job search prior to assessment count as part of the 16 weeks of job search that are allowable as a JOBS component during the application period and first year. If the employability plan that the State IV–A agency develops based on the assessment provides for an activity that is more appropriate for the individual, the job search activity must be terminated.

The Act also permits an additional 8 weeks of job search in any subsequent period of 12 consecutive months. We are adopting the existing interpretation of "an additional 8 weeks" to mean 8 weeks or its equivalent. For example, an equivalent would be one week a month for 8 months or one day a week for 40 weeks. Based on a comment, we are clarifying that after the additional 8-week period (or its equivalent) job search cannot be treated as a JOBS component for purposes of "participation".

The Act also provides that a State IV–A agency may require additional job search after the close of the 8-week period only as part of some other education, training or employment component which is designed to enhance the individual's employment prospects. For example, if a State IV–A agency requires an 8-week period of job search for a recipient and then assigns the individual to skills training, it is permissible to require her to engage in job search at the end of the training as part of the training.

Participation in job search as an activity under the program is not allowable for FFP or participation rates under the JOBS program if an individual has participated in job search for more than 4 months out of the 12 preceding months. We interpret "4 months" to be 4 months or its equivalent. For example, job search for one week a month for 8 months (after an initial 8 weeks of participation in a job search component) would be allowable.

Comment: One commenter recommended that a stronger emphasis be placed on job search activities, and suggested that the full-time "job" of every AFDC client should be looking for work. States should be encouraged to place all clients in job search upon completion of any other JOBS component if no employment has been obtained. Another commenter, however, proposed that only those individuals who have prior relevant work experience and usable job skills be assigned to job search. By assigning the "non-job-ready" to job search, job search becomes a "make-work" activity which does not promote self-sufficiency. Another commenter recommended that States be allowed greater flexibility in assigning participants to job search despite the time limitations imposed by the regulations.

Response: We agree that non-exempt AFDC applicants and recipients should be looking for work. However, we also agree that it is important for each State to have flexibility in designing its JOBS program to meet the specific needs of its clients and utilize those components that, in its judgment, will effectively promote self-sufficiency. Through JOBS, the client can be assisted to prepare for the occupation defined in her employability plan by participating in a range of components. The time limits contained in the regulations are taken directly from section 482(g) of the Act.

Comment: One commenter felt the proposed regulations on how and when clients were to participate in job search were too complex. Tracking the participation of the clients in job search would be too complicated and would hamper the State's ability to contract and coordinate with other agencies. They suggested a simpler definition: States should receive FFP for up to 16 weeks of job search activity per participant. Another commenter supported the idea that 16 weeks of job search be allowed not only for the applicant during the first year but also for recipients in each period of 12 months.

Response: Section 482(g) of the Act is very explicit as to the participation requirements of the job search program. Moreover, there were few changes made to the existing job search regulations from the previous law. States have the flexibility to define "eight weeks of participation" for the recipient which could lead to less intense job search over a longer period of time. Also, additional job search beyond the 16 weeks initial period (first year) or 8-week period (later years) can be required if combined with other activities.

Comment: Several commenters asked whether if a family becomes ineligible for AFDC and reapplies the 16-week participation requirement (8 weeks of job search as an applicant and 8 weeks as a recipient) begins again.

Response: Upon the filing of a new application, the potential JOBS participant is eligible for a "new" 16-week job search requirement if assigned to that component.

Comment: Several commenters noted that § 250.60(a) (1) and (2) include the provision of counseling and training. One commenter asked if these activities were required to be included under job search. Another commenter was concerned that the term "training" be clarified to mean job-seeking skills training—not occupational or academic training.

Response: The description of "individual job search" has been clarified to say "job-seeking skills training" rather than simply "training." Although not mandated by the Act, counseling and training activities related to developing job-seeking skills, resume writing, and interviewing techniques are a major part of assisting the client as she conducts a job search. It is expected, but not required, that the

State would provide these types of activities for job search participants.

Comment: Several commenters indicated that the regulations leave unclear the relationship between the requirement of an assessment after three weeks, and the State's option to require up to eight weeks of job search at the time of application. They further state that the regulations do not mandate any action by the State based on the results of the assessment. They suggest that the job search should only continue after assessment if it is determined appropriate during the assessment.

Response: If the employability plan developed as a result of the assessment determines that another activity is more appropriate, the job search should be discontinued.

Comment: One State asked that the option be given to stretch the second eight week period of job search (after the initial applicant period of 8 weeks) over an extended period of time.

Response: Section 482(g) of the Act is clear that the second period of job search cannot exceed a total of 8 weeks in any period of 12 consecutive months. We continue the same interpretation of "an additional 8 weeks", as under prior regulations, to mean 8 weeks or its full-time equivalent. After that 8-week (or its equivalent) period, job search cannot count as "participation".

Comment: Several commenters asked for clarification on the limits imposed on job search participation and the additional job search that is permissible.

Response: Section 482(g)(2) of the Act limits participation in job search by an applicant to up to eight consecutive weeks from the time she files an application for AFDC. Following this initial period, an additional eight weeks (or its equivalent) of participation may be required in any period of 12 consecutive months. Once this period of job search has been completed, additional job search activities may be mandated only if performed as part of an educational, training, or employment component. These job search activities must be identified as activities of the component. For example, the client might be required to conduct an intensive job search following the completion of a skills training class, or to participate in a one day per week resume writing class while attending an eight-week business course. For participation purposes, the education, training, or employment component is considered the JOBS activity. For FFP purposes any expenditures directly related to the completion of the approved JOBS activity are allowable subject to the limitations at §§ 250.73, 250.75, and 250.77. Therefore, FFP is available for the administrative and supportive service costs of the job search-related portion of the approved JOBS component.

Comment: One State asked for clarification of the date on which the initial eight weeks of job search begins for an applicant. The State recommended that the regulations specify that the eight weeks begin when the applicant is first assigned to, or becomes a participant in, the job search component.

Response: Section 482(g)(2)(A) of the Act clearly states that the initial eight week period of job search begins on the date the individual applies for AFDC.

On-The-Job Training (§ 250.61 of the Final Regulations)

Section 482(d)(1)(A)(ii)(II) of the Act provides for on-the-job training (OJT) as one of the four optional components in JOBS. Section 250.61 contains the regulations for OJT.

Our definition of OJT is based on the definition contained in WIN regulations at § 224.42(a) and information provided by the Department of Labor. JTPA regulations do not define OJT, although it is an allowable activity. There are a few basic principles that govern OJT. The participant is hired first by the employer. While engaged in productive work, she is provided training which gives her the knowledge or skills essential to the full and adequate performance of that job. She is compensated at a rate (including benefits) comparable to that of other employees performing the same or similar jobs, and the employer is reimbursed by the State IV–A agency or its agent for the extraordinary training and the additional supervision that is required. At the end of the OJT, the participant is retained as a regular employee.

In order to assure that OJT assignments offered through JOBS result in an increase in participants' skills and competencies, and that progress can be monitored by the State IV–A agency, we are requiring that qualitative measures for progress be developed for all OJT assignments that are included under JOBS. This is discussed in more detail in the definition of making good or satisfactory progress in a training component in § 250.1.

Comment: Several commenters expressed concern that the regulations did not prevent or discourage employers from recycling JOBS participants, i.e. using a participant until the OJT subsidy runs out and then discharging that participant and obtaining another.

Response: It is not our intention to allow employers to recycle JOBS participants in OJT slots. Upon satisfactory completion of the OJT, the employer is expected to retain the employee. When a State develops OJT contracts with employers, provisions for retaining the OJT participant upon satisfactory completion of the OJT should be included.

Rate of Reimbursement

The rate of reimbursement to employers will be limited to no more than an average of 50 percent of the wages paid by the employer to the participant during the period of the OJT. The operational experience of the six federally-funded grant diversion demonstration projects in which subsidy levels ranged from 25 percent to 83 percent did not suggest that higher rates significantly increased job opportunities. Furthermore this limitation is consistent with JTPA policy. We believe that by adopting this comparable policy, we avoid fostering competition among programs as to the reimbursement levels they provide. Section 250.61(b) contains this provision.

Comment: One commenter suggested that to eliminate windfall profits for employers, the reimbursement should be limited to a flat 50 percent, rather than the average of 50 percent of the wages paid to the JOBS participant during the OJT.

Response: An average of 50 percent was chosen to be consistent with JTPA policy. This policy affords States flexibility to vary in setting reimbursement rates for the length of the contract for a particular individual.

Duration of OJT

We have decided against limiting the length of time an individual can spend in OJT because we believe that a State should have the flexibility to design the program that both meets the needs of the State and the individuals it plans to serve, especially if it uses OJT for target populations. While we permit State flexibility, we strongly recommend that the State IV–A agency take into account the guidance that is available, such as the Dictionary of Occupational Titles, in determining the appropriate length of training and that the State IV–A agency assure that training is only for as long as is reasonable to learn the necessary skills.

Eligibility for Services during Participation

Wages from OJT are considered to be earned income for any purpose of the law, which is consistent with current AFDC policy. A person who loses eligibility for AFDC because of earned

income in accordance with § 233.20 or because of the application of the 100-hour rule in the case of the principal earner in an unemployed parent case will continue to be considered a participant in JOBS for the duration of the OJT. This will allow the agency to make payments to the employer through the completion of the OJT. This is comparable to the WIN regulations at § 224.42 which provide that a person in an OJT is considered to be a WIN registrant for the duration of the OJT even if she is no longer receiving AFDC. It also means that the participant will be eligible for the supportive services available to other participants in JOBS even though she is not receiving an AFDC grant. However, since the participant will have earned income, we believe that the State IV–A agency, in determining the need for supportive services, should treat the participant as it would treat an individual who finds unsubsidized employment.

As a participant in JOBS, the individual will be eligible for child care as determined by the State IV–A agency to be necessary for participation for the duration of the OJT. We have considered how to handle child care when the OJT ends in the case of an individual who became ineligible for AFDC during the period of participation in the OJT. The following approach is defined in the regulations. Since the individual was not in receipt of AFDC in the previous month, she is not eligible for the twelve months of transitional child care when the OJT ends. However, if she would have been eligible for transitional care at the time that she lost eligibility for AFDC due to going into the OJT, she can receive transitional care for the number of months left in the 12-month eligibility period.

For example, an individual who goes into OJT loses eligibility for AFDC in January. The OJT continues until April during which time she receives child care as a participant. If she would have been eligible for transitional child care under Part 256 in February, she is eligible for the remaining 9 months (from May to January). She would, of course, have to meet the requirements of eligibility and would have to contribute to the cost of the child care in accordance with the State's sliding fee scale. Alternatively, a State IV–A agency may simply provide child care as transitional child care from the time the individual becomes ineligible for AFDC due to income from the OJT if she would otherwise qualify. This approach has the advantage of being fairly simple although those individuals who did not meet other eligibility criteria (for example, did not receive AFDC benefits for the minimum 3 of the 6 preceding months) under Part 256 would not be eligible for the transitional care. However, these OJT participants could continue to receive child care under Part 255 for the duration of the OJT. We believe that our approach of providing up to 12 months of transitional child care to eligible OJT participants assures that individuals who enter employment through OJT are treated equitably regardless of whether the employment is unsubsidized or subsidized.

Comment: Several commenters raised concerns that those clients participating in OJT who become ineligible for AFDC due to earned income or the 100-hour rule in the case of an unemployed parent case, will not be deemed AFDC recipients during participation in OJT for purposes of establishing eligibility for transitional child care and Medicaid extensions. Several also suggested that the 12-month extended benefits should not begin until after the OJT had ended.

Response: Section 482 of the Act, which provides for OJT, does not provide for deeming eligibility for AFDC to a family which has lost eligibility for AFDC during the period of the OJT, for purposes of transitional child care or extended medical assistance. Furthermore, sections 302 and 303 of the Statute describe the eligibility requirements for transitional child care and extended medical assistance. Nothing in these sections allows those clients participating in OJT to be treated differently from other JOBS participants. We, therefore, do not believe that the Statute authorizes providing a full 12 months of transitional child care after the OJT period ends if the participant lost eligibility for AFDC during the period of the OJT.

Comment: One commenter asked if under § 250.61(f) a State must establish State policy on whether to implement the transitional child care provisions at the time AFDC eligibility is lost or at the end of the OJT. If the State chooses to treat all child care provided after an individual in an OJT loses eligibility for AFDC as transitional child care, does the individual who does not meet the minimum eligibility requirements receive no child care for the remainder of the OJT? The commenter felt the language in the preamble and the regulations appeared discrepant.

Response: A State does not need to establish one policy which it applies to all individuals who lose eligibility for AFDC while participating in OJTs. A State can determine on a case-by-case basis which child care treatment will be of most benefit to the client who is no longer AFDC eligible; i.e. whether the child care will be considered as transitional care at the point eligibility for AFDC is lost during the OJT or at the end of the OJT for the remaining months left in the 12-month eligibility period. However, pursuant to Part 255, the State must guarantee child care for a participant during her participation in OJT.

Comment: One commenter was concerned that if an OJT participant becomes ineligible for AFDC while in the OJT, continuation of supportive services appeared to be an option for the State.

Response: The State does not have an option whether to offer continuing supportive services for an OJT participant who has become ineligible for AFDC. The participant is eligible for supportive services if there is a need, and we have revised the regulations to reflect this policy. However, as the participant has earnings, the State IV–A agency, in determining the need for these supportive services, should treat the participant as it would any individual who finds employment.

Eligibility for Medicaid Extensions

Eligibility for Medicaid extensions is determined at the time the individual loses eligibility for AFDC. In other words, there is no provision, as there is under work supplementation, by which an OJT participant who is no longer an AFDC recipient may be eligible for Medicaid based on her status as a participant.

Differences Between OJT and Work Supplementation

Under JOBS, OJT and work supplementation are two of the four programs from which a State must choose its optional components. We carefully considered the differences between OJT and work supplementation under the Act. Since the Deficit Reduction Act of 1984 broadened the kinds of jobs that could be filled under work supplementation to include jobs in the private sector, many State IV–A agencies have used the existing work supplementation program authority to run what is essentially an OJT program. The diverted grants are used to pay for a portion of the training and supervision provided to the participant by the employer.

There have been many recommendations to make OJT and work supplementation as compatible as possible in our regulations so as to allow States maximum flexibility in program design. We have carefully considered all the arguments and

conclude that OJT and work supplementation must be considered separate components. We have two major reasons for reaching this conclusion.

The first is a new provision (section 484(c) of the Act) which specifically bars any participant in a work supplementation component from being assigned to "fill any established, unfilled position vacancy." The same prohibition has always existed in CWEP and is carried over to CWEP by the Statute. However, it is a new provision as it applies to work supplementation and limits the use of the work supplementation component to jobs that did not previously exist. A more complete discussion of this provision is contained in the preamble in § 250.62 on work supplementation.

The second reason is that the Act allows the State IV–A agency to apply special rules to participants in work supplementation jobs that are not available to persons in OJT. The State IV–A agency may reduce or extend earned income disregards as they apply to work supplementation participants (section 482(e)(2)(G) of the Act). The State IV–A agency may exempt work supplementation participants from retrospective budgeting requirements (section 482(e)(3)(D)). In addition, the State IV–A agency must extend Medicaid coverage to participants in work supplementation who would otherwise be eligible for AFDC under the State's plan if such State did not have a work supplementation program (section 482(e)(6) of the Act). There is no basis for extending any of these special rules to OJT participants and, if we did not make any distinction, there would be no way to determine which rules should apply to a given participant.

Furthermore, there is no compelling reason in OJT to invoke the special rules which are necessary to divert grants to a wage pool in work supplementation. Since, in OJT, JOBS funds are used for the training provided by the employer, the State IV–A agency, in its planning process, should calculate how many OJT training opportunities the State will develop and proceed accordingly.

For States which are concerned that diverted grants will not provide an adequate wage pool for their work supplementation component, we point out that they may earmark JOBS program monies at any time to add to the diverted grant money in the wage pool to ensure that sufficient funds are available for subsidy. This money could be unused OJT money, or any other JOBS program money. However, it is not permissible to use diverted AFDC grants in the OJT component.

Comment: Several commenters noted that the language in the proposed preamble and regulations contained references to "subsidies." It was recommended that the term "reimbursement" be used. This distinction clarifies that OJT slots are used for training with the employers being reimbursed for the training and additional supervision.

Response: We agree that this distinction is important and changes have been made in the preamble and regulations where appropriate.

Comment: One commenter asked whether the spouse of the principal earner would be allowed to continue in an OJT or job skills training component under JOBS if the principal earner was no longer AFDC eligible.

Response: As a JOBS participant, the second parent who is participating in an OJT or job skills training component under JOBS would be allowed to complete the activity, as provided in § 250.73(e).

Comment: One State asked if an individual can be considered a participant in an OJT component if she is in a JTPA placement and no JOBS funds are being expended.

Response: If an individual is placed in a JTPA OJT through a JOBS referral, it is appropriate to count the client as participating in a JOBS OJT even though no JOBS funds are being expended. With the limitations set by the JOBS funding cap it is expected that the State IV–A agency will coordinate with and utilize other agency services and activities to enhance its JOBS program components.

Work Supplementation Program (§ 250.62 of the Final Regulations)

Section 482(e) of the Act provides for a work supplementation program (WSP) as an optional component under the JOBS program. This component allows the State IV–A agency to pay, or "divert," all or part of the AFDC grant to an employer to cover part of the costs of the wages paid to an AFDC recipient who is participating in the program. The Family Support Act adopted most of the existing law. However, there were a few changes made to the work supplementation program by the Statute which are discussed below.

Under the prior law, only those individuals who would have been eligible for AFDC under a State IV–A plan as it was in effect in May 1981, or as modified thereafter as required by Federal law, could participate in work supplementation. The Act does not carry over this provision to the JOBS program.

Participation in the work supplementation program was voluntary, i.e., the AFDC recipient could elect to participate in work supplementation by accepting an offer of work. However, once the individual entered the program, she became a mandatory participant to insure that the agreements with employers would be carried out. Under the Act, the State IV–A agency may require an individual who is not exempt to participate in any appropriate component, including work supplementation. We have clarified that the State may choose to operate WSP as a voluntary or mandatory program.

Comment: Several commenters questioned whether it is appropriate to apply the displacement language from CWEP to work supplementation and OJT programs as provided at § 250.62(b)(2). They point out that participation in these slots is an employment situation; thus, the protection needed for regular employees at a work experience site does not apply in work supplementation/OJT situations. In addition, several organizations and private businesses suggested that JOBS participants should be able to be placed in established, unfilled positions if the placement does not violate union agreements or affect union organizing, existing collective bargaining agreements, or other employer/employee policies.

Response: The provision at § 250.62(b)(2) prohibiting placement in established, unfilled position vacancies applies to work supplementation positions. It does not apply to OJTs under § 250.61. However, we believe that section 484(c) of the Act is clear in applying the prohibition to both work supplementation and CWEP.

The argument that the last two sentences of section 484(c) of the Act can be read together to allow CWEP and work supplementation placements in established, unfilled vacancies if the placements do not assist, promote, or deter union organizing is not persuasive. The first sentence refers to "[f]unds available to carry out the program under this part" not being used to assist, promote, or deter union organizing; it is not limited to funds for CWEP and work supplementation positions.

Comment: One commenter asked that "employee status" be defined. Is it limited to providing such things as insurance coverage, workmen's compensation, leave and other benefits, or, since wages are considered earned income, should Federal, State and FICA withholdings be deducted?

Response: Section 482(e)(5)(B) of the Act requires wages to be considered as earned income for any provision of law. This includes Federal and State

withholding for income tax, FICA withholding, advance Earned Income Tax Credit if requested, etc. Employee status confers the benefits available to regular employees of that employer.

Comment: One commenter was concerned that a WSP participant is not deemed an employee for 13 weeks. The commenter stated that this lack of employment status would negatively affect an individual's entitlement to unemployment compensation, workers' compensation and health benefits.

Response: Section 482(e)(5)(A) of the Act allows a State the option of not considering a WSP participant an employee during the first 13 weeks of participation. Any employer who wishes to treat her as an employee during that period may do so.

Comment: One commenter asked if FFP would be paid for any period past the nine-month limitation on participation if the agency established a longer period of participation.

Response: No, we are limited by the provisions of section 482(e)(4) of the Act.

Comment: One commenter asked that the OJT provisions for the same pay and benefits as similarly situated workers be made applicable to WSP also.

Response: Section 482(e)(5)(A) is clear that the State has the option of not considering a WSP participant an employee during the first 13 weeks of employment. If the State chooses not to grant "employee status," the provisions for the same pay and benefits as similarly situated employees or trainees cannot be applied.

Comment: One commenter asked that States be given the option of setting up WSP as either a mandatory or voluntary program.

Response: Section 482(e)(3)(A) of the Act gives the State authority to implement either a mandatory or voluntary program. We have specified this in the regulations at § 250.62(c)(2).

Retrospective Budgeting/Monthly Reporting

The Deficit Reduction Act of 1984 and interim final rules at § 233.36, published September 10, 1984, provide that the State IV–A agency must require monthly reports from those assistance units with earned income or recent work histories. Additionally, § 233.31(a) provides that all assistance units required to file monthly reports must have the amounts of their assistance payments determined retrospectively. Because work supplementation program participants have earned income, they have been subject to monthly reporting and retrospective budgeting rules. The State, however, had the option to request waivers to exempt such participants from these two requirements.

The regulations at § 250.62(g) permit the State IV–A agency to exempt individuals who are participating in work supplementation from retrospective budgeting requirements and to determine their monthly payments prospectively. This means the amount of assistance payable to the participant's family for any month will be based on the income and other relevant circumstances in that month.

While the legislation does not specifically address the monthly reporting issue, we have decided to permit State IV–A agencies to exempt participants in supplemented jobs from monthly reporting without seeking a waiver. This policy is consistent with past practice. Furthermore, exemption from monthly reporting will allow the State to have one policy for all recipients whose payments are computed prospectively.

Calculating the Diverted Grant

The regulations at § 250.62(f) allows the State IV–A agency to "freeze" a participant's AFDC grant as an alternative to monthly recomputation. Under this procedure, upon taking a supplemented job, the participant's AFDC grant is recalculated considering her earnings from the job and any other sources. If her earnings and other income reduce her grant to zero, the entire amount of the former grant is "diverted" to a wage pool from which the employer is paid. If the earnings and other income do not cause the complete loss of the grant, she receives a "residual" payment. The difference between the former grant and the residual payment is diverted to a wage pool.

A wage pool is a mechanism which allows a State to pool (divert) AFDC grants not paid to the WSP participant and pay employers an amount for each WSP participant. From the Federal perspective, the pool is an account or listing for accumulating and tracking the diverted amounts so that FFP can be claimed when payments are made to employers.

The following example illustrates: The potential participant is a parent in a regular AFDC case receiving a monthly grant of $450 with no other unearned income. A full-time supplemented job is found which would pay $720 per month. The individual is currently eligible for the $30 and ⅓ and standard earned income disregards, and she has no other income. Child care is being provided at no cost, and no changes are foreseen in the family's needs, income, or resources.

Countable Income = $720 − $90 (work expense after 10/1/89) − $30 = $600; $600 − (⅓ of $600) = $400

Residual Payment = $450 (AFDC grant) − $400 (countable income) = $50

Diverted Grant = $450 (AFDC grant) − $50 (residual payment) = $400

If a State elects to "freeze" a participant's residual payment, the State IV–A agency must determine at the time of placement what payment amount, if any, the participant will be eligible for while participating in a supplemented job, given the hours of work, wages and other circumstances. Once this initial payment is determined, the amount is "frozen," and the participant, if otherwise eligible, receives the same amount (residual payment) for each month of participation regardless of changes which occur during the participation. If a participant becomes otherwise ineligible for AFDC benefits, she can continue to participate in WSP, and the State can continue to receive FFP for payments to an employer on her behalf.

Although the basic concept of "frozen" grants is attractive, States may be concerned about their ability to make adjustments in certain limited circumstances (for example, when the household size changes). Therefore, the State IV–A agency is permitted to make limited adjustments to a participant's residual payment within a "frozen" grant policy. Under such a "partial" freeze, for example, one State might make adjustments only in cases where the State's need or payment standards change. Another State might make adjustments not only under those circumstances, but also where the family size changes. If a State chooses a partially frozen grant policy, it must be consistently applied. That is, if a State IV–A agency provides adjustments for factors which would increase the payment amount, it must also make downward adjustments if changes in those same factors would cause a decrease in payment amounts.

The use of the terms "frozen" and "partially frozen" grants is not new. This policy is retained from the previous work supplementation program because States feel that freezing grants eases administration of the program. It is also consistent with § 250.62(b)(2) which gives the State IV–A agency broad discretion in establishing the terms and conditions under which jobs, payments, wages, and the conditions of participation are defined.

If a participant becomes ineligible for AFDC for any reason other than

earnings from the supplemented job, the individual does not receive a residual payment. However, she may continue in the supplemented job. The amount of the residual payment is diverted to the wage pool. For example, if a family becomes ineligible because of the receipt of a lump sum payment, the family would no longer receive a residual payment, but participation in the supplemented job could continue.

Comment: One State asked what FFP would be paid for JOBS funds supplementing the wage pool.

Response: No FFP is available for any funds supplementing the wage pool until the funds are used to pay the employer. Section 482(e)(3)(A) of the Act states the payments to individuals or employers under WSP, i.e., the AFDC grant funds that are being transferred to the wage pool and subsequently paid to an employer, shall be treated as IV–A expenditures. However, if JOBS funds are used to supplement the wage pool, FFP would be paid at the FMAP or 60% rate, whichever is higher, when expended, as a program cost has been incurred. The State IV–A agency must be able to segregate and track these program costs in order to claim the higher match.

Comment: Although noted in the preamble, one State recommended that the final regulations should specify that JOBS program funds may be added to the wage pool to subsidize wages of the participants. In addition, the regulations should specify that title IV–F funds used for this purpose are to be treated as an administrative cost of the work supplementation program.

Response: We have chosen not to add this language to the final regulations as the preamble often provides discussion of operational issues that do not necessitate regulation. Title IV–F funds used to supplement a wage pool and paid to an employer, are considered a program cost and would receive the higher JOBS match rate.

Comment: One commenter asked how an AFDC grant would be computed for a client who is simultaneously participating in WSP and in OJT and how the budgeting would be done if two members of the same household were both participating in one or both of these components.

Response: As pointed out in the discussion of OJT, there are important distinctions between OJT and WSP. No one is allowed to be in both components at the same time. There is no difference in budgeting from any other case with earned income by one or more family members.

Wage Pool Sampling

Section 482(e)(2)(F) of the Act allows the State to use a sampling methodology to determine the amount of money available for the wage pool. By selecting a sample of work supplementation cases to determine available monies for the wage pool, the State IV–A agency will not need to track all grants diverted on an individual basis. Reconciliation of the wage pool for each participant served is eliminated. Reconciliation is still required based on the results of the sample.

The State IV–A agency will need to develop a method to select an unbiased sample of work supplementation cases of sufficient size to produce statistically valid results when applying this method across the universe of work supplementation participants. The method used by the State IV–A agency must be described in its JOBS plan.

Medicaid Eligibility

Currently, a State has the option to provide Medicaid to the participant and her family if they are otherwise eligible. Section 482(e)(6) of the Act requires that the State provide Medicaid coverage to the participant and family members who would be eligible for AFDC under a State's plan if such plan did not have a work supplementation program. The Health Care Financing Administration (HCFA) is responsible for issuing regulations to implement this section of the Statute.

Child Care Eligibility

In § 250.62(h) we allow the State IV–A agency to provide child care to work supplementation participants according to the same policy that we apply to OJT participants. A more complete explanation of this policy is contained in the preamble to § 250.61 on OJT.

Comment: One State commented that except for § 250.62(h) concerning transitional child care for WSP participants, the proposed regulations were silent on supportive services for WSP participants. It was recommended that the final regulations specify that WSP participants shall be eligible for those supportive services that are available to other JOBS participants.

Response: A WSP participant is eligible for supportive services as a participant in JOBS. However, as was discussed in the preamble to OJT, since the participant is working, she should be treated as any individual who finds employment. We have chosen not to address supportive services in each section on the mandatory and optional components as an individual who is participating in an approved JOBS component is considered a JOBS participant and eligible for all supportive services provided under the State's Supportive Services plan.

Community Work Experience Program (§ 250.63 of the Final Regulations)

Section 482(f) of the Act provides for a community work experience program (CWEP). The new program generally retains the provisions in the prior law, with modification. The Act allows for training along with actual experience as ways to improve the employability of participants. We interpret this to mean that a State IV–A agency can include an element of training in a work experience position.

Under prior law, the maximum number of hours in any month that a participant may be required to work is that number which equals the amount of financial assistance payable to the assistance unit divided by the greater of the Federal or the applicable State minimum wage. The Statute modifies this calculation to clarify that the State IV–A agency must deduct any child support collected (except the $50 pass-through) in making the calculation of maximum hours.

Reassessment

Section 482(f)(2) of the Act provides that after 6 months of an individual's participation in CWEP and at the conclusion of each work and/or training assignment, the State IV–A agency must provide a reassessment and revision, as appropriate, of the individual's employability plan.

Section 482(f)(1)(B)(ii) of the Act provides that after an individual is assigned to CWEP for 9 months, she may not be required to continue in the assignment unless the maximum number of hours of participation is no greater than the amount of the assistance payment (excluding child support collected but not the $50 pass-through) divided by the highest of: (a) the Federal minimum wage; (b) the applicable State minimum wage; or (c) the rate of pay of individuals employed in the same or similar occupations by the same employer at the same site.

Comment: One commenter suggested that minimum standards be included in the regulations for the six-month reassessment process. The commenter proposed that in addition to requiring a face-to-face interview, a review would be conducted of the specific skills acquired during the past six months, and a determination made indicating whether extending CWEP participation would lead directly to employment or

acquiring additional skills needed for employment.

Response: It is expected that the State will use the six-month reassessment as a tool to determine the viability of the CWEP placement and the need for additional skill development for the participant. However, we believe that, as with the initial assessment, the State should have the flexibility to develop the method by which CWEP participants will be reassessed.

Excluding Child Support Collections

The provision requiring a State IV–A agency to exclude the amount of aid for which it is reimbursed by a child support collection from the calculation of the maximum hours an individual must participate is new, although several States have done so under past law. After considering several methods by which child support collections could be used to calculate CWEP hours excluding the child support collection, we have decided to allow each State to develop its own approach.

Comment: Several commenters were concerned about the exclusion of the $50 pass-through from being treated as a child support collection in calculating the maximum hours for CWEP participation. They believed that section 482(f)(1)(B) of the Act says that any portion of the AFDC benefit for which the State is reimbursed by a child support payment shall be excluded from the CWEP calculation. If an absent parent pays $300 in child support, the State has been reimbursed $300, even though in a separate transaction, the State passes through $50 of that amount to the family.

Response: Although the full amount of the child support collected from the absent parent is credited towards his child support obligation, the State does not retain all of the collected amount to reimburse the AFDC benefit; i.e. $50 is distributed to the AFDC household. In the example cited in the "Comment," the absent parent is credited for having met his $300 monthly child support obligation. However, in the distribution of the collection, $250 of the $300 is retained by the State and is considered a reimbursement for the AFDC benefit. The remaining $50 is not considered a reimbursement to the State as it is not retained by the State; it is "passed-through" to the AFDC family. Therefore, the $50 is deducted from the actual child support collected for purposes of calculating the maximum CWEP hours.

Comment: Several commenters made suggestions on procedures for treatment of child support in the calculation of the CWEP hours. These suggestions focused on how to calculate the CWEP hours if the child support reimbursement is not received in the month for which the calculation of the CWEP hours is being made. One commenter suggested that when a case is subject to retrospective budgeting, the income and child support from the budget month should be used to establish the maximum hours of obligation for the payment month. If a case is subject to prospective budgeting, the State and family's best estimate of income and child support for the month should be used to establish the maximum hours of obligation. One State proposed that the amount of the court order be used in the monthly calculation to ease administrative burden.

Response: As several logical options were received on this subject, we have decided to allow the State IV–A agency to establish its own procedures to implement this provision.

Other Work Experience Programs

The Act allows a State to have other work experience programs. A State may offer such programs if they are described in the State JOBS plan and approved by the Secretary. An alternative work experience program could be modeled after the WIN work experience program in which a participant is assigned to a full-time, temporary position for a limited number of weeks. Such a program gives the participant the experience of working full-time and learning what the demands of full-time employment are, both on the job and at home. Alternative work experience programs offer States the opportunity to be more creative and may be less burdensome administratively. Any alternative work program is subject to the FFP limitations at § 250.63(j) and the general program standards contained in section 484 of the Act.

Comment: Several commenters questioned whether States should be permitted to combine AFDC and Food Stamp benefits when determining the maximum hours of the CWEP obligation for purposes of participating in JOBS.

Response: Upon further examination of this issue, we have decided to remove § 250.63(d)(2) which allowed States to include the value of Food Stamp benefits in computing the maximum number of hours that a Food Stamp recipient, who participates in a CWEP program under JOBS, is required to participate.

Comment: One commenter noted that section 482(f)(1)(A) of the Act provides that "[t]o the extent possible, the prior training, experience, and skills of a recipient *shall* be used in making appropriate work experience assignments" (emphasis added). The comparable regulations at § 250.63(f) says: "To the extent possible, a State IV–A agency *should* take into account * * *" (emphasis added). The commenter suggested that the regulations reflect the Act as the term "shall" in legal construction is sometimes viewed as a stronger direction than "should."

Response: We agree. The appropriate change in the regulations has been made.

Comment: One State commented that since its inception CWEP has been portrayed as a training program intended to facilitate employment. However, the general perception of this program has been one of work in return for assistance as the hours of participation have been based on a wage standard. The State suggests that this perception is strengthened by the new regulations which provide that a participant's hours shall be based on the prevailing wage rate for that position if she is assigned to a work site for more than nine months. Therefore, the State believes that, in cases where an AFDC overpayment exists, States should be required to reduce the amount of the overpayment by calculating the value of the work performed by the CWEP participant using the formula of the hours worked times the applicable wage rate, instead of recouping the overpayment.

Response: Neither section 402(a)(22) of the Act nor § 233.20(a)(13) of the regulations permit recovery of overpayments by allowing a State to count hours of participation performed by an AFDC recipient in a CWEP site to reduce/recoup the overpayment. No additional language was added by the Statute allowing this method to recover overpayments.

Comment: Several commenters questioned how the CWEP differed from public service employment.

Response: The difference between CWEP and public service employment is that the participant is paid a wage in public service employment. A more complete discussion of public service employment is contained in the preamble and regulations at § 250.47.

Subpart H—Funding

JOBS Allocation Entitlement (§ 250.70 of the Final Regulations)

Federal funding for JOBS is provided as a capped entitlement. The regulations at § 250.70(b) implement the formula provided under section 403(k)(1) of the Act for determining the amount of Federal financial participation that is available to match expenditures by each

State with an approved JOBS plan. The amount established by the formula is the limit of Federal reimbursement for a State for a particular fiscal year. If a State is unable to claim up to its limit because the State did not make sufficient expenditures, funds not obligated by the end of the fiscal year cannot be carried over, as provided in the regulations at § 250.70(c).

Comment: Several States said that there is no language in the Family Support Act that prohibits a State from carrying over unobligated funds for use in the next fiscal year.

Response: We assume by the nature of the comment that these States believe that they should have available for use in a subsequent year funds that they did not obligate in the current year, in addition to the allocation provided for the subsequent year. However, the language at section 403(k)(1) of the Act provides that a State "shall be entitled to payments * * * of expenditures to carry out the program under part F" and that "such payments for any fiscal year in the case of any State may not exceed the limitation determined under paragraph (2) with respect to the State." Therefore, the Act establishes a limit not on JOBS funding for each State, but on the amount of the reimbursement that the State is "entitled" to for each year's JOBS expenditures. FFP is available for matching allowable costs paid for by the State. There is, therefore, no entitlement to funding if the State does not incur the costs.

Comment: One State recommended that funds unobligated by States be redistributed to other States for use in the JOBS program.

Response: The Family Support Act prescribes the formula for determining each State's limit of Federal reimbursement for JOBS. Any redistribution to another State would increase that State's limit fo. the fiscal year above the statutorily established limit and would, therefore, be impermissible.

Liquidation of Obligations

States will be required to liquidate all obligations incurred during a fiscal year within one year after the end of that fiscal year. The liquidation period for grant programs subject to the regulations at Part 92 is normally 90 days (§ 92.23(b)). However, we are permitting one year for liquidation in the regulations at § 250.70(d) for the JOBS program because we recognize that a State may need more flexibility in administering the JOBS program as many services are likely to be provided under contract.

Comment: One State strongly supported the regulations providing for a one year period to liquidate obligations. Another State maintained that a one year liquidation period was too short and recommended that the time period be in quarters following the final delivery of the service, i.e., within eight quarters after the completion of a course of study. Another State suggested that the JOBS program be treated like other entitlement programs under the Social Security Act and recommended that States be subject to the two year limit for the filing of claims in accordance with the regulations at Part 95 Subpart A.

Response: The recommendation of the second State would provide no defined period by which the Federal government would know the extent of outlays attributable to the JOBS program because such a method assigns a liquidation period according to the particular JOBS service or activity.

The suggestion of the third commenter cannot be adopted because the JOBS program cannot be treated in the same manner as the AFDC program. The Family Support Act, as explained previously, establishes an annual limit on JOBS funds. Funding for programs which are open-ended, such as the AFDC program, are not bound by yearly limits.

The timely filing requirements for claiming expenditures in the regulations at Part 95, Subpart A continue to apply to the JOBS program because the liquidation requirement is separate from the claiming requirement. For example, if a State obligates a document on September 30, 1989, and liquidates the obligation, i.e., makes the expenditures for this obligation, on September 30, 1990, then the State has until September 30, 1992 to claim the expenditures.

Comment: One State was concerned that the establishment of a one year liquidation period would require the State to audit contracts with service providers within one year of the closure of the contract and that such a requirement may be in conflict with State law.

Response: The liquidation period does not require a State to audit contracts within this one year period. The only auditing requirements that a State operating a JOBS program must meet are the auditing requirements of the Single Audit Act of 1984 as provided in the regulations at § 92.26. However, this does not mean that the State is not responsible, outside of the auditing process, for monitoring the activities, services, and expenditures conducted under contracts. The State must maintain ongoing monitoring of contracted activities, services, and expenditures.

Allotment of JOBS Limit of Entitlement (§ 250.71 of the Final Regulations)

All States are required to have a JOBS program effective October 1, 1990. However, States may begin operating a JOBS program before that date. Fifteen States began implementation of their programs on July 1, 1989.

A State's JOBS limit of funding is proportional to the number of quarters that the program is in operation in the State in a given fiscal year as described in the regulations at § 250.71(a).

Comment: One State suggested that States that implemented the JOBS program on July 1 should have been allocated their annual share of the JOBS funding limit, rather than just a quarterly share of that limit.

Response: Section 204(b)(1)(B) of the Statute provides that for a State that implements the JOBS program prior to October 1, 1990, its JOBS funding limit for the fiscal year will be divided by 4 and multiplied by the number of quarters the program is in operation in the fiscal year. Therefore, under the formula in the Statute, States that began July 1 receive one quarter's limit.

Comment: This same State recommended that States receive an annual grant award for the JOBS program instead of quarterly grant awards.

Response: An annual grant award pilot test program was initiated several years ago as a result of the efforts of the Joint State/Federal Cash Management Reform Task Force. The pilot applies to seven States and four of the Department's public assistance programs, such as the AFDC and Medicaid programs. Section 608(e) of the Statute extended this pilot test program through December 31, 1989. The test program is to operate on the same terms and conditions that existed as of September 30, 1988. Thus, its application has not been expanded beyond the original seven States and four programs. At this time it is the general practice in the AFDC program to issue quarterly awards. Because we have decided that the JOBS program should be operated similarly to the AFDC program, with certain exceptions, we believe that quarterly grant awards should be issued for the JOBS program as well.

Allotments to the Territories

The JOBS limit of funding for Puerto Rico, Guam, the Virgin Islands, and American Samoa is not subject to the funding restrictions at section 1108 of the Social Security Act (see the

regulations at § 250.71(c)(1)). For these jurisdictions, the costs related to the provision of child care under Part 255 are subject to the JOBS limit of entitlement. This includes the costs of child care services and related administrative costs (see the regulations at § 250.71(c)(2)). The costs related to the provision of transitional child care services under Part 256, including the cost of the services and the related administrative costs, are eligible for FFP under section 1108 of the Act (see the regulations at § 250.71(c)(3)).

Funds Available to Indian Tribes and Alaska Native Organizations

The JOBS program provides direct funding to Indian Tribes and Alaska Native organizations. The Federal funds available to Tribes and Alaska Native organizations constitute a reduction to the allotment of the State in which the Tribe or organization is located. Regulations at § 250.71(b)(1) describe how the reduction is determined. The regulations at § 250.90 provide the specific requirements for Indian Tribe and Alaska Native organization participation in the JOBS program.

Maintenance of Effort (§ 250.72 of the Final Regulations)

Section 482(a)(3) of the Act specifies that "Federal funds made available to a State for purposes of the program shall not be used to supplant non-Federal funds for existing services and activities which promote the purpose of this part. State or local funds expended for such purpose shall be maintained at least at the level of such expenditures for the fiscal year 1986."

We believe that Congress intended to provide for new or increased levels of services under the JOBS program, rather than to subsidize or buy-out existing programs. We believe that Congress also intended that the JOBS program bring together and make maximum use of existing resources. The requirements of the maintenance of effort provisions of the Act, as well as language limiting funding for contracted services to services not otherwise available on a non-reimbursable basis, are tests of whether a State is, in fact, meeting these goals.

One test has two parts: JOBS funds must not be used to supplant State and local funds, and JOBS funds must not be used to pay for services available on a non-reimbursable basis. Another test is whether the State is maintaining the FY 1986 level of expenditures for programs which serve the same purpose as the JOBS program.

We received many comments regarding the maintenance of effort provision of the NPRM. Based on the comments, we have reviewed these issues and reconsidered the language and legislative history of the Statute.

Non-Supplantation and Services Not Otherwise Available On a Non-Reimbursable Basis

The regulations at § 250.72(a), which prohibits the use of JOBS funds to supplant non-Federal funds for existing activities and services, is a general requirement of the JOBS program.

The regulations at § 250.72 (c) and (d) require that FFP not be provided for activities and services that are otherwise available to an AFDC recipient on a non-reimbursable basis. For program services, such as high school, which a State is required by law, regulation or other rule to provide to all residents without regard to availability of funding, FFP under JOBS would not be available. For other programs available to the general public, or to low-income residents in particular, but which may be permissibly limited by availability of State or local funds, FFP is available for the increase in expenditures attributable to JOBS participants.

The regulations at § 250.72(e) extends the requirements of § 250.72 (c) and (d) to services provided directly by the State IV–A agency.

Comment: Several States requested clarification regarding the requirement that a State not use JOBS funds for activities and services that are available on a non-reimbursable basis. One State asked for clarification on the availability of JOBS funds for a program which ordinarily provided services to AFDC recipients on a non-reimbursable basis, but whose funds were limited.

Response: The regulatory requirements regarding the use of JOBS funds for activities and services that are "not otherwise available on a non-reimbursable basis" fall into two categories. The first category, established at § 250.72(c), requires that providers under contract or agreement with a State IV–A agency maintain a level of service to AFDC applicants and recipients that is guaranteed to these individuals, regardless of the availability of JOBS funds. In this category, for example, we include the Job Training Partnership Act (JTPA) Program. Section 203(b)(3) of the JTPA provides that assistance under the JTPA program must be provided to AFDC recipients "on an equitable basis, taking into account their proportion of economically disadvantaged persons sixteen years of age or over in the area." Therefore, JOBS funds would be available for services and activities provided by JTPA only insofar as they exceeded the level required by this section of JTPA.

The second category is covered in the regulations at § 250.72(d), which requires that providers under contract or agreement with the State IV–A agency certify that the services being provided with JOBS funds are not services that would have been available to AFDC applicants or recipients under a program providing general services to the community, including AFDC recipients. An example would be the cost of a State GED program. In this instance, JOBS funds would be available for the costs of a GED program established for AFDC recipients specifically for the purposes of the JOBS program which is in addition to the GED programs provided to the general community. This would be the case as long as AFDC recipients remained eligible for the programs available to the general community and were served under those programs to at least the same extent as they had been prior to JOBS, not just in absolute terms but also in proportionate terms. For example, if a State doubled its overall GED program level, JOBS would not pay for additional GED slots until the number of AFDC recipients in non-reimbursable GED also doubled. However, special circumstances such as the need for more intensive training might warrant additional or separate JOBS funding without regard to the level of regular GED slots. The essential test is that JOBS funding not be used to supplant services which the State would otherwise provide through other arrangements and sources of funds.

Comment: One State mentioned that its job development and placement activities were provided by the State employment security agency which has been Federally-funded under the Wagner-Peyser Act. It further stated that funding under the Wagner-Peyser Act has decreased considerably. The State was concerned that the regulations at § 250.72(c) would preclude use of JOBS funds to offset Wagner-Peyser funding for State employment services.

Response: If funds under the Wagner-Peyser Act, or any other program, are insufficient, then JOBS funds may be used to fund additional activities and services that are necessary for JOBS participants, but only if AFDC recipients continue to receive their proportionate share of the other program's funds.

Comment: Two organizations suggested that the final regulations clearly state that activities not otherwise available on a non-reimbursable basis are eligible for JOBS reimbursement and that these activities

should be delineated in each State's JOBS and Supportive Services plans.

Response: Section 250.21 of the final regulations requires a State to identify in its State JOBS plans the extent to which services to be provided through JOBS: are available on a non-reimbursable basis; are provided by the State IV–A agency; and are to be purchased. The plan also requires that the State identify other services which are available and appropriate for JOBS participants based on its efforts to coordinate with other agencies.

Comment: One State asked for a clear description of "certification from the provider." Another State asserted that the requirement that certification from the provider or IV–A agency that the services provided are not otherwise available on a non-reimbursable basis was very burdensome because it would require a certification on every service provided.

Response: "Certification from the provider" is defined as a written assurance from the provider that such service or activity or such groups of services or activities are not available from the provider on a non-reimbursable basis for the period of the contract or agreement. We do not believe that a certification from a provider regarding services it provides on a non-reimbursable basis is onerous.

Comment: One State said that our interpretation of the phrase "not otherwise available on a non-reimbursable basis" in the contract authority section of the Act was erroneous. It indicated that the provision meant that States must not enter into contractual arrangements for services to JOBS participants if such services "would be available for referral and assignment of JOBS participants in the absence of such contractual arrangements and without reimbursable expenditure."

Response: From this comment, we understand that the State interpreted this requirement to mean that a State could only contract for services that the State itself was not already making available, without reimbursement, to AFDC recipients. We do not share this interpretation. In considering the requirement that a State not use JOBS funds to supplant non-Federal funds for existing JOBS-like services and activities, we believe it necessary that the non-supplantation requirement be extended to services and activities provided under contract since many of these services and activities will commonly be provided under contract. Therefore, the regulations at §§ 250.72 (c) and (d) provide that JOBS funds can only be used for services that the provider is not already required to provide AFDC recipients and for services that the provider has certified are not available to AFDC recipients on a non-reimbursable basis. In addition, the regulations at § 250.72(e) provides that a State, when providing services directly, must certify that such services are not otherwise available on a non-reimbursable basis.

Comment: Several commenters expressed confusion regarding the timeframe for establishing whether services and activities were not otherwise available on a non-reimbursable basis. Specifically, they asked whether this requirement pertained to services and activities currently available or available in past periods, particularly FY 1986.

Response: The regulatory provision regarding maintaining a level of expenditures for programs with the same purpose as the JOBS program refers to FY 1986; thus it requires retrospective consideration. The provision containing the requirement that a State not use JOBS funds for services and activities that are otherwise available on a non-reimbursable basis requires the State and its contractors to consider services and activities that are currently available to JOBS participants; thus it requires consideration of present conditions. We recognize that the proposed regulations on this issue were somewhat ambiguous. The regulations have been changed to clarify this point.

FY 86 Level of Expenditure

We recognize from the comments that some States were unsure whether they were required to maintain current levels of expenditures, or expenditures equal to the level of FY 1986. We want to be clear that the level of expenditures that a State must maintain each fiscal year for the JOBS program must at least equal State and local expenditures made in FY 1986 for programs with purposes similar to those of the JOBS program. It is this requirement that a State must meet in the form of total aggregate expenditures. This provision is retained at § 250.72(b).

In determining a State's FY 1986 level of expenditures for purposes of this requirement, a State must include State and local funds for title IV–A work programs and title IV–C (WIN and WIN Demo), including expenditures for those programs which were unmatched. A State must also include other State and local funds which were used for training, employment and education programs which had a defined purpose of preventing welfare dependency. For example, a specially-designed GED program for welfare or potential welfare recipients would be included. However, the overall costs of the State's GED program would not be included, even if some of the program's participants are AFDC recipients, since such programs do not generally have the defined purpose of preventing welfare dependency.

In determining the level of expenditures for those programs included in the FY 1986 base, the State must include expenditures for supportive services, including child care, provided to individuals in these programs. Amounts related to in-kind contributions, to the extent that in-kind contributions were used as the State share of expenditures for programs in FY 1986, must also be included.

Comment: Several States asked whether in calculating the FY 1986 level of expenditures, they were required to include only State and local IV–A expenditures, or also expenditures made by other State or local agencies.

Response: For purposes of the maintenance of effort requirement, the State must include in the calculation other expenditures in addition to title IV–A expenditures. The Act requires that a State maintain FY 1986 expenditures that were made for the purpose of Part F. The purpose of Part F is "to assure that needy families with children obtain the education, training, and employment that will help them avoid long-term welfare dependence." The reference, therefore, is to a general list of activities and services, and there is no restriction to activities and services under only title IV–A.

Comment: Several commenters have suggested that the proposed regulations indicated that States had to base the FY 1986 maintenance of effort requirement on expenditures associated with separate component activities and services. They suggested that States should be required to maintain spending at the FY 1986 level based on total aggregate expenditures.

Response: Although the proposed regulations did not specifically address this issue, it was our intent that total aggregate costs be used to determine that a State had maintained its FY 1986 level of effort. This approach makes allowance for adjustments a State has made in spending for various activities and services since FY 86. We have included a provision regarding this issue in the regulations at § 250.72(b).

Comment: One State indicated that adult education agencies and other service providers do not determine whether persons who receive their services are AFDC applicants or recipients. The State would, therefore,

not have information available to determine the FY 1986 level of expenditures.

Response: The final regulations clarify which expenditures constitute a State's FY 1986 level of effort. As a result, we believe that the State will have the ability to identify those expenditures made for programs that are included for purposes of this requirement.

Matching Rates (§ 250.73 of the Final Regulations)

JOBS program activities are subject to three different rates of FFP.

Cost Matched at 90 Percent

The FFP rate for that part of a State's total JOBS funds that equals the State's WIN or WIN Demonstration allotment for FY 1987 is 90 percent. This rate may be applied toward any allowable cost of the JOBS program. A State's 10 percent share may be in the form of cash or in the form of in-kind contributions. Section 403(l)(1)(B) of the Act does not provide a definition of "in-kind"; it states only that it be fairly evaluated. Therefore, in order to provide flexibility in this area, we are permitting a State's share of in-kind to be State in-kind or third party in-kind contributions. This has been the practice for the WIN program and we are incorporating this practice in the JOBS program, but only for this portion of the funding for JOBS.

Comment: Several commenters asked if there were any restrictions for claiming JOBS costs at 90 percent.

Response: A State may claim Federal reimbursement at 90 percent for any allowable JOBS costs. In addition, expenditures at 90 percent need not be claimed at the beginning of the fiscal year. The State can designate costs to be matched at 90 percent throughout the fiscal year.

Costs Matched at the FMAP Rate with a 60 Percent Floor

Federal matching under the JOBS program is also available at a State's Medicaid matching rate (the FMAP) for certain costs of the program that exceed a State's WIN or WIN Demonstration allotment. For the purposes of the JOBS program, the minimum matching rate is 60 percent. We shall refer to this matching rate as the "higher rate" in the following discussion.

Costs eligible for matching at the higher rate are: (1) the personnel costs of full-time staff working full-time in any capacity in the JOBS program, and (2) all direct costs associated with providing JOBS program services to individuals, including assessment, development of the employability plan, case management, and JOBS component activities. These costs include salaries and benefits of employees for the time and effort devoted specifically to these activities, whether they work on a full-time basis or not. In addition, costs of materials acquired or expended specifically for these activities, space, and other costs directly associated with the provision of these services are matched at the higher rate. For example, if a State contracts for a job club, the costs of staff, telephones used by participants, and the room used for the job club are matchable at the higher rate. Indirect costs are not matchable at this rate.

The definitions of "direct" and "indirect" costs are those definitions which are included in OMB Circular A-87, "Cost Principles for State and Local Governments." The term "full-time staff working in any capacity in the JOBS program" is defined as those individuals working a normal work week as defined by the State and who are working in the JOBS program only. A normal work week, however, cannot be based on a full-time equivalency measure.

The assessment of child care needs and referral to appropriate services for JOBS participants can be matched at the higher rate when these activities are provided as part of a JOBS assessment, development of an employability plan, or case management. Alternatively, these activities are available for match as child care administrative expenditures under title IV-A with an FFP rate of 50 percent.

Costs Matched at 50 Percent

Costs eligible for match at 50 percent are costs associated with the general administration of the JOBS program. In this category, we include: indirect personnel costs which are excluded from JOBS matching at the higher rate. Non-personal services costs associated with these indirect personnel costs are also matchable at 50 percent. These costs include space, travel, utilities, equipment, and supplies. Also matched at the 50 percent rate are: the costs of such items as JOBS program planning, monitoring, letting contracts, systems, title IV-F fair hearing activities, and other indirect costs of providing JOBS services and activities.

In addition, transportation, work-related expenses, and work-related supportive services are also available for match under the JOBS program at 50 percent. The requirements regarding these supportive services are at Part 255.

As a result of the clarification of policy regarding application of the different matching rates to program expenditures, it will not be necessary to distinguish between types of costs in most contracts for the direct provision of JOBS services and activities to individuals. However, contracts which, for example, provide multiple services and activities, to the extent that they involve significant indirect costs, could continue to be subject to segregation of costs. For example, if a State IV-A agency contracts with a single provider to deliver several components, administrative costs not directly related to the delivery of services, such as the salary of the head of the agency, would have to be segregated. In addition, contracts for general administrative functions, e.g. payroll and accounting, would be at the 50 percent match rate. This is an area we expect to monitor closely, and should it be necessary, we will revise the regulations accordingly.

Comment: Many commenters asked that the higher rate be applicable for the costs of part-time staff involved in any capacity of the JOBS program.

Response: Section 403(l)(1)(A)(ii)(I) of the Act clearly stipulates that the higher rate applies to full-time staff employed in the operation of the JOBS program. Given this language, we conclude that the costs of part-time staff can be matched at the higher rate for the time they spend on the actual provision of activities and services, but that time spent on activities not matchable at the higher rate must be matched at 50 percent. For example, if an individual's work week is 20 hours, and she spends 10 hours running a job club and 10 hours doing administrative work, the 10 hours on job club is matched at the higher rate, but the rest is matched at 50 percent. However, the final regulations significantly increase the activities for which the higher rate applies so that all of a part-time individual's activities might be matchable at the higher rate.

Comment: Many commenters stated that activities such as assessment and case management should be available for match at the higher rate. Other commenters suggested that orientation activities be matched at the higher rate.

Response: The regulations now provide that this rate applies to the costs of assessment and case management activities. Costs of orientation can also be matched at the higher rate. As an alternative, costs of orientation can be matched as title IV-A expenditures, if provided by IV-A staff, as described in § 250.77.

Comment: Several commenters stated that any social service provided to remove barriers to participating in JOBS, such as assistance with housing, health and family problems and the costs of alcohol and drug abuse rehabilitation,

should be available for match at the higher rate.

Response: The services described in the comment are supportive services, matchable at 50 percent. Alcohol and drug abuse rehabilitation may be considered as supportive services, if the State so provides in its Supportive Services plan.

Use of JOBS funds for supportive services should be related to assisting the individual to participate in JOBS or to accept employment. As such, we believe that it is appropriate for JOBS staff to make referrals to appropriate providers for such needs as housing, health, and for family problems.

JOBS funds can be used for remedial medical services necessary for an individual to participate in a JOBS component or to accept employment. An item in this category might be a pair of glasses. However, JOBS funds for this supportive service would only be available if funding from other sources, such as Medicaid, were not available.

Comment: One State asked whether JOBS funds could be used for programs designed to serve at-risk youth, i.e., younger recipients, who are not young parents, and are not eligible for participation in the JOBS program. The State also suggested that matching for such programs should be at the higher rate.

Response: Programs designed to serve at-risk youth may be matched as supportive services under the JOBS program. Expenditures for these programs can therefore be matched only at 50 percent. In order to be matched, such programs must be included in a State's Supportive Services plan and must be designed to include activities and services which assist the family in achieving self-sufficiency and enable these children to avoid welfare dependency in their adult years.

Comment: One State asked if the costs of a first-line supervisor supervising staff directly involved in both the JOBS program and the Food Stamps employment and training program are available for match at the higher percent.

Response: The distinction regarding first-line supervisors has been deleted from the final regulations. If a supervisor is directly involved with an activity for which the higher rate is applicable, then that part of her time associated with this activity is available for match at this rate. However, the costs of that part of her time that is associated with the Food Stamps employment and training program cannot be claimed under the JOBS program.

Comment: One State mentioned that it was not clear whether a State would be able to claim the higher match rate for full-time staff who are engaged in JOBS activities for only part of the time.

Response: If full-time staff are involved in non-JOBS activities in addition to JOBS activities, the higher rate is only available for that part of their time spent on activities matchable at the higher rate.

Other Matching Issues

A State's share of costs available for match at the higher rate or at 50 percent must be in cash. In-kind contributions, whether State in-kind or third party in-kind, cannot be used as the State's share.

State agencies are encouraged to seek financial support from private sources to develop and enhance JOBS program activities and other activities which help individuals to become self-sufficient. Funds donated from private sources for the JOBS program may be considered as a portion of a State's share of matching costs, a policy consistent with the use of such funds for the AFDC program. The conditions under which donated funds may be used as the State's share are set forth at § 235.66(b) and G–4000 of Part 5 of the Handbook of Public Assistance Administration. Thus, § 250.73(d)(2) provides that donated funds may be used for State match if such funds are transferred to the State IV–A agency and are under its administrative control, are donated without any restriction which would require use for a particular individual in the JOBS program or for a particular facility or institution involved in the JOBS program, and do not revert to the donor's facility or use. Donated funds may be used as the State share of JOBS expenditures for any of the three FFP rates.

Comment: Can JOBS funds be used to match the costs of services or activities provided to a JOBS participant after she is no longer an AFDC recipient, either because she has found unsubsidized employment or for other reasons? This question pertains to those activities or services other than those included in the child care or Medicaid transition benefit.

Response: If included in a State's JOBS and Supportive Services plans, the State may provide case management and supportive services for up to 90 days after a participant loses eligibility for AFDC. For JOBS component activities, if an individual loses AFDC eligibility after funds have been obligated or expended for such activities, FFP is available, regardless of the length of the activity. For example, if an individual is already participating in a course of vocational education which has been paid for, and the individual loses AFDC eligibility before the activity ends, then she may complete the course. Language incorporating this policy has been added at § 250.73(e).

Comment: Two States asked that the regulations provide flexibility in permitting States to use State funds not under the administrative control of the IV–A agency but used for purposes of the JOBS program as part of the State's share of JOBS expenditures for matching purposes.

Response: We have included requirements at § 250.73(d)(1) for the use of public funds as the State share of match under the JOBS program. The State IV–A agency must have administrative control of such funds in order to request Federal matching, in order to satisfy the single State agency requirement at § 250.10.

Comment: Several commenters expressed concern regarding the requirement that contractors and vendors segregate costs according to different matching rates. One commenter noted that segregating costs was not compatible with performance-based contracting, which makes payments to contractors based on outcomes, such as job placements.

Response: Changes in the final regulations regarding matching rates will, for the most part, eliminate the need for segregation of costs in contracts. Contracts which include costs not matchable at the higher rate will require cost segregation. The State may use performance-based contracts which include such costs, if the State, in calculating the unit cost, estimates the percentage of costs matchable at each rate.

Comment: One State asked whether, if title IV–F funding is used for systems interface, such funds would be subject to the JOBS cap under title IV–F?

Response: Section 250.81 provides that the costs for interfacing with an existing or planned title IV–A system are matchable under title IV–A. However, a State may choose to use title IV–F funds for this purpose, subject to the State's limit of entitlement.

Comment: One State mentioned that related Federal programs are based on a forward funding policy whereby the allocation amount is available to local planners during the planning process and that a similar process for the JOBS program would be helpful in coordinating the planning of these programs.

Response: The basis for forward funding in other Federal programs, such as JTPA, is statutory. The Statute does not include such a provision for the JOBS program.

Although funding under the JOBS program is available only from the quarter the State implements the program, provided the State JOBS plan and Supportive Services plan have been approved, funding for planning for the JOBS program is available as an AFDC administrative cost matchable at 50 percent.

Comment: One State mentioned that the three matching rates for the JOBS program were administratively burdensome and that there should be an alternative of one matching rate.

Response: The three matching rates applicable in the JOBS program are specifically provided for in the Act.

Reduced Matching Rate (§ 250.74 of the Final Regulations)

Target Groups

For the JOBS program, the Act provides certain safeguards to assure that the increased Federal funding intended to assist individuals in avoiding long-term dependency is directed largely towards those individuals who are most in need of assistance. The regulations at § 250.74(a) provides that if, in any fiscal year, a State fails to expend 55 percent of its JOBS expenditures on members of the State's target population as defined in § 250.1, the Federal matching rate for all JOBS expenditures for that same year will be reduced to 50 percent. The Secretary, however, may waive this reduction if a State can satisfactorily demonstrate that the characteristics of the caseload in that State make it infeasible to meet the requirements of the regulations at § 250.74(a) and that the State is targeting other long-term or potential long-term recipients.

Comment: One commenter asked when a State would be required to demonstrate that the characteristics of its caseload make it infeasible to meet this requirement and target other long-term or potential long-term recipients.

Response: A State must include in its JOBS State plan, or in an amendment to the plan, its reasons for concluding that the characteristics of its caseload make it infeasible to meet the requirement, and must identify at the same time other long-term or potential long-term groups which it plans to target.

Comment: One State said that there was no indication in the regulations about how the reduction for failure to spend 55 percent of JOBS expenditures on the target population would be taken. It recommended that the reduction be a prospective reduction.

Response: Section 403(l)(2)(A) of the Act provides that the penalty for failure to meet this requirement, i.e., the reduction to 50 percent, is applied to the year that the State fails to meet the requirement. The language is clearly different from the language regarding the participation rate penalty which specifically states that the penalty is to be applied prospectively.

Comment: One State asked whether the data collection requirements for determining if a State had spent 55 percent of JOBS expenditures on the target population could be waived if the State did not seek funding at the enhanced levels.

Response: In principle, we have no objection to waiving data collection requirements related to meeting the targeting standards where a State waives its entitlement to the higher matching rates. However, the same data are needed to meet some of the uniform data collection requirements contained in sections 203 and 606 of the Family Support Act. These sections do not specifically include the requirement for reduced funding if a State fails to spend 55 percent of its JOBS expenditures on the target population, but they do require data on the average amount spent per family in each JOBS component. Thus, a State would have to meet these latter data collection requirements even if it did not seek funding for JOBS at enhanced rates.

Comment: One State suggested that administrative costs not be included in the 55 percent target requirement.

Response: Section 403(l)(2) of the Act requires a State to spend 55 percent of its title IV–F expenditures on the target population in order to qualify for FFP at the rates specified in section 403(l)(1) of the Act. We have interpreted this to mean all JOBS expenditures because no category of costs was excepted. The regulations reflect this position.

Comment: One State suggested that if an individual is in a target group any time within the fiscal year but is moved out of the group within the fiscal year, the State should be allowed to count the individual as a participant in the target group for the entire year.

Response: A participant's target group status is established at the time of the initial assessment. Therefore, JOBS funds expended on behalf of this participant while she remains an AFDC recipient are counted as target group expenditures. A State may reassess target group status periodically as an individual may acquire target group status over time.

Participation Rates

Section 403(l)(3)(A) of the Act establishes participation rates that a State must meet for fiscal years 1990 through 1995 in order to qualify for enhanced matching rates. The term "participation" is defined in the regulations at § 250.78, and § 250.74 contains the formula for calculating participation rates.

The participation rate for FY 1990 is 7 percent; however, a State is not subject to a reduction in the Federal matching rate for FY 1990. FY 1992 is the first year in which a State will be liable for reduction of FFP for failure to meet the participation rates (for FY 1991.) Failure to meet a State's participation rate for a fiscal year will result in a reduction of its matching rate to 50 percent in the subsequent fiscal year.

The Secretary may waive in full or in part any penalties applicable to a State for not meeting these participation rates. The regulations at § 250.74(b)(5) provide the conditions under which such a waiver may be granted.

Comment: Several commenters asked whether certain groups of participants would be deemed not required to participate and, therefore, not included in the calculation. The groups suggested were: those in a political subdivision in which the program is not offered; those who are exempted based on remoteness; and those who have "good cause" not to participate.

Response: We have amended the final regulations to clarify that the calculation of participation rates will exclude: (1) a person who is exempt, including for remoteness, (2) a person living in a political subdivision in which there is no JOBS program, and (3) a person determined by the State to have "good cause" not to participate, for each month in which the "good cause" finding pertains.

Comment: Another group of commenters suggested that it would unfairly penalize a State if the calculation were to include those who cannot participate because the State determines that it has insufficient resources.

Response: We interpret the term "insufficient resources" as used by the commenters to mean that the State IV–A agency does not have adequate State funds to match available federal resources, and we disagree with this suggested change for the following reason. We believe that participation rates that only require 20 percent of the mandatory population to participate by FY 1994 already consider lack of State resources. Furthermore, the Statute provides specific relief from meeting this requirement in section 403(l)(3)(E) of the Act.

Comment: Another group of commenters suggested that we exclude

from the calculation those for whom the State cannot guarantee child care.

Response: Section 402(a)(19)(B)(i)(I) of the Act provides that the State must guarantee child care if it requires an individual to participate. If it cannot guarantee child care, then the individual cannot be required to participate and is not counted in the calculation. The determination that a State cannot guarantee child care must be made on an individual basis for each participant.

Comment: Several commenters asked how the calculation would treat participants entering or leaving a component in mid-month.

Response: The definition of participation at § 250.79 and the minimally required data elements at § 250.82 have been amended to include the date of assignment to a component. We have not specified a methodology for counting activity that does not occur throughout a calendar month. We will include the methodology in an Action Transmittal.

Comment: Several commenters approved of the proposal that persons sanctioned from a component be excluded from the calculation. Conversely, other commenters suggested that a State be allowed to include such persons. They argued that the issue in any sanction is participation, that sanctions are never undertaken lightly, and that they represent a high level of agency investment in maintaining the integrity of the program and the agreements between the program and the participants.

Response: We do not agree that sanctioned individuals should be counted as participants. We agree that sanction activity tends to involve significant staff time and effort. A fair and effective sanctions system is important to the integrity of a program. However, sanction activity is not participation. The regulations continues to provide that a sanctioned person will not be included in the participation calculation for the month she is sanctioned and any subsequent months she is under sanction.

Comment: Several commenters suggested that the Department's methodology for the participation rate calculation be made available to the States, including indication of how automated records are sorted, the number of records received, and the reason(s) for our exclusion of any records.

Response: We intend to involve a joint State/Federal work group in the precise working out of the calculation. The procedures and definitions resulting from that effort will be issued in Action Transmittals.

Comment: One State said that measuring participation rates rather than program outcomes defied the intent of the Family Support Act.

Response: The Act specified the applicable participation rates for several fiscal years, the methodology for determining a State's ability to meet them, and the penalty to be assessed for failure to meet the applicable participation rate. The regulations restate these provisions.

AFDC–UP Participation Rates

Participation rates for the AFDC–Unemployed Parent (AFDC–UP) program have also been established by the Act and appear in the regulations at § 250.74(c)(1). AFDC–UP participation rate requirements go into effect in FY 1994, and the first penalty would be imposed in FY 1995.

While the statutory language refers to waiving the penalty for not meeting the participation rates, and sets the waiver criteria, the actual penalty is not defined in the Act. We believe it is appropriate that the penalty for failure to meet the AFDC–UP participation rates be a reduction to 50 percent in FFP. This penalty is identical to the penalty established in the Act for failure to meet the general participation rates. It is also consistent with the penalty established for failure to expend 55 percent of JOBS funds on targeted groups.

As an alternative, we considered applying the penalties cited under section 404 of the Social Security Act for failure to substantially comply with the provisions of section 402(a) of the Social Security Act. The appropriate penalties under this section include the withholding of all AFDC grant funds to a State or the withholding of certain funds limited to specific categories. However, we concluded that these penalties would be too harsh.

The Secretary may waive in full or in part any penalties applied to a State for not meeting the participation rates for the AFDC–UP program. The regulations at § 250.74(c)(3) provide the conditions under which a full or partial waiver may be granted.

Comment: One organization noted that section 403(1)(4)(D) of the Act provides for waiver of the penalty for failure to meet the applicable AFDC–UP participation standards if the State submits a proposal which is likely to achieve the required percentage of participants for the subsequent fiscal years. The commenter asked why the proposed regulations at § 250.74(c)(3)(iii), on the other hand, specified that the proposal must be for both the current and subsequent fiscal years.

Response: The penalty for failing to meet a particular participation rate is enforced prospectively, i.e., it results in reducing a State's match to 50 percent for the year following the year for which the rate is not met. The "following year" is what we interpret the term "current fiscal year" to mean because a decision regarding participation rates is only made after the end of a fiscal year. For the regular participation rate waivers, section 403(1)(3)(E) of the Act provides that a proposal in support of a waiver request must contain a plan to achieve the applicable participate rate "for the current fiscal year and the subsequent fiscal years * * *" In the "current fiscal year" the State is already subject to a requirement that it meet a higher participation rate for unemployed parents, so it is appropriate that a plan to meet the higher rates should cover not only subsequent years but also the year in which the State submits the proposal. Otherwise, the State may also fail to meet the requirement for the "current fiscal year" and thus be subject to new penalties. Thus, although the language of the Family Support Act did not include the term "current fiscal year" for the AFDC–UP program, we believe that it is correct to do so.

Activities Excluded from FFP (§ 250.75 of the Final Regulations)

There are certain activities for which Federal matching under the JOBS program is not available under any circumstance. These are identified in the regulations at § 250.75. In addition, there are certain costs unallowable for FFP that apply only to the community work experience program and alternative work experience programs included in an approved JOBS plan. The regulations at § 250.63(j) detail these prohibitions.

Union Dues

Comment: One commenter asked about the availability of FFP for union dues.

Response: Union dues may be matched as a JOBS supportive service if an individual, as a condition of her acceptance of unsubsidized employment, is required to pay such dues and if union dues are identified in a State's Supportive Services plan as allowable.

Self-initiated Education and Training

Comment: The regulations at § 250.75 provides that the costs of self-initiated education or training activities, specifically tuition, books, fees, room and board, are not available for Federal reimbursement. One State suggested that the Family Support Act only meant

for this prohibition to apply to tuition, but that FFP would be available for books, fees, room and board under JOBS, either as a component activity or a supportive service.

Response: Section 402(a)(19)(F)(iii) of the Act prohibits "the costs of such school or training * * * " We believe it reasonable to include tuition, books, fees, room and board in the definition of such "costs." Therefore, FFP is not available for the costs of these items for those individuals in approved self-initiated programs. Individuals in these programs, however, are eligible for child care, transportation, and other supportive services.

Comment: One State asked if FFP would be available for the costs of school or training for an individual in a self-initiated program for subsequent periods of enrollment, such as the next semester.

Response: We have reviewed the language of the Act and have determined that there is no flexibility regarding this issue. It does not provide for FFP for these costs at any time.

Comment: Several commenters recommended that the costs of self-initiated education or training be considered AFDC special needs and, therefore, be reimbursable under the AFDC program.

Response: The Family Support Act provides that such costs are not Federally reimbursable for purposes of section 403 of the Social Security Act. Section 403 contains the requirements for payments to States not just for the JOBS program, but for the entire AFDC program. Therefore, Federal reimbursement for these costs as AFDC special needs is also prohibited.

Comment: One State was concerned that the prohibition for Federal reimbursement for education and training activities under § 250.75 pertained to all JOBS participants enrolled in any education or training activity.

Response: The prohibition at § 250.75(a) pertains only to the costs of education and training for individuals in self-initiated programs. JOBS component activities may include education and training for which Federal reimbursement is available provided all other requirements of the program are met, e.g., that the educational activity is not already available on a non-reimbursable basis.

Comment: One State maintained that FFP for child care licensing fees for individuals in a child care related self-initiated training program should be available as a supportive service.

Response: Such a fee constitutes a one-time work related expense necessary for accepting employment and therefore would be allowable as a supportive service under the JOBS program. However, we remind States that FFP is not generally allowable for child care licensing either under title IV–F or title IV–A as a child care administrative expenditure.

Construction

Comment: One State asked if the prohibition of FFP for construction included remodeling work. If so, it indicated that this would impose a hardship on States where building modifications are necessary to accommodate the increase in JOBS participants and increase in activities.

Response: The prohibition on construction does not pertain to costs for remodeling, rearranging, or altering facilities in order to make the area more appropriate for JOBS. However, under the provisions of OMB Circular A–87, Attachment B, Item C.2.c, "Rearrangements and alterations," such costs require approval of the Family Support Administration. OMB Circular A–87 is made applicable to the JOBS program under the regulations at 45 CFR 92.22.

Comment: One organization believed that the prohibition on the use of JOBS funds for construction extended to the costs of tools, equipment and materials used in training for construction trades jobs.

Response: JOBS funds may be used for expenses associated with a JOBS training activity. This provision prohibits the building of facilities only.

Financial Reports, Records, Statements and Audits (§ 250.76 of the Final Regulations)

Grants provided under the JOBS program of title IV–F are subject to the grant management regulations at Part 92. These regulations apply to federally-assisted programs that are not funded as open-ended entitlement programs, such as the AFDC program. (For the AFDC program, the grant regulations at Part 74 continue to apply.) The following provisions of Part 74 also apply to grants subject to Part 92: §§ 74.62(a), 74.173, 74.174(b), 74.304, 74.710, and 74.715.

In addition, all claims for Federal reimbursement must be supported by appropriate documentation. JOBS funds under title IV–F are subject to audit and financial and programmatic review. Claims for improper costs under the JOBS program will be subject to disallowance. Disallowance procedures for JOBS funds will be similar to the disallowance procedures for the AFDC program. States are reminded that expenditures of the JOBS program are also subject to other HHS regulations, such as those at 45 CFR Part 95 and Part 16.

Costs Matchable as AFDC Payments (§ 250.77 of the Final Regulations)

Supplemental Payments to Avoid Net Loss of Cash Income

The Family Support Act specifies that costs incurred by the State for supplemental payments to families so that they do not experience a net loss of cash income, pursuant to § 250.35, shall be treated as title IV–A costs. However, they are not considered AFDC benefit payments for any purpose.

Payments to Employers Under the Work Supplementation Component

Payments to employers in the work supplementation program include part or all of an AFDC grant that has been diverted to cover part of the wages paid to an AFDC recipient participating in this program (see regulations at § 250.62(l)). Because these payments are AFDC benefit payments, they are available for Federal matching under the AFDC program.

Comment: One State noted that it currently made State-only supplemental payments to work supplementation program participants when the family would receive less disposable income than they would otherwise have received had they not participated in WSP. For example, a participant in WSP who is in retrospective budgeting has a permanent reduction in hours. Due to the time lag inherent in the retrospective budgeting system, a revised residual grant will not be issued until two months following the payment month. Therefore, a supplemental payment is also issued in the intervening months for the difference between the original residual and the revised residual. Would this supplemental payment now be eligible for FFP?

Response: The regulations at § 250.77(a) provides that supplemental AFDC payments can be made to a recipient's family so that the family does not experience a net loss of cash income from the recipient having been required by the State to accept a job. When such payments are made, a recipient may not claim good cause for not participating in the JOBS program.

The supplemental payments described by the commenter are of a different nature. They result from the State's application of the AFDC retrospective budgeting requirements. However, the regulations at § 250.62(g) permits a State to exempt from the retrospective requirements of Part 233 individuals who hold supplemented jobs. The State

should consider this option when determining AFDC payments to an individual participating in the work supplementation program.

Comment: For the unemployed parent program, this same State also issues supplemental payments in those cases where a principal earner, who is working more than 100 hours and whose wages normally exceed the maximum aid payment, is ill for one week and his wages drop below the maximum aid payment even though he continues to work more than 100 hours. Will these supplemental payments be eligible for match under the AFDC program?

Response: No. The current regulations at § 233.100 provide that an individual is eligible for AFDC–UP payments only if she is employed less than 100 hours a month. In the State's example, the supplemental payments would be made to an individual working more than 100 hours a month.

Comment: Several States indicated that they perceive some overlap between the activities of an AFDC eligibility or income maintenance worker in determining eligibility and informing a potential recipient or recipient of the requirements and opportunities under the JOBS program. They asked under what conditions FFP would be available under title IV–A for JOBS activities.

Response: We permit a State to claim under the AFDC program at 50 percent those costs related to JOBS orientation, determination of exemptions, and referral to the JOBS program when such activities are conducted by a title IV–A eligibility or income maintenance worker. The State may, of course, choose to claim these costs as title IV–F costs. However, when the activities of JOBS orientation and referral are conducted by JOBS staff, and not AFDC staff, these costs can only be claimed under title IV–F.

Definition of Participation for Enhanced FFP (§ 250.78 of the Final Regulations)

The NPRM included a definition of participation in § 250.1 that related only to participation requirements for qualifying for enhanced FFP under § 250.74(b). In the interest of avoiding any confusion with all other definitions of participation in this regulations, we have removed this material from § 250.1 and added a new § 250.78.

Participation Standard

Participation will be measured in terms of a 20 hour-per-week standard. However, we will not limit the number of individuals considered to be participating to those who are scheduled to participate in an activity for 20 or more hours per week. Instead, we will consider as participants the largest number of individuals whose combined and averaged weekly hours equal or exceed 20. This means, for example, that an individual who participates in an activity for 30 hours per week will balance either one individual who participates for ten hours (counting as two participants), or two individuals who participate for 15 hours each (counting as three participants). This does not mean that four individuals each participating for five hours per week would be counted as one participant.

In terms of the overall requirement, we provide the following example. In 1995, when the participation standard will be 20 percent, there might be 1,000 non-exempt individuals in areas of the State covered by the JOBS program. At least 200 individuals must be satisfactorily participating in a given month, and their scheduled hours of participation must average 20 hours per week. If this standard were met, additional individuals participating in JOBS would not adversely affect the overall participation rate computation, even if their scheduled hours resulted in an overall average of less than 20 hours per week.

Activities Considered in Determining Participation Rates

In determining participation rates, activity will be counted for the number of hours scheduled. Activity in all components listed in the State JOBS plan, with the exception of Job Development and Job Placement, will qualify. In addition, participation in assessment and employability plan development will be counted, but only in one month for each period on AFDC.

We intend to develop a method to allow counting of participation for a portion of a calendar month. However, we have not yet determined the methodology for counting activity that does not occur throughout a calendar month. We considered a number of options, including prorating such activity, or converting partial month activity to a weekly average. These and other options would entail additional recordkeeping and reporting requirements. We have not included a specific methodology in the final regulations, but we intend to do so in an Action Transmittal.

Job entries will also be counted, in the following manner. For the month in which the job entry occurs, an individual will be considered to be participating for the number of hours required by the job. Hours of work will then be added to scheduled hours of component activity, yielding an average weekly activity level for the individual. In addition, work in the following calendar month will also be counted. For either month, hours required by the job will be counted only to the extent the individual retains employment. Job entries will only be considered for those who were participating in a JOBS component, or receiving job development and job placement services during the month of the job entry, or the preceding calendar month.

Satisfactorily Participating

In setting the participation standard, we considered whether the 20 hour standard should be based on scheduled hours, or on hours of actual attendance. We have determined that for purposes of measuring participation rates, activity will be counted for the number of hours scheduled, if an individual has "satisfactorily participated." In determining whether an individual has satisfactorily participated, the State will apply the following standard: an individual who attends at least 75 percent of the scheduled hours of activity in a month will be counted for the number of hours scheduled; an individual who attends for less than 75 percent of scheduled hours will not be counted. This policy is included in the regulations at § 250.78(b)(5).

In establishing this policy, we considered many factors and weighed a number of options. Our primary goal was to reflect Congressional intent with regard to the participation rate requirement. At this point, the JOBS program does not require outcome measures or performance standards—the Statute requires the Department to recommend such standards by October, 1993. However, as a temporary measure of State performance, Congress did include the participation rate requirement, which expires after FY 1995. We continue to believe that Congress intended this interim participation measure to be meaningful, and therefore must go beyond mere assignment, and reflect actual participation in the assignment.

We were also concerned that measuring only assignments, rather than actual participation, would encourage States to emphasize assignment, with little monitoring of individual activity. There is some evidence from current work and training programs that where States do not monitor individual activity there is a significant no-show and drop-out rate. The JOBS program will be more likely to reduce dependency if individual participants actually attend component activity for which funds are

expended. The modest administrative costs should be more than offset by the improved effectiveness of the States' JOBS programs. In addition, States may be able to avoid situations where they are spending money to purchase slots for assignments which are then sporadically attended.

Further, we felt that States would choose to track individual activity for reasons other than the participation rate requirement. For example, attendance should be considered for purposes of determining whether an individual should be permitted to continue in an activity, or whether to continue to provide supportive services.

We were also concerned with the administrative burden on the State that tracking individual attendance for every participant would create, based on comment to the NPRM and discussions with State and local officials. We therefore did not set specific verification requirements, nor did we require that the State maintain a record of attendance for all participants. Instead, we require that attendance be verified for the cases sampled for purposes of the reporting requirements, as described in § 250.82 of the regulation. In practical terms, this means that States should require providers to maintain some record of attendance, in order to assure that individual participation will be credited in determining participation rates. However, records for all participants need not be kept by the IV–A agency. In addition, we will not require verification of attendance for individuals who enter employment. In order to receive credit for job entry, the State need only verify that an individual has remained employed until the end of the sample month.

We have purposely not included reference to excused absence, or good cause for failure to attend the assigned activity, in setting the 75 percent standard. While the States should consider such factors in providing continued services, and in determining whether an individual should be sanctioned, we believe that retaining records of excused or unexcused absence, or requiring providers to determine if good cause for failure to attend exists would be excessively burdensome.

For some component activities, providing attendance information will present no additional burden. For example, a participant assigned to attend high school will require no additional tracking, since attendance is regularly monitored. If such an individual case is sampled, the State would verify attendance with the school. However, for other activities, States will need to negotiate with providers so that attendance records are maintained. For example, attendance records are often not kept for adult education classes, since this type of activity is typically voluntary. Although some providers may not agree to such requirements, others will react positively because they will be supportive of efforts to reduce the drop-out rate. We have therefore concluded that the benefits of tracking attendance outweigh the burdens.

We considered a number of other options in establishing the policy of satisfactorily participating. For example, we considered crediting only actual hours of attendance. We rejected this option for two reasons. First, it would require verification of actual attendance for all participants. Second, it could result in including individuals who were clearly not participating satisfactorily as participants. For example, an individual who attended only 10 hours per week of an assignment that called for 40 hours attendance could have been included as a participant.

We also considered requiring a higher percentage of attendance, or factoring in excused absences, in setting the 75 percent level. We believe that the 75 percent level is a good compromise between an unreasonably high standard, such as 100 percent, and a low standard that would negate the concept of meaningful participation.

We also considered permitting States to define satisfactorily participating. We did not choose this option because it would provide incentives to set low standards, and would not lead to uniform measurement of participation. A State with a strict definition of satisfactorily participating might be disadvantaged, and comparisons of State participation rates would be misleading.

Comment: Many commenters suggested that intake activities such as assessment, employability development planning, and orientation should be included, since these often involve significant client activity, and represent a front-end investment in barrier identification that is central to the goal of reducing long-term dependency. Some commenters suggested that these intake activities count without regard to duration; some suggested limits of one or two months; one suggested that a credit of 3 hours per client be permitted, such that 7 clients would count for the equivalent of one week of participation.

Response: We have carefully considered the arguments made by commenters and have decided to modify our definition of participation. These activities will count for the purposes of calculating participation rates for the number of hours of the activity. However, because these are preliminary activities which lead to component participation, we will allow them to be counted for an individual in only one month for each period on AFDC.

Comment: Several commenters suggested inclusion of all component activities. This included counting Job Development and Placement, and removing the "full-time" requirement for OJT and Work Supplementation. The reasons offered included the complexity of tracking different hours requirements for different components. The full-time requirement for OJT and Work Supplementation might induce a State to not make a part-time assignment because of the hours requirement for participation.

Response: The final regulations remove the differing hours requirements among the various components, but we have not included job development and job placement in the participation calculation. We continue to believe that job development and placement is primarily an agency activity. Many commenters who wanted it counted as participation described activities that more properly fit under individual or group job search, one of the optional components. Such activities would count as participation if the State has individual and group job search as one of its optional components. However, entry to employment from job development and job placement counts as participation, as described § 250.78.

Comment: Many commenters suggested that the 20 hours per week requirement is unreasonable and unworkable since most component activities are not designed for that standard. Commenters suggested that a State would increase the cost of a component to raise it to the level of 20 hours instead of, say 16, thereby wasting training and child care resources. Other commenters suggested that States would feel compelled to assign "filler" activity to meet the 20 hours requirement, and that such assignments would similarly waste training, child care and transportation costs. Several commenters suggested that if an hours requirement were retained, it rely either on the Unemployed Parent requirement of 16 hours per week already in the Act, or on the Food Stamp requirement of 12 hours per month.

Response: We have amended the regulations to provide for the combining and averaging of the hours of those scheduled to participate. This provision will provide States with substantially greater flexibility, while assuring that States provide meaningful activities for

reducing long-term welfare dependency. The clear guidance of the legislative history is that participation should be significant and not be permitted to become a token effort.

Comment: Several commenters suggested that the difficulty of tracking actual attendance in lieu of hours scheduled would be both costly and a poor use of staff time.

Response: It was never our intention to require States to track actual attendance hours. Therefore, we have clarified the regulations to indicate that we will count hours scheduled as long as the individual is satisfactorily participating in the activity; however, States are required to verify attendance for cases in the sample, as described in § 250.80.

Comment: Several commenters suggested that in lieu of counting only those clients whose participation in a month was equivalent to 20 hours per week, we permit all participation in qualifying activity to be averaged to either the same 20 hour standard (one commenter) or to some lesser hour requirement (two other commenters).

Response: We are persuaded that a combined and averaging approach would provide States with greater flexibility in working with the broad range of recipients within their caseloads. We have, therefore, kept the 20 hours per week standard, amended as follows: at least the required percentage of the participants must average 20 hours per week of scheduled activity for the month. For example, for each person scheduled for 40 hours per week, the State could count an additional 5 persons who each had been scheduled for 16 hours per week, or an additional 2 persons who each had been scheduled for 10 hours per week. However, in no case can an individual with no hours of participation count as a participant because the Statute specifically prohibits counting mere registration as participation.

Comment: Several commenters suggested that we include activity in certain supportive services, particularly those related to drug and alcohol abuse and mental health services, in the definition of participation.

Response: We carefully considered this possibility for the NPRM. Although such services may be important in allowing certain individuals to become prepared to participate, we have not amended the regulations to include those receiving supportive services such as drug and alcohol abuse remediation, but not otherwise participating in a JOBS activity, in calculating participation rates. We do not believe that Congress intended such services to constitute participation, since they are not mentioned in the Statute.

Comment: Several commenters suggested counting certain kinds of time that were not direct participation in a component as part of the hours requirement. Among these were transportation time, including time to transport children to and from child care.

Response: While we agree that time spent on a daily basis in commuting is necessary, it is not participation, just as commuting to and from work is not work.

Comment: Several commenters suggested counting educational activities on a year-round basis, or counting semester or quarter breaks, or counting summers even though courses were not being taken during the summer. Several commenters suggested providing for a "homework" allowance in addition to the actual scheduled hours in an educational component.

Response: We have amended the regulations to provide that educational activities count for the amount of time scheduled, without regard to the "making satisfactory progress" standard. We do not include a "homework" time allowance. While we recognize that some educational programs do assign homework, it would be too difficult to account for this administratively since there are so many different types of educational activities.

We do believe that scheduled breaks during the school year, including time between semesters, should be counted as participation, and the regulations now provide that an individual in an educational activity will be considered to be participating for her scheduled hours during scheduled breaks within the school year. We have also provided that if an individual is enrolled and attending high school for the last semester of a school year and is expected to return to high school for the next school year, then she shall be counted as a participant for the break between school years. The average number of hours per week for the break between school years shall be the scheduled average weekly attendance level for the participant in the previous school year. We make a distinction between attendance at high school and other kinds of educational activities (particularly postsecondary education) because other educational activities are often offered during the summer allowing the participant to continue the process of becoming self-sufficient.

Comment: Several commenters suggested the inclusion of a credit for job entry, on the ground that exclusion of such a credit inappropriately de-emphasizes the goal of employment, and would induce a State to purposely defer job entry until the first of the succeeding month.

Response: We agree that certain job entries should be included in a State's count of participants. Therefore, we have amended the final regulations to count job entry from a component or activity either in the month participation in the component or activity ends or in the next calendar month. If the job entry occurs in the month component activity ends, we will average the scheduled hours of participation in the component for the portion of the month prior to job entry with the scheduled number of hours of employment for the remainder of the month. If job entry occurs in the subsequent month, we will count the average scheduled weekly hours of work as participation. For all job entries, we will count the average scheduled weekly hours of work for one additional month as participation. The final regulations provide participation credit for job entries from a component or through job development and job placement activities.

Comment: A few commenters suggested that participation credit be given for any recipient employed part-time, or employed more than 30 hours per week.

Response: We have not amended the regulations to accommodate this suggestion because the central issue is participation in the State's JOBS program. Job retention by AFDC recipients, whether part-time or full-time, is a desirable outcome, but the participation rate language of the Act does not contemplate the ongoing inclusion of persons no longer participating.

Comment: Some commenters suggested deleting all specific hours requirements, since they found no statutory basis for establishing such requirements.

Response: The Act provides, at section 403(l)(3)(D), that a State will establish requirements, "consistent with regulations of the Secretary." We continue to believe that it is well within the authority of the Secretary and the provisions of the Act for the regulations to define, in effect, an hours-based benchmark for significant participation. The fundamental basis for minimal standards is that the Secretary is required by the Act to allow or disallow enhanced FFP to States based on whether the participation rates established in the Act are met. We believe the absence of a federally set minimum would lead to non-comparable rates of participation among the States,

and to the inclusion of token activities as participation.

Comment: Several commenters suggested that the standard be based solely on each individual's employability plan.

Response: We continue to believe that participation should be significant, and that Congress so intended. We note in this regard the colloquy among Senators Dole, Bentsen and Moynihan (134 Cong. Rec. S7970–1) regarding congressional intent that participation in JOBS be meaningful. In the absence of a Federal standard, we believe that relying on the employability plan as the standard would allow States to include token activities as participation. Proposing disallowances on the basis of non-comparable data among the States is not evidently contemplated by the Act. Permitting a "least common denominator" definition of participation to emerge is not responsive to the congressional indication that participation be "significant."

Subpart I—Uniform Data Collection Requirements

Uniform Data Collection Requirements (§ 250.80 of the Final Regulations)

The Family Support Act imposes substantial reporting requirements related to the JOBS program and its attendant child care provisions. Section 487(b) of the Social Security Act contains a minimum set of uniform reporting requirements that may be augmented as the Secretary determines. Section 403(e) requires, among other data elements, that a State provide information on the use of child care by AFDC recipients.

Comment: Many commenters suggested that the reporting requirements were drastically expanded beyond the requirements of the Act creating excessive administrative burdens and diverting funds from provision of services to reporting.

Response: With the exception of data elements needed to determine if a State qualifies for enhanced FFP, commenters cited no particular data elements as being beyond the requirements of the Act. The final regulations contain some additional data elements and some changes to those initially proposed. Most of the required data elements are directly related to an explicit or implicit statutory requirement. The rationale for these is discussed below.

Implicit Data Requirements

Certain reporting requirements are implicit because enhanced FFP is based on meeting certain levels of participation and on spending at least 55 percent of the State's JOBS funds for specified target groups.

Comment: One commenter suggested that implicit reporting requirements to determine whether a State qualifies for enhanced FFP were beyond any provision of the Family Support Act.

Response: The language of section 487(b) expressly provides that the uniform reporting requirements may include "* * * such other matters as the Secretary may determine." We find reporting requirements implicit in the participation and target group provisions of the Act. We believe it would be unreasonable and infeasible to calculate a State's eligibility for enhanced FFP in the absence of data by which to make the percentage determinations required by the Act. We have not amended the regulations.

Required Reporting

The final regulations provide for three kinds of reporting. First, it requires that the State submit electronically on a monthly basis a sample of unaggregated case records of JOBS participants scheduled to participate in a component, actively engaged in assessment or employability planning, or who had a job entry in the sample month or the month previous to the sample month. The sample must include a minimal set of data as prescribed in § 250.82. The case records must be identified by a federally described, but State supplied, substitute for the Social Security Number. A State will be required to maintain in its files a link between the identifier and the Social Security Number.

The sample in a State must be of sufficient size to provide accurate data at the State level, plus or minus two percentage points for an 0.2 attribute, at a 95 percent confidence level. This results in a maximum sample size of 1,537 cases annually for a State with a large JOBS program.

Second, the State must submit aggregate reports on a quarterly basis of the number of non-exempt AFDC recipients in political subdivisions of the State in which JOBS is operated, plus any additional aggregate reports necessary to fulfill reporting requirements not met by the sample.

Third, in lieu of a cost tracking system that would identify all title IV–F funds spent on each individual member of the State's target population, a State may submit an annually updated table of average total unit cost per component. The total unit cost per component must include associated administrative and case management costs. The table must also include an aggregate unit cost for a precomponent activity (assessment and related testing, and employability development planning) that includes associated administrative and case management costs. The State's sample of unaggregated case record data will be used in conjunction with the State's table of costs to determine whether the State has met the 55 percent requirement. In the same way we will develop the amounts spent per family by component and activity, as required by section 487(b) of the Act.

Sample Reporting

We developed this approach as an alternative to requiring periodic aggregate, hard-copy reporting. We require this sample in lieu of aggregate reporting because it will enable States and the Department to meet statutory reporting requirements, provide more useful information to Congress and the Executive Branch of the Federal government, and be less burdensome to States.

The regulations provide that any State may submit 100 percent of its unaggregated case records, rather than develop a sample that would approach the universe in order to achieve the required levels of precision.

Comment: Several commenters suggested that too large a sample would be required to meet the proposed precision and confidence levels, and contended that the workload involved in the proposed JOBS sample would be far in excess of the value of the precision obtained.

Response: We agree and have amended the regulations to require a sample that will yield a precision of plus-or-minus 2 percent for an 0.2 attribute at a 95 percent level of confidence. We note that this change should reduce a State's requisite sample size by a factor of six. On review, we concluded that a precision of plus-or-minus one percent would provide a larger sample of case records than is necessary.

Comment: Several States commented that their smaller AFDC populations made the option of submitting the universe in lieu of a sample attractive, and they requested that the option be retained in the final regulations.

Response: The regulations clarify and retain the option.

Comment: A few States commented that electronic submission of data would be difficult without significant systems support and technical assistance. Several other States commented that this would present no problem, and that they appreciated the option.

Response: We are providing systems support as described in § 250.81. We

will be providing both technical assistance and technology transfers as the circumstances warrant.

Comment: Several States commented that they would prefer to send hard-copy data in tables of federally prescribed format, rather than unaggregated case record data. They expressed concern about loss of control of use of the data, how the Department could use the data for unspecified purposes, and how they believed unaggregated data contravened congressional intent. Several other States commented that the submission of unaggregated case record data freed them from the tedious complexities of compiling derivative data and assembling reports in federally prescribed formats.

Response: We continue to believe that an electronically drawn sample of unaggregated case record data, transmitted to the Department by disk, tape or data transmission greatly reduces the burden on the States to meet the Federal reporting requirements. In addition, the data will enable us to provide much greater information to Congress and the Executive Branch. We anticipate being significantly more responsive to governmental needs and to enhance public understanding of the program.

Outcomes Data

Comment: Numerous commenters favored the addition of outcome data to the case record requirements, while two commenters opposed their inclusion at this time. The comments in favor of outcomes expressed three broad sentiments. One was a perceived excessive emphasis on participation, which would drive program operations towards the meeting of quotas not necessarily related to outcomes connected to client self-sufficiency. A second was the general belief that outcomes should be reported, either because they will be better indicators of program impact, or because the States anticipate there will ultimately be federally required outcome data, and States should have the benefit of being able to include the basic data elements in their automated systems now. The third was a small group of States that went beyond the general suggestion, and submitted extensive suggestions of particular outcome measures.

Response: We have amended the regulations at § 250.82 to require certain outcome data concerning job entry. We include these data since employment as a means to self-sufficiency and independence from welfare is the objective of the JOBS program. We also understand States' concern that they be given sufficient indication at the program's inception to include outcome data in the design or modification of their automated systems, rather than face a future requirement for potentially costly and inconvenient systems modifications, and the possible necessity to reconstruct data on outcomes. However, we are not currently in a position to specify data elements that might relate to the performance standards specified in the Statute. Nevertheless, States are permitted to add data elements they deem appropriate for State functions as long as Federal data requirements are met.

Comment: Two commenters suggested that the potential for misinterpretation of outcomes data was so great that while the need was acknowledged, they argued for deferral. One State suggested deferral at least until Federal and State staffs can review and assess the results of the studies called for in section 203 of the Statute. Another State argued that gross outcomes would be inherently misleading, since the only meaningful measure of program impact is the amount of net impact from the program, as compared to the levels of outcomes that would have occurred without benefit of the program's interventions.

Response: We agree with the final comment and have decided to maintain the distinction between the tallying of outcomes—particularly gross outcomes, even when limited to those that follow directly from component participation—and the legislative mandate to develop performance standards and propose them to the appropriate committees of the Congress. Many of the suggested outcomes data were in fact proposals for performance measures rather than outcomes data. We will retain these suggestions for our later work on performance standards.

Comment: One commenter noted that the Statute, while requiring a good deal of specific data, is silent about any outcomes data requirement. Another commenter indicated that the Congress was fully aware of the extensive data reporting requirements that they placed in the Statute, yet suggested that were Congress to look favorably on any expansion of the specified data requirements, it would be in the area of outcomes.

Response: We have amended the regulations to require the inclusion of outcomes data related to job entry from or following participation, in the case record data. We have noted elsewhere that we will count the hours of work towards a State's participation rate if the job entry is directly from a component (including job development or job placement) or follows component participation by no more than 31 calendar days. To be consistent, we are restricting the tally of job entries that will be regarded as outcomes of the program. Persons who are assigned to JOBS but are never involved in a component by the State JOBS program and find jobs on their own will not be included in the tally of "JOBS outcomes."

State Data Systems Options (§ 250.81 of the Final Regulations)

Given the large number of individuals who may participate in the JOBS program and the detailed nature of the subcategories of data required by the Statute, we believe that it is unlikely that a State can either operate its program effectively or meet the minimum requirements in the Statute without an automated client-based information system. Therefore, § 250.81 permits various rates of FFP for different parts of the system needed to operate the JOBS program effectively. For the sake of distinguishing this system from all others in a State's welfare data system, we refer here and in the definitions in § 250.1, to a State's JOBS Automated System, or JAS.

All requirements at § 95.601 *et seq.*, and § 205.35 through § 250.38 must be met with regard to any funding for a State's JAS.

Comment: Numerous commenters were concerned that the NPRM was silent on any phase-in period, and that States might consequently be held responsible for a fully functioning JAS at the time the State converted to JOBS.

Response: We have amended the regulations to indicate that States will have a phase-in period available until at least October 1, 1991. We have developed and submitted to OMB for clearance interim hard-copy reporting forms to meet the minimum reporting requirements for determining eligibility for enhanced FFP, and for the requirements of section 487(b) and 403(e) of the Act. These reports will apply for FY 1990 and FY 1991 and may be extended if the situation warrants.

Title IV–F funding at 50 percent FFP is available for a State's JAS. Title IV–A funding, also at 50 percent FFP, is available for the interface between a State's IV–A system and its JAS, if the State's IV–A system is a non-FAMIS system. For the interface between a State's JAS and a FAMIS IV–A system, title IV–A FFP is available at 90 percent. A State may, of course, use the portion of its JOBS entitlement which is matched at 90% (the WIN or WIN Demo

share based on FY 1987) for systems development.

Comment: Several commenters suggested that the exclusion of a State's JAS from 90 percent title IV–A funding was arbitrary and an abuse of discretion. Others commented that the JAS was fully as worthy of enhanced (i.e., 90 percent) funding as other systems that had qualified in the past. One State indicated it could not afford to develop a JAS without benefit of 90 percent funding.

Response: After careful review of the law and legislative history, we have not amended the regulations regarding enhanced FFP for a State's JAS, as there is no statutory authority for it. Enhanced FAMIS matching is only available pursuant to sections 403(a)(3)(B) and 402(a)(30) of the Act to develop title IV–A systems. We have allowed FAMIS funding for new or revised systems when they have met the functional requirement of section 402(a)(30) of the Act, for systems "under this part." This part is part A. The JOBS program is contained in part F. There is no mention in that part or anywhere in the Statute of enhanced funding for JOBS systems. Congress has specifically authorized enhanced funding for systems in other programs, and dealt with enhanced funding for IV–D systems in the Family Support Act itself.

We define the interface of an automated JOBS program with the title IV–A FAMIS system, for verification of eligibility and reconciliation of data, to include planning, development and implementation of title IV–A sub-systems to: (1) manage information on eligibility factors or target group membership; (2) effect notifications and referrals including non-cooperation; (3) check records of applicants and recipients on a periodic basis with other agencies to verify continued eligibility; and (4) notify appropriate officials when a recipient ceases to be eligible.

Comment: One State commented that the definitions of the terms used to describe the interface needed clarification.

Response: We agree that much clarification and elaboration will be required, but we do not agree that this should be attempted in regulations. We have met and will continue to meet with State staff on the development of design specifications for both JAS and the JAS interface with a State's FAMIS or other IV–A system. The products of that work will be provided to the States in Action Transmittals and technical manuals.

Required Case Record Data (§ 250.82 of the Final Regulations)

This section contains the minimum requirements for the case record that will permit us to derive much of the data required by the Statute and the Act as described in § 250.80. We specify this minimum, in part, to support the proposed submission of a sample of unaggregated case record data. However, we believe this approach will also assist States to record some of the minimum data necessary to operate the JOBS program effectively. States may add additional data elements they deem appropriate for these purposes as long as the Federal requirements are met.

In addition to the inclusion of limited outcomes data described in § 250.80, we have amended the content of the minimally required data where, upon analysis, we found that data required by provisions of the Statute could not be derived from the data set as originally described. For instance, we had not originally included the date of birth of the youngest child; this has been added to enable capturing one of the target group populations specified in the Act. We have also added an identifier to indicate that the individual satisfactorily participated in the JOBS program, as described in § 250.78(b)(5). The case record data section has been renumbered; the new identifier is at § 250.82(b)(12).

Comment: A few States commented that it seems infeasible to record the data only for the sample of cases, since it would not be known in advance which cases would be in the sample. These States suggested that the data be recorded for all cases.

Response: We agree that it will not be known in advance which cases will be in the sample, and that data should be recorded for all cases. However, the determination that an individual has satisfactorily participated for participation rate purposes, in accordance with § 250.78(b)(5), cannot be made until the end of the month, since the number of hours of actual attendance will not be known until the end of the month. Therefore, a State may choose to collect this data only on sample cases.

Comment: A number of commenters suggested additions or clarifications to the items proposed. These suggestions included: the addition of a code for applicant status and the addition of a code for sanction.

Response: Applicant status was a separate element in the NPRM and is included in program status in the final regulations. We have removed several proposed fields and added fields in which to code the starting and ending dates for pre-component activity, component activity, and job entry. We have not included a data element for sanction since sanctioned individuals are not included in any calculation.

Comment: A few commenters suggested the addition of codes for various demographics.

Response: The regulations at § 250.82 require some demographic data to be coded as part of the case record data. We expect that any additional demographic data that from time to time may be required will be available from the IV–A data base if they are not part of a State's JOBS data base.

Comment: A few commenters requested clarification of whether the establishment of a literacy level, particularly through testing, was effectively required by the presence of a data element.

Response: We have clarified in the final regulations that testing is optional, but that where the State elects that option, the recording of the result in the case record is required.

Comment: Several commenters requested clarification of how to deal with persons entering a component in mid-month, and how to record persons scheduled for more than one component or activity at a time.

Response: We have amended the regulations to provide for the beginning and ending dates of participation in pre-component activity and components, which will allow for consideration of partial month participation. Once the methodology for computing credit for partial month participation is developed, it will be disseminated in an Action Transmittal.

Comment: Several States commented that both Federal and State interests in the JOBS program would be well served by State involvement in the development and refinement of the actual data element definitions and reporting instructions and manuals.

Response: We fully agree. We have initiated steps to form working groups both for design and content specifications for JAS modules, and for data element definitions and reporting instructions. We will also involve State staff in the design and specifications for electronic transfer of data from the States to the Department.

Child Care Reporting

We received a number of comments about the uniform reporting requirements for child care (found at § 255.6). We decided to answer them here because of the substantial overlap

between the JOBS and supportive services systems.

Comment: Two commenters requested clarification of specific child care data items, such as a definition of "length of time assisted." One suggested that "types" of family be defined to mean whether the family was receiving cash assistance or not.

Response: We do not believe it appropriate to specify the child care data reporting requirements in more detail under regulations. Because these requirements under the Statute are much less extensive and detailed than the JOBS requirements, we do not see the need for the same type of elaborate data collection system as is needed for meeting the JOBS requirements. Therefore, the regulations at Part 255 are much less detailed. Furthermore, the level of detail suggested by the commenters (i.e., in terms of precisely defining data elements) is more appropriate to include in reporting instructions, and we are taking these comments into consideration in developing instructions.

In specifying the types of families for which data will be collected, consistency with the JOBS reporting requirements and the potential burden on States will be primary considerations. However, by law, we must collect data that distinguish between recipients and non-recipients, as well as between those who have earnings and those who do not have earnings.

Comment: Two commenters wanted us to require States to report or document additional child care information, such as receipt of transitional benefits; reasons for non-receipt of child care or other services; dates when specific information was provided and specific services were received; numbers requesting or needing services; numbers not receiving services; number of children receiving care, by age of child and type of care; amounts spent by type; and methods used to provide care.

Response: We have amended the regulations at § 250.82 to include some of these data in the requirements for the JOBS case record. The additions include information on receipt of child care and other supportive services. The value of data on reason for non-receipt of care has been substantially reduced because of the changes to Part 255 regarding requirements to provide child care and supportive services. The Supportive Services plan will provide information on the methods used to provide services, and local market rates will provide information on costs for different types of child care.

Consistent with our approach under JOBS, and in the interest of limiting the reporting burden on States, we tried not to go substantially beyond the child care reporting requirements specified in the Statute. However, we did decide to add one additional item —"type of paid child care arrangements." This information will be especially helpful in showing how States are implementing the new child care provisions. The amendment is incorporated in § 255.6.

Comment: One State opposed the requirement for documentation of child care data in the case record because such data is not related to the AFDC budget. It argued that data sufficient to establish an audit trail should be sufficient.

Response: Information sufficient to establish an audit trail is required for financial purpqses. However, that information does not address the specific uniform reporting requirements at section 403(e) of the Act. Also, the argument of relationship to the AFDC budget is not relevant. Normally, child care assistance information would not be part the AFDC case record; rather, it would be part of the JOBS case record or separate IV–A records on child care.

Comment: Two States wanted us to delay reporting requirements. One suggested that individual-based data not be required immediately. Rather, it wanted States to be allowed to include in their Supportive Services plan a description of what data were available, together with its expectations about dates when all reporting requirements would be met.

Response: The Statute does not provide delayed effective dates for the reporting provisions. However, we recognize that many States will need time to set up automated systems which will be capable of providing detailed case record information. Therefore, we have developed interim reporting forms, based on specific statutory requirements, which will be in effect upon OMB approval until more elaborate systems can be put into place.

Comment: One commenter wanted us to specify that reporting of transitional child care assistance would cover only State contributions, and not recipient contributions.

Response: Assistance will be defined more specifically in the reporting instructions. Of course, our primary interest lies in child care assistance actually paid by the State IV–A agency. However, we also need information on recipient contributions paid directly to the State because such contributions could require adjustments to claims for Federal matching. Furthermore, as we indicate in our discussions about fee payment systems in the preamble to Part 256, the State must monitor and enforce contributions due directly to providers. If our experience with these requirements indicates that such data would be necessary for the proper administration of the program, requirements may be established in the future.

Subpart J—Operation of Jobs Programs by Indian Tribes and Alaska Native Organizations

Scope and Purpose (§ 250.90 of the Final Regulations)

The Statute provides that Indian Tribes and Alaska Native organizations may apply to the Secretary by April 13, 1989 for direct funding to conduct a JOBS program. Tribal (refers to both Indian Tribes and Alaska Native organizations) groups had to apply by this date in order to receive direct JOBS funding in any future year.

The Department issued initial application guidelines (FSA–AT–89–11) on February 24, 1989, to officials of federally recognized Indian Tribes and Alaska Native organizations. Based on comments received from Tribal leaders, requesting that the April 13, 1989 application not be treated as a final document, and on the fact that we were still developing Federal policy at the time these guidelines were issued, we advised Tribal applicants that we would not disapprove their applications based on their initial submittal. We issued further guidelines (FSA–AT–89–14) on April 27, 1989 to specify final documentation required in order to permit Tribal grantees to begin their JOBS programs prior to the issuance of final regulations.

Eligible Indian Tribe and Alaska Native Organization Grantees (§ 250.91 of the Final Regulations)

The regulations clarify the general eligibility requirements of the Act concerning Indian Tribes. They reflect congressional intent that an Indian Tribe must be recognized by the Federal Government as eligible to receive services from the Bureau of Indian Affairs (BIA) in order to be eligible for the JOBS program. Specifically, Report 100–37 of the Senate Committee on Finance (p. 39) states that "* * * an Indian tribe is any tribe, band, nation, or other organized group or community of Indians * * * that is recognized by the Federal government as eligible for services from the Bureau of Indian Affairs and is located on a reservation * * *."

In addition, consortia or Tribal organizations representing eligible Tribes may operate a JOBS program if they meet certain conditions. These conditions provide that such consortia or organizations have the managerial and administrative capacity to operate the program and have received documented authority from the participating Tribes to conduct the program on their behalf.

Comment: Three commenters stated that a consortium should not be unnecessarily limited by "geographic proximity." They proposed that we should take into account similar governmental status, organizational structure, population characteristics and existing consortium arrangements. One State advised that it has Tribal consortia for Administration of Aging programs, WIC nutrition programs and JTPA that are not based on contiguous geographic boundaries and have a long history of operating very effectively.

Response: The regulations do not limit a consortium or Tribe to operating a JOBS program on behalf of eligible Tribes which are geographically contiguous to each other. We will take into account existing consortium arrangements. By requiring geographic proximity, we intend to preclude consortia from forming to serve Tribes that are scattered throughout the country.

Selection Criteria for Eligible Alaska Native Organizations (§ 250.92 of the Final Regulations)

The Act is very specific about the program eligibility of Alaska Native organizations. It limits Departmental approval to only one application from an Alaska Native organization for each of the 12 geographical regions. These regulations establish criteria which the Department will use to designate the Alaska Native organization grantee. The criteria are very similar to those used by JTPA in designating Native American grantees for its program. However, since under the JOBS program the Alaska Native grantee must serve all eligible Native Alaskans residing in the region in which the grantee is located, we have specifically required that the grantee demonstrate either that it has previous experience in operating regionwide programs or that it can establish the capability to effectively administer the program throughout the region.

Funding Formula (§ 250.93 of the Final Regulations)

The Act specifies that JOBS funding for an Indian Tribe is based on the number of adult members of the Tribe receiving AFDC compared to the total number of adult AFDC recipients in the State. The formula for Alaska Native organizations is based on the number of adult Alaska Natives receiving AFDC who reside within the boundaries of the region which the Alaska Native organization represents compared to the total number of adult AFDC recipients in the State of Alaska.

Since the Act does not establish a designated geographical service area for Tribes, as it does for Alaska Native organizations, the regulations define such an area. The Tribe will receive JOBS funds based on the number of adult members of the Tribe receiving AFDC who reside in the designated service area as compared to the total number of adult AFDC recipients in the State. As defined, the designated area creates a manageable program service area which includes Tribal members who could realistically be served by the Tribe. The State IV–A agency will be expected to provide JOBS services to Tribal recipients outside of the designated area. A designated service area concept is used in various other programs such as JTPA, the Community Services Block Grant and those under the BIA.

The State IV–A agency and Tribes or organizations have a mutual responsibility to share all available information so a funding level can be calculated. Accordingly, the regulations specify that the State IV–A agency and the Tribe or organization must exchange available information on adult Tribal AFDC recipients needed to determine the estimated number of the eligible Tribal recipients and to define the designated service area, if other than the reservation or trust lands, as appropriate. This requirement reflects the fact that the State IV–A agency is the most appropriate source of data relating to AFDC recipient status. However, many State IV–A agencies cannot identify individuals in their caseload by Tribal affiliation and thus will probably need membership or residence information from Tribes or organizations to verify Tribal AFDC recipient status.

We recognize that the State IV–A agency and Indian Tribes or Alaska Native organizations may have difficulty developing data on adult Tribal AFDC recipients, especially using the definition of adult recipient contained in the Act (i.e., an individual other than a dependent child, including a minor custodial parent of another dependent child, who is receiving AFDC).

Because of these data deficiencies, we strongly encourage Indian Tribes or Alaska Native organizations and State IV–A agency to enter into agreements which establish population estimates, as well as service area definitions, as appropriate. If a State IV–A agency and Tribe or organization cannot agree on the number of Tribal eligible recipients or the designated service area, the Department will, in consultation with the Tribe or organization and the State IV–A agency, make the final determination.

Non-Tribal recipients in a designated area are subject to the requirements of the State's JOBS program. However, a State IV–A agency may through contract (or other referral arrangement) authorize an Indian Tribe grantee to serve non-Tribal members residing in the designated service area. The State IV–A agency may only delegate to an Indian Tribe grantee those functions which do not involve agency discretionary judgment, as discussed in § 250.10 and related sections of the preamble.

Comment: Several commenters proposed that we use the current definition and procedures contained in the BIA regulations at 25 CFR 20.1(r) which define "near reservation." Another commenter asked that we define "reasonably accessible" as it is used in § 250.93(a)(1) which defines designated service area. In this regard, questions were raised as to whether a Tribe can exclude from the designated service area a portion of the reservation and whether Tribes can redefine the service area at a later date.

Response: We have amended the regulations to specify that the designated service area can not extend to areas or communities which are not designated by the Commissioner of Indian Affairs as "near reservation" as defined at 25 CFR 20.1(r). We chose this definition because the BIA service areas are well established and recognized by other Federal programs and States and Tribes, and we believe that it is an acceptable standard for JOBS purposes. We have further revised the regulations to allow a Tribe to exclude from its designated service area a portion of the reservation which is remote from that part of the reservation where JOBS services are provided. This will permit greater participation in JOBS by Tribal members living in the excluded area of the reservation to whom a State JOBS program is available. A Tribe may redefine the designated service area by submitting an amendment to the application as provided at § 250.97(d).

Comment: A number of commenters proposed that regulations at § 250.93(a)(1) which describe the JOBS funding formula be changed from "the number of adult members of the Indian Tribe" to "the number of Native

American adults." This would permit Tribes or organizations to serve all Indians receiving AFDC and living in the designated service area. One State that commented suggested that this would be better than contracting with the Tribe to serve non-Tribal members because of the necessity of running two different programs. Furthermore, it would be consistent with the approach taken by JTPA and BIA Tribally-contracted programs. Another commenter stated that there was nothing in the regulations which specifies that a State agency may contract with a Tribe to serve non-Tribal members.

Response: The Secretary has no authority to provide direct funding to a Tribe on behalf of an individual who is not a member of the Tribe. The statutory language and legislative history specify that the amount of funds provided to an Indian Tribe or Alaska Native organization is based on the "number of adult recipients of such tribe" receiving AFDC. However, we have defined Tribal member in the regulations at § 250.93(a)(3) to mean a person who is enrolled in, or certified as meeting the membership requirements by the designated official of, that Indian Tribe or Alaska Native organization. Under regulations at § 250.13, however, States may through contract (or other referral arrangement) authorize a Tribal grantee to provide services under JOBS to non-Tribal members living in the designated service area. Also, the Tribe can serve non-Tribal members on a voluntary basis.

Comment: One commenter asked whether AFDC applicants and recipients can be required as a condition of eligibility to provide Tribal status on their applications.

Response: We are amending § 250.93 to provide that a State in which there is a Tribal JOBS program in operation or a pending application may require applicants and recipients living in the designated service area to provide Tribal membership status as a condition of eligibility for AFDC under certain conditions.

There are programmatic reasons why this is necessary. However, in order that the State IV–A agency exercise care in requesting this information, Tribal status may only be required under the following conditions: (1) the information is necessary either to determine the number of adult members of an Indian Tribe or Alaska Native organization who receive AFDC, or to help determine whether such individual is to be served by a State or Tribal JOBS program; (2) upon requesting Tribal status, the State must explain the reason this information is requested and refer an individual who is a Tribal member to the Tribal JOBS program for further information; and (3) such information is only requested in those areas in which there is a Tribal JOBS program or an application pending and where State JOBS programs are also in operation; and (4) the information requested must relate only to membership in those Indian Tribes or Alaska Native organizations operating or expected to operate a JOBS program in the area.

Comment: One commenter was concerned that if the State serves or contracts with the Tribe to serve non-Tribal members it would create the potential for inequitable treatment because of the variation in the two programs. The commenter asked whether the State would be liable for deficiencies if the State program requirements were not met.

Response: While the State may contract with the Tribe or organization to serve non-Tribal members, the State is not required to ensure identical services to non-Tribal members living in the designated service area. However, the State must assure that the services provided through the Tribal program are appropriate in terms of the assigned individual's assessment and employability plan. If a State contracts with the Tribe or organization to serve non-Tribal members, it may limit the contract to the same services as are provided for Tribal members but it must retain responsibility for ensuring that the Tribe or organization fulfill the terms of the contract. Any differences in program services should be identified in the State plan.

Comment: One commenter asked whether a member of a Tribe that administers a JOBS program is considered a non-Tribal member if the individual lives on a reservation with another Tribe. The commenter also asked whether, if a Tribe serves non-Tribal members, through a contract with the State or on a voluntary basis, the Tribe is required to report activities subject to Federal reporting requirements to the State.

Response: Section 250.93 of the regulations provides that a Tribal grantee's share of program funds is based on the "number of adult members of the Indian Tribe receiving AFDC who live in the designated service area." This means that a Tribe may not receive direct funding on behalf of an AFDC recipient who resides outside his or her Tribe's designated service area regardless of the fact that he or she lives on a reservation with another Tribe who has also implemented JOBS. If a Tribe agrees to serve non-Tribal members in its designated service area based on a contract with the State, the Tribe will be required to report to the State information on activities subject to Federal reporting requirements.

Comment: Several commenters suggested that an Indian AFDC recipient living in areas served by both a State program and a Tribal program should be able to choose the program in which he or she will participate as is permitted in some other Federal programs. Two of the commenters proposed that if a Tribal member chooses a State JOBS program, the funding should transfer to the State. One commenter asked that we clarify whether a Tribal JOBS program has the power under § 250.93(a)(1) and § 250.95(e) to require all its Tribal members to be served only through its program rather than through a State program.

Response: When an Indian Tribe or Alaska Native organization opts to implement a JOBS program, the Tribal allocation of Federal funds, as specified in § 250.93(a)(1), is based on the number of adult members of the Tribe who are AFDC recipients residing in the Tribe's designated service area. This amount reduces the allotment of the State in which the Tribe or organization is located. The JOBS funding formula does not provide for funds to be diverted from the Tribe to the State where Tribal members' living in the designated service area participate in the State JOBS program. Therefore, a State is not required to provide services under JOBS to Tribal members living in the designated service area. While a State may serve Tribal members who wish to participate in a State program, using the State's share of JOBS funds, the Tribe may require that a Tribal member living in the designated service area participate in the Tribal JOBS program rather than the State program.

Comment: Several commenters supported the waiver of matching funds requirements for Tribal governments as a condition of receiving Federal JOBS funds. However, they believe this creates an inequity because funds provided to serve Indian JOBS participants will be based on a smaller per capita amount than non-Indian JOBS participants. They asked this inequity be resolved through enhanced Federal funds for Tribal JOBS programs. Other commenters stated that the allocation to the Tribe should not be in any way dependent upon the amount of funds appropriated by a State legislature.

Response: The funding formula is prescribed by Statute. Enhanced Federal funding for a Tribal JOBS program would be inconsistent with the Statute. Action by a State legislature has no

effect on the amount of funding for a Tribal JOBS program, since only Federal funds are involved.

Comment: One commenter proposed that the regulations should require that Tribes operating programs in a multi-State environment develop programs which will ensure that Tribal members living in a given State derive benefits and services in direct proportion to the funds granted to the Tribe from that State's allocation. This would avoid situations where multi-state funds granted to a Tribe are not spent equitably in various States.

Response: The funding formula established by the Statute does not require a Tribe or consortium operating a JOBS program in several States to target those funds proportionately. A regulatory provision to require proportionate spending would take flexibility away from a Tribe or consortium to design the most effective JOBS program for all of its members.

Comment: Some commenters suggested that § 250.80 and § 250.82 with respect to data collection are not necessarily the most appropriate for Tribal JOBS programs. They suggested that we work with Tribal groups to design reporting requirements and systems suitable for JOBS which build upon systems already in place for similar job training and social services activities such as JTPA. Several of the commenters suggested that we not require submission of participant information in electronic form as many Tribal systems are not currently designed to meet such a requirement, and the limited number of participants would make such electronic submission inappropriate for most, if not all, Tribal programs.

Response: We agree § 250.80 and § 250.82 relating to data collection are not necessarily appropriate for Tribal JOBS programs. Therefore, we are amending § 250.96 to include waivers of these provisions. We expect to issue an Action Transmittal following publication of these regulations which will address the reporting requirements for Tribal grantees.

Comment: Several commenters recommended that States modify their data systems to collect information on Indian recipients by reservation, Tribal affiliation, residence and county, since 127 Tribes and organizations have applied for direct funding nationwide.

Response: We do not anticipate that it will be necessary to require a State to collect information on Indian recipients by reservation, etc. Under § 250.93, a State has the option to require disclosure of Tribal membership as a condition of eligibility for AFDC. We believe that Tribes and the State IV–A agency should be able to work out data collection under a cooperative agreement. We will revisit the issue if this becomes a problem.

Comment: Regulations at § 250.12(e) require a State to exchange certain information with an eligible Indian Tribe or Alaska Native organization interested in conducting a separate JOBS program. One commenter suggested that this provision should be revised to make clear States must coordinate and exchange information with all Tribes, not just those operating a program funded by HHS. Therefore, the commenter suggests that we delete "interested in conducting a separate JOBS program under § 250.91."

Response: Sections 250.12(e) and 250.93 require that the State IV–A agency and Indian Tribes or Alaska Native organizations exchange information pertaining to implementation of JOBS. The State is required to assure coordination of JOBS program services, including child care pursuant to § 255.3(h) of the regulations, with related services provided by other agencies, including Tribal agencies operating programs under Departments other than HHS. We have no authority to require a State to coordinate and exchange information with all Tribes for purposes other than JOBS.

Program Administration, Implementation and Operations (§ 250.94 of the Final Regulations)

Program Administration

Under the final regulations, the Tribe or organization must designate an administrative entity, such as the social services agency or the Tribal JTPA agency, to be responsible for the administration of the JOBS program. This responsibility for program administration includes all the requirements under the Act, unless waived under § 250.96, as well as applicable requirements under all other related Federal regulations. Such regulations include the general funding provisions under part 92 which are generally applicable to Tribal administration of Federal programs (as reflected in § 250.13 and § 250.77 of the regulations) and the joint Department of Health and Human Services/Department of Labor regulations at Part 251 which cover worker's issues such as working conditions and displacement.

The responsibility to administer JOBS means that the Tribe or organization must maintain overall responsibility for the design and operation of the program. However, final regulations at § 250.10 permit Tribes or organizations to delegate some JOBS functions and activities which involve decision-making with regard to individual participants to entities other than the Tribal agency designated to operate JOBS, e.g. assessment, priority determinations, provision of component services, case management and conciliation. This is permissible so long as there are specific rules and regulations issued by the Tribal agency governing their implementation. Such entities must not have the authority to review, change, or otherwise substitute their judgment for that of the Tribal agency. Certain functions, such as determining exemption status, determining whether to sanction a participant, and holding hearings must be performed by the designated Tribal agency unless a waiver under § 250.96 is granted. However, final regulations clarify that certain other related functions, such as imposition of sanctions, are retained by the State IV–A agency based on its responsibility to administer the IV–A program. For instance, if the Tribe or organization determines that an individual has failed to meet participation requirements, the State IV–A agency is responsible for making the necessary AFDC payment changes, after the individual is afforded appropriate due process.

Part 255 requires that the State IV–A agency (which receives matching Federal funds under title III of the Statute to guarantee child care for JOBS participants) provide necessary child care for Tribal participants either directly or through contract with the Tribe or organization. Also, under Part 256 the State IV–A agency is responsible for transitional child care benefits. Because of these interrelated functions, we encourage the State IV–A agency and Tribal grantees to enter into agreements to develop the referral and operating procedures necessary for effective program implementation.

Comment: One commenter requested that the IV–A agency retain the responsibility for determining whether Tribal AFDC recipients are subject to participation in JOBS. Giving Tribal grantees the responsibility will require that Tribal JOBS programs set up and maintain a client tracking mechanism to determine when changes, such as birthdays, change in school attendance, birth of a child, etc., occur which would change status. While AFDC eligibility systems and procedures are currently set up to perform these functions, they are not set up to give notice to Tribes when such changes occur. Another commenter suggested that it will be extremely difficult to verify both IV–A

eligibility and JOBS participation when two organizations administer the program.

Response: Section 250.94(a)(3) specifies that the Tribal agency designated to administer JOBS may not delegate or contract out any functions which involve agency discretion, except as provided in § 250.10, such as program participation requirements and determining who should participate. Therefore, the Tribal agency must define exemption and participation criteria and must retain the final responsibility for determining whether, in fact, a Tribal AFDC recipient is subject to participation in the Tribal program. However, this does not preclude the Tribe or organization from arranging with the State to maintain a tracking mechanism for identifying status changes and to notify either the Tribe or organization or the Tribal AFDC recipients. We encourage States to alter their computer systems to provide such support. FFP will be available under title IV–F for that portion of the system. States need not, however, verify Tribal JOBS participation.

Comment: A commenter asked whether a Tribal member who is sanctioned for failure to participate may appeal the sanction to the State IV–A agency.

Response: No. It is the Tribal grantee's decision whether or not an individual should be sanctioned. This decision cannot be overturned by the State. However, the State IV–A agency retains the function of imposing the sanction and is responsible for making the necessary payment changes after the individual has been provided due process. The individual can appeal the amount of the reduction to the State IV–A agency.

Comment: A commenter suggested that we include in the final regulations a processing time for a State to impose a sanction following notification from the Tribe or organization. The commenter suggested that 45 days would be a reasonable processing time in order to provide time for notifying the AFDC recipient of the sanction.

Response: The State IV–A agency is responsible for imposing the sanction following notification by the Tribe or organization. We believe that we should not prescribe a specific timeframe for the State to effect the sanction. The State should have flexibility to establish a reasonable time limit.

Comment: Some commenters proposed that Tribes and Alaska Native organizations be permitted to use existing participant grievance procedures, such as JTPA, rather than be required to establish a separate process. Another commenter asked that we permit simplified procedures suitable to the size of the Tribe's program to avoid placing excessive administrative burdens on small Tribes.

Response: Tribes or organizations may apply under § 250.96(b) for a waiver of the requirement that the Tribal JOBS agency conduct the hearing, in order to use existing participant grievance procedures. The Tribe or organization must document that it is inappropriate for the Tribal JOBS agency to conduct the hearing, given the size of the Tribal JOBS program, and that the alternative procedure to resolve JOBS disputes meets the due process requirements of *Goldberg v. Kelly*.

Implementation

The regulations permit the Tribe or organization to begin its JOBS program before the State implements its program. This provision reflects the sovereignty of the Tribe or organization to operate its program to the full extent allowable under the Act. The requirement at § 255.2(f) for the State IV–A agency to guarantee child care necessary for Tribal members' participation is not effective prior to the State implementation date. However, this section (§ 250.94) of the regulations provides options to permit a Tribe or organization to conduct its program prior to the State's implementation. During the period prior to the State's implementation of the program, these options permit the Tribe or organization to either guarantee necessary child care for its participants or to operate its program on an entirely voluntary basis. These provisions are discussed in detail in § 250.95 and accompanying preamble concerning supportive services.

Also, to provide sufficient opportunity for the Secretary's review and approval, the regulations and the initial application guidelines (FSA–AT–89–11 and 14) require that the Tribe or organization submit its application with final documentation to the Department at least 45 days prior to implementation. Similar to the requirements for the State IV–A agency at § 250.20(b), the regulations provide that the Tribe or organization may not begin its JOBS program prior to approval by the Secretary. Prior approval is necessary given the complexity of the program, the needed interface which must occur between the Tribal applicant and the IV–A agency, and the fact that Tribal programs represent a whole new direction for welfare work programs.

Comment: Two commenters suggested that Tribes should be given greater flexibility on start dates for Tribal programs. They should be allowed to start their JOBS program on the first day of any month, and should not be limited to starting their programs on the first day of any quarter. Furthermore, the commenters stated that there should be flexibility for starting a JOBS program later than October 1, 1990 to allow for State/Tribal coordination, especially if a State does not intend to start the State JOBS program until October 1, 1990. Also, the commenters proposed that Tribes be given their entire fiscal year allocation regardless of the quarter in which they start and that they be permitted to carry over funds for two years such as is permitted with title IV–B programs and Indian Self-determination Act contracts.

Response: Section 204 of the Statute specifies that States must implement a JOBS program by October 1, 1990. The Statute also provides that should a State choose to implement JOBS sooner, it must do so on the first day of any calendar quarter prior to October 1, 1990. We read the Act, including this section, to apply to Tribal grantees as well. There is no basis for a waiver of this section. Furthermore, since section 204(b)(2) of the Statute requires that funding be proportional to the quarters the program is in operation in a given fiscal year, there is no basis for funding the JOBS program for the entire year when the program is in operation for less than four quarters. With regard to the comments on carrying over funds, see comments and responses under § 250.70.

Comment: Two commenters stated that Tribal governments should be able to use a Tribal council resolution of approval for the final JOBS application as an indication of community support for the program, consistent with the requirements for contract applications under the Indian Self-Determination Act. The commenters believe, for such small amounts of funds the regulations at § 250.94(d)(1)(ii), which require Tribes to hold extraordinary community comment procedures, are burdensome.

Response: Section 483(a)(2) of the Act specifies that the State JOBS plan be made available for public review and comment 60 days prior to submission to the Secretary. The regulations only require a 30-day comment period for Tribal grantees. We choose not to waive this requirement, because we believe that public participation is an important indication of community support. We do not believe that the comment procedures are burdensome inasmuch as the requirement can be satisfied through public announcements.

Comment: Several commenters contend that the regulations at

§§ 250.94(d)(3), (4), (5) and (6) require extensive consultation with other entities. They propose that rather than requiring documentation of such consultation, the Tribe or organization should be allowed to use a check-off form that indicates that there has been consultation with the appropriate entities. The commenters also suggested that the words "required to consult" be changed to "encouraged to consult," because consultation may not always be available given conflicting schedules. Furthermore, since Tribal and Navajo private industry councils that exist in Arizona are unique intergovernmental arrangements that do not exist in other States, regulatory language should be changed to permit alternate sources for obtaining required consultation.

Response: The regulations require extensive consultation in order to prevent duplication of services and to assure that other program services are available to JOBS participants. The regulations do not, however, require that the Tribal grantee submit formal documentation of each discussion it has with an organization identified in § 250.94(d) (4), (5), and (6). Section 250.94(d)(6) provides that the Tribal grantee must consult with private industry councils and Tribal Employment Rights Offices, as appropriate. Therefore, if such councils do not exist, Tribal grantees should consult with alternate sources.

Operations

This section of the regulations exempts Tribes and organizations from the requirements of § 250.12 in order to specify appropriate coordination requirements for Tribal grantees. Under this section, the Tribe or organization is required to provide its application to the State IV–A agency prior to its submittal to the Department. This is to ensure that necessary interface with the State IV–A agency has been established, including the development of agreements or methodologies, to assure that Tribal recipients receive equitable treatment under both the AFDC and JOBS programs.

The regulations also indicate the appropriate agencies and programs with which the Tribe or organization must coordinate. The coordination requirements reflect congressional concern that agencies administering JOBS identify available resources from other programs in order to prevent duplication of services, to assure that the maximum level of services is available to participants, and to ensure that costs of these other program services for which welfare recipients have been eligible are not shifted to the JOBS program. This latter provision is closely related to the provisions on maintenance of effort, which are described in § 250.98 and preamble.

Furthermore, although Tribal grantees are subject to § 250.44, which covers mandatory components, they are not subject to § 250.45, which covers optional components. Instead, § 250.94(e) requires Tribal JOBS programs to include four mandatory components and at least one optional component. The following program design modification is expected to more realistically reflect the special circumstances and needs of Tribal grantees.

Because the four mandatory components cover basic education, training and employment activities, many of which should be available to Tribal participants through other program resources, we believe that most Tribal programs should be able to offer all four components. For example, many literacy programs should be available to Tribal recipients through the Office of Indian Education and, thus, would not be funded under JOBS.

The Tribal program need include only one optional component. Of the four options given to States, two components—community work experience program (CWEP) and the work supplementation program—are integrally linked with AFDC recipient grants. Thus, the final regulations require that adequate operational agreements be worked out between the State IV–A agency and Tribal grantee before the Department can approve these components.

A Tribe is permitted to include, as an optional component, a work experience program as approved by the Secretary or alternative education, training, and employment activities as approved by the Secretary. We would approve, for example, an alternative work experience program which generally meets the requirements of a CWEP, JTPA, or BIA work experience program. Tribes or organizations are cautioned that in order to receive approval of alternative education, training and employment activities, such approaches must be consistent with the purpose of the JOBS program to reduce welfare dependency and must serve only eligible AFDC recipients. Thus, if JOBS is linked with another program such as JTPA, a Tribal grantee must be able to validate that JOBS funds were used only to serve Tribal JOBS participants. These stipulations are necessary to protect the integrity of the program. Based on congressional concern as well as our careful consideration, the regulations further require that JOBS funds not be used for public service employment or for allowances.

Comment: Two commenters proposed that job search activities should not be required for a minimum of 20 hours per week, because such activities are not appropriate in a situation where there are few employers and limited job openings. Many reservations are located in rural areas where there are few jobs available.

Response: The regulations at § 250.78, which define participation, were never intended to prevent States, or Tribes or organizations, from requiring job search for less than 20 hours per week. Furthermore, participation requirements are waived for Tribes or organizations under § 250.96(a)(13). Therefore, tribes or organizations may, require that a participant perform job search activities for less than 20 hours per week.

Comment: Most of the Tribal organizations that commented objected to the language at § 250.94(d)(1)(i), which requires the Tribe or organization to submit applications to the State IV–A agency for "review and comment." The commenters believed that this creates a negative precedent for State intervention in Tribal/Federal relations. The commenters proposed that the words "review and comment" be deleted and suggested that the words be replaced with "for purposes of exchanging information and achieving appropriate coordination." Another commenter objected to the use of the word "resolved" in the requirement at § 250.97(b) to submit plans to States and Tribal members for review and comment.

Response: We disagree that the use of the words, "review and comment" permits State intervention in Tribal/Federal relations. Nor is it our intent that the review and comment process impinge upon Tribal sovereignty or the government-to-government relationship between Tribes and the Federal government. The regulations at § 250.20(c)(2) also require the State IV–A agency to make the State JOBS plan available to members of federally-recognized Indian Tribes and Alaska Native organizations for review and comment. In both cases, this means that the State or Tribal grantee must consider the comments offered in the same way it considers comments from the public. Section 250.97(b) requires that the Tribe or organization resolve all comments received at the Tribal level in the same way that § 250.20(c)(2) provides that the State shall resolve all comments at the State level. This means only that the Tribe or organization

decides whether or not to change the application as a result of the comments.

Comment: Several commenters suggested that we allow Tribal programs to make incentive payments to JOBS participants as are currently used in connection with Tribal Work Experience Program (TWEP) participants. The commenters were concerned that JOBS participants would be treated inequitably relative to TWEP participants.

Response: There is no basis in the Statute or legislative history for making incentive payments using JOBS funds to AFDC recipients to participate in JOBS. Furthermore, any such payment made by a Tribal organization would have to be counted as income in determining the amount of the AFDC payment, i.e., the amount of the incentive payment would reduce the AFDC payment accordingly.

Comment: Regulations at § 250.94(d)(6) require a Tribe or organization to ensure that JOBS funds are used to provide training only for the types of jobs that are currently available or are likely to become available. Two commenters stated that since there are not always accurate labor market projections, the lack of such documentation should not be used as an obstacle to approving a JOBS application. They suggested that BIA labor force estimates, which do not indicate employment by type of jobs, be sufficient for planning purposes if no other data are available.

Response: The objective of the JOBS program is to provide training, education, job placement and employment to end welfare dependency. Therefore, it is important for Indian Tribes and Alaska Native organizations to consult with other organizations to identify and obtain advice on the types of jobs that are available within a reasonable distance of the reservation. When there are limited employment opportunities available, it is important that there be a plan as to how the education and training will make the JOBS participants self-sufficient. The labor force estimates published by BIA report the labor force status of Indians living on and adjacent to reservations, e.g., the number of Indians employed, unable to work, etc. This report does not provide any guidance as to types of jobs currently available or likely to become available. We will not disapprove an application solely on the basis that accurate projections or relevant statistical data are not available but will work with the Tribe or organization to assure that resources are expended consistent with the objectives of the program.

Comment: Section 250.94(e) states Tribal programs are not subject to the requirements of § 250.45, but paragraph (e)(2) specifies that Tribal programs must include at least one of the optional components unless a Tribe can provide justification that such activities are inappropriate. Two of the commenters found this misleading and suggested that it be reworded to say that Tribes "are not subject to requirements of § 250.45 but that Tribes may participate at their option."

Response: The commenter's interpretation of this point is incorrect. All of the optional components specified in § 250.45 for States are also included in § 250.94(e) for Tribes and organizations. However, the former requires that a State JOBS program include at least two of the components which are identified. Section 250.94(e)(2), on the other hand, specifies that Tribal programs are required only to include one optional component in their JOBS program and lists some alternatives in addition to those identified in § 250.45. Tribes or organizations must include one of the optional components or seek a waiver under § 250.96 on the basis that such activities are inappropriate.

Comment: One commenter proposed that the regulations at § 250.94(e)(2)(v)(B) be changed to permit JOBS funds to be used for public service employment as defined by the Tribal Government. Two other commenters suggested that we define "public service employment." Specifically, they wish to know what is the difference between non-allowable public service employment and allowable public sector placements for WSP and CWEP. They are concerned that the majority of reservation-based employment is through Tribal and Federal governments.

Response: By public service employment we mean a fully subsidized job in a public agency. The regulations do not preclude JOBS funds from being used to place Tribal members in jobs with Tribal, State, or Federal governments. What it does preclude is filling or establishing a job slot and fully reimbursing the employer for the salary paid to the JOBS participant.

Comment: Section 250.94(e)(3) provides that a Tribe or organization may operate WSP or CWEP only if adequate agreements with the State IV–A agency are implemented. Two commenters suggested that these agreements should be worked out using employer OJT contract formats currently used by Tribal JTPA and other programs. They proposed that the regulations should not require a formal State/Tribal intergovernmental agreement nor should an agreement be required as part of the Tribal JOBS application. Another commenter, however, suggested that the scope of agreements should be broadened. The agreements should cover any program function that is interrelated between the State's IV–A program and a Tribe's JOBS program, e.g., eligibility notifications, dispute resolution and hearings, imposition of sanctions, etc. The commenter suggested we should not prescribe specific terms of such agreements but should permit them to be tailored to the needs of both the Tribes and local IV–A agency offices.

Response: Because the CWEP and WSP programs are integrally linked with the AFDC recipient grants, it is mandatory that adequate operational agreements be worked out between the State IV–A agency and the Tribal grantee. The regulations do not define the format nor do they require that the agreement be submitted as part of the application.

However, the Tribal grantee must assure that such agreements exist. We do not believe, however, that it is necessary to require operational agreements to cover all phases of State/Tribal interface. It is best left to the State and Tribes or organizations to decide when this is necessary.

Supportive Services (§ 250.95 of the Final Regulations)

Under the final regulations, the Tribal grantee must provide for the work-related supportive services, such as clothing or transportation, necessary to enable an individual to participate in the JOBS program. Tribes or organizations must follow the requirements regarding work-related supportive services under Part 255. The Tribal grantee is given flexibility to determine the types of supportive services and methods of delivery but must describe these services and methods in its application documentation pursuant to § 250.97(f)(6).

Since the State IV–A agency is required to provide child care under Part 255 of the regulations, this section requires that the Tribe or organization must ensure, based on a method which is acceptable to the Tribe or organization and the State, that necessary child care is available when requiring an individual to participate in its program. Since the State IV–A agency will be providing child care services and the Tribe or organization will be designating who participates, we strongly encourage Tribal grantee to develop with the State IV–A agency

appropriate referral mechanisms to ensure that Tribal participants receive necessary child care services. In addition, we encourage the State IV–A agency to contract with Tribal grantees for providing child care services for Tribal participants.

The regulations at § 255.2(f) are designed to ensure that the State provides sufficient funds to meet the child care needs of Tribal participants and that the State uses comparable and appropriate methods of providing child care for Tribal participants as it uses for non-Tribal participants in the State. The Tribe or organization may guarantee child care for its participants through other program sources.

If the Tribe or organization begins its JOBS program before the State IV–A agency, the Tribal grantee can operate an entirely voluntary program. However, after the State implements its JOBS program, the Tribe or organization may no longer operate an entirely voluntary program. This provision is consistent with congressional concern, as reflected by the participation and exemption requirements in § 250.30, that individuals who are reasonably able to participate in the program, and for whom guaranteed child care is available, should be required to participate.

Comment: Two commenters suggested that we should encourage the State IV–A agency to work with all Indian job training programs, including those operated by Indian community-based organizations in off-reservations areas under Title IV of JTPA, to insure that child care services are available to AFDC recipients in all such training programs.

Response: Title IV–A funds are available to provide child care for JOBS participants and for other AFDC recipients in approved education and training. We encourage all State IV–A agencies to work with all Indian job training programs to insure that child care services guaranteed under Part 255 are available. This, of course, would include child care for a JOBS participant who is assigned to an existing Tribal job training program.

Comment: Some commenters suggested that the Secretary should exercise waiver authority and allocate Federal child care funds directly to those Tribes that opt to implement Tribally-operated child care services. One commenter believed that this would provide greater flexibility for Tribes while reducing administrative costs for both States and Tribes. Another commenter suggested that States should receive FFP for services such as child care and other required functions without a State matching requirement for the portion of Federal funds expended in services to Tribes and organizations operating JOBS. The commenter believes that this would be consistent with the intent of the Act which provides for a JOBS program and support services for Indian Tribes and organizations without requirement of matching share.

Response: While the Secretary has authority to waive requirements of section 402(a)(19) and title IV–F of the Act for Tribal programs, FFP for JOBS participants is not covered in these sections of the Act. There is no waiver authority under title IV–A to allocate Federal child care funds directly to Tribal grantees or to dispense with State matching requirements for the portion of Federal funds expended for Tribal services.

Comment: It appeared from the comments that some Tribal organizations were not clear as to responsibility for child support enforcement in relation to § 250.40(b).

Response: The requirement at § 250.40(b) has no effect on responsibility for enforcing child support orders.

Comment: One commenter stated that the definitions of "making good progress" and "making satisfactory progress" in both educational and training components refer only to standards approved by State or local agencies. The commenter proposed that the definition should be expanded to substitute approval by Tribal or Alaska Native organizations.

Response: We have revised the definition at § 250.1 to reflect this comment.

Waiver Authority (§ 250.96 of the Final Regulations)

This section indicates that certain requirements of the Act and of the regulations do not apply to Tribal grantees, as they are unique to State programs. These include provisions relating to State agency administration, the State's JOBS funding allotment and State matching requirements. Thus, these have been determined to be inappropriate for Tribal JOBS programs by the Secretary pursuant to his authority under the Act.

A Tribe or organization may also request waivers for any other requirements of section 402(a)(19) or Part F of the Act not specifically mentioned but must provide proper justification. The Secretary will consider the appropriateness of such waivers on a case-by-case basis.

Comment: Several commenters suggested that we add § 250.34 and Parts 255 and 256 to the list of waivers which the Secretary considers inappropriate for Tribal JOBS programs.

Response: Parts 255 (Supportive Services) and 256 (Transitional Child Care) are not functions subject to waiver authority. Tribes and organizations do not need waiver authority as these provisions are State, and not Tribal, requirements. While many of the provisions of § 250.34 are also State and not Tribal requirements, it would be inappropriate to waive a Tribe's or organization's responsibility for determining that an individual failed to meet participation requirements.

Application Requirements and Documentation (§ 250.97 of the Final Regulations)

The Tribal application requirements generally follow State JOBS plan requirements, which are discussed in detail in §§ 250.20 and 250.21 and related preamble.

Under the Act, Tribes and organizations had to apply to the Department by April 13, 1989, in order to conduct a JOBS program. Since we were still developing JOBS policies at the time we released guidelines for Tribal applications, we advised Tribal groups in the application notice (FSA–AT–89–11) that their April 13 submissions would probably need to be supplemented. On April 27, 1989 we provided additional guidance (FSA–AT–89–14) specifying documentation needed to supplement Tribal applications if the Tribes or organizations intended to implement a JOBS program prior to issuance of these final regulations.

We believe that the application documentation specified in this section is necessary in order to provide the Secretary with a sufficient level of information upon which to base approval. We determined that this documentation was needed, based on our review of all the requirements reflected in the Act and those required for State JOBS programs. Because of the complexity of the JOBS program requirements and the degree of program flexibility we would like to provide Tribal grantees under our waiver authority, we do not think these application requirements impose an undue administrative burden upon Tribal grantees. The application must serve as the Department's primary vehicle for assessing whether a Tribal grantee is meeting the requirements of the Act and regulations.

Comment: Several commenters considered the application and documentation requirements specified at § 250.97 administratively burdensome

for the amount of funds available. They suggested that we allow Tribes to submit a simple application and allow cross-references to established administrative and program procedures and manuals without requiring these materials as attachments to their applications.

Response: We do not believe that the application and documentation requirements specified at § 250.97 are unduly burdensome. As we have indicated above, the application is the Department's vehicle for measuring whether a Tribal grantee is meeting the requirements of the Act and regulations. We do not need extensive documentation of existing administrative and program procedures. In most cases, cross references would probably satisfy the requirements. However, most of the documentation we require relates to administrative and program procedures which must be established in order to meet the requirements of JOBS.

Comment: Several commenters suggested that, if a Tribal JOBS application is disapproved, there be a process, including technical assistance, in place to assist the Tribes in addressing and correcting the deficiencies in its application. They stated further that initial disapproval should not forever disqualify a Tribe from operating a JOBS program even after October 1, 1990.

Response: We currently provide technical assistance to Tribal grantees and plan to continue to provide such assistance as necessary. The Statute provides that a Tribe or Alaska Native organization had to apply by April 13, 1989 to conduct a JOBS programs and that a JOBS program may not be implemented later than October 1, 1990. We believe there is sufficient lead time for all Tribal grantees to develop and receive approval for an application to implement JOBS by that time. Therefore, Tribes or organizations that did not apply by April 13 or have not implemented a JOBS program by October 1, 1990 are ineligible to operate a JOBS program.

Maintenance of Effort for Indian Tribes and Alaska Native Organizations (§ 250.98 of the Final Regulations)

Tribal grantees are not subject to the requirements in § 250.72. Section 250.98 sets out maintenance of effort provisions that are more appropriate for Tribal entities. The requirements on maintenance of effort reflect congressional concern that JOBS funding not be used to supplant existing funding for programs which have been available for welfare recipients.

This means that JOBS funds should be used only to provide educational, training and employment activities for Tribal participants which are in addition to those which would otherwise be available. For example, where a high school education has been available to Tribal members, JOBS funds must not be used to pay for this activity. Thus, the Tribal grantee may not contract for services which are otherwise available on a non-reimbursable basis pursuant to the regulations at § 250.13.

Comment: One commenter proposed that when the AFDC–UP program provision becomes effective, the Bureau of Indian Affairs should continue to provide general assistance under the maintenance of effort provisions of law.

Response: This Department has no authority to require BIA to continue to provide general assistance to recipients who become eligible for AFDC.

PART 255—CHILD CARE AND OTHER WORK-RELATED SUPPORTIVE SERVICES DURING PARTICIPATION IN EMPLOYMENT, EDUCATION, AND TRAINING

Purpose (§ 255.0 of the Final Regulations)

The purpose of these regulations is to implement section 301 of the Family Support Act of 1988.

State Plan Requirements (§ 255.1 of the Final Regulations)

Title III of the Statute adds section 402(g) to title IV–A of the Act. Thus, child care is not part of the title IV–A plan which is covered in section 402(a) of the Act. Neither is it included in the State JOBS plan under title IV–F, which is covered in section 482(a) of the Act. In fact, section 402(g) does not address whether a plan is needed regarding the provision of supportive services. However, services provided under sections 301 and 302 of the Statute must be covered by a separate plan submitted in accordance with these regulations. Further, the State Supportive Services plan covering services under section 301 of the Statute must be submitted at the same time as the JOBS plan to ensure appropriate public and Federal review. The approval process will follow that for the State JOBS plan which is specified in § 250.20.

The State Supportive Services plan must contain information about child care services, work-related supportive services, and work-related expenses necessary for an individual to participate in JOBS or in another approved education, training, or employment activity, including a description of those services. We also are requiring that the State IV–A agency include a cross-reference to its State Supportive Services plan in its State JOBS plan to show the coordination between the two plans. The specific State Supportive Services plan requirements are contained at § 255.1. In States where Tribal entities are directly funded to operate a JOBS program, the State Supportive Services plan must include specific information on the State's provision of child care services for JOBS participants served by those Tribal entities.

Requiring a Separate Plan

Comment: We received general support for our regulations on this section. However, a few commenters suggested that we not require a separate Supportive Services plan, but require one plan which incorporated both the JOBS and Supportive Services provisions.

Response: We do not believe such an approach would be consistent with the statutory language at section 482(a)(1)(A) of the Act which requires that States establish a JOBS program under a plan which meets all the requirements of part F and section 402(a)(19), but does not mention 402(g). In a related matter, in paragraph (B) of section 482(a)(1), the Act establishes requirements for "a State plan for establishing and operating" the JOBS program. Nowhere does it provide for the inclusion of the supportive services provisions in this plan. Furthermore, while there is considerable overlap between the two plans, there are two important differences. First, except for the benefits provided in Puerto Rico, Guam, American Samoa, and the Virgin Islands under part 255, the child care benefits described under the Supportive Service plan are funded under a different source than JOBS. Secondly, eligibility for services under the Supportive Services plan extends substantially beyond JOBS participants. Thus, there are also programmatic reasons for requiring two plans.

At the same time, however, we agree with the comments about the close interrelationships between the two programs and the need for an integrated approach for dealing with them. On that basis, we require that the Supportive Services plan covering applicant and recipient services be transmitted together with the JOBS plan. Furthermore, in developing State plan preprints, we intend to develop one preprint package which would incorporate both the JOBS and Supportive Services plans. We will try to design the preprints so as to facilitate the integration of the two programs and

to minimize the burden on the States associated with completing two plans.

Comment: One State objected to the requirement for a Supportive Services plan, given the absence of specific statutory authority.

Response: Although the title III provisions of the Statute do not explicitly mention a State plan for Supportive Services, there are at least three specific bases for requiring such a plan. First, we believe that a Supportive Services plan is a necessary adjunct to the JOBS plan, as we cannot properly assess the acceptability of a JOBS plan without information on the nature and scope of supportive services to be provided. Secondly, supportive services are matchable under section 403 of the Act which provides that payments are made to the States under approved plans. Finally, section 1102 of the Act requires that the Secretary establish rules "necessary to the efficient administration of the functions" with which the Secretary is charged under the Act. We do not believe the Secretary could fulfill the statutory obligations under this section unless a State plan which specified how the State would meet the requirements of sections 301 and 302 of the Statute is required.

Plan Content

Comment: One commenter felt that our plan requirements were extensive and would require a lot of coordination.

Response: In drafting the plan requirements, we tried to limit the number of requirements so that they would not be too burdensome. At the same time, there was a certain minimal amount of information needed to determine whether statutory requirements were being met and to monitor the appropriateness of expenditures on supportive services.

To the extent that our requirements in this section or elsewhere entail substantial coordination with JOBS activities, the child care community and providers of related educational and supportive services, we believe they are justified, since a successful JOBS program depends on the successful provision of supportive services and the development of a coordinated, effective strategy for their delivery.

Comment: We received two comments suggesting that additional items be required in the plan—including a description of how transportation needs would be met (e.g., through advance payments or reimbursement) and more material related to the meeting of child care standards, coordination and parental access.

Response: A few of these suggested changes that would provide information helpful in determining how program requirements are being met and in achieving greater compatibility with the JOBS plan. At the same time, because we are concerned about placing unnecessary administrative burdens on the State, we did not want to add too many requirements.

Under this framework, we have revised § 255.1 to add the following requirements: 1) the State must assure, in arranging care, that it takes the individual needs of the child into account; 2) the State must specify the methods it will use for providing transportation and other supportive services; 3) the State must describe criteria and procedures it will use for approving education, training and employment activities for which necessary child care and supportive services will be authorized for individuals who live in non-JOBS areas of the State; 4) the State must describe the nature of its efforts to coordinate child care and supportive services with groups specified at § 255.3(h); 5) the State must describe its procedures for ensuring that center-based care will be subject to State and local requirements designed to ensure basic health and safety, including fire safety, protections (or a plan for developing such procedures, if none exist); and 6) the State must specify its policy on transitional supportive services. The fourth requirement replaces an assurance requirement which was found at § 255.1(e)(2) of the NPRM.

Although we added a requirement for a description of State procedures on basic health and safety protections for center-based care, we did not alter the specific requirements for State assurances that all child care meet applicable State or local laws or that parents have access because those items affect eligibility for Federal matching funds. Therefore, we will be able to monitor State compliance as part of our review of State expenditures. Furthermore, in § 255.5, we have clarified that States will be required to report information, upon the request of the Secretary, on the applicable standards of State and local law, on health and safety requirements for center-based care, and on the development of guidelines for family day care.

As we indicate in the section of the preamble discussing § 255.4, we also added provisions for State specification of a statewide limit and local market rates for children with handicaps or special needs for care.

We also moved the assurance requirement (regarding hours of child care) previously found at § 255.1(l) to § 255.1(e), where the other assurance provisions are located.

Comment: We received comments that it was inappropriate for the State plan to include a description of the priorities to be applied in determining when needed care will be guaranteed (as required at § 255.1(d)). It was considered by some to be particularly inappropriate to talk about priorities for those entitled to transitional child care benefits.

Response: We agree that the language at § 255.1(d) of the proposed regulations confused the nature of the child care guarantee for JOBS participants and transitional cases, and we, therefore, have deleted it. (Additional discussion about the nature of the child care guarantee is contained in the response to the next comment and in subsequent sections of the preamble.)

Comment: Commenters also objected to the proposed regulatory language at § 255.1(j) where we required the State plan to describe "how the State will assure that sufficient child care will be available to meet the participation standards in 250.74." Many felt this language undermined the child care guarantee. At the same time, some States felt they should not be required to assure that sufficient child care be available to enable them to meet required participation levels. They argued that States were not absolutely required to meet the participation standards, but only as a condition of receiving JOBS funds at a higher matching rate.

Response: We recognize the problems with our proposed language and have deleted the provision that was at § 255.1(j) of the NPRM. In writing the NPRM, we wanted to make sure that States understood our expectation, and the expectation of Congress as well, that the number of individuals participating in education, work and training programs should increase under the JOBS program. For this to happen, child care and other supportive services necessary for JOBS participation would have to be provided. However, we acknowledge that participation concerns are more appropriately addressed within the context of the JOBS program.

Comment: One commenter did not want us to require States to specify monetary limits for expenditures on different types of supportive services.

Response: We believe such limits are important to include to ensure equitable treatment across the State and to ensure the proper and efficient administration of the program.

Comment: One commenter wanted us to revise the references to State and

local standards in § 255.1 to recognize Tribal standards, where applicable. Response: We made this revision and corresponding revisions to §§ 255.4(c)(2) and 255.5(a), which also refer to State and local standards.

Plan Schedule

Comment: One commenter objected to our requirements that the Supportive Services plan, especially the part dealing with transitional child care, be subject to the biennial update schedule.

Response: We require the Supportive Services plan to be submitted on the same schedule as the JOBS plan because the services provided under the two plans are so inextricably linked. To the extent a State is not changing its plan, the biennial update should not entail a major workload. At the same time, it provides a regular opportunity for the State to review its policies, assess the availability of child care services, ensure that care continues to meet applicable standards of State and local law, and update items like local market rates which need regular modifications.

Also, we did not separate the plan for transitional child care services since those services are subject to many of the same provisions as the care provided under part 255. Again, where changes are not indicated, the biennial update should not be overly burdensome.

In the interest of clarity, we did add a reference in § 255.1 of the regulations to the schedule requirements at § 250.20.

Eligibility (§ 255.2 of the Final Regulations)

Section 402(g) of the Act provides that the State IV–A agency must guarantee child care to the extent that the State determines necessary for an individual in a family with a dependent child to: (1) accept or maintain employment, or (2) participate in an education or training activity if the agency approves the activity and periodically determines that the individual is satisfactorily participating in the activity. (Such education and training is not limited to activities funded under JOBS.) Where child care is necessary, but not available, a State IV–A agency cannot require an individual to participate in an activity or to accept or maintain employment unless it guarantees child care.

Child Care Guarantee

The Statute requires the State to guarantee child care for: participants in a JOBS activity; individuals in other approved education or training activities; and employed individuals. We, therefore, believe that the State is obligated to guarantee care even if it has not required an individual to participate or accept employment. This is a change from the approach taken in the proposed regulations, particularly with respect to the treatment of volunteers, and will be discussed further in the comment section.

The State IV–A agency must guarantee needed care to recipients who are working at the time the State implements JOBS as well as to recipients who begin working at a later date. It must also guarantee care to an individual who finds employment through JOBS or on her own if the care is necessary for her to accept or retain employment. However, the State does have flexibility in determining how child care needs will be met. For example, the State may select the disregard as the method for providing care for employed individuals.

In areas where child care of the appropriate type cannot be located by JOBS participants, the State must be prepared to assist these individuals in locating care. Such assistance may take the form of referral to existing child care resource and referral services, or direct assistance based upon information gathered through the State agency's own consultation, coordination, and research efforts. In addition, the State may provide assistance to other AFDC applicants and recipients in locating such care. However, the State is not required to provide child care directly or to otherwise create child care services. Where child care cannot be located, an individual cannot be required to participate, or to accept or retain employment.

For approved JOBS activities and employment, the State is obligated to guarantee care even if it has not required an individual to participate or accept employment. However, just as State resources and budgetary constraints may indirectly affect the provision of child care for those assigned to activities under JOBS (whether exempt or non-exempt), those in self-initiated activities may also be indirectly affected by State budgetary constraints since the State has broad discretion in deciding whether to approve such activities. This discretion is discussed further in response to the comments that follow.

Comment: Although some commenters supported our linkage of the child care guarantee to the availability of resources, JOBS participation rates, State appropriation ceilings, the availability of other services, and agency requirements, many did not. They felt the language undermined the guarantee for working recipients and for volunteers participating in JOBS. Commenters also suggested that the language seemed to contravene the requirement in the JOBS program that volunteers from target groups receive priority for JOBS services.

Response: Based on these comments and further review of the statutory language, we reconsidered our position and decided to make changes to both the regulations and the preamble. We have deleted any reference to a State's determining who would be provided child care based on the availability of resources and the requirement to describe how sufficient child care would be made available to meet the participation rates described in § 250.74. A more detailed discussion of the child care guarantee is contained in the preamble and response to comments.

Comment: One State wanted us to clarify that States were not obligated to provide services to those in self-initiated activities. Another asked us to clarify that States would not be required to provide child care services in non-JOBS areas.

Response: The Statute allows a State to treat self-initiated education or training which meets the requirements at section 402(a)(19)(F) of the Act as JOBS participation and to provide associated supportive services, including child care, if the State approves the activity. The State has further discretion to decide the criteria under which other education or training would be approved under JOBS, and discretion whether to approve education or training for child care and supportive services in non-JOBS areas of the State. However, we do wish to clarify that, at State option, child care and supportive services are allowable for those in education and training in non-JOBS areas as long as the State IV–A agency has approved the activity, and the individual is making satisfactory progress.

Comment: Two commenters wanted us to clarify that provision of child care and supportive services for clients in non-JOBS training is a State option and is not required before implementation of the JOBS program.

Response: The provisions authorizing child care and other supportive services for those engaged in any kind of education or training activity do not become effective for a State until its JOBS program under title IV–F is implemented. At that point, the State has broad discretion in the criteria used for determining whether education or training would be approved.

Informal Care

Consistent with our philosophy on parental choice (discussed later), we want to ensure that Federal and State policies support parental preference. In many cases, informal care provided by trusted friends or family members is the parent's preferred source of care. Therefore, we want to make clear that care provided in this manner is acceptable and must be included as one of the types of care to which families have access.

Comment: Several commenters expressed concern that informal care provided by relatives or family friends with no obligation to provide care was too tentative and unreliable. They felt it was counterproductive to rely on such services, especially when care would be needed on a regular basis over an extended period of time. (In fact, one commenter wanted the regulations to state the advantages of formal care.) Others were concerned that we were expecting care to be provided for free by persons with no legal responsibility for a child, that we were not giving adequate consideration to the needs of the child and that we were undermining parental choice by allowing States to limit families to informal, at-home care.

Response: The section on informal care in the preamble of the NPRM caused much confusion. We have re-written the preamble to clarify the principal reason for our original language—to validate informal care as one of the types of care to which families should have access. We were not attempting to limit families to informal, at-home care but merely to ensure that families have the choice of such care. The one exception to this provision is the situation where there is another adult in the home who is responsible for the care of the child (as discussed below).

Comment: Two commenters wanted us to require that a State agency accept the caretaker's assessment that no one at home was capable of providing necessary child care. In a related comment, it was suggested that individuals be allowed to determine if informal care was acceptable.

Response: We expect the State IV–A agency and the caretaker to work closely together to determine when child care is necessary. However, the ultimate decision about whether care is necessary rests with the individual except for a few limited situations. The State may determine child care is unnecessary in situations where: (1) the hours of employment or participation fall within the child's school hours; (2) there are individuals in the assistance unit whose needs are met on the basis of their responsibility for caring for the child (e.g., a parent, caretaker or essential person); or (3) there is another legally responsible adult in the home (e.g., an ineligible parent or a legal guardian). Exceptions to the latter two situations would be allowed, on a case-by-case basis, if the family provided information to the State agency indicating that the "responsible" individual could not provide appropriate care. Examples of reasons for exceptions would include cases where the other parent was bedridden or the child was at risk because of suspected abuse.

Under all other circumstances, (including the use of older siblings, aunts, or grandparents in the home), the individual may choose informal care as her preferred choice of care but may not be required to do so.

By Statute, responsibility for determining the necessity of supportive services resides with the State IV–A agency. This position is incorporated in § 255.2(c).

Eligible Children

In the final regulations at § 255.2(a), we have limited the guarantee of child care to those families with dependent children under 13, and those children who are either physically or mentally incapable of caring for themselves or subject to court supervision, when such care is necessary. Limiting child care to these situations is a reasonable policy, consistent with the limits enacted for the Dependent Child Care Tax Credit by section 703(a) of the Family Support Act, and, which will apply to taxable years beginning after December 31, 1988. These limits reflect widely-held views (reflected in a variety of laws and legislative proposals) on appropriate governmental participation in expenditures for child care services.

Comment: A substantial number of commenters opposed our limitation of the child care guarantee in this manner. They pointed out that many States and other programs had higher age limits or no age limits at all. At least one commenter felt the age standard should be replaced by the "need for supervision." A number wanted States to have general discretion in setting an age limit. Some were more supportive of the age 13 as a general rule for coverage, but wanted greater State discretion to cover children over the age of 12. Many were particularly concerned about covering older children who needed special supervision, either because of individual circumstances or because they lived in neighborhoods which had drug, crime, or related problems.

Response: We have determined that it is appropriate to retain the limit on child care guaranteed under title IV–A to children under 13 and to retain the exceptions for children over 13 who are mentally or physically unable to care for themselves. However, we have added an additional exception which would cover care for children aged 13 and over who are subject to court supervision. We decided to add the additional exception because we recognized that such children had an officially established need for special supervision. We did not feel that an exception was justified for all those over 13 needing supervision. Such an exception would be too broad and too difficult to define; in some States, it would act to obviate the age 13 limit.

Comment: We also received a few comments on our proposal to require the State IV–A agency to guarantee care for children who would be required to be in the assistance unit if it were not for the receipt of SSI under title XVI or foster care payments under title IV–E. Commenters wanted this guarantee to be broadened to cover other children in the household who were not on AFDC (such as undocumented alien children) and incapacitated older individuals.

Response: We decided not to expand the guarantee of child care to these categories of individuals or to otherwise cover the costs of their care. The statutory language covering the guarantee refers to families "with a dependent child requiring such care" and therefore suggests no broader eligibility than we proposed. We included children who would be AFDC recipients except for their receipt of IV–E foster care or SSI since such children are considered dependent children for other purposes of law; however, they are excluded under the Act from the assistance unit because of the receipt of needs-based, Federally-supported benefits.

We recognize the apparent inconsistency between the statutory language covering the guarantee and the "good cause" language at section 402(a)(19)(G)(iv)(II) of the Act which provides that individuals would have good cause for not participating or accepting employment if child care or day care for any incapacitated individual living in the same home as the dependent child is necessary, but is not available and not provided. However, it is possible to rationally and fully satisfy both statutory provisions. The revised language following subparagraph (D) of section 403(a)(3) of the Act, which limits Federal matching for child care expenditures to those

made pursuant to section 402(g), also identifies the class of individuals for whom IV–A expenditures may be made. These are those identified in the guarantee and include only dependent children. It is, therefore, narrower than the class of individuals whose need for care may affect JOBS participation or employment. With the narrower guarantee language, the State must devote IV–A funds to AFDC dependent children; where broader care needs are identified, the State would have to exempt the individual from participation or pursue alternative sources of care. For example, necessary day care for incapacitated adults may be provided as a JOBS supportive service.

Comment: A few commenters questioned the appropriateness of our reference to the verification requirements at § 250.30(b)(3) in determining whether a child aged 13 or over was physically or mentally incapable of caring for himself. They suggested other medical evidence, eligibility for handicapped or special education programs, and worker determinations as alternatives.

Response: We understand why the reference to § 250.30(b)(3) raised some question since entry into the labor force is not relevant. The point we wanted to make is that the determination of the handicapping condition had to be made by a physician, or a licensed or certified psychologist. It is the condition, notwithstanding the child's age, that creates a need for extended care and supervision. We have made changes in §§ 255.2(a) and 256.2(a) to reflect this position. We decided not to extend the determination further because we felt the determination should be specific to this purpose and should be made by someone professionally qualified to make it.

Child Care for Tribal Programs

The State IV–A agency must provide child care to AFDC applicants and recipients who are served by a Tribal JOBS program. Such services shall be available to the same extent that they are available to eligible participants in the State's JOBS program. The State IV–A agency must provide an equitable level of services for Tribal members, and they must provide the same range of methods or arrangements, unless certain methods would not be feasible because of the nature of child care services available in Tribal service areas.

Other Supportive Services

The Act requires that the State IV–A agency pay for or reimburse the costs of transportation and other work-related expenses, including work-related supportive services, if the State IV–A agency determines they are necessary for an individual to participate in JOBS. For individuals in JOBS components such as education and training, these expenses include both ongoing and one-time special expenses. In addition, we concluded that such services may include one-time, special work-related expenses which would enable individuals to accept or maintain employment. These are discussed in more detail under "Work-Related Expenses." On-going expenses related to employment are already covered by the work expense disregard (which was raised to $90 effective October 1, 1989); therefore, no provision for such expenses has been made under section 301 of the Statute or these regulations.

The State IV–A agency must define work-related supportive services and work-related expenses in its Supportive Services plan. It must also describe methods of providing other supportive services, specify monetary limits for each type, and indicate the basis for determining the need for the type of service.

Comment: One commenter wanted us to be more explicit about the State's duty to provide transportation.

Response: The regulations already specify that the State agency must pay for or reimburse transportation and other work-related supportive services for individuals in approved activities. We do not see the need to elaborate further.

Comment: One commenter wanted us to require that transportation support systems be funded through existing coordinated systems.

Response: Under this program, we will be funding the transportation needs of individuals. We will not be funding transportation systems. Nevertheless, in the interest of improved coordination, we have amended the regulations at §§ 250.12 and 255.3(h) to clarify that the State IV–A agency is expected to coordinate with other agencies providing related supportive services. Furthermore, we expect State policies on reimbursement to take into account existing transportation systems.

Comment: Two commenters were concerned about an apparent inconsistency with the preamble language on the requirement to provide other supportive services to participants and the regulatory language at § 255.2(c) which limited the requirement to services "necessary to enable an individual to participate as required * * *."

Response: Volunteers in approved activities have the same rights to services as mandatory participants. Therefore, we deleted the phrase "as required" from § 255.2(c).

Comment: In general, commenters agreed with the flexibility provided States under the proposed regulations to define supportive services and work-related expenses. However, two commenters suggested that the final regulations specify the types of supportive services (other than transportation and child care) that could be provided. Specific suggestions included medical expenses which were not covered under the Medicaid program, counseling, and substance abuse remediation.

Response: We did not list the types of services which were allowable under this section. We were concerned that we could not foresee all appropriate types of services that States would want to consider, and we did not want to preclude items at this point. In our discussion about one-time work-related expenses, we gave some examples of items that could be included. States could also include services for at-risk youth (as discussed in the preamble to the employability plan at § 250.41), counseling, medical and dental services, stand-alone courses in parenting or life skills training, day care for incapacitated adults, and substance abuse remediation. To be covered as JOBS expenditures, such services must be specified in an approved Supportive Services plan, necessary for the individual to participate in, or prepare for, a work, education or training activity, and not otherwise available on a non-reimbursable basis.

We also require that a State indicate in its Supportive Services plan the basis for determining need for covered supportive services. Here, the State would include additional factors or procedures employed by the State to determine the necessity of services. For example, a State might specify that it would authorize car repairs on a one-time basis only when public transportation was not available, or it might specify that it would authorize day care for incapacitated adults only upon written medical verification of such a need.

Comment: One commenter wanted us to require an assessment of transportation needs.

Response: The regulations at § 250.41(a)(1)(i) already requires that an initial JOBS assessment include "the individual's educational, child care, and other supportive services needs." Further, since JOBS participants are the only individuals for whom transportation must be provided (with the State having the option to approve

necessary transportation and services for individuals in non-JOBS areas of the State), it did not seem necessary to regulate further in this area.

Work-related Expenses

Although the Act requires that child care be guaranteed so that an individual may accept or maintain employment, it is silent on whether the State IV–A agency can pay for work-related expenses in order for the same individual to accept or maintain a job.

We have concluded that payment of such expenses is consistent with the intent of the JOBS program to help individuals obtain employment and avoid long-term welfare dependency. Therefore, such expenses are matchable as a JOBS expenditures for a JOBS participant who finds employment (whether as part of that participation or on her own), as well as for any individual who finds employment (including, at State option, an individual in non-JOBS areas).

In addition, the State IV–A agency may make one-time payments for reasonable work-related expenses to an applicant or recipient so that she can accept or maintain employment, if the State IV–A agency so provides in its Supportive Services plan. Such expenses might include a uniform, a set of tools, a pair of eyeglasses (if not available elsewhere), or the fee for a driver's license.

Comment: One commenter wanted to know if States could define work-related expenses.

Response: Consistent with our policy to provide State flexibility, we are not defining what items could be covered by a State as one-time work-related expenses. However, at § 255.1(h), we do require the State to include a definition in its Supportive Services plan.

Comment: The same commenter asked how supportive services, including one-time work-related expenses, would be covered in non-JOBS areas, i.e., would they be matchable as IV–A expenses.

Response: As discussed earlier, the Statute makes specific provision for supportive services expenditures to be made from JOBS funds in support of self-initiated education or training. Through amendments to section 403(a)(3) of the Act, it precludes child care, transportation, and work-related expenses as title IV–A administrative costs. For the reasons given later in the discussion of Special Needs, we believe such expenses are matchable only through JOBS funding. We allow the State to set up procedures under which IV–A staff could authorize such expenditures in non-JOBS areas. We have revised the regulations at § 255.2(c)(2) to recognize this option (and related State plan requirements at § 255.1(d)).

Comment: One commenter objected to the NPRM preamble language which restricted one-time work-related expenses related to the acceptance or maintenance of employment to participants in activities like job search and work supplementation, but did not provide them for participants in other components like training who might also locate employment and face such expenses.

Response: We agree that the restriction was not appropriate, and we have deleted the referenced preamble language. The regulatory language at § 255.2(g) would accommodate such expenses related to acceptance or maintenance of employment from any component.

Comment: Two commenters expressed concern that our NPRM would not accommodate work-related expenses necessary for participation in component activities, but only those related to employment.

Response: It was never our intention to preclude matching for work-related expenses for participants in a JOBS component. We were only trying to establish that in addition to these on-going work-related expenses, the State could also receive matching for one-time expenses (such as uniforms, tools, or fees for a driver's license) related to the acceptance or maintenance of employment.

Comment: One commenter felt we should remove the one-time restriction for employment-related expenses since they could recur or new expenses could develop while an individual was working.

Response: We left the one-time restriction in the regulations. The Act provides a work-expense disregard for meeting on-going expenses (the amount of that disregard increased to $90 effective October 1, 1989), and we do not want to authorize duplicate payments or subvert the statutory limit of the disregard. We intend that the one-time restriction not be a lifetime restriction, but be a restriction per job. For example, if a State gave an individual funds for a car repair to get to one job, she could at some later date get funds for a uniform needed at a subsequent job.

Approval of Supportive Services

Child care, transportation, and other supportive services necessary for an individual to participate in JOBS, and, at State option, other approved education or training in non-JOBS areas, are eligible for FFP. In order to approve such services, the State IV–A agency must determine that the activity is consistent with an appropriate employment goal, that the individual is making satisfactory progress, and the activity otherwise meets the State's approval criteria. In JOBS areas, these determinations would be made through the JOBS program.

If a State elects to approve education or training activities for child care and supportive services in non-JOBS areas, its approval criteria should be consistent with those used in JOBS areas. The criteria can follow the standards for approval of self-initiated activities under § 250.48(a) or encompass broader approval criteria used for approving JOBS education and training activities. We have amended the regulations at § 255.1 to require that the State Supportive Services plan specify the State's criteria for approving education or training for child care and supportive services in non-JOBS areas.

Comment: Many commenters were concerned about the provisions in the proposed regulations which would require that an employability plan be developed for those in outside education and training, that participants in these activities would be considered to be JOBS participants, and that supportive services other than child care would be approved through the JOBS program. They were concerned about their ability to authorize services in areas not covered by JOBS (both before the October, 1992, deadline for statewideness and after), the administrative burden associated with setting up additional JOBS offices and doing full JOBS orientations, assessments, and employability plans.

Response: In response to these concerns, we have revised the final regulations to allow the State IV–A agency to approve education or training for child care and supportive services in non-JOBS areas of the State outside of the JOBS program procedures. The State agency retains the responsibility for determining the appropriateness of an individual's employment goals, but it does not have to provide for a full JOBS orientation, assessment, or employability plan. Approval of education or training for child care and supportive services can be done by IV–A staff in a non-JOBS area.

However, in areas of the State with a JOBS program, individuals who are engaged in any self-initiated activity as provided in § 250.48 are JOBS participants, and approval must be done by JOBS staff in accordance with JOBS procedures.

Verification of Participation in Education or Training Activities

The agency must periodically (based on the ability of the program to report) determine that a recipient is making satisfactory progress, as defined at § 250.1. Child care services (or other supportive services) provided to individuals who are not attending could be considered payments for ineligible individuals and might be subject to disallowances, even if the State were monitoring progress on a regular basis.

Comment: Several commenters objected to the proposed disallowance if a participant is not making satisfactory progress. They objected to preamble language which indicated that States which followed a standard reviewing progress on a 3-month basis could be subject to disallowances. They raised questions about whether this policy would apply equally: 1) to JOBS participants and individuals approved for child care and supportive services in non-JOBS areas; and 2) in cases where an individual was not attending and where an individual was not making progress. One commenter suggested that disallowances should not be taken when payments were correctly paid based on the circumstances at the time of payment.

Response: The Statute provides that individuals in any education and training activities must be satisfactorily participating in order to be eligible for child care services. Consistent with the proper and efficient administration of Parts A and F, we are extending this requirement to other supportive services, and we are interpreting this requirement to mean making satisfactory progress as defined in § 250.1. If individuals are not making progress in activities, the value of their participation is questionable, and continued support should be re-evaluated. We expect a State to incorporate this concept into the criteria it uses for approving activities under JOBS and for approving education or training in non-JOBS areas.

As we indicated earlier, in discussing the definition of "making satisfactory progress" at § 250.1, we allow adjustments to institutional standards of progress to reflect the special needs of AFDC recipients, probationary periods, and consideration of mitigating circumstances in satisfactory progress determinations.

In response to the comments, we removed our reference to a three-month monitoring standard from both the regulations and preamble. However, we do expect regular monitoring, based on the program's ability to report progress. We recognize that the State may have difficulty determining, on a three-month or shorter schedule, whether satisfactory progress is being made because education and training institutions may not make determinations that frequently. As long as an individual is attending the activity, we would not anticipate taking disallowances for expenditures made to cover a period when the State could not know an individual's progress. During such a period, the State can presume an individual is making satisfactory progress, as long as the individual is attending the activity and available reports for prior periods are not negative (or there are sufficient mitigating circumstances for lack of attendance or unsatisfactory progress). We do expect the State to monitor attendance on a regular basis (with the individual or institution), and we indicated that we may take disallowances for child care or supportive services expenditures which cover periods of non- attendance.

This policy is related to the provision requiring that the Supportive Services plan include an assurance that child care claimed for reimbursement be reasonably related to the hours of participation or employment. In both situations, we want to ensure that expenditures are necessary for and directly related to participation or employment.

Services During Gaps in Participation

The State IV–A agency may provide child care and other necessary supportive services for up to two weeks for families in which an individual is waiting to enter approved education or training activities or to begin a component. In addition, the State may provide services for up to one month, on an exception basis, when child care arrangements would otherwise be disrupted and participation in a JOBS activity or employment is scheduled to begin during that period. This provision is included to ensure that child care services (or other service arrangements) are not lost and continuity of care is provided so that an individual can continue the employability process.

Comment: Several commenters disagreed with the provision in the NPRM which only allowed for up to one two-week period of services during gaps in participation. Commenters asked for greater flexibility to cover the provision of services during gaps in JOBS participation or immediately following a loss in employment. Suggested alternatives included: (1) full State discretion; (2) at least one month or 30 days; (3) retain two weeks but allow for exceptions in cases where child care would otherwise be lost, the child would have to be moved, a placement was imminent, school breaks, or when no more than 30 additional days of care would be required; and (4) various combinations thereof. Some suggested that States be allowed to provide transitional benefits beyond the Federal standards under an approved State plan.

Response: We have revised the final regulations at § 255.2(d) to allow services for up to one month, on an exception basis. This approach provides additional State flexibility while protecting against expenditures which do not further the purposes of the JOBS program. It allows the State to address situations where the goals of participation, employment, and continuity of care would be positively served by extension of services beyond a two-week period. The State IV–A agency must describe its policies on interim services in its Supportive Services plan, as required under § 255.1(g).

Comment: One commenter asked about the ability to pay transportation costs after termination of AFDC eligibility.

Response: We would allow such costs as JOBS expenditures consistent with the policy specified at § 250.73.

Services for Applicants

We were faced with the question of whether Congress intended that child care be available to recipients of AFDC only, or to applicants as well. In considering this issue, we concluded that child care should be available, as it was under prior law, when the agency requires an applicant to participate in job search. Temporary child care should also be available for other activities necessary to prepare an individual for participation in the program, such as orientation. States had told us that the lack of such child care during orientation results in a very high absenteeism rate.

However, we did not consider it to be proper use of resources to provide services to applicants who were not likely to be determined eligible. A State IV–A agency could provide services to certain individuals (e.g., those in job search or needing services to accept employment) whose eligibility has not been determined, as long as it has no reason to believe that the individual would not likely qualify for benefits. In addition, we did not believe it to be proper or efficient use of resources to provide child care or other supportive services to applicants in education or training activities, until their eligibility was determined.

Comment: Some commenters objected to the distinction we made in the proposed regulations between the eligibility of volunteers for services, compared to those required to participate. Under the proposed regulations, we provided for supportive services for those required to participate in job search, but not for those participating on a voluntary basis.

Response: As discussed previously, we decided that the distinction was inappropriate; it is not based on statutory language, and it acts to contravene the JOBS targeting provisions. Therefore, we have revised the regulatory language at § 255.2(e) to eliminate references to participation requirements. We also clarified that services are available to applicants both for job search and for other approved activities to prepare them for JOBS participation.

Comment: Another commenter wanted us to clarify that, like applicants, recipients were entitled to child care and other services necessary to participate in activities which prepare them for JOBS.

Response: In response to this comment, in our amendments to § 255.2(e), we also clarified that recipients participating in approved pre-component activities are entitled to such services.

Comment: One commenter wanted it clarified that applicants who were unlikely to qualify for AFDC eligibility should not be required to participate.

Response: When we stated that we did not consider it proper to provide services to individuals who appeared unlikely to qualify for AFDC, we meant to cover not just supportive services, but JOBS services as well, including job search, assessment, employability planning, and case management. For example, if a State agency has information (perhaps not yet verified) that a family applying for AFDC has excess resources or that deprivation does not exist, it should not refer that family for IV–A or IV–F services on either a mandatory or voluntary basis. Payments made for services provided to a family referred under such circumstances would be subject to disallowance.

Comment: One commenter had questions about the States' responsibility for documenting the allowability of applicant services.

Response: Applicant services generally would be subject to the same documentation requirements as recipient services. A unique aspect of applicant services is that questions about allowability could arise if there were evidence that services were provided after the State agency had information indicating that the individual was unlikely to qualify for AFDC. In the absence of such information, we would presume that applicant services were allowable.

Methods of Providing Child Care and Other Supportive Services (§ 255.3 of the Final Regulations)

The Act provided a number of methods to guarantee child care, including measures not specifically listed but methods identified and deemed appropriate by the State. Based on that language, the State IV–A agency may:

(1) Provide the care itself;

(2) Arrange care through public or private providers by use of contracts or vouchers;

(3) Provide cash or vouchers in advance to the caretaker relative so that the child care costs may be pre-paid;

(4) Reimburse the caretaker relative for child care expenses incurred;

(5) Arrange with other agencies and community volunteer groups for non-reimbursed care;

(6) Use the earned income disregard; or

(7) Adopt such other measures as the State IV–A agency deems appropriate.

The State IV–A agency must describe which of these methods it will use in its Supportive Services plan.

Comment: One commenter wanted us to allow a State to use a combination of methods of providing care for a single family.

Response: This is allowable. In fact a State could use a combination of methods for providing care to an individual child. For example, a State could reimburse a caretaker for in-home care before a child went to school and provide a voucher for the child's after-school care at a center.

Comment: One commenter thought we should require States to make child care payments up front.

Response: The Statute specifically allows for reimbursement of expenses; thus, a State clearly has the authority to make child care payments after costs have been incurred.

Direct Provision of Child Care

Historically, State IV–A agencies have not provided child care directly except in a few instances. However, we can foresee a situation in which a State IV–A agency might provide child care services within the agency, for example, while a parent is in a JOBS orientation session. Where care is provided directly, Federal matching is subject to the same limits on costs as would be applied for outside child care; the State IV–A agency cannot charge its direct and overhead costs for providing care without regard to the limits established pursuant to § 255.4(a).

Vouchers

Vouchers have become a very popular method of providing care as they may give parents great freedom of choice. Many States are using voucher systems, also referred to as purchase-of-care mechanisms, for child care delivery. If a State IV–A agency wishes to institute such a system, the Department can provide referrals to agencies with expertise in establishing one.

Voluntary Providers

In planning to meet the child care demands related to the Statute, there may be an opportunity for communities to mobilize volunteer resources to expand existing programs. For example, there is a growing need for before and after school care for school-age children. Volunteers under the supervision of professional caregivers could be a tremendous addition to the staff necessary for such programs. Many communities are also recruiting retired citizens to help fill personnel shortages in day care centers by creating staff positions for aides which can be filled by volunteers.

Comment: Although we received general support for the flexibility in methods we provided, one commenter wanted us to eliminate care by volunteers, or any non-reimbursed care, as an option.

Response: We disagree. To eliminate these options would unduly restrict parental choice on care. In particular, we disagree with the assumption that all care provided on this basis is inferior, and we will not preempt parental decisions based on this assumption.

Direct Payments to the Caretaker Relative

The State IV–A agency may pay the caretaker relative directly either by providing payment in advance or by reimbursing the caretaker relative who has already paid for the care. In these situations, the family member cannot receive the earned income disregard for child care specified at § 233.20(a)(11)(i), and the determination of eligibility and payment amount must be determined without considering child care costs or payments.

Income Disregards

The State IV–A agency may use the existing child care disregards as provided at § 233.20(a)(11)(i). Although the child care disregard is not

specifically listed among the methods in the Act, Congress demonstrated its intent that the disregard continue when it raised the amount of the child care disregard in title IV of the Statute effective October 1, 1989.

Inclusion of the disregard as a method for guaranteeing child care under this Part does not mean that the provisions of this Part supersede existing provisions regarding the child care disregard. Thus, the disregard remains limited by the amount specified in section 402(a)(8)(A)(iii) of the Act, it remains available for expenditures on children aged 13 and over, and it is not limited by the local market rate.

The State IV–A agency may make supplemental payments for child care costs that exceed the disregard amounts but are within the limits established under this Part. Under § 255.3(f), in cases subject to retrospective budgeting, the State IV–A agency may modify their budgeting procedures to provide for child care costs in the first one or two months of employment. This option is discussed in more detail later.

Comment: In general, commenters liked the flexibility we provided. However, one commenter objected to the use of the disregard as a method—apparently because they considered the disregard levels to be too low.

Response: We do not believe this objection merits a change. First, the Statute specifically allows a State to set the limit of child care expenses at the level of the disregards, and it would be inappropriate for us to try to undermine that flexibility here. Since States are given the option to use the disregard levels for payment of child care services, regardless of the method used, eliminating the disregard as a method does not in any way assure that higher child care payments will be available. Secondly, we allow States to supplement the disregard. Thus, inclusion of the disregard as a method of providing child care services does not necessarily result in lower child care payments for those receiving benefits under this Part.

Comment: One commenter supported our position stated in the preamble to the NPRM that these new child care provisions do not supersede the existing provisions in the Social Security Act for the disregard of actual child care costs. At the same time, other commenters questioned whether our regulations at § 233.20 needed revisions to reflect the options available under the Family Support Act for payment of child care costs, or to cross-reference the Supportive Services plan.

Response: We did not feel it was appropriate to amend § 233.20 to incorporate other methods of providing child care since this section deals specifically with the disregard of income under AFDC, and other methods would not involve a disregard. Further, we intend to include a reference to the disregard regulation in the Supportive Services plan. We do not believe that the disregard regulation would also need to cross-reference the Supportive Services plan.

Because the disregard regulations provide for a disregard only of actual costs, it should clearly be understood that the State would not disregard child care costs which were otherwise being met under Part 255. Child care costs being paid by the agency are not "expenditures for care" by the family and therefore are not eligible to be disregarded.

However, even where the State is paying for child care under Part 255, a family could be incurring its own child care expenses if the State payment level is less than the total cost of care. Where the cost of the care exceeds the local market rate, but is within the disregard limits at section 402(a)(8)(iii), the family could receive a disregard for the share of costs it incurs itself. For example, suppose child care costs under Part 255 were limited by the local market rate to $150 in a particular case, and the family needing child care would otherwise be eligible for the child care disregard of $175. The family may choose to continue its child care arrangement costing $175, and the State may choose whatever method it wants to pay the $150 for care allowed under Part 255. The family would then incur child care expenses of $25, which could be disregarded. (Alternatively, at State option, the full $175 amount could be met through the disregard.)

The disregard and other methods of paying for care under Part 255 may not be combined in order to duplicate assistance under the two provisions. The amount available in combination may not exceed the higher of the appropriate disregard limit at section 402(a)(8)(A)(iii) of the Act or the applicable limit under Part 255. For example, in the above case, a family could not secure child care costing $325 with the expectation of getting $150 in assistance under Part 255 and an additional $175 to be covered by the disregard amount. This would constitute duplication of benefits and would violate the intent of the statutory limits for both the disregard and the Part 255 provisions.

Comment: Two commenters suggested that States should be required to continue the disregard as a method of paying for child care expenses.

Response: We agree that the child care disregard authorized under section 402(a)(8) of the Act must remain available to eligible applicants and recipients when appropriate. However, we decided not to require States to include it as a method of guaranteeing care under these new provisions. We believe the statutory language requires State flexibility in this area because the Statute does not directly mention the disregard as a method by which States would guarantee care.

Comment: Another commenter wanted us to eliminate the inconsistency between the scope of the two sets of provisions; in particular, the new provisions cover only child care, while the disregard provisions cover dependent care.

Response: We recognize the inconsistency but have not made a change since the difference is due to differences in statutory language. The new provisions specifically refer to a guarantee of "child care," and (as discussed elsewhere) to families with a dependent child "requiring such care," while the disregard provisions in section 402(a)(8) of the Act specifically cover expenditures for a "dependent child, or an incapacitated individual living in the same home as the dependent child." Thus, the scope of the disregard language is broader. (In earned income cases, families with expenditures on care for individuals in the home who are not dependent children could have those costs covered through the disregard even though the guarantee under section 402(g) of the Act does not extend to such individuals. However, these costs could not be supplemented if care is more than the disregard amount because there was no statutory change made to the disregard provisions to allow such supplementation.)

Supplementing the Disregard

Comment: One commenter felt that States should be required to issue a supplement when the disregard amount was less than the amount which would be available if a direct payment were made. A second commenter inquired whether the States would be obligated to make supplemental payments in these cases. He felt that perhaps the State should not be required to make a supplemental payment if there were adequate care available and the State could arrange care within the disregard limits.

Response: We proposed these supplements as an option for States, rather than a requirement, because the child care provisions under title III of the Statute did not supersede the

existing child care disregards. In fact, in title IV of the Act, Congress specifically amended the statutory limit on the disregard amount, without any reference to the other child care provisions. We believe that requiring supplementation of the disregard would subvert congressional intent by essentially invalidating the new disregard limits otherwise provided in the Family Support Act. Therefore, we have not amended our policy.

Disadvantaging the Family by a Change in Method

The Statute prohibits a State IV–A agency from disadvantaging any family receiving AFDC on October 13, 1988, through a change in its method of reimbursing the cost of child care. The only method for reimbursing child care costs for recipients with earnings on that date was the earned income disregard; for participants in education or training programs, special needs was an available method. Families receiving benefits under either method could be disadvantaged if the State changed to a method of direct payment. At § 255.3(e), we require that, for recipients who received AFDC payments on October 13, 1988, determined by using the child care disregard at § 233.20(a)(11)(i) or special needs payments, the State IV–A agency must determine current AFDC eligibility and payments based on the continued application of the disregard or special needs payments in order to find out if the family would be disadvantaged. If the family would be disadvantaged, we require the State to determine the family's AFDC eligibility and benefit (including child care needs) as if the method applicable on October 13, 1988, were still in effect.

Comment: Two commenters pointed out that families whose child care was provided as a special need as of October 13, 1988 could also be disadvantaged if a different method was used which provided or paid for child care directly.

Response: We have revised the preamble and regulations at § 255.3(e)(2) to recognize this additional group. We also revised the regulations and preamble language to indicate that the State must determine the family's AFDC eligibility and benefit (including child care needs) as if the October 13, 1988, method were being used; however, we do not directly require that the same method be used since, in the case of special needs, the method is no longer available.

Comment: Two commenters questioned the requirement for the disregard to be applied as of October 13, 1988.

Response: We retained the requirement because we believe that families who were not eligible for child care benefits at the earlier time cannot be disadvantaged by a change in method.

Comment: Another commenter asked that we expand upon how States would determine if a family was disadvantaged.

Response: When a family needs child care benefits for employment or for participation, the State would determine if the family received child care benefits in the form of a disregard or as special needs in October 1988. If not, the State need not worry about disadvantaging the family under this provision. However, if the family received the disregard or special needs in October 1988 and is now eligible for child care, but the State is considering another method of providing care, the State must check to determine that the family is not worse off as a result of applying the new method. If the family received the disregard in October 1988, the State must calculate eligibility and benefits as if the disregard were its method, to determine if the family would otherwise be disadvantaged. If the family's child care was provided as a special need, then the State must determine the family's AFDC eligibility and benefit as if special needs were its method of providing child care, to determine if the family would be otherwise disadvantaged.

In determining if the family would be disadvantaged, the State should look for two types of circumstances. The first is where the provision of direct services would make the family ineligible (for example, under the "185 percent gross-income test"), but the family would retain eligibility if the costs of care would be covered through a disregard or special needs. These methods would allow the family to retain AFDC eligibility with a higher income level. The second circumstance is where the amount available to cover costs under the method applied in October 1988 would be higher than under the method now under consideration. This could happen if the disregard level and actual costs for care are both higher than the local market rate. Since the disregard and special needs were not limited to the local market rate, the family would receive more money under the prior method. Under either of these circumstances, the family would be disadvantaged by a change in the State's method of providing care. Therefore, the State would be required to determine the family's AFDC eligibility and payment as if the October 1988 method (and the payment amount under that method) were in effect.

Meeting Child Care Costs Under Retrospective Budgeting

Recipients who need child care before beginning employment often lack sufficient funds to pay for such care before receiving their paychecks. If a State IV–A agency uses a two-month retrospective budgeting cycle and meets child care needs through the disregard at § 233.20(a)(11), for the first four months of employment, a family only receives recognition of child care costs for two of those four months. For example, under current rules, if a recipient becomes employed in January and has child care costs in January, February, March and April, the child care disregard will not offset income in determining the amount of the payment until March and April. If a State IV–A agency decides to provide child care for the first and second month of employment, as a start-up cost, the State IV–A agency could not use the disregard to offset income used to determine March and April's payment because the recipient did not actually meet the cost of child care in January and/or February.

We will allow the State IV–A agency to provide start-up costs for child care for the initial one or two months of employment and to apply the disregard for the third and fourth months as if such costs had been paid by the recipient. However, in order to prevent duplication of benefits, if a State IV–A agency elects to do this, it may not apply the disregard to income used to determine the payment for the month(s) following the month in which child care ceases. The State IV–A agency may meet the start-up costs by making direct payments to the provider or by reimbursing the recipient. Any reimbursement for child care would not be counted as income or resources for any month.

Comment: Commenters generally supported our policy to allow adjustments to retrospective budgeting (and for our disregard of supportive services payments). However, one commenter felt that States should be required to modify the retrospective budgeting process.

Response: We have not changed our proposal in response to this comment. We believe such a requirement would unduly limit State flexibility and could result in a very significant new administrative burden on State agencies that currently provide child care benefits largely through the disregard. Furthermore, the child care provisions of

the Statute do not supersede the related provisions for disregard of child care expenses at section 402(a)(8) of the Act. Under the existing provisions, retrospective budgeting procedures remain in effect. Therefore, we do not believe States could be required to modify their retrospective budgeting procedures.

Comment: Two commenters objected to our requirement that States that modified the retrospective budgeting process had to discontinue application of the disregard after the recipient ceased receiving child care. They thought it was unfair to reduce AFDC benefits at the same time that individuals who lost their jobs were losing income.

Response: We do not believe a change in policy is indicated. We proposed this policy in order to prevent duplication of benefits. As written, the recipient would receive child care payments for the same period of time as they were incurring child care costs. Thus, those receiving payments through this method would be treated comparably to those who received child care benefits or vouchers directly. If we took the commenters' suggestion, these individuals would receive an extra one or two months of child care benefits. This kind of differential treatment would not be justified. Further, such a policy would seem to be inconsistent with the statutory language that recipients be paid no more than actual child care costs.

Comment: One commenter requested that we clarify the regulations at § 255.3(f) concerning the State's option to modify the retrospective budgeting process.

Response: We have revised the regulations to clarify that the State may directly pay for child care costs incurred during the initial one or two months but subsequently apply the child care disregard in determining payments for the corresponding payment months.

Comment: One commenter asked about the obligation of the State agency, in cases subject to the normal retrospective budgeting procedures, to cover full child care costs by paying for costs after the individual goes off the AFDC rolls. They also asked for clarification of the effective date of transitional coverage in this situation.

Response: We do not believe the State should be required to pay for child care expenditures after AFDC recipients who received the child care disregard leave the rolls. As stated elsewhere, we took the position that the existing disregard provisions under law were not superseded by the Family Support Act. Consistent with this position and our policy to provide State flexibility in determining appropriate methods of providing care, we have decided not to require the State to pay individuals who received the child care disregard any additional child care benefits under Part 255 after they are no longer eligible for AFDC.

This policy does not affect the length of time a family would be eligible for transitional benefits under Part 256, which cover child care expenses from the first month after a family becomes ineligible through the twelfth month after a family loses eligibility. Child care benefits under Part 255 cover the period before a family loses eligibility; payments for that period, even if made after the family is off the AFDC rolls, do not affect eligibility under Part 256.

Parental Choice

The regulations at §§ 255.3(c) and 255.3(d) reflect our desire to allow the caretaker relative to choose the type of child care (center, group family day care, family day care or in-home care), if more than one type is available. This is consistent with section 482 of the Act which requires the State IV–A agency to provide information to individuals about child care, including what assistance is available to help the participant select appropriate child care services.

The regulations at § 255.3(d) also provide that an individual who is required to participate under Part 250 may not refuse appropriate care unless she can arrange other care or demonstrate that such refusal will not prevent or interfere with participation. Thus, an individual's choice is not constrained by the methods or types of care which the State IV–A agency has elected to provide under its Supportive Services plan. The State IV–A agency is required to pay for the child care services arranged by the individual, even if that would require that it set up an alternative mechanism for payment of such services. Such payment would still be subject to the limits established by this Part.

Comment: One commenter wanted us to require that States allow a reasonable time for individuals to arrange care by themselves.

Response: We did not see the need to regulate in this area. We believe that individuals would have the ability on an ongoing basis to develop alternative child care arrangements. Further, in cases where the hours of participation would be minimal and the care arrangements temporary, such as for an orientation or assessment, we believe the State agency should have the ability to make temporary arrangements which would provide care needed during one-time or intermittent appointments for discussions with caretakers about JOBS participation.

Comment: States generally supported our conclusion that unlicensed care was permissible. However, several commenters objected to any requirements that States facilitate the use of unlicensed care and asked for broader State discretion on paying for unlicensed or unregulated care. Among their concerns were conflicts with existing State laws about the ability to make payments to unlicensed providers, cost and other complications related to minimum wage requirements for unrelated in-home providers, and interference with State efforts to upgrade child care quality.

Response: We understand these concerns, but consistent with the position of President Bush, we believe that parents should be able to make informed choices about who provides care for their children. In order to assist parents in making these decisions, the State agency is free to provide information on the advantages of different types of child care, and identify licensed providers who are conveniently located for participants and who otherwise meet their needs.

Informal care may be more problematic in some States when the State agency makes direct payments to providers. For years, States have been paying for informal care through the disregard, and the State might minimize its problems if it continues to use the disregard or otherwise make advance payments to participants who would be responsible for making the payments to providers. As a point of clarification, when we stated in the preamble that the State agency had to pay for this kind of care, we did not mean that the State agency must make direct payments to the providers of such care.

Comment: Two commenters wanted us to clarify that self-arranged care had to meet applicable standards of State and local law. In related comments, one commenter asked about the obligation of a State to pay for self-arranged care out of State funds: 1) if the care were substandard and therefore did not qualify for Federal matching; or 2) where a license was required, but never applied for or denied. The same commenter asked for clarification of the meaning of "applicable standards" for out-of-home care when there were no such standards.

Response: Payments for self-arranged care are subject to the requirements established under this Part. Thus, to qualify for Federal matching, any self-arranged child care has to meet

applicable standards of State and local law. States are not required to pay for self-arranged care that does not meet the requirements for Federal matching at § 255.4(c). However, depending on the situation, unlicensed care could meet these requirements. For example, a church-affiliated child care center, a family day care provider caring for only one or two children, or an in-home provider could be exempt from State licensing requirements; in such cases licensing requirements would not apply, and by default, the care would meet the "applicable standards" of State law. On the other hand, if a child care center was subject to State licensing requirements, but had not applied, or was not qualified, care provided at that center would not be eligible for Federal matching, and the State would not have to pay for such care.

Comment: One commenter felt that, in offering a choice among available types of providers, States should be required to include licensed or regulated care.

Response: We do not feel the need to further regulate in this area. At § 255.3(c), we already require the State to offer a choice "if more than one type of care is available, e.g., center, group family, family day care, or in-home care." These choices would normally include licensed or regulated care. In some cases, licensed or regulated care might not be available; we cannot require the State to offer choices which are not available.

Comment: One commenter raised questions about care provided at religious institutions or at centers affiliated with religious institutions. It cited constitutional issues which could arise under purchase-of-service contracts or voucher programs concerning the separation of church and State—based upon religious effects of the care, hiring, and funding practices of the centers and other factors. It also raised concerns about recipients being required to choose care at centers with religious affiliations.

Response: A State may not require any individual to accept care at a center which has a religious affiliation. However, for those individuals choosing a center with religious affiliation, the State must develop payment mechanisms which can accommodate such a choice. Consistent with constitutional requirements, a State must ensure that its programs do not create an excessive entanglement between the government and religious institutions.

Comment: One commenter said we should require States to provide individuals a full choice of payment methods and inform them that direct payments were available. Another suggested that those using self-arranged care be afforded the full range of methods of payment.

Response: We believe the Statute gives States discretion in deciding which child care methods to use. Individuals are not necessarily entitled to direct payments or any other method of provision. Therefore, we have not incorporated such a requirement.

Needs of the Child

The Act and the regulations at § 255.3(b) require that the State IV–A agency must take into account the needs of the child if it arranges the care. This means that care must be available during the hours needed, including before or after school (or both) as well as care for the entire day. The care must be reasonably accessible so that neither the child nor the caregiver must travel distances beyond what is normally acceptable in the community.

Special attention should be given to children with special needs. There are a variety of programs funded at the Federal and the State level for children with special needs. Often, there is little or no coordination between these programs and other dependent care. We encourage the State IV–A agency to make a concerted effort to identify programs such as Head Start that might benefit JOBS participants and their children and to coordinate with these programs.

There are many materials already developed by the Department, the States, and the private sector that contain information on the types of care and selection of appropriate care. The State IV–A agency may find it cost effective to use local child care resource and referral (CCR&R) agencies to provide this information. Child care resource and referral agencies exist throughout the country as a public/private venture to serve the community. They keep data on available resources (including openings and providers), often listing not only name, address, and cost of care, but information on curriculum and special programs.

Comment: One commenter requested that we include the language about reasonable accessibility based upon normally acceptable community standards in the regulations.

Response: We revised the regulations at § 255.3(b) in response to this comment. However, we also allow the State to establish a uniform standard which would apply across the State. To require all States to establish standards based on individual community patterns raised serious concerns about intra-state equity and the potential administrative burden on States that hundreds of such determinations would entail.

Comment: Several commenters asked us to clarify the regulations at § 255.3(b) where we indicate that "[i]n arranging for child care, the State agency must take into account the needs of the child, including * * * the appropriateness of the care to the age and special needs of the child." The specific concern was the implication that the State agency was solely responsible for the determination of appropriateness. The commenters felt that the caretakers should be able to determine whether child care was appropriate.

Response: The State agency is not solely responsible for determinations of appropriateness of child care. When the State agency arranges for child care, then the agency must take into account the needs of the child (as required by statutory language at section 402(g)(1)(B)) and make an initial determination of the appropriateness of care. If a child care recipient is concerned about the appropriateness of care arranged by the State, she has several alternatives, including requesting assistance from the State in identifying alternative care, arranging alternative care, or requesting a hearing, pursuant to § 255.2(h).

Methods of Providing Other Supportive Services

Under § 255.3(g), the State IV–A agency may provide transportation or other supportive services either directly or through payment or reimbursement. This policy is consistent with current Federal policy and State practices under existing work program options. The Supportive Services plan must specify the methods by which supportive services would be provided; this requirement is incorporated in § 255.1(c).

Coordination

Under the Act and final regulations at § 255.3(h), the State IV–A agency must coordinate its child care activities with existing early childhood education programs in the State, including Head Start and preschool programs funded under Chapter 1 of the Education Consolidation and Improvement Act. The State IV–A agency should build upon existing resources to expand the range of services available to JOBS participants.

We recognize that helping a mother set up a stable child care plan, especially if it involves more than one provider, can be difficult. However, we also know how important a well-developed plan is; poorly thought-out arrangements break down, causing

disruption to training and employment. We believe that the provision of services for a brief interim period may prevent the disruption of such carefully planned arrangements and allow continuity of care.

Comment: One commenter thought we should be more explicit regarding the form in which we expected States to coordinate and the results which we expected.

Response: Although we believe very strongly in the importance of coordination, we do not believe it would be fruitful for us to regulate in this area. Successful coordination depends upon items such as open, informed communication; the identification of mutual interests; and reductions in institutional and territorial barriers. These areas are difficult to regulate. We could lay out specific coordination activities which we would like the State to undertake, such as requirements to share its Supportive Services plan, to participate on boards, and to attend meetings, but those would not ensure successful coordination. Also, we do not want a State agency which has made valiant attempts to coordinate to be at risk when outside parties thwart its coordination efforts.

However, our regulations do touch upon our expectations of the results of coordination where we require the State Supportive Services plan to include an assessment of the availability of child care services provided on a non-reimbursable basis by other Federal, State, and local services. Further, as discussed under § 255.1, we have amended the State plan requirements to include a description of the nature of coordination with appropriate public and private agencies.

Comment: Two commenters thought we should require coordination with existing child care resource and referral agencies.

Response: We agree that such coordination would be beneficial. It would help the State agency identify potential resources and minimize duplication of efforts. Therefore, we have added resource and referral agencies to the list for State IV–A agency coordination.

Comment: One commenter suggested that State agencies should be required to consult with Indian Tribes and Alaska Native organizations about the child care methods that would be available. A couple of other commenters wanted States and Tribes to have the flexibility to work out mutually acceptable methods of providing care, which could include intergovernmental agreements for Tribes to provide services or systems for Tribal issuance of child care payments to JOBS participants. Another commenter thought that we should require States to develop their payment methods in consultation with the Tribes.

Response: The JOBS regulations at § 250.12(e)(2) already require coordination between the State agency and Tribal grantees about the services provided under Part 255. As part of this required coordination, we would expect the State and Indian Tribes or Alaska Native organizations to discuss such issues as methods of providing child care, criteria and procedures for approving and paying for care, and Tribal child care standards. However, we did not believe that it would be appropriate to issue specific regulatory requirements on the scope of consultation because we expect so much variation among the States with respect to State/Tribal child care issues.

Comment: One commenter suggested that State agencies be required to coordinate with JTPA agencies to ensure that there will not be duplication of supportive services.

Response: We have revised the regulations at §§ 250.12 and 255.3(h) to provide that the State IV–A agency must coordinate with agencies providing related supportive services. The NPRM only mentioned coordination with respect to child care, but not other supportive services.

Allowable Costs and Matching Rates (§ 255.4 of the Final Regulations)

Statewide Limit

Section 402(g)(1)(C) of the Act and § 255.4(a) of the regulations provide that FFP is available for payments for the actual cost of child care up to the statewide limit chosen by the State IV–A agency. The statewide limit may be the disregard level at § 233.20(a)(11)(i), or some higher figure. In no case is FFP available for payments which exceed the applicable local market rate.

An example may help to explain this provision. Suppose a State IV–A agency sets a statewide limit ($250), which is higher than the child care disregard, for the purpose of calculating the amount of child care costs that it will pay for or reimburse. In City A, the applicable local market rate is also $250. Thus the State IV–A agency can pay for the actual cost up to $250. In City B, the applicable local market rate is $225. Thus even if the care cost $250 in City B, FFP would only be available for $225. In City C, the applicable local market rate is $275. FFP would be available for only $250 (the statewide limit) or, if less than $250, the actual cost of care.

Comment: We received several comments opposing the requirement that States set a statewide limit for Federal matching of child care costs. Some commented that such a limit would not reflect local needs.

Response: We interpret the statutory language, which specifies that payments be limited by the disregard level or "an amount established by the State," to mean that if the State chooses to pay an amount higher than the disregard, it must establish a statewide limit. This amount is distinct in the Statute from local market rates. Further, we do not believe that setting a statewide limit precludes a State from reflecting local needs in its payment levels. For example, the State could set its statewide limit at the highest local market rate in the State. Payments would then be based on the actual cost of care up to the local market rate and the statewide amount would not be a limiting factor.

The statewide limit may be different for children under two and children aged two and over, consistent with the amendment to the child care disregard provision under the Statute effective October 1, 1989.

Comment: One commenter opposed allowing the AFDC disregard amount to be used as the statewide limit.

Response: The option for a State to use the disregard amount as its limit is specifically included in the Statute.

Comment: One commenter suggested allowing the State to use the statewide limit as the rate for a locality where the local market rate is very close to it.

Response: The Statute limits costs to the local market rate, and we cannot allow States to substitute a higher limit.

Local Market Rates

Each State IV–A agency must establish local market rates, and the State Supportive Services plan must explain the methodology used to establish them. We do not propose to impose any statistical formula to be used uniformly. However, in § 255.4(a)(2), we set a few requirements which the State IV–A agency must follow in establishing those rates. Furthermore, we intend to issue an Action Transmittal within six months which would specify criteria to be used in evaluating State sampling methodologies.

First, the State IV–A agency must base the rates on a representative sample of providers, obtained in a survey by the State IV–A agency or under an outside survey. Secondly, local market rates must be set at the 75th percentile. This level was selected because it represents a reasonable balance between concerns about fiscal

accountability and accessibility to services. Finally, local market rates must be determined by type of care such as center care, group family day care, family day care, and in-home care. Rates should be differentiated by care for infants, toddlers, preschool and school children and whether there are different rates for full-time and part-time care. Where appropriate, rates should reflect reductions in the cost of care for additional children from the same family.

State IV–A agencies have had some experience in determining local market rates when preparing State budgets and calculating the allowable title XX rate for child care. Also, studies are available to a State IV–A agency if help is needed in establishing local market rates. Many States rely on information provided by the local child care resource and referral agencies such as the studies done in 1987 and 1988 by the California Child Care Resource and Referral Network that gave costs of care, licensed capacity, enrollment, open slots, wait lists, hours of care, transportation, and types of regulated providers.

Collecting data on unregulated caregivers providing care in the home of the child may be more difficult and demand a different approach. We are aware of this difficulty, and we would allow a State to develop a procedure for determining the appropriate adjustment to apply to the rates for regulated care which it determined using the prescribed methodology.

Comment: Numerous commenters objected to an additional guideline we included in the NPRM which required that local market rates be determined for areas no greater than political subdivisions. Their concern was based in large part on the administrative difficulty of determining hundreds of rates and on the inconsistency of these requirements with other State systems. Most commenters supported greater flexibility in this area, but a few offered specific options such as the use of regional data; sub-State data grouped by similar geographic, economic or demographic conditions; or rural versus urban groupings.

Response: We have changed our regulations to delete the requirement that local market rates be determined for all political subdivisions. Instead, we allow the State to determine these rates for broader geographical regions in the State or for groups of small areas which reflect similar geographic, economic, or demographic conditions. This approach represents the best balance of our interests in minimizing the administrative burden on States and ensuring that rates reflect actual expected costs.

Comment: A number of commenters had general objections to the basic approach we used. They felt our approach was too complex and administratively burdensome. They also wanted greater flexibility so that other methods in the State could be adopted.

Response: Our decision to eliminate the requirement to produce local market rates for all political subdivisions addresses this concern and greatly reduces the administrative burden on the State.

Comment: We received one comment suggesting that establishing local market rates be made optional.

Response: The law states that "[t]he State agency may not reimburse the cost of child care provided with respect to a family in an amount that is greater than the applicable local market rate (as determined by the State in accordance with regulations issued by the Secretary)." Therefore, the State must establish a local market rate. However, we did make some changes to the proposed guidelines for establishing the local market rate as discussed.

Comment: Numerous commenters opposed our basing the local market rate on the 75th percentile cost of such types of care in the local areas. Most commenters were concerned that this methodology might limit them from purchasing appropriate care in an area or care which provided special developmental programs, transportation, or medical services especially needed by children of AFDC recipients. Others felt that this would severely restrict access in rural areas. Some suggested that the computation of market rate cutoffs or percentiles should be based on the number of slots of care rather than the number of providers; if larger providers are more expensive, the 75th percentile would cover less than 75 percent of the slots.

Response: It is not our intention to restrict a State's ability to purchase appropriate quality child care in an area or care which has developmental programs or special services. However, we must have some method for controlling Federal financial participation in the cost of care which is exceptionally high for the State or locality. Therefore, we have decided to leave the 75th percentile requirement in the regulations. However, we will allow it to be based on child care slots instead of providers; this could increase the amount of child care available within the established cost limits. Further, by allowing the State broader discretion in defining local market areas, we believe we have alleviated some of the concerns of rural areas that our approach would arbitrarily exclude certain providers.

It was clear from the comments that there was considerable misunderstanding about what the term the 75th percentile means. Therefore, we decided it would be helpful to explain how the 75th percentile is derived.

Percentiles are derived from ranked data and separate the lowest values from the highest values, based on a percentage point cutoff. A common use of percentiles is in standardized educational tests, where a percentile score is typically given to indicate what percent of the nation's students are below the score reported. In the case of child care rates, a percentile score would identify the percentage of child care providers (or slots) in the sample whose rates were lower. Contrary to what some commenters thought, it does not indicate the percent of an average (or the highest) market rate. Thus, the 75th percentile does not mean that we would allow States to pay only 75 percent of the local market rate.

To determine the 75th percentile for a sample of a particular type of child care, it is first necessary to rank all of the sample child care rates from lowest to highest. Once this is done, you would go three-quarters of the way up the list. The number separating the 75 percent of providers [or slots) with the lowest rates from the 25 percent who are most expensive is the 75th percentile. Following is an example. In a local market area, a State develops a representative sample of child care rates for center-based care as follows: $120, $100, $110, $125, $95, $150, $120, and $135 (per week). Ranked from lowest to highest the rates are: $95, $100, $110, $120, $120, $125, $135, and $150. Here, $125 is the sixth value in a list of eight rates, and it represents the 75th percentile. Therefore, the local market rate would be established at $125.

One additional step must be taken if the size of the sample is not a multiple of four because, in those cases, a State may not be able to precisely determine the 75th percentile. Modifying the earlier example, suppose rates of $130 and $140 were also included in the sample. Here, the ranked rates would be as follows: $95, $100, $110, $120, $120, $125, $130, $135, $140 and $150. In this case, $130 represents the 70th percentile (i.e., 70 percent of the rates are at or below $130), and $135 represents the 80th percentile. Thus, any rate of $130 or less is clearly within the 75th percentile, and any rate of $135 or more is clearly above the 75th percentile. The State has discretion as to how to treat rates between $130 and $135; an obvious

option would be to consider $132.50 to be the 75th percentile because it is halfway between the 70th and 80th percentile figures.

In addition, in response to concerns that the 75th percentile excludes care, especially in rural areas, where there are only one or two providers of a particular type of care in a local market area, we would allow the State to set the local market rate at the 100th percentile (to include the one or two providers).

Comment: One commenter suggested that States should be free to use the market rates for regulated care as the limit for informal care.

Response: It would not be appropriate to apply the rate for center-based, or regulated care, to other types of care which are likely to cost different amounts. However, we do recognize that it might be difficult to draw an adequate representative sample of providers for unregulated forms of care. Therefore, in such cases, we would allow the State to develop a procedure for determining the appropriate adjustment to apply to the rates for regulated care which it determines using the prescribed methodology. For example, it could use other surveys or other State programs to determine the appropriate differentials among rates for center-based, group family, family day, and in-home care and apply those differentials to the center-based rate that it determined under our standard guidelines. A State which plans to use this type of estimating procedure must describe its approach as part of its methodology description required in the Supportive Services plan at § 255.1(i).

Comment: A few commenters objected to the types of child care for which we required distinct market rates. A couple identified additional categories which might be appropriate, including night care or hourly care where care requirements exceeded the standard time available in a daily fee. Other commenters felt there were too many types specified. One specific objection was the reduction in cost associated with care provided to multiple members from one family.

Response: We identified these categories based on discussions with experts on child care services, indicating that the market for child care services typically was differentiated in this manner. At the same time, for certain types of differentiations, we used the terms "where applicable" and "if applicable" because we recognized the possibility that there could be local markets where such distinctions did not exist. In these cases, the State would have the flexibility not to develop separate rates. However, now that we allow the State to develop consolidated market areas which include a substantial number of political subdivisions, this is less likely to happen. We also recognize that it is not a universal practice among child care providers to make adjustments in fees when more than one family member uses a facility; therefore, our regulations only require States to "consider" this factor. Where such reductions are not standard, we do not expect States to make adjustments.

The types of differentiation specified in the regulations represent a minimum set of categories for which local market rates would be developed. Where the market for child care in an area, or State, is differentiated in additional ways, the State is free to develop more categories of local market rates. However, in response to concerns about the administrative burden of determining these rates, with the exception of creating a category for special needs, we did not want to add more Federal requirements in this area.

Comment: One commenter questioned the phrase "if applicable" in § 255.4(a)(3)(ii).

Response: We included this phrase to accommodate local markets for child care which were less differentiated. However, unless a State computes rates for all political subdivisions, we expect these categories to be generally applicable.

Comment: A few commenters expressed the desire to keep the special need option as a way of meeting the higher costs for care of handicapped children or children with other special needs, because that was not addressed in the instruction on local market rate and statewide limit.

Response: We recognize the need for making higher child care payments for certain children who are handicapped or who have other special needs. Therefore, we have added this as a category for determining local market rates. A State may also set a separate statewide limit for child care for children with special needs for such care. However, separate local market rates or statewide limits would not be allowed to cover special educational or other services not directly related to child care. For example, the State could not set special rates to cover costs of protective services or educational enrichment programs. However, this does not preclude a State from funding a Head Start grantee, for example, for costs (within the established limits) for child care provided during hours before or after the Head Start program.

Comment: Several commenters suggested that States update their local market rates periodically (i.e., every one or two years). Another commenter suggested that local market rates be increased, subject to cost-of-living changes for the services sector.

Response: Our regulations at § 255.1(i) already included a requirement for periodic updates, at least biennially. We decided to keep this requirement. A biennial requirement would be consistent with the plan submittal schedule and keep the rates reasonably up-to-date. At the same time, it would not force a State to spend a disproportionate share of its resources on this aspect of program administration, and it should allow sufficient flexibility to allow coordination of updates with other State programs. Our regulations allow more frequent updates by States where appropriate.

Also, we did not feel that it would be appropriate to require States to update based on outside cost-of-living indices. The system we established for determining local market rates should produce more accurate information on changes to child care costs at the local level than outside cost-of-living indices.

Applicable Standards For Child Care

The Statute requires that FFP be available for child care only if it meets applicable standards of State and local law and requires that parents be allowed access to the child care services. The requirement for parental access would cover custodial parents and non-custodial parents consistent with court orders governing such matters.

The State IV–A agency must also establish procedures to ensure that center-based care will be subject to State and local requirements designed to ensure basic health and safety, including fire safety, protections. (Comments we received on this point are discussed at § 255.5.)

The State must also endeavor to develop guidelines for family day care if it does not already have them. We do not believe, however, that Congress intended to limit child care only to care that is specifically regulated by current State or local law. Other care, even if it is unregulated at the State or local level, is reimbursable under the Act. For example, some States exempt from their standards any center care that is under the auspices of a religious organization. Some States do not have licensing or registration standards for family day care. Other States do not require licensing or registration for family day

care until they serve more than a specified number of children.

It should be noted that there are few laws covering in-home care, i.e., care of a child in that child's own home. Appropriate individuals may be paid as in-home caregivers. FFP is available for child care provided in the child's home by a relative who is not part of the assistance unit, such as a grandparent, aunt, or older sibling. FFP also is available for care by a relative outside of the home if care by that relative meets any applicable standards.

Comment: A few commenters wanted it clarified that relatives who were not part of the filing unit, or older siblings who were part of the filing unit, could be paid for child care services.

Response: FFP is available for child care provided by relatives who are not part of the assistance unit. However, as noted in the preamble of the proposed regulations, we preclude payment to any members of the assistance unit for providing child care services. Child care payments are made to offset direct financial costs to the assistance unit for child care services. When child care is provided by a member of the assistance unit, for example, an older sibling watching a younger child, there is no direct cost to that unit for child care. Even if the parent chooses to pay the older sibling, there is only an exchange of funds within the unit, not a direct financial cost to the assistance unit.

We have amended the regulation at § 255.4(f) to include the prohibition against FFP for payments made for care provided by parents or legal guardians, or by members of the assistance unit (including essential persons).

Comment: One commenter wanted us to clarify what would be required of States regarding the requirement that they endeavor to develop guidelines for family day care.

Response: We decided not to regulate specific requirements in this area. First, the vast majority of States have guidelines or stronger requirements already, and therefore regulating in this area would have limited effect. Secondly, the statutory provisions requiring that States report on such guidelines means that we will have much better information in the future on which to base any requirements (or otherwise judge State efforts). Finally, the availability of grant funds for fiscal years 1990 and 1991 to improve States' licensing and registration requirements means that changes in State guidelines or standards are expected, and regulatory requirements could easily become obsolete.

Comment: One commenter wanted the regulations at § 255.5 to incorporate the requirement for parental access.

Response: The regulations at §§ 255.1(e)(3) and 255.4(c)(1) already incorporate this requirement. Consistent with the Statute, we provide that FFP is available only if the entity providing care allows parental access. We also require the State to assure in the Supportive Services plan that entities providing care will allow parental access. We believe that these two provisions adequately address the statutory requirements on parental access.

Comment: One commenter wanted us to clarify that parental access meant access to all parts of a child care facility utilized by children at all times without prior notice.

Response: We decided not to regulate in this area. As we indicate elsewhere, the legislative history clearly establishes congressional intent not to create new Federal requirements for child care standards. Because parental access is such a closely related issue, we believe a consistent approach should be used. Although the commenter's definition looks reasonable, we would defer to States to define what parental access means.

Comment: One commenter wanted us to require States to establish standards on several specified items for all types of care (including exempt care); guidelines were not considered sufficient. Another wanted us to establish Federal requirements for informal care to ensure quality and safety.

Response: The conference report, (H. Rep. 100–998, 100th Cong., 2nd Sess. (at page 163)), specifically says: "The conference agreement does not give the Secretary the authority to establish Federal day care standards. It is not the intent of Congress to stipulate specific day care standards." On this basis, we have not created Federal requirements for child care standards, and this position received support from a number of commenters. In the case of family day care, the specific statutory requirement is that the State "endeavor to develop guidelines for family day care." Consistent with the principle of not creating Federal requirements, we are neither requiring standards in place of guidelines nor the development of guidelines in place of steps to endeavor to develop guidelines.

Comment: Several commenters wanted us to regulate all centers.

Response: Because Congress did not intend for us to regulate Federal child care standards, we have not created specific requirements. However, as discussed later, we have amended § 255.5 to require States to establish procedures to ensure that center-based care is subject to requirements designed to ensure basic health and safety, including fire safety, protections.

Applicable Tribal Standards

FFP is available for child care on Indian reservations if that care meets applicable State or Tribal standards. When both State and Tribal standards exist, the Tribal standards are the applicable standard. As required under the regulatory provision at § 255.5(a), State procedures to ensure that center-based care is subject to applicable health and safety requirements must cover center-based care provided on Indian reservations.

Comment: One commenter was concerned that two different child care standards would apply to a single household if there were an individual in the household subject to the State JOBS program and one subject to a Tribal program.

Response: There could be two different standards, but the existence of that situation would depend upon the location of appropriate child care services, not the nature of the participant's JOBS program. Either participant, working with the State, could seek child care on or off the reservation, depending upon her needs and the needs of her child.

Comment: One commenter asked whether State standards apply if there are no Tribal standards. Another commenter expressed concern about the State IV–A agency's being responsible for requiring that State licensing standards be met on Tribal lands.

Response: In the absence of Tribal standards, State standards would apply unless Tribal areas were excepted under State law. If State laws are applicable, those laws must be met in order for child care on a reservation to qualify for Federal matching.

Comment: One State asked about the ability of a State to pay for unlicensed providers through Indian Tribes.

Response: Depending on State and Tribal law, child care provided on a reservation may or may not be subject to State licensing requirements. It could also be subject to Tribal requirements. Whatever the situation, care on a reservation must meet any "applicable" standards to be eligible for payment under this Part, and we have revised the regulations at § 255.4(c)(2) to reference applicable Tribal law.

Matchable Administrative Costs

Many State and local agencies have indicated concern that adequate child care resources will not be available. However, the conference report does not support an interpretation that Congress intended to provide funds for activities such as resource development, recruitment and training under this program. Therefore, the regulations at § 255.4(f) specify that administrative costs for such activities as recruitment and training of providers, licensing, or resource development would not be considered allowable IV–A costs.

Under the Statute, Congress authorized a separate appropriation of $13,000,000 for fiscal years 1990 and 1991 for the Secretary to make grants to the States to improve licensing and registration requirements and procedures, and to monitor child care provided to children who receive aid under the State IV–A plan. State grants would reflect the State's proportion of the number of children in the State receiving aid under the State IV–A plan compared to the national total. The State would have to provide matching funds for these funds for an amount that is not less than 10 percent of the amount of the grant.

Comment: Although two commenters supported this position in part, many commenters wanted us to provide Federal matching for resource development and a broad range of other administrative activities. The suggested inclusions were numerous—matching of services, services information systems, counseling, staff development and training, coordination with other child care systems, joint resource and referral activities, establishing market rates, development and implementation of sliding fee scales, establishing payment or reimbursement systems, provider recruitment, provider training on State and local law, enforcement of child care standards and monitoring, development of after-school programs, provision of provider liability insurance, arranging purchase-of-service contracts (including development of requests for proposals and provider selection), creation or expansion of resource and referral systems, upgrading of providers/bringing unlicensed providers into the regulated system/providing technical assistance to providers who wish to be licensed, construction of child care facilities, advertising and recruiting providers to accept AFDC children, and ensuring that providers comply with State and local law. Commenters argued that Federal matching was necessary for these activities so that States could: (1) fulfill their responsibilities in guaranteeing care, counseling individuals and assisting them to locate care; and (2) assure child care expenditures would meet the conditions necessary to be eligible for Federal matching.

Response: Some of the items mentioned by commenters clearly fall within the definition of allowable administrative costs and would be matchable since they are necessary for the proper and efficient administration of the program. These include: matching of recipients to available child care services, services information systems, counseling about child care services, State IV–A agency staff development and training, coordinating with other child care delivery systems, establishing local market rates, developing and implementing sliding fee scales, establishing payment or reimbursement systems (as well as systems to collect fees, determine payment accuracy, recoup overpayments, and conduct hearings), and arranging purchase-of-service contracts (if this is a method the State has elected for providing care).

When we indicated that funds would not be available for resource development, we were not talking about the costs of matching recipient needs to available services or the costs of other coordination or consultation activities necessary for agencies to properly assist recipients in locating services. We were talking about resource development in the broader sense—those activities designed to increase or to upgrade the overall capacity of the child care delivery system. As one commenter pointed out, the conferees dropped a House provision that would have provided open-ended Federal matching funds for the development of new child care resources in the State. We must therefore conclude that Congress did not intend to provide such funding. On that basis we shall not allow Federal matching for general State expenditures on: provider recruitment, provider training (including training on State and local law), State programs to provide liability insurance, upgrading of providers (e.g., to bring unlicensed providers into the regulated system), or providing technical assistance to providers who wish to be licensed. We recognize that, in the process of developing information on providers or working out payment agreements, the State agency may provide incidental technical assistance to providers in some of these areas. This is acceptable, but IV–A funds may not be expended upon general resource development activities which serve to benefit a much broader community than this program. State agency expenditures on coordinating with other programs to develop after-school programs which would serve AFDC recipients would be matchable, as would the costs of after-school care. However, IV–A funds could not be used for activities such as the recruitment or training of staff for after-school programs or for modification of existing facilities or programs. Construction costs are not matchable under a Comptroller General opinion which prohibits Federal funding of construction costs under programs unless specific statutory authority exists.

Federal matching would be available for the development of a resource and referral system for the IV–A program or for an appropriate share of the costs incurred in setting up or maintaining a resource and referral system which jointly benefits the IV–A program and other users. Where a resource and referral system already exists, Federal matching could cover the costs of expansion or modification necessary to serve the needs of the IV–A program. Federal matching could also cover fees for obtaining information from existing systems. However, Federal matching would not be available for expenditures on child care resource and referral services if they were otherwise available on a non-reimbursable basis. Likewise in the area of monitoring and enforcement of State and local standards for child care, we would match activities which are directly connected with IV–A program requirements. Specifically, we will provide Federal matching funds for the development of procedures to ensure that center-based care will be subject to applicable health and safety protections, including fire safety. However, we will not pay for implementation of such procedures or their ongoing application. Enforcement of State and local laws is a State and local responsibility, and we do not expect to provide Federal funds for State and local government expenditures in meeting their general responsibilities.

Since proper administration of the program includes activities necessary for ensuring that expenditures are proper, Federal matching funds will be available for State agency activities necessary to ensure that child care meets applicable standards of State and local law and that parents have access to child care providers. However, State agency activities in this area should build upon existing monitoring systems. We do not expect, and will not pay for, activities which: (1) duplicate monitoring activities of other State and

local agencies which have general responsibilities in this area; or (2) are general in nature and not directly connected with the provision of services under Parts 255 or 256.

Matching Rates

The costs of providing transportation, work-related expenses, and other work-related supportive services are matched at 50 percent and are under the JOBS cap.

FFP is available for child care benefits at the Federal medical assistance percentage and is not subject to the funding cap for JOBS for any State IV–A agency other than Puerto Rico, the Virgin Islands, Guam and American Samoa. For these jurisdictions, treatment of child care costs incurred is described at § 250.71(c).

Although the Statute does not directly address child care administrative costs, such costs are matchable at the administrative matching rate for AFDC as expenditures necessary for the proper and efficient administration of the program. As discussed in the previous section on "Matchable Administrative Costs," matchable administrative expenditures would include costs such as staff, supplies and overhead associated with the determination of eligibility for benefits, computation and issuance of benefit payments, review of payment accuracy, hearings, program referrals, program planning and management, and data collection and reporting.

Comment: One commenter wanted us to authorize the payment of one-time application or service fees to child care providers as administrative expenditures.

Response: We will allow these costs as IV–A administrative costs. We do not anticipate that these fees will be extremely costly since they are intended only to cover the one-time cost of processing the individual's application for child care. When a State agency arranges care at a facility which imposes these fees, the State would be required to pay for them. Where an individual arranges her own care or initiates an application without prior approval by the State, the State would have discretion whether to pay for the costs of any application or processing fees.

Comment: One State was concerned that expenses on rate-setting activities prior to JOBS implementation would not be matchable.

Response: We would match them as necessary and proper for the administration of the IV–A plan.

Comment: A few commenters felt that certain expenditures other than payments for child care services—such as expenditures related to connecting individuals with child care services, counseling, information systems, coordination, and resource and referral—should be matched as program, rather than administrative, expenditures.

Response: Title III of the Statute provides matching at the FMAP rate only for "amounts expended for child care." It does not provide it for information and referral activities. In fact, it does not directly address costs for any activities related to the administration of the child care assistance provisions. (Child care information and referral activities under JOBS are discussed in section 482(c)(3) of the Act.) However, we decided that such expenditures could be matched as necessary for the proper and efficient administration of the child care benefits. On that basis, they qualify as IV–A administrative costs and are matchable at the 50 percent rate.

Comment: One commenter wanted us to clarify that child care services provided by full-time JOBS staff and staff providing services such as determining eligibility, computing and issuing benefits, and making referrals would be matched under JOBS at the higher rates.

Response: When child care information and referral services are provided for JOBS participants and child care is approved through the JOBS program, costs associated with providing those services may be charged to the JOBS program. Such costs would be subject to JOBS matching regulations, as provided at § 250.73. Thus, the costs of staff who work full-time providing JOBS-related child care information or services (or full-time on these activities and other JOBS functions), are eligible for the higher JOBS match rate. In addition, when the assessment of child care needs and referral to appropriate services are provided as part of a JOBS assessment, development of an employability plan, or case management, those costs can be matched at the higher rate. If child care services are not matchable at the higher rate, then the State can charge the portion of time spent providing JOBS-related child care to JOBS at the 50 percent rate. Costs of providing these services are also allowable as IV–A administrative costs.

If IV–A staff provide child care for employed individuals and former recipients (eligible for transitional child care), and for JOBS participants, then only the costs of providing services for JOBS participants are matchable as IV–F costs, subject to the rules described above. The costs of providing child care services to individuals other than JOBS participants are matched as IV–A administrative costs.

Regardless of how costs associated with JOBS-related child care are charged, costs associated with providing transitional child care benefits must be charged as IV–A administrative costs. Further, expenditures on transitional child care benefits are chargeable only to IV–A (and not IV–F). As discussed elsewhere, costs associated with administering supportive services other than child care are generally matchable only under IV–F; however, where IV–A staff in non-JOBS areas are authorized to approve education or training for child care and supportive services, staff costs may be charged to title IV–A as administrative costs.

Comment: Another commenter wanted us to clarify that IV–A administrative match was available for administration of the child care provisions.

Response: As discussed above, IV–A administrative match is available for such administrative costs.

Fraud And Abuse

Although the Statute does not explicitly extend safeguarding against fraud and abuse to the supportive services authorized under the Statute, we believe that it is in the best interest of the Federal government and the State IV–A agency to require the State IV–A agency to do so. We have incorporated such a requirement at § 255.4(h). The State IV–A agency may use any method it deems reasonable to insure that charges are properly claimed and paid, and that they cover services actually received. Financial reviews to identify costs not eligible for FFP will be an important part of Federal oversight.

Comment: One commenter indicated that we should clarify what we meant by the requirement at § 255.4(h) that States take reasonable precautions against fraud and abuse or require that State child care programs be subject to the provisions of § 235.110.

Response: We believe that, consistent with the requirements at § 235.110, States should have methods available for identifying potentially fraudulent child care payments (to beneficiaries or child care providers), procedures for appropriate law enforcement referrals consistent with due process requirements, and designation of responsible officials. Therefore, we have amended the regulations at § 255.4(h) to make an appropriate reference to the requirements at § 235.110.

Comment: We also received a question about whether States would be required to recoup fraudulent child care payments for those receiving benefits under both Parts 255 and 256.

Response: Yes, for the child care benefits program, we are establishing recoupment rules similar to those in effect for the AFDC program. Our recoupment policies are discussed in more detail in "The Nature of Child Care Payments," section which follows.

Special Needs

In the past, many supportive services, especially for persons participating in employment and training programs, have been allowed as special needs. With the enactment of JOBS and the new child care provisions, Congress established specific programs for funding for such services and eliminated the need to treat such costs as special needs. Furthermore, for education and training activities and supportive services other than child care, it established an overall cap on the amount of Federal funds for these purposes. Therefore, the State IV–A agency may not pay for child care or for other supportive services that may be provided under JOBS, as special needs.

Comment: One commenter raised the issue of whether States who currently have a special need item covering training-related needs could eliminate such an item from their standard (as required by our NPRM) and still comply with the requirement of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, which prohibits lowering their AFDC payment levels below the levels in effect on May 1, 1988.

Response: Yes, they could. Based on the legislative history of the Medicare legislation, we have concluded that Congress intended to include only basic needs and not special needs in this maintenance of effort provision.

Comment: A number of commenters objected to the elimination of the option of providing payment for child care and supportive services (including fees and books for education) through special needs. Some commenters wanted the special need option at § 233.20(a)(2)(v) left unchanged, thus allowing the payment method throughout the State. Others wanted the special need option left for areas of the State that do not have a JOBS program so that self-initiated training and employment could be supported. Still others wanted the special needs left for non-JOBS participants in both areas of the State (JOBS and non-JOBS).

Response: For the reasons already stated, we have decided not to restore the special need item for child care and other supportive services for employment and training related to JOBS. However, in response to the concerns which were raised about the feasibility of approving all services through the JOBS program, we have decided to allow alternative approval procedures. For non-JOBS areas of the State, education or training activities may be approved for child care and supportive services by IV–A staff. The IV–A staff may also authorize one-time work-related expenses to accept or maintain employment if provided for in the State Supportive Services plan. Child care services would be covered by the payment of child care under title IV–A. Other supportive services and one-time work-related expenses would be charged to the JOBS program. We maintain, as stated in the preamble to the NPRM, that congressional intent was to fund these supportive services under the JOBS cap. Child care and supportive services needed for employment, education or training in non-JOBS areas of the State must meet State and Federal approval criteria (e.g., consistency with an appropriate employment goal and satisfactory progress). However, a streamlined approval process, which could be done by an AFDC eligibility worker as an adjunct to the normal IV–A eligibility functions, would be acceptable.

Nature Of Child Care Payments

Section 402(g)(3)(A) of the Act provides that child care payments are funded under section 403(a) of the Act. However, they are not IV–A assistance payments as such. Thus, (1) they are covered under a Supportive Services plan, rather than the State IV–A plan; (2) their receipt does not provide categorical Medicaid eligibility; (3) there is no entitlement to direct payment of benefits; (4) they are not subject to disallowance under the AFDC quality control system; and (5) they are not treated as assistance payments for the purposes of child support enforcement. At the same time, however, these child care benefits are funded on the same basis as AFDC, as an open-ended entitlement program, and they are administered by the same agency. Thus, for ease of administration, we are providing at § 255.4(i) that they be subject to many of the same administrative and financial rules as AFDC. For example, child care payments are subject to similar financial reporting requirements, similar procedures apply with respect to issues like the appeal of disallowances and the treatment of cancelled and uncashed checks, and grants to States are subject to the same basic administrative rules.

As indicated earlier, child care expenditures are not subject to disallowance under the AFDC Quality Control (QC) system. It appears that the QC system would not be an effective or proper vehicle for this purpose. However, consistent with the efficient administration of the program, we may use the existing QC process as a means of sampling cases to gather information on the correctness of child care payments. Using sample cases from the QC system, we would take disallowances following the procedures currently used for AFDC administrative costs.

Comment: A few commenters expressed concerns about the references to the QC system and wanted clarification of our plans.

Response: As we indicated in the NPRM preamble, child care payments under Parts 255 and 256 are not considered assistance payments for the purposes of Quality Control (e.g., for the purpose of §§ 205.40 or 205.44). However, as a point of clarification, child care expenses which are covered through the disregard will continue to be included under the QC system because they are part of the assistance payment. Since the child care disregard is subject to QC review, we would take no separate disallowances on those cases. Separate reviews would be limited to payment of child care costs through other methods—such as direct reimbursement, vouchers, etc.

We may use the QC system to draw samples of cases with child care payments for review. However, we recognize that any sample drawn through the QC system may need to be supplemented to include cases receiving transitional benefits and perhaps additional cases receiving benefits under Part 255 if we are to comprehensively review a State's child care payments.

We would expect financial reviews to cover such areas as the accuracy of payment levels. We would look at whether payment levels were within the limits established by law (no more than actual costs, the statewide limit, or local market rates). To the extent that payments did not meet Federal requirements, they would be subject to potential disallowances. We will issue an Action Transmittal within ninety days establishing the recordkeeping requirements that States will need to follow in order to qualify for Federal matching.

Similar disallowance procedures would be applied to improper claims for expenditures on supportive services made under title IV–F. However, these

reviews would focus more heavily on consistency of expenditures with the approved State plan, since Federal rules in this area are minimal.

Comment: One commenter wanted us to clarify whether QC reviewers would be used to review child care payments.

Response: We have not yet determined the circumstances under which QC reviewers would be used to review child care payments and to make recommendations about whether disallowance are appropriate.

Comment: One commenter wanted us to clarify that disallowances for payments under Part 256 would also be excluded from the AFDC Quality Control system.

Response: This is the case. The regulations at § 256.4(b) indicate that the provisions at § 255.4 on disallowances also apply to Part 256.

Comment: One commenter wanted us to clarify the circumstances under which we would take disallowances for child care administration.

Response: Claims of administrative expenditures would be disallowed if the expenditures were not used for the purposes of this program or were otherwise unallowable under this program. For example, we could not pay costs associated with providing child care to Food Stamp-only or General Assistance recipients, for the construction of child care facilities, or for activities excluded under § 255.4(f).

Comment: A few commenters asked that we clarify child care overpayment and recoupment policies. As stated earlier, one commenter asked specifically about the requirement to recover fraudulent payments.

Response: We believe it would be appropriate for States to employ policies on overpayment and recoupment which are similar to those used under the AFDC program. We expect State agencies to promptly take any actions necessary to correct underpayment and overpayment. Payments made to adjust for underpayment would be disregarded in determining eligibility for AFDC, like other child care payments.

For those who received prior overpayments but are no longer receiving child care payments, recovery would normally be made by appropriate action under State law against the income or resources of the individual or family. For those who received prior overpayments and are still receiving child care payments, recovery would normally be made either through repayment by the recipient or by reducing future child care payments.

Overpayment recovery must be attempted in all cases involving current recipients of child care benefits, in all cases of fraud, and in all cases where the overpayment amount would equal or exceed the costs of recovery.

Overpayment recovery should usually be attempted from the recipient of the child care payment regardless of whether the recipient of the child care payment is a provider of child care services or a recipient of child care benefits. However, based on the nature of the agreement between the State agency and providers, there may be cases where the State is obligated to pay an amount to the provider in excess of the amount which would be eligible for FFP. In these cases, the State agency need not attempt overpayment recovery, but it cannot receive Federal matching funds for such an overpayment. Examples of such situations include cases where the State purchases a number of child care slots, but does not fully utilize them, and cases where the State agrees to pay more than the allowable local market rate. In other cases where an individual receives child care services, which may have been approved by the State, but were not eligible for Federal matching (e.g., they did not meet applicable standards of State and local law; the child was not eligible under §§ 255.2(a) or 256.2(a); or the family was not eligible at the time under § 256.2(b)), it may also not be possible to collect the overpayment from the provider. Depending upon the individual case circumstances, it might be appropriate for the State to attempt recovery of these latter types of overpayments from the individual or family receiving child care benefits (e.g., where a family kept a child in child care after participation ceased or where they were no longer employed).

In § 255.4(j), we are incorporating these principles and related aspects of the AFDC recoupment process, derived from § 233.20(a)(13) where appropriate.

We decided not to impose the 90 percent rule (which applies to AFDC overpayments) for the recoupment of child care overpayments because it is not a statutory requirement for this program and it seemed inappropriate to impose such a rule when recoupment could be coming from provider payments rather that recipient benefits. However, when recovering an overpayment from an individual still receiving child care benefits, the recovery shall result in the family retaining, for any month, from the combined aid, financial assistance, income and liquid resources of the family, a reasonable amount of funds, consistent with preventing the unnecessary disruption of existing child care services and with the continued requirement to guarantee child care.

Any child care overpayments may be recovered from other IV–A child care payments. Recovery of child care overpayments may not be made from AFDC grants, except on a voluntary basis.

Recovery of overpayments of supportive services paid under IV–F would follow similar standards. Such recoveries could only be made from subsequent IV–F supportive services payments, not from AFDC or IV–A child care payments.

Due Process

Due process requirements (using the JOBS or IV–A hearing process, as appropriate) would apply to child care services. However, except in situations where a change in the method of payment affects AFDC benefit levels, requirements for timely notice would not apply to disputes about the method of payment. Under this Part, the State IV–A agency has discretion about the method of payment to be used; unlike the AFDC program, recipients are not necessarily entitled to assistance in any particular form.

If disputes arise about the provision of child care benefits under this part or the State IV–A agency proposes to deny, discontinue, terminate or reduce child care benefits, the individual is entitled to a hearing, but is not entitled to a continuation of child care benefits in the same amount or form pending that hearing. Consistent with the requirements of § 205.10, however, the individual's AFDC payment may not be reduced because of sanctions under § 250.34 or because of changes in the method of guaranteeing an individual's child care benefits while a hearing is pending. For example, in cases where a recipient's participation in a JOBS activity or in education or training ceased in non-JOBS areas (e.g., due to illness or termination due to unsatisfactory progress), the State IV–A agency would cease providing child care benefits. The individual could appeal that State IV–A agency decision, but child care benefits would not be provided during conciliation or while a hearing was pending. In the meantime, the recipient might be prevented from continuing (or resuming) participation because of the termination of child care benefits. She could not have her AFDC benefits reduced for non-participation while a hearing was pending, and the termination of child care benefits would be considered in determining whether she had good cause for non-participation during that period.

Comment: A number of commenters felt the proposed regulations violated

due process requirements and the requirements of the Family Support Act regarding the applicability of *Goldberg* v. *Kelly*. They objected to our position that recipients of child care under Part 255 would not be eligible for continuation of benefits pending a hearing. Other concerns included the consistency in treatment between the two classes of child care beneficiaries (those on AFDC receiving benefits and those receiving transitional child care) and the potential for unnecessary losses of child care arrangements.

Response: To help ensure that due process requirements are met, we have changed the proposed regulations at § 255.2(g) to add requirements that the State IV–A agency inform families about their rights and responsibilities and respond to requests for assistance within a reasonable period of time. However, we decided not to change our position on hearings and aid paid pending. First, the Family Support Act provision on *Goldberg* v. *Kelly* applies only to disputes related to JOBS participation; it does not apply to general disputes on child care. Secondly, the standards under the *Goldberg* v. *Kelly* decision would not require aid paid pending a hearing under these circumstances. In this decision, the Court recognized a distinction between welfare assistance, which provides "the means to obtain essential food, clothing, housing, and medical care," and other kinds of assistance which do not provide "the very means by which to live." "The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss.' " Thus, under *Goldberg* v. *Kelly*, the loss of child care benefits should not be held to the same due process requirements as the loss of financial assistance because it does not touch "the means by which to live" in the same manner. By requiring continuation of financial assistance, unless declined, pending a hearing, our regulations meet due process requirements.

As stated earlier, we saw a distinction between child care benefits provided to a recipient and the transitional benefits provided to a former recipient (where we do require aid paid pending). In short, in the case of an AFDC recipient, we know that her basic needs are being met through AFDC until a hearing is held; further, a JOBS participant would not be subject to participation requirements if necessary care was not being guaranteed; and, for an employed recipient, the disregard would be available to prevent the loss of a job or income until a hearing is held. Since a recipient of transitional care typically has earned income as her basic means of support, we reasoned that the loss of that care could result in the loss of her basic means of support and, therefore, we believe that requiring aid be paid pending a hearing in such cases is reasonable.

Comment: Several States wanted to know if Federal matching is available for child care benefits paid pending a hearing.

Response: In the case of transitional benefits, where aid must be paid pending a hearing, Federal matching would be available for such assistance. Nevertheless, if the hearing decision is adverse to the recipient, such aid must be recovered. For child care benefits under Part 255, we would not provide Federal matching for aid paid pending a hearing.

Comment: A couple of commenters objected to the language at § 255.2(h), that changes in the manner of payment were not subject to timely notice requirements. Some expressed concerns about the continuity of care; one suggested that timely (ten-day) notices should be required when a change in method would affect the family's contribution.

A couple of commenters wanted us to distinguish between changes in the manner of child care payment and changes in the type of care. They thought our language implied that timely notice requirements would apply to changes in the type of child care arrangements and wanted us to clarify that position.

Response: We do not believe that timely notices should always be required when the manner of payment is changed. The Statute clearly gives the State the authority to select the methods of providing care; individuals are not entitled to receive care under any particular method. The authority for the State to change the manner of payment would be a simple extension of the authority of the State to select a method of providing care.

However, we do recognize that changes in the method of provision of care could disrupt child care arrangements or otherwise negatively affect the individual's child care benefits. In such cases, timely notice should be provided, and we have revised the regulations at §§ 255.2(h) and 256.4(d) accordingly. Specifically, if a change in the method of providing child care (i.e., a change in the manner of payment) would involve a discontinuation, suspension, reduction, or termination of benefits, or force a change in child care arrangements, the State must provide timely notice. Timely notice requirements would not apply if the change in method of providing child care did not have one of these effects.

Comment: One State had questions about how States would take into account changes in the statewide payment levels, market rates, and standards, particularly as they would affect vendors.

Response: If a change is made to the statewide payment levels, market rates, or applicable standards of State and local law, child care being provided at the time of the change is subject to the change. There is no statutory authority for States to phase-in such a change by grandfathering existing child care arrangements. States should be aware of this requirement when entering into arrangements or contracts with child care providers. A State might choose to include provisions for modification or cancellation in order to avoid questions about the availability of Federal matching.

Child Care Standards (§ 255.5 of the Final Regulations)

The language of the Act reflects Congress' intent to ensure the health and well-being of the children for whom child care is provided. Child care must meet current applicable standards of State and local law; however, States are not required to develop new standards. Consistent with congressional intent, we are not creating Federal requirements in this area. At § 255.1(e), we require that the State Supportive Services plan include an assurance that the State will meet the appropriate standards of State and local law (and/or Tribal law, where applicable). The State must make the standards available to the Family Support Administration, upon request, for the purposes of program reviews, payment reviews and audits.

The regulations incorporate the requirements in the Statute that the State provide the Secretary, upon request, with a description of State and local requirements for center-based care designed to ensure basic health and safety, including fire safety, protections and endeavor to develop guidelines for family day care. The Secretary shall report to the Congress on the nature and content of State and local standards for health and safety by October 1, 1992. We will be sending an Action Transmittal to the State IV–A agencies at a future date requesting the information necessary to meet these requirements. For the purpose of the one-time report to Congress, it would be helpful if the State IV–A agency

describes the procedures that both have been and will be established. The State also must endeavor to develop guidelines for family day care if such guidelines do not already exist.

We have revised the regulations at § 255.5 to provide that the State will have to make available, upon request of the Secretary, information on the applicable standards of State and local law, as well as on its basic health and safety requirements for center-based care. This change reflects our changes to the requirements on States regarding center-based care, discussed in response to the following comment, and it makes the regulations consistent with the language in the NPRM. The revised regulations also indicate that the Secretary may require information on the development of guidelines for family day care. The guidelines information is not addressed in the Supportive Services plan, but is subject to reporting under the Statute.

Comment: Several commenters objected to the language at § 255.2(a), where we said that States had to have procedures to ensure that center-based child care would be subject to "applicable" standards of State and local law including those designed to ensure basic health and safety protection, and fire safety. Some commenters felt this language was inconsistent with our preamble language and the statutory language. Some wanted the regulatory language revised to correspond to the preamble language, which more directly reflected the Statute.

Response: We have revised the regulations at § 255.5(a) to require that the State establish procedures to ensure that center-based child care will be subject to State and local requirements designed to ensure basic health and safety, including fire safety, protections. This language more closely follows the Statute.

Uniform Reporting Requirements for Child Care (§ 255.6 of the Final Regulations)

Consistent with the requirements of section 606 of the Statute, the State IV–A agency is required to report information on child care to ensure that the provisions of the Statute are effectively implemented. These requirements are addressed in § 255.6 of the regulations. We also have included a requirement that the State IV–A agency report the number of children for whom care is provided, by type of care, under both Parts 255 and 256. As in any other fiscal expenditure, adequate information must be in the case record documenting these expenditures.

We have addressed specific comments on uniform reporting requirements for child care under the general section on uniform reporting.

PART 256—TRANSITIONAL CHILD CARE

Purpose (§ 256.0 of the Final Regulations)

The purpose of this part is to implement section 302 of the Family Support Act of 1988.

State Plan Requirements (§ 256.1 of the Final Regulations)

The State Supportive Services plan must include the methods available to provide extended child care. We suggest that the State IV–A agency use the same methods, except for the income disregard, that it has in place for providing child care to AFDC recipients during employment, education and training activities, including activities under JOBS.

The State Supportive Services plan must also contain the sliding fee scale under which the family will contribute to the cost of the child care.

As in the case of the initial JOBS plan, we expect the State IV–A agency to submit a Supportive Services plan for transitional child care 45 days before the April 1, 1990 effective date. If a State IV–A agency has not previously submitted a Supportive Services plan because it has not implemented its JOBS program, the Supportive Services plan for transitional child care must contain both the provisions discussed here and any provisions described at § 255.1 that apply to transitional care. For example, the transitional plan must include necessary assurances on procedures and information on local market rates.

As discussed in the preamble to § 256.2, we have added a requirement that the State include in its Supportive Services plan a description of its application requirements for transitional benefits.

Eligibility (§ 256.2 of the Final Regulations)

Basic Eligibility Requirements

Effective April 1, 1990, certain AFDC recipients will, upon loss of eligibility for AFDC because of employment, become eligible for 12 consecutive months of child care. To be eligible for this benefit, the former recipient must have received AFDC (or been considered a recipient under § 233.20(a)(3)(viii)(D)) for 3 of the prior 6 months. We define the first month of the period of eligibility as the month the individual becomes ineligible for AFDC because of one of the following three events:

(1) any increase in earned income;

(2) the loss of the $30 + ⅓ or the $30 disregard because of the expiration of the time limits on their use; or

(3) for AFDC–UP cases only, an increase in the number of hours worked by the principal earner to 100 hours or more per month.

Comment: One commenter suggested that we clarify that eligibility based on an increase in the hours of work would result only from an increase in hours by the principal wage earner.

Response: Although a clarification may not be necessary, since hours of employment do not directly affect AFDC eligibility except in the case of the principal earner, we revised the preceding preamble language on eligibility to clarify that only an increase in the hours worked by the principal earner would cause eligibility.

Comment: One commenter was concerned about the eligibility requirements for transitional benefits not being parallel to existing programs using title XX.

Response: We realize these eligibility requirements may differ from requirements in other programs, but the requirements are statutory, and we cannot revise them. There may be greater opportunity for achieving consistency by modifying requirements in other programs. In particular, eligibility requirements for title XX child care benefits are not set by Federal law, but are determined by the individual States.

Comment: A few commenters objected to the requirement of receiving AFDC in 3 of the preceding 6 months. They felt that it penalized new recipients who receive AFDC for periods of less than 3 months, as well as those States that are able to quickly assist AFDC recipients in finding employment. Furthermore, they raised concern over a possible incentive to AFDC recipients to remain on AFDC for at least 3 months before securing employment so that they could be eligible for transitional child care benefits.

Response: The requirement that former recipients received AFDC for 3 out of preceding 6 months was set in the Statute. It is consistent with prior transitional benefit provisions.

Comment: One commenter requested that recipient declaration be allowed in determining whether the family received AFDC benefits during 3 of the preceding 6 months in cases where families received AFDC in another State.

Response: In cases where the State does not have direct access to data on

prior AFDC receipt, recipient declaration would be allowed, but States are expected to develop and follow appropriate verification procedures.

Comment: One commenter wanted us to clarify that non-JOBS participants are eligible for transitional child care benefits.

Response: The regulations at § 256.2(b), which specifies the basic conditions under which families are eligible for transitional child care, includes no reference to JOBS. Therefore, all AFDC recipients are eligible for benefits, provided they meet all eligibility requirements discussed above.

Comment: One commenter wanted us to revise our regulations because they did not cover child care related to acceptance of a job under the guarantee.

Response: We have revised § 256.2 so that the guarantee covers care needed to accept and retain employment.

Application for Benefits

We will allow the State to establish its own requirements for determining eligibility for transitional child care benefits. These requirements must be included in the Supportive Services plan. The requirements could vary depending on the need of the State for eligibility and payment information. For example, a State that has current information about recipients might approve transitional child care and establish fees through a recertification process. In other cases, where the State does not have current information (e.g., where the individual's arrangements with a relative for unpaid care are discontinued and she begins needing child care benefits 6 months after she leaves AFDC), the same State might require a full application.

Comment: While two commenters supported the written application requirement contained in the NPRM as an administrative necessity, many commenters opposed it. Most were opposed to it because of the burden that it would place on agencies and clients, and because of the gap in child care that could result. A few commenters also noted that this sort of application is not required for extended Medicaid benefits and, therefore, should not be required for transitional child care benefits either.

A few commenters suggested that there be no requirement at all; some wanted automatic eligibility—at least for those who cooperated in establishing their eligibility before they become ineligible for AFDC or for those who were already receiving child care benefits under JOBS. Other suggestions included: (1) requiring that an application be filed: (a) based on the need to know; (b) if at least one month had elapsed since termination from AFDC; (c) only in situations where there has been a break in the period of State-supplemented day care and the break was at the household's request; and (2) giving States the option to require applications: (a) under any circumstance; (b) when at least one month had elapsed since leaving AFDC; or (c) if the client had a break in eligibility. In place of a written application, a few commenters suggested these alternatives: (1) recertification with minimum data asked and prompt approval; (2) recertification except in cases where factors have already been documented in the case file and there is no expectation of change; and (3) oral applications or other application methods, short of a formal, written application.

Response: We have changed the regulations and will no longer require a written application. The revised language at § 256.2(b) indicates that the family must request transitional child care benefits and meet appropriate application requirements established by the State. These requirements could vary depending on the need of the State for eligibility and payment information.

In light of the flexibility we provided in this area, we felt it was important to know the nature of the requirements established by the State. Therefore, we amended § 256.1 to add an additional item to the Supportive Services plan which would describe State application requirements.

Comment: We received similar objections to our policy denying retroactive benefits.

Response: We have decided to change our policy and require the provision of retroactive benefits. Therefore, we have deleted the language which was at § 256.2(b)(3) of the NPRM indicating that there was no eligibility for benefits prior to the month of application. We have also deleted preamble language saying that individuals should be clearly informed about the loss of transitional child care benefits for any month prior to the month of application if they fail to apply.

Comment: One commenter wanted us to include a reasonable time period for taking action on applications in the regulations. The commenter suggested that we set a 15-day time limit for acting on an application that is submitted just before the family becomes ineligible for AFDC and a 45-day limit when there has been a gap of one month or longer in AFDC eligibility.

Response: Since we deleted the mandatory application requirement, we expect State requirements, and the circumstances under which application is made, to vary considerably. Therefore, we do not feel that we should prescribe such standards. Nevertheless, we expect States to act upon requests for child care benefits—under this Part and Part 255—within a reasonable time period.

Comment: One commenter wanted clarification on the criteria that should be used in reviewing applications for approval or rejection.

Response: We do not want to regulate unnecessarily in this area, because we anticipate substantial variation in application requirements among and within States. Obviously, approval of benefits should be based on sound, documented and complete information. There should also be a specific request for benefits. Applications should be disapproved when information indicates ineligibility or when information is insufficient to determine eligibility or fees. If an application is disapproved, the State should send a notice which includes the reason for the disapproval. The State also must inform an applicant of the opportunity to have a hearing if she wants to appeal a disapproval of benefits.

The regulations at § 256.2(b)(3) have been revised to indicate that families must request transitional benefits, must provide the information necessary for the State to determine their eligibility and fees, and meet appropriate application requirements of the State.

Notifications

The State has the responsibility of informing the recipient that the transitional child care benefits are available. Such notification should take place at the time the State provides the program information required at § 250.40 and be repeated at the time of termination of the individual's AFDC benefits. Section 256.4(c) requires that recipients be notified of their potential eligibility for transitional child care when they become ineligible for AFDC and that they be informed of the steps they need to take to ensure that they request and receive all benefits for which they would be eligible.

Comment: One commenter wanted us to require States to develop procedures for clients to access child care after they find employment.

Response: We decided not to create regulatory requirements in this area. First, they would unduly interfere with the State's flexibility to establish the methods by which individuals would

receive benefits under this part. Secondly, they would violate our general principle not to regulate procedural matters unnecessarily. Further, the statutory language does not support such requirements. In the context of the JOBS program, the Statute establishes certain expectations about State agency assistance in helping individuals access child care; it does not establish similar expectations for State agency assistance to individuals seeking transitional benefits. Thus, we concluded that no requirements were intended here.

Comment: One commenter suggested that the notification should cover penalties for quitting a job or failing to cooperate with the child support enforcement program.

Response: We agree that it is important that recipients are aware of these responsibilities and penalties. However, they should be informed of all their rights and responsibilities under the program. We therefore added a requirement in §§ 255.2(g)(1) and 256.4(c) to specify this State responsibility.

Comment: A couple of commenters felt the transitional notice should be separate from the notice of AFDC termination and recommended that notices be made by personal contact.

Response: We did not feel changes here were necessary. Under the proposed regulations, we already required that the notification be given "in writing, and orally as appropriate." We also required that individuals first receive information about these benefits under the JOBS orientation. To impose further notice requirements would seem unnecessarily onerous on States and would be contrary to our general philosophy not to unnecessarily regulate State notification procedures. Furthermore, we did not feel that a separate notice was necessarily preferable from the recipient's point of view. A well-designed single notice—or single mailing—could be more effective than separate notices.

Comment: One commenter thought that notices should cover the methods of providing transitional versus recipient care.

Response: Such information might be covered under the JOBS orientation or under the new rights and responsibilities requirement that we added in response to another comment. We do not believe a specific requirement is indicated. As we discussed elsewhere, under the JOBS program, there are detailed informational requirements regarding the provision of child care services. The Statute does not create similar informational requirements for transitional care, and it makes no provision for the administration of those benefits. Therefore, we do not believe extensive requirements in this area were intended.

Effective Date

We considered when the first month of ineligibility must occur to qualify a former recipient for this benefit. We decided that the first month of ineligibility for AFDC—and the concomitant first month of eligibility for transitional child care—must be April, 1990, or later, because April 1, 1990, is the effective date for the transitional child care provisions. Therefore, to receive transitional child care for April, 1990, the last month of AFDC benefits must have been in March, 1990, and March would be one of the three months with receipt of AFDC benefits required during the six-month period following September which are necessary for eligibility.

Comment: One commenter wanted clarification on which month is the first month of eligibility—the effective month of AFDC discontinuance or the month when AFDC should have been discontinued if an error is made.

Response: Eligibility for transitional child care benefits begins when AFDC should have been discontinued; that is when the family becomes ineligible for AFDC. The statutory language refers to the period when a family "ceases to receive aid to families with dependent children." We do not consider payments made in error to be such aid. Rather, we consider only aid paid while the family is eligible to be "aid to families with dependent children." Thus, the fact that a State continues to make AFDC payments erroneously does not affect the eligibility period for transitional child care.

Comment: A few commenters wanted us to interpret the April 1, 1990, effective date differently so that more individuals would be eligible. Some suggested that we extend the benefit to those already receiving such a benefit under a State program, provided that all other eligibility requirements were met at the time they became ineligible for AFDC and during the period before April 1, 1990. Another commenter wanted participants in States that had JOBS in place before April 1, 1990, who became employed and subsequently ineligible for AFDC prior to April 1, 1990, to be eligible for benefits for the remainder of their 12-month transition.

Response: We do not believe a change in policy is indicated. We believe the policy in the proposed regulations represents the best interpretation of the April 1, 1990, effective date for this provision. It is consistent with the interpretation used in implementing prior transitional benefit provisions under the Social Security Act.

Comment: One commenter suggested that the final regulations include the provision that the first month of AFDC ineligibility be on or after April 1, 1990, in order for the family to be eligible for this benefit.

Response: We have added this provision to the final regulations at § 256.2(b)(4).

Period of Eligibility

Based on the intent that families have help with their child care needs for 12 months after losing their AFDC benefits, the regulations provide that families who do not need child care immediately after such loss of AFDC may begin to receive child care in any month during the 12-month eligibility period for the remaining balance of the 12-month period. For example, a family that does not need child care until five months after going off AFDC would qualify for that month and the remaining six months of the 12-month eligibility period.

States must keep case records open for 12 months after the individual, who loses AFDC eligibility, becomes eligible for the transitional child care.

Comment: One commenter opposed the 12-month limit on benefits.

Response: The 12-month eligibility period was set by Congress in the Statute.

Comment: One commenter wanted everyone to receive 12 months of benefits regardless of when employment was found or the reason they lost eligibility for AFDC.

Response: The eligibility for and timing of the transitional child care benefits is set by the Act. The 12-month eligibility period begins when the family loses AFDC eligibility because of increased hours of or countable income from employment, not when a member of the family finds employment. For example, an AFDC recipient could be employed, but still be eligible for AFDC. If a few months later she gets a raise and becomes ineligible for AFDC because her income is now too high, she is eligible for 12 months of transitional child care from that point. If, however, a family loses AFDC eligibility for a reason other than the employment-related ones specified in the Act, it cannot receive transitional child care benefits, even if a member finds a job during the 12-month period after the family loses AFDC eligibility.

Comment: One commenter wanted to know whether those in the AFDC–UP

program were eligible for the full 12 months of benefit if the State currently limits receipt of AFDC benefits to 6 months and they find a job after this 6-month benefit ends.

Response: In this situation, the family became ineligible for AFDC because of the time-limitation on UP benefits. The family is ineligible for transitional child care benefits because it does not meet the statutory eligibility requirement that the family become ineligible for AFDC because of employment.

Good Cause

The Act provides that a family is ineligible for transitional child care if the caretaker relative, who is a member of the AFDC family, terminates employment without good cause or fails to cooperate in establishing paternity and enforcing child support. Cooperation in establishing paternity and enforcing child support is discussed at § 232.12.

If the caretaker relative loses a job (with good cause as defined at § 250.35), and then (prior to re-establishing eligibility for AFDC) finds another, the family would qualify for the remaining portion of the 12-month eligibility period. Also, if the caretaker relative loses a job and the family goes back on AFDC, that family could again become eligible for a full 12 months of transitional child care as long as it meets the eligibility requirements discussed above.

Comment: One commenter opposed penalties for terminating employment without good cause.

Response: The Statute provides that a family is ineligible for benefits if a caretaker relative who is a member of the family terminates employment without good cause.

Comment: One commenter wanted us to clarify the regulations about provision of a new, full 12-month period of eligibility when the participant loses or quits her job with good cause, goes back on AFDC, and then finds another job.

Response: We have done so at § 256.2(e) in the final regulations.

Comment: One commenter questioned whether our reference to § 250.35 was appropriate. The particular concern was that § 250.35 did not necessarily cover the loss of a job which was beyond the recipient's control.

Response: Loss of eligibility only occurs when an individual terminates her employment. Thus, ineligibility would only occur when the individual takes an action which precipitates the loss of the job. Furthermore, the regulations at § 250.35 have been amended to include situations beyond the individual's control. We therefore believe the reference to § 250.35 is appropriate and adequate.

Comment: One commenter suggested that we require appropriate notification of the potential sanctions for non-cooperation.

Response: As discussed elsewhere, we believe that the State should provide recipients this information, and we have made appropriate changes to the regulations.

Comment: One commenter asked that we make the references in the regulations to "member" and "caretaker relative" in §§ 256.2(a), 256.2(d), and 256.2(e) consistent.

Response: We have not made these changes in the body of the final regulations because there are statutory differences between the two terms. Furthermore, if we change each of the named references to "member," we broaden the base for penalty. That is, a family could become ineligible for benefits based on the actions of any family member instead of the actions of a caretaker relative alone. Conversely, if we change each of the references to "caretaker relative", we limit the scope of the guarantee available to the family. The family could only receive transitional child care if it was necessary to keep a caretaker relative employed. Child care needed for the employment of family members other than the caretaker would be excluded.

Fee Requirement (§ 256.3 of the Final Regulations)

Section 402(g)(3)(A)(vii) of the Act requires the State IV–A agency to establish a sliding fee scale for the purpose of calculating a family's contribution for transitional child care.

The final regulations provide States flexibility in determining the formula for calculating these fees. The only regulatory requirement is that all recipients of benefits under this Part must make some contribution.

Comment: In the NPRM, we asked for suggestions for Federal rules on imposing specific limits on the fee scales determined by States. Most of the comments we received suggested that we give States flexibility and allow them to use existing formulas developed for other child care programs in the State. The following are some of the specific suggestions: (1) allow States to use their own formulas, which would be included in the Supportive Services plan; (2) require payment by the family of 100 percent of the cost of care if family income exceeds 185 percent of the poverty level; (3) do not require a payment of any amount from families below the poverty level; and (4) make the sliding fee scale optional.

Response: The Statute explicitly requires that the State establish sliding fee scales, and we cannot make it optional. However, in response to the strong support for State flexibility in this area, in the absence of similar requirements across States, and in the interest of reducing administrative hurdles to program coordination, we have decided to allow State flexibility in determining the formula for calculating fees. The only requirement we decided to impose at this time is a requirement that all recipients of benefits under this Part make some contribution, however minimal. We believe such a requirement would not create serious compatibility problems and we consider it essential to establish the transitional nature of these benefits and develop recipient responsibility for self-support. We are not setting Federal requirements on the significance of that contribution, and we recognize that the contribution expected from those with the lowest income levels might be no more than a token amount (and contributions might be subject to a different payment schedule).

Although we have decided not to regulate substantially in this area, we are still concerned that States establish scales which require meaningful contributions from families able to pay. We will monitor the State practices in this area over the coming few years and will reconsider our regulatory approach if it appears Congressional intent is not being met in this area.

Comment: Other commenters wanted clarification about how to determine family income; one commenter suggested counting all income normally counted plus income of dependent children. Commenters also asked whether they could add in other factors (e.g., expense of care) besides ability to pay in establishing their fee structures.

Response: The State may determine income using AFDC rules for counting and verifying income (at §§ 233.20 and 233.36), or it may use income rules established by other State child care programs. Also, it may consider factors besides income in setting fees as long as those factors directly affect the family's ability to pay. For example, the State could consider the number of children requiring child care services.

Comment: One commenter wanted the States to have flexibility in the method of payment and the setting of their fees. The commenter suggested that States have the option to develop a sliding scale which establishes the State's obligation for payment rather than setting recipient fees. One consequence of the proposed approach would be that

recipients incur the full costs of more expensive care.

Response: Although we provide States flexibility in establishing payment methods, fee amounts, and fee collection procedures, we do not think this commenter's approach is consistent with congressional intent. It would not have the same effect on the recipient as a traditional sliding fee scale system, and recipient fees would not fully reflect the recipient's ability to pay. We are particularly concerned that this approach could work to discriminate against recipients based on their geographic location or the needs of the child, and that it would unduly restrict parental choice.

Collection of Fees

States may set different periods of payment collection for differing levels of payment. For example, it may not be cost-effective to collect and record very low fees every month. Data will be required in the case record concerning the fee schedule and the collection of the fee.

Under the regulations at § 256.3(e), the State IV–A agency must take appropriate action if a family does not pay its fee. If a family does not cooperate in paying its fee, it would become ineligible for continued transitional benefits, and it would remain ineligible for so long as back fees were owed, unless satisfactory arrangements have been made to make full payment. However, transitional child care benefits would not be discontinued without due process, and benefits would be continued pending a hearing, if requested. Unless the fee requirements are taken seriously by States and recipients of benefits, the program will not be effective in providing a transition towards self-sufficiency.

Under the regulations at § 256.1(e) the State plan must specify the methods and procedures the State IV–A agency shall use to ensure that fees are collected.

Comment: Several commenters on this section wanted the fee to be paid to the provider directly. Some suggested that payment to the provider be made a requirement, but a few suggested allowing a State the option. One commenter requested flexibility for the States to develop their own fee collection system.

Response: In order to ensure some State flexibility and ease administration, we have decided not to require State agencies to collect fees directly. States have at least three options: (1) require the fee to be paid to the State; (2) require the fee to be paid directly to the provider and have the State pay the provider for the difference; or (3) pay the recipient the State's contribution and require her to pay the provider in full.

Comment: One commenter wanted to know if the fee is used to offset the expense of child care.

Response: The fees collected should be used to offset the expense of child care (like AFDC overpayment collections are treated). They are considered program income which should be handled like a "deduction," as described in § 74.42(c).

Comment: One commenter suggested that we allow States flexibility to develop arrangements with providers to cover costs of uncollected fees.

Response: Some flexibility is allowable, as long as the State does not abdicate its responsibility to see that fees are collected. Recipients should be responsible for contributing to the cost of their child care, and any arrangements between the State agency and providers should be consistent with this goal.

Comment: Several commenters did not want the State to be obligated to monitor or enforce payments to providers.

Response: As long as the State is paying for part of the child care, we believe the State is obligated to make sure the provider is getting paid. Unless fees are paid, States may end up incurring higher child care costs or losing potential child care slots because of disgruntled, unpaid providers. This situation increases the potential for a lapse in care or a lack of child care slots. Therefore, the State must monitor and enforce payments to providers.

Comment: A couple of commenters were opposed to the denial of benefits to non-paying families.

Response: The Statute requires that families "shall contribute" to the cost of child care benefits based on their ability to pay. We decided to make such contributions a condition of eligibility in order to give the requirement meaning. Otherwise, those who failed to meet their fee obligations would be better off than those who were fulfilling their responsibilities. Furthermore, the provision creates some consistency between how cooperation in paying fees is treated and how other forms of cooperation (e.g., in meeting child support requirements) are met. This consistency will make the provision easier to administer and more understandable to recipients and agency staff.

Comment: One commenter had a question about whether a family is required to pay what it owes in full before benefits are restored.

Response: A family need not pay in full before benefits can be restored. However, arrangements must be made to ensure that it will meet its obligation. These arrangements could take the form of an agreement upon a payment plan or some plan for recoupment.

Comment: One commenter wanted a definition of "satisfactory arrangements."

Response: We decided not to include a definition in our regulations because we wanted to provide States with sufficient flexibility to handle individual family situations.

Comment: One commenter had a question about the effect the failure to pay the transitional child care fee has on the family's AFDC grant.

Response: If the family loses its job and goes back on AFDC while owing back child care payments, such payments could be recouped from future child care payments or may be paid back directly by the family, but the State could not recoup child care payments from the AFDC grant.

Other Provisions (§ 256.4 of the Final Regulations)

In part because the transitional child care provisions of the Statute have distinct beginning and ending dates separate from the other child care provisions of the Statute, we have included them as a separate part in these regulations. However, most of the provisions in Part 255 apply to this part. For example, the provisions of § 255.3(a) regarding the methods of providing child care generally apply to transitional child care although the income disregard is not an option in these cases. The other provisions in Part 255 that pertain to allowable costs, matching rates, standards, disallowance procedures, and uniform reporting also apply.

One minor exception to this general rule relates to the funding of Puerto Rico, Guam, the Virgin Islands and American Samoa. The exception reflects the fact that child care costs under Part 255 for these jurisdictions are covered under the JOBS funding cap, while their transitional child care costs fall under the section 1108 limits.

Another exception is that transitional child care benefits cannot be suspended, reduced, discontinued or terminated until a decision is rendered after a hearing requested within a timely notice period. We make this distinction because recipients of transitional child care benefits under this part do not have the same protection of the "means by which to live" (in terms of continuation of AFDC benefits and the option to cease participation) as is available to

individuals receiving child care under part 255.

Comment: One commenter asked that we make the regulatory cites in § 256.4(a) correspond to the text that follows.

Response: At § 256.4(a) in the NPRM, we state that the State IV–A agency providing transitional child care must meet the following requirements:

§ 255.3(a): which addresses the use of methods for guaranteeing care (paragraphs 1–7)
§ 255.3(b): which requires taking into account individual needs of the child
§ 255.3(c): which governs parental choice
§ 255.3(f): which covers cases that are subject to retrospective budgeting
§ 255.5: which covers child care standards
§ 255.6: which covers uniform reporting requirements

We go on to suggest those cites correspond to the following subjects:

Methods of providing child care
Child care standards
Disallowances
Coordination
Services to Indians and Alaska Natives
Uniform reporting requirements

Unfortunately, the two lists do not correspond. We therefore have revised § 256.4 to indicate that the following provisions of part 255 also apply to part 256:

§ 255.3(a), paragraphs 1–5 and 7—regarding available methods
§ 255.3(b) regarding consideration of the individual needs of the child
§ 255.3(c)–(d) regarding parental choice
§ 255.3(h) regarding coordination
§ 255.4(a) regarding FFP limits
§ 255.4(b)(1) regarding matching rates
§ 255.4(c) regarding requirements for FFP
§ 255.4(f) regarding no matching for resource development
§ 255.4(g) regarding matching for administrative costs
§ 255.4(h) regarding fraud
§ 255.4(i) regarding disallowances and fiscal requirements
§ 255.4(j) regarding recovery of overpayments
§ 255.5 regarding standards
§ 255.6 regarding uniform reporting

Technical and Conforming Amendments (§§ 205.50, 224.0, 233.20, 233.90, 233.100, 234.60, 238.01, 239.01 and 240.01 of the Final Regulations)

Section 202 of the Family Support Act, Public Law 100–485, contains the technical and conforming amendments to title IV–A of the Social Security Act which are required by the enactment of the Statute.

Until October 1, 1990, we cannot remove existing Federal regulations which have been amended by the Statute because the existing regulations will continue to govern State IV–A agencies until they have approved JOBS plans. Therefore, in amending the Federal regulations, we have either incorporated JOBS provisions in the existing regulations (for example, § 205.50 on safeguarding of information) or added a provision specific to States with JOBS programs (for example, treatment of earned income at § 233.20(a)(11)(v)).

Sections 202 and 204 of the Statute repeal the following statutory provisions of title IV of the Act as of October 1, 1990: Part C (WIN); Section 409 of Part A (community work experience program (CWEP)); Section 402(a)(35) of Part A (employment search); and Section 414 of Part A (work supplementation). For States which implement JOBS prior to October 1, 1990, the Federal regulations governing WIN (Part 224), CWEP (Part 238), work supplementation (Part 239), and employment search (Part 240) will no longer apply. Therefore, we have added a provision to each of these existing regulations clarifying that the current regulations do not apply to States with approved JOBS plans and will be repealed for all States as of October 1, 1990. The final regulations which distinguish the applicability of the current regulations are found at §§ 224.0(c) (WIN), 238.01(b) (CWEP), 239.01(b) (work supplementation), and 240.01(b) (employment search).

Safeguarding of Information

Section 202 of the Statute amends section 402(a)(9)(A) of the Act to include programs under Part F for which the State IV–A agency must also provide safeguards which restrict the use or disclosure of information concerning applicants or recipients. In accordance with these amendments, we have amended § 205.50(a)(1)(i)(A) to cover programs under Part F under our safeguarding regulations.

Treatment of Earned Income

Section 202 of the Statute also amends section 402(a)(8)(A)(iv) of the Act regarding the treatment of earned income to remove special treatment afforded earned income from public service employment and incentive payments for institutional training under the Work Incentive program. In lieu of amending § 233.20(a)(11)(iv) which governs treatment of earned income under WIN, we have added a new provision at § 233.20(a)(11)(v) that governs the treatment of earned income and expenses in States with approved JOBS plans. For regular employment or OJT, the disregards in §§ 233.20 (a)(11)(i) and (a)(11)(ii)(B) apply. For earned income from a job under work supplementation, the same disregards apply unless a State IV–A agency has elected to provide differently in its State JOBS plan in accordance with § 250.62 (j) and (k). Section 233.20(a)(11)(v)(C) provides that any advance payment or reimbursement to the JOBS participant for child care, transportation, work-related expenses, or work-related supportive services is to be disregarded. Section 233.20(a)(11)(v)(D) provides that payment for or reimbursement of child care pursuant to part 255 for employed individuals who are not JOBS participants is disregarded.

Changes to Section 407

Definition of "quarter of work". In the NPRM, we proposed to revise the definition of "quarter of work" based on section 202(b)(10) of the Statute, which amended section 407(d)(1) of the Act. Upon additional examination, we have determined that a technical amendment in the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100–647) repealed section 202(b)(10) of the Statute. Therefore, we have deleted this proposed change from the final regulations. The definition of "quarter of work" is not changed by title II of the Family Support Act. It is changed by title IV of the Family Support Act and is not effective until October 1, 1990.

Participation Requirements for Unemployed Parents

Under current law, a principal earner in an AFDC–Unemployed Parent case must be registered with WIN or, if exempt because of remoteness, with a public employment office as a condition of eligibility for aid. In addition, there is a requirement that the principal earner be certified to participate in WIN within 30 days after receipt of AFDC. Certification means that the necessary support services are available so that recipients can participate in training or employment. Additionally, Federal financial participation is not available if, after the 30 days, the State IV–A agency has not taken action to certify the principal earner to WIN.

The Statute amends the current law to provide that aid will be denied if the parent, unless exempt under the new section 402(a)(19)(C)(vii), is not currently participating or available for participation in a JOBS program, or, if exempt due to remoteness, is not registered with the State public employment office. We have amended § 233.100(a)(5)(i) to add this provision for States with approved JOBS plans.

The Statute further amends section 407(c) of the Act to provide that within

30 days after receiving aid, the parent must participate or apply for participation in the JOBS program, unless the program is not available in the area where the parent is living. We have amended § 233.100(a)(6) to add this provision for States with approved JOBS plans.

The Statute also amends section 407(c) of the Act to provide that FFP will not be available to the State IV–A agency for any period beginning with the 31st day after the individual receives aid, if the State has not taken appropriate steps directed towards the participation of the parent in a JOBS program. We have amended § 233.100(c)(2)(iii) to add this provision for States with approved JOBS plans.

Comment: Several commenters objected to the statutory provisions requiring unemployed parents to be available or participating in JOBS within 30 days of receiving AFDC and denying FFP to a State if it had not taken "appropriate steps directed toward the participation of such parent in a program under part F." One State asked what expenditures did the prohibition on FFP apply to?

Response: These are statutory provisions. The final regulations give States maximum flexibility within the statutory provisions to implement these provisions. FFP would not be available for expenditures for the benefits paid to a family eligible under section 407 of the Act if appropriate steps had not been taken toward the participation of the parent in that family in a program under Part F.

Comment: Some commenters asked for clarification about what the participation requirements in this section mean. One was concerned about phase-in of the JOBS program and how this provision affected it. One said that independent job search should be required of unemployed parents prior to enrollment in JOBS as many unemployed parents find jobs in the first few months anyhow.

Response: Although the amendments to the Act specify some timeframes within which either the State or the individual must act, they do not specifically define what those activities are. We believe that the State is in the best position to determine what activities would both conform to the requirements of the law and meet the needs of unemployed parents in the State. For example, as the commenter suggested, independent job search might be an appropriate approach. Independent job search is a JOBS component if the State so defines in its State Plan. It would not be staff intensive or costly, yet would meet the requirements of this provision. However, since the law refers to "appropriate steps directed toward participation" and that the participant must be participating (or available for participation), we believe that preparatory activities such as an initial assessment to determine availability would satisfy the requirements of the Act. Furthermore, we do not believe that such an activity would be a burden even in States that are phasing in the JOBS program.

Loss of Eligibility for Failure to Attend School or Make Satisfactory Progress

Comment: In the NPRM, we proposed to remove the provision at § 233.90(b)(2) which states that an otherwise eligible child under age 18 may not be denied aid if he fails to attend school or make satisfactory grades. Several States questioned our authority to make this change. They doubted whether the Statute intended to permit States to require satisfactory school attendance of all children in order to receive aid.

Response: In lieu of removing § 233.90(b)(2) entirely, we have revised it to provide that if an individual under the age of 18 is required to participate in JOBS and her assignment is to educational activities, then she is subject to the mandatory participation requirements of JOBS and may be sanctioned by the loss of her AFDC benefits as prescribed in section 402(a)(19)(G) for non-attendance at school as that would constitute non-participation in JOBS. We have not changed the provision that prohibits denial of AFDC benefits for failing to make satisfactory grades.

Vendor Payments

The Statute also amends section 402(a)(19)(G) of the Act to extend to the JOBS program the requirement that the State IV–A agency make vendor or protective payments in the event the caretaker relative is sanctioned for failure to participate. Therefore, we have revised § 234.60(a)(12) to add JOBS to the list of programs for which imposing a sanction requires a State IV–A agency to provide protective or vendor payments.

Special Needs

Finally, we have amended § 233.20(a)(2)(v) to prohibit the use of special needs for certain costs related to participation in JOBS or other educational or training activities. We have added the phrase "or other educational or training activities" to clarify that the prohibition applies to all educational or training activities, including those in areas which do not have a JOBS program and those which are self-initiated. Such costs are eligible for matching under JOBS or, in the case of self-initiated education or training, are not matchable pursuant to § 250.48. The additional language clarifies this. A more complete discussion of special needs is contained in the preamble to § 255.4.

Comment: Several commenters pointed out that the language of § 233.20(a)(2)(v) as contained in the proposed regulations did not appear to contain the prohibition on use of special needs for educational costs provided in § 250.46.

Response: The commenters are correct in pointing out this oversight. We have amended the final regulations to incorporate specific language about the costs of educational activities (including tuition, books, and fees) not being allowable as special needs.

Other Provisions

All conforming amendments and other changes to chapter II necessitated by the Family Support Act will be handled in another regulatory package.

(Catalog of Federal Domestic Assistance Programs 13.780, Assistance Payments Maintenance Assistance, 13.781 Job Opportunities and Basic Skills Training)

List of Subjects

45 CFR Part 205

Computer technology, Grant programs-social programs, Privacy, Public assistance programs, Reporting and recordkeeping requirements, Wages.

45 CFR Part 224

Administrative practice and procedure, Grant programs-social programs, Reporting and recordkeeping requirements, Work Incentive (WIN) Programs.

45 CFR Part 233

Aliens, Grant programs-social programs, Public assistance programs, Reporting and recordkeeping requirements.

45 CFR Part 234

Grant programs-social programs, Health care, Public assistance programs, Rent subsidies.

45 CFR Part 238

Aid to Families with Dependent Children, Grant programs-social programs, Manpower training programs.

45 CFR Part 239

Aid to Families with Dependent Children, Employment, Grant programs-social programs.

45 CFR Part 240

Aid to Families with Dependent Children, Employment, Grant programs-social programs.

45 CFR Part 250

Aid to Families with Dependent Children, Grant programs-social programs, Employment, education and training.

45 CFR Part 255

Aid to Families with Dependent Children, Grant programs-social programs, Employment, education and training, Day care.

45 CFR Part 256

Aid to Families with Dependent Children, Grant programs-social programs, Employment, education and training, Day care.

Dated: September 11, 1989.

Catherine Bertini,

Acting Assistant Secretary for Family Support.

Approved: September 14, 1989.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

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

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

1. The authority citation for Part 205 is revised to read as follows:

Authority: Secs. 402, 403, 406, 411, 1102, and 1106(a), Social Security Act (42 U.S.C. 602, 603, 606, 611, 1302, and 1306(a)); sec. 9101, Pub. L. 99–509, 100 Stat. 1972; sec. 202, Pub. L. 100–485, 102 Stat. 2377.

2. Section 205.50 is amended by revising paragraph (a)(1)(i)(A) to read as follows:

§ 205.50 Safeguarding information for the financial assistance programs.

(a) * * *

(1) * * *

(i) * * *

(A) The administration of the plan of the State approved under title IV–A, the plan or program of the State under title IV–B, IV–C, IV–D, or IV–F or under title I, X, XIV, XVI (AABD), XIX or XX or the supplemental security income (SSI) program established by title XVI. Such purposes include establishing eligibility, determining amount of assistance, and providing services for applicants and recipients.

* * * * *

PART 224—WORK INCENTIVE PROGRAMS FOR AFDC RECIPIENTS UNDER TITLE IV OF THE SOCIAL SECURITY ACT

1. The authority citation for Part 224 is revised to read as set forth below and the authority citations following all the sections in Part 224 are removed:

Authority: Secs. 402(a)(19), 430–444 and 1102, Social Security Act (42 U.S.C. 602(a)(19), 630–644, and 1302); secs. 202 and 204, Pub. L. 100–485, 102 Stat. 2377, 2381.

2. In § 224.0, paragraph (c) is added to read as follows:

§ 224.0 Purpose and scope.

* * * * *

(c) The provisions of this part do not apply to any State IV–A agency which has an approved JOBS plan under § 250.20. A list of State IV–A agencies with approved JOBS plans is available from the Family Support Administration, Office of Family Assistance, 370 L'Enfant Promenade, SW., Washington, DC 20447. For all State IV–A agencies the provisions of this Part are repealed as of October 1, 1990.

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

1. The authority citation for Part 233 is revised to read as follows:

Authority: Secs. 1, 402, 406, 407, 1002, 1102, 1402, and 1602, Social Security Act (42 U.S.C. 301, 602, 606, 607, 1202, 1302, 1602, and 1382 note); and sec. 6, Pub. L. 94–114, 89 Stat. 579 and Part XXIII of Pub. L. 97–35, 95 Stat. 843, and Pub. L. 97–248, 96 Stat. 324, and Pub. L. 99–603, 100 Stat. 3359, sec. 221, Pub. L. 98–181, as amended by sec. 102, Pub. L. 98–479 (42 U.S.C. 602 note) and sec. 202, Pub. L. 100–485, 102 Stat. 2377.

2. In § 233.20, paragraph (a)(2)(v) is revised, paragraphs (a)(11)(v) and (a)(11)(vi) are redesignated as paragraphs (a)(11)(vi) and (a)(11)(vii) respectively and a new paragraph (a)(11)(v) is added to read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *

(2) * * *

(v) If the State IV–A agency includes special need items in its standard:

(A) Describe those that will be recognized and the circumstances under which they will be included, and

(B) Provide that they will be considered for all applicants and recipients requiring them; except that:

(*1*) Under AFDC, work expenses and child care (or care of incapacitated adults living in the same home and receiving AFDC) resulting from employment or participation in either a CWEP or an employment search program cannot be special needs, and

(*2*) In a State which has a JOBS program under Part 250, child care, transportation, work-related expenses, other work-related supportive services, and the costs of education (including tuition, books, and fees) resulting from participation in JOBS (including participation pursuant to §§ 250.46, 250.47, and 250.48) or any other education or training activity cannot be special needs.

* * * * *

(11) * * *

(v) The treatment of earned income and expenses under JOBS is as follows:

(A) For earned income from regular employment or on-the-job training, as described at § 250.61, the disregards in paragraphs (a)(11)(i) and (a)(11)(ii)(B) shall apply.

(B) For earned income from a job under the work supplementation component, as described at § 250.62, the disregards in paragraphs (a)(11)(i) and (a)(11)(ii)(B) shall apply unless the State IV–A agency in its State JOBS plan, has elected to provide otherwise under § 250.62(j) and § 250.62(k).

(C) For all activities under JOBS and self-initiated education and training in non-JOBS areas, advance payment or reimbursement to the individual for child care, transportation, work-related expenses, or work-related supportive services is disregarded.

(D) Payment or reimbursement of child care pursuant to Part 255 for employed individuals who are not JOBS participants and one-time work-related expenses for individuals who are not JOBS participants pursuant to Part 255 are disregarded.

* * * * *

3. Section 233.90 is amended by revising paragraph (b)(2) to read as follows:

§ 233.90 Factors specific to AFDC.

* * * * *

(b) * * *

(2) An otherwise eligible child who is under the age of 18 years may not be denied AFDC, regardless of whether she attends school (unless she is required to participate in the JOBS program pursuant to § 250.30 and she is assigned to educational activities) or makes satisfactory grades.

4. Section 233.100 is amended by revising paragraphs (a)(5)(i); (a)(6); and (c)(2)(iii) to read as follows:

§ 233.100 Dependent children of unemployed parents.

(a) * * *

(5) * * *

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

* * * * *

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

* * * * *

(c) * * *

(2) * * *

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

* * * * *

PART 234—FINANCIAL ASSISTANCE TO INDIVIDUALS

1. The authority citation for Part 234 is revised to read as set forth below and the authority citations following all the sections in Part 234 are removed:

Authority: Secs. 402, 403, 406 and 1102 of the Social Security Act (42 U.S.C. 602, 603, 606, and 1302); Section 201 of Pub. L. 100–485, 102 Stat 2359.

2. Section 234.60 is amended by revising the first sentence of paragraph (a)(12) to read as follows:

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

(a) * * *

(12) In cases where an individual is sanctioned for failure to participate in WIN, employment search, CWEP, or JOBS, the State plan must provide that when protective or vendor payments are made pursuant to § 224.52(a)(1), § 238.22, § 240.22(a)(1), § 240.22(b)(1) and § 250.34(d) of this chapter, only paragraphs (a)(7), (a)(9)(ii), and (a)(11)(i) and (ii) of this section will be applicable. * * *

* * * * *

PART 238—COMMUNITY WORK EXPERIENCE PROGRAM

1. The authority citation for part 238 is revised to read as set forth below and the authority citations following all the sections in part 238 are removed:

Authority: Section 409 and 1102 of the Social Security Act (42 U.S.C. 609 and 1302); Sections 202 and 204 of Pub. L. 100–485, 102 Stat. 2378, 2381.

2. Section 238.01 is revised to read as follows:

§ 238.01 Scope of this part.

(a) *General.* State IV–A agencies 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, State IV–A agencies 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 percent).

(b) *Applicability.* The provisions of this part do not apply to any State IV–A agency which has an approved JOBS plan under § 250.20. A list of State IV–A agencies with approved JOBS plans is available from the Family Support Administration, Office of Family Assistance, 370 L'Enfant Promenade, SW., Washington, D.C. 20447. For all State IV–A agencies, the provisions of this part are repealed as of October 1, 1990.

PART 239—WORK SUPPLEMENTATION PROGRAM

1. The authority citation for Part 239 is revised to read as set forth below and the authority citations following all the sections in Part 239 are removed:

Authority: Sections 414 and 1102 of the Social Security Act (42 U.S.C. 614 and 1302); Sections 202 and 204 of Pub. L. 100–485, 102 Stat. 2378, 2381.

2. Section 239.01 is revised to read as follows:

§ 239.01 Scope of this part.

(a) *General.* Under the work supplementation program, State IV–A agencies may use AFDC funds to develop and subsidize work for AFDC recipients as an alternative to aid provided to AFDC recipients. The work supplementation program may be implemented notwithstanding the definitions contained in section 406 of the Social Security Act or any other provision of law. Under this program AFDC recipients may choose, on a voluntary basis, to accept an offer of work to the extent such jobs are made available. In order to pay for the costs of developing and subsidizing these jobs, a State IV–A agency may reduce the need standard in effect for selected categories of recipients on the basis of their ability to participate in the work supplementation program. The reduction of the need standard may be made for either the entire State or for selected geographical areas. The total amount of Federal financial participation for operation of a State IV–A agency's work supplementation program is limited as provided in subpart D of this part.

(b) *Applicability.* The provisions of this part do not apply to any State IV–A agency which has an approved JOBS plan under § 250.20. A list of State IV–A agencies with approved JOBS plans is available from the Family Support Administration, Office of Family Assistance, 370 L'Enfant Promenade, SW., Washington, DC 20447. For all State IV–A agencies, the provisions of this Part are repealed as of October 1, 1990.

PART 240—EMPLOYMENT SEARCH PROGRAM

1. The authority citation for Part 240 is revised to read as set forth below and the authority citations following all the sections in Part 240 are removed:

Authority: Sections 402(a) and 1102 of the Social Security Act (42 U.S.C. 602(a) and 1302); Sections 202 and 204 of Pub. L. 100–485, 102 Stat. 2377, 2381.

2. Section 240.01 is revised to read as follows:

§ 240.01 Scope of this part.

(a) *General.* Each State with a plan approved under title IV–A of the Social Security Act may establish a program of employment search in accordance with

the requirements in this Part. The single State agency designated in the State plan to administer or supervise the AFDC program must administer the employment search program.

(b) *Applicability.* The provisions of this Part do not apply to any State IV–A agency which has an approved JOBS plan under § 250.20. A list of State IV–A agencies with approved JOBS plans is available from the Family Support Administration, Office of Family Assistance, 370 L'Enfant Promenade, SW., Washington, DC 20447. For all State IV–A agencies, the provisions of this Part are repealed as of October 1, 1990.

Title 45, chapter II, Code of Federal Regulations is amended by adding a new part 250 to read as follows:

PART 250—JOB OPPORTUNITIES AND BASIC SKILLS TRAINING PROGRAM

Subpart A—Purpose and Definitions

Sec.
250.0 Purpose.
250.1 Definitions.

Subpart B—Administration

250.10 State IV–A agency administration.
250.11 Requirement for a statewide program.
250.12 Coordination and consultation.
250.13 Contracting authority.

Subpart C—State Plan Requirements and Content

250.20 Requirement for a State JOBS plan.
250.21 State plan content.

Subpart D—Participation Requirements, Exemptions and Sanctions

250.30 Requirements for individual participation and exemptions.
250.31 Volunteers.
250.32 Participation requirements for education.
250.33 Participation requirements for unemployed parents.
250.34 Sanctions.
250.35 Good cause.
250.36 Conciliation and fair hearings.

Subpart E—Operation of State JOBS Programs/Program Components

250.40 Providing information to AFDC applicants and recipients.
250.41 Initial assessment and employability plan.
250.42 Agency-participant agreement.
250.43 Case management.
250.44 Mandatory components.
250.45 Optional components.
250.46 Postsecondary education.
250.47 Other education, training and employment activities.
250.48 Self-initiated education or training.

Subpart F—[Reserved]

Subpart G—Optional Components of State JOBS Programs

250.60 Job search program.
250.61 On-the-job training.
250.62 Work supplementation program.
250.63 Community work experience program.

Subpart H—Funding

250.70 JOBS allocation entitlement.
250.71 Allotment of JOBS limit of entitlement.
250.72 Maintenance of effort.
250.73 Matching rates.
250.74 Reduced matching rate.
250.75 Activities excluded from FFP.
250.76 Financial reports, records, statements and audits.
250.77 Costs matchable as AFDC payments.
250.78 Definition of participation for enhanced FFP.

Subpart I—Uniform Data Collection Requirements

250.80 Uniform data collection requirements.
250.81 State data systems options.
250.82 Required case record data.

Subpart J—Operation of JOBS Programs by Indian Tribes and Alaska Native Organizations

250.90 Scope and purpose.
250.91 Eligible Indian Tribe and Alaska Native organization grantees.
250.92 Selection criteria for eligible Alaska Native organizations.
250.93 Funding formula.
250.94 Program administration, implementation and operations.
250.95 Supportive services.
250.96 Waiver authority.
250.97 Application requirements and documentation.
250.98 Maintenance of effort for Indian Tribes and Alaska Native organizations.

Authority: Sections 402, 403, 481, 481 note, 482, 483, 484, 485, 486, 487, and 1102 of the Social Security Act as amended (42 U.S.C. 602, 603, 681, 682, 682 note, 683, 684, 685, 686, 687, and 1302); Section 204(b) of Pub. L. 100–485, 102 Stat. 2381.

Subpart A—Purpose and Definitions

§ 250.0 Purpose.

(a) The purpose of the Job Opportunities and Basic Skills Training (JOBS) program under titles IV–A and IV–F of the Social Security Act is to assure that needy families with children obtain the education, training and employment that will help avoid long-term welfare dependence. To accomplish this purpose, the JOBS program is intended to;

(1) Encourage, assist, and require applicants for and recipients of AFDC to fulfill their responsibilities to support their children by preparing for, accepting, and retaining employment;

(2) Provide individuals with the opportunity to acquire the education and skills necessary to qualify for employment;

(3) Provide necessary supportive services, including transitional child care and medical assistance, so that individuals can participate in JOBS and accept employment;

(4) Promote coordination of services at all levels of government in order to make a wide range of services available, especially for individuals at risk of long-term welfare dependency, and to maximize the use of existing resources; and

(5) Emphasize accountability for both participants and service providers.

(b) This part provides that a State IV–A agency, as a condition of participation in the AFDC program, must operate a JOBS program. In addition, these regulations require that States provide child care and other supportive services for participants in the JOBS program, as well as certain other individuals, pursuant to parts 255 and 256. This part contains the policies, rules and regulations pertaining to the Job Opportunities and Basic Skills Training (JOBS) program.

(c) This part is applicable to States with approved JOBS programs pursuant to § 250.20, and to all States as of October 1, 1990.

§ 250.1 Definitions.

Except to the extent otherwise specified in this section, terms used in part 250 shall have the same meaning otherwise applicable to the Aid to Families with Dependent Children (AFDC) program.

Adult recipient means an individual other than a dependent child (unless such child is the minor custodial parent of another dependent child) whose needs are met (in whole or in part) with payments of Aid to Families with Dependent Children.

Basic literacy level means a literacy level that allows a person to function at a level equivalent to at least grade 8.9.

Component means any of the services or activities available under the provisions of § 250.44 through § 250.48.

CWEP means the community work experience program authorized in § 250.45 and § 250.63.

Department means the U.S. Department of Health and Human Services.

FFP means Federal financial participation in expenditures made by a State.

Institution of higher education means any institution determined by the Secretary of Education to meet:

(1) The definition of such term contained in either section 1201(a) or section 481(a) of the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), as amended; or

(2) The definitions of "proprietary institution of higher education" or

"postsecondary vocational institution," which are defined at sections 481 (b) and (c) of that Act.

Intensive job search is, for purposes of § 250.74(c), job search by a parent in an unemployed parent case that is either group or individual job search for a monthly average equivalent to 20 hours per week.

JAS means a JOBS Automated System authorized under § 250.81 for a State to support its operation of the JOBS program.

JOBS is the Job Opportunities and Basic Skills Training program required by section 402(a)(19) of the Social Security Act, as amended by section 201(a) of the Family Support Act of 1988 (Pub. L. 100–485) and set forth in part F of title IV of the Social Security Act, as added by section 201(b) of the Family Support Act.

JOBS plan means the statewide operational plan for JOBS.

Limited English proficiency means limited ability in speaking, reading, writing, or understanding the English language by a person whose native language is a language other than English or by a person who lives in a family or community environment where a language other than English is the dominant language.

Make good progress and *Making satisfactory progress* in an educational component mean that the participant in any educational activity is meeting, on a periodically measured basis of less than one year, such as a term or quarter, a consistent standard of progress based upon a written policy that was: developed by the educational institution or program in which she is enrolled; and approved by the appropriate State or local education agency and by the State welfare agency or Indian Tribe or Alaska Native organization. Such standard includes both a qualitative measure of a participant's progress, such as a grade point average, and a quantitative measure, such as a reasonable time limit by which a student is expected to complete her studies. Upon review and approval by the State or local education agency and the State IV–A agency or Indian Tribe or Alaska Native organization, the standard may provide that a student who does not meet the institution's or program's progress standard is nonetheless making satisfactory progress during a probationary period, or shall be deemed to be making satisfactory progress because of mitigating circumstances. *Make good progress* and *Making satisfactory progress* in a training component (i.e., OJT and skills training) mean that the participant is meeting, on a periodically measured basis of less than one year, such as quarterly, a consistent standard of progress based upon a written policy that was: developed by the training provider, and approved by the State IV–A agency or Indian Tribe or Alaska Native organization. Such standard includes both a qualitative measure of a participant's progress, such as competency gains or proficiency level, and a quantitative measure, such as a reasonable time limit for completion of the training program. Standards for making good or satisfactory progress in a training program must be employed by October 1, 1992, but should be used at an earlier time if available.

MSA means Metropolitan Statistical Area, a system of geographical areas defined and maintained by the Executive Office of the President, Office of Management and Budget.

OJT means on-the-job training as authorized in § 250.45 and § 250.61.

Postsecondary education means a program of postsecondary instruction offered by:

(1) An institution of higher education determined by the Secretary of Education to meet section 1201(a), or section 481 (a), (b), or (c) of the Higher Education Act of 1965, as amended;

(2) An institution of higher education or a vocational school determined by the Secretary of Education to meet section 435(b) or section 435(c) of the Higher Education Act of 1965, as amended; or

(3) A public institution that is legally authorized by the State to provide such a program within the State.

Secretary means the Secretary of Health and Human Services.

Target population means that group composed of each individual who:

(1) Is receiving AFDC, and who has received such aid for any 36 of the preceding 60 months;

(2) Makes application for AFDC, and has received such aid for any 36 of the 60 months immediately preceding the most recent month for which application has been made;

(3) Is a custodial parent under the age of 24 who:

(i) Has not completed a high school education and, at the time of application for AFDC, is not enrolled in high school (or a high school equivalency course of instruction); or

(ii) Had little or no work experience in the preceding year; or

(4) Is a member of a family in which the youngest child is within 2 years of being ineligible for AFDC because of age.

For a particular State, this term will include, in lieu of individuals listed, such alternative groups of long-term or potential long-term recipients as the State has demonstrated to the satisfaction of the Secretary are feasible target populations in that State's caseload.

UP means Unemployed Parent and refers to the program authorized in section 407 of the Social Security Act which provides aid to a dependent child who is deprived of parental support or care by reason of the unemployment of the parent who is the principal earner.

Subpart B—Administration

§ 250.10 State IV–A agency administration.

(a) The State agency responsible for the administration or supervision of the State's title IV–A plan is responsible for the administration or supervision of the JOBS program.

(b) Except as provided in paragraph (c)(2), JOBS activities which involve decision-making with regard to individual participants may be performed by an entity other than the State IV–A agency according to the policies, rules, and regulations of the State IV–A agency. In doing so, such entity must not have the authority to review, change, or disapprove any administrative decision of the State IV–A agency, or otherwise substitute its judgment for that of the State IV–A agency as to the application of policies, rules, and regulations promulgated by the State IV–A agency.

(c) JOBS activities may be delegated or contracted with the exception of the following:

(1) Overall program administration, including:

(i) Establishment of optional provisions and components of the program;

(ii) Responsibility for program planning, design of program, and determining who should participate;

(iii) Establishment of program participation requirements;

(iv) Development of a definition of good cause for failing to participate; and

(v) The issuance of other policies, rules, and regulations governing the program.

(2) Actions involving individuals, including:

(i) Determination of exemption status;

(ii) Determination of good cause for failure or refusal to participate;

(iii) Determination and application of sanctions;

(iv) Providing notice of case actions; and

(v) Fair hearings.

§ 250.11 Requirement for a statewide program.

(a) Not later than October 1, 1992 the State must make the JOBS program available on a statewide basis. This means that the JOBS program, including all components described in § 250.44 and two of the components in § 250.45, must be available in each political subdivision of the State, unless the State determines that it is not feasible to do so.

(b) Although all required and at least two optional components, as described in §§ 250.44 and 250.45, must be included in a State JOBS program, the components need not be operated in the same manner in each political subdivision, nor must the State operate the same optional components, as listed in § 250.45, in each political subdivision.

(c)(1) If the State IV–A agency concludes that a statewide program is not feasible, appropriate justification must be submitted to the Secretary for review and approval as part of its JOBS plan, unless the following criteria are met:

(i) A minimal JOBS program is available in a number of political subdivisions in which 95 percent of the State's adult recipients reside; and

(ii) A complete JOBS program is available in all Metropolitan Statistical Areas in the State, and in a number of political subdivisions in which 75 percent of the State's adult recipients reside.

(iii) A minimal program includes high school or equivalent education, as specified in § 250.44, one optional component from among those specified at § 250.45, and information and referral to available non-JOBS employment services. A complete program includes all mandatory components as well as any two optional components.

(iv) In determining the percentages of adult recipients residing in political subdivisions of a State, for purposes of this section, adult members of Indian Tribes and Alaska Native organizations who reside within the service area of a Tribal JOBS program, pursuant to § 250.90, will not be counted.

(2) The justification must include the following:

(i) The number of adult recipients that would be excluded and a comparison of:

(A) The estimated average annual unit cost per participant were the JOBS program extended to excluded areas with

(B) The estimated average annual unit cost per JOBS participant in the included areas;

(ii) A description of the local economic conditions that make operation of the program in such areas infeasible; and

(iii) Whether the State expects to expend all of its limit of entitlement, pursuant to § 250.70, for the period covered by the JOBS plan.

§ 250.12 Coordination and consultation.

State IV–A agencies are required to assure coordination of JOBS program services, including child care and supportive services pursuant to § 255.3(h) of the regulations, with related services provided by other agencies.

(a) The Governor shall assure that JOBS program activities are coordinated with programs under the Job Training Partnership Act (JTPA) and with any other relevant employment, training, and education programs available within the State. At a minimum, this means that the appropriate job training and preparation components of the State JOBS plan shall be consistent with the coordination criteria specified in the Governor's coordination and special services plan required under section 121 of the JTPA.

(b) In developing the JOBS plan and carrying out the JOBS program, including the supportive services provisions, the State IV–A agency must consult and coordinate with other providers, including those specified in paragraph (c) of this section, to identify existing resources to prevent duplication of services, assure that other program services are available to enable participants to achieve self-sufficiency, and assure that costs for these other services for which welfare recipients have been eligible are not incurred by the JOBS program pursuant to § 250.72.

(c) At a minimum, the State IV–A agency must consult and coordinate with:

(1) The State agency responsible for JTPA;

(2) The State agency responsible for the Employment Service;

(3) The State education agency for programs under the Adult Education Act (20 U.S.C. 1201 *et seq.*) and Carl D. Perkins Vocational Education Act (20 U.S.C. 2301 *et seq.*);

(4) The State agencies responsible for child care activities as described in § 255.3(h); and

(5) The State agencies responsible for public housing.

(d) The State IV–A agency and local welfare agencies, as appropriate, must consult with the private industry councils (as established under section 102 of the JTPA):

(1) On the development of arrangements and contracts under JOBS, as described in § 250.13, and under the JTPA; and

(2) To identify and obtain advice on the types of jobs available, or likely to become available, in the area. The State IV–A agency must ensure that JOBS provides training for the types of jobs which are, or are likely to become, available in the area, and that resources are not expended on training for jobs that are not likely to become available.

(e) The State IV–A agency must exchange information with an eligible Indian Tribe or Alaska Native organization which submitted an application to the Department by April 13, 1989 to operate a separate JOBS program under § 250.91.

(1) This information includes available data on adult Tribal or Alaska Native organization AFDC recipients necessary to determine a Tribe or organization's JOBS funding level and designated service area, as appropriate, as described in § 250.93(b). State and Tribal and Alaska Native organization representatives receiving such AFDC recipient data must follow comparable standards of confidentiality as described in § 250.93(b).

(2) Since the State IV–A agency maintains responsibility for providing basic AFDC program services, such as eligibility notifications, and child care funds or services to participants in a Tribal JOBS program, the State and such grantee must coordinate interrelated activities as described in § 250.94(a) and part 255.

§ 250.13 Contracting authority.

The State IV–A agency shall carry out the JOBS program directly or through arrangements or under contracts with administrative entities under section 4(2) of the Job Training Partnership Act (JTPA), with State and local educational agencies, and with other public agencies, Indian Tribes or Alaska Native organizations or private organizations (including community-based organizations as defined in section 4(5) of the JTPA).

(a) Arrangements and contracts entered into under this section may cover any service or activity (including outreach, information and referral) to be made available under the JOBS program. Such contracted service or activity must be consistent with the requirements under § 250.10 and must not otherwise be available on a nonreimbursable basis, as specified in § 250.72(c).

(b) The State IV–A agency must consult with the private industry councils on the development of arrangements and contracts under JOBS pursuant to § 250.12.

(c) In selecting service providers, the State IV–A agency must take into

account appropriate factors which may include past performance in providing similar services, demonstrated effectiveness, fiscal accountability, cost efficiency, ability to meet performance standards, and such other factors as the State IV–A agency may determine to be appropriate.

(d) For purposes of claiming FFP, the State IV–A agency must segregate costs by the applicable matching rates, as defined at § 250.73(b)(1), in any arrangement or contract entered into under this section.

(e) Services contracted under JOBS are subject to the requirements of part 92, excluding the provisions at § 92.30(d)(4).

Subpart C—State Plan Requirements and Content

§ 250.20 Requirement for a State JOBS plan.

(a) As a condition of participation in the AFDC program, the agency responsible for administering or supervising the administration of the IV–A plan must:

(1) No later than October 1, 1990, establish and operate a JOBS program under a JOBS plan that has been approved by the Secretary before implementation and that meets the requirements of this Part;

(2) Submit its initial JOBS plan to the Secretary for review and action at least 45 days prior to the anticipated implementation date; and

(3) Submit its initial Supportive Services plan, in accordance with §§ 255.1 and 256.1 concurrent with the initial JOBS plan, except that a State which has not submitted a JOBS plan prior to April 1, 1990, must submit a Supportive Services plan for transitional child care in accordance with § 256.1 at least 45 days prior to implementation.

(b) The initial JOBS plan and Supportive Services plan will be subject to prior approval by the Secretary. FFP will only be available for expenditures incurred after approval by the Secretary.

(c) A State JOBS plan and Supportive Services plan must be submitted to:

(1) The Governor for review and comment; and

(2) The State Job Training Coordinating Council (SJTCC) and the State education agency for review and comment at least 60 days prior to submittal to the Secretary. The plan shall be published and otherwise made reasonably available through local news facilities and public announcements, to the general public, including members of federally-recognized Tribes and Alaska Native organizations in the State, for review and comment, concurrent with submittal to the SJTCC and the State education agency. Comments received shall be resolved by the State.

(d)(1) State JOBS plans and Supportive Services plans submitted to the Secretary prior to the issuance of the JOBS and Supportive Services plan preprints shall be considered interim plans.

(2)(i) A State operating a JOBS program and providing supportive services under interim plans shall submit a new JOBS plan and a new Supportive Services plan for approval within 90 days of the date that JOBS and Supportive Services plan preprints are issued by the Secretary.

(ii) The new JOBS and Supportive Services plans must be submitted for public review and comment pursuant to the provisions of paragraph (c) no later than 30 days prior to submittal to the Secretary, if substantial changes to the interim plans have been made.

(iii) Interim plans shall remain in force until formal action on the new plans is taken (i.e., approval or disapproval) by the Secretary.

(e)(1) The State must submit an update of its JOBS and Supportive Services plans to the Secretary for approval not less than every two years. The update shall be considered a new JOBS plan and Supportive Services plan, and shall be submitted to the Secretary for approval at least 90 days prior to beginning of the next biennial period. The State must follow the public review and comment provisions in paragraph (c).

(2) The update must consist of:

(i) Assurances regarding those parts of the State JOBS Plan and Supportive Services plan that remain unchanged;

(ii) A description of any changes in program operations including but not limited to changes in components and target populations served;

(iii) An estimate of the number of persons to be served by the program during the next biennium and the availability of services provided by the State IV–A agency as well as other providers; and

(iv) An assurance that the State JOBS plan is consistent with the coordination criteria specified in the current Governor's Coordination and Special Services Plan required under section 121 of the JTPA.

(3)(i) For all States the first biennial update must be submitted by July 1, 1992, for the period beginning October 1, 1992. As an alternative, a State may submit its first biennial update by April 1, 1992 for the period beginning July 1, 1992. A State which elects to submit its biennial update on April 1, 1992 for the period beginning July 1, 1992 must show in the update that it will have a Statewide program by October 1, 1992.

(ii) A State JOBS plan and Supportive Services plan approved pursuant to paragraph (d)(2) shall remain in force until formal action is taken (i.e., approval or disapproval) by the Secretary on the first biennial update.

(iii) Each approved biennial update shall remain in force until formal action is taken (i.e., approval or disapproval) by the Secretary on the update for the following biennial period.

(f)(1) The State shall submit proposed amendments to approved plans as necessary and they shall be reviewed according to the process described at §§ 201.3(f) and 201.3(g).

(2) A plan amendment is necessary if the State makes changes which affect eligibility for services or requirements to participate, or makes changes in program design that alter the nature of the program.

(g) A State that submits a plan, an amendment to an existing plan, or a biennial update that is not approvable will be given the opportunity to make revisions before formal disapproval; upon formal disapproval, a State may request a hearing pursuant to the process set forth in § 201.4 and part 213.

§ 250.21 State plan content.

A State's JOBS plan must contain the following:

(a) Assurances that:

(1) The title IV–A agency will, upon approval of the JOBS plan by the Secretary, have in effect and operation:

(i) A JOBS program that meets the requirements of section 402(a)(19) and title IV–F of the Act; and

(ii) A program for providing child care and other supportive services consistent with the requirements of the Act and with the State's separate Supportive Services plan, pursuant to §§ 255.1 and 256.1;

(2) The JOBS program will meet all statutory and regulatory requirements;

(3) To the extent that the program is available in a political subdivision of a State and the State's resources otherwise permit, the State will require non-exempt recipients for whom the State guarantees child care in accordance with § 255.2(a) to participate;

(4) Individuals are not discriminated against on the basis of race, sex, national origin, religion, age, or handicapping condition in assignment to training and education developed under the JOBS program;

(5) In assigning participants to any JOBS program activity the State agency

will comply with the provisions of section 484(a) of the Act;

(6) Benefits and services provided under the programs in part A, part D, and part F of title IV of the Act are furnished in an integrated manner;

(7) Services provided by the State IV–A agency are not otherwise available on a non-reimbursable basis, as required by § 250.72(e);

(8) All applicants for and recipients of aid are encouraged, assisted, and required to fulfill their responsibilities to support their children by preparing for, accepting, and retaining such employment as they are capable of performing;

(9) State and local funds expended for such purpose shall be maintained at least at the level of such expenditures for the FY 1986. The FY 1986 level must be identified;

(10) Federal funds made available to a State for purposes of the program shall not be used to supplant non-Federal funds for existing services and activities which promote the purpose of part F of title IV of the Act.

(b) Information about overall implementation of the State's JOBS program:

(1) A statement of the goals and objectives of the State JOBS program, and a description of how the State intends to implement the program during the biennium to support those goals and objectives;

(2) A description of the administrative structure for the JOBS program;

(3) A description of the contracting process that will be used to deliver services for the State IV–A agency, pursuant to § 250.13, including:

(i) Types of services to be provided under contract;

(ii) Types of contracts used;

(iii) Types of providers;

(4) If the State program is less than statewide, identification of subdivisions to be included or excluded. For any period after September 30, 1992, for which the State does not meet the criteria at § 250.11(c)(1), justification as described at § 250.11(c)(2);

(5) If the State proposes to serve target populations other than those described at § 250.1,

(i) The characteristics of the caseload in the State that make it infeasible to meet the requirements of § 250.74(a)(1); and

(ii) The long-term or potential long-term recipients that the State is targeting instead of those described at § 250.1.

(6) A description of the State's dispute resolution process including:

(i) A description of the conciliation process including:

(A) Length of conciliation; and

(B) The entity responsible for conciliation;

(ii) A description of an alternative fair hearing process the State uses for the JOBS program, if any;

(iii) A description of the grievance procedure for resolving complaints by regular employees pursuant to section 484(d) of the Act.

(c) The options for participation which the State elects including:

(1) Lowering the age of the youngest child (but no less than one) for the exemption pursuant to § 250.30(b)(9)(i);

(2) Making exemptions in § 250.30 (b)(9)(i) and (b)(9)(ii) inapplicable to both parents and requiring their participation if child care is guaranteed in accordance with part 255;

(3) Limiting exemptions in § 250.30 (b)(9)(i) and (b)(9)(ii) to the parent who is not the principal earner;

(4) Establishing minimum standards for work that qualifies an individual for the exemption at § 250.30(b)(7);

(5) Making supplemental payments if a family would experience a net loss of cash income resulting from acceptance of a job, pursuant to § 250.35(c). A State must describe what necessary and reasonable expenses it uses to calculate "net loss of cash income;"

(6) Allowing a parent under age 25 who has not completed high school or an equivalent course of education to meet the unemployed parent program 16-hour work requirement by participating in educational activities.

(d) A description of program operations to include the following:

(1) A description of the client flow process;

(2) For each required component and each optional component a State elects (including all components in §§ 250.46, 250.47, and 250.48):

(i) A description of the services to be provided in the component;

(ii) The extent to which such services will be:

(A) Available on a non-reimbursable basis;

(B) Provided directly or funded by the State IV–A agency;

(iii) The extent to which such services will be provided in each political subdivision covered by the State JOBS program;

(3) If the State elects to use a case management system pursuant to § 250.43, a description of the case management system to include:

(i) How case management services will be delivered and by what entities; and

(ii) If not used statewide, description of methods by which individuals will be assigned a case manager;

(4) If the State elects to use agreements or contracts with participants, pursuant to § 250.42, a description of how they will be used, including, if not used statewide, how the State will determine for whom they will be used;

(5) If the State elects to offer an alternative work experience component pursuant to § 250.63, a description of potential sponsors, types of activities, the hours and duration of participation that will be required, target populations, and how the program differs from CWEP;

(6) If the State elects to design a work program for unemployed parents, pursuant to § 250.33, a description of the program including an assurance that the State has not substituted education or training activities for the work requirement;

(7) If the State elects to operate a work supplementation component pursuant to § 250.62, which of the following options it elects and, if appropriate, what the policy is with respect to:

(i) Exempting individuals holding supplemented jobs from the retrospective budgeting requirements at Part 233 and monthly reporting;

(ii) Varying the standard of need by subdivision in which the work supplementation component is in operation;

(iii) Varying the standard of need for different categories of recipients on the basis of ability to participate in the program;

(iv) Making any other adjustment in the amount of aid paid under the title IV–A plan to different categories of recipients pursuant to § 250.62(i)(3);

(v) Reducing or eliminating the amount of earned income to be disregarded from participation in a supplemented job;

(vi) Varying the number of months (up to nine) the State applies the $30 and one-third or the $30 disregard;

(vii) Using a sampling methodology to determine the amounts to be reserved and used for providing and subsidizing jobs pursuant to § 250.62(m);

(8) Description of any State limits or restrictions upon postsecondary educational services, with respect to the subject matter of the education or training offered, length of program, characteristics of the institution, and length of coverage under JOBS (if different from length of program), for:

(i) Postsecondary education to which the State refers a JOBS participant under § 250.46.

(ii) Self-initiated education or training under § 250.48(a) for which the State

provides child care or supportive services.

(9) Criteria established for:

(i) Determining the inappropriateness of educational activities for custodial parents aged 18 or 19 who are to be placed in training or work activities in lieu of educational activities under § 250.32(a)(3);

(ii) Assigning an individual aged 20 or over who does not have a high school diploma or the equivalent to educational activities under § 250.32(b);

(iii) Approving postsecondary educational activities under § 250.46, if the State elects to refer participants to such education; and

(iv) Approving self-initiated education or training under § 250.48(a).

(10) If the State elects to excuse custodial parents under 18 years of age from educational activities, the criteria in accordance with § 250.32;

(11) If the State elects to define "basic literacy level" as higher than the grade 8.9 floor defined at § 250.1, the State's definition;

(12) The State's definition of other "good cause" for failure to participate in accordance with § 250.35(d). At a minimum this must include circumstances that are beyond a household's control;

(13) If a State elects to provide case management services to an individual who loses eligibility for AFDC after she accepts employment, the length of time up to 90 days for which services will be provided;

(e) A description of the nature of coordination with public and private agencies and organizations as described at § 250.12. This must include:

(1) Identification of specific existing resources that are available and appropriate for participants in the State JOBS program;

(2) A description of coordination and consultation in the development of the State JOBS plan;

(3) A description of how the State JOBS plan is consistent with the coordination criteria specified in the Governor's coordination and special services plan, pursuant to § 250.12(a);

(4) The results of consultation with private industry councils to assure that training and educational activities under JOBS are directed toward jobs that are available or likely to become available;

(f) Annual estimates of the numbers of persons to be served on a monthly basis during the biennium covered by the plan, and;

(g) Other information needed to clarify how the State has chosen to implement its JOBS program in accordance with title II of the Family Support Act of 1988 and implementing regulations.

Subpart D—Participation Requirements, Exemptions and Sanctions

§ 250.30 Requirements for individual participation and exemptions.

A State JOBS plan must provide that:

(a) Where State resources otherwise permit, all recipients of AFDC who live in a subdivision covered by a JOBS program and for whom the State IV–A agency has guaranteed child care in accordance with Part 255 shall be required to participate in JOBS except as provided under paragraph (b) of this section.

(b) An individual shall be considered exempt and not be required to participate if she:

(1) Is a child who—

(i) Is under age 16, or

(ii) Attends, full-time, an elementary, secondary, vocational or technical school (except that such school attendance as a required JOBS activity for a child who loses this exemption will not requalify the child for the exemption);

(2) Is ill, when determined by the State on the basis of medical evidence or another sound basis that the illness or injury is serious enough to temporarily prevent entry into employment or training;

(3) Is incapacitated, when verified by the State that a physical or mental impairment, determined by a physician or a licensed or certified psychologist, prevents the individual from engaging in employment or training under JOBS. This may include a period of recuperation after childbirth if prescribed by a woman's physician;

(4) Is 60 years of age or older;

(5) Resides in a subdivision of the State where the JOBS program is available, but in a location which is so remote from a JOBS program or activity that effective participation is precluded. The individual shall be considered remote if a round trip of more than 2 hours by reasonably available public or private transportation, exclusive of time necessary to transport children to and from a child care facility, would be required for a normal work or training day. However, if normal round trip commuting time in the area is more than 2 hours, then the round trip commuting time shall not exceed the generally accepted community standards;

(6) Is needed in the home because another member of the household requires the individual's presence due to illness or incapacity as determined by a physician or a licensed or certified psychologist, and no other appropriate member of the household is available to provide the needed care;

(7) Is working 30 or more hours a week. The State IV–A agency may establish minimum standards in its JOBS plan for work that qualifies an individual for this exemption;

(8) Is pregnant, and it has been medically verified that the child is expected to be born in the month in which participation would be required or within the following six-month period;

(9)(i) Subject to paragraph (b)(9)(iv), is the parent or other relative of a child under 3 years of age (or an age less than 3 but not less than 1, if the State plan so provides) who is personally providing care for the child; or

(ii) Subject to paragraph (b)(9)(iv), is the parent or other relative personally providing care for a child under 6 years of age, unless the State IV–A agency assures that child care will be guaranteed and that participation in the program by the parent or relative will not be required for more than 20 hours per week.

(iii) Only one parent or other relative in a case may be exempt under paragraph (b)(9)(i) or paragraph (b)(9)(ii) of this section.

(iv) In the case of a family eligible for AFDC by reason of the unemployment of the parent who is the principal earner, only one parent may be exempt under paragraph (b)(9)(i) or paragraph (b)(9)(ii) of this section. The State IV–A agency may:

(A) Limit the exemptions in paragraph (b)(9)(i) and paragraph (b)(9)(ii) of this section to the parent who is not the principal earner;

(B) Make the exemptions in paragraph (b)(9)(i) and paragraph (b)(9)(ii) of this section inapplicable to both parents and require their participation in the program if child care in accordance with Part 255 is guaranteed with respect to the family; or

(10) Is a full-time volunteer serving under the Volunteers In Service To America (VISTA) program, pursuant to Title I of the Domestic Volunteer Service Act of 1973;

(c)(1) The State IV–A agency shall reevaluate any exemption at such time as the condition is expected to terminate but no less frequently than at each redetermination of AFDC eligibility;

(2) The State IV–A agency shall promptly notify the recipient and any appropriate service providers of any change in the recipient's exemption status.

§ 250.31 Volunteers.

The State IV–A agency must provide that applicants for and recipients of AFDC who are exempt under § 250.30 from participation in the program or who are not otherwise required by the State IV–A agency to participate will be allowed to do so on a voluntary basis to the extent that the program is available in the applicable political subdivision and State resources otherwise permit.

(a) The State IV–A agency shall give first consideration to applicants for or recipients of AFDC who volunteer to participate in determining the priority of participation within the target populations described at § 250.1.

(b) When an individual who volunteers to participate stops participating in the program without good cause as defined at § 250.35,

(1) If she has been determined to be exempt pursuant to § 250.30, she shall not be given priority to participate so long as other individuals are actively seeking to participate.

(2) If she has been determined not to be exempt pursuant to § 250.30, she shall be subject to sanction as described at § 250.34.

§ 250.32 Participation requirements for education.

(a) To the extent that the program is available in the political subdivision involved and State resources otherwise permit, in the case of a custodial parent who is not yet 20 years of age, has not completed a high school education (or its equivalent) and is not exempt from participation under § 250.30(b), the State shall require such a parent to participate in educational activities as described in § 250.44(a)(1). For purposes of this section, custodial parent means the parent who lives with the child, including custodial parents who would otherwise be exempt under § 250.30(b)(9) because of the age of the youngest child.

(1) The State IV–A agency may require full-time participation (as defined by the educational provider) in educational activities directed toward the attainment of a high school diploma or its equivalent. This includes individuals who would otherwise only have to participate on a part-time basis because their youngest child is under 6 years of age.

(2) The State IV–A agency may excuse a custodial parent who is under age 18 from the school attendance requirement if such parent is determined to be beyond the State's compulsory attendance requirements and if the State's JOBS plan contains criteria for making this determination. The State's criteria must:

(i) Provide that each determination is based upon an individual assessment of the parent rather than upon the application of categorical exemptions;

(ii) Not rely solely upon grade completion; and

(iii) Provide for participation in another educational activity as defined under § 250.44(a) or in skills training activities under § 250.44(b) that are combined with education.

(3) The State IV–A agency may require a custodial parent who is age 18 or 19, and required to participate in JOBS under this section, to participate in training or work activities (subject to the 20-hour limit in § 250.30(b)(9)(ii)) instead of educational activities described at § 250.44(a) if one of the following conditions is met:

(i) Such parent fails to make good progress in successfully completing educational activities, or

(ii) Prior to any assignment of the individual to such educational activities it is determined, based on an educational assessment and the employment goal established in the individual's employability plan, that participation in educational activities is inappropriate for such parent.

(b) If a State IV–A agency requires an individual who has attained the age of 20 years and has not earned a high school diploma (or its equivalent) to participate in JOBS, the State agency shall include educational activities consistent with her employment goals as a component in the individual's employability plan. Any other services or activities may not be permitted to interfere with her participation in appropriate educational activities under § 250.44. However, a State IV–A agency may elect not to require an individual to participate in educational activities if:

(1) The individual demonstrates a basic literacy level; or

(2) The long-term employment goal of the individual, as identified by the State IV–A agency in her employability plan, does not require a high school diploma (or equivalent).

§ 250.33 Participation requirements for unemployed parents.

(a) The State IV–A agency shall require that at least one parent, in any family eligible for AFDC by reason of the unemployment of the parent who is the principal earner, participate for a total of at least 16 hours a week in a work supplementation program, a community work experience program, or other work experience program, on-the-job training, or a State-designed work program described in the State JOBS plan and approved by the Secretary. A State-designed work program may not substitute education or training activities for the work requirement.

(b) In the case of a parent under age 25 who has not completed high school or an equivalent course of education, the State IV–A agency may require the individual to participate in educational activities as defined at § 250.44(a) in lieu of one or more of the programs specified in paragraph (a). An individual meets the participation requirements of this section if he or she is making satisfactory progress as defined at § 250.1.

(c) An individual participating in a community work experience program under § 250.63 shall be considered to have met the participation requirement in paragraph (a) if the individual participates for the maximum number of hours in any month calculated in accordance with § 250.63(d)(1).

§ 250.34 Sanctions.

(a)(1) When an AFDC recipient who is required to participate in the JOBS program, including those individuals required to participate because the State IV–A agency exercised its option under § 250.30(b)(9)(iii), fails to comply (i.e., fails without good cause to participate in the program, refuses without good cause to accept employment, or terminates employment or reduces earnings without good cause), the sanctions in paragraph (c) of this section shall apply during the following periods:

(i) For the first such failure to comply, until the failure to comply ceases;

(ii) For the second such failure to comply, until the failure to comply ceases, or 3 months, whichever is longer; and

(iii) For any subsequent failure to comply, until the failure to comply ceases, or 6 months, whichever is longer.

(2) Failure to participate in the program includes failure to meet State IV–A agency requirements for orientation, assessment, employability development planning, or case management.

(b) For the purpose of determining that an individual's failure to comply has ceased, a State IV–A agency may require the individual to participate in the activity to which she was previously assigned or an activity designed by the State to lead to full participation for a period of up to two weeks before terminating the sanction. During such participation, the individual shall be eligible for child care and support services which the State determines are necessary for participation. If she successfully participates in such activities, the sanction will be considered to have terminated as of the

day she agreed to participate. If no such activity is available, the sanction will terminate on the day she agrees to participate.

(c) During the sanction period:

(1) The State IV–A agency will not take into account the individual's needs in determining the family's need for assistance and the amount of the assistance payment.

(2) If the individual is a parent whose family is eligible in accordance with § 233.100, the State IV–A agency will not take into account the needs of the second parent in determining the family's need for assistance and the amount of the assistance payment unless the second parent is participating in the JOBS program.

(3) If the individual is the only dependent child, the State IV–A agency will not take into account the individual's needs in determining the family's need for assistance and the amount of the assistance payment.

(d) If such individual is a parent or other caretaker relative, payments for the remaining members of the assistance unit will be in the form of protective or vendor payments in accordance with § 234.60(a)(12). However, if after making reasonable efforts the State IV–A 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.

(e) The State IV–A agency will promptly remind in writing any individual whose failure or refusal has continued for 3 months of the individual's option to end the sanction. The notice shall advise that:

(1) She may immediately terminate the first or second sanction by participating in the program or accepting employment; and

(2) She may terminate any subsequent sanction after six months have elapsed by participating in the program or accepting employment.

§ 250.35 Good cause.

For the purposes of § 250.34(a), good cause for failure to participate in the program or refusal to accept employment shall be found if:

(a) The individual is the parent or other relative personally providing care for a child under age 6 and the employment would require such individual to work more than 20 hours per week;

(b) Child care (or day care for any incapacitated individual living in the same home as a dependent child) is necessary for an individual to participate or continue participation in the program or accept employment and such care is not available and the State agency fails to provide such care;

(c)(1) The employment would result in the family of the participant experiencing a net loss of cash income. A participant may not claim good cause under this paragraph if the State IV–A agency assures that the family will not experience a net loss of cash income by making a supplemental payment;

(2) Net loss of cash income results if the family's gross income less necessary work-related expenses is less than the cash assistance the individual was receiving at the time the offer of employment is made. Gross income includes, but is not limited to, earnings, unearned income and cash assistance; or

(d) The individual meets other grounds for good cause set forth by the State IV–A agency in its JOBS plan. At a minimum, the State must describe what circumstances beyond the household's control will constitute "good cause."

§ 250.36 Conciliation and fair hearings.

(a) Each State IV–A agency shall establish a conciliation procedure to resolve disputes related to an individual's participation in the JOBS Program.

(b) Once conciliation ends and the notice of adverse action has been issued, the individual may contest the proposed sanction. If she contests and loses, or does not contest, then a sanction will be imposed for the appropriate time period.

(c) If a dispute is not resolved through conciliation, the State shall provide the individual with an opportunity for a hearing. The hearing process may follow the provisions of § 205.10. Alternatively, the hearing process may be established for the JOBS program. However, assistance may not be suspended, reduced, discontinued, or terminated as a result of a dispute involving an individual's participation in JOBS unless the hearing meets the due process standards set forth by the U.S. Supreme Court in *Goldberg* v. *Kelly*, 397 U.S. 254 (1970).

Subpart E—Operation of State JOBS Programs/Program Components

§ 250.40 Providing program information to AFDC applicants and recipients.

(a) The State IV–A agency must at the time of application or redetermination inform all AFDC applicants and recipients, in writing and orally as appropriate, of the availability of the program activities and the supportive services for which they are eligible, and agency and participant responsibilities, including:

(1) Education, employment, and training opportunities available under the JOBS plan;

(2) Supportive services, including, but not limited to, child care during participation, transitional child care, health coverage transition options pursuant to section 1925 of the Act, and transportation and other work-related supportive services provided under the JOBS plan;

(3) The obligations of the State IV–A agency including the program and supportive services to be provided, as described in paragraphs (a) (1) and (2) of this section;

(4) The rights, responsibilities, and obligations of participants in the program, including but not limited to, the grounds for exemptions from participation and the consequences for refusing or failing to participate (including the effect on volunteers as described in § 250.31);

(5)(i) The types and locations of child care services reasonably accessible to participants in the program. Such information may be provided directly or through arrangement with others such as the appropriate human services or resource and referral agency;

(ii) The assistance that is available to help participants select appropriate child care services; and

(iii) The assistance available, on request, to help participants obtain child care services.

(b) The agency must also inform applicants and recipients of their responsibility to cooperate in establishing paternity and enforcing child support obligations, as described in Part 232, and must assist individuals in obtaining the paternity establishment and child support services for which they may be eligible.

(c)(1) After the State IV–A agency gives an AFDC applicant the information described in paragraphs (a) and (b) of this section, the State IV–A agency must notify the individual, in writing, within one month of the determination of eligibility, of the opportunity to indicate her desire to participate in the program and provide a clear description of how to enter the program.

(2) After the State IV–A agency gives an AFDC recipient the information described in paragraphs (a) and (b) of this section, the State IV–A agency must notify the individual, in writing, within one month of providing that information, of the opportunity to indicate her desire to participate in the program, and

provide a clear description of how to enter the program.

(3) The notification provision in paragraphs (c)(1) and (c)(2) of this section does not prohibit the State IV–A agency from requiring non-exempt recipients, or applicants in the case of job search, to participate in the JOBS program prior to the one-month notice.

(4) If a non-exempt individual indicates a preference not to participate, in response to such notification under paragraphs (c)(1) or (c)(2) of this section, such a preference does not prevent the State IV–A agency from otherwise requiring participation in JOBS.

§ 250.41 Initial assessment and employability plan.

(a)(1) Within a reasonable time period prior to participation the State IV–A agency must make an initial assessment of employability based on:

(i) The individual's educational, child care, and other supportive services needs;

(ii) The individual's proficiencies, skills deficiencies, and prior work experience;

(iii) A review of the family circumstances, which may include the needs of any child of the individual; and

(iv) Other factors that the State IV–A agency determines are relevant in developing the employability plan, as described in paragraph (b) of this section.

(2) The State IV–A agency may conduct the initial assessment through various methods such as interviews, testing, counseling and self-assessment instruments.

(b) On the basis of the assessment described in paragraph (a) of this section, the State IV–A agency must develop an employability plan in consultation with the participant, including a participant in a self-initiated activity pursuant to § 250.48 of this Part.

(1) The employability plan must:

(i) Contain an employment goal for the participant;

(ii) Describe the services to be provided by the State IV–A agency, including child care and other supportive services pursuant to Part 255;

(iii) Describe the JOBS activities, as provided in Subpart E of this Part, that will be undertaken by the participant to achieve the employment goal; and

(iv) Describe any other needs of the family, pursuant to paragraph (a)(1)(iii), that might be met by JOBS, such as participation by a child in drug education or in life skills planning sessions.

(2) The employability plan shall take into account:

(i) Available program resources;

(ii) The participant's supportive services needs;

(iii) The participant's skills level and aptitudes;

(iv) Local employment opportunities; and

(v) To the maximum extent possible the preferences of the participant.

(3) The employability plan shall not be considered a contract.

(4) Final approval of the plan rests with the State IV–A agency.

§ 250.42 Agency-participant agreement.

(a) Following the initial assessment and the development of the employability plan as described in § 250.41, the State IV–A agency may require the participant (or the adult caretaker in the family of which the participant is a member) to negotiate and enter into an agreement with the State IV–A agency.

(1) Such agreement should indicate at a minimum:

(i) The purpose of the agreement;

(ii) The participant's obligations under the program;

(iii) The length of participation in the program, including the number of hours of participation per week; and

(iv) The educational, training and employment activities, and the supportive services, including child care, to be provided by the agency during the period of participation.

(2) If the State IV–A agency elects this option, it must give the participant such assistance as she may need to review and understand the agreement.

(3) This agreement may be considered a contract between the State IV–A agency and the JOBS participant, pursuant to applicable State laws and regulations.

(b) If the State IV–A agency elects to use agreements or contracts, it does not have to use them in all political subdivisions having JOBS programs. The State IV–A agency, however, must apply this provision to participants on an equitable basis.

§ 250.43 Case management.

(a) The State IV–A agency may assign a case manager to a participant and the participant's family. The decision to assign a case manager may be made on a case-by-case basis.

(b) The case manager must be responsible for assisting the family to obtain any services that may be needed to assure effective participation in the program.

§ 250.44 Mandatory components.

A State's JOBS program must include the following four services and activities. The State IV–A agency need not make each service or activity a discrete offering, but may combine several into a single program activity, provided that the State IV–A agency can adequately distinguish the principal components for the purpose of Federal reporting requirements. The required services and activities are:

(a) Any educational activity below the postsecondary level that the State IV–A agency determines to be appropriate to the participant's employment goal. Such activities may be combined with training that the State IV–A agency determines is needed in relation to the participant's employability plan. The educational activities that must be made available include, but are not limited to:

(1) High school education or education designed to prepare a person to qualify for a high school equivalency certificate;

(2) Basic and remedial education that will provide an individual with a basic literacy level, equivalent to at least grade 8.9; and

(3) Education in English proficiency for an individual who is not sufficiently competent to understand, speak, read, or write the English language to allow employment commensurate with her employment goal;

(b) Job skills training, which includes vocational training for a participant in technical job skills and equivalent knowledge and abilities in a specific occupational area;

(c) Job readiness activities that help prepare participants for work by assuring that participants are familiar with general workplace expectations and exhibit work behavior and attitudes necessary to compete successfully in the labor market; and

(d) Job development and job placement activity by the agency, in soliciting a public or private employer's unsubsidized job opening or in discovering such job openings, and the marketing of participants, and securing job interviews for participants.

§ 250.45 Optional components.

A State JOBS program must include, but is not limited to, at least two of the following four components:

(a) Group and individual job search, as described in § 250.60;

(b) On-the-job training, as described in § 250.61;

(c) Work supplementation, as described in § 250.62; and

(d) Community work experience program, or other approved work experience program, as described in § 250.63.

§ 250.46 Postsecondary education.

A State's JOBS program may include referral of a participant to postsecondary education, as determined necessary to meet any individual goals that are directly related to obtaining useful employment in a recognized occupation, within limits established by the State IV–A agency and reflected in the State JOBS plan. In accordance with § 233.20(a)(2)(v), the costs of such education, including tuition, books and fees, do not qualify for FFP as special needs.

§ 250.47 Other education, training, and employment activities.

(a) A State's JOBS program may include education, training, and employment activities other than those described in §§ 250.44 through 250.46, but which are included in the approved State JOBS plan.

(b) In no event will a State program of public service employment be approved under JOBS. Public service employment is fully-subsidized employment in a public agency.

§ 250.48 Self-initiated education or training.

(a) The State IV–A agency may allow a parent or other caretaker relative or any dependent child in the family who is attending in good standing an institution of higher education (as defined in section 481(a) of the Higher Education Act of 1965), or a school or other entity offering a course of vocational or technical training, at the time she would otherwise commence participation in the JOBS program, to continue to attend. Vocational or technical training leads to useful employment in a recognized occupation. It includes postsecondary education, as defined in § 250.1, that results in other than a baccalaureate or advanced degree, and such training offered by other entities such as public secondary schools and public and private entities that offer adult vocational education.

(1) Self-initiated activity qualifies as "self-initiated education or training" under this paragraph if:

(i) The participant is attending at least half-time as defined by the institution;

(ii) The participant is making satisfactory progress in such institution, school, or course;

(iii) The course of study is consistent with the individual's employment goal; and

(iv) The participant meets the State's criteria for determining the appropriateness of the self-initiated education or training.

(2)(i) The State IV–A agency must conduct an assessment and develop an employability plan, as provided at § 250.41, so that the State IV–A agency may determine the appropriateness of the education or training in accordance with the criteria it has established.

(ii) If the State IV–A agency approves the self-initiated education or training, any other JOBS activities in which such individual participates may not be permitted to interfere with the education or training activity. However, an individual may be required to accept employment after a review of her employability plan, if the State IV–A agency has informed her at the time it first approves the self-initiated activity that it could perform such a review and reassignment.

(3) The costs of self-initiated education or training under this paragraph shall not constitute federally reimbursable expenses under JOBS.

(4) A State IV–A agency may restrict postsecondary education or training in its State JOBS plan.

(5) The costs of child care, transportation, and other supportive services necessary for approved self-initiated education or training under this paragraph are eligible for Federal reimbursement pursuant to § 255.4.

(b) If an individual in a JOBS area is enrolled in a self-initiated activity that does not meet the requirements of paragraph (a) of this section, the State may approve such activity as a JOBS activity according to the regulations and State criteria applicable to JOBS component activities covered under §§ 250.44 through 250.47. Eligibility for child care, transportation and other supportive services shall be in accordance with § 255.2.

Subpart F—[Reserved]

Subpart G—Optional Components of State JOBS Programs

§ 250.60 Job search program.

(a) A State IV–A agency may operate a job search program as a component of its JOBS program. A job search program may serve participants in either group or individual job-seeking activities.

(1) Individual job search includes the provision of counseling, job-seeking skills training, information dissemination and support on a one-to-one basis.

(2) Group job search includes the provision of counseling and training in a group setting where applicants or recipients are taught job-seeking skills, and may include a phone bank from which participants contact potential employers.

(b) In addition to non-exempt recipients, a State IV–A agency may require an individual applying for AFDC to participate in a job search component unless she is exempt under § 250.30(b).

(c) A State IV–A agency may require an individual to participate in a job search component from the date she files an application for aid for an initial period of up to eight consecutive weeks. Following this initial period (which may extend beyond the date when eligibility is determined), the State IV–A agency may require additional participation in a job search component not in excess of eight weeks (or its equivalent) in any period of 12 consecutive months. The first such period of 12 consecutive months shall begin at any time following the close of the initial period.

(1) A State IV–A agency may not delay the processing of an individual's application for aid because of her participation in job search.

(2) In no event may an individual be required to participate in job search for more than 3 weeks before the State IV–A agency conducts an assessment as provided at § 250.41. If the State IV–A agency determines based on the assessment that another JOBS activity is more appropriate, or is required by Part 250, the State IV–A agency shall terminate the job search requirement.

(d) Additional job search activities beyond those required in paragraph (c) may be required only as part of another educational, training, or employment component designed to improve the individual's employment prospects.

(e) Job search by an individual under this section shall in no event be treated, for any purpose, as an activity under JOBS if the individual has participated in such job search for 4 months (or its equivalent) out of the preceding 12 months.

§ 250.61 On-the-job training.

(a) A State IV–A agency may operate an on-the-job training (OJT) program as a component of its JOBS program. Under OJT a participant is hired by a private or public employer and while engaged in productive work receives training that provides knowledge or skills essential to the full and adequate performance of that job. The State IV–A agency or its agent shall enter into a contract with the OJT employer to reimburse the employer for providing training and additional supervision to the participant.

(b) Payments to an employer for on-the-job training shall not exceed an average of 50 percent of the wages paid by the employer to the participant during the period of such training.

(c) A participant in OJT shall be compensated by the employer at the same rates, including benefits and

periodic increases, as similarly situated employees or trainees and in accordance with applicable law, but in no event less than the higher of the Federal minimum wage or applicable State or local minimum wage law.

(d) Wages paid to participants in OJT will be considered to be earned income for purposes of any provision.

(e) If a participant in OJT becomes ineligible for AFDC pursuant to the rules applicable to earned income at § 233.20, or pursuant to the 100-hour rule at § 233.100 in the case of a principal earner in an unemployed parent case, she shall remain a JOBS participant for the duration of the OJT and shall be eligible for supportive services under Part 255 available to other JOBS participants similarly situated.

(f) If the individual would have been eligible for transitional child care pursuant to Part 256 at the time the ineligibility for AFDC occurred, she shall be eligible for transitional child care after the OJT ends for the number of months that remain in the 12-month period following the month in which she became ineligible for AFDC after OJT ended. As an alternative, the State IV–A agency may treat all child care provided after an individual in an OJT job loses eligibility for AFDC as transitional child care if the individual meets the requirements at Part 256.

(g) The State IV–A agency must develop qualitative measures for making good or satisfactory progress, pursuant to § 250.1, in order for OJT to qualify as a component activity under JOBS.

§ 250.62 Work supplementation program.

(a) A State IV–A agency may operate a work supplementation program as a component of its JOBS program. Under the work supplementation program, a State IV–A agency may use AFDC funds to develop and subsidize jobs for AFDC recipients as an alternative to aid.

(b) A "supplemented job" is a job provided under this section to an eligible individual by the State or local agency administering the State IV–A plan or by any other employer for which all or part of the wages are paid by such State or local IV–A agency.

(1) The State IV–A agency may use whatever means it determines appropriate to provide or to subsidize jobs for participants.

(2) The State IV–A agency may provide or subsidize any type of job. It may determine the length of time the position is to be provided or subsidized, the amount of wages to be paid to the recipient, the amount of subsidy to be provided by the State or local IV–A agency, and the conditions of participation, except that no participant may be assigned to fill any established, unfilled position vacancy in accordance with section 484 of the Act.

(c)(1) An eligible individual is an individual who is in a category which the State IV–A agency determines should be eligible to participate in the work supplementation program, and who would, at the time of placement in the supplemented job, be eligible for AFDC if the State IV–A agency did not have a work supplementation program in effect. For the purpose of this section, time of placement is defined as the date on which the State IV–A agency and the employer reach agreement on the terms of the placement and the specific individual to be placed.

(2) The State may establish a work supplementation program as either a mandatory or voluntary program.

(d) A State or local IV–A agency administering the State plan is not required to provide employee status to any eligible individual to whom it provides a job position or with respect to whom it subsidizes all or part of the wages paid to such individual by another entity under this program, nor is it required to provide that eligible individuals filling job positions provided by other entities under such program be provided employee status by such entity during the first 13 weeks in which they fill such position.

(e) Participants in supplemented jobs will be paid wages which shall be considered to be earned income for purposes of any provision of law.

(f) The State IV–A agency may elect to calculate the amount of an eligible individual's residual (direct AFDC) grant, if any, at the time of placement in the supplemented job and base the amount of the residual grant (the AFDC grant minus earnings and other countable income) for the duration of the individual's participation in the supplemented job (in whole or part) on that calculation. Such a policy is known as "freezing the grant." If the individual becomes otherwise ineligible for AFDC benefits, the State IV–A agency may allow the individual to continue in the supplemented job and divert the AFDC grant to the wage pool, but the State IV–A agency shall not pay a residual grant to the individual.

(g) At State option, individuals who hold supplemented jobs may be exempt from the retrospective budgeting requirements at Part 233 and monthly reporting, and the amount of the aid which is payable to the family of any such individual for any month, or which would be so payable but for the individual's participation in a supplemented job, shall be determined on the basis of the income and other relevant circumstances in that month.

(h) If an individual in a supplemented job would have been eligible for transitional child care pursuant to Part 256 at the time the ineligibility for AFDC occurred, she shall be eligible for transitional child care after her supplemented job ends for the number of months that remain in the 12-month period following the month in which she became ineligible. In the alternative, the State IV–A agency may treat all child care provided after an individual in a supplemented job loses eligibility for AFDC as transitional child care if the individual meets the requirements at Part 256.

(i) A State IV–A agency may adjust the standard of need under the State IV–A plan as the State determines to be necessary and appropriate to carry out a work supplementation program. Such changes in the need standard may be made notwithstanding § 233.20.

(1) The standard of need in effect in those subdivisions of the State in which such program is in operation may be different from the need standard in effect in subdivisions in which such program is not available.

(2) The standard of need for categories of recipients of aid may vary among such categories as the State IV–A agency determines to be appropriate on the basis of ability to participate in the work supplementation program.

(3) A State IV–A agency may make further adjustments in the amount of aid paid under the title IV–A plan to different categories of recipients in order to offset increases in benefits from other government-provided, needs-related programs as the State IV–A agency deems necessary and appropriate to further the purpose of the work supplementation program.

(j) A State IV–A agency may reduce or eliminate the amount of earned income to be disregarded from participation in a supplemented job.

(k) Notwithstanding the time limitations on the $30 and one-third and the $30 disregard in § 233.20(a)(11), a State IV–A agency may allow a participant employed in a supplemented job to receive the $30 and one-third or the $30 disregards for one or more of the first nine months of such employment.

(l) Payments by the State IV–A agency to individuals or to entities providing jobs for recipients under the work supplementation program shall be expenditures incurred by the State IV–A agency for AFDC and shall not exceed the amount that would otherwise be payable under the title IV–A 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 paragraphs (i), (j), and (k), 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).

(m) A State IV–A agency may determine the amounts to be reserved and used for providing and subsidizing jobs under this section by using a sampling methodology. The State IV–A agency must describe its sampling methodology in its JOBS plan.

§ 250.63 Community work experience program.

(a) A State IV–A agency may operate a community work experience program (CWEP) as a component of its JOBS program. The purpose of CWEP is to improve the employability of individuals not otherwise able to obtain employment by providing work experience and training to assist them to move promptly into regular public or private employment.

(b) The State IV–A agency shall provide coordination among a community work experience program, any program of job search, and the other employment-related activities under the JOBS program to insure that job placement will have priority over participation in CWEP, and that individuals eligible to participate in more than one program under JOBS are not denied AFDC on the grounds of failure to participate in one such program if they are actively and satisfactorily participating in another. The State IV–A agency may provide that part-time participation in more than one such program may be required where appropriate.

(c) Community work experience programs shall be limited to projects which serve a useful public purpose in fields such as health, social service, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, public facilities, public safety, and day care.

(d)(1) The maximum number of hours that an individual may be required to work or undergo training (or both) in CWEP is the number of hours which would result from dividing the family's monthly grant amount by the greater of the Federal or the applicable State minimum wage.

(2) The portion of a recipient's aid for which the State is reimbursed by a child support collection (except for the $50 pass-through) shall be excluded in determining the maximum number of hours that she is required to work.

(e) Nothing contained in this section shall be construed as authorizing the payment of AFDC as compensation for work performed, nor shall a participant be entitled to a salary or to any work or training expense provided under any other provision of law by reason of her participation in a CWEP program.

(f) To the extent possible, a State IV–A agency shall take into account the prior training, experience and skills of a recipient in making appropriate work assignments.

(1) After each six months of an individual's participation in a community work experience program and at the conclusion of each assignment under such a program the State IV–A agency must provide a reassessment and revision, as appropriate, of the individual's employability plan.

(2) After an individual has been assigned to a position for a total of nine months, such individual may not be required to continue in that assignment unless the maximum number of hours of participation is no greater than the family's grant divided by the highest of:

(i) The Federal minimum wage; or

(ii) The applicable State minimum wage; or

(iii) The rate of pay for individuals employed in the same or similar occupations by the same employer at the same site.

The portion of a recipient's aid for which the State is reimbursed by a child support collection (not including the $50 pass-through) shall continue to be excluded in determining the number of hours that such individual may be required to work.

(g) Participants in CWEP may perform work in the public interest (which otherwise meets the requirements of this section) for a Federal office or agency with its consent, and, notwithstanding 31 U.S.C. 1342, or any other provision of law, such agency may accept such services, but such participants shall not be considered to be Federal employees for any purpose.

(h) Nothing in this section or in any State plan approved under § 250.20 shall be construed to prevent a State IV–A agency from operating (on such terms and conditions and in such cases as the State IV–A agency may find to be necessary or appropriate) a community work experience program.

(i) CWEP participants must not fill established, unfilled position vacancies in accordance with section 484 of the Act.

(j) FFP is not available for:

(1) Capital expenditures, depreciation or use allowances in connection with a CWEP;

(2) The cost of making or acquiring materials or equipment in connection with participation in a project; or

(3) The cost of supervision of participants.

(k) The State IV–A agency may offer any other work experience program which is described in the JOBS plan and approved by the Secretary.

(1) The program narrative for such a program should include a description of the potential sponsors, the type of activities, the hours or length of participation required, target group(s), and how the program is different from CWEP.

(2) The limitations on FFP for CWEP in paragraph (j) apply to all State work experience programs.

(3) Any other work experience program must meet the general program standards at section 484 of the Act.

Subpart H—Funding

§ 250.70 JOBS allocation entitlement.

(a) Federal matching for JOBS program expenditures is limited to a national total equal to the amounts established for each fiscal year in section 403(k)(3) of the Act.

(b) A State IV–A agency with an approved JOBS plan shall be entitled to payments from this annual limit. The maximum annual payment for a State will be the sum of two amounts:

(1) An amount equal to the State's WIN or WIN Demonstration allotment for fiscal year 1987; and

(2) An amount allocated from the balance of the annual national limitation on the basis of each State's relative average monthly number of adult recipients as defined at § 250.1.

(c) In accordance with § 92.23, JOBS funds allocated to a State IV–A agency for a given Federal fiscal year are for use during that fiscal year and must be obligated by the State no later than the end of the fiscal year. Carry forward of an unobligated balance of Federal funds to a succeeding Federal fiscal year is not permitted. An unobligated Federal fund balance at the close of a Federal fiscal year will be returned to the Federal government through the issuance of a negative grant award by the Department following receipt of the final quarterly expenditure report for the fiscal year.

(d) A State must liquidate all obligations incurred under the title IV–F grant awards not later than one year

after the end of the fiscal year for which the funds were awarded and obligated. The Federal share of unliquidated obligations will be returned to the Federal government.

§ 250.71 Allotment of JOBS limit of entitlement.

(a) For a State IV–A agency that implements JOBS in a quarter of a fiscal year prior to October 1, 1990, the State's allotment from its JOBS limit of entitlement for that period will be proportional to the number of such quarters that JOBS is operational in that State in that fiscal year.

(b) An Indian Tribe or Alaska Native organization which receives the Secretary's approval to conduct a JOBS program shall receive a direct payment for operation of its JOBS program, without the requirement for a non-Federal share, pursuant to § 250.93.

(1) The amount of any such direct payment will be deducted from the amount of the State's allotment, and will be proportional to the Tribe's or organization's proportion of the State's adult AFDC recipient population, as established pursuant to § 250.93.

(2) The remaining allocation to a State IV–A agency shall be subject to the regulations governing FFP at § 250.73.

(c) The following rules apply to Puerto Rico, Guam, the Virgin Islands and American Samoa which are subject to the provisions of section 1108 of the Act:

(1) The limitations on payments contained in section 1108 do not apply to a State's annual limit of entitlement for the JOBS program as described in § 250.70(b).

(2) The availability of FFP for child care under Part 255 and the related appropriate FFP rates are described at § 255.4(b)(2) and § 255.4(g).

(3) The availability of FFP for transitional child care under Part 256 and the related appropriate FFP rates are described at § 256.4(b).

§ 250.72 Maintenance of effort.

(a) Federal JOBS funds shall not be used to supplant non-Federal funds for services and activities that promote the purposes of the JOBS program.

(b) States must spend no less than the total of State and local expenditures incurred in fiscal year 1986 for training, employment and education programs which had a defined purpose of preventing welfare dependency or potential welfare dependency. This requirement includes State and local funds expended for title IV–A and title IV–C work programs, including expenditures on those programs which were unmatched, and other State and local funds expended for this purpose, with or without benefit of Federal matching funds. This requirement also applies to expenditures for supportive services, including child care, expended for this purpose. In determining that State and local fiscal year expenditures are no less than fiscal year 1986 expenditures, States may use total aggregate expenditures.

(c) State IV–A agency contracts and arrangements may be made for services only to the extent that they are not otherwise available on a non-reimbursable basis. "Not otherwise available" here means that if the services are available to AFDC applicants and recipients by a provider, the provider must maintain that level of service before the State IV–A agency may contract for additional services of the same sort from that provider.

(d) Any State IV–A agency arrangement or contract must contain a certification from the provider that the services being contracted for are not otherwise available from that provider on a non-reimbursable basis. Services provided on a "non-reimbursable basis" are those services that a State makes available to most eligible residents or to the low income population, including AFDC applicants and recipients.

(e) A State IV–A agency directly providing JOBS component services must certify in the State JOBS plan that such services are not otherwise available on a non-reimbursable basis.

§ 250.73 Matching rates.

(a) From a State IV–A agency's total annual limit of entitlement, FFP is available at a rate of 90 percent for expenditures up to an amount equal to the State's WIN or WIN Demonstration allotment for fiscal year 1987. The State's match for this amount may be in cash or in kind fairly evaluated.

(b)(1) FFP will be available for the balance of a State IV–A agency's limit of entitlement as follows:

(i) At the higher of the State's Medicaid matching rate or 60 percent for: personnel costs (salaries and benefits) for full-time staff working full-time in any capacity in the JOBS program; and all direct costs associated with providing JOBS program services to individuals, including assessment, development of the employability plan, case management, and JOBS component activities.

(ii) At 50 percent for: indirect personnel costs which are excluded from JOBS matching at the FMAP rate (or 60%); non-personal services costs associated with these indirect personnel costs, including space, travel, utilities, equipment, and supplies; the costs of such items as JOBS program planning, monitoring, letting contracts, systems, title IV–F fair hearing activities, and other indirect costs of providing JOBS services and activities; and for transportation, work-related expenses, and work-related supportive services as provided under the requirements of Part 255.

(2) A State's match for these amounts must be in cash, not in kind.

(c) The costs of services and activities purchased under contract by the State or local IV–A agency must be segregated according to the requirements of the FMAP rate with a floor of 60 percent and the requirements for 50 percent matching.

(d) A State's share of JOBS expenditures may include public and private funds.

(1) Public funds may be considered as the State's share in claiming FFP when the funds are:

(i) Appropriated directly to the State or local agency, or transferred from another public agency (including Indian tribes) to the State or local agency and under its administrative control;

(ii) Not used to match other Federal funds; and

(iii) Not Federal funds, or are Federal funds authorized by Federal law to be used to match other Federal funds.

(2) Funds donated from private sources may be considered as the State's share in claiming FFP when the funds are:

(i) Transferred to the State or local agency and under its administrative control;

(ii) Donated without any restriction which would require their use for assisting a particular individual or at particular facilities or institutions;

(iii) Do not revert to the donor's facility or use.

(e) If included in a State's JOBS and Supportive Services plans, FFP is available for JOBS activities and services provided for certain periods to an individual who has been a JOBS participant but who loses eligibility for AFDC. These activities and periods are:

(1) Case management activities and supportive services for up to 90 days from the date the individual loses eligibility for AFDC; and

(2) JOBS component activities for the duration of the activity if funds for the activity are obligated or expended before the individual loses eligibility for AFDC.

§ 250.74 Reduced matching rate.

(a)(1) FFP for a State IV–A agency shall be 50 percent (rather than the rates described in § 250.73) in any fiscal year in which that State spends less than 55

percent of the State's JOBS expenditures on applicants and recipients who are members of the State's target populations as defined in § 250.1.

(2) If any State IV–A agency demonstrates to the satisfaction of the Secretary that the characteristics of the caseload in that State make it infeasible to meet the requirements of paragraph (a)(1), and that the State is targeting an approved set of long-term or potential long-term recipients, the match rate in § 250.73 shall be applied.

(3) A State IV–A agency need not require or allow participation of an individual in the program if, as a result of such participation, the amount payable to the State for quarters in a fiscal year with respect to the program would be reduced pursuant to paragraph (a)(1).

(b)(1) FFP for a State IV–A agency shall be 50 percent (rather than the rates described in § 250.73) in any fiscal year for the State's JOBS expenditures if the State's participation rate (determined under paragraph (b)(2)) for the preceding fiscal year does not equal or exceed:

(i) 7 percent if the preceding fiscal year is 1990;

(ii) 7 percent if such year is 1991, however, no reduction in FFP shall be made in 1991 for any failure to meet the participation rate specified in (b)(1)(i);

(iii) 11 percent if such year is 1992;

(iv) 11 percent if such year is 1993;

(v) 15 percent if such year is 1994; and

(vi) 20 percent if such year is 1995.

(2) The State IV–A agency's participation rate for a fiscal year shall be the average of its participation rates for computation periods in such fiscal year. The computation periods shall be:

(i) The fiscal year, in the case of fiscal year 1990;

(ii) The first six months, and the seventh through twelfth months, in the case of fiscal year 1991;

(iii) The first three months, the fourth through sixth months, the seventh through ninth months, and the tenth through twelfth months, in the case of fiscal years 1992 and 1993; and

(iv) Each month, in the case of fiscal years 1994 and 1995.

(3) The State IV–A agency's participation rate for a computation period shall be the number, expressed as a percentage, equal to:

(i) The average monthly number of individuals required or allowed by the State to participate in the program, who have participated (as defined in § 250.78) in such program in months in the computation period, plus the number of individuals required or allowed by the State to participate in such program, who have so participated in that month in such period for which the number of such participants is the greatest; divided by

(ii) Twice the average monthly number of individuals required to participate in such period (other than individuals described in paragraphs (b)(9)(i) and (b)(9)(iv) of § 250.30 with respect to whom the State IV–A agency has exercised its option to require their participation and individuals sanctioned under § 250.34).

(4) In determining the average monthly number of individuals required to participate as provided in paragraph (b)(3)(ii), the following individuals shall be excluded:

(i) Those who are determined exempt in accordance with exemption criterion in § 250.30(b);

(ii) Those who on a case-by-case basis have been determined to have good cause for not participating;

(iii) Those who reside in an area of the State in which the JOBS program is not operated; and

(iv) Those who have been sanctioned.

(5) If the Secretary determines that the State IV–A agency has failed to achieve the participation rate for any fiscal year, if the Secretary may waive, in whole or in part, the reduction in the payment rate otherwise required by paragraph (b)(1) if he finds that:

(i) The State is in conformity with section 402(a)(19) and part F of the Act;

(ii) The State has made a good faith effort to achieve the applicable participation rate for such fiscal year; and

(iii) The State has submitted a proposal which is likely to achieve the applicable participation rate for the current fiscal year and the subsequent fiscal years (if any) specified therein.

(c)(1) FFP for a State IV–A agency shall be 50 percent beginning in fiscal year 1995 for the State's JOBS expenditures (rather than the rates described in § 250.73) if the percentage of UP cases meeting the participation requirements in § 250.33, for the preceding fiscal year does not equal or exceed:

(i) 40 percent in the case of the average of each month in fiscal year 1994;

(ii) 50 percent in the case of the average of each month in fiscal year 1995;

(iii) 60 percent in the case of the average of each month in fiscal year 1996; and

(iv) 75 percent in the case of the average of each month in each of the fiscal years 1997 and 1998.

(2) The percentage of participants for any month in a fiscal year for this purpose shall equal the average of:

(i) The number of individuals described in § 250.33 who have met the requirement therein; divided by

(ii) The total number of principal earners (but excluding those in families who have been recipients of aid for 2 months or less if, during the period that the family received aid, at least one parent engaged in intensive job search as defined in § 250.1).

(3) If the Secretary determines that the State IV–A agency has failed to achieve the participation rate for any fiscal year specified above, the Secretary may waive, in whole or in part, the reduction in the payment rate otherwise required by paragraph (c)(1) if he finds that:

(i) The State is in conformity with section 402(a)(19) and Part F of the Act;

(ii) The State has made a good faith effort to achieve the applicable participation rate and has been unable to do so because of economic conditions in the State, including significant numbers of recipients living in remote locations or isolated rural areas where the availability of work sites is severely limited, or because of rapid and substantial increases in the caseload that cannot reasonably be planned for; and

(iii) The State has submitted a proposal which is likely to achieve the applicable participation rate for the current fiscal year and the subsequent fiscal years (if any) specified therein.

§ 250.75 Activities excluded from FFP.

(a) The costs of education or training activities (such as tuition, books, fees, room and board) that the State IV–A agency determines may constitute participation under the provisions of § 250.48(a) shall not constitute federally reimbursable expenses for purposes of the JOBS program.

(b) No funds shall be used for construction.

(c) No funds shall be used to assist, promote, or deter union organizing.

§ 250.76 Financial reports, records, statements and audits.

(a) The following Departmental regulations are applicable to the JOBS program: Part 92, "Uniform administrative requirements for grants and cooperative agreements to State and local governments;" Part 16, "Procedures of the Departmental Appeals Board;" Part 30, "Claims collection;" Part 75, "Informal grant appeals procedures;" Part 95, "General administration-grant programs;" and Part 201, "Grants to States for public assistance programs."

(b) Financial reporting of JOBS program expenditures are generally

subject to the requirements of the existing regulations at § 201.5 and § 92.41, as appropriate.

(c) Financial records and accounts shall be made available for audit purposes to the Secretary or any authorized representative.

(d) JOBS program funds and activities shall be audited in conformity with the requirements of §§ 92.26 and 74.62(a).

(e) FFP improperly claimed under the JOBS program is subject to disallowance. If a State IV–A agency disagrees with a decision to disallow FFP, it can appeal within 30 days of the date of the disallowance decision. The procedures for appeal of AFDC disallowances apply, including review of the Departmental Appeals Board, in accordance with part 16 of the Department's regulations.

§ 250.77 Costs matchable as AFDC payments.

(a) Costs incurred by the State IV–A agency for supplemental AFDC payments shall be treated as title IV–A costs with respect to which sections 403(a)(1) or 403(a)(2) of the Act apply, when such payments are made in order that a recipient's family shall not experience a net loss of cash income from the recipient having been required by the State to accept a job.

(b) Payments to employers under work supplementation as described at § 250.62(l) shall be expenditures incurred by the State IV–A agency for AFDC.

(c) States may claim as AFDC administrative expenditures those costs related to JOBS orientation, determination of mandatory status, and referral to the JOBS program when such activities are conducted by a title IV–A eligibility or income maintenance worker. When these same activities are conducted by JOBS staff, these costs must be claimed under title IV–F.

§ 250.78 Definition of participation for enhanced FFP.

(a) For the purpose of determining a State's participation rate under § 250.74(b), the average monthly number of individuals who have participated will be the largest number of applicants and recipients whose combined and averaged weekly hours of participation in the activities specified in paragraph (b)(1) equals or exceeds 20 hours per week.

(b) For the purpose of paragraph (a),

(1) Activities include:

(i) Assessment and employability plan development, but only for one month for each such individual for each period on AFDC;

(ii) Any component specified in the State JOBS plan, with the exception of job development and job placement;

(iii) Any approved self-initiated education or training pursuant to § 250.48(a);

(iv) Job entry, in the following manner. For the month in which the job entry occurs, an individual will be considered to be participating for the number of hours of work. Hours of work will then be included with hours of component activity in the month of the job entry in determining the average weekly activity level for the individual. Hours of work in the following month will be counted, provided the individual retains employment throughout the month. However, job entries will only be considered for:

(A) Individuals who were participating in a JOBS component or activity during the month of the job entry, or the preceding calendar month, or;

(B) Individuals who received job development and placement services during the month of job entry, or the preceding calendar month.

(2) The number of hours counted for an individual will not include time spent commuting to or from the assignment or to or from a child care provider;

(3) Individuals, other than those in high school, will not be considered to be participating in an educational activity during the period between school years. An individual enrolled and in attendance in high school during the last semester of the school year will be considered to be participating at her average weekly attendance level for the previous school year during the period between school years if she is expected to return to high school for the next school year. Individuals in all educational activities will be considered to be participating for the assigned hours during shorter, scheduled school breaks;

(4) An individual will be considered to have satisfactorily participated if she attended an activity for at least 75 percent of the monthly hours scheduled. All hours of scheduled activity will be counted if the individual has satisfactorily participated. Neither hours of scheduled activity nor hours of participation will be counted if an individual has not satisfactorily participated.

Subpart I—Uniform Data Collection Requirements

§ 250.80 Uniform data collection requirements.

(a) A State IV–A agency must provide to the Department a sample of monthly unaggregated case record data containing such data and identifiers as are specified in § 250.82, and such additional data as the Secretary may from time to time specify in an Action Transmittal or in reporting instructions.

(1) The sample must be provided in formats specified by the Department. Data must be submitted electronically on an on-going basis by means of disk, tape or electronic connection, with all cases submitted no later than 45 days after the end of the month in which the sample is drawn.

(2) Each record of the sample must contain an identifier that is not the Social Security number, and that protects the privacy of the individual pursuant to the requirements of § 205.50.

(3) The sample must be large enough to provide a precision of plus or minus two percentage points for an 0.2 attribute ($p=20\%$ or 0.2) at a 95 percent confidence level. Submission of 100 percent of unaggregated JOBS case records is also acceptable.

(4) The sample shall be drawn from the population of individuals scheduled to participate in a component, actively engaged in assessment or employability planning in the month, or who had a job entry in the sample month or the month previous to the sample month.

(5) For each record in the sample, the State must verify that the individual satisfactorily participated in the sample month, as defined in § 250.78, except that for individuals who entered employment, the State must verify only that the individual was employed at the end of the sample month.

(b) For the purpose of determining participation rates, a State IV–A agency must report, for each month, on a quarterly basis, the aggregate number of individuals required to participate as specified in § 250.74(b)(3)(ii).

(c)(1) For the purpose of calculating whether a State spent 55 percent of its title IV–F funds on target groups pursuant to § 250.74(a), and determining the amounts spent per family by component and activity, each year a State IV–A agency may, instead of a cost-tracking system that identifies all funds spent on each individual, develop and submit to the Secretary a table of the previous Federal fiscal year's average total JOBS cost per participant per month of participation.

(2) The average total cost data in the table must separately state:

(i) For pre-component activity: assessment and related testing, employability development planning, and associated administrative and case management costs;

(ii) For each component: component costs, and associated administrative and case management costs;

(d) A State IV–A agency must submit any other information that the Secretary determines necessary.

(e) Until October 1, 1991, or until sample based reporting is implemented, whichever is later, the State must submit such interim aggregate hardcopy reports as are required by the Secretary.

§ 250.81 State data systems options.

(a) A State IV–A agency may integrate its JOBS Automated System (JAS) with an existing or planned title IV–A system. A State IV–A agency may also use a stand-alone system. Either option must be a client-based information system capable of producing at a minimum all data elements required in § 250.82.

(b)(1) Title IV–A funding is available for planning, design, development and implementation of the JOBS interface between title IV–A and title IV–F requirements. The interface of an automated JOBS program with the title IV–A system, for verification of eligibility and reconciliation of data, includes planning, design, development and implementation of title IV–A systems to:

(i) Manage information on eligibility factors and target group membership;

(ii) Effect notifications and referrals including non-cooperation;

(iii) Check records of applicants and recipients on a periodic basis with other agencies to verify continued eligibility; and

(iv) Notify appropriate officials when a recipient ceases to be eligible.

(2) If the JAS interfaces with an existing or planned FAMIS-type system and all FAMIS requirements are met, title IV–A FFP at 90 percent is available. Otherwise interface expenditures are matched at 50 percent under title IV–A.

(c) JOBS funding is available at a 50 percent administrative rate for the acquisition and development of the remainder of the JAS, subject to the requirements of § 205.35 through § 205.38. This excludes the JOBS interface with the title IV–A system, but includes all other input, maintenance and reporting of those data elements required in § 250.82 that cannot be obtained from the title IV–A system through the JOBS interface. A cost allocation plan must be approved to share the cost among all Federal and State programs benefiting from the State's JAS.

(d) Administrative funding under either title IV–A or title IV–F for systems design, development, and implementation must comply with the requirements of § 95.601, *et seq.*

§ 250.82 Required case record data.

(a) The State IV–A agency must maintain an individual case record for each JOBS participant.

(1) For the purposes of this section, a JOBS participant is an individual who is:

(i) Actively engaged in assessment or employability planning during the month; or

(ii) Assigned to a component, including self-initiated education or training pursuant to § 250.48(a).

(2) To the extent the State IV–A agency's JAS can access the required data in the required form from other systems, duplicate entry is to be avoided.

(b) The minimum data required are:

(1) Case identifier other than Social Security Number, but the State must maintain in its files a link between the identifier and the SSN;

(2) Date of birth;

(3) Program status and exemption code;

(4) Youngest child's date of birth;

(5) Date of most recent AFDC opening;

(6) Number of months within the most recent 60 months of receipt of AFDC;

(7) Education level (highest grade completed) and date completed;

(8) Literacy level, but only when the State elects to determine a literacy level;

(9) Target group codes to identify which of the target groups specified in § 250.1 an individual was a member of, if any, at the time of entry into JOBS, and the date of entry;

(10) Identifier for a person not exempt, because the State elected to reduce the age of youngest child exemption to less than age three, or because the State elected to require participation of the second parent in a UP case where the second parent would otherwise be exempt for meeting the requirements of § 250.30(b)(9);

(11) Assignment status: scheduled hours, and beginning and ending dates, for each of the following that apply:

(i) Assessment and employability development planning;

(ii) Each JOBS component, including separate identification for self-initiated education or training, pursuant to § 250.48(a);

(iii) Job status, including date of job entry;

(12) Identifier indicating that the individual satisfactorily participated in the JOBS program, as defined at § 250.78, during the month, but only for sampled cases described in § 250.80;

(13) Amount of supportive services, other than child care, paid during the month;

(14) Amount of child care payment for the month;

(15) Type of child care;

(16) Such additional data as the Secretary may from time to time specify in an Action Transmittal or in reporting instructions.

Subpart J—Operation of JOBS Programs by Indian Tribes and Alaska Native Organizations

§ 250.90 Scope and purpose.

The purpose of an Indian Tribe or Alaska Native organization JOBS program is to assure that Tribal (refers to both an Indian Tribe and Alaska Native organization) members receiving AFDC obtain the education, training and employment services they need to avoid long-term dependency. Tribal grantees are subject to all the regulations under part 250, unless otherwise indicated in this subpart, and regulations under parts 255, 74, and 92, which include general funding and disallowance and termination provisions for Federal programs.

§ 250.91 Eligible Indian Tribe and Alaska Native organization grantees.

Funds shall be allotted to operate a JOBS program pursuant to § 250.71 to groups meeting the following eligibility standards:

(a) An Indian Tribe, defined as any Tribe, band, nation, or other organized group or community of Indians which:

(1) Is federally recognized as eligible for the special programs and services provided by the United States Government to Indians because of their status as Indians; and

(2) Has a reservation, which means Indian reservation, public domain Indian allotment, or former Indian reservation in Oklahoma.

(b) A consortium or Tribal organization representing more than one Tribe if each participating member Tribe meets the eligibility requirements for JOBS as defined in paragraph (a) of this section and if such consortium or organization meets the following criteria:

(1) All the participating members must be in geographic proximity to one another. However, a consortium may operate in more than one State;

(2) The consortium must demonstrate that it has the managerial, technical or administrative staff with the ability to properly administer government funds, manage a JOBS program, and comply with the provisions of the Statute and of the regulations;

(3) The consortium must submit with its JOBS application a resolution from

each participating Tribe authorizing the consortium to receive JOBS funds on behalf of each Tribe in its JOBS program.

(c) An Alaska Native organization including any Alaska Native village, or regional or village corporation eligible to operate a Federal program under Public Law 93–638 (Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450) or such group's designee. The boundaries of an Alaska Native organization are those of the geographical region, established pursuant to section 7(a) of the Alaska Native Claims Settlement Act, (85 Stat. 688) within which the Alaska Native organization is located.

§ 250.92 Selection criteria for eligible Alaska Native organizations.

(a) The Secretary may approve only one application from an Alaska Native organization for each of the 12 geographical regions established pursuant to section 7(a) of the Alaska Native Claims Settlement Act. The Department shall designate the Alaska Native grantee for each geographic region based on the following criteria:

(1) Previous experience in operating an effective employment and training program serving Indians and Native Alaskans;

(2) The number and kinds of activities of similar magnitude and complexity that the applicant has successfully completed; and

(3) The ability to provide services effectively to all eligible Native Alaskans residing in the region.

(b) In order to be approved an Alaska Native application must promote the efficient and nonduplicative administration of the JOBS program in the State of Alaska.

§ 250.93 Funding formula.

(a) A Tribal grantee's share of program funds will be calculated annually pursuant to § 250.71 and will be based on the following ratio:

(1) The number of adult members of the Indian Tribe receiving AFDC who live in the designated service area compared to the total number of adult AFDC recipients in the State. The designated service area must include the reservation but can not extend to areas or communities which are not designated by the Commissioner of Indian Affairs as "near reservation" as defined at 25 CFR 20.1(r). Tribal grantees may exclude a portion of the reservation which is remote from that part of the reservation where JOBS services are provided; or

(2) The number of adult Alaska Natives receiving AFDC who reside within the boundaries of the region which the organization represents to the total number of adult AFDC recipients in the State of Alaska.

(3) Tribal member means a person who is enrolled in, or certified as meeting the membership requirements by the designated official of, that Indian Tribe or Alaska Native organization.

(b)(1) The State IV–A agency and the Indian Tribe or Alaska Native organization must exchange available information on adult Tribal AFDC recipients needed to determine the eligible Tribal population and to define the designated service area, if other than the reservation or trust lands. State and Tribal representatives receiving such AFDC recipient data must follow standards of confidentiality to assure that recipient and Tribal privacy is protected pursuant to § 205.50.

(2) If sufficient data on adult AFDC recipient members of a Tribe or of an Alaska Native organization are not available, the State IV–A agency and the Tribe or organization may enter into an agreement covering a mutually agreed upon estimated figure of the eligible Tribal population or covering the designated service area.

(3) If the State IV–A agency and the Tribe or organization cannot agree on the number of Tribal adult AFDC recipients or designated service area, the Secretary, in consultation with the Tribe or organization and State, will make the final determination of Tribal funding.

(c) A Tribal grantee is not required to match Federal funds.

(d) States with Tribal JOBS programs in operation or a pending application may require applicants and recipients living in the designated service area to provide Tribal membership status as a condition of eligibility for AFDC under the following conditions:

(1) The information is necessary either to determine the number of adult members of an Indian Tribe or Alaska Native organization who receive AFDC, or to help determine whether such individual is to be served by a State or Tribal JOBS program;

(2) Upon requesting information about Tribal status, the State must explain the reason for its request for the information (e.g., to determine which JOBS program will serve the individual), and refer the individual to the appropriate Tribal JOBS program for further information;

(3) Such information is only requested in those areas in which there is a Tribal JOBS program or an application pending and where a State JOBS program is also in operation; and

(4) Information requested must relate only to membership in those Tribes or Alaska Native organizations operating or expected to operate a JOBS program in the area.

§ 250.94 Program administration, implementation and operations.

(a) The Tribal grantee must designate a Tribal agency or department to administer the Tribal JOBS program.

(1) The designated agency or department will be responsible for the administration of the Tribal JOBS program including the requirements under 402(a)(19) and Part F of the Act.

(2) The responsibility for the administration of JOBS, pursuant to paragraph (a)(1) of this section, includes functional areas such as exemption and priority determinations (§ 250.30), orientation and referrals (§ 250.40), assessment and the development of the employability plan (§ 250.41), JOBS activities (§ 250.44 and § 250.94(e)), dispute resolution and hearings (§ 250.36). Certain other related functions are retained by the State IV–A agency. These include the administration of provisions on child care (Part 255) and transitional child care services (Part 256).

(3) The designated agency or department may not delegate or contract out any functions which involve agency discretion, except as provided for in § 250.10 of the regulations.

(b) The Tribe or organization that submitted an application by April 13, 1989, may begin operating its JOBS program as of the first day of any quarter between July 1, 1989 and October 1, 1990, independent of the State's JOBS implementation date. If the Tribe or organization elects to begin operating its program before the State, during this interim time period:

(1) The Tribe or organization must guarantee necessary child care (without additional title IV–A funding for child care pursuant to Part 255) if it requires an individual to participate in its JOBS program.

(2) If the Tribe or organization cannot guarantee necessary child care as described in paragraph (b)(1), it cannot require an individual to participate in its JOBS program but may operate an entirely voluntary program.

(c) The Tribe or organization may not begin its JOBS program prior to approval of the Secretary. Final documentation for the application (meaning supplemental materials submitted after the initial April 13, 1989 application) must be sent to the Department at least 45 days prior to implementation of the Tribal program. This will allow sufficient time for the Department's review and approval.

(d)(1) Tribes or organizations shall not be subject to the specific requirements of § 250.12 of the regulations, but must coordinate program services with appropriate agencies as follows:

(i) The Tribal application with final documentation must be submitted to the State IV–A agency for its review and comment at least 30 days before submittal to the Secretary. The Tribe or organization shall consider comments made by the State IV–A agency in its application submitted to the Secretary.

(ii) The application with final documentation must also be made available to Tribal members for review and comment at least 30 days prior to submittal to the Secretary. The Tribe or organization must certify in its application that such public participation has taken place.

(2) To operate a JOBS program, the Tribe or organization must coordinate with the State IV–A agency to ensure that interrelated program functions are effectively performed. These functions include State responsibilities—such as providing to the Tribal grantee eligibility notifications and the necessary child care funds or services for Tribal participation—and Tribal responsibilities—such as notifying the State IV–A agency when Tribal members fail to participate without good cause.

(3) A Tribe or organization must consult and coordinate with other providers including those specified in paragraph (d)(4) of this section, to identify existing resources, prevent duplication of services, and ensure that the maximum level of services is available to enable participants to achieve self-sufficiency.

(4) At a minimum, the Tribal grantee must consult and coordinate with:

(i) The Tribal agency responsible for JTPA, if applicable;

(ii) The Tribal agency responsible for other employment and training services, including those offered under the Bureau of Indian Affairs;

(iii) The Tribal agency responsible for education, including any programs under the Bureau of Indian Affairs, the Department of Interior, or under the Office of Indian Education of the Department of Education.

(5) The Tribal grantee must consult with existing formal advisory councils, such as private industry councils, on the development of arrangements and contracts under JOBS, as described in § 250.12(d).

(6) The Tribal grantee must consult with private industry councils and Tribal Employment Rights Offices, as appropriate, to identify, and obtain advice on, the types of jobs available or likely to become available within a reasonable commuting distance from the Tribe's designated service area or the organization's boundaries. The Tribe or organization must ensure that JOBS provides training for the types of jobs which are, or are likely to become, available in or near its designated service area or organization's boundaries and that resources are not expended on training for jobs that are not likely to become available.

(e) Tribal programs are subject to the requirements of § 250.44 but are not subject to the requirements of § 250.45.

(1) A Tribal JOBS program must include all the mandatory components at § 250.44 unless the Tribe or organization can justify that such activities are inappropriate. A Tribe's or organization's application must describe the types of activities and methods of delivery for each of the mandatory components.

(2) Tribal programs are not subject to the provisions at § 250.45 but must include at least one of the following components unless a Tribe or organization can justify that such activities are inappropriate:

(i) Group and individual job search, as described in § 250.60;

(ii) On-the-job training, as described in § 250.61;

(iii) Community work experience program, as described in § 250.63, or a work experience program as approved by the Secretary;

(iv) Work supplementation program, as described in § 250.62;

(v) Alternative education, training and employment activities which are not described in § 250.60, § 250.61, § 250.62 or § 250.63, as approved by the Secretary.

(A) Innovative approaches with the private sector are encouraged if they are consistent with the purpose of JOBS to assist AFDC recipients to avoid long-term dependency.

(B) JOBS funds may not be used for public service employment or for allowances other than for those required for supportive services as described in Part 255.

(3) Because the amount of the IV–A payment is an integral part of determining participation in work supplementation and community work experience programs, a Tribe or organization may operate these programs only if adequate agreements with the State IV–A agency are implemented. The agreements should cover operational procedures and the exchange of information, including grant levels and child support calculations for community work experience participants and earnings for work supplementation participants.

§ 250.95 Supportive services.

(a) The Tribal grantee must provide, pay for, or reimburse necessary supportive services (other than child care) pursuant to Part 255, including transportation and other work-related expenses, that the Tribe or organization determines are necessary to enable an individual to participate in JOBS.

(b) The State IV–A agency is responsible for guaranteeing child care for Tribal JOBS participants according to the provisions specified under Part 255.

(c) If the Tribe or organization is using child care funds or services provided by the State pursuant to paragraph (b) of this section, it must ensure, based on a method which is mutually acceptable to the State IV–A agency and Tribal grantee, that necessary child care is available when requiring an individual to participate in its program.

(d) If the Tribe or organization does not choose to use State funds or services for child care, it must provide (without additional title IV–A funding for child care) these funds or services in order to guarantee necessary child care when requiring an individual to participate.

(e) Once the State has implemented its JOBS program, the Tribe or organization, in order to require an individual to participate, must guarantee necessary child care either through the State IV–A agency, pursuant to paragraphs (b) and (c), or directly, pursuant to paragraph (d) of this section; but it may not operate an entirely voluntary JOBS program.

§ 250.96 Waiver authority.

The Secretary may waive any JOBS requirements set forth under section 402(a)(19) and Part F of the Act that he determines inappropriate for Tribal JOBS programs.

(a) The Secretary has determined that certain requirements of the Act are inappropriate for JOBS programs operated by Indian Tribes or Alaska Native organizations. They cover the following provisions or sections of the regulations:

(1) Section 250.10 (IV–A agency administration);

(2) Section 250.11 (Statewide requirement);

(3) Section 250.12 (Coordination and consultation);

(4) Section 250.20 (State plan requirements);

(5) Section 250.21 (State plan content);

(6) Section 250.33 (UP–16 hour rule);

(7) Section 250.45 (Optional components);
(8) Section 250.70 (a) and (b) (Allocation entitlement);
(9) Section 250.71 (b)(2) and (c) (Allotment);
(10) Section 250.72 (Maintenance of effort);–
(11) Section 250.73 (Matching rates);
(12) Section 250.74 (Reduced matching rate);
(13) Section 250.78 (Definition of Participation for Enhanced FFP);
(14) Section 250.80 (Uniform Data Collection Requirements);
(15) Section 250.81 (State data systems);
(16) Section 250.82 (Required case record data);
(17) Section 255.1 (c) and (h) (Supportive Services plan requirements).

(b) A Tribe or organization may request that the Secretary waive any other requirements of section 402(a)(19) or Part F of the Act not listed under paragraph (a) of this section with proper justification. The Secretary will consider the appropriateness of such waivers on a case-by-case basis.

§ 250.97 Application requirements and documentation.

(a) As a condition of participation in the JOBS program, the designated Tribal agency or department responsible for administering the JOBS program must:

(1) No later than October 1, 1990, establish and operate a JOBS program under a JOBS application that has been approved by the Secretary before implementation and meets the requirements of parts 250 and 255.

(2) Submit final documentation for the application to the Secretary for review and action at least 45 days prior to the anticipated implementation date. The Tribal grantee may not begin its JOBS program prior to the Secretary's approval pursuant to § 250.94(c).

(b) The Tribal application must be submitted to the State IV–A agency for review and comment at least 30 days prior to submittal to the Secretary. The application shall be made available to Tribal members for review and comment at least 30 days prior to submittal to the Secretary. Comments received shall be resolved by the Tribe or organization.

(c)(1) The Tribal grantee must submit an update of its JOBS application to the Secretary for approval at least every two years. The update shall be considered a new JOBS application and shall be submitted to the Secretary for approval at least 90 days prior to the beginning of the next biennial period. The Tribal grantee must follow the public review and comment provisions in paragraph (b).

(2) The update must consist of:

(i) Assurances regarding those parts of the Tribal JOBS application that remain unchanged;

(ii) A description of any changes in program operations including but not limited to changes in component activities; and

(iii) An estimate of the number of persons to be served by the program during the next biennium.

(3)(i) For all Tribal grantees the first biennial update must be submitted by July 1, 1992, for the period beginning October 1, 1992.

(ii) Each approved biennial update shall remain in force until formal action is taken (i.e. approval or disapproval) by the Secretary on the update for the following biennial period.

(d) The Tribal grantee shall submit proposed amendments to the approved application as necessary, and they shall be reviewed according to the process described at §§ 201.3(f) and 201.3(g).

(e) A Tribe or organization that submits an application, an amendment to an existing application, or a biennial update to its application that is not approvable will be given the opportunity to make revisions before formal disapproval; upon formal disapproval, a Tribe or organization may request a hearing pursuant to the process set forth in § 201.4 and Part 213.

(f) A Tribal applicant must submit documentation (which is in addition to the information requested in the application) covering the following items for the Secretary's review before final approval of the application can be determined:

(1) Assurances that the administering Tribal agency will have in effect a JOBS program which meets the requirements of section 402(a)(19) and Part F of the Act, unless waived by the Secretary, and including cross-references to all appropriate statutory and regulatory requirements that the JOBS program will meet;

(2) A description of the administrative process and methods of delivery for:

(i) Providing program information under § 250.40;

(ii) Assessments pursuant to § 250.41;

(iii) Agency-participant agreements, if this option is elected;

(iv) Case management system (§ 250.43), if this option is elected;

(3) A description of the mandatory and elected optional component activities described under § 250.94(e) and the methods of delivery;

(4) A description of the selection and assignment criteria that will be used to refer participants to the various services and activities provided under the Tribal JOBS program;

(5) A description of the coordination processes with other programs, including any agreements with the State IV–A agency, Tribal JTPA agency, other employment and training agencies and educational agencies, specifying how these other agencies will track and report to the Tribe or organization on satisfactory participation and use of JOBS funds;

(6) A description of how the administering Tribal agency will determine eligibility for work-related expenses such as clothing or transportation and other supportive services; a listing of the work-related expenses and the supportive services it will provide to its JOBS participants; the methods of delivering these supportive services; and

(7) A description of the conciliation and hearings procedures which meet the due process standards specified in proposed § 250.36, including notification to the State IV–A agency of formal decisions that a non-exempt Tribal member has failed to participate.

§ 250.98 Maintenance of effort for Indian Tribes and Alaska Native organizations.

Tribal programs are not subject to the requirements in § 250.72 but are subject to the following requirements:

(a) JOBS funds shall be used only for education, training and employment activities that are in addition to those which would otherwise be available to Tribal AFDC recipients in the absence of such funds.

(b) A Tribe or organization may contract for services only to the extent that such services are not otherwise available to AFDC Tribal recipients on a non-reimbursable basis.

Title 45, Chapter II, Code of Federal Regulations is amended by adding a new Part 255 to read as follows:

PART 255—CHILD CARE AND OTHER WORK-RELATED SUPPORTIVE SERVICES DURING PARTICIPATION IN EMPLOYMENT, EDUCATION, AND TRAINING

Sec.

255.0 Purpose.
255.1 State plan requirements.
255.2 Eligibility.
255.3 Methods of providing child care and other supportive services.
255.4 Allowable costs and matching rates.
255.5 Child care standards.
255.6 Uniform reporting requirements for child care.

Authority: Sections 402, 403 and 1102 of the Social Security Act as amended (42 U.S.C. 602, 603 and 1302).

§ 255.0 Purpose.

This Part pertains to child care and other supportive services for families receiving, and in some cases applying for, AFDC. State IV–A agencies must provide such services, under conditions specified in this Part, to eligible families to allow participation in employment, education or training.

§ 255.1 State plan requirements.

A State IV–A agency operating a program under title IV–A must submit a Supportive Services plan to the Secretary, consistent with the schedule specified at § 250.20, which includes the following:

(a) The methods the State IV–A agency will use to provide child care in accordance with § 255.3.

(b) The dollar amount(s) which the State IV–A agency establishes for limiting the amount of payment or reimbursement for child care, if the State IV–A agency elects pursuant to § 255.4(a)(1), to set an amount (or amounts) higher than the amount of the disregard at § 233.20(a)(11)(i).

(c) A description of the types of other supportive services and work-related expenses, including transportation, which will be available to participants in the JOBS program under Part 250 and other eligible recipients, the methods by which they will be provided, the monetary limits to be applied to each type of service or activity, and the basis for determining need for each type.

(d)(1) A description of the criteria which will be used to approve education or training for child care and supportive services in non-JOBS areas of the State, in accordance with § 255.2. Such criteria must, at a minimum, include:

(i) That the education or training is consistent with an appropriate employment goal; and

(ii) That the individual is making satisfactory progress.

(2) Specification of any procedures under which IV–A staff will approve, in non-JOBS areas:

(i) Education or training activities for child care and supportive services; and

(ii) One-time work-related expenses which are necessary for an applicant or recipient to accept or maintain employment.

(e) An assurance that procedures are established to ensure that:

(1) Child care meets applicable standards of State and local law, and/or Tribal law, where applicable;

(2) Any entity providing child care allows parental access as required under § 255.4(c)(1);

(3) In arranging child care, the State IV–A agency takes the individual needs of the child into account, in accordance with § 255.3(b); and

(4) Child care provided or claimed for reimbursement is reasonably related to the hours of participation or employment.

(f) An assessment of the availability of child care services provided on a non-reimbursable basis by Federal, State and local sources other than title IV–A.

(g) Specification of a State IV–A agency's policies on:

(1) Interim child care and other supportive services as provided in § 255.2(d); and

(2) Transitional supportive services, as provided in § 250.73(e)(1).

(h) Specification of a State IV–A agency's policy on provision of one-time work-related expenses in accordance with § 255.2(c)(3), including:

(1) The types of any such expense;

(2) The monetary limits to be applied to such expenses; and

(3) Whether the State provides one-time work-related expenses in non-JOBS areas.

(i) A description of the methodology used for setting local market rates pursuant to § 255.4(a)(2). Such methodology must address rates established for each type of care (i.e., center, group family day care, family day care, and in-home care) provided. The plan must address variations in the costs of care for infants, toddlers, pre-school and school-age children, special needs children, whether care is full or part-time, and reduction in the cost of care for additional children in the same family if such variations exist. The rates must be submitted to the Family Support Administration Regional Office and must be updated periodically, but no less than biennially.

(j) A description of the nature of the State IV–A agency's efforts to coordinate child care and other supportive services, with the groups specified at § 255.3(h).

(k) In States where Tribal entities are directly funded to operate a JOBS program, a description of how the State will provide child care services for JOBS participants served by those Tribal entities.

(l)(1) A description of the State's procedures for ensuring that center-based care will be subject to State and local requirements designed to ensure basic health and safety, including fire safety, protections; or

(2) A plan for developing such procedures.

§ 255.2 Eligibility.

(a) The State IV–A agency must guarantee child care for a dependent child who is: under age 13; physically or mentally incapable of caring for himself or herself, as verified by the State based upon a determination by a physician or a licensed or certified psychologist; or under court supervision (and for a child who would be a dependent child except for the receipt of benefits under Supplemental Security Income under title XVI or foster care under title IV–E), to the extent that such child care is necessary to permit an AFDC eligible family member to—

(1) Accept employment or remain employed; or

(2) Participate in an approved education or training activity under JOBS (including self-initiated education or training pursuant to § 250.48(a)), or in approved education or training consistent with criteria in the State's Supportive Services plan for approval of education or training in non-JOBS areas.

(b) The guarantee under paragraph (a) also applies to Tribal members who are subject to participation requirements under Subpart J of Part 250, consistent with the requirement in paragraph (f).

(c)(1) The State IV–A agency must provide, pay for, or reimburse transportation and other work-related expenses (including work-related supportive services) which it determines are necessary to enable an individual to participate in approved JOBS activities under Part 250, including self-initiated education or training pursuant to § 250.48(a)).

(2)(i) The State agency may provide, pay for, or reimburse transportation and other work-related expenses (including work-related supportive services) which it determines are necessary to enable a recipient to participate in approved education or training in non-JOBS areas;

(ii) Approval of education and training for necessary supportive services in non-JOBS areas must be consistent with criteria established in the Supportive Services plan.

(3)(i) The State agency may provide, pay for, or reimburse one-time, work-related expenses which it determines are necessary for an applicant or recipient to accept or maintain employment.

(ii) The State IV–A agency may approve these expenses through the JOBS program or, in non-JOBS areas, through procedures established in accordance with § 255.1(d)(2).

(d) The State IV–A agency may provide for child care and other necessary supportive services for an individual who is waiting to enter an approved education, training, or JOBS component or employment:

(1) For a period not to exceed two weeks; or

(2) For a period not to exceed one month where child care (or other services) arrangements would otherwise be lost and the subsequent activity is scheduled to begin within that period.

(e) The State IV–A agency must provide child care and supportive services necessary:

(1) For applicants to participate in job search pursuant to § 250.60; and

(2) For applicants and recipients to participate in other approved activities to prepare them for participation in the JOBS program.

(f) The State IV–A agency must make child care services available to applicants and recipients who are participating in a JOBS program operated by an Indian Tribe or Alaska Native organization, pursuant to §§ 250.94 and 250.95. Child care services, which are also appropriate in meeting any special needs of Tribal participants, must be made available on an equitable basis. To the extent it is appropriate, the same range of reimbursement methods must be available to Tribal JOBS participants as are available to participants in the State JOBS program.

(g)(1) The State IV–A agency must inform families requesting child care under this Part of their rights and responsibilities.

(2) The State IV–A agency must respond to a request for child care under this Part within a reasonable period of time.

(h) AFDC applicants and recipients are entitled to hearings under the provisions of §§ 205.10 or 250.36, as appropriate, on issues concerning the appropriateness of, denial of, prompt issuance of, or intended actions to discontinue, terminate, suspend or reduce assistance under this part. However:

(1) Changes in the manner of payment are not subject to timely notice requirements unless they result in a discontinuation, suspension, reduction, or termination of benefits, or they force a change in child care arrangements; and

(2) The provisions of § 205.10(a)(6) regarding aid paid pending a hearing do not apply.

§ 255.3 Methods of providing child care and other supportive services.

(a) The State IV–A agency may use any of the following methods for guaranteeing the availability of child care:

(1) Providing the care directly;

(2) Arranging the care through providers by use of purchase of service contracts or vouchers;

(3) Providing cash or vouchers in advance to the caretaker relative in the family;

(4) Reimbursing the caretaker relative in the family;

(5) Arranging with other agencies and community volunteer groups for non-reimbursed care;

(6) Using the child care disregard as provided in § 233.20(a)(11)(i); or

(7) Adopting such other arrangements as the State IV–A agency deems appropriate.

(b) In arranging for child care, the State IV–A agency must take into account the individual needs of the child, including the reasonable accessibility of the care to the child's home and school, or caretaker's place of employment or training (based on normally accepted standards in the community or State), and the appropriateness of the care to the age and special needs of the child.

(c) If more than one type of child care is available, e.g., center, group family care, family day care or in-home care, the caretaker relative must be provided an opportunity to choose the arrangement. The State IV–A agency may select the method of payment under paragraph (a).

(d)(1) An individual required to participate under Part 250 may refuse available appropriate child care as determined by the State IV–A agency, if she can arrange other child care or can show that such refusal will not prevent or interfere with participation in approved education or training activities (including JOBS) or employment.

(2) The State IV–A agency must establish at least one method by which self-arranged child care can be paid.

(e)(1) If a State IV–A agency chooses to meet the cost of child care through a method other than use of the child care disregard at § 233.20(a)(11)(i), the State IV–A agency must then determine AFDC eligibility and payment amount without this disregard, except for families described in paragraph (e)(2) of this section.

(2) In the case of a family which was receiving AFDC on October 13, 1988, based on application of the child care disregard at § 233.20(a)(11)(i) or through the provision of special needs, if such a family would be disadvantaged as a result of meeting the cost of child care through another method which does directly affect AFDC eligibility, the State must determine the family's AFDC eligibility and payment (including child care needs), as if the method of provision which was applicable on October 13, 1988, is still in effect.

(f)(1) For cases subject to retrospective budgeting, the State IV–A agency has the option to meet the cost of child care directly for the first one or two months of employment and then to apply the child care disregard at § 233.20(a)(11)(i) to offset income received in those initial one or two months in determining the AFDC payment for the corresponding payment months. The State IV–A agency's payment shall not be counted as income or resources for any month. Under these circumstances, a State IV–A agency may not apply the disregard to income used to determine the amount of the payment for the month(s) following the month in which child care ceases.

(2) The State IV–A agency, at its option, may provide a supplemental payment to a family when the amount available through the disregard is less than the amount that would be available if another method were used.

(g) The State IV–A agency may assure the availability of necessary transportation and other work-related expenses (including other work-related supportive services) through direct provision, or payment, or reimbursement of costs consistent with its Supportive Services plan.

(h) Each State IV–A agency must coordinate:

(1) Its child care activities with existing child care resource and referral agencies and with early childhood education programs in the State, including Head Start programs, preschool programs funded under Chapter 1 of the Education Consolidation and Improvement Act of 1981, and school and nonprofit child care programs (including community-based organizations receiving funds designated for preschool programs for handicapped children); and

(2) Its supportive services with related services provided by other agencies.

§ 255.4 Allowable costs and matching rates.

(a) FFP is available for the actual cost of child care up to a statewide limit established by the State IV–A agency in its State Supportive Services plan, but not for more than the applicable local market rate.

(1) In setting the statewide limit:

(i) The State IV–A agency may choose the amount of the child care disregard at § 233.20(a)(11)(i), or some higher amount(s); and

(ii) The State agency may specify a higher statewide limit for children with special needs.

(2) The applicable local market rates must be determined:

(i) Based on representative samples of child care providers or slots;

(ii) For all political subdivisions or for alternative areas which represent reasonable local child care markets based upon their geographic proximity or common characteristics; and

(iii) Based on the 75th percentile cost of such types of care in the local areas. (However, where there are only one or two providers of a type of care in a local market area, the rate may be set at the 100th percentile.)

(3) Local market rates must:

(i) Be established for center care, group family care, family day care, and in-home care;

(ii) Differentiate among care for children with special needs, infants, toddlers, pre-school and school-age children, where applicable;

(iii) Differentiate between full-time and part-time care, if applicable; and

(iv) Consider reductions in the cost of care for additional children in the same family.

(b)(1) Except for Puerto Rico, Guam, the Virgin Islands, and American Samoa, in the case of amounts expended for child care, FFP shall be at the Federal medical assistance program (Medicaid) rate and is included in the title IV–A general program entitlement.

(2) For Puerto Rico, Guam, the Virgin Islands, and American Samoa, the rate is 75 percent and is included in the JOBS limit of entitlement.

(c) FFP is available only if:

(1) The entity providing the care allows parental access; and

(2) The care meets applicable standards of State and local law, and/or Tribal law, where applicable.

(d) In the case of amounts expended for transportation and other work-related expenses and supportive services for eligible individuals, FFP shall be at the rate of 50 percent and is subject to the annual limit of entitlement, pursuant to § 250.73(b)(1).

(e) The State IV–A agency is not permitted to provide payment for child care or any other supportive service or work-related expense as an AFDC special need pursuant to § 233.20(a)(2)(v)(B)(2).

(f) FFP is not available for:

(1) Recruitment or training of child care providers, resource development, or licensing activities; or

(2) Payments made for care provided by parents, legal guardians, or members of the assistance unit (including essential persons).

(g) The matching rate for child care administrative costs under this Part is 50 percent and, except for Puerto Rico, Guam, the Virgin Islands, and American Samoa, the amount is outside the funding limitation for JOBS.

(h) The State IV–A agency must take reasonable precautions to guard against fraud and abuse in the funding of child care costs, consistent with requirements at § 235.110.

(i)(1) Federal matching funds improperly claimed for child care services or administration are subject to disallowance under Part 201. If the State IV–A agency disagrees with the decision to disallow FFP, it can appeal under existing title IV–A procedures, including review of the Departmental Appeals Board in accordance with Part 16 of these regulations.

(2) Financial reporting of child care expenditures is generally subject to the requirements of the existing regulations at § 201.5.

(3) Child care expenditures are generally subject to the requirements of Part 201, including the provisions at § 201.5(e) (regarding the applicability of most of the requirements of Part 74 to the administration of grants to States), the provisions at Subpart B (regarding review and audits), and the provisions of § 201.67 (regarding treatment of uncashed or cancelled checks).

(j)(1) The State must take all reasonable steps necessary to promptly correct any overpayment to a recipient or a service provider under this section (or Part 256). An overpayment to a family or provider currently receiving child care payments or benefits must be recovered through repayment (in part or in full) by the family or provider responsible for the overpayment or by recovering the overpayment through a reduction in the amount payable to the family or provider.

(2) State IV–A agencies need not attempt recovery of overpayments from providers if obligated to make the full payment under contract; however, FFP may not be claimed for such overpayments.

(3) In recovering overpayments from a recipient family, the State shall provide that the family retains, for any month, a reasonable amount of funds.

(4) Recoupment of child care overpayments may be made only from child care benefits; and recoupment of supportive services overpayments may be made only from supportive services benefits. Any recoveries of child care or supportive services overpayments may be made from AFDC benefit payments only upon a voluntary request of the recipient family.

(5) Overpayments to individuals may be recovered from the family unit which was overpaid, from individuals who were members of the family when overpaid, or from families which include members of a previously overpaid family. In cases of former recipients or recipients who refuse to repay, recovery shall be made by appropriate action under State law against the income and resources of the overpaid individual or family.

(6) Underpayments and overpayments may be offset against each other in correcting incorrect payments.

(7) Recovery must be attempted in all cases of fraud, in all cases involving current recipients, and in all cases where the overpayment amount would equal or exceed the costs of recovery.

(8) States must collect and maintain information on the collection of overpayments and make appropriate adjustments for Federal matching, consistent with requirements established by the Secretary.

§ 255.5 Child care standards.

(a) The State IV–A agency must establish procedures to ensure that center-based child care will be subject to State and local (and/or Tribal, where applicable) requirements designed to ensure basic health and safety (including fire safety) protections.

(b) The State must also endeavor to develop guidelines for family day care if it has not already done so.

(c) Upon request of the Secretary, the State IV–A agency must make available information on applicable standards of State and local law, including the requirements specified in paragraph (a) of this section and the guidelines specified in paragraph (b) of this section.

§ 255.6 Uniform reporting requirements for child care.

Each State IV–A agency shall be required to provide such child care information and data as are determined to be necessary by the Secretary to ensure the effective implementation of the provisions under this Part and Part 250. The uniform reporting requirements include, at a minimum, the average monthly number of families served, the types of such families, the amounts expended with respect to families assisted, the types of paid child care arrangements, and the length of time for which such families are assisted. The information and data for these families shall be separately stated with respect to families who have earnings and those who do not, and with respect to families who are receiving aid under the State IV–A plan and those who are not.

Title 45, chapter II, Code of Federal Regulations is amended by adding a new part 256 to read as follows:

PART 256—TRANSITIONAL CHILD CARE

Sec.
256.0 Purpose.
256.1 State plan requirements.
256.2 Eligibility.
256.3 Fee requirement.
256.4 Other provisions.

Authority: Sections 402, 403 and 1102 of the Social Security Act as amended (42 U.S.C. 602, 603 and 1302).

§ 256.0 Purpose.

This part pertains to child care available to families whose eligibility for AFDC assistance has ceased due to increased hours of, or earnings from, employment or as a result of the loss of income disregards due to the expiration of the time limits at § 233.20(a)(11).

§ 256.1 State plan requirements.

(a) The State Supportive Services plan specified under § 255.1 must include a description of:

(1) The methods the State IV–A agency will use to provide transitional child care;

(2) The sliding fee scale under which families will contribute toward the cost of child care;

(3) The methods and procedures the State IV–A agency shall use to ensure that fees are collected; and

(4) The application requirements established by the State.

(b) A State IV–A agency which has not implemented a JOBS program as of April 1, 1990 must submit a Supportive Services plan for transitional care which includes the provisions described in this Part and the provisions at § 255.1 which apply to transitional child care (i.e., paragraphs (a), (b), (e), (f), (i), (k) and (l)).

§ 256.2 Eligibility.

(a) The State IV–A agency must guarantee child care for a child who is: under age 13; is physically or mentally incapable of caring for himself or herself, as verified by the State based on a determination of a physician or a licensed or certified psychologist; or under court supervision, and who would be a dependent child, if needy, (and for a child who would be a dependent child except for the receipt of benefits under Supplemental Security Income under title XVI or foster care under title IV–E), to the extent that such care is necessary to permit a member of an AFDC family to accept or retain employment.

(b) A family is eligible for transitional child care provided the following conditions are met:

(1) The family must have ceased to be eligible for AFDC as a result of increased hours of, or increased income from, employment or the loss of income disregards due to the time limitations at § 233.20(a)(11);

(2) The family must have received AFDC in at least three of the six months immediately preceding the first month of ineligibility;

(3) The family requests transitional child care benefits, provides the information necessary for determining eligibility and fees, and meets appropriate application requirements established by the State; and

(4) The family ceased to be eligible for AFDC on or after April 1, 1990.

(c) Notwithstanding when the family requests assistance under this Part, eligibility for transitional child care begins with the first month for which the family is ineligible for AFDC, for the reasons included in paragraph (b)(1), and continues for a period of 12 consecutive months. Families may begin to receive child care in any month during the 12-month eligibility period.

(d) The family is not eligible for child care under this Part for any remaining portion of the 12-month period if the caretaker relative:

(1) Terminates employment without good cause, as defined in § 250.35; or

(2) Fails to cooperate with the State IV–A agency in establishing payments and enforcing child support obligations, as defined in § 232.12.

(e)(1) If the caretaker relative loses a job with good cause, and then finds another job, the family can qualify for the remaining portion of the 12-month eligibility period.

(2) If the family re-establishes eligibility for AFDC during this period, it could qualify for a new 12-month eligibility period if it met the necessary conditions of eligibility (including the 3-of-6 month requirement).

§ 256.3 Fee requirement.

(a) The State IV–A agency must require each family receiving transitional child care to contribute toward the payment for such care based on the family's ability to pay.

(b) Each State IV–A agency shall establish a sliding fee scale which will provide for some level of contribution by all recipients.

(c) A State IV–A agency may vary the period of collection for different fee levels.

(d) The State IV–A agency may establish whether fees are paid to the providers or the State agency. In cases where the family's contribution is paid to the State IV–A agency, such contribution is subject to the program income requirements in § 74.42(c), Subpart F. Claims for Federal matching funds for child care expenditures shall be adjusted to reflect collection of fees under this Part.

(e) Individuals who fail to cooperate in paying required fees will, subject to appropriate notice and hearings requirements, lose eligibility for benefits under this Part for so long as back fees are owed, unless satisfactory arrangements are made to make full payment.

§ 256.4 Other provisions.

(a) The State IV–A agency, in providing transitional child care, must meet the requirements in §§ 255.3(a) paragraphs (1)–(5) and (7), (b), (c), (d), and (h); 255.5; and 255.6.

(b) The provisions on child care costs and matching rates at § 255.4 shall apply to this Part, except in the case of Puerto Rico, Guam, the Virgin Islands, and American Samoa, child care expenditures under this Part are not covered as JOBS expenditures, but as expenditures subject to the limitation under section 1108 of the Act.

(c) The State IV–A agency must notify all families of their potential eligibility for transitional child care services under this part in writing, and orally as appropriate, at the time they become ineligible for AFDC. The notification must include information on the steps they must take to establish eligibility for benefits and of their rights and responsibilities under the program.

(d) Provision of benefits under this part are subject to the notice and hearings provisions at § 205.10, except that timely notice requirements do not apply to changes in the manner of payment, unless those changes result in a discontinuation, suspension, reduction, or termination of benefits, or they force a change in child care arrangements.

[FR Doc. 89–23937 Filed 10–12–89; 8:45 am]
BILLING CODE 4150–04–M

federal register

Friday
October 13, 1989

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Desert Tortoise; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN: 1018-AB35

Endangered and Threatened Wildlife and Plants; Desert Tortoise

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to determine the Mojave population of the desert tortoise (*Gopherus (=Xerobates, =Scaptochelys) agassizii*) as an endangered species pursuant to the Endangered Species Act of 1973, as amended (Act). The Service proposes to determine the Sonoran population of the desert tortoise found outside its natural range in Arizona (south and east of the Colorado River) and Mexico as a threatened species due to similarity of appearance to the Mojave population. Desert tortoises belonging to the Sonoran population remaining in their natural range in Arizona (south and east of the Colorado River) and in Mexico are not covered by this proposed rule.

An emergency rule was published on August 4, 1989, listing the Mojave population of the desert tortoise as an endangered species which expires on August 2, 1990. An emergency situation in the form of a recently documented outbreak of a virulent respiratory disease, currently known as Upper Respiratory Disease Syndrome (Respiratory Disease Syndrome), has been identified and has caused significant declines to certain tortoise subpopulations and threatens to become pandemic in subpopulations already stressed as a result of habitat degradation, predation, and other factors. The Beaver Dam Slope desert tortoise is proposed to be upgraded from threatened to endangered with the critical habitat remaining as previously designated. The Service seeks data and comments from the public on this proposed rule.

DATES: Comments from all interested parties must be received by January 11, 1990. The Act requires the Service to promptly hold at least one public hearing on the proposed listing regulation, if requested by any person by November 27, 1989. Because of anticipated widespread public interest, the Service has decided to hold three public hearings. See **SUPPLEMENTARY INFORMATION** for dates and locations of hearings.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director (Attn: Listing Coordinator), U.S. Fish and Wildlife Service, 1002 NE. Holladay Street, Portland, Oregon 97232-4181. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert P. Smith, Assistant Regional Director for Fish and Wildlife Enhancement, at the above address (telephone (503) 231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Hearing Information

November 20, 1989, 7:00 to 11:00 p.m., Riverside Convention Center at Raincross Square, 3443 Orange Street, Riverside, California.

November 28, 1989, 2:00 to 5:00, and 7:00 to 10:00 p.m., Clark County Commission Chambers, Bridger Building, 225 Bridger Avenue, First Floor, Las Vegas, Nevada.

November 29, 1989, 7:00 to 9:00 p.m., St. George City Offices, Council Chambers, 175 East 200 North, St. George, Utah.

A public hearing will be conducted at each of these locations at the times indicated. Oral statements may be limited to 3 or 5 minutes, if the number of parties present desiring to give such statements necessitates limitation. There are no limits to the length of any written statement presented at a hearing or mailed to the Service. Written comments are given the same weight and consideration as oral comments presented at the public hearings.

Background

The desert tortoise is one of three species in the genus *Gopherus* found in the United States. The Berlandier's tortoise (*G. berlandieri*) is found in northeastern Mexico and southern Texas. The gopher tortoise (*G. polyphemus*) is found in the hot, humid portions of southeastern United States. *G. agassizii* is relatively large, with adults measuring up to 15 inches in shell length and inhabits the Mojave, Colorado, and Sonoran deserts in the southwestern United States and adjacent Mexico.

Recent studies based on shell shape and variations in genetic composition indicate that the desert tortoise has two distinct populations, one of which is divided into two subpopulations (Spang et al. 1988). A summary of this information is as follows:

The Colorado River has been an effective geographic barrier, isolating the Mojave and the Sonoran populations for millions of years. The Mojave population is found to the west and the north of the river and the Sonoran population is found to the east and south. The Mojave population is further divided into two subpopulations.

The western Mojave subpopulation includes parts of the west Mojave, east Mojave, and Colorado Deserts in California and extreme southern Nevada. Tortoises occur in creosote bush (*Larrea tridentata*), cactus, and shadscale (*Atriplex confertifilia*) scrub habitats, and Joshua tree (*Jucca brevifolia*) woodlands (Dodd 1986).

Study plot data from eight sites in the western Mojave region indicate that populations have declined at rates of 10 percent or more per year for the last six to eight years. Vandalism, collections, raven predation, and disease are a few of the many factors that have resulted in population declines. Habitat conditions have deteriorated and/or habitat has been lost in certain localities due to urban, energy, and mineral development, vehicle-oriented recreation, grazing, military activities, and other uses.

The eastern Mojave subpopulation includes tortoises in eastern California, southern Nevada, and the Beaver Dam Slope and the Virgin River Basin of southwestern Utah and extreme northwestern Arizona (north of the Colorado River). Eastern Mojave tortoises occur in creosote bush-burro bush (*Ambrosia dumosa*) or creosote bush-Joshua tree vegetation types. Downward trends in this subpopulation and its habitat are believed to be a result of urban development, long-term livestock grazing, mining, large-scale water development, off-road vehicle use, collecting, military activities, and many other human-related uses.

The Sonoran population is found in Arizona, south and east of the Colorado River, and in Mexico. Tortoises in this area are found predominantly on steep, rocky slopes of mountain ranges, primarily in Arizona upland vegetation dominated by palo verde and saguaro cactus. The distribution of the present population and habitat is disjunct. Some habitat has been lost to expansion of urban areas. Grazing, mining, and fire have adversely affected some areas of tortoise habitat.

The Beaver Dam Slope subpopulation of the Mojave population of desert tortoises in Utah was listed as threatened with critical habitat on August 20, 1980 (45 FR 55654).

The Service received a petition on September 14, 1984, from the Environmental Defense Fund, Natural Resources Defense Council, and Defenders of Wildlife to list the desert tortoise in Arizona, California, and Nevada as endangered under the Endangered Species Act. The Service determined in September 1985 that the proposed listing of the tortoise within the three petitioned States was warranted but precluded by other listing actions of higher priority under authority of section 4(b)(3)(B)(iii) of the Act. Annual findings of warranted but precluded have been made in each subsequent year since 1985 under authority of section 4(b)(3)(C) of the Act.

Data collection on the Mojave population in recent months indicate that many local tortoise subpopulations throughout the range of the species have declined precipitously. The rapid spread of Respiratory Disease Syndrome, rarely seen before in wild tortoises, has been identified as a significant contributing factor in the current high level of tortoise losses.

On May 31, 1989, the same three environmental organizations that petitioned the Service in 1984 provided substantial new information and again petitioned the Service to list the desert tortoise as an endangered species throughout its United States range under the expedited emergency provisions of the Act. This second petition, treated by the Service as a petition under the Administrative Procedure Act, was received on June 2, 1989. In response to this petition, the Service conducted an extensive review of existing information on the Respiratory Disease Syndrome, other reported diseases in Arizona, and the current status of the tortoise. As a result of this and other information, the Service determined the Mojave population of the desert tortoise to be an endangered species under an emergency rule published on August 4, 1989 (54 FR 32326). The emergency rule provides protection under the Act for the Mojave population of tortoises for 240 days (until April 2, 1990). The Service did not take emergency action to reclassify the Beaver Dam Slope subpopulation in Utah to endangered because it is already protected by the Act.

This proposal constitutes the final finding on the petitioner's request to list the desert tortoise throughout its range in the United States as an endangered species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal list. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). The Act defines species to include subspecies and any distinct population segment of any species of vertebrate fish or wildlife that interbreeds when mature. The factors and their application to the Mojave population of the desert tortoise are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

As indicated above, habitat is deteriorating and has been lost in many parts of the tortoise's range due to an accelerating rate of urban, energy, and mineral development, military activities, vehicle-oriented recreational activities, grazing, and land exchanges.

For an animal such as the tortoise, which must consume its annual forage requirement in no more than five months out of the year (March to June, and September), it is apparent that meeting this need can become critical if forage has not been produced, is unavailable, or is of poor nutritive quality.

Changes in perennial vegetation, especially the reduction in cover of small and large shrubs and perennial grasses, are believed to be the result of cattle and sheep grazing pressures. These changes have created openings and barren areas in the desert landscape and have deteriorated the quality of habitat for the tortoise. Losses of plant cover may contribute to the excessive raven predation on small tortoises, making the tortoise more exposed and vulnerable as raven prey.

Changes in annual vegetation, also thought to be mostly connected to grazing, have also affected food supplies for tortoises. Weedy plant species that have been introduced for grazing, such as red brome (*Bromus rubens*), filaree (*Erodium cirutarium*), and abu mashi (*Schimus arabicus*), can germinate, flower, and fruit before native plants. Native plant species are essential to meet the nutritional needs of the tortoise and are their favored forage. Exotic, weedy plant species are outcompeting many native plant species (Berry 1988). Additional potential adverse impacts to the tortoise from cattle and sheep grazing include: damage to shrubs used for tortoise shelter, crushing of burrows and nests, and trampling of young tortoises. The degree and nature of impacts from cattle grazing are dependent upon habitat, grazing history, seasons of use, stocking rates, and density of the tortoise population (Sievers et al. 1988).

Livestock grazing is thought to be a factor contributing to tortoise habitat degradation in portions of all four States covered by this proposed rule: Nevada, Utah, Arizona, and California. No formal research has been conducted in Nevada on effects of livestock grazing on tortoises. However, both the Final Statement for the Proposed Domestic Livestock Grazing Management Program for the Caliente Area, Nevada, and the Final Environmental Impact Statement for the Clark County, Nevada Grazing Program concluded that conflicts between livestock and desert tortoises would be reduced by grazing reductions and/or livestock removal during portions of the growing season (Bureau of Land Management (BLM) 1979, BLM 1982).

One BLM-funded research study on the Crescent Peak grazing allotment in Piute Valley near Searchlight, Nevada in 1983, concluded that an observed die-off of tortoises was "aggravated by the long-term grazing intensity that had occurred in the area" (Mortimer and Schneider 1983). An unusually high mortality rate in desert tortoises was found while the authors were investigating a permanent tortoise study plot in the valley. The plot is located in an ephemeral pasture used by livestock in the winter and early spring. From the data collected, the authors inferred that a major population change of tortoises occurred between 1979 and 1983. The population sustained a very high mortality rate (23.8 percent) with a resultant decline in the number of sexually mature individuals. Heavy spring grazing pressure had occurred for several years before 1980 and little or no annual forage was produced on the allotment in 1980 and 1981. The authors concluded that the decade of spring grazing had reduced the quality of the habitat and the ability of the tortoises to withstand the drought years of 1980 and 1981, even when cattle were not turned into the pasture during those years.

The Goffs tortoise study plot is located 26 miles to the south of the Piute Valley site and in 1980 was estimated to have a 2 percent annual mortality rate (Turner and Berry 1984). The major difference between the two plots is that the Goffs site is not grazed. The tortoises on that site were able to withstand the adverse weather conditions because they were in better physical condition than those in Piute Valley.

The majority of Utah's Beaver Dam Slope allotment is in the Southern Desert Shallow Hardpan Range Site as

identified by the Soil Survey of Washington County (United States Department of Agriculture 1977). The potential vegetation for this site is approximately 15 to 25 percent grasses, 2 to 5 percent forbs, and 40 to 80 percent shrubs. If the site is in excellent condition, the total annual production of air-dried herbage available as forage is about 400 pounds per acre in good moisture years and 250 pounds per acre under poor moisture years. The median production of annuals on the Beaver Dam Slope between 1980 and 1986 was 83 pounds per acre; half of the time forage production was more and half of the time it was less. The mean (average) production of annuals during that time period was 191 pounds per acre.

It is possible that the forage requirements of the tortoise may never be met on the Beaver Dam Slope. The BLM (BLM 1987) stated that 47 percent of the Beaver Dam Slope allotment is considered to be in fair forage condition while 53 percent is in poor forage condition. This estimate was based on desirable forage for livestock, and hence tortoises because of the dietary overlap. Additionally, the overall range trend has been static, no improvement has occurred.

Another important facet of tortoise feeding behavior is food preferences. Like livestock, tortoises prefer some plants over others and will go out of their way to consume them even if the plant is in low abundance. Coombs (1977b) observed in his study on the Beaver Dam Slope that bush muhly (*Muhlenbergia porteri*) was sought out more than any other plant even though it was one of the least available. This perennial grass has been greatly reduced in abundance by livestock grazing (Stoddart et al. 1975). The second most important plant was cheatgrass (*Bromus tectorum*) and was also one of the least common plants available to the tortoise. Minden (1980) found that a milk-vetch (*Astragulus nuttallianus*) was by far the most commonly consumed plant in his study (59 percent). This annual plant was not mentioned by Coombs (1977). Apparently, the year of Minden's study (1980) was one of above normal rainfall which allowed this annual forb to grow. It is, therefore, believed that the tortoise has food preferences and that total forage production is not an accurate gauge of food availability.

In Arizona, the habitat of the Mojave population of tortoises has experienced alteration of plant species composition and density. This floristic change has been attributed, in part, to livestock grazing. The area has been overgrazed by cattle, sheep, and horses since the 1850's. Examination of livestock use in some of this area plus changes in plant densities and species composition indicate that adequate nutritional forage for tortoises may be lacking because of past overgrazing practices (Hohman and Ohmart 1978).

Vehicle free-play in tortoise habitat results in cumulative adverse impact to tortoise habitat. Impacts vary from minor habitat alteration and vehicle route proliferation to total denudation of extensive areas created by intensive vehicle play, parking, and camping. Concentrated vehicle play areas may eliminate all but the most hardy shrubs. Other impacts include soil compaction and erosion. Tortoises suffer from loss of forage, loss of vegetative cover, and loss of burrow sites and then become subject to increased mortality from crushing, collection, and vandalism (Sievers et al. 1988).

The increasing use of off-road vehicles appears to be having a significant effect on tortoise abundance and distribution. Not only may direct mortality result through crushing of tortoises either above ground or in their burrows, but the desert ecosystems may be degraded as a result of off-road vehicle use (Luckenbach 1982). Growth of annuals and herbaceous perennials may be severely reduced. The basic energy fixation and transfer systems of the desert can be disrupted or destroyed by vehicular activities. The tortoises in the St. George area of Utah are particularly vulnerable because of their proximity to an expanding urban population.

Competitive off-highway vehicle racing events adversely impact tortoise habitat. They often involve several hundred race participants and thousands of spectators. The camping and race start and finish areas receive intensive vehicle use and become devoid of vegetation. Tortoises are eliminated from these areas entirely due to the loss of food, cover, and burrow sites. Affected areas become enlarged with continued use (Sievers et al. 1988).

Competitive off-highway vehicle racing events have adversely impacted tortoise habitat in Nevada. Vehicles operated by racers and pit crews, as well as spectators, have been known to cut across desert habitat off-road, and racers frequently pass other vehicles in vegetated areas (Burge 1986; U.S. Fish and Wildlife Service 1989).

Vehicle route proliferation has occurred in many areas and can result in a significant cumulative loss of habitat. Human access increases the incidence of tortoise mortality from collection, gunshot, and crushing by vehicles. Soil compaction results in loss of vegetation and increases in erosion (Sievers et al. 1988).

Road construction and vehicle use appear to have a long-ranging impact on the tortoise. Besides the immediate loss of tortoise habitat from road construction, paved roads and vehicular traffic affect tortoise populations within about one kilometer (km) (0.62 mile) of a road. For new roads, the extent of impact is up to 0.4 km (0.29 mile) away, while older roads may reduce tortoise numbers up to 2 km (1.24 miles) away (Nicholson 1978).

Large surface disturbances (e.g., power plants, mining, agricultural developments, military activities, and urbanization) cause long-term, permanent loss of habitat. Both large and small developmental activities often induce further surface disturbing activities with resulting habitat loss and tortoise population reduction. Increased human activity results in increased vehicle kills, vandalism, and collecting of tortoises (Sievers et al. 1988).

The metropolitan Las Vegas, Nevada, area has experienced rapid expansion in recent years, climbing from 241,000 people in 1980 to 335,000 in 1987; an increase of 28 percent (Walker and Cowperthwaite 1988). In the four years between 1982 and 1986, 10,000 acres of desert (tortoise habitat) were converted to urban uses (Clark County Department of Comprehensive Planning, pers. comm. 1989). City and county planners assume the ultimate limits of growth are set at the effective topographic limits of construction; planning maps indicate that the metropolitan area could eventually cover approximately 390 square miles (Clark County Regional Flood Control District 1986).

In northeast Arizona, additional habitat loss and fragmentation has occurred from mining, off-road vehicle activities, road and powerline construction and maintenance, agricultural development, and commercial, residential, and recreational developments. Currently, there is a proposal to develop 2,000 acres of tortoise habitat near Littlefield, Arizona for commercial purposes. Other developments are also planned for this area. Long-term plans call for development of a community of 250,000 people in the Littlefield area. Other potential habitat degradation activities include a BLM proposal for a utility corridor alternative across the Beaver Dam Slope in Arizona that would be two miles wide.

Land exchanges may result in habitat loss and increased fragmentation of

populations. Even where tortoise habitat is exchanged by the BLM for other tortoise habitat, there is an increased likelihood of development, resulting in loss of habitat, on the new private holdings (Sievers et al. 1988).

Three thousand sixty seven acres of moderate tortoise density lands, west of Las Vegas, Nevada, were recently transferred from BLM to Summa Corporation. The Desert Tortoise Council (Council) estimated that from 300 to 800 tortoises would be displaced by the exchange, and 3,470 acres of crucial tortoise habitat, as defined by the Council, would be lost to private development (Desert Tortoise Council 1987).

Recent legislation directs the Secretary of the Interior (Secretary) to sell 3,700 acres of moderate-to-high tortoise density lands, 20 miles northeast of Las Vegas, to Clark County. The Secretary is also authorized to offer for sale up to 17,000 additional acres in the same area (Pub. L. 101–67. Apex Project, Nevada Land Transfer and Authorization Act of 1989. July 31, 1989).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Desert tortoises have long been a popular pet in the southwest. It is not currently known to what extent collecting has impacted wild populations. It is estimated that at least 100,000 desert tortoises exist in captivity. Many tortoises held in captivity, however, are known to exhibit signs of the contagious Respiratory Disease Syndrome. The release of diseased captive tortoises is considered by the BLM to be the source of introduction of the currently identified Respiratory Disease Syndrome found in wild populations.

Vandalism, including shooting and crushing of tortoises under vehicles, has been documented by the BLM and is considered a factor in reducing the number of tortoises in their natural habitat. BLM studies in the western Mojave Desert of California on 11 permanent study plots showed 14.3 percent of the carcasses with evidence of gunshot. At one plot, carcasses with evidence of gunshot was as high as 28.9 percent (Sievers et al. 1988).

Loss of tortoises from vandalism has also been reported in northwest Arizona. Approximately 10 percent of shell remains from a tortoise study plot near Littlefield, Arizona, had gunshot wounds (Charles Pregler, BLM 1989).

Luckenbach (1982) concluded that human activity is the most significant cause of tortoise mortality. The Beaver Dam Slope subpopulation of the Mojave tortoise population has been subjected to collecting pressure in the past, and although the species is now protected in Utah, some collecting may still occur. On the Beaver Dam Slope in Arizona, heavy collection for the pet trade took place until the 1970s (Coombs 1977). Automotive stations paid children to collect tortoises and sold them to passing motorists (Coombs 1977a).

C. Disease or Predation

Predation of young tortoises by ravens (*Corvus corax*) is a growing threat to the species. Common raven populations in the southwestern deserts have increased significantly since the early 1940's, presumably in response to expanding human use of the desert. Sewage ponds, landfills, power lines, roads, and other uses have increased available foraging, roosting, and nesting opportunities for ravens. In recent years, raven predation on juvenile desert tortoises has increased to a point where recruiting of young tortoises into the adult population has been significantly reduced or eliminated in certain localities. Ravens are highly adaptable as to their feeding patterns, and concentrate on easily available seasonal food sources such as juvenile tortoises, including live, healthy animals. In the Desert Tortoise Natural Area, a protected area of 21,320 acres in the western Mojave Desert in California, even though tortoise eggs are still being laid and hatched, as shown by the presence of very small tortoises, raven predation appears to have severely curtailed the recruitment of the young into the adult population (BLM 1989).

The BLM's 1989 Environmental Assessment (BLM 1989) for the Selected Control of the Common Raven to Reduce Desert Tortoise Predation in the Mojave Desert, California, further summarizes the annual trend (percent annual change) and the change (percent) of raven numbers in the last 20 years. In the Mojave Desert, raven populations have increased 1528 percent between 1968 and 1988, at a rate of nearly 15 percent per year. In the Colorado-Sonoran Deserts, raven populations have increased 474 percent in 20 years, at a rate of over 9 percent per year. In the Great Basin Desert, raven populations have increased by 168 percent in the last 20 years, at a rate of over 5 percent per year. In the Southern California Basin, raven populations have increased by 328 percent, at a rate of over 7.5 percent per year.

In 1989, BLM funded a tortoise study at the Piute Valley study plot in Nevada. Preliminary indications include a relatively large number of young tortoise mortalities due to ravens. The carcasses have not yet been extensively examined in the laboratory. Evidence of raven predation on young tortoises at another study plot (Christmas Tree Pass in Nevada) was observed in 1986, as evidenced by tortoise remains around a raven nest and roost site (Sid Sloan, BLM, pers. comm. 1989).

Predation studies on the Mojave population of the tortoise in Arizona have not been formally conducted. The proximity of tortoises to local dumps and a dairy, however, indicates that increased predation by ravens on juvenile tortoises, if not already a problem, may result in increased mortality of tortoises in the future.

A new threat to certain desert tortoise subpopulations has recently been identified. A fatal disease, currently referred to as Desert Tortoise Respiratory Disease Syndrome, has been observed in animals in a number of widely dispersed locations throughout the Mojave Desert. It currently appears to be spreading and the mature, reproductively active segment of the population may be most vulnerable.

The disease has been known for some time in captive tortoises throughout the world (Snipes et al. 1980), although the exact cause, or etiological agent, has not been clearly identified. The disease is probably the result of multiple factors working in concert. It is known that the disease may be readily transmitted from an infected tortoise to a non-infected tortoise (Rosskopf 1988). A virus (herpes-like) has been observed by electron microscopic studies in other species of turtles with respiratory tract infections (Jacobson et al. 1986). A paramyxovirus is also considered as a primary pathogen capable of initiating the disease (Jacobson, pers. comm., in Rosskopf 1988). Infected animals may not necessarily exhibit obvious signs of the disease.

Once the disease is initiated, bacteria may invade and become the primary pathological agent. *Pasturella testudinatus* was recently isolated from a series of sick tortoises collected for disease study from the Desert Tortoise Natural Area in California. Species of *Pasturella* bacteria are commonly associated with disease syndromes initiated or enhanced by other predisposing factors, including poor nutrition, stress, and immune system compromise.

The disease appears to be spread via physical contact between infected and non-infected animals (Rosskopf 1988). Adult male tortoises may contact many females in a single breeding season and, thus, the occurrence of the disease in the adult breeding population would reinforce the conclusion that direct nose

contact during courtship activities could spread the pathogen to susceptible tortoises. Once the disease is contracted, there appears to be little chance of full recovery and the affected individual eventually becomes debilitated and dies. Even individuals given extensive treatment in captivity usually succumb to the disease eventually. Furthermore, if an individual appears to overcome the disease, relapse may occur under stress conditions (Rosskopf 1988).

Although the transmittance of an infectious agent from one tortoise to another occurs by contact, the actual infection of the newly inoculated individual may be associated with other factors that increase its susceptibility. Some of the original information published about this disease suggested a nutritional and/or stress-related cause with a secondary bacterial infection of debilitated animals (Fowler 1977). The combination of an infectious agent along with lowered resistance is typical of these types of disease syndromes in many other animals.

Based on current knowledge of the incidence, morbidity, and the mortality rates, the disease appears to be escalating in surveyed populations in the western Mojave Desert. The disease was first recognized as a major problem in wild populations in the spring of 1988 (Fauna West Wildlife Consultants 1989). Signs of the disease were observed in up to 46 percent of adult tortoises examined during surveys of the Desert Tortoise Natural Area in the western Mojave Desert in southern California in the spring of 1988. In one portion of this range, the infection rate went from 9 percent in a 1988 survey to 52 percent of all tortoises in a 1989 survey. A loss of about 20 percent of the marked tortoise population with disease signs occurred in one year in this plot.

While not all populations surveyed have such high mortality rates, these figures demonstrate the potential impact the disease can have on any given area. Infection rates in multiple grid areas in the southern California study area range from 7 to 50 percent. The disease signs have also been observed in individual tortoises from a variety of populations (Berry 1989) including the Fremont Valley (50 percent infection rate), Saguara National Monument in Arizona (2 of 12 radio-tagged infected, and died), and Beaver Dam Slope, Utah-Arizona (10 to 20 percent infection rate with high mortality in radio-tagged animals). Interviews of personnel at veterinary hospitals in the Las Vegas, Nevada, area by Service personnel have revealed that most cases of Respiratory Disease Syndrome are found in captive tortoises, but that wild tortoises have been brought in with signs of respiratory disease. The potential exists for the Respiratory Disease Syndrome to reach epidemic proportions throughout the Mojave population. There appear to be no natural barriers that would prevent transfer of infectious agents from California subpopulations to Nevada, Utah, and Arizona subpopulations in the Mojave desert. The release of diseased captive animals may, however, spread the disease faster than the natural movement of tortoises between States.

In addition to the identified respiratory disease in the Beaver Dam Slope subpopulation of the Mojave tortoise population, an apparent nutritional disease causing ostesoporosis of the bones has been identified (Jarchow 1988).

Berry and Coffeen (1987) analyzed 100 remains of desert tortoises collected between 1982 and 1986 on the Beaver Dam Slope, Utah. Almost all of the remains were collected from two permanent study plots: Woodbury-Hardy and Beaver Dam Slope. Of the 72 tortoises found on the Woodbury-Hardy plot and one off the plot, fifteen (20.6 percent) of the specimens showed thinning of the plastron and/or carapace, holes in the bone, or a honecomb structure. An additional five specimens (6.9 percent) had deformed bones (pelvic girdle) or eroded bones. Another 15 tortoises (20.6 percent) showed no evidence of abnormalities or thinning of bones. The remaining 38 specimens (52 percent) could not be evaluated. Of the 23 tortoises from the Beaver Dam Slope plot and 5 from nearby, 9 (32.1 percent) showed evidence of thin bones and/or holes on the plastron and/or carapace or honecombing on the girdles. Nine (32.1 percent) had normal bones and an additional nine could not be classified.

In 2,300 tortoise specimens observed in California, Berry found very few cases of bone abnormality, bone disease, and thinning of bones in young individuals. In contrast, young to middle-aged tortoises from Utah were found in substantial numbers with thin bones or bone disease. Dr. J. Fischer, an orthopedic surgeon, speculated that poor nutrition was the cause for thin bones and osteoporosis in young tortoises.

A study by Jarchow (1987) indicated that osteoporosis (porous bones) and associated osteomalacia (soft bones) in tortoise shells and skeletons found on the Beaver Dam Slope could be attributed to long-term malnutrition. He suggested that the reduction in abundance of bush muhly may be the primary cause. This perennial grass is highly palatable to livestock, as well as to the tortoise. Bush muhly, once occurred in extensive stands throughout the southwest, but is now found only in the protection of shrubs due to grazing pressure (Cronquist et al. 1977).

D. The Inadequacy of Existing Regulatory Mechanisms

All four States in which the Mojave tortoise population occurs have laws that provide varying levels of protection for the desert tortoise. Even with State protective measures, subpopulations of the tortoise have continued to decline.

State of Nevada laws concerning fish, game, and watercraft, as amended, afford limited protection to the desert tortoise. Nevada Revised Statutes (NRS), section 501.110.1(d) sets forth that reptiles must be classified as either protected or unprotected. NRS section 501.110.2 states that protected wildlife may be further classified as either sensitive, threatened, or endangered. The Nevada Administrative Code (NAC), section 503.080.1(a) classifies the desert tortoise as protected and rare outside the urban areas of Clark County (Las Vegas). NRS section 503.597, states that it is unlawful, unless with written consent of the Nevada Department of Wildlife, to transport a desert tortoise from one portion to another portion of the State or across State lines.

The California Fish and Game Commission adopted a regulation change on June 22, 1989, to amend the California Code of Regulations, section 670.5(b)(4) of title 14, to add the desert tortoise as a State threatened species. Under the Fish and Game Code, Article 3, section 2080 prohibits the import or export of endangered or threatened species. This section also indicates that no person shall take, possess, purchase, or sell within the State, any listed species, or any part or product thereof, except as otherwise provided in State law or regulation.

The California Fish and Game Code, Article 4, section 2090 requires that each State agency shall consult with the California Department of Fish and Game to ensure that any action authorized, funded, or carried out by that State lead agency is not likely to jeopardize the continued existence of any State listed species.

On January 1, 1988, the Arizona Game and Fish Commission (Commission) prohibited the take of desert tortoises from the wild (Arizona Game and Fish Commission 1989). The Commission also prohibits the sale of tortoises and the export of tortoises from the State. Prior to that date, anyone with an Arizona

hunting license could take and possess one tortoise for each person in that household. No provisions have been made to permit or otherwise identify those tortoises that were in possession prior to January 1, 1988. Thus, enforcement of the State ban on take may not be possible unless the actual taking of a tortoise from the wild is observed. There is no State authority in Arizona to regulate the take of desert tortoise habitat.

Unlike many other States, Utah does not have special regulations designating certain species as either threatened or endangered, thereby affording them additional protection. All Utah wildlife species are classified as prohibited, controlled, or noncontrolled. The desert tortoise is considered a "prohibited reptile" under Utah Rule *R608–3 Collection, Importation, Transportation, and Subsequent Possession of Zoological Animals* (Utah Division of Wildlife Resources 1987). Prohibited species are zoological animals that are prohibited from collection, importation, transportation possession, sale, transfer, or release because they pose unacceptable disease, ecological, environmental, or human health or safety risks. No state regulations exist to stop loss of tortoise habitat through land development or other habitat degradative actions.

E. Other Natural or Manmade Factors Affecting its Continued Existence

An ancillary effect of continued declines in populations and loss of habitat is the fragmentation of remaining populations. Long-term survival of these fragmented populations will be aggravated by normal random fluctuations in the population and environment that could lead to extirpation of subpopulations.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Mojave population of the desert tortoise in determining to propose this rule. Based on this evaluation, the preferred action is to list the Mojave population of the desert tortoise as endangered. The Act states that the term "endangered species" means any species that is in danger of extinction throughout all or a significant portion of its range. Given the loss of a substantial number of tortoises due to the respiratory disease, loss and degradation of habitat over much of their range, and losses due to raven predation, it is considered that some subpopulations could be extirpated within one year. If the declining trend is not turned around, eventual extinction of the population may be unavoidable.

Listing of Sonoran Population Still Precluded

The Service declined to emergency list the Sonoran population of the desert tortoise in response to the petition. The rationale leading to this decision was as follows:

1. Historically, desert tortoises in the Sonoran population occur in numerous small groups, more or less patchy or disjunct, inhabiting steep-sided canyons. This habitat is less subject to disturbance than is more level terrain.

2. The very patchiness of the distribution in the Sonoran population leads the Service to believe that the Respiratory Disease Syndrome affecting other subpopulations will not likely reach the epidemic proportions that it has in locations like the Desert Tortoise Natural Area in California. Although a few instances of a respiratory disease have been documented in the Sonoran population and are of concern to the Service, it appears that respiratory disease: (a) Is usually present in tortoise populations to varying degrees; (b) has not shown any evidence of becoming pandemic; (c) has not been shown to be Respiratory Disease Syndrome; and (d) is currently being addressed by the Service and the Arizona Game and Fish Department, who will continue to gather and evaluate data. A report on the results of these studies will be available in January 1991.

The report will contain information needed to determine whether the Sonoran population of the desert tortoise warrants listing. All available information on distribution, abundance, and threats will be summarized. This will include review of published and unpublished information and preparation of maps overlaying tortoise distribution with projected land use patterns. Results of field work to determine population status and trend with emphases on reproduction, disease, and mortality will be determined from revisiting previously sampled sites.

Similarity of Appearance Treatment of the Sonoran Population

Section 4(e) of the Endangered Species Act, as amended, provides that the Secretary of the Interior may, by regulation of commerce or taking, and to the extent he deems advisable, treat any species as an endangered or threatened species even though it is not listed pursuant to section 4(a)(1) of the Act if he finds that: (a) Such species so closely resembles in appearance an endangered or threatened species that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species; (b) the effect of this substantial difficulty is an additional threat to the endangered or threatened species; and (c) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of the Act.

The Service finds that there are no visual differences, readily discernible by law enforcement personnel or the general public, between the tortoises in the Mojave and Sonoran populations, that the similarity of appearance represents an additional threat to the Mojave population, and that treating the Sonoran population as threatened due to similarity of appearance, when located outside its natural range, would facilitate the enforcement of prohibitions under the Act regarding illegal trade in or possession of endangered Mojave desert tortoises. Treating the Sonoran population as threatened due to similarity of appearance when outside its natural range would eliminate the necessity of Service special agents having to determine the origin of each desert tortoise prior to enforcing the prohibitions in section 9 of the Act. Inability of the Service to enforce the prohibitions in the Act would represent an additional threat to the listed Mojave population of the desert tortoise. By treating members of the Sonoran population of tortoises as threatened under the similarity of appearance provisions of the Act, when located outside their natural range, the Service believes that enforcement problems can be minimized, while at the same time, the conservation of listed Mojave populations can be ensured.

Reclassification of the Beaver Dam Slope Population from Threatened to Endangered

The Beaver Dam Slope population of the desert tortoise was listed as threatened with critical habitat in 1980. The declining trend of this population appears to be continuing despite the protection afforded by the Endangered Species Act and efforts of State and Federal agencies to reverse the downward trend.

Minden and Keller (1981) surveyed a one square mile plot in the Woodbury Desert Study Area, which is located within designated critical habitat for the tortoise in southwestern Utah. They estimated a density of 109 to 136 tortoises per square mile based on the 74 live wild animals that were found. The average mortality rate for 1980 and 1981 was 6 percent.

The same one square mile study plot was resurveyed in 1986 (Welker 1986). Preliminary results indicate an estimated reduction of over 50 percent in numbers from Minden and Keller's work in 1981. The data in Welker's draft report indicates that only 27 tortoises were captured within the study plot; i.e., 6 released captives and 21 wild tortoises. The density of tortoises within the study area was estimated at between 34 and 47 per square mile. The population was dominated by adult (61.9 percent) and male (77 percent) tortoises. This is a complete reversal of the sex ratios found by Woodbury and Hardy (1948) of 36 percent males and 64 percent females. An animal population weighed heavily towards males is an indication of a population in poor reproduction condition. The average annual mortality rate in 1986 was 22 percent with the majority of deaths occurring in juvenile and female tortoises. This rate is considered high when compared to an average annual mortality rate of 1 to 5 percent in 1948; 6.86 percent by Coombs (1977b); and 6 percent in 1981.

A 50 percent population decline of the desert tortoise on a study plot on the Beaver Dam Slope, Utah has been documented between 1981 and 1986. This data appears to be representative of a continuing decline of the entire Beaver Dam Slope subpopulation of Mojave desert tortoises. The Act states that the term "endangered species" means any species or vertebrate population which is in danger of extinction throughout all or a significant portion of its range. As previously discussed herein, given the loss of a substantial number of Beaver Dam Slope tortoises due to disease, loss and degradation of habitat over much of their range, losses due to raven predation, and an escalating decline in the population, it is considered that the Beaver Dam Slope subpopulation of the Mojave desert tortoise population is in imminent danger of extinction.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time a species is proposed to be endangered or threatened.

Critical habitat was designated for the Beaver Dam Slope subpopulation of the Mojave desert tortoise in 1980. The status of this previously designated critical habitat would not be changed with this proposal.

The Service finds that designation of critical habitat for the remainder of the Mojave desert population is not presently determinable. The Service's regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. The range of the Mojave desert tortoises is extensive. Much of this habitat has been fragmented and degraded by a number of land-disturbing activities. Some remaining areas of good habitat are isolated from each other or are of such small size as not to support viable subpopulations of the tortoise. The specific size and spatial configuration of these essential habitats, as well as vital connecting linkages between areas necessary for ensuring the conservation of the Mojave desert population throughout its range, cannot be determined at this time.

During the proposed comment period, the Service will seek additional agency and public input on critical habitat, along with information on the biological status of and threats to the Mojave desert tortoise. The Service intends to use this and other information in formulating a decision on critical habitat designation for the Mojave population of the tortoise.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing.

Such increased recognition and conservation efforts would provide a means to ensure survival for the desert tortoise. Available funding would be used on research to determine the causes of and possible treatments for the disease currently infecting tortoise populations and to determine whether the disease can be passed on to hatchlings by infected females. Available funding would also be used for, but would not necessarily be limited to, the identification and isolation of healthy populations, carrying out predator control to reduce loss of immature tortoises, public education to discourage further releases of diseased captive tortoises, and to address habitat issues including land acquisition, fencing, and habitat improvement.

The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Regulations governing these conferences are found at 50 CFR 402.10. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

At least 50 percent of occupied habitat within the range of the Mojave population of the desert tortoise is managed by the BLM. Other Federal managers of tortoise habitat include the Department of Defense, National Park Service, and the Fish and Wildlife Service. Tortoises are also found on lands managed by Indian tribes. Federal activities may include, but may not be limited to, actions resulting in grazing, off-highway-vehicle use, mining, construction of developments and rights-of-way, and military activities.

The act and implementing regulations found at 50 CFR part 17 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale any endangered species in interstate or foreign commerce. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been illegally taken. Certain exceptions apply to agents of the

Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing such permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

All *Gopherus* tortoises, including the desert tortoise, were listed on July 1, 1975, as Appendix II species under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES Convention). The only exception within the genus is *G. flavomarginatus*, which was listed as an Appendix I species. The CITES Convention, as implemented by the Act and various regulations (50 CFR part 23), imposes restrictions on importation and exportation of Appendix I and II species.

Status of Feral Tortoises and Tortoises Currently Held in Captivity

Feral desert tortoises, which have been released inside the native habitat of the Mojave desert tortoise, would be classified endangered species in the area north and west of the Colorado River and would be protected under the Act.

Under section 9(b)(1) of the Act, prohibitions applicable to the Mojave population will not apply to tortoises that were held in captivity or in a controlled environment on the date of the publication of the emergency rule (August 4, 1989), provided, that such holding and any subsequent holding or use of the tortoise was not in the course of a commercial activity.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions for the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final action concerning this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, pursuant to the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Regional Director (Attention: Listing Coordinator) at the address provided above (**ADDRESSES** section).

Author

The primary author of this proposed rule is Miss Jackie Campbell, Division of Endangered Species and Habitat Conservation, Regional Office, U.S. Fish and Wildlife Service, 1002 NE Holladay Street, Portland, Oregon 97232–4181, (503) 231–6131 or FTS 429–6131.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.11(h) by revising the entry for "Tortoise, desert" under REPTILES to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rule
Common name	Scientific name						
REPTILES							
*	*	*	*	*	*	*	
Tortoise, desert	Gopherus (=Xerobates, =Scaptochelys) agassizii.	U.S.A. (AZ, CA, NV, UT), Mexico.	Entire area, except in AZ, south and east of the Colorado River, and Mexico.	E	103,357	17.95(c)	NA.
Do	do	do	U.S.A. (AZ, south and east of Colorado River) and Mexico when found outside of AZ, south and east of Colorado River, or Mexico.	T(S/A)		NA	17.42(e).
*	*	*	*	*	*	*	

3. It is further proposed to amend § 17.42 by adding a new paragraph (e) to read as follows:

§ 17.42 Special rules—reptiles.

* * * * *

(e) Desert tortoise (*Gopherus (=Xerobates, =Scaptochelys) agassizii*)

(1) *Definition.* For the purposes of this paragraph (e) "desert tortoise" shall mean any member of the species *Gopherus (=Xerobates, =Scaptochelys) agassizii*, whether alive or dead, and any part, product, egg, or offspring thereof, found outside of Arizona (south and east of the Colorado River) and Mexico, regardless of natal origin or place of removal from the wild.

(2) *Applicable provisions.* The provisions of § 17.21–17.23 shall apply to any desert tortoise subject to this paragraph (e).

Dated: October 6, 1989.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 89–24252 Filed 10–12–89; 8:45 am]

BILLING CODE 4310–55–M