the daily land use fee and then multiplying the daily land use fee by the number of days of significantly restricted access to, or occupancy of, the recreation residence. If significantly restricted access to, or occupancy of, the recreation residence includes part of one day, that day shall be counted as a whole day. A temporary land use fee reduction during significantly restricted access to, or occupancy of, a recreation residence shall be applied as a credit to the annual land use fee for the recreation residence permit for the following year.

Homer Wilkes,

Under Secretary, Natural Resources and Environment.

[FR Doc. 2023–21564 Filed 9–29–23; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Ch. I

[Docket ID FEMA–2023–0026]

RIN 1660–AB12

FEMA Proposed Policy: Federal Flood Risk Management Standard (FFRMS)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) is accepting comments on the proposed FEMA policy, *Federal Flood Risk Management Standard (FFRMS).* This proposed policy would provide detail, consistent with applicable regulations, on applicability, processes, resources, and responsibilities for implementing the FFRMS as part of FEMA's 8-step decision making process for carrying out the directives of Executive Order 11988, Floodplain Management, as amended.

DATES: Comments must be received by December 1, 2023.

ADDRESSES: You may submit comments, identified by Docket ID: FEMA–2023–0026, via the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Portia Ross, Policy and Integration Division Director, Office of Environmental Planning and Historic Preservation, Resilience, DHS/FEMA, 400 C St. SW, Suite 313, Washington, DC 20472–3020. Phone: (202) 709–0677; Email: *fema-regulations@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: FEMA is proposing to issue a policy complementary to 44 CFR part 9, Floodplain Management and Protection of Wetlands, which governs FEMA's implementation the Federal Flood Risk Management Standard (FFRMS). This policy would facilitate implementation of FFRMS and bolster the resilience of communities and Federal assets against the impacts of flooding.

Consistent with a proposed rule that is published elsewhere in this issue of the **Federal Register**, this proposed policy would require that FEMA determine the appropriate vertical flood elevation and corresponding horizontal FFRMS floodplain for Actions Subject to the FFRMS using either the Climate Informed Science Approach (CISA), the Freeboard Value Approach (FVA), or the 0.2 Percent Annual Chance Flood Approach (0.2PFA). Under the proposed policy, FEMA would determine the FFRMS flood elevation and corresponding FFRMS floodplain according to CISA for all locations where CISA is available where the best-available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate science exist. When using CISA, for non-critical actions the FFRMS floodplain would be at least as restrictive as the 1% annual chance (AC) flood elevation and corresponding horizontal floodplain, and for critical actions the FFRMS floodplain would be at least as restrictive as the 0.2% AC flood elevation and corresponding horizontal floodplain. For locations where CISA is not available and actionable, FEMA would determine the FFRMS elevation and FFRMS floodplain for non-critical actions by using the area that would be inundated by the lower of the 0.2% AC flood or +2-foot FVA. For critical actions, FEMA would determine the FFRMS elevation and FFRMS floodplain using the area that would be inundated by the higher of the 0.2% AC flood or +3-foot FVA. (For locations where information about the elevation and/or extent of the 0.2% AC floodplain is not available, the FFRMS floodplain would be the +3-foot FVA for critical actions and +2-foot FVA for non-critical actions).

This policy would also outline FEMA's process to identify actions that may receive substantial damage or substantial improvement determinations, require consideration of natural features and nature-based approaches as alternatives to a proposed action, explain requirements to minimize flood risk, and encourage early coordination when multiple Federal agencies are jointly engaged in an action to ensure a consistent approach to determine which floodplain determination is applied.

Authority: Executive Order 11988, Floodplain Management, as amended and implementing regulations of 44 CFR part 9, among other authorities listed in the proposed policy.

Deanne B. Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–21093 Filed 9–29–23; 8:45 am]

BILLING CODE 9111–66–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 205, 260, 261, and 263

RIN 0970–AC97

Strengthening Temporary Assistance for Needy Families (TANF) as a Safety Net and Work Program

AGENCY: Office of Family Assistance (OFA); Administration for Children and Families (ACF); Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: ACF proposes to amend the Temporary Assistance for Needy Families (TANF) program regulations to strengthen the safety net and reduce administrative burden. This NPRM encompasses a package of reforms to ensure TANF programs are designed and funds are used in accordance with the statute. In addition, the package includes provisions that are more technical in nature and are designed to reduce administrative burden and increase program effectiveness.

DATES: In order to be considered, the Department must receive written comments on this NPRM on or before December 1, 2023.

ADDRESSES: ACF encourages the public to submit comments electronically to ensure they are received in a timely manner. You may submit comments, identified by [docket number] and/or Regulatory Information Number (RIN) 0970–AC99, by any of the following methods:

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

• *Email comments to: TANFquestions@acf.hhs.gov.*

• *Instructions:* All submissions received must include the agency name and docket number ([docket number]) or RIN (0970–AC79) for this rulemaking. All comments received will be posted without change to *https://www.regulations.gov, including any personal information provided.*

FOR FURTHER INFORMATION CONTACT: The Office of Family Assistance, ACF, at *TANFquestions@acf.hhs.gov or 202–401–9275.* Deaf and hard of hearing individuals may call 202–401–9275 through their chosen relay service or 711 between 8 a.m. and 7 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

List of Proposals

This NPRM would: (1) establish a ceiling on the term ''needy''; (2) clarify when an expenditure is ''reasonably calculated to accomplish a TANF purpose''; (3) exclude as an allowable TANF maintenance-of-effort (MOE) expenditures cash donations from non-governmental third parties and the value of third-party in-kind contributions; (4) ensure that excused holidays match the number of federal holidays, following the recognition of Juneteenth as a federal holiday; (5) develop new criteria to allow states to use alternative Income and Eligibility Verification System (IEVS) measures; (6) clarify the ''significant progress'' criteria following a work participation rate corrective compliance plan; (7) clarify the existing regulatory text about the allowability of costs associated with disseminating program information.

Background

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 created TANF, repealing the Aid to Families with Dependent Children (AFDC) and related programs. The TANF program provides a fixed block grant of about $16.5 billion to states, territories (Guam, the Virgin Islands, and Puerto Rico), and the District of Columbia. Additionally, federally recognized American Indian tribes and Alaska Native organizations may elect to operate their own TANF programs.[1] TANF's annual funding has never been adjusted for inflation in its 27-year history and is now worth almost 50 percent less than when the program was created.

The TANF statute at 42 U.S.C. 601(a) and 604(a)(1) provides that TANF grants must be used in any manner reasonably calculated to accomplish one or more of the following four purposes:

(1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and

(4) encourage the formation and maintenance of two-parent families.

Within this statutory framework, state TANF programs provide a range of benefits and services that can serve as a critical support to families experiencing economic hardships, including the provision of cash assistance, employment and training assistance, and related services. Pursuant to 42 U.S.C. 604(a)(2), a state may also use its TANF grant for expenditures that were authorized under the prior AFDC, Job Opportunities and Basic Skills Training (JOBS), or Emergency Assistance (EA) programs as reflected in a state's plan on certain dates specified in the statute.

To avoid incurring a penalty under 42 U.S.C. 609(a)(7), a state must meet a MOE requirement each fiscal year, that is, expenditure of state funds in TANF or a separate state program for certain benefits and services. As established in 42 U.S.C. 609(a)(7), each state must expend funds that meet a TANF purpose for eligible families in an amount equal to at least 80 percent of state spending in FY 1994 for AFDC programs related to cash assistance, emergency assistance, job training, and child care. This required amount falls to 75 percent if the state meets its TANF work participation requirement for the fiscal year.

Work participation rates measure the degree to which a state engages families receiving assistance funded by TANF or MOE in work activities specified under federal law. A state faces financial penalty for a fiscal year if it does not meet both an overall work participation rate of 50 percent and a two-parent work participation rate of 90 percent in each case, minus any caseload reduction credit. 42 U.S.C. 609(a)(3). A state's caseload reduction credit for a fiscal year equals the percentage point decline (for reasons other than changes in eligibility rules) in its average monthly caseload between FY 2005 (the current base year) and a comparison year. The Fiscal Responsibility Act of 2023 recalibrates the base year for caseload reduction from FY 2005 to FY 2015, starting in FY 2026. In addition, the ''excess MOE'' provision in TANF regulations allows a state to increase its caseload reduction credit, and thus lower its work participation rate target further, by spending more MOE funds than is required.

While states must adhere to the work participation rate and other federal requirements, such as a 60-month lifetime limit on an adult receiving federally funded assistance, states otherwise have flexibility in designing their TANF programs. Each state decides on the type and amount of assistance payments, the range of other services to be provided, and the rules for determining who is eligible for benefits within certain federal statutory parameters.

Statutory Authority

This proposed regulation is issued under Title IV of the Social Security Act, 42 U.S.C. 601 *et seq.* As explained in the preamble to the 1999 TANF final rule, the Secretary of Health and Human Services has authority to regulate in areas where the statute specifies and where Congress has charged the Department of Health and Human Services (HHS or the Department) with enforcing penalties. 64 FR 17725, April 12,1999.

Note that here and below we use the term ''we'' in the regulatory text and preamble. The term ''we'' is synonymous with the Secretary of the Department of Health and Human Services or any of the following individuals or agencies acting on his behalf: the Assistant Secretary for Children and Families, the Department, and the Administration for Children and Families.

The first two proposals, both related to allowable spending, would clarify the criteria the Department will use when applying the misuse of funds penalty in 42 U.S.C. 609(a)(1). These proposals would help ensure that states expend TANF funds in accordance with the provisions of Title IV–A. The statute at 42 U.S.C. 609(a)(1) requires the Department to assess a misuse of funds penalty when TANF funds have ''been used in violation of this part.'' As noted in the 1999 preamble, we have an obligation to set out, in regulations, the criteria we will use in carrying out our express authority to enforce certain TANF provisions by assessing penalties in cases where TANF funds were spent

[1] Proposed changes to the TANF regulations are limited to the state regulations at this time. This NPRM does not propose any changes to the tribal TANF regulations. Prior to any changes in tribal TANF regulations, we will engage in tribal consultation.

for unallowable activities. 64 FR 17725, April 12,1999. Essentially, we have the authority and the responsibility to provide notice to grantees of when an expenditure constitutes a misuse of funds made in violation of Title IV–A. We note that this rulemaking is consistent with 42 U.S.C. 617 which provides, in relevant part, that the Department may regulate ''where expressly provided in this part.''

In the preamble to the original TANF final rule (64 FR 17720 *et seq.,* April 12, 1999), we indicated that we would regulate in a manner that did not impinge on a state's ability to design an effective and responsive program. At the same time, we expressed our commitment to ensuring that states are accountable for meeting TANF requirements and indicated that we would gather information on how states were responding to the added flexibility under TANF. We stated that we would consider proposing appropriate legislative or regulatory remedies if we found that states were using their flexibility to avoid TANF requirements or otherwise undermine the statutory goals of the program. A review of state spending patterns suggests that it is the appropriate time to regulate in relation to allowable spending to ensure that the statutory goals of the program are being met.

Under the law, a state participating in TANF must describe in its state plan how it will conduct a TANF program ''that provides assistance to needy families with (or expecting) children and provides parents with job preparation, work, and support services to enable them to leave the program and become self-sufficient.'' 42 U.S.C. 602(a)(1)(A)(i). More than 27 years after the establishment of TANF, state programs have shifted away from a focus on direct cash and employment assistance. Although states are permitted under the statute to determine how much funding to expend on cash assistance, we remind states that there is a large body of research that shows that cash assistance is a critically important tool for reducing family and child poverty.[2] Studies have found that when families receive TANF and are more financially secure, they are less likely to be involved in the child welfare system.[3] In FY 2021, combined federal TANF and MOE expenditures and transfers totaled $30.3 billion. Despite the evidence that cash assistance reduces child and family poverty, of that amount, less than 23 percent was used for cash assistance, compared to 71 percent in FY 1997. In 2020, for every 100 families in poverty, only 21 received cash assistance from TANF, a reduction from 68 families when TANF was enacted in 1996.[4] In 2019, TANF cash assistance served just 21.3 percent of eligible families across the country, compared to 1997 when TANF cash assistance served almost 70 percent of estimated eligible families.[5]

States are also underinvesting in work, education, and training for parents with low incomes as well as critical work supports. We remind states that TANF funds directed to child care can serve as an essential work support to families that helps lift these families out of poverty, expose children to high-quality services during a rapid period of development, and reduce incidences of involvement in the child welfare system.[6]

The TANF statute provides that states can transfer up to 30 percent of their federal TANF block grant funds to the Child Care and Development Fund (CCDF), and they can also spend their federal TANF funds and MOE funds directly on child care. In FY 2021, states transferred approximately $1.16 billion to CCDF. Additionally, states spent $3.75 billion of TANF and MOE funds directly on child care, but approximately half of states chose not to transfer any TANF funds to CCDF. TANF funds transferred to CCDF are subject to CCDF rules—including health and safety requirements. TANF funds transferred to CCDF are also subject to reporting requirements that illustrate the impact of child care funding and allow the public greater visibility into the average subsidy that a family receives, the number of children served, and whether states are reaching particularly vulnerable populations of children, including children with disabilities. A state's expenditure on child care is meaningful as it addresses a cost that is particularly high for needy families. As illustrated by recent research from the President's Council of Economic Advisers, child care costs represent 23 percent of annual expenses for families earning less than $34,000, and 31 percent of annual expenses for families earning under $25,000.[7] However, when states use TANF and MOE funds directly on child care it allows for a substantial amount of federal funding to be spent on child care without any requirement that the children receiving services are in settings that meet basic health or safety standards, potentially putting children at risk. It is also unclear how many children are served with these funds, or where they are served. To the extent that states interested in expending TANF funds on child care did so through transfers to CCDF, it would yield benefits to families that receive higher quality care and improve public awareness of how those funds are spent. The President's Executive Order on Increasing Access to High-Quality Care and Supporting Caregivers encourages the use of TANF funds for high-quality child care as a critical work support for needy families.[8]

Instead of a focus on cash assistance, work, and critical work supports like child care, states are spending TANF and MOE funds on a wide range of benefits and services, including some with tenuous connections to a TANF purpose and, in some instances, providing supports for families with incomes up to 400 percent of the federal poverty guidelines.

To ensure states are spending their funds in accordance with the purposes of TANF, the Department is proposing two changes to clarify allowable expenditures. The first proposed change would establish a federal limit on how states may define the term ''needy'' and the second seeks to clarify how the term ''reasonably calculated to accomplish a TANF purpose'' applies. These changes would also establish criteria for assessing what is and is not an allowable use of funds, and therefore, are within the Department's regulatory authority to enforce the misuse of funds penalty provision at 42 U.S.C. 609(a)(1).

The Department is introducing a third proposed change that would exclude as

[2] D. Thomson, R. Ryberg, K. Harper, J. Fuller, K. Paschall, J. Franklin, & L. Guzman, (2022). Lessons From a Historic Decline in Child Poverty. Child Trends; M.A. Curran, (2022). Research Roundup of the Expanded Child Tax Credit: One Year On. In Poverty and Social Policy Report (Vol. 6, Issue 9).

[3] D.A. Weiner, C. Anderson, & K. Thomas. (2021). *System transformation to support child and family well-being: The central role of economic and concrete supports.* Chicago, IL: Chapin Hall at the University of Chicago.

[4] Aditi Shrivastava and Gina Azito Thompson, ''TANF Cash Assistance Should Reach Millions More Families to Lessen Hardship,'' Center on Budget and Policy Priorities, February 18, 2022, available at: *https://www.cbpp.org/research/income-security/tanf-cash-assistance-should-reach-millions-more-families-to-lessen.*

[5] U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, *Welfare Indicators and Risk Factors, 21st Report to Congress,* April 26, 2022, p. A–12, available at: *https://aspe.hhs.gov/sites/default/files/documents/08b81f08f8a96ec7ad7e76554a28efd1/welfare-indicators-rtc.pdf.*

[6] *childtrends.org/publications/alignment-between-early-childhood-and-child-welfare-systems-benefits-children-and-families.*

[7] *https://www.whitehouse.gov/cea/written-materials/2023/07/18/improving-access-affordability-and-quality-in-the-early-care-and-education-ece-market/.*

[8] *https://www.federalregister.gov/documents/2023/04/21/2023-08659/increasing-access-to-high-quality-care-and-supporting-caregivers.*

allowable TANF MOE expenditures cash donations from non-governmental third parties and the value of third-party in-kind contributions under TANF. The Department has authority to regulate what counts as MOE, consistent with the statutory framework, in order to enforce the MOE penalty at 42 U.S.C. 609(a)(7) and to determine how MOE expenditures factor into the caseload reduction credit pursuant to 42 U.S.C. 607(b)(3)(A). This proposed change would ensure that states themselves are investing in TANF programs and maintaining their own financial commitment to needy families, as intended by Congress, all while maintaining state flexibility.

The fourth proposed change would add an eleventh holiday to the number of holidays that can count toward the work participation rate for work-eligible individuals in unpaid work activities, realigning the provision with the federal holidays since the recognition of Juneteenth as a federal holiday.

The last three proposals would reduce administrative burden, provide clarity, and increase program effectiveness in the TANF program. In the fifth proposal, the Department seeks to develop new criteria to allow states to use alternative Income and Eligibility Verification System (IEVS) measures. Section 1137(a)(2) of the Social Security Act allows for the Department to regulate with respect to the need for alternative verification sources in certain circumstances; this proposal would amend the existing regulation at 45 CFR 205.55(d).

The sixth proposed change would clarify the ''significant progress'' criteria following a work participation rate corrective compliance plan to permit a reduction in the amount of a penalty if a state that had failed both the overall and two-parent work participation rates for a year corrected its overall rate but not the two-parent rate. This proposal falls under the Department's authority to regulate where the Department is charged with enforcing certain TANF provisions (42 U.S.C. 609(a)(3)), and thus fits within the statutory authority granted to the Secretary to regulate state conduct in the TANF program.

The seventh proposed change would clarify existing regulatory text about the allowability of costs associated with providing program information. The regulation at 45 CFR 263.0 (b)(1)(i) currently provides that ''providing program information to clients'' is a program cost and not an administrative cost. We propose to delete that language from (b)(1)(i) and create a new subsection (iii) that clarifies the point that administrative costs exclude the costs of disseminating program information. For example, the cost of providing information pamphlets or brochures about how to reduce out-of-wedlock pregnancies is allowable under purpose three, and the cost of providing information about community resources to needy families or needy parents, pursuant to purposes one and two, respectively, is allowable, whether or not the described community resources themselves are funded by TANF.

The TANF statute sets an administrative cap of 15 percent. 42 U.S.C. 604(b). It provides that a ''State to which a grant is made under section 403 shall not expend more than 15 percent of the grant for administrative purposes.'' 42 U.S.C. 604(b). Section 263.0 implements the cap by making clear which categories of expenditures are program costs that do not count towards the cap, and which qualify as administrative costs and thus count towards the cap. Failure to comply with the administrative cap could lead to a misuse of funds penalty, therefore this proposal falls under the Department's authority to regulate where the Department is charged with enforcing certain TANF provisions (42 U.S.C. 609(a)(3)), and thus fits within the statutory authority granted to the Secretary to regulate state conduct in the TANF program.

Taken together, the seven proposed changes would strengthen TANF's safety net function, ease administrative burdens, and ultimately, improve TANF's ability to serve as a critical support to families experiencing economic hardship to achieve economic mobility.

Section-by-Section Discussion of the Proposed Regulatory Provisions

1. *Establish a ceiling on the term ''needy'' so that it may not exceed a family income of 200 percent of the federal poverty guidelines.*

We propose that, for purposes of allowable TANF expenditures and misuse of funds penalties, state definitions of ''needy'' may not exceed 200 percent of the federal poverty guidelines, *i.e.,* for example, an annual income of $49,720 for a family of three in the 48 contiguous states and the District of Columbia using the federal poverty guidelines for 2023.[9] The federal poverty guidelines are often used for administrative purposes in federal programs and are issued each year in the **Federal Register** by HHS under the authority of 42 U.S.C. 9902(2) (See 74 FR 3424, January 19, 2023). We propose this provision to help ensure that TANF funds are being used to provide services to families that are in fact needy, as contemplated by the TANF statute. Census data from 2021 indicate that 35.0 percent of children, or 25.5 million children, live at or below 200 percent of poverty in the United States.[10]

The TANF statute at 42 U.S.C. 601(a)(1) & (2) specifies that expenditures under TANF purpose one may only be made for ''needy'' families and TANF purpose two may only be made for ''needy'' parents. Generally, MOE must also be spent for ''needy families.'' Accordingly, the term ''needy'' is crucial in determining allowable TANF expenditures under the first two purposes of TANF and expenditures countable toward state MOE requirements. Current regulations do not define the term ''needy'', which means there is presently no federally specified income limit for use of TANF funds under TANF purposes one and two as well as for most MOE expenditures.

This proposed rule would amend § 260.30 to add a definition of ''needy.'' This change would require that state definitions of ''needy'' with respect to all federal TANF and state MOE expenditures that are subject to a required needs standard must be limited to individuals in families with incomes at or below 200 percent of the federal poverty guidelines.[11] A state may use a definition of needy that is at any level at or below 200 percent of the federal poverty guidelines, but a state definition of ''needy'' could not exceed 200 percent of the federal poverty guidelines under this proposed change. The state may continue to establish different standards of need for different services limited to ''needy'' families, but all must

[9] Readers should note the difference between the federal poverty guidelines produced by HHS and the poverty thresholds produced by the Census Bureau. In this NPRM, we use ''the federal poverty guidelines'' which is the version of the federal poverty measure issued each year in the **Federal Register** by HHS under the authority of 42 U.S.C. 9902(2). The federal poverty guidelines are a simplification of the poverty thresholds. The poverty thresholds are issued by the Census Bureau and used mainly for statistical purposes. The federal poverty guidelines are often used for administrative purposes in federal programs, although they are most commonly referred to as ''federal poverty level,'' ''federal poverty line,'' or ''FPL.'' See *https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines* for more detail on the federal poverty guidelines.

[10] Census Bureau poverty estimates are based on the federal poverty thresholds, published by the Census Bureau each year. The Census Bureau poverty thresholds are mainly used for statistical purposes and are a different measure than the federal poverty guidelines.

[11] See *https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines* for more detail on the federal poverty guidelines.

be at or below the 200 percent of the federal poverty guidelines. While the Department does not have the authority to regulate for a minimum standard, we encourage states to set guidelines that do not limit the breadth of eligibility within the proposed 200 percent of federal poverty guidelines. The proposed change would not impact the need for income verification and therefore the Department does not expect it to create significant additional administrative burden. The Department solicits comment on strategies for minimizing administrative burdens in the implementation of this proposed ceiling on the term ''needy.''

We believe that limiting the definition of need to 200 percent of the federal poverty guidelines is consistent with the intent of Congress in establishing TANF. We are mindful that, in TANF, Congress sought to provide increased state flexibility in relation to the prior AFDC program. At the time that TANF was enacted in 1996, the median gross income limit for a family of three in the AFDC Program was $1,079—about equal to 100 percent of the federal poverty guidelines in 1996.[12] Only two states had a gross income limit exceeding 200 percent of the federal poverty guidelines and the great majority of state standards of need were below 150 percent of the federal poverty guidelines. The actual median benefit amount for a family of three with no other countable income was also $389 (36 percent of the federal poverty guidelines).[13] Accordingly, setting a definition of ''needy'' at 200 percent of the federal poverty guidelines sets a reasonable boundary, but still allows for state flexibility far in excess of state practices in the former AFDC program.

The Department notes that the proposed 200-percent limit is consistent with the statutory requirement that TANF funds transferred to the Social Services Block Grant ''shall be used only for children or their families whose income is less than 200 percent of the income official poverty line. . . .'' 42 U.S.C. 604(d)(3)(B). Congress did not set a similar limit on TANF funds not transferred to the Social Services Block Grant; however, the Department notes that the statute referenced ''needy families'' and, at the time TANF was enacted, as noted above, AFDC standards of need in states were much lower than 200 percent of poverty. States would have the flexibility to set standards lower than 200 percent under this proposal and could also choose to set a standard based on a percentage of state median income, as long as the limit corresponded with an amount that was at or below the 200-percent of the federal poverty guidelines standard.

There is currently no regulatory definition of ''needy'' because rather than defining the term ''needy'', the 1999 TANF final rule deferred to state reasonable definitions of the term. This approach centered on state flexibility. The drafters also acknowledged the possibility that we might revisit that decision if we identified situations in which state actions undermined the goals of the program. 64 FR 17725–26, April 12, 1999. Over the last 25 years, all states have maintained initial eligibility income limits for cash assistance below 200 percent of the federal poverty guidelines; however, we have observed that some states have used the flexibility to allow higher-income families to be eligible for programs where a needs standard is required, going beyond the bounds of a reasonable definition of ''needy''.

Many states have used TANF or MOE funds for services other than cash assistance under purpose one and two for families at 300 or 400 percent of the federal poverty guidelines, or even higher. In at least 40 states, ACF identified programs with income limits of over 200 percent of the federal poverty guidelines. There were several different types of programs, including pre-kindergarten, child welfare, tax credits, employment, housing, and emergency assistance. Examples include child welfare services for families up to 500 percent of the federal poverty guidelines and pre-kindergarten for families at 300 percent of the federal poverty guidelines. All these services are generally allowable uses of TANF and MOE funds under purposes one and two; our concern is not the services for which the funds are used, but rather that TANF funds are being expended for programs that are not targeted to needy families as intended by Congress. It is important to understand that an income limit as high as 400 percent of the federal poverty guidelines allows TANF-funded services under TANF purposes one and two to go to families earning roughly $92,000 per year for a family of three. We recognize that families within 400 percent of the federal poverty guidelines may also face hardship, and that programs that offer this support are important investments in child well-being. However, the Department is proposing a ceiling on the term ''needy'' to ensure that TANF funds are expended in accordance with the statutory requirements and to maintain program integrity.

Given the state spending described above, we are proposing this rule because we think states are going beyond the bounds of a reasonable definition of ''needy.'' This proposal would provide clarity on how the Department would assess when an expenditure warranted a misuse of funds penalty, 42 U.S.C. 609(a)(1), because states have expended funds on individuals or families that are not needy within a reasonable definition of the statutory term. As the Department concluded in the 1999 TANF final rule, the Secretary has authority to regulate in areas where the statute specifies and where Congress has charged the Department with enforcing penalties, 64 FR 17725, April 12, 1999.

The preamble to the regulations explained how the Department interpreted its authority and constraints on its authority under 42 U.S.C. 617:

> Under the new section 417 of the Act, the Federal government may not regulate State conduct or enforce any TANF provision except to the extent expressly provided by law. This limitation on Federal authority is consistent with the principle of State flexibility and the general State and congressional interest in shifting more responsibility for program policy and procedures to the States. We interpreted this provision to allow us to regulate in two different kinds of situations: (1) Where Congress has explicitly directed the Secretary to regulate (for example, under the caseload reduction provisions, described below); and (2) where Congress has charged the Department of Health and Human Services (HHS) with enforcing penalties, even if there is no explicit mention of regulation. In this latter case, we believe we have an obligation to States to set out, in regulations, the criteria we will use in carrying out our express authority to enforce certain TANF provisions by assessing penalties.

64 FR 17720, 17725, April 12, 1999.

As noted earlier, this proposed rule is in line with the limitation in 42 U.S.C. 617, because we believe we have an obligation to set out, in regulations, the criteria we will use in carrying out our misuse of funds penalty authority when TANF funds ''have been used in violation of this part,'' meaning where TANF funds are spent for unallowable activities. *Id.*

The Department considered alternatives to this proposal, including determining a standard of need that varies according to the state's cost of living, or an index of the average state median income, as well as other possible limits on the term ''needy'', such as limiting the term to families below 130 percent of the federal poverty guidelines. As previously noted, we are

[12] The AFDC gross income limit equaled 185 percent of a state's standard of need.

[13] See table 8–12 of the 1996 Green Book *https://aspe.hhs.gov/sites/default/files/migrated_legacy_files//155481/08tanf.txt.*

mindful that, in TANF, Congress sought to provide increased state flexibility in relation to the prior AFDC program, where the median gross income limit was about equal to 100 percent of the federal poverty guidelines at that time. Additionally, we noted that a limit at 200 percent of the federal poverty guidelines limit is consistent with the statutory requirement regarding TANF funds transferred to the Social Services Block Grant. Research has shown that parents with incomes below 200 percent of the federal poverty guidelines are more than twice as likely as higher income parents to report at least one form of material hardship, such as those related to housing, food, or medical needs.[14] We welcome comments on the proposed limit of 200 percent of the federal poverty guidelines, which aligns with this research.

2. *Determining when an expenditure is ''reasonably calculated to accomplish a TANF purpose''.*

This proposed rule would amend 45 CFR 263.11 to add a new subsection (c) that sets forth the reasonable person standard for assessing whether an expenditure is ''reasonably calculated to accomplish the purpose of this part'' 42 U.S.C. 604(a)(1). The proposed regulation defines it to mean expenditures that a reasonable person would consider to be within one or more of the enumerated four purposes of the TANF program.

Section 604(a) provides the general rules for how TANF grant funds are expended. Entitled ''Use of grants,'' it provides in subsection (a)(1) that ''[s]ubject to this part,'' a state may use the grant ''in any manner that is reasonably calculated to accomplish the purpose of this part, including to provide low income households with assistance in meeting home heating and cooling costs . . .''. Section 601(a), entitled ''Purpose'' provides that ''[t]he purpose of this part is to increase the flexibility of States in operating a program designed to'' accomplish one or more of the four enumerated statutory purposes: (1) provide assistance to needy families so that children may be cared for in their homes or in the homes of relatives; (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and (4) encourage the formation and maintenance of two-parent families. This regulation proposes a standard the Department will apply in determining whether it considers an expenditure to be ''reasonably calculated to accomplish the purpose of this part.''

This proposal sets forth the standard the Department will apply to determine whether expenditures are not reasonably calculated under section 604(a)(1) and thus warrant a penalty under the misuse of funds penalty authority in section 609(a)(1). As the Department explained in promulgating the 1999 TANF final rule, the Secretary has authority to regulate in areas where the statute specifies and where Congress has charged the Department with enforcing penalties.

In the original TANF final rule (64 FR 17720, April 12, 1999), the Department did not regulate in relation to section 604(a)(1). As we noted then, we ''endeavored to regulate in a manner that does not impinge on a State's ability to design an effective and responsive program.'' *Id.* at 17725. We noted that, in the absence of regulation, we would defer to a state's reasonable interpretation of statutory provisions:

> To the extent that we have not addressed a provision in this final regulation, States may expend their Federal TANF funds under their own reasonable interpretations of the statutory language, and that is the standard that will apply in determining penalty liability.

64 FR 17841, April 12, 1999.

At the same time, the 1999 final rule preamble pointed to instances in which the Department had concluded that certain expenditures could not be reasonably calculated to accomplish the purpose of TANF. At the time the Department issued the regulations, there was particular interest in and concern about the possible use of TANF for foster care maintenance, other out-of-home costs, and use of TANF for juvenile justice expenditures. We expressed in the 1999 final rule preamble that, while certain costs might be permissible under TANF's grandfather clause, such costs are not otherwise allowable under TANF:

> With regard to foster care or other out-of-home maintenance payments, we would note that such costs are not allowable TANF costs under section 404(a)(1) of the Act since they are not reasonably calculated to further a TANF purpose . . .
>
> There are additional costs related to foster care or out-of-home maintenance payments that may be allowable and referred to, in short-hand, as foster care. For example, there are costs for family preservation activities, such as counseling, home visits, and parenting training, that would be allowable TANF costs because they are reasonably calculated to enable a child to be cared for in his or her own home.

64 FR 17762, April 12, 1999.

Subsequently, the preamble explained:

> However, expenditures for residential care as well as assessment or rehabilitative services, including services provided to children in the juvenile justice system, do not meet any of the purposes of the TANF program and would not count toward basic MOE. The principal purpose [] for placement is to protect the child or to protect society because of the child's behavior, not to care for the child in his or her own home (purpose 1). Since the focus is to address the child's needs, expenditures to care for the child in these living situations does not end the dependence of needy parents on government benefits by promoting job preparation, work and marriage (purpose 2). The remaining two purposes do not even remotely relate to this situation.

64 FR 17823, April 12, 1999.

In 2015, the Department reminded states that, ''[a]ny federal TANF expenditures for juvenile justice services . . . will be considered a misuse of TANF funds and subject to penalty action.''[15] While we noted in the 1999 final rule preamble that states have flexibility to design their TANF programs, we also expressed our commitment to ensuring that states were accountable for meeting TANF requirements and indicated that we would gather information on how states were responding to the added flexibility under TANF, 64 FR 17725, April 12, 1999. We wrote that ''we reserved the right to revisit some issues, either through legislative or regulatory proposals, if we identified situations where State actions were not furthering the objectives of the Act'', *Id.* As discussed in detail below, a review of state spending patterns suggests that it is the appropriate time to regulate allowable spending to ensure that states are expending critical TANF funds on expenditures that are reasonably calculated to accomplish one or more of the TANF purposes.

As noted earlier, we believe this rulemaking is in line with the limitation in 42 U.S.C. 617 because the Department has authority and the obligation to assess misuse of funds penalties. Accordingly, we believe we have an obligation to set out, in regulations, the standard we will use in carrying out our misuse of funds penalty authority when TANF funds ''have been used in violation of this part'', meaning where TANF expenditures are not

[14] Michael Karpman, Dulce Gonzalez, Stephen Zuckerman, and Gina Adams, *What Explains the Widespread Material Hardship among Low-Income Families with Children?* Urban Institute, December 2018.

[15] *https://www.acf.hhs.gov/ofa/policy-guidance/tanf-acf-pi-2015-02-prohibition-use-federal-tanf-and-state-moe-funds-juvenile.*

reasonably calculated to meet one or more of the TANF purposes, *Id.* We also view this proposal as providing notice to states of how we intend to interpret the reasonably calculated provision and are not articulating a standard beyond that provided for in the statute.

We are mindful that the TANF statute sought to ''increase the flexibility of states. . .'' and we believe the proposed approach below is fully consistent with the statute. 42 U.S.C. 601(a) (2023). In enacting TANF, Congress was not seeking to and did not provide states with unlimited flexibility, but rather sought to increase the flexibility of states in relation to the program that TANF replaced, the AFDC Program. In the AFDC program, there were detailed and complex federal eligibility rules,[16] highly specific definitions of countable income and specified exclusions and disregards,[17] a detailed federal definition of countable resources,[18] detailed federal rules governing the sanction process,[19] and detailed rules governing multiple other aspects of program operations.[20] In the years prior to TANF enactment, states had repeatedly sought federal waivers in relation to these rules and could only attain waivers subject to very specific requirements.[21] TANF was intended to increase state flexibility in relation to this AFDC baseline; however, increased flexibility must still accord with the statutory requirements.[22] It should not be understood to negate them.

It has become clear that, in some instances, states have indeed undercut statutory requirements by using TANF and MOE funds to pay for activities with, at best, tenuous connections to any TANF purpose. This is particularly a problem for expenditures claimed under purposes three and four, where the statute does not limit benefits and services to needy families or needy parents. As described below, these expenditures include over $1 billion spent on college scholarships (including for middle- and high-income individuals without children) that states have asserted are allowable because they are reasonably calculated to accomplish the purpose of preventing and reducing out of wedlock pregnancies. Similarly, close to $1 billion is being spent on general youth services that are not targeted to vulnerable youth, but that states are asserting accomplish the purpose of preventing and reducing out-of-wedlock pregnancies. Additionally, a portion of the close to $2 billion spent on covering costs in state child welfare systems is being justified as providing assistance to needy families, but those expenditures appear to be covering ordinary operating costs of state child welfare systems and not targeted services to meet the goal of preventing children from entering into foster care by providing assistance to families so that children may remain in their homes as articulated in purpose one. While services described may provide important social supports, we believe that in many cases those services would not be interpreted as a reasonable activity to meet a TANF purpose.

As a result, the Department has concluded that it is necessary to articulate a general standard for determining whether an expenditure is reasonably calculated to accomplish a TANF purpose. In accordance with the ''reasonably calculated'' language of the statute, we propose in this rule to describe the applicable standard as a ''reasonable person'' test. This is the same standard that our regulations have employed since 1999 for determining whether a misuse of funds is intentional. The discussion below concerning the ''reasonable person'' test would apply when determining intentional misuse of funds, even though we are not proposing any modification to that regulatory provision. In addition, this process would apply to all expenditures made after the effective date of the rule, which we propose be no earlier than the start of the fiscal year following finalization. We understand states may need some time to make sure that all their state TANF expenditures meet the reasonable person standard and solicit comment on what readers would consider to be a reasonable implementation period.

In many instances, the analysis will be entirely straightforward because certain expenditures clearly fall within the plain language of the statutory purpose. For example, cash assistance for needy families, employment services for needy parents, and teen pregnancy prevention programs clearly fall within the express statutory language of TANF purposes one, two, and three, respectively. However, in other instances, a question may arise as to whether an expenditure is reasonably calculated to accomplish a purpose of TANF. Such a question could arise in a variety of ways, including: in a state plan or plan amendment review; in responding to a state's question about use of TANF funds; in resolving an audit; in an external report related to state TANF program expenditures; or from information gleaned in site visits. In such cases, including when resolving state audit findings, the Department will ask for additional information before assessing a penalty for misuse of funds, 42 U.S.C. 609(a)(1). We will consider, as appropriate, factors including: (1) evidence that the expenditure actually accomplished a TANF purpose; (2) evidence that prior expenditures by the state or another entity for the same or a substantially similar program or activity actually accomplished a TANF purpose; (3) academic or other research indicating that the expenditure could reasonably be expected to accomplish a TANF purpose; (4) whether the actual or expected contribution of the expenditure to accomplishing a TANF purpose is reasonable in light of the extent of that expenditure; and (5) the quality of the reasoning (as outlined below) underlying the state's explanation that the expenditure accomplished or could be expected to accomplish a TANF purpose. In addition, where a program is multifaceted or includes several different types of services, we would examine the extent to which the state uses the Office of Management and Budget cost principles to allocate costs of different components of a service or benefit to appropriate funding sources and ensures that only the portions of a program, benefit, or service that the state demonstrates are reasonably calculated to accomplish a TANF purpose are allocated to TANF. § 263.14.

As with any situation in which one must determine whether a particular action is reasonable, the analysis will necessarily be fact-specific. Therefore, a state's explanation should clearly describe such facts as the precise service or benefit it intends to fund, the population eligible to receive the service or benefit, any other eligibility criteria or circumstances that would restrict provision of the benefit or service, the amount the state intends to expend, under which purpose it is claiming the expenditure, and what its rationale is for concluding that the expenditure is reasonably calculated to meet the purpose. In weighing the information that a state provides to support an expenditure as reasonably calculated to accomplish a TANF purpose, we would assess the quality of that evidence, including whether the state's justification for the expenditure is

[16] See 42 U.S.C. 602(a)(7), (13), (18) (1995).

[17] See 42 U.S.C. 602(a)(7), (17), (31), (36) (1995).

[18] See 42 U.S.C. 602(a)(7) (1995).

[19] See 42 U.S.C. 602(a)(19)(G) (1995).

[20] See, *e.g.,* 42 U.S.C. 602(a)(9)–(16), (19), (22)–(26), (33), (37) (1995).

[21] See House Committee on Ways and Means, Green Book: Background Material and Data on Programs within the Jurisdiction of the Committee on Ways and Means, 104–14 § 8 at 434 (1996).

[22] See *id.,* App. L at 1338.

sound, well-supported, and draws a strong, logical connection to the TANF purpose. Our process would evaluate whether the state's explanation addresses relevant and appropriate factors given the nature of the service or benefit it intends to fund.

As we noted above, ''evidence'' refers to supporting materials that substantiate a state's assertion that an activity is reasonably calculated to accomplish a TANF purpose. There are several forms of evidence that a state might provide to support its justification for a TANF expenditure. One of them is evidence from research, and the strongest case will be made with the best available research. Evidence will be strongest if it is based on the following types of research, listed in descending order of rigor: (1) the activity has been evaluated using a rigorous evaluation design (such as randomized controlled or high-quality quasi-experimental trials) and has demonstrated favorable impacts on the outcome(s) of interest; (2) a body of research has demonstrated a favorable association between the activity and the outcome(s) of interest sufficient that a reasonable person would consider the expenditure reasonably calculated to accomplish a TANF purpose; or (3) qualitative or descriptive research suggests the activity favorably affects the outcome(s) of interest sufficiently that a reasonable person would consider the expenditure reasonably calculated to accomplish a TANF purpose. Research evidence could come from an existing systematic review, an existing clearinghouse, a catalog of evidence-based research or evaluation of emerging or substantially similar programs.

While such evidence will most clearly establish that an expenditure is reasonable, programmatic evidence could be sufficient for a reasonable person to find that an activity is reasonably calculated to accomplish a TANF purpose. This can be done through an analysis using performance and administrative data comprised of information on activities, services delivered, and outcomes achieved that a program collects on an ongoing basis to measure progress toward goals or to inform operations and service delivery. Programmatic evidence should include an analysis of this data that demonstrates that the activity accomplishes a TANF purpose. The analysis could substantiate that an activity meets the ''reasonable person'' standard.

Readers should note that we have provided a proposal of the framework we would use to determine if an expenditure were reasonably calculated to accomplish a TANF purpose. We offer a number of examples below, and anticipate that, for many expenditures, it will be entirely clear whether the expenditure is or is not reasonably calculated to accomplish a TANF purpose. The TANF program does not include a state plan approval process; rather it has only a process for determining that a plan is complete in providing information required by statute. TANF also does not have an expenditure preapproval process. Still, we appreciate that, in planning program expenditures, states will value clarity as to whether particular expenditures may be considered reasonably calculated to accomplish a TANF purpose. Thus, from an implementation standpoint, if a state had concerns about whether an expenditure was reasonably calculated to accomplish a TANF purpose, it could, though need not, request the Department's views before proceeding. We welcome comments on additional factors we might consider in the process of determining whether an expenditure is reasonable.

With this proposed standard in mind, the Department provides more information below about how to determine whether an expenditure is reasonably calculated under the reasonable person standard. We note that we do not consider the examples to be an exhaustive list. The Department welcomes comments on these determinations, examples, and potential impacts on financial management and reporting, as well as service delivery and program operations.

TANF purpose one. The first purpose of TANF is ''to assist needy families so that children may be cared for in their own homes or in the homes of relatives.'' Based on the reasonable person standard, recurring cash assistance payments to families and many non-recurrent, short-term benefits that help families meet basic needs are plainly reasonably calculated to assist needy families so that children can stay in their own homes or in the homes of relatives. A reasonable person would realize that, for a child to remain safe in the home, their basic needs must be met. We remind readers that the term ''assistance'' in purpose one is not limited to the definition in 45 CFR 260.31 but subsumes the range of ways in which a state may use TANF funds to help needy families. 45 CFR 260.31(c)(2). Ensuring that families experiencing financial hardship are connected to economic supports such as TANF cash assistance is an effective prevention strategy to allow children to stay in their homes or in the homes of relatives and divert families from entering the child welfare system. Additionally, the Department thinks that, under the reasonable person standard, certain prevention and reunification strategies associated with child welfare systems are plainly reasonably calculated to achieve TANF purpose one. These include parenting skills classes, family reunification efforts, supports for parents preparing for reunification, and providing concrete and economic supports to prevent removal from home. All of these activities are part of the essential services states provide to ensure children can remain or return safely to their own homes or the homes of relatives.

Where the connection to TANF purpose one is not as straightforward, a child welfare service can be reviewed using the reasonable person standard factors outlined above to help determine whether it meets that purpose. For example, some states use TANF or MOE funds to pay for respite care services for parents or other relatives. Those states might provide evidence from the Child Welfare Information Gateway, where peer-reviewed studies of similarly designed programs have found that respite care allows for children to remain permanently in their homes. They might also be able to provide administrative data to show that they have seen respite care services provide the short-term supports necessary to allow children to remain in their own homes or in the homes of relatives compared with the absence of these services. With this information, the Department could determine that the use of respite care services is reasonably calculated to meet TANF purpose one. In another example, a state may want to use TANF funds to provide diversion and alternative response activities. The state could provide information from academic studies or administrative data that these activities help keep children in their own homes or in the homes of relatives and are therefore reasonably calculated to meet TANF purpose one.

Other child welfare activities for children and families do not have as close a connection to, reunification, permanency, or services to prevent child maltreatment. These types of activities, such as child protection investigations, would likely not be allowable under purpose one in the framework outlined in the proposed rule. By their very nature, child protection investigations are intended to learn whether a child has been harmed or is at risk of being harmed and should be removed from the home, rather than to provide assistance so that children can remain in their own homes or in the homes of relatives. The Department appreciates that, in some cases, the outcome of the investigation will be a determination that the child can remain in the home with specified prevention services to the family. Those services could be allowable under the first purpose of TANF, but not the investigation itself.

TANF purpose two. The second purpose of TANF is to ''end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage.'' There are a range of services that, under the reasonable person standard, are plainly reasonably calculated to accomplish this purpose, such as workforce development services that help needy parents find and keep jobs, as well as work supports such as child care or other services and supports that allow needy parents to look for and maintain employment. The connection between the examples enumerated and ending the dependence of needy parents on government benefits is clear through the direct link between searching for a job and securing the job, enhancing skills and credentials, and increasing earnings, and enrolling children in child care so a parent may work. Such services could include tuition assistance and other education and training supports specifically for needy parents. It could also include many early education programs that are necessary services for families with low incomes to care for children while parents look for and maintain employment. A reasonable person could conclude that providing these services would help parents with low incomes work, and therefore end their dependence on government benefits. The Department values the critical importance of quality early childhood education—including child care and preschool—for all families, but for it to be allowable under TANF purpose two, it must be a support for work for needy parents.

States have used or may want to use TANF or MOE funds to pay for other education and training activities that are not as straightforwardly connected to TANF purpose two. In these instances, the Department would review the benefit or service using the reasonable person framework outlined above. For example, a state might want to provide education and training for childless individuals or to parents regardless of income. The Department believes that it is unlikely there could be sufficient evidence or logical coherence to show that education and training for individuals who are not parents could be reasonably calculated to end the dependence of needy parents. To the extent that is the case, such spending would not be allowed under TANF purpose two under this proposed rule. Similarly, we think it unlikely that states could provide evidence that education and training received without regard to income level could be reasonably calculated to end the dependence of needy parents. As a result, expenditures for these activities are unlikely to be allowed under TANF purpose two under this proposed rule.

TANF purpose three. The third purpose of TANF is to ''prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies.'' The Department believes that certain activities are plainly reasonably calculated to prevent and reduce out-of-wedlock pregnancies. These include programs that provide comprehensive sex education, family planning services, pregnancy prevention programs, and community mobilization services for at risk youth that increase access to pregnancy prevention programs for teens.

However, jurisdictions have sought to claim other expenditures under TANF purpose three where the connection to preventing and reducing out-of-wedlock pregnancies appears to be far more tenuous or even non-existent. College scholarship programs for adults without children likely do not meet the reasonable person standard under purpose three. Since this expenditure does not fall clearly within the plain language of the statutory purpose, the Department would use the factors under our proposed standard to review the expenditure. This would include reviewing the evidence and documentation provided by the state. Without evidence that the expenditure actually accomplishes the TANF purpose, that prior expenditures by the state or another entity for the same or a substantially similar program or activity actually accomplished the TANF purpose, or that there is academic or other research indicating that the expenditure could reasonably be expected to accomplish the TANF purpose, the expenditure is unlikely to meet the reasonable person standard we propose and therefore would likely not be allowable under this proposal.

Similarly, programs that only or primarily provide pregnancy counseling to women only after they become pregnant likely do not meet the reasonable person standard because the connection to preventing and reducing out-of-wedlock pregnancies is tenuous or non-existent, and therefore do not accomplish purpose three. States that provide funding for these types of programs, including through entities sometimes known as crisis pregnancy centers or pregnancy resource centers, must be able to show that the expenditure actually accomplishes the TANF purpose, that prior expenditures by the state or another entity for the same or a substantially similar program or activity actually accomplished the TANF purpose, or that there is academic or other research indicating that the expenditure could reasonably be expected to accomplish the TANF purpose. If pregnancy prevention programming is a part of an ongoing program, such as year round after-school programming, only those costs associated with delivery of pregnancy prevention should be cost allocated and non-TANF funds used to fund other activities.

TANF purpose four. The fourth purpose of TANF is to ''encourage the formation and maintenance of two-parent families.'' The Department believes that certain activities fall clearly within the plain language of the statutory purpose to promote two-parent families. These activities include marriage education, marriage and relationship skills programs, parent and co-parent skills workshops, and public awareness campaigns on the value of marriage and responsible fatherhood.

In FY 2021, 27 states reported a total of $925.0 million in federal TANF and MOE expenditures on ''Services for Children and Youth.'' A wide variety of services and programs may fall in this category, including afterschool and mentoring or academic tutoring programs. States often assert that programs like these meet purposes three and four. The Department recognizes and appreciates the value of such services, but under the statute and the implementing reasonable person standard, many of them likely are not reasonably calculated to achieve purpose four. The Department is unaware of evidence from academic research or program design or outcomes documentation that shows these activities accomplished or could be expected to accomplish the purpose of encouraging the formation and maintenance of two-parent families. For example, if a state were to assert that spending on after-school programs is reasonably calculated to promote the formation and maintenance of two-parent families, the state would need to provide evidence to justify such a service under the reasonable person standard. Even then, if this programming were a small portion of the overall activities in the program, the state would need to cost allocate. Only the programming that is reasonably calculated to meet purpose four or met another TANF purpose could be funded with TANF.

Authorized Solely Under Prior Law. The Department reiterates that there are some expenditures that are allowable under the TANF program even though they do not meet any of the four purposes enumerated in 42 U.S.C. 604(a)(1). Those are expenditures ''authorized solely under prior law,'' which are allowed pursuant to section 42 U.S.C. 604(a)(2). That provision permits a state to use TANF—but not MOE—funds in any manner that it was authorized to use funds under the prior Title IV–A (AFDC) or IV–F (Job Opportunities and Basic Skills Training programs) on September 30, 1995, or at state option, August 21, 1996. For example, foster care payments to non-relative caregivers do not count as a purpose one expenditure because they are not reasonably calculated to provide assistance so that children may be cared for in their own homes or in the homes of relatives. This is, because, by definition, they provide support to non-relatives caring for children who have been removed from their homes. However, if a state was explicitly authorized to provide such support under prior law, meaning that its AFDC, EA, or JOBS plan in effect on September 30, 1995 (or, at state option, August 21, 1996), included the benefit or service, then the state may use TANF, but not MOE, to support the activity. We refer to these as services that are authorized ''solely'' under prior law, because that is the only way a state may fund them under TANF, as they are not otherwise reasonably calculated to accomplish a TANF purpose.

For all other TANF and MOE-funded activities, we invite readers to provide comments on our proposed standard of ''reasonably calculated to accomplish the TANF purpose'' and offer any alternative approaches for operationalizing the standard.

3. *Exclude third-party, non-governmental spending as allowable MOE.*

This proposed rule would amend § 263.2(e) to exclude, as an allowable TANF MOE expenditure, cash donations and the value of in-kind contributions from non-governmental third parties.

Each state must meet a maintenance-of-effort (MOE) requirement under TANF. To avoid a TANF penalty for a fiscal year, a state must have ''qualified state expenditures'' of at least 80 percent of the amount the state spent on a specified set of programs in FY 1994, before TANF was enacted, or 75 percent if the state satisfies its federal work participation requirement for the fiscal year. The statute specifies that the ''qualified state expenditures'' a state may count toward its MOE requirement in a given fiscal year are ''the total expenditures by the state during the fiscal year'' that meet one or more of the purposes of TANF and serve eligible families. 42 U.S.C. 609(a)(7)(B)(i).

Congress established the level of historic state expenditures based on spending in FY 1994 for a set of programs that existed before TANF and were eliminated at the time that Congress enacted the TANF block grant. The MOE levels were set based on non-federal state spending in FY 1994 for programs authorized under the former Titles IV–A and IV–F of the Social Security Act, specifically the AFDC benefits and administrative costs, the Emergency Assistance Program, the Job Opportunities and Basic Skills Training Program, and a set of child care programs that had been funded under Title IV–A. In shifting from the former structure of federal matching funds for state expenditures to a block grant framework, Congress made the decision to require states to continue to make expenditures for programs and activities meeting TANF purposes at a level not less than 80 percent of the level at which they had been spending in FY 1994 for this set of programs (or 75 percent if the state meets its work participation requirement for the year). Congress established this requirement without an inflation adjustor. When adjusting for inflation (based on 2022 data), states are actually required to spend approximately 50 percent of what they spent in FY 1994.

Under the statutory framework, if a state does not meet its required MOE level for a fiscal year, it is subject to financial penalty in the amount it falls short of its required MOE. The proposed change would further clarify the criteria for the agency to assess this penalty. The intent of this provision is to ensure that states maintain a certain level of financial commitment to the TANF program and participate financially along with the federal government. Financial involvement by states is necessary for the success of the TANF program as envisioned by Congress. Under the current rule, in addition to state funds, a state is permitted to count toward the MOE requirement certain in-kind or cash expenditures by non-governmental third parties, so long as these expenditures meet a TANF purpose and other requirements. In this NPRM, we propose to eliminate the ability of states to count cash donations and in-kind contributions from non-governmental third parties towards MOE. The NPRM distinguishes between governmental spending and that of non-governmental third parties. Governmental spending, meaning spending directly by state, counties, and local government agencies only, would continue to be allowable under the amended rule. For example, if a state uses funds from its workforce department to fund TANF work programs, the state workforce department is a ''governmental third party'' and therefore allowable. State and local government entities also frequently combine funding, which would also still be allowable under this proposed rule.

The Department issued policy guidance in 2004 (TANF–ACF–PA–2004–01) implementing a policy that allowed states to claim third-party spending and contributions as countable towards a state's MOE requirement. The guidance noted that the statute did not explicitly provide that in-kind or cash expenditures by sources in the state other than the state or local government may count toward the state's TANF MOE requirement. Further, it noted that the 1999 TANF final rule had not directly addressed the issue, but that states could look to the cost sharing principles in 45 CFR part 92 (currently 45 CFR part 75), which generally apply to TANF. Those cost sharing principles present a range of ways for a state to satisfy cost sharing requirements, including expenditures for allowable costs or cash donations by non-federal third parties and the value of third-party in-kind contributions. The 2004 guidance concluded that third-party in-kind or cash expenditures could count toward a state's MOE requirement, as long as the spending was used for an allowable purpose.

In our interim final rule, promulgated after the Deficit Reduction Act of 2005 (DRA), we codified the policy by amending § 263.2(e) to provide that ''[e]xpenditures for benefits or services listed under paragraph (a) of this section may include allowable costs borne by others in the State (*e.g.,* local government), including cash donations from non-Federal third parties (*e.g.,* a non-profit organization) and the value of third party in-kind contributions'' if certain requirements were met. 71 FR 37454, 37470, June 29, 2006. We did not receive any comments concerning the third-party provision. The final rule was issued on February 5, 2008 (73 FR 6772, February 5, 2008).

After reviewing how states have implemented this provision, and carefully considering the effects that third-party, non-governmental contributions have had over the last 15 years, discussed below, we are proposing to revise this provision so that third-party, non-government MOE contributions of any kind cannot count towards a state's MOE requirement. The Department believes that our proposed regulation is the best interpretation of 42 U.S.C. 609(a)(7)(B)(iv). The statute at 42 U.S.C. 609(a)(7)(A) provides that the Secretary shall impose a penalty if a state fails to make ''qualified State expenditures'' equal to at least 80 percent of the amount it spent on welfare programs in FY 1994. ''Qualified State expenditures,'' meaning those countable as MOE, are defined as ''the total expenditures *by the State* during the fiscal year, *under all State programs,* [in certain categories] with respect to eligible families.'' 42 U.S.C. 609(a)(7)(B)(i) (emphasis added). Thus, the statutory language is clearly in reference to expenditures by the state, not subsuming expenditures by non-governmental organizations in the state.

Under current rules, states may count non-governmental expenditures by non-profit organizations, corporations, or other private parties as contributions to state MOE. While these expenditures represent efforts made to serve low-income families *in* a state, they do not reflect the effort made *by* a state. In other words, they constitute expenditures that other organizations make, and a state reports them as MOE as if the state itself had made the expenditure. The Department proposes revising the MOE requirement to prohibit a state from counting third-party, non-governmental spending as its own, and to ensure that states themselves are investing in programs that meet TANF purposes, as was the original intent of the statute.

In addition to our having concluded that the revision is most consistent with the statutory language and intent of Congress, the Department also believes it is justified as a matter of policy. Since third-party MOE became permissible, experience has shown that counting non-governmental spending as MOE may reduce the overall level of services available to low-income families in a state. Most commonly, these third parties are non-governmental entities already providing food assistance, youth services, family preservation services, or housing assistance. The state then counts these existing third-party expenditures as TANF MOE while reducing its own spending—in essence, substituting private, third-party spending on low-income families that would occur regardless of being counted as state expenditures on MOE, for state spending. For example, if a state's basic MOE requirement were $100 million and it counted $25 million in spending from food banks as MOE, the state could then reduce its own financial commitment from $100 million to $75 million. Consequently, the state could spend $25 million less of its general revenue funds on purposes designed to benefit families with low incomes.

States do not report on the source of MOE so the Department cannot determine how much of its MOE requirement each state is fulfilling using third-party, non-governmental spending. However, according to a 2016 GAO report, 16 states reported counting third-party, non-governmental expenditures toward their required spending level in FY 2015.[23] These are the most recent data available. Twenty-nine states reported counting third-party, non-governmental expenditures as state MOE spending at least once from fiscal years 2007 through 2015. Eleven states reported that third-party, non-governmental expenditures accounted for over 10 percent of their TANF MOE spending in their most recent year of counting third-party expenditures. This percentage reached as high as 60 percent in one state, which counted $99 million from third-party, non-governmental dollars to meet its $173 million obligation. Two other states derived over 30 percent of their MOE funds from third-party, non-governmental sources. In short, some states are claiming a significant amount of money as MOE—amounts that do not reflect their own spending on services for low-income families.

This 2016 GAO report also indicated that some of these states asserted that they would be likely to cut services in other areas to reach the basic MOE requirement if third-party, non-governmental dollars could no longer count as MOE. Likewise, some states claimed that they would face penalties or lose partnerships if this provision were implemented. Based on our experience administering the program, we do not expect that these consequences will come to pass, given the few states that currently use this flexibility and the total amount of funds presently at issue. We do not believe there is reason for concern that states would need to cut expenditures for other groups to maintain low-income spending at a level sufficient to meet the MOE requirement, which adjusted for inflation, is less than 40 percent of what the state was spending in FY 1994.

[23] GAO, *Temporary Assistance for Needy Families: Update on States Counting Third-Party Expenditures toward Maintenance of Effort Requirements,* February 2016.

Indeed, a state would be more likely to spend additional funds on low-income families to make up for the MOE shortfall if this proposal were to take effect. Moreover, we are not aware of any reason that being unable to count non-governmental expenditures toward MOE requirements should in any way impair or jeopardize partnerships with non-governmental organizations. We invite state agencies and the public to provide information that will shed light on the extent of the use of third-party, non-governmental expenditures to count as MOE.

By proposing to eliminate this provision, our goal is to restore the maintenance-of-effort requirement in a manner consistent with the statutory language and purpose. We invite comment on the effects that this proposed change would have on state programs, budgets, and partnerships.

4. *Ensure that excused holidays match the number of federal holidays, following the recognition of Juneteenth as a federal holiday*.

The Department introduced the idea of counting excused absences and holidays toward the TANF work participation rate in the interim final rule that implemented the legislative changes from the DRA (71 FR 37454, 37466, June 29, 2006). The interim final rule explained that states could count paid employment hours toward the work participation rate by using the hours for which the individual was paid, which therefore allowed paid holidays to count. The Department recognized that individuals in unpaid allowable work activities might also be absent due to a holiday, and therefore the interim final rule allowed states to count ''reasonable short-term, excused absences for hours missed due to holidays.'' Although the interim final rule did not specify a number of holidays that could count toward the work participation rate, the final rule set the number of holidays at 10 (73 FR 6826, February 5, 2008). In the preamble to that final rule, we noted, ''We deliberated at length about the appropriate number [of holidays], considering the number granted on average by private companies, the average number of State paid holidays, and the number of Federal holidays. Ultimately, we chose to limit it to 10 to be consistent with the number of Federal holidays.'' (73 FR 6809, February 5, 2008). On June 17, 2021, President Biden signed into law the Juneteenth National Independence Day Act, which established June 19 as an eleventh legal, public holiday.

Under our authority to issue regulations on how to count and verify reported hours of work, this proposal would realign the TANF rules with respect to holidays to the number of federal holidays. 42 U.S.C. 607(i)(1). It would revise § 261.60(b) to ensure that the maximum number of holidays permitted to count in the work participation rate for unpaid work activities in the fiscal year matches the number of federal holidays as established in 5 U.S.C. 6103. For example, with the inclusion of Juneteenth, the number of federal holidays increased to 11, and therefore under our proposal a state could allow up to 11 holidays to count toward the work participation rate for individuals in unpaid allowable work activities. The proposal would not alter the calculation for individuals participating in paid work activities, which includes the hours for which an individual was paid, including paid holidays and sick leave, and which can be based on projected actual hours of employment for up to six months, with documentation.

As under current rules, each state must designate in its work verification plan the days that it wishes to count as holidays for those in unpaid activities. The Department encourages states to honor our newest public holiday by granting Juneteenth itself as an excused day for TANF participants in unpaid activities.

5. *Develop new criteria to allow states to use alternative Income and Eligibility Verification System (IEVS) measures.*

This proposed rule would amend § 205.55(d) to allow states to use alternative Income and Eligibility Verification System (IEVS) data sources. IEVS is a set of data matches that each state must complete to confirm the initial and ongoing eligibility of a family for TANF-funded benefits. Section 1137 of the Social Security Act (42 U.S.C. 1320b–7) requires a state to participate in IEVS and to match TANF applicant and recipient data with the following information through IEVS:

1. Employer quarterly reports of income and unemployment insurance benefits from the State Wage Information Collections Agency (SWICA);
2. IRS earned income maintained by the Social Security Administration;
3. Immigration status data maintained by the Immigration and Naturalization Service; and
4. Unearned income from the IRS.

Currently, under § 205.55(d), a state may request approval from the Department to use an alternate source or sources of income and eligibility information to meet any of the IEVS data matching requirements. The state must demonstrate that the alternate source is as timely, complete, and useful as the data provided by the original source. When considering applications, we have noticed that this standard is very difficult to meet, particularly with respect to requests for alternatives to the IRS unearned income data. This is largely because the IRS's data represent the most complete set of national information on unearned income, making other sources inherently less complete. Unearned income data are captured through the IRS 1099 form series; there are currently over 15 different 1099 forms, each dependent upon the type of unearned income being reported. Other data sources are not able to capture every distinct type of unearned income. States have repeatedly noted that some of the required IEVS matches, and especially the match with unearned income data from the IRS, are administratively burdensome and neither cost effective nor programmatically useful. They explain that the costs of maintaining the security procedures required for the IRS match are very high, as they include specific staff training and background protocols, as well as establishing a ''secure room.'' One state indicated that its conservative estimate for these requirements cost over $100,000 annually. At the same time, states have noted the minimal programmatic usefulness of the match with IRS unearned income data, because the majority of recipients of TANF-funded benefits have modest resources and because the data are based on the previous year's tax returns and thus do not clearly reflect the applicant's or participant's current status. We propose to modify the criteria for alternative sources of IEVS data matches so that they are more reasonable and factor in cost effectiveness. Specifically, we propose to allow a state to request to use an alternative data source that is as cost effective rather than as complete as the original source. We would continue to require any alternate data source to be both as timely and useful as the original source. This action would reduce administrative burden on states by allowing them the flexibility to find more cost-effective data matches and perform the ones that are most likely to benefit their programs. This proposal is consistent with the IEVS statute, which provides that certain ''wage, income and other information'' from certain sources ''shall be requested and utilized to the extent that such information may be useful in verifying eligibility for, and the amount of benefits available . . . as determined by the Secretary of Health and Human Services. . . .'' § 1320b–7(a)(2). The Department welcomes comments on the current administrative burdens, including cost and time estimates, and usefulness of the required IEVS matches as well as the benefits that might be gained from using more cost-effective alternate data sources.

6. *Clarify the ''significant progress'' criteria following a work participation rate corrective compliance plan.*

Each state must meet two minimum work participation rates under TANF for a fiscal year, an overall or ''all families'' work participation rate and a two-parent work participation rate, or face a financial penalty. The law provides for a single penalty for failing to meet the work participation requirement, even though there are two separate participation rates, *i.e.,* two ways to trigger the penalty. Until FY 2007, virtually all work participation rate penalties came from failures to meet the two-parent rate alone, but with the changes made by the DRA, some states began to fail the overall rate or both rates. Many states that receive a penalty notice enter into a corrective compliance plan (CCP) to correct the failure and avoid a financial penalty. In accordance with § 262.6(i), a state that enters into a CCP because it is subject to a penalty must completely correct the violation within the plan period to avoid the penalty. If it does not, § 262.6(j)(1) permits a reduction in the penalty if a state did not achieve full compliance pursuant to its CCP goals but made ''significant progress'' towards correcting the violation.

We propose to modify § 261.53(b) to clarify the means of qualifying for ''significant progress'' when a state that has failed its work participation rate also fails to correct the violation fully in a corrective compliance plan because it has corrected one rate but not both. Specifically, it would more directly address a situation where a state that failed both the overall and two-parents rates for a year and subsequently meets the overall rate (but not the two-parent rate) as part of its corrective compliance plan to qualify for a reduced penalty. It also clarifies the description of the existing formula for calculating significant progress. This modification is within the Secretary's authority to ''assess some or all of the penalty . . . if the State does not, in a timely manner, correct or discontinue as appropriate, the violation. . . .'' 42 U.S.C. 609(c)(3).

We are proposing to recalculate a state's penalty as if the state had failed only the two-parent work requirement in the penalty year. Two-parent penalties are based on a state's two-parent caseload percentage, which typically equals 10 percent or less of the total caseload. Our proposal would reduce administrative burden and substantially reduce some potential penalties, making them commensurate with the degree of a state's remaining noncompliance.

7. *Clarify the existing regulatory text about the allowability of costs associated with disseminating program information.*

The seventh proposed change would clarify existing regulatory text about the allowability of costs associated with providing program information. The regulation at 45 CFR 263.0(b)(1)(i) currently provides that ''providing program information to clients'' is a program cost and not an administrative cost. We propose to delete that language from (b)(1)(i) and create a new subsection (iii) that clarifies the point that administrative costs exclude the costs of disseminating program information. For example, the cost of providing information pamphlets or brochures about how to reduce out-of-wedlock pregnancies is allowable under purpose three, and the cost of providing information about community resources to needy families or needy parents, pursuant to purposes one and two, respectively, is allowable, whether or not the described community resources themselves are funded by TANF.

The TANF statute sets an administrative cap of 15 percent. 42 U.S.C. 604(b). It provides that a ''State to which a grant is made under section 403 shall not expend more than 15 percent of the grant for administrative purposes.'' 42 U.S.C. 604(b). Section 263.0 implements the cap by making clear which categories of expenditures are program costs that do not count towards the cap, and which qualify as administrative costs and thus count towards the cap. Failure to comply with the administrative cap could lead to a misuse of funds penalty, therefore this proposal falls under the Department's authority to regulate where the Department is charged with enforcing certain TANF provisions (42 U.S.C. 609(a)(3)), and thus fits within the statutory authority granted to the Secretary to regulate state conduct in the TANF program.

Severability

To the extent that any portion of the requirements arising from the rule once it becomes final is declared invalid by a court, HHS intends for all other parts of the final rule that are capable of operating in the absence of the specific portion that has been invalidated to remain in effect.

Regulatory Impact Analysis

Introduction

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, Executive Order 14094, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all benefits, costs, and transfers of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). This analysis identifies economic impacts that exceed the threshold for significance under Section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes estimates of anticipated impacts, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $177 million, using the most current (2022) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would not likely result in unfunded expenditures that meet or exceed this amount.

Statement of Need

As described above, the Department has determined that it is necessary to take regulatory action to strengthen the effectiveness of TANF as the safety net and work program originally intended by Congress. It is critical to implement these reforms at the federal level in order to maintain consistent policies across states that align with congressional intent, while still providing flexibility for states to design programs that meet the specific needs of their populations.

In addition, the package includes provisions that are more technical in nature and are designed to reduce administrative burden and increase program effectiveness. The Department has determined it is necessary to make these changes at the federal level, again to ensure consistency and fairness across states, and to improve the functioning of government.

Summary of Impacts

This analysis finds that the proposed rule would result in a range of transfers of between $1.087 billion and $2.494 billion. The largest impacts from the proposed rules relate to provisions that: establish a ceiling on the term ''needy;'' determine when an expenditure is ''reasonably calculated to accomplish a TANF purpose;'' and exclude third-party, non-governmental spending as allowable MOE. These impacts would be constant in every year, beginning in the first fiscal year after the proposed rule is finalized (if it is finalized). Thus, we adopt a one-year time horizon for these impacts, which also do not depend on the choice of discount rate. Figure A below reports these impacts reported in current dollars. This analysis also discusses several policy alternatives to the proposed rule that ACF considered. ACF invites comments on all estimates contained in this analysis.

FIGURE A—SUMMARY OF ANNUAL IMPACTS

Category	Estimates		Units
	Low	High	Year dollar
Transfers—Federal			
All Provisions—Federal Annualized Monetized ($millions/year).	598.1	1127.4	2023.
From/To	From: State uses of federal funds		To: State uses of federal funds.
Provision—Reasonably Calculated	598.1	1127.4	2023.

FIGURE A—SUMMARY OF ANNUAL IMPACTS—Continued

Category	Estimates		Units
	Low	High	Year dollar
From/To	From: State uses of federal TANF funds on expenditures that are not reasonably calculated to meet a TANF purpose		To: State uses of federal TANF funds on expenditures that are reasonably calculated to meet a TANF purpose.
Transfers—Other Annualized Monetized			
All Provisions—Other Annualized Monetized ($millions/year).	488.7	1366.7	2023.
From/To	From: State funds		To: State funds.
Provision—200%	146.2	584.9	2023.
From/To	From: State funds on expenditures for families above 200 percent of the federal poverty guidelines		To: State funds on expenditures for families at or below 200 percent of the federal poverty guidelines.
Provision—Reasonably Calculated	196.8	636.1	2023.
From/To	From: State funds on expenditures that are not reasonably calculated to meet a TANF purpose		To: State funds on expenditures that are reasonably calculated to meet a TANF purpose.
Provision—Third Party Non-Governmental MOE	145.7	145.7	2023.
From/To	From: State funds outside of TANF		To: State funds used for TANF MOE.
Costs			
Administrative costs for ACF and jurisdictions ($millions/year).	.371		2023.
From/To	From: employee productive time.		To: employee productive time on activities related to rule implementation.

Estimating the Quantified Impacts of the Proposed Rule

We have used the best tools available to estimate the transfers associated with this proposed rule, relying on the financial and programmatic data states report on the ACF–196R (the TANF financial data report) and ACF–204 (the Annual MOE) forms. The utility and the limitations of these forms are outlined below. We have focused our analysis on the first two proposals related to allowable spending and the third proposal related to third-party non-governmental MOE, as the financial data reporting allows us to make some estimates of program impacts that may result from these proposed changes. This regulatory impact analysis focuses on activities funded through the TANF program. However, the direct impact within the program does not fully account for services that would continue to be provided in jurisdictions through other funding sources. We seek public comment on these estimates. When deciding whether or not to include a particular program or funding stream in the estimate, the Department made assumptions that are not official determinations of whether programs or services would be impacted by the proposed rule.

Data Sources for Identifying Impacts

ACF–196R: States are required to report cumulative transfers, expenditures, and unliquidated obligations made with federal TANF and MOE funds on the ACF–196R, submitted quarterly. ACF publishes this data for each fiscal year, and we apply FY 2021 data in this analysis.[24]

On the ACF–196R, there are 29 categories of transfers, expenditures, and unliquidated obligations. Some categories have subcategories that provide additional specificity on how funds were used. For example, category 9 ''Work, Education, and Training Activities'' is broken up into three smaller subcategories, ''Subsidized Employment,'' ''Education and Training,'' and ''Additional Work Activities.'' Others are quite broad, such as category 17, ''Services for Children and Youth.'' Even when the subcategories exist, there may be several types of programs or services captured in one category, serving different populations. It is not possible to determine, for example, what percentage of spending in the ''Refundable Earned Income Tax Credits'' is spent on families above 200 percent of the federal poverty guidelines. One strength of this data source is that states report federal and MOE spending separately, so we can determine how much spending in the reported categories is federal funds and how much is state MOE.

ACF–204: Annual Report on State-Maintenance-of-Effort Programs. States must submit this report for each fiscal year and include information for each benefit or service program for which the state has claimed MOE expenditures for the fiscal year. There is wide variation across states in the quality and detail of these reports.

[24] U.S. Department of Health and Human Services, U.S. Administration for Children and Families, Office of Family Assistance, *FY 2021 TANF and MOE Financial Data,* December 16, 2022, available at: *https://www.acf.hhs.gov/ofa/news/ofa-releases-fy-2021-tanf-and-moe-financial-data#:~:text=In%20FY%202021%2C%20combined%20federal,education%2C%20and%20training%20activities%3B%20and.*

The ACF–204 provides more detail in qualitative and quantitative information about some state MOE programs than the ACF–196R; however, it only encompasses information about MOE spending and is therefore an incomplete picture of spending. We cannot use the ACF–204 to identify the universe of expenditures that may be impacted by the proposed rule, as federal programs will not be included, and some states may have excluded significant portions of their MOE programs. The form can, however, provide some additional context and examples for types of programs that may be impacted.

Implementation Timeline

The Department proposes that each provision would go into effect in the fiscal year following the publication of the final rule. The intent of the proposed implementation timeline is to provide states with appropriate time to understand the provisions, develop responses, and shift funding if necessary to be in compliance and avoid potential penalties. The Department seeks comment on the appropriateness of the proposed timeline.

Impact Estimates for Each Proposed Provision

1. Establish a ceiling on the term "needy" so that it may not exceed a family income of 200 percent of the federal poverty guidelines.

This proposed rule would require each state's definition of needy applied to all federal TANF and state MOE expenditures that are subject to a federally required needs standard to be limited to individuals in families with incomes at or below 200 percent of the federal poverty guidelines. A state is able to use definitions of "needy" that are at any level at or below 200 percent of the federal poverty guidelines but state definitions of "needy" could not exceed 200 percent of the federal poverty guidelines under this proposed change.[25]

If states maintained their current behavior following the implementation of this rule, state spending on families over 200 percent of the federal poverty guidelines would no longer be countable as MOE. A state could fail to reach its MOE requirements and incur a penalty. This would create an incentive for new behavior from states to transfer MOE spending from families above 200 percent of the federal poverty guidelines to families at or below that limit.

To determine the impacts on spending of this provision, ACF reviewed ACF–204 reports and TANF state plans for FY 2021 and identified programs that had eligibility that included families over 200 percent of the federal poverty guidelines. This approach is limited by the wide variation in quality of reports across states, and it was not possible to have a comprehensive view of all states. TANF state plans have information about both federal and MOE TANF programs, but not expenditure amounts. The ACF–204 reports are limited to MOE spending but provide both program eligibility information and expenditure amounts. As a result, we were able to estimate the number of states with either federal or MOE spending on programs that have needs or eligibility standards of over 200 percent of the federal poverty guidelines. But because the ACF–204 reports are limited to MOE, we were only able to estimate expenditure amounts for MOE spending.

In at least 40 states and the District of Columbia, ACF identified programs, either federal or MOE-funded, with income limits of over 200 percent of the federal poverty guidelines. There were several different types of programs, including pre-kindergarten, child welfare, tax credits, employment, housing, and emergency assistance. In some programs, limits were 80 percent of the state median income, while others had limits based on the federal poverty guidelines (*e.g.,* 300 percent). There was not enough detail in the ACF–204 reports or TANF state plans to determine for every reported program if the eligibility standards were above 200 percent of the federal poverty guidelines. ACF expects that there may be an undercount in the number of impacted programs or states.

In addition to a short description of each MOE program type, states also reported the amount of state MOE expenditures for each program on the ACF–204. In 22 states and the District of Columbia, ACF identified programs funded with MOE that had needs or eligibility standards of over 200 percent of the federal poverty guidelines. We estimate that total state MOE expenditures on identified programs with eligibility of over 200 percent of the federal poverty guidelines was $2.92 billion in FY 2021. Because federal spending is not included, this will be an underestimate.

Of that $2.92 billion, only a percentage would have been spent on families with incomes above 200 percent of the federal poverty guidelines. There may be great variation across states and programs in the proportion of funds that are spent on families with higher incomes. ACF estimates that the range of funds spent on families above 200 percent of the federal poverty guidelines was between 5–20 percent, which is $146.2 million to $584.9 million (see Figure B). With the proposed rule, the impacted amount would be transferred to programs and services for families with incomes below 200 percent of the federal poverty guidelines.

FIGURE B—PROGRAMS WITH ELIGIBILITY OVER 200 PERCENT OF THE FEDERAL POVERTY GUIDELINES AND ESTIMATES OF PERCENT OF IMPACTED FUNDS

	Expenditures on programs with eligibility above 200% of the federal poverty guidelines	Funds spent on families above 200% of the federal poverty guidelines if X% of expenditures are above 200% (millions)	
		5%	20%
$ millions	2,924	146.2	584.9

[25] The federal poverty guidelines are published annually by the U.S. Department of Health and Human Services. See Annual Update of the HHS Poverty Guidelines, 74 FR 3424, January 19, 2023, available at: *https://www.federalregister.gov/documents/2023/01/19/2023-00885/annual-update-of-the-hhs-poverty-guidelines*.

State Responses

No change: If states did not change their behavior in response to this rule, an amount between $146.2 million and $584.9 million in spending would be determined to be unallowable. If a state used federal TANF funds on unallowable spending, it would be assessed a penalty for misuse of funds. The penalty would be equal to the amount of funds misused, which would be a reduction in the subsequent year's block grant. The state would be required to make up that reduction in the year following the imposition of the penalty with state funds that do not count as MOE. If it used state funds, it could not count those as MOE. If a state does not meet its required MOE level for a fiscal year, it is subject to financial penalty in the amount it falls short of its required MOE. Therefore if the state were no longer able to meet its MOE requirement following the proposed change, it would be assessed a penalty. The penalty would be equal to the amount that the state fell short of its MOE requirement, which would be a reduction in the subsequent year's block grant. The state would be required to make up that reduction with state spending that does not count as MOE.

Shift spending from services for families with incomes over 200 percent of the federal poverty guidelines to services for families with incomes at or below 200 percent of the federal poverty guidelines.

To avoid a penalty, states would shift the $146.2 to $584.9 million in spending for families with incomes over 200 percent of the federal poverty guidelines to services for families with incomes at or below 200 percent of the federal poverty guidelines. This would represent a transfer focusing on supports for the families that need TANF services the most.

2. Determining when an expenditure is ''reasonably calculated to accomplish a TANF purpose''.

States are able to spend federal TANF and MOE funds on activities that are ''reasonably calculated to accomplish'' one or more of TANF's four purposes: (1) to assist needy families so that children may be cared for in their own homes; (2) to end dependence of needy parents on government benefits by promoting job preparation, work and marriage; (3) to prevent and reduce the incidence of out-of-wedlock pregnancies; and (4) to encourage the formation and maintenance of two-parent families. The proposed rule would amend 45 CFR 263.11 to add a new subsection (c) that sets forth the reasonable person standard for assessing whether an expenditure is ''reasonably calculated to accomplish the purpose of this part'' 42 U.S.C. 604(a)(1). The proposed regulation defines it to mean expenditures that a reasonable person would consider to be within one or more of the enumerated four purposes of the TANF program.

With the proposed rule, spending that does not meet the reasonable person standard will not be allowable. We expect that some of the current TANF and MOE spending, if continued after the implementation of this rule, would not meet this standard. When considering the impacts on spending of this provision, ACF identified the major ACF–196R expenditure areas where spending may be impacted: pre-kindergarten and Head Start, services for children and youth, child welfare, and college scholarships. Much of the spending claimed in these categories would continue to be allowable under the proposed rule if states demonstrate that it meets the reasonable person standard. However, for some expenditures, states will not be able do this, and that spending would not be allowable. The Department made assumptions about a percentage range of spending in a given expenditure category or subcategory that would no longer be allowable under the proposed rule in order to estimate impacts. The Department then considered the cumulative impact across categories to identify the possible responses of states and estimate economic impact. The Department welcomes comments on these estimates, described below.

Pre-Kindergarten and Head Start

ACF expects that a proportion of current spending reported under the ''Pre-Kindergarten and Head Start'' category on the ACF–196R under purposes three and four would not meet the proposed criteria of meeting the reasonable person standard. States with spending on pre-kindergarten and Head Start may be able to claim them as being directly related to purpose two, by demonstrating that the services provide a needed support so that parents may prepare for or go to work. Some states may already be claiming pre-kindergarten and Head Start MOE as purpose two, and others may be able to shift their spending from other purposes to purpose two. This may lead states to change how they claim this spending. If they are currently claiming spending under purpose three or four, they might shift to claiming under purpose two if they can demonstrate that the service helps parents prepare for, obtain, or maintain work. This would not represent a change in spending, but a change in categorization. The Department expects that a substantial portion of pre-kindergarten or Head Start spending may be allowable under purpose two. If states do categorize pre-kindergarten or Head Start spending under purpose two, they would be required to meet the 200 percent of the federal poverty guidelines standard of ''needy'' as proposed in the NPRM. If states are currently spending TANF funds on pre-kindergarten or Head Start for families over 200 percent of the federal poverty guidelines, they would need to shift or narrow that spending to families at or under 200 percent of the federal poverty guidelines.

In FY 2021, 28 states reported spending $2.9 billion on ''Early Care and Education-Pre-Kindergarten/Head Start'' (see Figure C). A reasonable estimate for the proportion of funds that would no longer be allowable may be 10–50 percent (see Figure D). We selected this range because of our expectation that a substantial portion of pre-kindergarten and Head Start spending will be allowable under purpose two, while making the range broad to capture the uncertainty due to lack of detailed data. The Department expects that this would not be uniformly distributed across states, however we do not have detailed data to estimate accurately which states would be most impacted.

	FY 2021 spending on Pre-K and Head Start ($ millions)		
	Combined Federal and MOE	Federal	MOE
U.S. Total	$2,929.3	$70.9	$2,858.5

FIGURE D—ESTIMATED AMOUNT OF PRE-KINDERGARTEN AND HEAD START THAT WILL NO LONGER BE ALLOWABLE IF 10–50% IS NOT ALLOWABLE ($ IN MILLIONS)

	Non-allowable estimate range ($ millions)	
	10%	50%
U.S. Total	$292.9	$1,464.7

Services for Children and Youth

In FY 2021, 28 states reported a total of $925.0 million in federal TANF and MOE expenditures on ''Services for Children and Youth.'' A wide variety of services and programs may fall in this category, including after-school programs and mentoring or tutoring programs. The Department expects that many of these programs would not meet the reasonable person standard, though programs focused on preventing teen pregnancy and non-marital childbearing would likely be allowable. Because of data availability, the Department is presenting a wide range of estimates for the amount of spending in this category that would no longer be allowable under the proposed rule, from 10–50 percent. We welcome comments on the accuracy of this estimate. If 10 to 50 percent of the FY 2021 expenditures were no longer allowable, that would represent $92.5 to $462.5 million.

FIGURE E—EXPENDITURES ON SERVICES FOR CHILDREN AND YOUTH IN FY 2021 AND ESTIMATED NON-ALLOWABLE SPENDING

[$ millions]

Number of States	FY2021 Spending (millions)	Non-allowable estimate range	
		10%	50%
28	$925.0	$92.5	$462.5

Child Welfare

In FY 2021, states spent approximately $1.9 billion in federal TANF and MOE funds on ''Child Welfare Services.'' This category includes the three subcategories ''20.a Family Support/Family Preservation/Reunification Services,'' ''20.b Adoption Services,'' and ''20. C Additional Child Welfare Services'' (see Figure F). The Department expects that most or all spending in 20.a and 20.b would still be allowable under the proposed rule, which is approximately 51 percent of the FY 2021 Child Welfare Services spending. The Department expects that some of the spending in 20.c ''Additional Child Welfare Services,'' such as expenditures on child protective services investigations, would not meet the reasonable person standard and will therefore not be allowable.

FIGURE F—FY 2021 ACF–196 CHILD WELFARE SERVICES SPENDING BY CATEGORY

Child welfare services categories	FY 2021 spending (millions)	% of child welfare services spending FY 2021 (%)
Family Support/Family Preservation/Family Reunification Services	899.2	47
Adoption Services	32.1	2
Additional Child Welfare Services	967.2	51
Total	1,898.5	....

States do not report enough detail on child welfare expenditures to determine conclusively the amount of spending that would no longer be allowable. Therefore, the Department estimates that 10 to 50 percent of the current ''Additional Child Welfare Services'' spending would not be allowable. The impact of this would vary across states. In FY 2021, 23 states reported spending ''Additional Child Welfare Services'' funds on the ACF–196R. If 10 to 50 percent of this spending were no longer allowable, that would be $96.7 to $483.6 million, or 5 to 25 percent of FY 2021 ''Child Welfare Services'' spending (see Figure G).

Number of states	FY 2021 spending ($ millions)	Non-allowable estimate range	
		10%	50%
23	$967.2	$96.7	$483.6

College Scholarships

Education and training for parents with low incomes is a critical element of the TANF program's capacity to increase opportunities for family economic mobility. However, the Department is aware of instances of TANF funds being used for college scholarships for adults without children. Under the proposed rule, college scholarships for adults without children would not meet the reasonable person standard.[26]

To estimate spending on college scholarships, ACF examined spending reported on the ACF–196R under ''Education and Training'' or ''non-EITC refundable tax credit.'' Depending on

[26] The Department notes that it is possible that tuition assistance and other education and training supports may meet TANF purpose two, as long as the services specifically support the economic advancement of parents with low incomes.

the structure of their programs, states report college scholarship spending in these categories. ACF identified the expenditures of eight states with known spending on college scholarships for adults without children in FY 2021 in the appropriate ACF–196R category (see Figure H). We then examined the ACF–204 reports for these states with known spending on college scholarships for adults without children and were often able to identify amounts that were more precise than obtained from including the entire ACF–196R category. ACF estimates that these states spent $1.14 billion on college scholarships in FY 2021. This may exclude states with smaller amounts of college scholarship spending that we are unaware of due to current reporting limitations. It also likely overstates the college scholarship expenditures in identified states, as the ACF–196R categories include activities other than college scholarships. For example, in at least one state, the category includes a variety of other tax credits, and the amount of college tuition tax credits is not identified separately. Additionally, a portion of college scholarship spending may go to parents with children at or under 200 percent of the federal poverty guidelines, and therefore might be allowable under purpose two after rule enactment. Given limitations in the data that ACF can collect, we believe that a range from 85 to 115 percent of $1.14 billion, that is, from $970.7 million to 1.31 billion, is a reasonable estimate for non-allowable spending. Because we looked at states with known college scholarship spending on adults without children, and then were able to identify specific college scholarship expenditures in these states, we believe that the percentage of this spending that will be non-allowable is high, providing the basis for the 85 percent lower estimate. There is still some uncertainty, especially in states where the expenditure was a ‘‘non-EITC refundable tax credit,’’ as we do not have data on the amount of this spending that is specifically on college scholarships. The upper estimate accounts for states that may have college scholarship spending on adults without children that we are unaware of from current reporting.

FIGURE H—ESTIMATES OF FY 2021 SPENDING IN CATEGORIES THAT INCLUDE COLLEGE SCHOLARSHIPS AND NON-ALLOWABLE ESTIMATE RANGE

[$ millions]

	FY 2021 spending on college scholarships ($ millions)	Non-allowable estimate range ($ millions)	
		85%	115%
U.S. Total	1,142.0	970.7	1,313.3

State Responses

To identify possible state responses to this provision, we looked at the cumulative impact of spending in the four categories described above, and at federal and MOE spending separately, because states incur different types of penalties depending on the type of spending. Figure I summarizes the amount of spending in each category, broken out by federal and MOE. In FY 2021, states spent $1.5 billion in federal funds on pre-kindergarten and Head Start, services for children and youth, additional child welfare services, and college scholarships. States claimed $4.5 billion in maintenance-of-effort spending on those categories. As discussed previously, we expect that a portion of this spending would be non-allowable under the reasonably calculated provision.

FIGURE I—AMOUNT OF FY 2021 SPENDING ON POTENTIALLY IMPACTED CATEGORIES

[$ millions]

Spending category	Amount of spending: FY 2021 (millions)		
	Federal	MOE	Total
Pre-Kindergarten/Head Start	$70.9	$2,858.5	$2,929.3
Services for Children and Youth	211.9	713.1	925.0
Child Welfare Services—Additional Child Welfare Services	589.8	377.4	967.2
College Scholarships	601.0	541.0	1,142.0
Total Spending	1,473.5	4,490.0	5,963.5

Response: No change in behavior.

Federal TANF Spending

In FY 2021, 37 states had federal spending in these categories that we expect may be impacted under the reasonably calculated provision. Taking into account the estimated percentage range of non-allowable spending in each category described previously, we estimate that between $598.1 and $1.13 billion of the total $1.47 billion in federal spending in these categories would be non-allowable (see Figure J.) Therefore, if states did not change their behavior in the year following the enactment of the proposed rule, 37 states would spend between $598.1 and $1.14 billion total in federal TANF funds on services that are non-allowable. In the following fiscal year, the audit process would identify the non-allowable spending, and states would incur a penalty for misuse of funds in the year following the audit. With this penalty, the federal block grant award is reduced by the amount of TANF funds misused. States are required to replace these federal funds with state funds. This would be a transfer of between $598.1 and $1.127 billion in state funds from other uses to TANF. The states would incur the penalty in the year following audit findings of the non-allowable spending. We expect that the possibly of a penalty would serve as an incentive for states to transfer federal TANF funds from non-allowable spending to allowable uses.

FIGURE J—IMPACT ON FEDERAL SPENDING

Federal	Number of states with federal spending in categories possibly impacted under reasonably calculated provision	Estimate of non-allowable spending under reasonably calculated provision (millions)	
		Low estimate	High estimate
	37	$598.1	$1,127.4

MOE Spending

To meet the basic MOE requirement, states must claim state expenditures each fiscal year of at least 80 percent of a historic State expenditure level for ''qualified State expenditures.'' If a state meets the minimum work participation rate requirements for all families and two-parent families, they only need to spend at least 75 percent of the historic amount. For the purpose of this analysis, we assume that all states have an 80 percent MOE requirement, because states do not know which level they are required to meet until after the fiscal year is over.

In FY 2021, 38 states claimed MOE spending in at least one of the four categories we analyzed as possibly being impacted under the reasonably calculated provision, totaling $4.49 billion. Taking into account the estimate range of non-allowable spending within each category described previously, we estimate that between $854.7 million and $2.60 billion of this spending would be non-allowable under the proposed provision.

Under the proposed reasonably calculated provision, if states were to make no changes to their behavior, they would spend between $854.7 million and $2.60 billion that is non-allowable as MOE. When reviewing state spending, the Department would not ''count'' this spending as MOE. A state with non-allowable spending would have its MOE level reduced by the amount of non-allowable spending.

This reduction in MOE will have different impacts on states depending on their levels of MOE spending. For example, a state may have a $100 million MOE requirement, and claim $120 million in MOE spending. If $15 million of that spending is non-allowable, the state's MOE level would be reduced to $105 million. The state would still meet the MOE requirement. Many states claim ''excess MOE,'' meaning they claim more MOE spending than needed to meet their basic requirement. So, the Department expects after the rule's enactment, most states will still have enough MOE spending to meet their basic requirement and therefore will not be impacted if they do not change their MOE spending behavior.

However, some states may not be able to meet the MOE requirement after subtracting non-allowable spending. For example, if a state has a $100 million MOE requirement, claims $120 million in MOE spending, but $40 million is non-allowable, their MOE spending will be reduced to $80 million. They would not meet their basic MOE requirement and would be assessed a penalty for failing to meet the TANF MOE requirement. In the next fiscal year, their federal TANF grant would be reduced by the amount of the shortfall, $20 million. The state then would need to ''replace'' those funds by spending an additional $20 million in state funds. This would be a transfer of state funds from their status quo use to MOE.

We applied the estimated percentage range of non-allowable spending in each category to state spending in FY 2021, subtracting each state's estimated amount of non-allowable spending from its reported MOE spending. We identified states where this reduction would result in their failure to have enough MOE to meet the 80% MOE requirement, performing this analysis for the low and high ends of the estimated non-allowable spending range.

Of the 38 states who claimed MOE spending in one or more of the four analyzed categories, we estimate that between five and nine states would fail to meet the MOE requirement under the reasonably calculated provision. The amount of MOE shortfall would be between $196.8 and $636.1 million (Figure K). If states did not change their behavior, these five to nine states would be penalized for failing to meet the TANF MOE requirement. They would need to transfer between $196.8 and $636.1 million in state funds to TANF MOE. We expect that this would incentivize impacted states to change behavior to avoid a penalty.

FIGURE K—IMPACT ON MOE SPENDING

MOE	Number of states with MOE spending in categories possibly impacted under reasonably calculated provision	Estimated additional number of states that fail to meet 80% MOE requirement under reasonably calculated provision *		Amount of shortfall (millions)	
		Low estimate	High estimate	Low estimate	High estimate
	38	5	9	$196.8	$636.1

Response: Shift non-allowable spending in pre-kindergarten and Head Start, services for children and youth, and additional child welfare services to activities that meets the reasonable person standard.

States that reported federal TANF spending in these categories could shift the subset of non-allowable federal spending to other programs or services that are directly related to a TANF purpose. For pre-kindergarten and Head Start spending, states may be able to recategorize the non-allowable spending claimed under purpose three as purpose two. We estimate that the total transfer for federal TANF spending would be between $598.1 million and $1.13 billion.

States that claimed MOE spending in these categories could shift spending that is non-allowable under the reasonably calculated provision to other programs or services that are directly related to a TANF purpose. As discussed previously, we expect that this change in behavior will be incentivized in states where they cannot meet their basic MOE requirement if the non-allowable spending is excluded from their MOE. This is the case in five to nine states, and the estimated transfer in state funds to allowable TANF MOE uses is between $196.8 and $636.1 million.

Caveats

Our estimates only include four spending categories, which we selected because we believe they represent the majority of non-allowable spending. With the implementation of the rule, we may identify non-allowable spending in other categories, which could change the number of impacted states and amount of non-allowable spending.

Our analysis assumes that the percentage of spending on the four categories that is non-allowable is consistent across states. We expect that this is not the case, and that depending on the services provided, some states may have proportionally more non-allowable spending than others. We try to compensate for this by having fairly broad ranges in our estimates.

3. Exclude third-party, non-governmental spending as allowable MOE.

Currently, states are able to count spending by third-party, non-governmental entities toward their MOE and Contingency Fund spending requirements. This third-party, non-governmental spending often occurs in programs outside of the TANF program but for services and benefits that meet TANF allowable purposes. States do not report data to ACF about the source of their MOE; we have based our analysis on information from a GAO study published in 2016, the only published data available for analysis.[27] We used the percentage of MOE spending that was third-party, non-governmental MOE spending in the GAO study to estimate spending for FY 2021, and we estimate that five states used third-party, non-governmental MOE to meet some of their MOE requirement in FY 2021. The total amount of third-party, non-governmental MOE spending in those five states was an estimated $145.7 million.

If these states did not change their behavior following the implementation of a final rule that adopts the provision on third-party, non-governmental MOE as proposed, they would each fall short of meeting the basic MOE requirement by the amount of third-party, non-governmental expenditures that counted toward basic MOE. Each would be assessed a penalty that reduced the TANF grant by the amount of the shortfall. They would have to expend additional state funds beyond their MOE requirement, which do not count as MOE, in the year after we impose the penalty, to replace the reduction of the federal grant. This would represent a transfer of state funds to the TANF program from other state spending. Assuming that all five states failed to expend additional MOE in the first year of implementation to substitute for any of their third-party, non-governmental MOE, a total of $145.7 million of TANF spending would be transferred from the states to the federal government.

We have limited information about third-party non-governmental expenditures, and we cannot accurately estimate how much a state may fall short of its basic MOE requirement in a given year. However, for a state that would need to increase state MOE spending to comply with its basic MOE requirement after changes in this regulation take effect, the impact of falling short and having a penalty would be twice as great as increasing MOE spending and avoiding a penalty. Therefore, we anticipate that states will have an incentive to shift state spending to avoid a penalty. States would transfer spending toward their TANF programs or identify additional state governmental spending that meets one or more of the purposes of TANF and qualifies as MOE.

Under this proposed rule, we do not expect that the third-party, non-governmental expenditures on TANF-eligible individuals would decrease, because these are typically funds that these organizations spend, regardless of the state's ability to count them toward the TANF MOE requirement. It is possible that governmental spending on TANF-eligible individuals would stay the same (by identifying additional existing *governmental* MOE) or increasing MOE spending in other areas. There is great variation in the types of programs that can be considered TANF-related spending (*e.g.,* basic assistance, child care, work supports) and there may be high returns to society for spending on these types of programs. When faced with a need to increase MOE spending, states will have a variety of beneficial types of activities they can choose to fund, and we expect that they would choose those that are in greatest need or provide the highest return on the expenditure, given local conditions. Therefore, an equally efficient or improved utilization of resources is expected.

4. Ensure that excused holidays match the number of federal holidays, following the recognition of Juneteenth as a federal holiday.

This proposal would realign the TANF rules with respect to holidays to the number of federal holidays. It would revise § 261.60(b) to increase from 10 to 11 the maximum number of holidays permitted to count in the work participation rate for unpaid work activities in the fiscal year. The proposal would not alter the calculation for individuals participating in paid work activities, which includes the hours for which an individual was paid, including paid holidays and sick leave, and which can be based on projected actual hours of employment for up to six months, with documentation. There is negligible anticipated fiscal impact of this provision.

5. Develop new criteria to allow states to use alternative Income and Eligibility Verification System (IEVS) measures.

IEVS is a set of data matches that each state must complete to confirm the initial and ongoing eligibility of a family for TANF-funded benefits. State TANF programs are required to participate in IEVS and must match TANF applicant and recipient data with four types of information through IEVS. The Department is proposing to change the criteria for alternate sources of income and eligibility information, which would provide flexibility to states to find more effective data matches and perform the ones that are likely to benefit their programs the most. States will have the option of continuing the status quo IEVS measures or of using the proposed flexibility to use alternative measures. For states that choose to use this flexibility, there will be upfront costs of staff time to develop new criteria and submit them for approval, along with costs of ongoing monitoring and compliance. The main benefit will likely be the cost effectiveness of alternative sources of data matching. We have not quantified these impacts. Because they have the option of maintaining the status quo, we expect that states will only invest upfront and ongoing resources if this cost to them is outweighed by the benefits of the flexibility. The Department expects a reduction in administrative burden for states that opt to take up this provision and welcomes comments from states about the impact of this provision on administrative burden or other costs and benefits.

[27] U.S. Governmental Accountability Office, *Temporary Assistance for Needy Families: Update on States Counting Third-Party Expenditures toward Maintenance of Effort Requirements,* February 2016, available at: *https://www.gao.gov/assets/gao-16-315.pdf.*

6. Clarify the ''significant progress'' criteria following a work participation rate corrective compliance plan.

This proposal would add a clearer means of qualifying for ''significant progress'' when a state that has failed its work participation rate also fails to correct the violation fully in a corrective compliance plan. Specifically, it would permit a state that failed both the overall and two-parents rates for a year and subsequently meets the overall rate (but not the two-parent rate) as part of its corrective compliance plan to qualify for a reduced penalty. The Department considers this proposal necessary to improve governmental processes and expects a reduction in potential financial penalties by making penalties commensurate with the degree of the state's remaining noncompliance.

7. Clarify the existing regulatory text about the allowability of costs associated with disseminating program information.

The seventh proposed change would clarify existing regulatory text about the allowability of costs associated with providing program information. We propose to clarify the point that administrative costs exclude the costs of disseminating program information. The Department considers this necessary to provide clarification because the TANF statute sets an administrative cap of fifteen percent and failure to comply with the administrative cap could lead to a misuse of funds penalty. We do not expect that this will have a fiscal impact because it is only clarifying our longstanding statutory interpretation.

Administrative Costs

Costs to ACF

We identify a one-time cost to ACF's Office of Family Assistance to revise the Compliance Supplement for the Office of Management and Budget's Uniform Administrative requirements, Cost principles, and Audit Requirements Regulations. For the purposes of this analysis, we assume these tasks would be performed by federal employees on the General Schedule payscale at grade 14, step 5, in the locality pay area covering ACF headquarters in Washington, DC, earning an hourly wage of $71.88.[28] Assuming benefits and indirect costs of labor equal 100 percent of the hourly wage, the corresponding fully loaded cost of labor for these employees is $157.48 per hour. We anticipate that it will take two employees, each working 80 hours, to revise these documents, or 160 hours in total. Thus, we estimate that ACF would incur $23,001.60 in costs under the proposed rule. This estimate represents an opportunity cost, monetized as the value of the employee's productive time, rather than additional federal spending.

Costs to States and Other Jurisdictions Administering TANF Programs

We identify a one-time cost to agencies that administer TANF programs to read and understand the proposed rule. Given the length of the preamble (approximately 21,600 words) and average reading speeds about 225 words per minute,[29] we estimate that it would take each individual about 1.6 hours to read and understand the proposed rule.[30] We assume that, in each jurisdiction, one lawyer and one auditor would spend time absorbing this information. We adopt an average pre-tax hourly wage for lawyers of $78.74 per hour,[31] and a corresponding fully loaded cost of labor of $157.48 per hour; for auditors, we adopt a pre-tax hourly wage of $41.70 per hour,[32] and a corresponding fully loaded cost of labor of $83.40 per hour. For this impact, we calculate costs of $385.41 per jurisdiction,[33] and total costs of $20,812.03 across all jurisdictions.[34]

We also identify a cost to agencies that administer TANF programs to determine whether they are in compliance with the regulatory requirements of the proposed rule. We model this impact as one program administrator and one budget officer per jurisdiction each spending 3 work days on this effort, or 48 total working hours per jurisdiction. To monetize this impact, we adopt an average pre-tax hourly wage for managers of $63.08 per hour, and a corresponding fully loaded wage of $126.16. For this impact, we calculate costs of $6,055.68, and total costs of $327,006.72 across all jurisdictions.

In total, we identify $23,001.60 in costs to ACF, $347,818.75 in costs to jurisdictions administering TANF programs, and $370,820.35 in incremental administrative costs attributable to the proposed rule. We request comment on these cost estimates, including to identify any additional sources of costs of this proposed rule.

Analysis of Regulatory Alternatives

In developing this proposed rule, the Department carefully considered the alternative of maintaining the status quo. If the Department does not act, states will be able to continue funding services that do not align with congressional intent. Additionally, there will be valuable missed opportunities to increase administrative efficiency and to support states in designing and implementing effective work programs that provide positive benefits to participants and society.

In addition to maintaining the status quo, we considered other alternatives to the proposals in the NPRM.

Alternative 1: Establish a ceiling on the term ''needy'' so that it may equal but may not exceed a family income of 130 percent of the federal poverty guidelines. We considered several possible approaches to establishing a ceiling on the term ''needy.'' In particular, we considered proposing setting the limit at or below 130 percent of the federal poverty guidelines. We examined the ACF–204 forms submitted by states in 2021 in order to identify programs funded with MOE that had needs or eligibility standards of over 130 percent of the federal poverty guidelines. We estimate that the range of funds spent on families above 130 percent of the federal poverty guidelines is between $483.8 million and $3.285 billion. Under this alternative, the impacted amount would be transferred to programs and services for families with incomes at or below 130 percent of the federal poverty guidelines. We note that because of data limitations, our analysis only includes expenditures claimed as MOE. Therefore our estimate likely underrepresents the magnitude of the impact.

The Department also reviewed general eligibility limits for several other major federal programs that serve families with very low incomes, as shown in Figure L.

[28] U.S. Office of Personnel Management. 2023 General Schedule (GS) Locality Pay Tables: Washington–Baltimore–Arlington, DC–MD–VA–WV–PA. *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2023/DCB_h.pdf.*

[29] U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. 2016. *Guidelines for Regulatory Impact Analysis. https://aspe.hhs.gov/reports/guidelines-regulatory-impact-analysis.* 225 is a midpoint estimate of the ''average adult reading speed (approximately 200 to 250 words per minute)'' (page 26).

[30] 1.6 hours = 21,600 words ÷ 225 words per minute ÷ 60 minutes per hour.

[31] U.S. Bureau of Labor Statistics. Occupational Employment and Wages, May 2022: 23–1011 Lawyers. *https://www.bls.gov/oes/current/oes231011.htm.* Accessed August 16, 2023.

[32] U.S. Bureau of Labor Statistics. Occupational Employment and Wages, May 2022: 13–2011 Accountants and Auditors. *https://www.bls.gov/oes/current/oes132011.htm.* Accessed August 16, 2023.

[33] $385.41 = 1.6 hours * ($157.48 per hour + $83.40 per hour).

[34] $20,812.03 = 54 jurisdictions * $385.41 per jurisdiction.

FIGURE L—SIMPLIFIED INCOME ELIGIBILITY LIMITS FOR OTHER FEDERAL PROGRAMS

Program	Income eligibility limit
Medicaid	At or below 138% of the federal poverty guidelines in Medicaid-expansion states, lower in non-expansion states.
SNAP	At or below 130% of the federal poverty guidelines; up to 200% for states with broad-based categorical eligibility for those receiving a TANF-funded benefit.
LIHEAP	At or below 150% of the federal poverty guidelines or at or below 60% State Median Income.
Head Start	At or below 100% of the federal poverty guidelines, or households receiving SNAP and other public assistance.
National School Lunch Program	At or below 130% of the federal poverty guidelines eligible for free meals; between 104% and 185% eligible for reduced price meals.
Title IV–E Foster Care	Eligible for Aid to Families with Dependent Children (AFDC) under the state plan in effect July 16, 1996.
Social Services Block Grant	At or below 200% of the federal poverty guidelines.

Because of the wide variety of services funded by TANF, the Department is aware that states may have strategically designed services so that TANF programs can enhance and complement other federal programs while still serving needy families. By setting a ceiling above the limit of many other programs, the Department allows for state flexibility while also aligning closely with another grant that also funds a variety of services for needy families, the Social Services Block Grant.

Alternative 2: Establish a ceiling on the term ''needy'' so that it may equal but may not exceed a family income of 300 percent of the federal poverty guidelines. In addition to a lower needy standard limit, the Department also considered establish a higher ceiling on the term ''needy'' at 300 percent of the federal poverty guidelines. We examined the ACF–204 forms submitted by states in 2021 and identified $826.9 million in expenditures claimed as MOE in programs that have needs standards above 300 percent of the federal poverty guidelines. We estimate that between $41.3 million and $165.4 million of these expenditures are for families above 300 percent of the federal poverty guidelines. Under this alternative, the impacted amount would be transferred to programs and services for families with incomes at or below 300 percent of the federal poverty guidelines. We note that because of data limitations, our analysis only includes expenditures claimed as MOE. Therefore our estimate likely underrepresents the magnitude of the impact.

For context, for a family of three in 2021, this would be an annual income of $65,880. The monthly average would be $5,490, which is 1.5 times greater than the highest state eligibility limit for ongoing eligibility for cash assistance in 2021. Given that 300 percent greatly exceeds the highest income limit for cash assistance initial eligibility, and that it is substantially higher than other federal program income eligibility limits (see Figure L), the Department rejected a 300-percent limit, as it did not appear to be aligned with congressional intent for programs that serve needy families.

Alternative 3: Establish a phase-in schedule for the provisions of the proposed rule: provisions four through seven would have effective dates in the fiscal year of the finalization of the proposed rule; provisions one through three would have an effective date at the start of the fiscal year following publication. Under this alternative, with the finalization of the proposed rule, provisions four through seven, related to work and administrative efficiencies, would be effective immediately. For the first three provisions regarding allowable spending and third-party, non-governmental MOE, there would be an effective data in the fiscal year following the finalization of the rule. By establishing different effective dates, states would have necessary time to identify strategies and make changes to be in compliance with the allowable spending and third-party MOE provisions, which could be a complex process in some states. It would also not delay the implementation of provisions four through seven, which provide some changes that states have requested and strengthen TANF work programs. However, it is likely that provisions four through six will require changes to state administrative systems. Additionally, because of uncertainty in timing of the effective date, the Department is concerned about the burden on states if the rule is finalized late in a fiscal year. Therefore, the Department rejected this alternative in favor of a single effective date for all provisions at the start of the fiscal year following finalization.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. For purposes of the RFA, states and individuals are not considered small entities. As the rule directly and primarily impacts states and indirectly impacts individuals, it has been determined, and the Secretary proposed to certify certifies, that this proposed rule would not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.,* as amended) (PRA), all Departments are required to submit to OMB for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. As required by this Act, we will submit any proposed revised data collection requirements to OMB for review and approval

Executive Order 13132

Executive Order 13132 requires federal agencies to consult with state and local government officials if they develop regulatory policies with federalism implications. Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government closest to the people. While the Department has not identified this rule to have federalism implications as defined in the Executive Order, consistent with Executive Order 13132, the Department specifically solicits and welcomes comments from state and local government officials on this proposed rule.

Assessment of Federal Regulation and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 2000 (Pub. L. 106–58) requires federal agencies to determine whether a policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. This proposed regulation would not have a negative impact on family well-being as defined in the law.

Jeff Hild, Acting Assistant Secretary of the Administration for Children and Families, approved this document on September, 20, 2023.

List of Subjects

45 CFR Part 205

Computer technology, Grant programs—social programs, Public assistance programsReporting and recordkeeping requirements, Wages.

Reporting and recordkeeping requirements, Wages.

45 CFR Part 260

Administrative practice and procedure, Grant programs—social programs, Public assistance programs.

45 CFR Part 261

Administrative practice and procedure, Employment, Grant programs—social programs, Public assistance programs, Reporting and record keeping requirements.

45 CFR Part 263

Administrative practice and procedure, Grant programs—social programs, Public assistance programs, Reporting and record keeping requirements.

Dated: September 22, 2023.

Xavier Becerra,

Secretary.

For the reasons set forth in the preamble, we propose to amend 45 CFR Subtitle B, Chapter II, as follows:

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

■ 1. The authority citation for part 205 continues to read as follows:

Authority: 42 U.S.C. 602, 603, 606, 607, 1302, 1306(a), and 1320b–7: 42 U.S.C. 1973gg–5.

■ 2. In § 205.55, revise paragraph (d) to read as follows:

§ 205.55 Requirements for requesting and furnishing eligibility and income information.

* * * * *

(d) The Secretary may, based upon application from a State, permit a State to obtain and use income and eligibility information from an alternate source or sources in order to meet any requirement of paragraph (a) of this section. The State agency must demonstrate to the Secretary that the alternate source or sources is as timely and useful, and either as complete or as cost effective for verifying eligibility and benefit amounts as the data source required in paragraph (a) of this section. The Secretary will consult with the Secretary of Agriculture and the Secretary of Labor prior to approval of a request, as appropriate. The State must continue to meet the requirements of this section unless the Secretary has approved the request.

* * * * *

PART 260—GENERAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) PROVISIONS

■ 3. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 601, 601 note, 603, 604, 606, 607, 608, 609, 610, 611, 619, and 1308.

■ 4. Amend § 260.30 by adding the definition ''Needy'' to read as follows:

§ 260.30 What definitions apply under the TANF regulations?

* * * * *

Needy means state established standards of financial need may not exceed a family income of 200 percent of the federal poverty guidelines.

* * * * *

PART 261—ENSURING THAT RECIPIENTS WORK

■ 5. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 601, 602, 607, and 609; Pub. L. 109–171.

■ 6. In § 261.53, revise paragraph (b) to read as follows:

§ 261.53 May a State correct the problem before incurring a penalty?

* * * * *

(b) To qualify for a penalty reduction under § 262.6(j)(1) of this chapter, based on significant progress towards correcting a violation, a State must either:

(1) Reduce the difference between the participation rate it achieved in the fiscal year for which it is subject to a penalty and the rate applicable for the fiscal year in which the corrective compliance plan ends (adjusted for any caseload reduction credit determined pursuant to subpart D of this part) by at least 50 percent; or

(2) Have met the overall work participation rate during the corrective compliance plan period but did not meet both the overall and two-parent work participation rates in the same fiscal year during the corrective compliance plan period, if the State failed both the overall and two-parent work participation rates in the fiscal year for which it is subject to a penalty.

■ 7. In § 261.60, amend paragraph (b) by revising the second, third, and fourth sentences to read as follows:

§ 261.60 What hours of participation may a State report for a work-eligible individual?

* * * * *

(b) * * * For participation in unpaid work activities, it may include excused absences for hours missed due to a maximum number of holidays equal to the number of federal holidays in a fiscal year, as established in 5 U.S.C. 6103, in the preceding 12-month period and up to 80 hours of additional excused absences in the preceding 12-month period, no more than 16 of which may occur in a month, for each work-eligible individual. Each State must designate the days that it wishes to count as holidays for those in unpaid activities in its Work Verification Plan. In order to count an excused absence as actual hours of participation, the individual must have been scheduled to participate in a countable work activity for the period of the absence that the State reports as participation. * * *

* * * * *

PART 263—EXPENDITURES OF STATE AND FEDERAL TANF FUNDS

■ 8. The authority citation for part 263 continues to read as follows:

Authority: 42 U.S.C. 604, 607, 609, and 862a; Pub. L. 109–171.

■ 9. Amend § 263.0, by revising (b)(1)(i) and adding (b)(1)(iii) to read as follows:

§ 263.0 What definitions apply to this part?

* * * * *

(b) * * *

(1) * * *

(i) For example, it excludes costs of providing diversion benefits and services, screening and assessments, development of employability plans, work activities, post-employment services, work supports, and case management. It also excludes costs for contracts devoted entirely to such activities.

* * * * *

(iii) It excludes costs of disseminating program information, such as information about program services, information about TANF purposes, or other information that furthers a TANF purpose.

* * * * *

■ 10. Revise § 263.2(e) to read as follows:

§ 263.2 What kinds of State expenditures count toward meeting a State's basic MOE expenditure requirement?

* * * * *

(e) Expenditures for benefits or services listed under paragraph (a) of this section are limited to allowable costs borne by State or local governments only and may not include cash donations from non-governmental third parties (*e.g.,* a non-profit organization) and may not include the value of third-party in-kind contributions from non-governmental third parties.

* * * * *

■ 11. Amend § 263.11 by adding paragraph (c) to read as follows:

§ 263.11 What uses of Federal TANF funds are improper?

* * * * *

(c) If an expenditure is identified that does not appear to HHS to be reasonably calculated to accomplish a purpose of TANF (as specified at § 260.20 of this chapter), the State must show that it used these funds for a purpose or purposes that a reasonable person would consider to be within one or more of the four purposes of the TANF program (as specified at § 260.20 of this chapter).

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1831 and 1852

[Notice: (23–099)]

RIN 2700–AE72

NASA Federal Acquisition Regulation Supplement (NFS): Removal of Total Compensation Plan Language (NFS Case 2023–N002)

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: NASA is proposing to amend the NASA Federal Acquisition Regulation Supplement (NFS) as well as corresponding sections of the CFR at 48 CFR part 1831 and 1852 to remove NFS 1831.205–671, Solicitation provision, and NFS Clause 1852.231–71, Determination of Compensation Reasonableness.

DATES: Comments are due December 1, 2023.

FOR FURTHER INFORMATION CONTACT: Edgar Lee, NASA HQs, Office of Procurement Management and Policy Division, LP–011, 300 E. Street SW, Washington, DC 20456–001. Telephone 202–420–1384; facsimile 202–358–3082.

SUPPLEMENTARY INFORMATION:

I. Background

NASA is proposing to amend the NFS by removing NFS 1831.205–671, Solicitation provision, and NFS 1852.231–71, Determination of Compensation Reasonableness, from the NFS. NASA has determined that these provisions are unnecessary as the as they exceed the scope requirements adequately covered in FAR provision 52.222–46, Evaluation of Compensation for Professional Employees. Currently, NFS requires an evaluation for all labor categories and periodic review of total compensation plans after contract award for cost reimbursement contracts (at least every 3 years) to evaluate the reasonableness of compensation for all proposed labor categories in service contracts.

NASA has made a determination to rely on FAR provision 52.222–46, agencywide templates, and instructions, to ensure consistency in the data provided to NASA and subsequent evaluations as well as ensuring NASA continues to pay fair and reasonable wages.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review by OMB under E.O. 12866, Regulatory Planning and Review. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

NASA does not expect this rule, when enacted, to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule is removing the NFS unique requirements for submission of total compensation plan. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. NASA invites comments from small business concerns and other interested parties on the expected impact of this rulemaking on small entities.

NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rulemaking consistent with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 and NFS Case 2023–N002 in correspondence.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply. The changes proposed in this rulemaking will make an existing information collection currently approved under Office of Management and Budget (OMB) control number 2700–0077, *Contractor and Subcontractor Compensation Plans,* unnecessary. Subject to public comment to the contrary as part of this proposed rule, NASA plans to discontinue this collection with the publication of the final rule.

List of Subjects

48 CFR Part 1831

Accounting, Government procurement.

48 CFR Part 1852

Accounting, Government procurement, Reporting and recordkeeping requirements.

Erica Jones,

NASA FAR Supplement Manager.

For the reasons stated in the preamble, NASA proposes to amend 48 CFR parts 1831 and 1852 as follows:

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 1. The authority citation for part 1831 continues to read as follows:

Authority: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

§ 1831.205–671 [Removed and Reserved]

■ 2. Remove and reserve § 1831.205–671.

PART 1852—SOLICITATION PROCEDURES AND CONTRACT CLAUSES

■ 3. The authority citation for part 1852 continues to read as follows:

Authority: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

§ 1852.231–71 [Removed and Reserved]

■ 4. Remove and reserve § 1852.231–71.

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