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Title 45: Public Welfare

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PART 286—TRIBAL TANF PROVISIONS

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Authority: 42 U.S.C. 601, 604, and 612; Public Law 111–5.

Source: 65 FR 8530, Feb. 18, 2000, unless otherwise noted.

Subpart A—General Tribal TANF Provisions

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§ 286.1 What does this part cover?[↑ top](#)

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

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

§ 286.5 What definitions apply to this part?[↑ top](#)

The following definitions apply under this part:

ACF means the Administration for Children and Families.

Act means the Social Security Act, unless otherwise specified.

Administrative cost means costs necessary for the proper administration of the TANF program.

- (1) It excludes the direct costs of providing program services.
 - (i) For example, it excludes costs of providing diversion benefits and services, providing program information to clients, screening and assessments, development of employability plans, work activities, post-employment services, work supports, information on and referral to Medicaid, Child Health Insurance Program (CHIP), Food Stamp and Native Employment Works (NEW) programs and case management.
 - (ii) It excludes the salaries and benefit costs for staff providing program services and the direct administrative costs associated with providing the services, such as the costs for supplies, equipment, travel, postage, utilities, rental of office space and maintenance of office space, and
 - (iii) It excludes information technology and computerization needed for tracking and monitoring.
- (2) It includes the costs for general administration and coordination of this program, including contract costs for these functions and indirect (or overhead) costs. Some examples of administrative costs include, but are not limited to:
 - (i) Salaries and benefits and all other direct costs not associated with providing program services to individuals, including staff performing administrative and coordination functions;
 - (ii) Preparation of program plans, budgets, and schedules;

- (iii) Monitoring of programs and projects;
- (iv) Fraud and abuse units;
- (v) Procurement activities;
- (vi) Public relations;
- (vii) Services related to accounting, litigation, audits, management of property, payroll, and personnel;
- (viii) Costs for the goods and services required for administration of the program such as the costs for supplies, equipment, travel, postage, utilities, and rental of office space and maintenance of office space, provided that such costs are not excluded as a direct administrative cost for providing program services under paragraph (1) of this definition;
- (ix) Travel costs incurred for official business and not excluded as a direct administrative cost for providing program services under paragraph (1) of this definition;
- (x) Management information systems not related to the tracking and monitoring of TANF requirements (*e.g.*, for a personnel and payroll system for Tribal staff); and
- (xi) Preparing reports and other documents related to program requirements.

Adult means an individual who is not a “minor child,” as defined below.

Alaska Tribal TANF entity means the twelve Alaska Native regional nonprofit corporations in the State of Alaska and the Metlakatla Indian Community of the Annette Islands Reserve.

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

Cash assistance, when provided to participants in the Welfare-to-Work program, has the meaning specified at §286.130.

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

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

The Department means the Department of Health and Human Services.

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

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

- (1) All U.S. citizens who meet the Tribe's criteria for Tribal TANF assistance;

(2) All qualified aliens, who meet the Tribe's criteria for Tribal TANF assistance, who entered the U.S. before August 22, 1996;

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

(a) An alien who is admitted to the U.S. as a refugee under section 207 of the Immigration and Nationality Act;

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

(c) An alien whose deportation is being withheld under section 243(h) of such Act; and

(d) An alien who is lawfully residing in any State and is a veteran with an honorable discharge, is on active duty in the Armed Forces of the U.S., or is the spouse or unmarried dependent child of such an individual;

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

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

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

Family Violence Option (or FVO) means the provision at section 402(a)(7) of the Act made available to Tribes under which a Tribe may certify in its Tribal TANF plan that it has elected the option to implement comprehensive strategies for identifying and serving victims of domestic violence.

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

FY means fiscal year.

Good cause domestic violence waiver means a waiver of one or more program requirements granted by a Tribe to a victim of domestic violence under the FVO, as described in §286.140(a)(3).

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

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

(1) Arctic Slope Native Association;

(2) Kawerak, Inc.;

- (3) Maniilaq Association;
- (4) Association of Village Council Presidents;
- (5) Tanana Chiefs Council;
- (6) Cook Inlet Tribal Council;
- (7) Bristol Bay Native Association;
- (8) Aleutian and Pribilof Island Association;
- (9) Chugachmuit;
- (10) Tlingit Haida Central Council;
- (11) Kodiak Area Native Association; and
- (12) Copper River Native Association.

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

Minor child means an individual who:

- (1) Has not attained 18 years of age; or
- (2) Has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training).

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

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

Qualified Aliens has the same meaning given the term in 8 U.S.C. 1641 except that it also includes members of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act, who are lawfully admitted under 8 U.S.C. 1359.

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

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

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

SFAG or State Family Assistance Grant means the amount of the block grant funded under section 403(a) of the Act for each eligible State.

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

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

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

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

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

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

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

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

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

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

Victim of domestic violence means an individual who is battered or subject to extreme cruelty under the definition at section 408(a)(7)(C)(iii) of the Act.

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

Welfare-related services means all activities, assistance, and services funded under Tribal TANF provided to an eligible family. See definition of "Assistance" in §286.10.

Welfare-to-Work means the program for funding work activities at section 412(a)(2)(C) of the Act.

WtW means Welfare-to-Work.

WtW cash assistance, when provided to participants in the Welfare-to-Work program, has the meaning specified at §286.130.

§ 286.10 What does the term "assistance" mean?

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(a) The term “assistance” includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (*i.e.*, for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).

(1) It includes such benefits even when they are:

(i) Provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients; and

(ii) Conditioned on participation in work experience or community service or any other work activity.

(2) Except where excluded under paragraph (b) of this section, it also includes supportive services such as transportation and child care provided to families who are not employed.

(b) It excludes:

(1) Nonrecurring, short-term benefits that:

(i) Are designed to deal with a specific crisis situation or episode of need;

(ii) Are not intended to meet recurrent or ongoing needs; and

(iii) Will not extend beyond four months.

(2) Work subsidies (*i.e.*, payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);

(3) Supportive services such as child care and transportation provided to families who are employed;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts;

(6) Services such as counseling, case management, peer support, child care information and referral, information on and referral to Medicaid, Child Health Insurance Program (CHIP), Food Stamp and Native Employment Works (NEW) programs, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and

(7) Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of the Act, to an individual who is not otherwise receiving assistance.

(c) The definition of the term assistance specified in paragraphs (a) and (b) of this section does not preclude a Tribe from providing other types of benefits and services consistent with the purposes of the TANF program.

§ 286.15 Who is eligible to operate a Tribal TANF program?

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(a) An Indian tribe that meets the definition of Indian tribe given in §286.5 is eligible to apply to operate a Tribal Family Assistance Program.

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

Subpart B—Tribal TANF Funding

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

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

(1) A Tribe must indicate its definition of “Indian family” in its Tribal Family Assistance Plan. Each Tribe may define “Indian family” according to its own criteria.

(2) When we request the necessary data from the State, the State will have 30 days from the date of the request to submit the data.

(i) If we do not receive the data requested from the State at the end of the 30-day period, we will so notify the Tribe.

(ii) In cases where data is not received from the State, the Tribe will have 45 days from the date of the notification in which to submit relevant information. Relevant information may include, but is not limited to, Census Bureau data, data from the Bureau of Indian Affairs, data from other Federal programs, and Tribal records. In such a case, we will use the data submitted by the Tribe to assist us in determining the amount of the TFAG. Where there are inconsistencies in the data, follow-up discussions with the Tribe and the State will ensue.

(b) We will share the data submitted by the State under paragraph (a)(2)(i) of this section with the Tribe. The Tribe must submit to the Secretary a notice as to the Tribe's agreement or disagreement with such data no later than 45 days after the date of our notice transmitting the data from the State. During this 45-day period we will help resolve any questions the Tribe may have about the State-submitted data.

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

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

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

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

(1) The Tribe must submit any relevant information within 45 days from the date it notifies the Secretary of its disagreement with State submitted data under §286.20(b).

(2) We will review the additional relevant information submitted by the Tribe, together with the State-submitted data, in order to make a determination as to the amount of the TFAG. We will determine the amount of the TFAG at the earliest possible date after consideration of all relevant data.

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

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(a) A Tribe that wishes to terminate its TFAG prior to the end of its three-year plan must—

(1) Notify the Secretary and the State in writing of the reason(s) for termination no later than 120 days prior to the effective date of the termination, or

(2) Notify the Secretary in writing of the reason(s) for termination no later than 30 days prior to the effective date of the termination, where such effective data is mutually agreed upon by the Tribe and the affected State(s).

(b) The effective date of the termination must coincide with the last day of a calendar month.

(c) For a Tribe that retrocedes, the provisions of 45 CFR part 92 will apply with regard to closeout of the grant. All unobligated funds will be returned by the Tribe to the Federal government.

(d) The SFAG will be increased by the amount of the TFAG available for the subsequent quarterly installment.

(e) A Tribe's application to implement a TANF program subsequent to its retrocession will be treated as any other application to operate a TANF program, except that we may take into account when considering approval—

(1) Whether the circumstances that the Tribe identified for termination of its TANF program remain applicable and the extent to which—

(i) The Tribe has control over such circumstances, and

(ii) Such circumstances are reasonably related to program funding accountability, and

(2) Whether any outstanding funds and penalty amounts are repaid.

(f) A Tribe which retrocedes a Tribal TANF program is responsible for:

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

(2) Any applicable penalties (see subpart D) for actions occurring prior to retrocession; the provisions of 45 CFR Part 92 and OMB Circulars A-87 and A-133;

(3) compliance with other Federal statutes and regulations applicable to the TANF program; and

(4) any penalties resulting from audits covering the period before the effective date of retrocession.

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

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(a) Tribes may use TFAGs for expenditures that:

(1) Are reasonably calculated to accomplish the purposes of TANF, including, but not limited to, the provision to low income households with assistance in meeting home heating and cooling costs; assistance in economic development and job creation activities, the provision of supportive services to assist needy families to prepare for, obtain, and retain employment; the provision of supportive services to prevent of out-of-wedlock pregnancies, and assistance in keeping families together, or

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

§ 286.40 May a Tribe use the Tribal Family Assistance Grant to fund IDAs ?

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(a) If the Tribe elects to operate an IDA program, it may use Federal TANF funds or WtW funds to fund IDAs for individuals who are eligible for TANF assistance and may exercise flexibility within the limits of Federal regulations and the statute.

(b) The following restrictions apply to IDA funds:

(1) A recipient may deposit only earned income into an IDA.

(2) A recipient's contributions to an IDA may be matched by, or through, a qualified entity.

(3) A recipient may withdraw funds only for the following reasons:

(i) To cover post-secondary education expenses, if the amount is paid directly to an eligible educational institution;

(ii) For the recipient to purchase a first home, if the amount is paid directly to the person to whom the amounts are due and it is a qualified acquisition cost for a qualified principal residence by a qualified first-time buyer; or

(iii) For business capitalization, if the amounts are paid directly to a business capitalization account in a federally insured financial institution and used for a qualified business capitalization expense.

(c) To prevent recipients from withdrawing funds held in an IDA improperly, Tribes may do the following:

(1) Count withdrawals as earned income in the month of withdrawal, unless already counted as income,

- (2) Count withdrawals as resources in determining eligibility, or
- (3) Take such other steps as the Tribe has established in its Tribal plan or written Tribal policies to deter inappropriate use.

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

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(a) A Tribe may not use Tribal Family Assistance Grant funds to provide assistance to:

- (1) Families or individuals that do not otherwise meet the eligibility criteria contained in the Tribal Family Assistance Plan (TFAP); or
- (2) For more than the number of months as specified in a Tribe's TFAP (unless covered by a hardship exemption); or
- (3) Individuals who are not citizens of the United States or qualified aliens or who do not otherwise meet the definition of "eligible families" at §286.5.

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

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

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

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

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

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

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(a) ACF will negotiate a limitation on administrative costs with each Tribal TANF applicant individually for the first year of a program's operation based on the applicant's proposed administrative cost allocation. No Tribal TANF grantee may expend more than 35 percent of its Tribal Family Assistance Grant for administrative costs during the first year.

(b) ACF will negotiate a limitation on administrative costs with each Tribal TANF applicant individually for the second year of a program's operation based on the applicant's proposed administrative cost allocation. No Tribal TANF grantee may expend more than 30 percent of its TFAG for administrative costs during the second year.

(c) ACF will negotiate a limitation on administrative costs with each Tribal TANF applicant individually for the third and all subsequent years of a program's operation based on the applicant's proposed administrative cost allocation. As negotiated, a Tribal TANF grantee may not expend more than 25 percent of its TFAG for administrative costs

during any subsequent grant period.

(1) For the purposes of determining administrative costs, Tribes with approved plans who have been operating Tribal TANF programs prior to the effective date of this regulation will be able to negotiate a reasonable adjustment in their approved administrative cost rate, not to exceed the limitations in the Final Rule delineated above.

(2) [Reserved]

(d) ACF will negotiate limitations on administrative costs based on, but not limited to, a Tribe's TANF funding level, economic conditions, and the resources available to the Tribe, the relationship of the Tribe's administrative cost allocation proposal to the overall purposes of TANF, and a demonstration of the Tribe's administrative capability.

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

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(a) Activities that fall within the definition of “administrative costs” at §286.5 are subject to the limit determined under §286.50.

(b) Information technology and computerization for tracking, data entry and monitoring, including personnel and other costs associated with the automation activities needed for Tribal TANF monitoring, data entry and tracking purposes, are excluded from the administrative cost cap, even if they fall within the definition of “administrative costs.”

(c) Designing, administering, monitoring, and controlling a sample are not inherent parts of information technology and computerization and, thus, costs associated with these tasks must be considered administrative costs.

(d) Indirect Costs negotiated by BIA, the Department's Division of Cost Allocation, or another federal agency must be considered to be part of the total administrative costs.

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

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No. A Tribe may reserve amounts awarded to it, without fiscal year limitation, to provide assistance, benefits, and services in accordance with the requirements under §286.35 or §286.40, if applicable.

[74 FR 25163, May 27, 2009]

Subpart C—Tribal TANF Plan Content and Processing

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

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(a) Any eligible Indian tribe, Alaska Native organization, or intertribal consortium that wishes to administer a Tribal

TANF program must submit a three-year TFAP to the Secretary of the Department of Health and Human Services. The original must be submitted to the appropriate ACF Regional Office with a copy to the ACF Central Office.

(b) A Tribe currently operating a Tribal TANF program must submit to the appropriate ACF Regional Office, with a copy to the ACF Central Office, no later than 120 days prior to the end of the three-year grant period, either—

(1) A letter of intent, with a copy to the affected State or States, which specifies they do not intend to continue operating the program beyond the end of the three-year grant period; or

(2) A letter of intent, with a copy to the affected State or States, which specifies they intend to continue program operations with no changes to the geographic service area or service population; or

(3) A new three-year plan which indicates a change in either the geographic service area or service population.

(c) For Tribes choosing option (b)(2) above, a new three-year plan must be submitted to the appropriate ACF Regional Office, with a copy to the ACF Central Office, no later than 60 days before the end of the current three-year grant period.

§ 286.70 Who submits a Tribal Family Assistance Plan?

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

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

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

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

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

(d) When one of the participating Tribes in a consortium wishes to withdraw from the consortium in order to operate its own Tribal TANF program, the Tribe needs to submit a Tribal TANF plan that follows the requirements at §286.75 and §286.165.

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

[↑ top](#)

(a) The TFAP must outline the Tribe's approach to providing welfare-related services for the three-year period

covered by the plan, including:

- (1) Information on the general eligibility criteria the Tribe has established, which includes a definition of “needy family,” including income and resource limits and the Tribe's definition of “Tribal member family” or “Indian family.”
 - (2) A description of the assistance, services, and activities to be offered, and the means by which they will be offered. The description of the services, assistance, and activities to be provided includes whether the Tribe will provide cash assistance, and what other assistance, services, and activities will be provided.
 - (3) If the Tribe will not provide the same services, assistance, and activities in all parts of the service area, the TFAP must indicate any variations.
 - (4) If the Tribe opts to provide different services to specific populations, including teen parents and individuals who are transitioning off TANF assistance, the TFAP must indicate whether any of these services will be provided and, if so, what services will be provided.
 - (5) The Tribe's goals for its TANF program and the means of measuring progress towards those goals;
 - (6) Assurance that a 45-day public comment period on the Tribal TANF plan concluded prior to the submission of the TFAP.
 - (7) Assurance that the Tribe has developed a dispute resolution process to be used when individuals or families want to challenge the Tribe's decision to deny, reduce, suspend, sanction or terminate assistance.
 - (8) Tribes may require cooperation with child support enforcement agencies as a condition of eligibility for TANF assistance. Good cause and other exceptions to cooperation shall be defined by the Tribal TANF program.
- (b) The TFAP must identify which Tribal agency is designated by the Tribe as the lead agency for the overall administration of the Tribal TANF program along with a description of the administrative structure for supervision of the TANF program.
 - (c) The TFAP must indicate whether the services, assistance and activities will be provided by the Tribe itself or through grants, contracts or compacts with inter-Tribal consortia, States, or other entities.
 - (d) The TFAP must identify the population to be served by the Tribal TANF program.
- (1) The TFAP must identify whether it will serve Tribal member families only, or whether it will serve all Indian families residing in the Tribal TANF service area.
 - (2) If the Tribe wishes to serve any non-Indian families (and thus include non-Indians in its service population), an agreement with the State TANF agency must be included in the TFAP. This agreement must provide that, where non-Indians are to be served by Tribal TANF, these families are subject to Tribal TANF program rules.
 - (e) The TFAP must include a description of the geographic area to be served by the Tribal TANF program, including a specific description of any “near reservation” areas, as defined at 45 CFR 20.1(r), or any areas beyond “near reservation” to be included in the Tribal TANF service area.
- (1) In areas beyond those defined as “near reservation”, the TFAP must demonstrate the Tribe's administrative capacity to serve such areas and the State(s)', and if applicable, other Tribe(s)' concurrence with the proposed

defined boundaries.

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

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

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

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

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

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

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

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

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(a) To assess a Tribe's level of success in meeting its TANF work objectives, a Tribe that submits a TFAP must negotiate with the Secretary minimum work participation requirements that will apply to families that receive Tribal TANF assistance that includes an adult or minor head of household receiving such assistance.

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

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

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

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

- (A) An explanation of how the economic conditions and/or resources available to the Tribe justify inclusion of transportation time in determining work participation hours; and
- (B) An explanation of how counting reasonable transportation time is consistent with the purposes of TANF;
- (3) The work activities that count towards these work requirements;
- (4) Any exemptions, limitations and special rules being established in relation to work requirements; and
- (5) The Tribe must provide rationale for the above, explaining how the proposed work requirements relate to and are justified based on the Tribe's needs and conditions.
- (i) The rationale must address how the proposed work requirements are consistent with the purposes of TANF and with the economic conditions and resources of the Tribe.
- (ii) Examples of the information that could be included to illustrate the Tribe's proposal include, but are not limited to: poverty, unemployment, jobless and job surplus rates; education levels of adults in the service area; availability of and/or accessibility to resources (educational facilities, transportation) to help families become employable and find employment; and employment opportunities on and near the service area.

§ 286.85 How will we calculate the work participation rates?

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- (a) Work participation rate(s) will be the percentage of families with an adult or minor head-of-household receiving TANF assistance from the Tribe who are participating in a work activity approved in the TFAP for at least the minimum number of hours approved in the TFAP.
- (b) The participation rate for a fiscal year is the average of the Tribe's participation rate for each month in the fiscal year.
- (c) A Tribe's participation rate for a month is expressed as the following ratio:
- (1) The number of families receiving TANF assistance that include an adult or a minor head-of-household who is participating in activities for the month (numerator), divided by
- (2) The number of families that include an adult or a minor head-of-household receiving TANF assistance during the month excluding:
- (i) Families that were penalized for non-compliance with the work requirements in that month as long as they have not been sanctioned for more than three months (whether or not consecutively) out of the last 12 months; and
- (ii) Families with children under age one, if the Tribe chooses to exempt these families from participation requirements.
- (d) If a family receives assistance for only part of a month or begins participating in activities during the month, the Tribe may count it as a month of participation if an adult or minor head-of-household in the family is participating for the minimum average number of hours in each full week that the family receives assistance or participates in that month.

(e) Two-parent families in which one of the parents is disabled are considered one-parent families for the purpose of calculating a Tribe's participation rate.

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

[↑ top](#)

During the month, an adult or minor head-of-household must participate in work activities for at least the minimum average number of hours per week specified in the Tribe's approved Tribal Family Assistance Plan.

§ 286.95 What, if any, are the special rules concerning counting work for two-parent families?

[↑ top](#)

Parents in a two-parent family may share the number of hours required to be considered as engaged in work.

§ 286.100 What activities count towards the work participation rate?

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(a) Activities that count toward a Tribe's participation rate may include, but are not limited to, the following:

- (1) Unsubsidized employment;
- (2) Subsidized private sector employment;
- (3) Subsidized public sector employment;
- (4) Work experience;
- (5) On-the-job training (OJT);
- (6) Job search and job readiness assistance; (see §286.105)
- (7) Community service programs;
- (8) Vocational educational training; (see §286.105)
- (9) Job skills training directly related to employment;
- (10) Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;
- (11) Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, if a recipient has not completed secondary school or received such a certificate;
- (12) Providing child care services to an individual who is participating in a community service program; and

(13) Other activities that will help families achieve self-sufficiency.

(b) [Reserved]

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

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(a) Tribes are not required to limit vocational education for any one individual to a period of 12 months.

(b) There are two limitations concerning job search and job readiness:

(1) Job search and job readiness assistance only count for 6 weeks in any fiscal year.

(2) If the Tribe's unemployment rate in the Tribal TANF service area is at least 50 percent greater than the United States' total unemployment rate for that fiscal year, then an individual's participation in job search or job readiness assistance counts for up to 12 weeks in that fiscal year.

(c) If job search or job readiness is an ancillary part of another activity, then there is no limitation on counting the time spent in job search/job readiness.

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

[↑ top](#)

(a) An adult or minor head-of-household taking part in a work activity outlined in §286.100 cannot fill a vacant employment position if:

(1) Any other individual is on layoff from the same or any substantially equivalent job; or

(2) The employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction in its work force in order to fill the vacancy with the TANF participant.

(b) A Tribe must establish and maintain a grievance procedure to resolve complaints of alleged violations of this displacement rule.

(c) This regulation does not preempt or supersede Tribal laws providing greater protection for employees from displacement.

§ 286.115 What information on time limits for the receipt of assistance must a Tribe include in its Tribal Family Assistance Plan?

[↑ top](#)

(a) The TFAP must include the Tribe's proposal for:

(1) Time limits for the receipt of Tribal TANF assistance;

(2) Any exceptions to these time limits; and

(3) The percentage of the caseload to be exempted from the time limit due to hardship or if the family includes an individual who has been battered or subjected to extreme cruelty.

(b) The Tribe must also include the rationale for its proposal in the plan. The rationale must address how the proposed time limits are consistent with the purposes of TANF and with the economic conditions and resources of the Tribe.

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

(c) We may require that the Tribe submit additional information about the rationale before we approve the proposed time limits.

(d) Tribes must not count towards the time limit:

(1) Any month of receipt of assistance to a family that does not include an adult head-of-household;

(2) A family that does not include a pregnant minor head-of-household, minor parent head-of-household, or spouse of such a head-of-household; and

(3) Any month of receipt of assistance by an adult during which the adult lived in Indian country or in an Alaskan Native Village in which at least 50 percent of the adults were not employed.

(e) A Tribe must not use any of its TFAG to provide assistance (as defined in §286.10) to a family that includes an adult or minor head-of-household who has received assistance beyond the number of months (whether or not consecutive) that is negotiated with the Tribe.

§ 286.120 Can Tribes make exceptions to the established time limit for families?

[↑ top](#)

(a) Tribes have the option to exempt families from the established time limits for:

(1) Hardship, as defined by the Tribe, or

(2) The family includes someone who has been battered or has been subject to extreme cruelty.

(b) If a Tribe elects the hardship option, the Tribe must specify in its TFAP the maximum percent of its average monthly caseload of families on assistance that will be exempt from the established time limit under paragraph (a) of this section.

(c) If the Tribe proposes to exempt more than 20 percent of the caseload under paragraph (a) of this section, the Tribe must include a rationale in the plan.

§ 286.125 Does the receipt of TANF benefits under a State or other Tribal TANF program count towards a Tribe's TANF time limit?[↑ top](#)

Yes, the Tribe must count prior months of TANF assistance funded with TANF block grant funds, except for any month that was exempt or disregarded by statute, regulation, or under any experimental, pilot, or demonstration project approved under section 1115 of the Act.

§ 286.130 Does the receipt of Welfare-to-Work (WtW) cash assistance count towards a Tribe's TANF time limit?[↑ top](#)

(a) For purposes of an individual's time limit for receipt of TANF assistance as well as the penalty provision at §286.195(a)(1), WtW cash assistance counts towards a Tribe's TANF time limit only if:

(1) Such assistance satisfies the definition at §286.10; and

(2) Is directed at ongoing basic needs.

(b) Only cash assistance provided in the form of cash payments, checks, reimbursements, electronic funds transfers, or any other form that can legally be converted to currency is subject to paragraph (a) of this section.

§ 286.135 What information on penalties against individuals must be included in a Tribal Family Assistance Plan?[↑ top](#)

(a) The TFAP must include the Tribe's proposal for penalties against individuals who refuse to engage in work activities. The Tribe's proposal must address the following:

(1) Will the Tribe impose a pro rata reduction, or more at Tribal option, or will it terminate assistance to a family?

(2) After consideration of the provision specified at §286.150, what will be the proposed Tribal policies related to a single custodial parent, with a child under the age of 6, who refuses to engage in work activities because of a demonstrated inability to obtain needed child care?

(3) What good cause exceptions, if any, does the Tribe propose that will allow individuals to avoid penalties for failure to engage in work?

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

(5) What, if any, will be the Tribe's policies related to victims of domestic violence consistent with §286.140?

(b) The Tribe's rationale for its proposal must also be included in the TFAP.

(1) The rationale must address how the proposed penalties against individuals are consistent with the purposes of TANF, consistent with the economic conditions and resources of the Tribe, and how they relate to the requirements of section 407(e) of the Act.

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

(c) We may require a Tribe to submit additional information about the rationale before we approve the proposed penalties against individuals.

§ 286.140 What special provisions apply to victims of domestic violence?

[↑ top](#)

(a) Tribes electing the Family Violence Option (FVO) must certify that they have established and are enforcing standards and procedures to:

(1) Screen and identify individuals receiving TANF assistance with a history of domestic violence, while maintaining the confidentiality of such individuals;

(2) Refer such individuals to counseling and supportive services; and

(3) Provide waivers, pursuant to a determination of good cause, of TANF program requirements to such individuals for so long as necessary in cases where compliance would make it more difficult for such individuals to escape domestic violence or unfairly penalize those who are or have been victimized by such violence or who are at risk of further domestic violence.

(b) Tribes have broad flexibility to grant waivers of TANF program requirements, but such waivers must:

(1) Identify the specific program requirement being waived;

(2) Be granted based on need as determined by an individualized assessment by a person trained in domestic violence and redeterminations no less than every six months;

(3) Be accompanied by an appropriate services plan that:

(i) Is developed in coordination with a person trained in domestic violence;

(ii) Reflects the individualized assessment and any revisions indicated by any redetermination; and

(iii) To the extent consistent with paragraph (a)(3) of this section, is designed to lead to work.

(c) If a Tribe wants us to take waivers that it grants under this section into account in deciding if it has reasonable cause for failing to meet its work participation rates or comply with the established time limit on TANF assistance, has achieved compliance or made significant progress towards achieving compliance with such requirements during a corrective compliance period, the waivers must comply with paragraph (b) of this section.

(d) We will determine that a Tribe has reasonable cause for failing to meet its work participation rates or to comply with established time limits on assistance if—

(1) Such failures were attributable to good cause domestic violence waivers granted to victims of domestic violence;

(2) In the case of work participation rates, the Tribe provides evidence that it achieved the applicable rates except with respect to any individuals who received a domestic violence waiver of work participation requirements. In other words, the Tribe must demonstrate that it met the applicable rates when such waiver cases are removed from the calculation of work participation rate;

(3) In the case of established time limits on assistance, the Tribe provides evidence that it granted good cause domestic violence waivers to extend time limits based on the need for continued assistance due to current or past domestic violence or the risk of further domestic violence, and individuals and their families receiving assistance beyond the established time limit under such waivers do not exceed 20 percent of the total number of families receiving assistance.

(e) We may take good cause domestic violence waivers of work participation or waivers which extend the established time limits for assistance into consideration in deciding whether a Tribe has achieved compliance or made significant progress toward achieving compliance during a corrective compliance period.

(f) Tribes electing the FVO must submit the information specified at §286.275(b)(7).

§ 286.145 What is the penalty if an individual refuses to engage in work activities?

[↑ top](#)

If an individual refuses to engage in work activities in accordance with the minimum work participation requirements specified in the approved TFAP, the Tribe must apply to the individual the penalties against individuals that were established in the approved TFAP.

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

[↑ top](#)

(a) If the individual is a single custodial parent caring for a child under age six, the Tribe may not reduce or terminate assistance based on the parent's refusal to engage in required work if he or she demonstrates an inability to obtain needed child care for one or more of the following reasons:

- (1) Appropriate child care within a reasonable distance from the home or work site is unavailable;
- (2) Informal child care by a relative or under other arrangements is unavailable or unsuitable; or
- (3) Appropriate and affordable formal child care arrangements are unavailable.

(b) Refusal to work when an acceptable form of child care is available is not protected from sanctioning.

(c) The Tribe will determine when the individual has demonstrated that he or she cannot find child care, in accordance with criteria established by the Tribe. These criteria must:

- (1) Address the procedures that the Tribe uses to determine if the parent has a demonstrated inability to obtain needed child care;

(2) Include definitions of the terms “appropriate child care,” “reasonable distance,” “unsuitability of informal care,” and “affordable child care arrangements”; and

(3) Be submitted to us.

(d) The Tribal TANF agency must inform parents about:

(1) The penalty exception to the Tribal TANF work requirement, including the criteria and applicable definitions for determining whether an individual has demonstrated an inability to obtain needed child care;

(2) The Tribe's procedures (including definitions) for determining a family's inability to obtain needed child care, and any other requirements or procedures, such as fair hearings, associated with this provision; and

(3) The fact that the exception does not extend the time limit for receiving Federal assistance.

§ 286.155 May a Tribe condition eligibility for Tribal TANF assistance on assignment of child support to the Tribe?

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(a) Tribes have the option to condition eligibility for Tribal TANF assistance on assignment of child support to the Tribe consistent with paragraph (b) of this section.

(b) For Tribes choosing to condition eligibility for Tribal TANF assistance on assignment of child support to the Tribe, the TFAP must address the following—

(1) Procedures for ensuring that assigned child support collections in excess of the amount of Tribal TANF assistance received by the family will not be retained by the Tribe; and

(2) How any amounts generated under an assignment and retained by the Tribe will be used to further the Tribe's TANF program, consistent with §286.45(f).

[65 FR 8530, Feb. 18, 2000, as amended at 69 FR 16672, Mar. 30, 2004]

§ 286.160 What are the applicable time frames and procedures for submitting a Tribal Family Assistance Plan?

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(a) A Tribe must submit a Tribal TANF letter of intent and/or a TFAP to the Secretary according to the following time frames:

Implementation date:	Letter of intent due to ACF and the State:	Formal plan due to ACF:	ACF notification to the State due:
January 1, February 1 or March 1	July 1 of previous year	September 1 of previous year	October 1 of previous year.
April 1, May 1 or June 1	October 1 of previous year	December 1 of previous year	January 1 of same year.
July 1, August 1 or September 1	January 1 of same year	March 1 of same year	April 1 of same year.

October 1, November 1 or December 1	April 1 of same year	June 1 of same year	July 1 of same year.
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(b) A Tribe that has requested and received data from the State and has resolved any issues concerning the data more than six months before its proposed implementation date is not required to submit a letter of intent.

(c) The effective date of the TFAP must be the first day of any month.

(d) The original TFAP must be sent to the appropriate ACF Regional Administrator, with a copy sent to the Division of Tribal Services, Office of Community Services, Administration for Children and Families.

(e) A Tribe that submits a TFAP or an amendment to an existing plan that cannot be approved by the Secretary will be given the opportunity to make revisions in order to make the TFAP, or an amendment, approvable.

(f) Tribes operating a consolidated Public Law 102–477 program must submit a TFAP plan to the Secretary for review and approval prior to the consolidation of the TANF program into the Public Law 102–477 plan.

§ 286.165 How is a Tribal Family Assistance Plan amended?

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(a) An amendment to a TFAP is necessary if the Tribe makes any substantial changes to the plan, including those which impact an individual's eligibility for Tribal TANF services or participation requirements, or any other program design changes which alter the nature of the program.

(b) A Tribe must submit a plan amendment(s) to the Secretary no later than 30 days prior to the proposed implementation date. Proposed implementation dates shall be the first day of any month.

(c) We will promptly review and either approve or disapprove the plan amendment(s).

(d) Approved plan amendments are effective no sooner than 30 days after date of submission.

(e) A Tribe whose plan amendment is disapproved may petition for an administrative review of such disapproval under §286.170 and may appeal our final written decision to the Departmental Appeals Board no later than 30 days from the date of the disapproval. This appeal to the Board should follow the provisions of the rules under this subpart and those at 45 CFR part 16, where applicable.

§ 286.170 How may a Tribe petition for administrative review of disapproval of a TFAP or amendment?

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(a) If, after a Tribe has been provided the opportunity to make revisions to its TFAP or amendment, the Secretary determines that the TFAP or amendment cannot be approved, a written Notice of Disapproval will be sent to the Tribe. The Notice of Disapproval will indicate the specific grounds for disapproval.

(b) A Tribe may request reconsideration of a disapproval determination by filing a written Request for Reconsideration to the Secretary within 60 days of receipt of the Notice of Disapproval. If reconsideration is not requested, the disapproval is final and the procedures under paragraph (f) of this section must be followed.

(1) The Request for Reconsideration must include—

- (i) All documentation that the Tribe believes is relevant and supportive of its TFAP or amendment; and
 - (ii) A written response to each ground for disapproval identified in the Notice of Disapproval indicating why the Tribe believes that its TFAP or amendment conforms to the statutory and regulatory requirements for approval.
- (c) Within 30 days after receipt of a Request for Reconsideration, the Secretary or designee will notify the Tribe of the date and time a hearing for the purpose of reconsideration of the Notice of Disapproval will be held. Such a hearing may be conducted by telephone conference call.
- (d) A hearing conducted under §286.170(c) must be held not less than 30 days nor more than 60 days after the date of the notice of such hearing is furnished to the Tribe, unless the Tribe agrees in writing to an extension.
- (e) The Secretary or designee will make a written determination affirming, modifying, or reversing disapproval of the TFAP or amendment within 60 days after the conclusion of the hearing.
- (f) If a TFAP or amendment is disapproved, the Tribe may appeal this final written decision to the Departmental Appeals Board (the Board) within 30 days after such party receives notice of determination. The party's appeal to the Board should follow the provisions of the rules under this section and those at 45 CFR part 16, where applicable.

§ 286.175 What special provisions apply in Alaska?

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A Tribe in the State of Alaska that receives a TFAG must use the grant to operate a program in accordance with program requirements comparable to the requirements applicable to the State of Alaska's Temporary Assistance for Needy Families program. Comparability of programs must be established on the basis of program criteria developed by the Secretary in consultation with the State of Alaska and the Tribes in Alaska. The State of Alaska has authority to waive the program comparability requirement based on a request by an Indian tribe in the State.

§ 286.180 What is the process for developing the comparability criteria that are required in Alaska?

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We will work with the Tribes in Alaska and the State of Alaska to develop an appropriate process for the development and amendment of the comparability criteria.

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

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(a) If a dispute arises between the State of Alaska and the Tribes in the State on any part of the comparability criteria, we will be responsible for making a final determination and notifying the State of Alaska and the Tribes in the State of the decision.

(b) Any of the parties involved may appeal our decision, in whole or in part, to the HHS Departmental Appeals Board (the Board) within 60 days after such party receives notice of determination. The party's appeal to the Board should follow the provisions of the rules under this section and those at 45 CFR part 16, where applicable.

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

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(a) At such time that any of the above parties wish to amend the comparability document, the requesting party should submit a request to us, with a copy to the other parties, explaining the requested change(s) and supplying background information in support of the change(s).

(b) After review of the request, we will make a determination on whether or not to accept the proposed change(s).

(c) If any party wishes to appeal the decision regarding the adoption of the proposed amendment, they may appeal using the appeals process pursuant to §286.165.

Subpart D—Accountability and Penalties

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§ 286.195 What penalties will apply to Tribes?

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(a) Tribes will be subject to fiscal penalties and requirements as follows:

(1) If we determine that a Tribe misused its Tribal Family Assistance Grant funds, including providing assistance beyond the Tribe's negotiated time limit under §286.115, we will reduce the TFAG for the following fiscal year by the amount so used;

(2) If we determine that a Tribe intentionally misused its TFAG for an unallowable purpose, the TFAG for the following fiscal year will be reduced by an additional five percent;

(3) If we determine that a Tribe failed to meet the minimum work participation rate(s) established for the Tribe, the TFAG for the following fiscal year will be reduced. The amount of the reduction will depend on whether the Tribe was under a penalty for this reason in the preceding year. If not, the penalty reduction will be a maximum of five percent. If a penalty was imposed on the Tribe in the preceding year, the penalty reduction will be increased by an additional 2 percent, up to a maximum of 21 percent. In determining the penalty amount, we will take into consideration the severity of the failure and whether the reasons for the failure were increases in the unemployment rate in the TFAG service area and changes in TFAG caseload size during the fiscal year in question; and

(4) If a Tribe fails to repay a Federal loan provided under section 406 of the Act, we will reduce the TFAG for the following fiscal year by an amount equal to the outstanding loan amount plus interest.

(b) In calculating the amount of the penalty, we will add together all applicable penalty percentages, and the total is applied to the amount of the TFAG that would have been payable if no penalties were assessed against the Tribe.

As a final step, we will subtract other (non-percentage) penalty amounts.

(c) When imposing the penalties in paragraph (a) of this section, we will not reduce an affected Tribe's grant by more than 25 percent. If the 25 percent limit prevents the recovery of the full penalty imposed on a Tribe during a fiscal year, we will apply the remaining amount of the penalty to the TFAG payable for the immediately succeeding fiscal year.

(1) If we reduce the TFAG payable to a Tribe for a fiscal year because of penalties that have been imposed, the Tribe must expend additional Tribal funds to replace any such reduction. The Tribe must document compliance with this provision on its TANF expenditure report.

(2) We will impose a penalty of not more than 2 percent of the amount of the TFAG on a Tribe that fails to expend additional Tribal funds to replace amounts deducted from the TFAG due to penalties. We will apply this penalty to the TFAG payable for the next succeeding fiscal year, and this penalty cannot be excused (see §286.235).

(d) If a Tribe retrocedes the program, the Tribe will be liable for any penalties incurred for the period the program was in operation.

§ 286.200 How will we determine if Tribal Family Assistance Grant funds were misused or intentionally misused?

[↑ top](#)

(a) We will use the single audit or Federal review or audit to determine if a Tribe should be penalized for misusing Tribal Family Assistance Grant funds under §286.195(a)(1) or intentionally misusing Tribal Family Assistance Grant funds under §286.195(a)(2).

(b) If a Tribe uses the TFAG in violation of the provisions of the Act, the provisions of 45 CFR part 92, OMB Circulars A-87 and A-133, or any Federal statutes and regulations applicable to the TANF program, we will consider the funds to have been misused.

(c) The Tribe must show, to our satisfaction, that it used the funds for purposes that a reasonable person would consider to be within the purposes of the TANF program (as specified at §286.35) and the provisions listed in §286.45.

(d) We will consider the TFAG to have been intentionally misused under the following conditions:

(1) There is supporting documentation, such as Federal guidance or policy instructions, indicating that TANF funds could not be used for that purpose; or

(2) After notification that we have determined such use to be improper, the Tribe continues to use the funds in the same or similarly improper manner.

(e) If the single audit determines that a Tribe misused Federal funds in applying the negotiated time limit provisions under §286.115, the amount of the penalty for misuse will be limited to five percent of the TFAG amount.

(1) This penalty shall be in addition to the reduction specified under §286.195(a)(1).

(2) [Reserved]

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

[↑ top](#)

(a) We will use the Tribal TANF Data Reports required under §286.255 to determine if we will assess the penalty under §286.195(a)(3) for failure to meet the minimum participation rate(s) established for the Tribe.

(b) Each Tribal TANF Grantee's quarterly reports (the TANF Data Report and the Tribal TANF Financial Report) must be complete and accurate and filed by the due date. The accuracy of the reports are subject to validation by us.

(1) For a disaggregated data report, “a complete and accurate report” means that:

(i) The reported data accurately reflect information available to the Tribal TANF grantee in case records, financial records, and automated data systems;

(ii) The data are free from computational errors and are internally consistent (*e.g.*, items that should add to totals do so);

(iii) The Tribal TANF grantee reports data for all required elements (*i.e.*, no data are missing);

(iv) The Tribal TANF grantee provides data on all families; or

(v) If the Tribal TANF grantee opts to use sampling, the Tribal TANF grantee reports data on all families selected in a sample that meets the specification and procedures in the TANF Sampling Manual (except for families listed in error); and

(vi) Where estimates are necessary (*e.g.*, some types of assistance may require cost estimates), the Tribal TANF grantee uses reasonable methods to develop these estimates.

(2) For an aggregated data report, “a complete and accurate report” means that:

(i) The reported data accurately reflect information available to the Tribal TANF grantee in case records, financial records, and automated data systems;

(ii) The data are free from computational errors and are internally consistent (*e.g.*, items that should add to totals do so);

(iii) The Tribal TANF grantee reports data on all applicable elements; and

(iv) Monthly totals are unduplicated counts for all families (*e.g.*, the number of families and the number of out-of-wedlock births are unduplicated counts).

(3) For the Tribal TANF Financial Report, a “complete and accurate report” means that:

(i) The reported data accurately reflect information available to the Tribal TANF grantee in case records, financial records, and automated data systems;

(ii) The data are free from computational errors and are internally consistent (*e.g.*, items that should add to totals do

so);

(iii) The Tribal TANF grantee reports data on all applicable elements; and

(iv) All expenditures have been made in accordance with 45 CFR part 92 and all relevant OMB circulars.

(4) We will review the data filed in the quarterly reports to determine if they meet these standards. In addition, we will use audits and reviews to verify the accuracy of the data filed by the Tribal TANF grantee.

(c) Tribal TANF grantees must maintain records to adequately support any report, in accordance with 45 CFR part 92 and all relevant OMB circulars.

(d) If we find reports so significantly incomplete or inaccurate that we seriously question whether the Tribe has met its participation rate, we may apply the penalty under §286.195(a)(3).

§ 286.210 What is the penalty for a Tribe's failure to repay a Federal loan?

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(a) If a Tribe fails to repay the amount of principal and interest due at any point under a loan agreement:

(1) The entire outstanding loan balance, plus all accumulated interest, becomes due and payable immediately; and

(2) We will reduce the TFAG payable for the immediately succeeding fiscal year quarter by the outstanding loan amount plus interest.

(b) Neither the reasonable cause provisions at §286.225 nor the corrective compliance plan provisions at §286.230 apply when a Tribe fails to repay a Federal loan.

§ 286.215 When are the TANF penalty provisions applicable?

[↑ top](#)

(a) A Tribe may be subject to penalties, as described in §286.195(a)(1), §286.195(a)(2) and §286.195(a)(4), for conduct occurring on and after the first day of implementation of the Tribe's TANF program.

(b) A Tribe may be subject to penalties, as described in §286.195(a)(3), for conduct occurring on and after the date that is six months after the Tribe begins operating the TANF program.

(c) We will not apply the regulations retroactively. We will judge Tribal actions that occurred prior to the effective date of these rules and expenditures of funds received prior to the effective date only against a reasonable interpretation of the statutory provisions in title IV-A of the Act.

(1) To the extent that a Tribe's failure to meet the requirements of the penalty provisions is attributable to the absence of Federal rules or guidance, Tribes may qualify for reasonable cause, as discussed in §286.225.

(2) [Reserved]

§ 286.220 What happens if a Tribe fails to meet TANF requirements?

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(a) If we determine that a Tribe is subject to a penalty, we will notify the Tribe in writing. This notice will:

(1) Specify what penalty provision(s) are in issue;

(2) Specify the amount of the penalty;

(3) Specify the reason for our determination;

(4) Explain how and when the Tribe may submit a reasonable cause justification under §286.225 and/or a corrective compliance plan under §286.230(d) for those penalties for which reasonable cause and/or corrective compliance plan apply; and

(5) Invite the Tribe to present its arguments if it believes that the data or method we used were in error or were insufficient, or that the Tribe's actions, in the absence of Federal regulations, were based on a reasonable interpretation of the statute.

(b) Within 60 days of receipt of our written notification, the Tribe may submit a written response to us that:

(1) Demonstrates that our determination is incorrect because our data or the method we used in determining the penalty was in error or was insufficient, or that the Tribe acted prior to June 19, 2000, on a reasonable interpretation of the statute;

(2) Demonstrates that the Tribe had reasonable cause for failing to meet the requirement(s); and/or

(3) Provides a corrective compliance plan as discussed in §286.230.

(c) If we find that the Tribe was correct and that a penalty was improperly determined, or find that a Tribe had reasonable cause for failing to meet a requirement, we will not impose the related penalty and so notify the Tribe in writing within two weeks of such a determination.

(d) If we determine that the Tribe has not demonstrated that our original determination was incorrect or that it had reasonable cause, we will notify the Tribe of our decision in writing.

(e) If we request additional information from a Tribe, it must provide the information within thirty days of the date of our request.

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

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(a) We will not impose a penalty against a Tribe if it is determined that the Tribe had reasonable cause for failure to meet the requirements listed at §286.195(a)(1), §286.195(a)(2), or §286.195(a)(3). The general factors a Tribe may use to claim reasonable cause include, but are not limited to, the following:

(1) Natural disasters, extreme weather conditions, and other calamities (*e.g.*, hurricanes, earthquakes, fire, and

economic disasters) whose disruptive impact was so significant that the Tribe failed to meet a requirement.

(2) Formally issued Federal guidance which provided incorrect information resulting in the Tribe's failure or prior to the effective date of these regulations, guidance that was issued after a Tribe implemented the requirements of the Act based on a different, but reasonable, interpretation of the Act.

(3) Isolated, non-recurring problems of minimal impact that are not indicative of a systemic problem.

(4) Significant increases in the unemployment rate in the TFAG service area and changes in the TFAG caseload size during the fiscal year being reported.

(b) We will grant reasonable cause to a Tribe that:

(1) Clearly demonstrates that its failure to submit complete, accurate, and timely data, as required at §286.245, for one or both of the first two quarters of FY 2000, is attributable, in significant part, to its need to divert critical system resources to Year 2000 compliance activities; and

(2) Submits complete and accurate data for the first two quarters of FY 2000 by November 15, 2000.

(c) In addition to the reasonable cause criteria specified above, a Tribe may also submit a request for a reasonable cause exemption from the requirement to meet its work participation requirements in the following situation:

(1) We will consider that a Tribe has reasonable cause if it demonstrates that its failure to meet its work participation rate(s) is attributable to its provisions with regard to domestic violence as follows:

(i) To demonstrate reasonable cause, a Tribe must provide evidence that it achieved the applicable work rates, except with respect to any individuals receiving good cause waivers of work requirements (*i.e.*, when cases with good cause waivers are removed from the calculation in §286.85); and

(ii) A Tribe must grant good cause waivers in domestic violence cases appropriately, in accordance with the policies in the Tribe's approved Tribal Family Assistance Plan.

(2) [Reserved]

(d) In determining reasonable cause, we will consider the efforts the Tribe made to meet the requirements, as well as the duration and severity of the circumstances that led to the Tribe's failure to achieve the requirement.

(e) The burden of proof rests with the Tribe to fully explain the circumstances and events that constitute reasonable cause for its failure to meet a requirement.

(1) The Tribe must provide us with sufficient relevant information and documentation to substantiate its claim of reasonable cause.

(2) [Reserved]

§ 286.230 What if a Tribe does not have reasonable cause for failing to meet a requirement?

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(a) To avoid the imposition of a penalty under §286.195(a)(1), §286.195(a)(2), or §286.195(a)(3), under the following circumstances a Tribe must enter into a corrective compliance plan to correct the violation:

(1) If a Tribe does not claim reasonable cause for failing to meet a requirement; or

(2) If we found that a Tribe did not have reasonable cause.

(b) A Tribe that does not claim reasonable cause will have 60 days from receipt of the notice described in §286.220(a) to submit its corrective compliance plan to us.

(c) A Tribe that does not demonstrate reasonable cause will have 60 days from receipt of the second notice described in §286.220(d) to submit its corrective compliance plan to us.

(d) In its corrective compliance plan the Tribe must outline:

(1) Why it failed to meet the requirements;

(2) How it will correct the violation in a timely manner; and

(3) What actions, outcomes and time line it will use to ensure future compliance.

(e) During the 60-day period beginning with the date we receive the corrective compliance plan, we may, if necessary, consult with the Tribe on modifications to the plan.

(f) A corrective compliance plan is deemed to be accepted if we take no action to accept or reject the plan during the 60-day period that begins when the plan is received.

(g) Once a corrective compliance plan is accepted or deemed accepted, we may request reports from the Tribe or take other actions to confirm that the Tribe is carrying out the corrective actions specified in the plan.

(1) We will not impose a penalty against a Tribe with respect to any violation covered by that plan if the Tribe corrects the violation within the time frame agreed to in the plan.

(2) We must assess some or all of the penalty if the Tribe fails to correct the violation pursuant to its corrective compliance plan.

§ 286.235 What penalties cannot be excused?

[↑ top](#)

(a) The penalties that cannot be excused are:

(1) The penalty for failure to repay a Federal loan issued under section 406.

(2) The penalty for failure to replace any reduction in the TFAG resulting from other penalties that have been imposed.

(b) [Reserved]

§ 286.240 How can a Tribe appeal our decision to take a penalty?[↑ top](#)

(a) We will formally notify the Tribe of a potential reduction to the Tribe's TFAG within five days after we determine that a Tribe is subject to a penalty and inform the Tribe of its right to appeal to the Departmental Appeals Board (the Board) established in the Department of Health and Human Services. Such notification will include the factual and legal basis for taking the penalty in sufficient detail for the Tribe to be able to respond in an appeal.

(b) Within 60 days of the date it receives notice of the penalty, the Tribe may file an appeal of the action, in whole or in part, to the Board.

(c) The Tribe must include all briefs and supporting documentation when it files its appeal. A copy of the appeal and any supplemental filings must be sent to the Office of General Counsel, Children, Families and Aging Division, Room 411–D, 200 Independence Avenue, SW, Washington, DC 20201.

(d) ACF must file its reply brief and supporting documentation within 45 days after receipt of the Tribe's submission under paragraph (c) of this section.

(e) The Tribe's appeal to the Board must follow the provisions of this section and those at §§16.2, 16.9, 16.10, and 16.13 through 16.22 of this title to the extent they are consistent with this section.

(f) The Board will consider an appeal filed by a Tribe on the basis of the documentation and briefs submitted, along with any additional information the Board may require to support a final decision. Such information may include a hearing if the Board determines that it is necessary. In deciding whether to uphold an adverse action or any portion of such action, the Board will conduct a thorough review of the issues.

(g) The filing date shall be the date materials are received by the Board in a form acceptable to it.

(h) A Tribe may obtain judicial review of a final decision by the Board by filing an action within 90 days after the date of such decision with the district court of the United States in the judicial district where the Tribe or TFAG service area is located.

(1) The district court will review the final decision of the Board on the record established in the administrative proceeding, in accordance with the standards of review prescribed by 5 U.S.C. 706(2). The court's review will be based on the documents and supporting data submitted to the Board.

(2) [Reserved]

(i) No reduction to the Tribe's TFAG will occur until a final disposition of the matter has been made.

Subpart E—Data Collection and Reporting Requirements[↑ top](#)**§ 286.245 What data collection and reporting requirements apply to Tribal TANF programs?**[↑ top](#)

(a) Section 412(h) of the Act makes section 411 regarding data collection and reporting applicable to Tribal TANF programs. This section of the regulations explains how we will collect the information required by section 411 of the Act and information to implement section 412(c) (work participation requirements).

(b) Each Tribe must collect monthly and file quarterly data on individuals and families as follows:

(1) Disaggregated data collection and reporting requirements in this part apply to families receiving assistance and families no longer receiving assistance under the Tribal TANF program; and

(2) Aggregated data collection and reporting requirements in this part apply to families receiving, families applying for, and families no longer receiving assistance under the Tribal TANF program.

(c) Each Tribe must file in its quarterly TANF Data Report and in the quarterly TANF Financial Report the specified data elements.

(d) Each Tribe must also submit an annual report that contains specified information.

(e) Each Tribe must submit the necessary reports by the specified due dates.

§ 286.250 What definitions apply to this subpart?

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(a) Except as provided in paragraph (b) of this section, the general TANF definitions at §§286.5 and 286.10 apply to this subpart.

(b) For data collection and reporting purposes only, “TANF family” means:

(1) All individuals receiving assistance as part of a family under the Tribe's TANF program; and

(2) The following additional persons living in the household, if not included under paragraph (b)(1) of this section:

(i) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(ii) Minor siblings of any child receiving assistance; and

(iii) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

§ 286.255 What quarterly reports must the Tribe submit to us?

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(a) *Quarterly reports.* Each Tribe must collect on a monthly basis, and file on a quarterly basis, the data specified in the Tribal TANF Data Report and the Tribal TANF Financial Report.

(b) *Tribal TANF Data Report.* The Tribal TANF Data Report consists of three sections. Two sections contain disaggregated data elements and one section contains aggregated data elements.

(1) *TANF Data Report: Disaggregated Data—Sections one and two.* Each Tribe must file disaggregated information on families receiving TANF assistance (section one) and families no longer receiving TANF assistance (section two). These two sections specify identifying and demographic data such as the individual's Social Security Number; and information such as the type and amount of assistance received, educational level, employment status, work participation activities, citizenship status, and earned and unearned income. These reports also specify items pertaining to child care and child support. The data requested cover adults (including non-custodial parents who are participating in work activities) and children.

(2) *TANF Data Report: Aggregated Data—Section three.* Each Tribe must file aggregated information on families receiving, applying for, and no longer receiving TANF assistance. This section of the Report asks for aggregate figures in the following areas: the total number of applications and their disposition; the total number of recipient families, adult recipients, and child recipients; the total number of births, out-of-wedlock births, and minor child heads-of-households; the total number of non-custodial parents participating in work activities; and the total amount of TANF assistance provided.

(c) *The Tribal TANF Financial Report.* Each Tribe must file quarterly expenditure data on the Tribe's use of Tribal Family Assistance Grant funds, any Tribal fund expenditures which are being substituted for TFAG funds withheld due to a penalty, and any State contributions. The report must be submitted on a form prescribed by ACF.

§ 286.260 May Tribes use sampling and electronic filing?

[↑ top](#)

(a) Each Tribe may report disaggregated data on all recipient families (universal reporting) or on a sample of families selected through the use of a scientifically acceptable sampling method. The sampling method must be approved by ACF in advance of submitting reports.

(1) Tribes may not use a sample to generate the aggregated data.

(2) [Reserved]

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

(c) Each Tribe may file quarterly reports electronically, based on format specifications that we will provide. Tribes who do not have the capacity to submit reports electronically may submit quarterly reports on a disk or in hard copy.

§ 286.265 When are quarterly reports due?

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(a) Upon a Tribe's initial implementation of TANF, the Tribe shall begin collecting data for the TANF Data Report as of the date that is six months after the initial effective date of its TANF program. The Tribe shall begin collecting financial data for the TANF Financial Report as of the initial effective date of its TANF program.

(b) Each Tribe must submit its TANF Data Report and TANF Financial Report within 45 days following the end of each quarter. If the 45th day falls on a weekend or on a national, State or Tribal holiday, the reports are due no

later than the next business day.

§ 286.270 What happens if the Tribe does not satisfy the quarterly reporting requirements?

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(a) If we determine that a Tribe has not submitted to us a complete and accurate Tribal TANF Data Report within the time limit, the Tribe risks the imposition of a penalty at §286.205 related to the work participation rate targets since the data from the Tribal TANF Data Report is required to calculate participation rates.

(b) Non-reporting of the Tribal TANF Financial Report may give rise to a penalty under §286.200 since this Report is used to demonstrate compliance with provisions of the Act, the provisions of 45 CFR part 92, OMB Circulars A-87 and A-133, or any Federal statutes and regulations applicable to the TANF program.

§ 286.275 What information must Tribes file annually?

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(a) Each Tribal TANF grantee must file an annual report containing information on its TANF program for that year. The report may be filed as:

- (1) An addendum to the fourth quarter TANF Data Report; or
- (2) A separate annual report.

(b) Each Tribal TANF grantee must provide the following information on its TANF program:

- (1) The Tribal TANF grantee's definition of each work activity;
- (2) A description of the transitional services provided to families no longer receiving assistance due to employment; and
- (3) A description of how a Tribe will reduce the amount of assistance payable to a family when an individual refuses to engage in work without good cause pursuant to §286.145.
- (4) The average monthly number of payments for child care services made by the Tribal TANF grantee through the use of disregards, by the following types of child care providers:
 - (i) Licensed/regulated in-home child care;
 - (ii) Licensed/regulated family child care;
 - (iii) Licensed/regulated group home child care;
 - (iv) Licensed/regulated center-based child care;
 - (v) Legally operating (*i.e.* , no license category available in Tribal TANF grantee's locality) in-home child care provided by a nonrelative;

- (vi) Legally operating (*i.e.* , no license category available in Tribal TANF grantee's locality) in-home child care provided by a relative;
 - (vii) Legally operating (*i.e.* , no license category available in Tribal TANF grantee's locality) family child care provided by a nonrelative;
 - (viii) Legally operating (*i.e.* , no license category available in Tribal TANF grantee's locality) family child care provided by a relative;
 - (ix) Legally operating (*i.e.* , no license category available in Tribal TANF grantee's locality) group child care provided by a nonrelative;
 - (x) Legally operating (*i.e.* , no license category available in Tribal TANF grantee's locality) group child care provided by a relative; and
 - (xi) Legally operating (*i.e.* , no license category available in Tribal TANF grantee's locality) center-based child care.
- (5) A description of any nonrecurring, short-term benefits provided, including:
- (i) The eligibility criteria associated with such benefits, including any restrictions on the amount, duration, or frequency of payments;
 - (ii) Any policies that limit such payments to families that are eligible for TANF assistance or that have the effect of delaying or suspending a family's eligibility for assistance; and
 - (iii) Any procedures or activities developed under the TANF program to ensure that individuals diverted from assistance receive information about, referrals to, or access to other program benefits (such as Medicaid and food stamps) that might help them make the transition from Welfare-to-Work; and
- (6) A description of the procedures the Tribal TANF grantee has established and is maintaining to resolve displacement complaints, pursuant to §286.110. This description must include the name of the Tribal TANF grantee agency with the lead responsibility for administering this provision and explanations of how the Tribal TANF grantee has notified the public about these procedures and how an individual can register a complaint.
- (7) Tribes electing the FVO must submit a description of the strategies and procedures in place to ensure that victims of domestic violence receive appropriate alternative services, as well as an aggregate figure for the total number of good cause domestic waivers granted.
- (c) If the Tribal TANF grantee has submitted the information required in paragraph (b) of this section in the TFAP, it may meet the annual reporting requirements by reference in lieu of re-submission. Also, if the information in the annual report has not changed since the previous annual report, the Tribal TANF grantee may reference this information in lieu of re-submission.
- (d) If a Tribal TANF grantee makes a substantive change in certain data elements in paragraph (b) of this section, it must file a copy of the change either with the next quarterly data report or as an amendment to its TFAP. The Tribal TANF grantee must also indicate the effective date of the change. This requirement is applicable to paragraphs (b)(1), (b)(2), and (b)(3) of this section.

§ 286.280 When are annual reports due?

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- (a) The annual report required by §286.275 is due 90 days after the end of the Fiscal Year which it covers.
- (b) The first annual report for a Tribe must include all months of operation since the plan was approved.

§ 286.285 How do the data collection and reporting requirements affect Public Law 102–477 Tribes?

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- (a) A Tribe that consolidates its Tribal TANF program into a Public-Law 102–477 plan is required to comply with the TANF data collection and reporting requirements of this section.
- (b) A Tribe that consolidates its Tribal TANF program into a Public-Law 102–477 plan may submit the Tribal TANF Data Reports and the Tribal TANF Financial Report to the BIA, with a copy to us.

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