The New Framework: Alternative State Funding Choices Under TANF

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Center for Law and Social Policy
CLASP

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Executive Summary

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) dramatically transforms federal policy and the funding structure affecting assistance for poor families. A central element of the legislation is the creation of the Temporary Assistance for Needy Families block grant (TANF) to replace the Aid to Families with Dependent Children (AFDC) program. The new structure makes a fundamental change in the relationship between federal and state funds, and the new relationship has important implications for program design.

The AFDC Program operated on the principle of federal-state match: a state made expenditures to operate AFDC and a set of related programs and was reimbursed for a portion of those costs by the federal government. In contrast, the fiscal relationship in TANF is based on the principle of maintenance of effort. Under the legislation, each state is eligible to receive a block grant of federal TANF funds. The amount of the block grant will be reduced if the state fails to satisfy a basic maintenance of effort (MOE) requirement for the expenditure of state funds. A state can choose to satisfy its basic MOE requirement by spending state funds in any of three ways:

- by **commingling** state and federal funds in a single TANF Program, so that each family's assistance is funded with a mixture of federal and state funds;
- by expending state funds **segregated** from federal funds in the state's TANF Program, so that among families assisted in the TANF Program, some families are receiving federally-funded TANF assistance and some families are receiving state-funded TANF assistance; or
- by expending state funds in a **separate state program** or programs; a separate state program is one that receives no federal TANF funds.

The distinctions between the three models matter because some TANF requirements only apply to families receiving federally-funded TANF assistance, while other TANF requirements apply to any family receiving assistance (whether federally- or state-funded) in the TANF Program. For example:

- Most TANF **prohibitions** on assistance (including those prohibitions relating to providing assistance to categories of immigrants) only apply to use of federal TANF funds; accordingly, a state wishing to assist families subject to such federal prohibitions may do so and have the expenditures count toward basic maintenance of effort requirements, if the state provides assistance either with segregated state funds or in a separate state program.
- The TANF **sixty-month time limit** is calculated based on counting the number of months that a family including an adult receives federally-funded TANF assistance. Thus, a state wishing to develop a different approach to time limits (e.g., allowing for categories of exemptions or extensions, identifying categories of families to which the time limits do not apply) may do so by making use of segregated state funds within TANF or through use of a separate state program.
- TANF **work and participation requirements** are based on all families with adults receiving assistance in the TANF Program. Accordingly, families assisted in TANF will be subject to these requirements if they are assisted in the TANF Program, even if their assistance is funded with segregated state funds. A state could, however, make use of one

or more separate state programs to address circumstances where the most appropriate activities for families are activities not countable toward TANF participation rates.

- Families receiving assistance in the TANF Program are required to assign **child support** rights to the state; when child support is collected for such a family, the state is required to send the federal share (half or more of the child support collected) to the federal government. A state wishing to allow families to keep their child support, or a state wishing to structure a program of child support assurance as an alternative to TANF, might accomplish this goal by assisting categories of families with child support orders in a separate state program.

Looking at the above structure as a whole, the basic summary that emerges is:

- If a state **commingles** state and federal funds in a single TANF program, then all of the key TANF requirements - time limits, other prohibitions, participation and work requirements, and child support requirements - will apply to all "assistance" provided under the program.
- If a state uses the model of **segregated** state funds within a TANF program, then the federal time limits and most other prohibitions will not apply to families receiving "assistance" funded with segregated state funds. However, the TANF participation and work requirements and TANF child support requirements will still apply to such families.
- If a state has one or more **separate state programs**, the families assisted in a separate state program will not be subject to TANF time limits or other prohibitions, TANF participation and work requirements, or TANF child support requirements.

Given the different consequences of the three models, is there a "right" way to structure state spending in the new framework? In our view, a state's analysis should not begin by assuming that any of the three models is necessarily the appropriate or preferred approach. Rather, a state should begin by considering the basic approach to welfare reform that the state wishes to take, and the policies that the state wishes to apply regarding who should be eligible for assistance, what conditions should apply to that assistance, how to best advance the state's approach to work, etc. Once the state has identified the policies it wishes to pursue, the question then becomes which of the three models (or which combination of the three) best helps the state effectuate those policies.

While there are many potential advantages to separate state programs, a state considering the pros and cons of separate state programs needs to give consideration to two potential disadvantages: possible loss of access to the federal **Contingency Fund** and a set of **warnings from HHS**. In our view, neither of these potential disadvantages should be sufficient to discourage a state from taking an approach that would best allow the state to advance important policy goals, but states need to be aware of and sensitive to these considerations in reaching a decision.

The TANF structure includes a $2 billion federal Contingency Fund from which states can draw down additional funds during a period of economic downturn. A state may only access the Contingency Fund by providing state match and by having state expenditures in the TANF Program at or above 100% of its historic state expenditures during the year in which the state

seeks Contingency Fund access. One consequence of spending state funds in a separate state program is that it may make it difficult or impossible for the state to reach the level of 100% MOE within TANF, and as a result, the state will not qualify for the Contingency Fund.

Second, in a recent policy announcement, HHS acknowledged that states have the flexibility to spend state MOE funds in a separate state program, but HHS expressed concern that states might use this flexibility to develop separate state programs designed to avoid the TANF participation requirements or to avoid returning a share of their child support collections to the federal government. While HHS lacks the authority to prohibit the approach, HHS expressed an intent to propose regulations intended to discourage such efforts and to seek legislation to have families assisted in separate state programs with MOE dollars included in federal participation rate calculations. HHS further advised states "not to set up separate State programs which retain what would otherwise be the appropriate Federal share of child support collections" and expressed an intent to work with the Governors and Congress to identify approaches that will ensure that States do not use the flexibility provided to retain Federal dollars in State coffers.

Ultimately, each state must decide for itself what weight should be given to the HHS admonitions. There are legitimate concerns about states designing pure shell games, e.g., a state shifting half of its caseload into a separate state program and then asserting that it has generated a 50% caseload decline. However, there is a fundamental difference between using the flexibility now provided by federal law to evade federal requirements and using that flexibility to advance a state-based vision of welfare reform. One of the express selling points of the block grant structure was that while various restrictions were being placed on federal funds, states would have broad discretion in the use of state funds. It will be of little value if states have discretion but are afraid to use it.

Our basic advice is that a state should begin its welfare redesign process by deciding which policies it wishes to pursue and then considering which model or combination of models of state funding best further those policies. It is a major shift to move away from thinking about a single program predicated on the principle of federal-state matching payments to thinking about the alternatives and opportunities presented by a block grant subject to one set of rules and state maintenance of effort funds subject to a different set. However, in the new framework, flexibility in the use of state funds may provide one of the principal vehicles by which states can experiment and advance innovations.

Introduction

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) dramatically transforms federal policy and the funding structure affecting assistance for poor families. A central element of the legislation is the creation of the Temporary Assistance for Needy Families block grant (TANF) to replace the Aid to Families with Dependent Children (AFDC) program. The new structure makes a fundamental change in the relationship between federal and state funds, and the new relationship has important implications for program design. This document describes the new choices for how states might structure the expenditure of state funds and outlines some of the key policy implications of those choices.

The AFDC Program operated on the principle of federal-state match: a state made expenditures to operate AFDC and a set of related programs and was reimbursed for a portion of those costs by the federal government. In contrast, the fiscal relationship in TANF is based on the principle of maintenance of effort. Under the new legislation, each state is eligible to receive a block grant of federal TANF funds. The amount of the block grant will be reduced if the state fails to satisfy a maintenance of effort (MOE) requirement for the expenditure of state funds. A state can choose to satisfy its MOE requirement in any of three ways: by commingling state with federal funds in a single TANF program; by expending state funds segregated from federal funds in the state's TANF program; or by expending state funds in a separate program or programs which do not receive federal TANF funds. The federal requirements which attach to state funds depend on which alternative a state elects. There are pros and cons to each alternative. The key point is that in the new policy environment, an essential aspect of state flexibility comes from recognizing that the rules governing use of federal and use of state funds are different.

It is important to identify those instances in which states have greater flexibility in the use of state funds because the PRWORA places significant restrictions on the use of federal funds; some of those restrictions may, in some circumstances, make it more difficult for states to accomplish their policy goals. During the past several years, most states have considered and enacted welfare reform initiatives designed to promote employment. States commonly sought waivers of federal requirements in order to adopt new rules concerning the treatment of earnings, asset limits, exemptions from JOBS participation, the kinds and sequence of JOBS activities available to or required of participants, sanctions for failure to comply with JOBS requirements, and time limits of one sort or another. Under TANF, many of the changes which previously required a waiver will now be matters of state discretion. At the same time, the Act also contains a number of significant new requirements and restrictions for which states cannot attain waivers. Among the most significant:

- **Prohibitions on Assistance:** The law contains a set of "prohibitions" on using federal TANF funds to assist certain categories of individuals and families. A state may wish to

provide assistance to at least some of the individuals or families subject to the federal prohibitions, e.g., categories of legal immigrants now ineligible for federally-funded TANF assistance.

- **Time Limits:** The law prohibits states from using federal TANF funds to provide "assistance" to a family that includes an adult that has received assistance attributable to federal TANF funds for at least 60 months; states may allow exceptions for no more than 20% of their cases. The design of the federal time limit may be very different from the approach that a state has taken or wishes to take.
- **Work and Participation Requirements:** To avoid risking a fiscal penalty, the state must meet federal participation rates for families with adults (or a minor child, head of household) receiving TANF assistance; only a limited set of activities are "countable" toward federal participation rates, and the federal law provides no exemption for, e.g., circumstances where a parent or caretaker is incapacitated or disabled or caring for a disabled family member. A state may wish to count a broader range of activities as participation or may wish to respond more flexibly in circumstances where participation is difficult or impossible.
- **Child Support Assignment and Collection:** All families receiving "assistance" under a State's TANF program will be required to assign their child support rights to the State, and the state will be required to send to the federal government at least half of any child support amounts collected in the cases of families receiving TANF assistance. The state may wish to take a different approach to the treatment of child support collections.

Each of the above provisions may or may not be consistent with the directions a state has taken or wishes to take in the future. The Act does provide that if a state had a waiver in effect prior to enactment of the PRWORA, the state may elect to continue the waiver until its expiration, and provisions of the Act that are inconsistent with the waiver will not apply until the expiration of the waiver.[1] However, many states have not received waivers for the full range of activities they would like to pursue, and even for those that have, the meaning and application of the Act's provisions concerning continuance of waivers is quite uncertain. In addition, many current state waivers will expire within the next several years, leaving states subject to the restrictions and requirements of TANF. To the extent the new law's requirements are inconsistent with the direction a state wishes to take, the options for structuring state spending may be critical tools that will allow the state to implement the policies that it has determined to be most appropriate.

[1] Also, note that states may also continue policies inconsistent with the provisions of Act that are included in waiver applications pending on the date of enactment, and approved on or before July 1, 1997, provided that such a state will still be subject to the requirements of Sec. 407, i.e., the participation rate requirements. For more information on the relation between prior waivers and TANF requirements, see Greenberg and Savner: **Waivers and the New Welfare Law: Initial Approaches in State Plans** (Center for Law and Social Policy, November 1996).

To understand the options and potential strategies available to a state in using state funds, it is necessary to consider the alternative models now available for the structuring of state funds, the relationship of those models to TANF maintenance of effort requirements, and how TANF requirements do and do not apply to each model. The remainder of this document first outlines the basic choices in the structuring of state funds and applicable federal requirements that flow from those choices and then outlines some of the key policy considerations that states may wish to consider in determining how to structure their spending of state funds in the new framework.

HHS has recently issued a Policy Announcement, TANF-ACF-PA-97-1 (Jan. 31, 1997), in which the agency identifies the three potential models of spending state funds in the TANF structure, and discusses the legal consequences of a state electing each model. The following discussion of the three models and the legal consequences of adopting each model is, we believe, wholly consistent with the analysis of permissible state choices presented in HHS' Policy Announcement; we are aware of no differences between our legal analysis of the three models and the analysis presented in the HHS Policy Announcement. At the same time, the Policy Announcement contained a set of admonitions to states which appeared designed to discourage states from making full use of the flexibility in using state funds permissible under the new structure. For reasons that will be apparent to readers of this document, we disagree with the tone of discouragement voiced in parts of the HHS Policy Announcement, and hope that states will use their legal flexibility to advance constructive policy alternatives in support of state-based visions of welfare reform.

I. The Basic Framework

A. Three Models for the Use of State Funds

In the new structure, there are now three basic options available to states for structuring spending of state funds in a state's welfare reform effort: commingled state and federal spending within the TANF program; segregated state spending within the TANF Program; and the development of one or more separate state programs.[2] (While we refer to a single state TANF program, as discussed below, a state is free to expend federal TANF funds in more than one program.) Qualified state expenditures under each of these models will count toward the TANF basic maintenance of effort requirements, but different rules and requirements apply to the state's funds, depending on which of the three models is used. The three basic models are:

Commingled State and Federal Spending in the TANF Program: A state might spend state funds in the program that also receives federal TANF funds and "commingle" state funds with federal TANF funds. For example, if the state commingles state and federal funding for assistance

[2] These three options are expressly identified in TANF-ACF-PA-97-1, at p. 6-7.

for 100 cases, and 60% of the money in the program involves federal funding, and 40% involves state funding, all 100 of those cases will receive assistance that is partially federally-funded and partially state-funded. Commingled state and federal funds was the model typically used by states in the AFDC program.[3]

Segregated State Spending in the TANF Program: Alternatively, a state might spend state funds in a program that also receives federal TANF funds, but segregate some or all of such state spending so that the assistance provided to certain families, together with the administrative costs relating to those families is paid for entirely with state funds. For example, if 60% of the money in the program involves federal funding, and 40% involves state funding, and the state has 100 cases, the state might structure its TANF program so that 60 of its cases are federally-funded, and 40 are state-funded.

Separate State Programs: Alternatively, a state might use state funds to create or expand a program that receives no TANF funds - referred to here as a "separate state program" because it is separate from the program or programs in which a state expends its federal TANF funds.[4]

B. The Three Models and TANF Maintenance of Effort Requirements

In operating their TANF programs, states face two distinct maintenance of effort (MOE) requirements - a basic MOE requirement and a Contingency Fund MOE requirement. State spending under any of the three models may be countable toward the basic MOE requirement. In contrast, only state spending in the TANF program (whether commingled with or segregated from federal funds) can count toward Contingency Fund MOE.

While the basic and Contingency Fund MOE provisions both involve a maintenance of effort requirement, the two provisions differ as to the consequences of failure to satisfy the requirement;

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[3] Under AFDC, there were instances in which states added a state-funded component to their AFDC programs to provide assistance to families who were categorically ineligible for federal AFDC benefits, e.g., two-parent families who met neither the AFDC-UP nor AFDC-I requirement, and pregnant women during the first two trimesters of their pregnancy.

[4] While it is possible to define the three models as distinct forms, there are some currently-unresolved questions about situations where the models might overlap. For example, if assistance for a family is paid with segregated state funds, but federal TANF funds are expended for administrative or non-assistance costs for the family, would the instance still be categorized as involving segregated state spending? If assistance and administration are both paid with state funds, what is the precise line between segregated state spending in TANF and expenditures in a separate state program? At this point, there is no HHS guidance on these issues. While there may be some important unresolved definitional issues, the distinctions between the three models are nevertheless sufficiently clear to consider the policy issues raised by the alternatives.

the level of spending required to satisfy the requirement; and the nature of spending that will satisfy the requirement.

The basic MOE provision provides that a state's TANF grant will be reduced on a dollar-for-dollar basis if the state fails to expend at least 80% (or 75%, if the state meets applicable federal participation rate requirements) of a "historic state expenditure level"[5] for "qualified expenditures" for "eligible families" in "all state programs." Thus, **spending need not be in the TANF program to count toward basic MOE, so long as it is a "qualified expenditure" for "eligible families."**

Generally, "qualified expenditures" are expenditures for eligible families for cash assistance; child care; certain education, training and work expenditures; administrative costs in connection with the above expenditures; and any other expenditures reasonably calculated to accomplish the purposes of TANF and not otherwise prohibited by TANF.[6] "Eligible families" do <u>not</u> necessarily need to be families eligible for federal TANF assistance. Instead, "eligible families" are families which:

- have a child living with a parent or other adult relative (or individuals which are expecting a child); and
- are needy under the TANF income standards established by the State under its TANF plan.[7]

Since the basic MOE requirement is that countable state spending be for "qualified expenditures" for "eligible families," a state might structure its expenditures under any of three models to satisfy basic MOE requirement.

The Contingency Fund MOE provision specifies that a state may not qualify for supplemental funding from the federal $2 billion Contingency Fund in a year of economic downturn (and will be required to repay any contingency funds received) unless the State expends, in that year, at least 100% of its "historic state expenditure level" in the TANF program. To count toward Contingency Fund MOE, the expenditure must be made in the TANF program. Thus, **state**

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[5] A state's level of "historic State expenditures" is generally based on spending for AFDC and a set of AFDC-related programs in FY 94. See Sec. 409(a)(7)(B)(iii). An HHS-issued table reflecting 75%, 80%, and 100% of state historic State expenditure levels is attached as Appendix A.

[6] For a more detailed explanation of what constitutes a "qualified expenditure," <u>see</u> Greenberg and Savner, **A Detailed Summary of Key Provisions of the Temporary Assistance for Needy Families Block Grant** (Center for Law and Social Policy, August 1996).

[7] TANF-ACF-PA-97-1, at p. 11.

spending in a separate state program will not count toward the Contingency Fund MOE requirement, although spending of state funds for "qualified state expenditures" in TANF (whether commingled or segregated) will be countable.

The practical significance of being unable to count spending under separate state programs for Contingency Fund purposes is discussed at pp. 23-24. At this point, however, the key point to note is that for purposes of basic maintenance of effort, spending under any of the three models is possible.

C. When Do TANF Requirements Apply to Expenditure of State Funds?

While spending under each of the three models may be countable toward basic MOE, there are other significant implications to which model the state elects. To appreciate the consequences of the three different models, it is important to recognize that TANF requirements generally fall into one of two broad categories:

- **Some TANF requirements only apply to use of federal TANF funds.** Thus, they do not apply to families assisted in a separate state program or to families assisted in the state's TANF program with segregated state funds. However, these requirements do apply to families assisted in the state's TANF program with commingled funds. In effect, if $1 of a family's assistance is funded with a federal TANF dollar, the requirements applicable to use of federal TANF funds apply.

- **Other TANF requirements apply to families receiving assistance under the state program funded with TANF funds.** Thus, these requirements do not apply to families assisted in a separate state program, but do apply to any family assisted in the State's TANF program, whether the family is assisted with commingled or segregated funds.

The distinction between the two categories arises because of the language chosen by Congress in various provisions of the new law. In some instances, Congress drafted a provision so that it only applies to families assisted with federal funds; in other instances, Congress worded the provision as applying to families receiving assistance under the state program funded under TANF.[8] In

[8] More precisely, the Act often refers to families receiving assistance "under the State program funded under this part." Note that in the Act's many references to "the State program funded under this part," the implicit assumption is that TANF funds provided to a state will be used in a single program. However, nothing in the Act requires a state to use all of its TANF grant in a single program. It appears to be a matter of state discretion to use TANF funds in one program or several. This creates some uncertainty as to the application of requirements and restrictions applicable to the state program funded under TANF, i.e., if $1 of federal TANF funding is provided to a State program, does that State program become part of the "state program funded under this part?" Until there is any federal interpretation, our discussion is premised on the most cautious interpretation: that whenever federal TANF funds are expended in a State

some cases, there is an obvious policy reason why Congress wished (or did not wish) to impose a restriction that only applied to federally funded assistance; in other instances, the policy reason may not be apparent. In any case, HHS has reviewed the federal statute, and developed a table (attached as Appendix B) that expressly outlines when a requirement applies to assistance provided with commingled or segregated funds.

As the HHS table reflects, **most TANF "prohibitions," including the sixty-month limit, only apply to assistance funded with federal TANF funds.** Accordingly, **these prohibitions extend to assistance funded with commingled funds, but not to assistance funded with segregated state funds in TANF or to assistance funded in a separate state program.** States are prohibited from using federal TANF funds, and therefore are prohibited from using commingled state funds, to provide assistance to:

- a family without a minor child or a pregnant woman;
- a family that includes an adult who has received assistance attributable to federal funds for 60 months (subject to 20% exceptions);
- an immigrant entering the U.S. on or after August 22, 1996 (unless subject to exception);
- a minor parent not in school (unless subject to exception);
- a minor parent not in adult-supervised setting (unless subject to exception);
- a child absent from the home for more than the permitted period of time, subject to good cause exceptions;
- a parent or caretaker who fails to report the absence of a child affecting eligibility;
- a fugitive felon or probation/parole violator; or
- an individual found to have fraudulently misrepresented residence to receive multiple benefits (this restriction applies to the provision of cash assistance only).

If a state wishes to assist individuals or families subject to a federal prohibition, the state has two principal choices: the state can elect to provide assistance with segregated state funds within the TANF program or can elect to provide assistance in a separate state program. (Note, however, that expenditures counting toward maintenance of effort must be for "families," so it is unclear under what, if any circumstances, a state could spend maintenance of effort funds to assist individuals who were not members of a family with a minor child.)

The second category of restrictions and requirements applies not just to assistance funded with federal TANF dollars, but also to any assistance under the state program funded under TANF. Thus, if a state elects a model under which both federal TANF funds and state funds will be used - whether the state funding is commingled with or segregated from the federal funding - these

program, that program becomes part of the "state program funded under this part" and that all references to a state program should be read as equally applicable to each state program funded with TANF funds.

provisions apply to the entire program. The most significant of these requirements [9] are likely to be:

- **Participation Rates:** A state risks a fiscal penalty if the state does not ensure that a specified percentage of families, including adults who receive assistance under the program, are participating in certain work or work-related activities.
- **Twenty-Four Month Work Requirement:** A state's TANF Plan must require that all parents and caretakers receiving assistance under the program engage in work (as defined by the state) within 24 months.
- **Child Support Assignment:** As a condition of receiving assistance under the TANF program, a family must assign its support rights to the state. The state must reduce the family's assistance by at least 25% (and may terminate the family's assistance) if the family fails without good cause to cooperate in establishing paternity and enforcing child support.
- **Child Support Collections:** When the state receives child support assigned by a family receiving assistance under the program, the state must send the federal share[10] of support collected to the federal government.

Note that the TANF prohibitions and requirements described above apply to "assistance" in the state's TANF program and are not simply limited to families receiving "cash assistance." As yet, there is no federal regulatory definition of assistance. In its recent Policy Announcement, HHS explains that its approach to defining assistance could be "greatly illuminated by both State practice under TANF and by the rulemaking process." However, at this time, HHS' initial perspective is to define assistance as:

> "[E]very form of support provided to families under TANF except for the following:
>
> 1) services that have no direct monetary value to an individual family and that do not involve implicit or explicit income support, such as counseling, case management, peer support and employment services that do not involve subsidies or other forms of income support; and
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> 2) one-time, short-term assistance (e.g., automobile repair to retain employment and avoid welfare receipt and appliance repair to maintain living arrangements)."

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[9] For a detailed listing of all restrictions and requirements identified by HHS as applying to a state program funded under TANF, refer to the HHS table, Appendix B. For more information about the nature of each restriction and requirement, see Greenberg and Savner, **A Detailed Summary of Key Provisions of the Temporary Assistance for Needy Families Block Grant** (Center for Law and Social Policy, August 1996).

[10] See Section II. D on Child Support, infra at pp. 18-23, for a discussion of what constitute the federal share of child support collected on behalf of a TANF program participant.

Under this federal guidance, certain services provided by states will not fall within the definition of assistance and need not be subject to the requirements described above. Until there are applicable regulations, states have some ability to exercise discretion as they follow the federal guidance in developing their own categorizations of what does and does not count as assistance. Note, however, that because the term "assistance" appears in a number of places in the federal statute, it presumably means the same thing each time it appears. A state could not, for example, count a family as receiving assistance for purposes of counting toward the state's work participation requirements without also counting the family as receiving assistance for purposes of the law's child support requirements.

Looking at the above structure as a whole, the basic summary that emerges is:

- If a state commingles its state funds with federal funds in a single TANF program, then all of the key TANF requirements - time limits, other prohibitions, participation and work requirements, and child support requirements - will apply to all assistance provided under the program.
- If a state uses the model of segregated state funds within a single TANF program, then the federal time limits and most other prohibitions will not apply to families receiving assistance funded with segregated state funds. However, the TANF participation and work requirements and TANF child support requirements will still apply to such families.
- If a state makes use of one or more separate state programs, the families assisted in the separate state program will not be subject to TANF time limits or other prohibitions, will not be subject to TANF participation and work requirements, and will not be subject to TANF child support requirements.

Applicability of the Key TANF Restrictions & Requirements under the Three Funding Models			
Key Program Restrictions and Requirements	Federal TANF-Funded Assistance and Commingled Funds	Segregated State Fund Assistance in TANF Program	Separate State Program Assistance
Restrictions on assistance to immigrants, most other TANF prohibitions	Yes	No	No
Sixty-month limit	Yes	No	No
Participation rates	Yes	Yes	No
TANF child support assignment and distribution rules	Yes	Yes	No

II. Some Key Implications for Structuring State Spending

Given the different consequences of the three models, is there a "right" way to structure state spending in the new framework? In our view, a state's analysis should not begin by assuming that any of the three models is necessarily the appropriate or preferred approach. Rather, a state should begin by considering the basic approach to welfare reform that the state wishes to take and the policies that the state wishes to apply regarding who should be eligible for assistance, what conditions should apply to that assistance, how to best advance the state's approach to work, etc. Once the state has identified the policies it wishes to pursue, the question then becomes which of the three models (or which combination of the three) best helps the state advance its approach.

At the policy level, a state might initially consider its preferred approach in four areas: program eligibility; time limits; work and participation requirements; and child support. If this analysis leads the state to wish to pursue one or more separate state programs, the state will then wish to consider two additional factors: access to the federal Contingency Fund and how to view the admonitions provided by HHS in its recent Policy Announcement. This section considers the four policy areas; the next section considers the two additional factors.

A. Eligibility and Federal Prohibitions: Advantages of Segregated Funding or Separate State Programs

As noted above, infra at p.7, most TANF prohibitions only apply to use of federal TANF funds. Accordingly, a state wishing to assist a family or individual subject to a federal prohibition may do so either through segregated funding or through a separate state program. So long as the family is an "eligible family," i.e., the family is residing with a minor child (or including a pregnant woman) and meets the state's income standards, the expenditures for assistance to that family will count toward basic MOE.

Why would a state wish to assist a family or individual that is subject to a federal prohibition? The answer depends on the specific prohibition. For example, some categories of legal immigrants previously served in state AFDC programs are now ineligible for federally-funded TANF assistance, and many legal immigrants entering the United States on or after August 22, 1996 will be ineligible for federally-funded TANF assistance for a five-year period after they enter the United States. A state might wish to assist some or all of these legal immigrants with state funds that could count toward a state's MOE requirements. HHS expressly acknowledges that states have the flexibility to use state MOE funds to serve "qualified" aliens during their five-year federal ineligibility period; HHS also acknowledges that states may choose to use state MOE funds to serve legal aliens who do not meet the definition of a "qualified alien" and may also use State MOE funds to serve aliens who are not lawfully present in the United States by enacting legislation authorizing such assistance.[11]

A state might also wish to use its funds in a circumstance where the state may generally agree with a federal prohibition, but is troubled by particular applications of that prohibition. For example, the TANF statute prohibits a state from using federal TANF funds to assist a minor parent who is not participating in education, once that parent's child reaches the age of 12 weeks. A state may generally agree with this approach, but believe that there should be some ability to provide for good cause exceptions. The federal law does not allow such flexibility with federal funds. Accordingly, a state might, for example, enact its own good cause exceptions, and provide that individuals falling within the exceptions could be assisted with segregated state funds.

As these examples suggest, a state should view the federal prohibitions as a restriction on federal funds, not as prohibitions on state conduct. Each prohibition ought to be independently reviewed and evaluated, with the recognition that the state may elect to use state funds (whether segregated in TANF or through a separate state program) in any instance where the state wishes to take a different approach.

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[11] TANF-ACF-PA-97-1, at p. 11-12.

B. Time Limits: Using Segregated Spending or a Separate State Program to Accommodate a State-Designed Time Limit or to Maintain a Program Without a General Time Limit

The TANF sixty-month time limit applies to assistance funded with federal TANF funds. Accordingly, a state wishing to take an approach to time limits which is different from the federal approach can do so either through the use of segregated funds or a separate state program.

Before enactment of TANF, state approaches to time limits fell into four general categories:

- No time limit on assistance;
- Termination Time Limit - a time limit after which cash assistance to a family ends;
- Work-Program Time Limit - a time limit after which participation in a work program is required as a condition of further cash assistance, but in which cash assistance may continue so long as the family complies with applicable work requirements; or
- Reduction Time Limit - a time limit after which cash assistance to a family is reduced, but not terminated altogether.

States with termination time limits had, without exception, developed objective criteria for exemptions (categories of families for whom the time-limit clock does not run) and policies that provided for extensions (conditions under which a family can continue to receive aid after they have reached the time limit) based on individual family circumstances. No state sought to impose an arbitrary percentage limitation on the number of families who would be exempt from the time limit or who could be eligible for an extension after reaching the time limit. For example, a termination time limit might restrict assistance to no more than 24 months in a 48 month period, but provide exemptions to families during any period in which no adult in the family is receiving aid, the adult receiving aid is incapacitated, the adult caretaker is caring for an incapacitated family member, the head of the household is a minor, the family includes a child under the age of one year, or the adult caretaker is employed for 20 or more hours per week. The state might also provide for continued aid beyond the time limit for any family in which the parent has made her best effort to prepare for and find employment, but is either unemployed or employed at such low wages that she still qualifies for a supplementary cash assistance grant when her family reaches the time limit.[12]

If the state elects to commingle federal and state funds into a single TANF program, the state will likely face difficulties in implementing any of the above approaches to time limits in a manner consistent with the TANF sixty-month limit. For example, a state wishing to implement a

[12] See Greenberg, Savner, and Swartz, **Limits on Limits: State and Federal Policies on Welfare Time Limits** (Center for Law and Social Policy, June 1996.)

termination time limit with a set of exemptions could still develop categories of exemptions and inform families that a month of receiving assistance while exempt would not count against the state's time limit. However, since the family was still receiving federally-funded TANF assistance, the month would count against the sixty-month limit, and the state could only assist the family after the sixty-month point with state funds or as part of the allowable 20% exception.[13] Similarly, a state wishing to maintain or implement a work-program time limit would typically wish to exempt some families from the time limit and not arbitrarily terminate cash assistance to those who were in full compliance with work requirements; such an approach may be difficult or impossible to maintain consistent with a 20% cap on continued assistance. Obviously, states wishing to implement a reduction time limit[14] or no time limit would have to be even more concerned about the impact of the 20% limitation.

Under TANF, the principal way to ensure that a month of assistance does not count against the sixty-month limit is providing that assistance with state funds, either through segregated state funding within TANF or through a separate state program. For example, suppose a state wishes to impose a five-year time limit, but also wishes to provide that the clock does not run in any month in which a parent is participating in unsubsidized employment. The state could effectuate this policy by providing that eligible families with an employed parent will be funded with segregated state funds in the TANF program, so that months spent working do not count against the time limit. Or, suppose a state wishes to provide that new applicants will be screened and assessed to determine if they have been victims of domestic violence, and the state wishes to provide that the time limit will not be applied for some period of time to victims of

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[13] States may use federal TANF funds to continue assistance to a family after it reaches the sixty month time limit, provided that the total number of families receiving federally-funded TANF assistance beyond the time limit may not exceed 20% of the average monthly number of families receiving assistance under the state's TANF program. Also note that if such a family moved to another state at some point, the "count" that would matter for purposes of that state's calculation would be the number of months of federally-funded assistance.

[14] In lieu of imposing a full termination of assistance at the sixty-month point, there is some question as to whether a state might be able to implement a reduction-time limit under TANF with a time limit shorter than sixty months. The issue arises because the federal time limit is worded as follows:

> A State to which a grant is made under section 403 shall not use any part of the grant to provide assistance to a family that includes an adult who has received assistance under any State program funded under this part attributable to funds provided by the Federal Government, for 60 months (whether or not consecutive) after the date the State program funded under this part commences, subject to this paragraph.
> Sec. 408(a)(7)(A)

By its terms, this language appears to provide that months are only counted when a family with an adult receives assistance. If a state implements a reduction time limit in which, for example, the needs of the adult are removed from the grant after some period of time, it appears possible that the family ceases to be a family with an adult receiving assistance.

domestic violence. The state could develop a system to code such families as "time-limit-exempt" and to fund their assistance with state funds until it was appropriate to remove the exemption.

Or, suppose a state wishes to provide that its time-limit will not apply to cases in which a grandparent is caring for grandchildren. One approach here may be to simply exclude the grandparent from the assistance unit, since it appears that the TANF time limits only apply to months in which the adult is receiving assistance. However, in their AFDC Programs, states allowed needy grandparents the option to receive assistance. If a state wishes to provide such assistance without having a time-limit clock run, the state could do so through segregated funding or through a separate state program.

In considering its choices here, the state might initially wonder whether it is worth exploring the use of segregated spending or a separate state program, in light of TANF's allowance of exceptions for 20% of the caseload. In their prior time-limit designs, states often sought to exempt categories of recipients who, over time, may well exceed 20% of the state's TANF caseload. However, even if a state is very confident of the ultimate effectiveness of its program, there is still an advantage in structuring spending to reduce the number of families who reach the federal sixty-month limit, because:

- **The more effective the state's program, the bigger will be the problem presented by the 20% limit.** The 20% limit is calculated based on the families still receiving assistance. For example, suppose a state's caseload was 100, and the state cuts the caseload in half through an effective reform initiative. Of the 50 remaining, a very high percentage may have significant employability barriers, but the 20% limit would be calculated based on the remaining number.
- **The TANF time limit applies not just to cash assistance, but to any assistance funded with TANF dollars.** TANF funds may be used for an AFDC-like cash assistance program, but might also be used for numerous other forms of assistance: food assistance, housing assistance, transportation assistance, etc. The sixty-month limit applies to any assistance funded under TANF. Thus, even if a state wishes to impose a stringent time limit, there is still an advantage in minimizing the instances where families reach the federal sixty-month limit, so that TANF dollars can be used for additional or alternative forms of assistance for families.

Given the flexibility that exists through use of segregated spending or a separate state program, a state wishing to develop its own approach to time limits has significant ability to do so. In particular, as recently as 1996, a basic principle in many states was that the state would not impose a time limit resulting in termination of assistance to a family where the parent was unable to work or unable to attain a job despite her best efforts. A state wishing to preserve such an approach can still do so through its choices in structuring its funds.

C. Work and Participation Requirements: Using Separate State Programs to Accommodate a State-Based Approach

If a state's principal concern is an interest in assisting families subject to a federal prohibition or implementing an alternative time limit approach, the state might address its concern either through segregated funding or a separate state program. However, if the state wishes to adopt an approach to work and participation rate requirements or to child support requirements different from the approach in the federal law, the use of segregated funding within TANF will not be sufficient; it will become necessary to explore options for separate state programs.

Before enactment of TANF, states sought to strengthen the employment focus of their welfare systems, through such approaches as:

- increasing the numbers of families subject to program participation requirements;
- requiring more individuals to participate in job search as their initial JOBS activity, and securing waivers to eliminate the time limit on job search activities included in the JOBS statute, both with regard to job search as an initial activity and as an ongoing activity requirement during or following participation in other components; and
- maintaining a broad array of education, training and other employment-related activities and securing waivers to mandate additional activities designed to prepare an individual for employment that were not specifically authorized as potential JOBS components under the JOBS statute, such as participation in drug and alcohol abuse treatment programs.

Notwithstanding these broad policy trends, most states continued to provide JOBS exemptions for individuals who were incapacitated or were needed in the home to care for an incapacitated family member. Further, while moving in the direction of "Work First" programs, states typically were still allowing substantial access to education and training programs: in an average month in FY 95, most JOBS participants (55%) were engaged in education or training activities.

The work and participation requirements of TANF also seek to strengthen the employment focus of state welfare systems, but through a strategy that is in many respects inconsistent with the policy choices adopted by most states and described above. The inconsistencies are most striking in two respects:

- The types of activities which are countable toward meeting the first 20 hours per week (and the first 30 hours per week in the case of a two-parent family) of required participation are far more limited than the approaches previously taken by states, because: basic education as a stand-alone activity is not countable at all except for single heads of households under age 20; participation in "vocational educational training" (together with the number of families in which a teen single-parent head of household is engaged in

education activities) is limited to no more than 20% of a state's TANF caseload[15] and to no more than 12 months for any individual; and participation in job search activities is generally limited to no more than 6 weeks for any individual.

- The only group that states are allowed to exempt from inclusion in the calculation of the participation rate are single-parents with children under one year of age.

A state pursuing the policies that have become increasingly common during the past several years is effectively penalized in two ways under TANF participation rate rules. First, though the state has chosen, at potentially significant cost, to provide a range of education, training, counseling and treatment services to families, participation in many of these activities will not count toward the first 20 hours of required participation, and in some cases will not be countable at all. Second, although states have frequently determined that individuals who are incapacitated or are needed at home to care for a disabled family member should not be required to participate in work-related activities, under the new participation rate rules, these individuals and families will still be included in the denominator (i.e., the base upon which the state's participation rate is calculated) when calculating the state's participation rate. Depending on the composition of a state's caseload and the available resources, it might be extremely difficult to meet the new participation requirements while at the same time allowing access to activities that are not countable toward those requirements and allowing for exemptions for those families that the state had determined should properly be excused from activities.

Segregating funds within TANF will not help a state that wishes to allow a broader range of activities or wishes to exempt families in which a parent is unable to work. TANF participation rates are calculated based on all families with adults receiving assistance in the state's TANF program, whether the assistance is provided with commingled or segregated funds. Rather, such a state may need to consider the possibility of implementing a separate state program.

For example, a state might structure a separate state program to provide cash assistance and services to families in which the parent is required to participate in counseling, treatment, education, training or other activities that are not countable toward the TANF participation rate. Families might be assigned to the separate state program during periods of such participation and then assigned to the TANF program when it is more appropriate for them to participate in an

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[15] There continue to be unresolved issues about how to interpret the cap on vocational educational training. The statute provides that a limit of "not more than 20 percent of individuals in all families and in 2-parent families" may count toward the participation rates by participating in vocational educational training or by being single heads of households under age 20 engaged in education. Conference Report language suggests that the intent of the Conferees was to apply the 20% cap to those counting toward the participation rate rather than to the entire caseload. However, given the plain language of the statute, and in the absence of federal regulations, states would appear to have the discretion to interpret the provision consistent with its plain language, i.e., to allow 20% of individuals in all families to count through vocational educational training.

activity that is countable under TANF rules. Families in which a parent is incapacitated or needed in the home to care for an incapacitated family member might also be assigned to a separate state program until they were able to participate in federally countable activities. By designing a separate state program to provide assistance to families during periods when the parents in those families were less job-ready, the state's TANF program would primarily serve the families of more job-ready parents.

In our view, the best way to think about these issues is not what is the "easiest" way to meet TANF participation rates. Rather, the basic TANF structure essentially assumes that families receiving TANF assistance are able to engage in work and specified work-related activities for at least 20 hours a week. If that assumption is not accurate for a family - either because the parent is unable to work or because the most appropriate activity for the parent is not countable toward TANF participation rates - then it may be most appropriate to provide an alternative structure in which assistance for that family can be provided.

Designing a separate state program need not simply mean creating a program that looks like the TANF program, but with different participation requirements. For example, a state wishing to enhance access to education and training activities for low-income families might consider using state maintenance of effort funds to develop a program of financial aid for post-secondary education for low-income families or to fund stipends for low-income parents participating in JTPA-approved activities or to extend unemployment compensation for low-income parents engaged in education and training activities. The broad point is that if the state wishes to provide support for participation in activities that do not count toward TANF participation, it may be preferable to use state maintenance of effort funds to develop an alternative to TANF.

Developing a separate state program or programs for those for whom work is not presently expected may also help the state in developing one set of time limit rules for those who appear readily employable and a different set of rules for those whose circumstances prevent employment. If a state wishes to have one set of time limit rules for those appearing employable and a different set for, e.g., families in which a member is disabled or incapacitated, the state could accomplish that approach by having a time limit with certain categories of exemptions. However, the state might prefer to have one program with a termination time limit, and another program with no time limit or a substantially different time limit. The state can do so through the vehicle of a separate state program.

A state might decide that it is appropriate to make use of both a separate state program and segregated state funding within the TANF program. For example, the state might wish to operate a separate state program for families who would benefit from participating in activities not countable toward TANF participation rates. At the same time, the state might also wish to assist working poor families in its TANF program, though without imposing a time limit on assistance

to families who were working in unsubsidized employment. If sufficient funds were available, the state might wish to place alternative-participation families and exempt families in separate state programs, while assisting working poor families with segregated state funding within its TANF program. The working poor families assisted within TANF will (if they are employed sufficient hours) count toward TANF participation rates, but the months in which they are being assisted with segregated state funding will not count against the federal TANF time limit.

D. Child Support: Fiscal and Policy Implications of a Separate State Program

The child support consequences are very different for families assisted in the TANF program and families assisted in separate state programs. In brief, if a family is assisted in the TANF program, the family must assign its child support rights to the state, and when support is collected, the "federal share" of support must be sent to the federal government. In contrast, if the same family is assisted in a separate state program, there is no requirement to impose an assignment or send the "federal share" of support to the federal government.[16] There is a clear fiscal advantage to the state in assisting families with child support in separate state programs. States can utilize this aspect of the structure either to expand assistance and services to low-income families, to implement a child support assurance program, or simply to reduce state spending.[17] At the same time, states must be aware of certain potential adverse consequences of adopting a separate state program in the context of child support collections which force a balancing of factors in deciding how or whether to proceed.

As noted above, one of the key requirements applicable to all families who receive assistance through a state's TANF program (whether their assistance is funded with commingled or segregated dollars) is that they assign to the state any child and spousal support owed to them (up to the amount of benefits they receive from the program).[18] If a support collection is actually made, the state is required to return a portion of that collection to the federal government.[19] This is called the "federal share" and is based on the federal government's matching rate for the state's

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[16] There is also no federal requirement that custodial parents cooperate in establishing paternity and securing support through the state's IV-D system as a condition of assistance in a separate state program, although such requirements might be imposed by a state.

[17] CLASP does not advocate use of a separate state program simply as a means of shifting costs from the state to the federal government; rather, CLASP encourages states to consider the development of a separate state program as an approach to reduce the poverty of low-income families.

[18] Section 408(a)(3)(A).

[19] Section 457(a)(1).

Medicaid program.[20] Thus, states will be required to pay the federal government from 50% to 83% of the child support collected for families receiving assistance from the program funded under TANF.[21] The remainder of the money (called the "state share") can be kept by the state, given to the family, or divided between the state and the family. If any of the money is given to the family, the state can disregard some or all of it in calculating the family's TANF grant. However, because the federal share must be paid first, the cost of any disregard policy must be borne entirely by the state.

When families are provided assistance through a separate state program, the rules applicable to child support collections are different in two key ways. First, all current support collected must be paid directly to the family,[22] and second, none of the current support collected is required to be paid to the federal government.[23] Under a separate state program, the state would be free to develop whatever rules it wished regarding the treatment of a family's child support income in determining the family's benefit level. That is, the state might count all, some portion, or none of the child support income as income that would affect the family's benefit level under the separate state program. Depending on the state's decision, the portion of the child support that would be paid to the federal government had the family been aided under the state's TANF program, could be:

- retained in its entirety by the family without affecting the family's level of assistance;
- shared between the family and the state; or
- used in its entirety by the state to offset the cost of separate state assistance, thereby making funds available for other programs and services.

The fiscal impact on states and families of providing assistance through a separate state program is demonstrated below comparing the treatment of a family for whom $200 per month in child support is collected in a state with a 50% Medicaid match rate when $300 per month is provided

[20] Section 457(c)(2).

[21] Section 457(c)(1). However, subsection (d) of the new law is a "hold harmless" provision which provides that if the state share of collections is less than the state share in FY 95, the state share is the FY 95 amount. This appears to mean that if TANF collections fall as the caseload drops, the state is assured of the FY 95 level, at least to the limit of total TANF collections. While the provision does not specify the mechanism for covering a shortfall in the state share, presumably it would come out of the federal share.

[22] Sections 457(a)(2)(A) and (3).

[23] If--in the past-- the family received AFDC or assistance from a program funded by TANF, there may be child support arrears owed for the period the family received such assistance. These arrears are owed to the state under the assignment. When the state collects and distributes these arrears, a portion will have to be given to the federal government as a federal share. Section 457(a)(2)(iii).

through either: 1) a TANF program in which there is no pass through/disregard; 2) a separate state program in which there is no disregard provided; or 3) a separate state program in which there is a disregard of 25% of child support income (A disregard is one possible way for the state to share the benefit of collections with families assisted in the separate state program.):

Example #1: State with 50% Match Rate			
	Income to Family	Payment to Federal Government	Net Cost to State
TANF program (assistance with commingled or segregated funds)	$300 (Assistance)	$100 (50% of child support collected)	$200 ($300 in assistance minus $100 in child support retained by the state)
Separate state program (all child support paid to family treated as countable income)	$300 ($200 child support plus $100 assistance)	None	$100 (Assistance)
Separate state program (all child support paid to the family and one-fourth disregarded)	$350 ($200 child support plus $150 assistance)	None	$150 (Assistance)

If the state's federal Medicaid matching rate were 75%, the state's savings would be even greater:

Example #2: State with a 75% Match Rate			
	Income to Family	Payment to Federal Government	Cost to State
TANF program (assistance with co-mingled or segregated funds)	$300 (Assistance)	$150 (75% of child support collected)	$250 ($300 in assistance minus $50 in child support retained by the state)
Separate state program (all child support paid to family treated as countable income)	$300 ($200 child support plus $100 assistance)	None	$100 (Assistance)
Separate state program (all child support paid to family and one-fourth disregarded)	$350 ($200 child support plus $150 assistance)	None	$150 (Assistance)

However, the fiscal ramifications are not quite as simple as the above examples might suggest. In addition to getting a share of the current support collected for families receiving assistance under its TANF program, states also get incentive payments for making support collections for all families using the state child support system. Through the incentive payment system, states obtain (in the aggregate) a total of about $400 million per year. Incentive payments are funded through the federal share of collections; that is, the federal government returns a portion of its federal share to the states as incentive payments. Under the current system, which is scheduled to remain in place until FY 2000, the total amount of incentive payments received by a state is closely tied to the amount of collections the state makes for families receiving TANF assistance.[24] If TANF caseloads fall under new eligibility rules, the amount of incentive payments made to the state will also decline.[25] If the TANF caseload decline is accelerated by the creation of a separate state program, the decline in incentive payments will be even steeper. If all families which receive child support are moved/diverted from TANF to a separate state program, the state could reach the point where it would receive no incentive payments. Thus, the potential reduction of incentive payments has to be calculated in determining the fiscal impact of a separate state program.[26]

Making this calculation is technically complex. However, to get a rough idea of the impact, a state can estimate that total incentive payments equal 15% of the amount of support collected for families in its TANF program.[27] The tables below show what would happen in states with 50% and 75% federal reimbursement rates if one-half of the families formerly receiving AFDC instead received assistance through a separate state program.

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[24] Under the PRWORA, the system for calculating incentive payments will change in FY 2000, when incentive payments will be available for a variety of support-related activities, not just collections. HHS has submitted a report to Congress (February 1997) concerning a proposed redesign of the system as required by Section 341(a).

[25] This drop in collections for families in a state's TANF program may be partially offset by improvements in the state's ability to collect support through increased automation and expanded enforcement authority under PRWORA.

[26] As noted above, under the current system incentive payments are paid out of the federal share of collections and not from a federal appropriation. The federal share will decline as TANF collections decline. In addition, the federal share will decline whenever the hold harmless provision applies to the state share. Because the new hold harmless provision appears to assure the state share at the FY 95 level, the federal share may be reduced or eliminated if there is a significant enough shortfall in the state share. As the federal share declines, the pool of incentive funds also will be reduced unless the funding is restructured by Congress.

[27] States are paid separate incentives for collections in TANF and non-TANF cases. The actual calculation is based on the state's cost effectiveness in making the collection and whether the collection is made for an TANF or a non-TANF case. Incentives paid for non-TANF cases are capped at 115% of incentives paid for TANF cases. In addition, adjustments are made to account for certain costs and for collections in interstate cases. When all of these factors are taken into account, historically, the typical state incentive payment turns out to be about 14-15% of former AFDC collections. Thus, this figure is used here to get a rough idea of the impact of moving cases to a state-only program.

Example #3: $50M in AFDC Child Support Collections - 50% Federal Matching Rate				
	Federal Share	State/Family Share	Federal Incentive payment	Revenues for State/Families
All AFDC families served in state TANF program	$25M (50% of all collections)	$25M (50% of all collections)	$7.5M (15% of all collections)	$32.5M (State share plus incentive payment)
Families accounting for 50% of prior AFDC child support collections served through separate state program	$12.5M (50% of $25M collected for families remaining in TANF)	$37.5M ($25M collected for families in state program plus 50% of $25M collected for families remaining in TANF program)	$3.75M (15% of $25M collected for families remaining in TANF program)	$41.25M (State share plus incentive payment)

The additional revenue available within a state could, as noted above, be shared with the families for whom the child support collections were being made by counting only a portion of the collections as income in determining the family's benefit level in the state program. To the extent that the additional revenue was not provided to the families, but recovered by the state through the counting of child support as unearned income to the family, the state might use such additional revenues to provide enhanced services to families receiving aid or for any other purpose it wished. One possibility might be to use these funds to initiate some form of child support assurance program that would guarantee a minimum monthly child support payment to families who have child support orders.[28]

To the extent states create or expand separate state programs to enhance their ability to pursue state developed policies, the reduction in child support collections may have a significant impact on federal revenues. As the tables above make clear, the cost of the fiscal benefit to states and families will be borne by the federal government. As federal efforts to balance the budget proceed, and as some in Congress are already expressing concern about the extent to which the federal government bears the cost of the administration of state child support programs, the potential response of Congress and the Administration to a significant loss of revenue is difficult to gauge.[29]

[28] For a discussion of how such a child support program might be structured see, **Child Support Assurance: A New Opportunity on the Block Grant Structure** (Center for Law and Social Policy, April 1997).

[29] According to preliminary FY 95 data, the federal share of child support collections after payment of the $50 pass-through but before payment of incentives was $1.224 billion, and the federal government returned $400 million to the states in estimated incentives, yielding a net federal share of $824 million. The Congressional Budget Office projects significant additional federal revenues in future years due to the elimination of the pass-through and improved

Nonetheless, the PRWORA clearly allows state funds spent in separate state programs to be counted toward the basic maintenance of effort requirement, and a state exploring its options should consider the pros and cons of this approach.

III. Two Cautionary Considerations: Contingency Fund Access and HHS Admonitions

To briefly summarize, if a state is principally concerned with assisting families subject to federal prohibitions or wishes to take a different approach to time limits than that contained in the TANF statute, the state can probably accomplish that goal within TANF by using segregated state funding, and need not consider the pros and cons of separate state programs. If, however, the state wishes to take an approach to participation rates or child support collections different from the TANF requirements, the state will need to consider the appropriateness of implementing one or more separate state programs.

The above discussions suggested some of the potential advantages of separate state programs. However, there are also two potential disadvantages: possible loss of access to the federal Contingency Fund and a set of warnings from HHS. In our view, neither of these potential disadvantages should be sufficient to discourage a state from taking an approach if the approach otherwise seems clearly preferable on policy grounds, but states do, however, need to be aware of and sensitive to these considerations in reaching a decision.

Contingency Fund: As noted previously, a state seeking access to the federal Contingency Fund during a period of economic downturn must have expenditures in the TANF program at or above 100% of its historic state expenditures by the end of the year in which the state seeks Contingency Fund access. Plainly, one consequence of placing maintenance of effort funds in a separate state program is that it may make it difficult or impossible for the state to reach the level of 100% MOE within TANF, and as a result, the state will not qualify for the Contingency Fund.

The significance of loss of access to the Contingency Fund should not be minimized; at the same time, it is important to consider that:

- At this point, many states see no evidence of imminent recession and are not designing their programs predicated on 100% MOE; if a state has already made the decision not to maintain at or close to 100% MOE, then the decision to commit MOE dollars to separate state programs may have little practical significance; and
- In contrast to the basic MOE level, which must be maintained every year to avoid a penalty, the Contingency Fund MOE level need only be attained in the year in which the state seeks contingency funds. Thus, a state might elect to commit funds to a separate

collections as a result of PRWORA.

state program now, with the recognition that if there was a severe economic downturn, it might be necessary to restructure state spending so that the spending was occurring within TANF.

Ultimately, a state will need to weigh the importance of the policies that might be furthered by a separate state program and balance them against the possibility that they could result in reduced likelihood of Contingency Fund access. If however, the state concludes that use of separate state programming is one of the principal opportunities for creativity in the new structure, it would be unfortunate for that creativity to be impaired by the fear of loss of Contingency Fund access.

HHS Admonitions: In its recent Policy Announcement, HHS expresses particular concern that states might utilize their flexibility to develop separate state programs in two ways: "In particular, we are concerned that States could design their programs so as to avoid the work requirements in Section 407 [i.e., the TANF participation rates] or to avoid returning a share of their child support collections to the federal government." Based on these concerns, HHS indicates an intent to propose regulations to:

- deny a state any reduction in its TANF participation rates based on a caseload reduction credit, unless the state provides caseload information for separate MOE programs and demonstrates that TANF caseload reductions are not artifacts of the way in which the programs have been structured[30];
- deny "reasonable cause" to a State whose MOE policies work to circumvent the work requirements of the Act. If a state fails to meet required participation rates, the Secretary would not consider a "reasonable cause" claim, unless the state provided information about its MOE program, demonstrated it was making a good faith effort in the work area with respect to both its TANF and MOE programs, and was not using a separate MOE program to evade the force of the work participation rates; and
- look at a State's <u>overall</u> work effort in deciding whether the state qualifies for a high performance bonus.

[30] Note, however, that if a state that establishes a separate program to serve a portion of the families who might otherwise receive assistance under its TANF program, the state will still benefit from the fact that the families being served in the separate program will not be included in the denominator when the state's participation rate is calculated, even if the state does not receive a caseload reduction credit for those families. Further, in our view, any decision by HHS concerning how reductions in a state's TANF caseload will be treated in calculating the state's caseload reduction credit ought to include consideration of whether the separate program that now serves the families in question reflects a state effort to attempt a new and different approach to meeting the families' needs. For example, a state that uses state funds to create a program providing nutrition assistance to families barred by new restrictions on immigrant eligibility should not have those families counted against the state in determining whether the state qualifies for the caseload reduction credit.

In addition, HHS also expresses an intent to seek legislative authority to impose data collection requirements concerning recipients served by MOE programs and to provide that the calculation of whether a state has met its applicable participation rate should be based on success in both the TANF and MOE programs.

As to child support, HHS expressly says that it is "advising States not to set up separate State programs which retain what would otherwise be the appropriate Federal share of child support collections." In addition to seeking information about child support collection in separate state programs, HHS also expresses an intent to identify approaches which will ensure that states do not use the flexibility provided to retain federal dollars in state coffers.

In analyzing the HHS guidance, it is important to draw a distinction between its statutory interpretation and its broader cautionary admonitions to states. As we have noted, HHS ultimately concludes that using segregated funding within a TANF program as well as designing separate state programs are permissible options now available to states. At the same time, the tone of the Policy Announcement is plainly intended to discourage some of the options now available to states.

In response, the first point to emphasize is that the flexibility that now exists in using state funds directly flows from the language of the statute. Had Congress wished to impose all federal TANF requirements on state MOE funds, Congress plainly could have done so. Instead, the wording of the TANF prohibitions is often expressly limited to the use of federal funds, and the basic MOE language is explicitly drafted to include qualified expenditures under all state programs, rather than just within the TANF Program.

Second, the HHS tone and admonitions reflect no acknowledgment that the reason why a state may wish for additional flexibility in the use of state funds is that the state may view certain federal TANF requirements as rigid and inappropriate. In particular, many people are troubled by the specific design of the TANF work participation requirements; this is not based on an opposition to work, but a concern that the TANF requirements do not provide sufficient flexibility to allow access to education, training, job readiness and job search programs in appropriate cases, and do not draw needed distinctions between those who are able to participate and those who are not. Under these circumstances, if a state uses a separate program to assist families with disabled caretakers or to allow access to education, this should be recognized as a legitimate policy choice, rather than seen as an evasion of work requirements.

In discussing the implications of separate state programs for the child support system, HHS emphasizes the concern that states might elect this approach as a means of preventing the sharing of child support collections with the federal government. It is possible that some states might wish to do so purely for the fiscal advantage. However, states also may wish to adopt a separate

state program approach in order to implement a Child Support Assurance model, under which families are allowed to retain their child support, and the state provides a supplemental payment to those families whose child support is not sufficient to reach the guarantee level set by the state. For affected families, a Child Support Assurance program could function as a genuine alternative to the TANF system, and it is entirely appropriate for a state to implement such an approach without it being subject to TANF rules.

There are legitimate concerns about states designing pure shell games, e.g., a state shifting half of its caseload into a separate state program and then asserting that it has generated a 50% caseload decline. However, it is important to draw a distinction between using the rules for such shell games and taking advantage of additional flexibility with state funding in order to advance a state-based vision of welfare reform. It is unfortunate that the HHS admonitions did not appear to recognize that difference.

Ultimately, a state seeking to develop appropriate policies in the new environment needs to keep in mind two crucial distinctions:

- First, for better and worse, one of the fundamental changes accompanying TANF implementation was the imposition of a set of sharp restrictions on HHS authority. In light of those restrictions, it is important to draw a distinction between HHS' preferences and its statutory authority. HHS may or may not approve of a state's policy choices, but if those choices are permitted under the statute, it is up to the state, not HHS, to decide whether to proceed.

- Second, there is a fundamental difference between using flexibility to evade federal requirements and using flexibility to advance a state-based vision of welfare reform. One of the express selling points of the block grant structure was that while various restrictions were being placed on federal funds, states would have broad discretion in the use of state funds. It will be of little value if states have discretion, but are afraid to use it.

Our basic advice is that a state should begin its welfare redesign process by deciding which policies it wishes to pursue and then considering which model or combination of models of state funding best effectuate the state-based vision. It is a major shift to move away from thinking about a single program predicated on the principle of match to thinking about the alternatives and opportunities presented by a block grant subject to one set of rules and state maintenance of effort funds subject to a different set. However, in the new structure, the truly flexible funding is state money. In the new framework, flexibility in the use of state funds may provide one of the principal vehicles by which states can experiment and advance innovations.

Acknowledgments

Section II D, "Child Support: Fiscal and Policy Implications of a Separate State Program" (pp. 18-23) was jointly authored with Paula Roberts and Vicki Turetsky at CLASP. As such, the Section represents our joint analysis and perspectives on the issues discussed therein. A number of other people reviewed a prior draft of this document; we would like to thank Jodie Levin-Epstein, Jocelyn Guyer, Cindy Mann, and Sharon Parrott for their helpful comments.

Appendix A: STATE MAINTENANCE OF EFFORT LEVELS REQUIRED UNDER P.L. 104-193*

State	FY 1994 State	Maintenance of Effort (MOE):	
	Expenditures 1/	75% MOE Level 2	80% MOE Level 3/
Alabama	$52,285,491	$39,214,118	$41,828,393
Alaska	65,256,536	48,942,402	52,205,229
Arizona	126,703,568	95,027,676	101,362,854
Arkansas	27,785,269	20,838,952	22,228,215
California	3,643,207,905	2,732,405,929	2,914,566,324
Colorado	110,494,527	82,870,895	88,395,622
Connecticut	244,561,409	183,421,057	195,649,127
Delaware	29,028,092	21,771,069	23,222,474
District of Columbia	93,931,934	70,448,951	75,145,547
Florida	494,558,734	370,919,051	395,646,987
Georgia	231,158,036	173,368,527	184,926,429
Hawaii	97,308,640	72,981,480	77,846,912
Idaho	18,238,307	13,678,730	14,590,646
Illinois	572,027,363	429,020,522	457,621,890
Indiana	151,366,637	113,524,978	121,093,310
Iowa	82,617,695	61,963,271	66,094,156
Kansas	82,332,751	61,749,563	65,866, 201
Kentucky	89,891,312	67,418,484	71,913,050
Louisiana	73,886,837	55,415,128	59,109,470
Maine	50,370,048	37,777,536	40,296,038
Maryland	235,953,925	176,965,444	188,763,140
Massachusetts	478,596,697	358,947,523	382,877,358
Michigan	624,691,167	468,518,375	499,752,934
Minnesota	239,660,347	179,745,260	191,728,278
Mississippi	28,965,744	21,724,308	23,172,595
Missouri	160,161,033	120,120,775	128,128,826
Montana	20,919,224	15,689,418	16,735,379
Nebraska	36,628,645	28,971,484	30,902,916
Nevada	33,985,152	25,488,864	27,188,122
New Hampshire	42,820,131	32,115,098	34,256,105
New Jersey	405,274,008	303,955,506	324,219,206
New Mexico	49,933,908	37,450,431	39,947,126
New York	2,281,060,386	1,710,795,290	1,824,848,309
North Carolina	205,567,684	154,175,763	164,454,147
North Dakota	12,092,480	9,069,360	9,673,984
Ohio	520,734,467	390,550,850	416,587,574
Oklahoma	81,667,075	61,250,306	65,333,660
Oregon	123,006,454	92,254,841	98,405,163
Pennsylvania	542,834,133	407,125,600	434,267,306
Rhode Island	80,489,394	60,367,046	64,391,515
South Carolina	47,785,847	35,839,385	38,228,678
South Dakota	11,699,056	8,774,292	9,359,245
Tennessee	110,413,171	82,809,878	88,330,537
Texas	314,299,558	235,724,669	251,439,646
Utah	33,720,733	25,290,550	26,976,586
Vermont	34,204,541	25,653,406	27,363,633
Virginia	170,897,560	128,173,170	136,718,048
Washington	362,747,900	272,060,925	290,198,320
West Virginia	43,601,385	32,701,039	34,881,108
Wisconsin	225,638,309	169,228,732	180,510,647
Wyoming	14,220,435	10,665,326	11,376,348
State Total	$13,913,281,640	$10,434,961,230	$11,130,625,312

1. The State share of expenditures for AFDC benefits, administration, EA, IV-A child care and JOBS in FY 94. State expenditures may be revised to account for expenditures made by States on behalf of Tribes.
2. States must maintain a level of effort of 75% of FY 1994 expenditures if they meet participation rate requirements.
3. States must maintain a level of effort at 80% of FY 1994 expenditures if they do not meet participation rate requirements.

*This table was excerpted from Temporary Assistance for Needy Families Program Instruction, TANF-ACF-PI-96-2.

Appendix B: OVERVIEW OF TANF PROVISIONS IN DIFFERENT PROGRAM CONFIGURATIONS*

PROVISION	FEDERAL TANF PROGRAMS[1]	SEGREGATED STATE TANF PROGRAMS[2]	SEPARATE STATE PROGRAMS[3]
Covered by State plan	Yes	Yes	No
Needy per income stds in State TANF plan	Yes	Yes	Yes [4]
Restricted disclosure	Applicable	Not applicable	Not applicable
Allowable expenditures	For purposes and as authorized under IV-A or IV-F as of 9/30/95	Count toward both TANF and Contingency Fund MOEs. Must be for purposes of program or for cash asst, child care, certain education, or admin costs	Count only toward TANF MOE (not Contingency Fund MOE). See State TANF section for allowable purposes.
15 % admin cost cap	Yes; ADP exception	Yes	Yes
Medical services	Only pre-pregnancy family planning	No specific restriction	No specific restriction
24-month work reqt	Yes	Yes	No
2-month work reqt	Yes	Yes	No
407 work reqts	Yes	Yes	No
work sanctions	Yes	Yes	No
non-displacement	Yes	No	No
child reqt	Yes; "minor child"	Yes [4]	Yes [4]
child ineligible when absent minimum period	Yes	No	No
child support	Assignment & cooperation req'd. Share of collections to Fed govt.	Assignment & cooperation req'd. Share of collections to Fed govt.	Assignment & cooperation may not be req'd. No share of collections for Fed. govt.
time limit on assistance	Yes	No	No
teen school attendance	Required	No requirement	No requirement
teen parent living arrangements	Must be adult-supervised	No requirement	No requirement
Federal non-discrimination statutes	4 statutes applicable	4 statutes applicable	No specific provision
fraud cases	10-yr exclusion	No exclusion	No exclusion
drug felons	Receive reduced benefits	Receive reduced benefits	No provision
data reporting	Required	Required	Not required
fugitive felons	Barred from assistance	No bar	No bar

1. This column would also apply to programs where State MOE funds are co-mingled with Federal TANF funds.
2. Under this scenario, Federal and State funds are not co-mingled. Since State funds are segregated, some -- but not all -- of the Federal TANF rules apply.
3. These programs count towards State MOE. They are not subject to TANF requirements, per se, but are subject to the MOE restrictions at section 409(a)(7).
4. Per definition of "eligible families."

*This table is excerpted from the TANF-ACF-PA-97-1 located on HHS' world wide web page, http://www.acf.dhhs.gov.