AFDC Program Rules for Advocates: An Overview


I. Overview

This article summarizes the basic rules of the Aid to Families with Dependent Children (AFDC) program in effect as of July 1991. Other Center on Social Welfare Policy and Law publications cited in the footnotes provide more detailed information and are available from the Center. /1/ The Center is also available to assist those representing AFDC claimants. /2/

A. Nature of the Program

AFDC is a means-tested income support program that is administered by the states under federal supervision and regulation. The states provide cash grants for basic maintenance to eligible needy families if and for as long as they include a "dependent child," as defined by federal standards, and are financially eligible, as defined by state standards. While federal law does not require states to participate in AFDC, all states have done so since the Social Security Act of 1935 created the program.

The federal government reimburses each state for at least 50 percent of its AFDC program’s cost. States in which per capita income is below or barely above the national average qualify for a higher federal "matching rate" based on the degree of the difference, subject to a maximum rate of 83 percent. See 42 U.S.C. Secs. 603, 1318, and 1396d(b). In return for the federal funds, states must comply with federal AFDC requirements specified in federal statutes and regulations.

AFDC is referred to as an "entitlement" program in two quite different senses. Federal matching funds are an entitlement to the states because the federal government guarantees that it will appropriate whatever funds are needed to match state AFDC expenditures. AFDC benefits are an entitlement to eligible families because federal law requires states to provide benefits to all eligible individuals who apply and to continue benefits for as long as these individuals remain eligible.
B. Legal Framework and Judicial Review

1. General

AFDC is governed by both federal and state statutes and rules. The federal statutes and regulations governing AFDC itself are found at Title IV-A of the Social Security Act, 42 U.S.C. Secs. 601-617 and 45 C.F.R. Parts 201-206, 213, 232-237, and 282; those governing the Child Support Enforcement (CSE) program for families receiving AFDC and for other families are found at Title IV-D of the Social Security Act, 42 U.S.C. Secs. 651-659 and 45 C.F.R. Parts 301-307; those governing the Job Opportunities and Basic Skills (JOBS) program, a work program for AFDC claimants, are found at Title IV-F of the Social Security Act, 42 U.S.C. Secs. 681-687 and 45 C.F.R. Part 250; and those governing child care and other "supportive services" for AFDC work program participants are found at 42 U.S.C. Sec. 602(g) and 45 C.F.R. Part 255. /3/

AFDC is also subject to the United States Constitution, including the due process clause /4/ and the equal protection clause. Successful equal protection challenges are unlikely under the lenient rational basis test used to review welfare classifications. /5/

2. Federal

From the federal perspective, AFDC is a grant program in which the federal government is the grantor, the states are the grantees, and the families who qualify for benefits are the intended beneficiaries of the federal grant. Benefit claimants have standing in federal courts and, usually, in state courts to enforce state compliance with the grant conditions established by federal statutes and rules. /6/

To receive federal funding for its AFDC program, a state must submit a document called a "plan," describing its program, to the U.S. Department of Health and Human Services (HHS) to demonstrate compliance with federal grant conditions. HHS's central office is in Washington, D.C. It has regional offices throughout the country, each covering a number of states.

If a state wishes to make a change in a matter covered by its plan, it must submit a plan amendment. HHS is responsible for approving or disapproving plans and amendments thereto and for ensuring that a state operates its program in compliance with its approved plan. See 42 U.S.C. Sec. 604 and 45 C.F.R. Secs. 201.2-201.10 and 205.5, with respect to plans for the AFDC program. Similar plan requirements exist for CSE and JOBS and, by HHS regulation, for supportive services. /7/

These plans are available for inspection at the HHS regional office that covers the state and also should be available in the state AFDC agency office. HHS now requires states to submit their AFDC plan information on a preprinted form that often requires only a yes or no answer about plan conditions. Because the written state policies actually used to administer the
program usually need not be submitted, HHS usually cannot verify from the plan documents whether the conditions are as indicated.

Although states are obligated to comply with federal requirements, HHS may allow states to deviate from certain statutory requirements in order to run "demonstration projects." 42 U.S.C. Sec. 1315. Since 1970, HHS has under such authority allowed states to impose more burdensome requirements on families than those specified by the federal statute. HHS's use of this waiver authority raises difficult legal questions.

3. State

From the state perspective, AFDC is a grant program in which the state is the grantor and dependent children and their caretakers are the grantees. (Some states call their programs ADC or some other name that is similar to but not exactly the same as AFDC.) In most states, benefit claimants can seek judicial review of adverse administrative decisions in state court and can raise claims that the decisions are contrary to federal or state law or unsupported by substantial evidence. This remedy is in addition to the remedies noted above under discussion of the federal role.

A state's AFDC program must be "statewide," that is, it must be in effect everywhere in the state and must use uniform rules for all subdivisions. 42 U.S.C. Sec. 602(a)(1) and 45 C.F.R. Sec. 205.120. However, rules may vary from one area to another if objectively verifiable differences exist in factors relevant to the rule. For example, in some states, need and payment standards vary, based on differences in the cost-of-living from area to area.

Similar statewide requirements exist for CSE. The JOBS program does not have to be statewide, but requirements with respect to its geographic scope do exist.

**C. Administrative Framework**

1. Federal

HHS is responsible for regulating and supervising state AFDC, CSE, JOBS, and supportive services administration. The Administration for Children and Families (ACF) is the "operating division" within HHS responsible for all four programs. Within ACF, the Office of Family Assistance (OFA) is the "component" responsible for AFDC benefits, JOBS, and supportive services, and the Office of Child Support Enforcement (OCSE) is the component responsible for CSE. /8/

Complaints to HHS about state noncompliance with federal requirements sometimes produce results. Generally, complaints should be filed initially with the HHS regional office that covers the state. No specific procedure has been established for filing complaints, and no federal rules specifically require HHS to take action in response to complaints.
2. State

Federal law requires a state to designate a "single state agency" either to administer its AFDC program directly or to supervise and regulate its administration by agencies of local government, usually county agencies. 42 U.S.C. Sec. 602(a)(3); 45 C.F.R. Sec. 205.100 and 205.101. These agencies are often referred to as the state or local IV-A agency. While the majority of states now have state agency-administered AFDC programs, 15 states still have state-supervised and locally administered programs: Alabama, California, Colorado, Georgia, Maryland, Minnesota, Montana, New Jersey, New York, North Carolina, North Dakota, Ohio, South Carolina, Virginia, and Wisconsin.

The "single state agency" requirement means, among other things, that claims decisions and other operational actions must be performed by staff of the agency designated to administer the program and, if applicable, the supervising state agency. The state agency also must issue written material for the guidance of workers in local components of that agency and workers in supervised local government agencies. Such material can be in the form of regulations, manuals, state letters, and so on. If the program is administered by agencies of local government, those agencies must be bound under state law to comply with the AFDC directives of the "single state agency."

Similar requirements exist with respect to designation of an agency to administer the CSE program. These agencies are referred to as IV-D agencies. The JOBS program must be administered or supervised by the state IV-A agency.

In states with local administration, complaints to the state agency about local agency noncompliance with state agency policies sometimes produce results. State policies may specify procedures for such complaints.

D. Program Demographics and Benefit Levels

Four million families with 7.7 million children and 3.7 million adult caretakers received AFDC benefits in an average month in 1990. /9/ Thus, well over 4 million families received AFDC at some time in the year, as many families entered AFDC and many others exited over the course of the year. HHS projects that the monthly number of cases will increase to about 4.3 million families in 1991, and there are signs that the actual increase may be greater.

Most families receiving AFDC are headed by a mother and are without a father in the home--"solo parent" families. /10/ While this is primarily because such families are more likely to be needy and financially eligible, it is also partially because the "dependent child" definition excludes some needy families with two parents in the home. About 70 percent of AFDC families have fewer than three children, and about 60 percent include a child below age 6. /11/ Of the 45 percent of adult recipients whose educational level is known, half are at least high school graduates. /12/
Recent studies estimate that half of the families who start to receive AFDC will receive AFDC for no more than two years at a time, and that half of the families who ever receive AFDC receive it for no more than four years over the course of their lives. /13/ As to "long-term" use, these studies estimate that 30 percent of those who ever receive AFDC will receive it for eight or more years over the course of their lives.

The AFDC "benefit level" means the monthly grant for a family with no income. In January 1991, the AFDC benefit level for a family of three was less than the poverty level in all states and less than two-thirds of the poverty level in all but five states. /14/ The combined benefit level from food stamps and AFDC for a family of three with no income was below 75 percent of the poverty level in more than half of the states and below the poverty level in all states except Alaska (105 percent) and Hawaii (103 percent). /15/

II. Types of Eligibility Requirements

Three types of substantive eligibility requirements cumulatively define the class of persons that the AFDC program is intended to benefit: status requirements, financial requirements, and conduct requirements. Those who satisfy the substantive eligibility requirements must also comply with procedural requirements for demonstrating substantive eligibility in order actually to qualify—or continue to qualify—for benefits.

III. Status Eligibility Requirements

A. Summary

Federal rules limit eligibility to persons who are in certain categories of the population and satisfy a citizen/lawful alien requirement. The rules allow states to exclude nonresidents and certain families headed by minor parents and to prohibit Supplemental Security Income (SSI) recipients from simultaneously receiving AFDC. Federal law bars states from excluding otherwise eligible persons who meet the federal status requirements unless the federal AFDC statute gives the states the option of excluding them. See 45 C.F.R. Sec. 233.10(a)(1)(ii)(A). /16/

B. Citizen/Alien Status

The federal statute limits eligibility to citizens, aliens lawfully admitted for permanent residence, and aliens permanently residing in the U.S. under color of law. 42 U.S.C. Sec. 602(a)(33) and 45 C.F.R. Sec. 233.50. Generally, individuals granted lawful temporary resident status pursuant to the Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (1986), are ineligible for AFDC, food stamps, and other benefits for five years after being granted such status. /17/ 8 U.S.C. Sec. 1255a(h) and 42 U.S.C. Sec. 602(f).
C. State Residence

Federal regulations allow but do not require states to exclude people who do not reside in the state. 45 C.F.R. Sec. 233.40. (State residents can include migrant farmworkers.) However, durational residency requirements are unconstitutional. /18/ Persons who otherwise qualify as state residents so qualify even if they are homeless. /19/

D. Minor Parent Families

The federal statute was amended effective January 1, 1990, to give states the option to exclude families headed by a parent below age 18 who has never married, unless such a family resides with an adult relative or is in a supervised supportive service living arrangement or qualifies for an exception to this requirement. /20/ 42 U.S.C. Sec. 602(a)(43). It is questionable whether states can adopt this option before HHS finalizes the implementing regulations that it proposed at 55 Fed. Reg. 34294-34306 (Aug. 22, 1990).

E. SSI Recipients

The federal statute bars SSI recipients from simultaneously receiving AFDC. 42 U.S.C. Sec. 602(a)(24). However, though some states seem unaware of it, federal law requires states to provide AFDC to otherwise eligible relatives caring for a child receiving SSI if the child meets the requirement for a "dependent child" summarized in part III.F.1, below. /21/

F. Categorical Coverage

The federal statute limits AFDC benefits to families in which a "dependent child" is living with his or her "caretaker relative" and to certain pregnant women who are not otherwise covered as dependent children or caretaker relatives. 42 U.S.C. Sec. 606. States may provide additional benefits for "essential persons."

1. Dependent Children

To qualify as a dependent child, a child must be below a certain age, be living with a relative ("caretaker relative") within a specified degree of kinship, and be "deprived of parental support or care." 42 U.S.C. Secs. 606(a) and 607. See also 45 C.F.R. Sec. 233.90.

a. Age Requirement

The age requirement is satisfied if a child is below age 18 or, at state option, if the child is age 18 and attending full-time a secondary or vocational school program that will be completed by age 19. 42 U.S.C. Sec. 606(a)(2). (A teenage parent can also qualify as a child.)
b. Living with a Caretaker Relative Requirement

The living with a caretaker relative requirement can be satisfied if a child is living with and being cared for by one of the following relatives: father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece; persons of preceding generations as denoted by prefixes of grand, great, or great-great; and the spouses of any of the aforementioned relatives, even if the marriage has been terminated. 42 U.S.C. Sec. 606(a) and 45 C.F.R. Sec. 233.90(c)(1)(v)(A). The relative is referred to as a "caretaker relative." A child may be temporarily absent from the relative's home and still meet the "living with" requirement. 45 C.F.R. Sec. 233.90(c)(1)(v)(B). A child may qualify as living with a caretaker relative even if the child and caretaker are homeless. /22/

c. Deprivation of Parental Support or Care Requirement

A child must be deprived of parental support or care by the death, continued absence, or incapacity of either or both parents, or by the unemployment of the principal earner parent. A "parent" includes the child's natural or adoptive parent, but not a stepparent, unless the stepparent has the same support obligation under state law as a natural or adoptive parent. 45 C.F.R. Sec. 233.90(a)(1). When a child is living with two parents as so defined, the deprivation requirement is not satisfied unless one or both parents are incapacitated or the principal earner parent is unemployed.

i. Absence of a Parent

Absence exists if a parent is absent for any reason except solely for military service. 42 U.S.C. Sec. 606(a); 45 C.F.R. Sec. 233.90(c)(1)(iii). Generally, not living in the home is enough to constitute absence, but a question may be raised when the parent who is living elsewhere has frequent and substantial contact with a child. /23/ A convicted offender permitted to live at home while serving a sentence may qualify as absent. Agencies often improperly deny aid on the ground that a family failed to provide sufficient verification of a father's absence from the home.

ii. Incapacity

Parents, even if employed, are incapacitated if their ability to support or care for their children has been substantially reduced by a physical or mental defect, illness, or impairment that is expected to last for at least 30 days. 45 C.F.R. Sec. 233.90(c)(1)(iv). While the federal AFDC incapacity standard is far less stringent than the federal social security/SSI disability standard, many states seem to define incapacity more restrictively than the federal standard allows. /24/
iii. Unemployment

Prior to October 1, 1990, only about half of the states covered children deprived because of the unemployment of the principal earner parent, commonly referred to as "AFDC-U" or "AFDC-UP" coverage. Federal law was amended in 1988 to require all states to provide AFDC-UP coverage from October 1, 1990, until September 30, 1998, and some other AFDC-UP changes were also made. While HHS has not yet finalized proposed rules on the AFDC-UP changes published at 55 Fed. Reg. 34294-34305 (Aug. 22, 1990), states should have implemented the changes on October 1, 1990. 25/

The principal earner is the parent who earned more money in the 24-month period before the family applied for aid. 42 U.S.C. Sec. 607(d)(4). To be "unemployed," the principal earner must be working fewer than 100 hours per month and must have a work history. 42 U.S.C. Sec. 607, 45 C.F.R. Sec. 233.100, and proposed 45 C.F.R. Sec. 233.101.

To meet the work history requirement, the principal earner must have at least 6 "quarters of work" in any 13 calendar quarter periods ending within the year prior to application or must have "qualified" for (but not necessarily have received) unemployment compensation benefits within the year prior to application. This includes persons who performed work that was not covered work under state unemployment compensation law. 42 U.S.C. Sec. 607(b)(1)(A)(iii) and 607(d)(3). A quarter of work includes calendar quarters in which the parent earned $50 or more; received credit for a quarter of coverage under the social security program; participated in an AFDC work program, or, since October 1, 1990, and until September 30, 1998, and at state option, participated in the Job Training Partnership Act (JTPA); or attended full-time an elementary or secondary school or a vocational or technical course designed to prepare for gainful employment. 42 U.S.C. Sec. 607(d)(1). However, only 4 quarters of JTPA participation or school attendance may be counted toward the required 6. 42 U.S.C. Sec. 607(b)(1)(A)(iii)(I).

Until September 30, 1998, the 25 states that were not providing AFDC-UP coverage on September 26, 1988, can limit payment of AFDC-UP benefits to a family to 6 months out of any 13-month period if they provide assurances to HHS that they have programs for providing education, training, and employment services to AFDC-UP parents. 42 U.S.C. Sec. 607(b)(2)(B). This means that they may deny benefits based on the principal earner's unemployment if the family received AFDC benefits based on such unemployment in 6 of the prior 12 months. A state could also adopt a less stringent payment period limitation. States may not deny benefits for any month in which a family qualifies for AFDC on another basis, such as absence or incapacity.

2. Caretaker Relatives

Federal law requires states to offer benefits to AFDC caretaker relatives as well as to dependent children. 42 U.S.C. Sec. 606(b)(1). A teenage parent can qualify as a caretaker relative.
Unless a child is deprived because of parental incapacity or unemployment, only one relative can receive AFDC as a child's caretaker, even if more than one relative is in the home (e.g., aunt and uncle) who could qualify as the caretaker relative. When a child is deprived because of parental incapacity or unemployment, both parents (or a parent and spouse) are covered whether or not they are married. 42 U.S.C. Sec. 606(b) and 45 C.F.R. Sec. 233.10(b)(2)(ii)(b). /26/

3. Pregnant Women

Federal law gives states the option of covering from the sixth month of pregnancy pregnant women who are not otherwise eligible if the fetus, were it a child, would be eligible. 42 U.S.C. Sec. 606(b) and 45 C.F.R. Sec. 233.90(c)(2)(iv). /27/

4. Essential Persons

A state may include in an AFDC grant an extra amount to meet the needs of a household resident who is not eligible for AFDC but whom the state considers essential for the AFDC family's well-being. 42 U.S.C. Secs. 602(a)(7)(A) and 606(b). States do not have to provide essential person coverage. A state may not treat an individual as an essential person unless a family agrees. 45 C.F.R. Sec. 233.20(a)(2)(vii)(b). While essential persons are not considered AFDC recipients, their income and resources are considered in determining a family's financial eligibility and payment.

In 1989, HHS amended the federal essential person regulation to limit sharply the circumstances under which a state could treat an individual as an essential person. In the wake of several court decisions holding the amended regulation overly restrictive, HHS announced in May 1991 that it intended to reinstate the prior regulation, and that states could immediately adopt essential person policies based on the prior regulation. /28/

IV. Financial Eligibility Requirements

A. Basic Principles and Terms

Financial eligibility determinations are made with respect to the AFDC assistance unit, which usually includes a caretaker relative and one or more dependent children. Eligibility is determined separately for each month in the year, and each month the unit must satisfy both a resources requirement and an income requirement. If the unit satisfies both requirements and is otherwise eligible, a grant is made to the unit for that month that is intended for the needs of all the persons in the unit. /29/

Except for the "gross income" test explained below, the income and resources requirements are applied to "countable" income and resources, meaning income and resources after all
exclusions. Exclusions include both "exemptions" and "disregards." "Exemptions" are exclusions provided by statutes other than the federal AFDC statute. "Disregards" are exclusions provided by the federal AFDC statute or regulations.

The resources (or "assets") requirement affects eligibility for payment only, not the amount of the payment if the unit is eligible. The unit satisfies the requirement if, on the first day of the month, the combined countable value of resources owned by or deemed to the unit members is less than or equal to the resource limit, sometimes referred to as the "resource reserve level." The federal statute specifies $1,000 as the maximum resource limit and allows states to set a lower limit. 42 U.S.C. Sec. 602(a)(7)(B). Currently, all states apply a $1,000 limit. The limit does not vary with unit size.

The income requirement affects eligibility for payment and the amount of the payment if the unit is eligible. The requirement consists of two separate tests. Applicant units with earned income must also satisfy a third test. All of the tests apply to the combined income received by or deemed to the unit members in the month for which eligibility is being determined. 42 U.S.C. Sec. 601(a)(13) and 45 C.F.R. Sec. 233.37. This is called "prospective" or "current needs" budgeting. See 45 C.F.R. Sec. 233.31.

A unit's gross income cannot exceed 185 percent of the monthly "need standard" amount that applies to the unit (income test 1). 42 U.S.C. Sec. 602(a)(18). ("Gross income" means income after exemptions but before certain disregards.) A unit's countable income must be less than the monthly "payment standard" amount that applies to the unit (income test 2). See 42 U.S.C. Sec. 602(a)(7) and 45 C.F.R. Sec. 233.20(a)(3)(ii). For applicant units with earned income that have not received AFDC in at least one of the preceding four months, the sum of countable income and any amount disregarded pursuant to the "$30 + 1/3" earnings disregard (see part IV.E, below) in arriving at countable income must be less than the need standard amount that applies to the unit (income test 3). 42 U.S.C. Sec. 602(a)(7) and 602(a)(8)(B).

The state "need standard" sets forth the monthly amounts required for basic maintenance as determined by the state, and the state "payment standard" sets forth the monthly amounts that the state uses to calculate grants for eligible units. 45 C.F.R. Sec. 233.20(a)(3)(ii) (last sentence). Need and payment standard amounts vary directly with unit size and may also vary with other factors, such as shelter costs.

In about half of the states, the need standard is also the payment standard. In the other states, the payment standard is a fraction of the need standard (e.g., the need standard equals $400; the payment standard equals 75 percent of the need standard; thus, the payment standard equals $300).

If a unit is financially eligible for a particular month, its grant for that month is based on the difference between the payment standard and its countable income, usually its countable income in that month. However, if the unit is required to file a monthly report (see part VII.C.1, below), its grant may at state option be based on the difference between the payment standard and its countable income in the first or second preceding month, referred to as "retrospective budgeting." See 42 U.S.C. Sec. 602(a)(13). Families subject to retrospective budgeting
typically experience a two-month lag between a decrease in income and an increase in the monthly grant amount, which may cause great hardship.

In most states, the monthly grant equals the "budget deficit," the difference between the payment standard and the unit's countable income /30/ (e.g., the budget deficit equals $300; the grant equals 100 percent of the budget deficit; thus, the grant equals $300). In some states, the monthly grant equals a percentage of the budget deficit, that is, a percentage of the difference between the payment standard and countable income (e.g., the budget deficit equals $300; the grant equals 75 percent of the budget deficit; thus, the grant equals $225). Also, some states set "payment maximums" that are less than the payment standard. In these states, the grant equals the payment maximum if the budget deficit exceeds the maximum (e.g., the budget deficit equals $300; the grant equals 100 percent of the budget deficit subject to a $250 payment maximum; thus, the grant equals $250). Some states may combine the percentage of the deficit and payment maximum limitations (e.g., the budget deficit equals $300; the grant equals 75 percent of the budget deficit subject to a $200 payment maximum; thus, the grant equals $200).

Federal law prohibits states from making a payment unless the unit's countable income is at least $10 less than the payment standard. 42 U.S.C. Sec. 602(a)(32). The grant that a unit would otherwise receive may be reduced if the state is recovering a prior overpayment by reducing current grants.

**B. Need and Payment Standards**

Federal law does not require states to set realistic need standards, and it allows states to base grants on a payment standard that is less than the state need standard. See 45 C.F.R. Sec. 233.20(a)(2)(ii). /31/ In some states, state law may provide a basis for claims challenging the general adequacy of state need and payment standards. /32/

Federal law does prohibit states from reducing the need standard below levels set pursuant to a 1969 updating. 42 U.S.C. Sec. 602(a)(23). State Medicaid funding may be terminated if AFDC "payment levels" are reduced below those in effect July 1, 1987, and May 1, 1988. /33/ 42 U.S.C. Secs. 1396b(i)(9) and 1396a(c). Additionally, federal law now requires states to "reevaluate" their need and payment standards at least every three years, with October 1991 as the deadline for the initial reevaluations. 42 U.S.C. Sec. 602(h). /34/ However, reevaluations need not necessarily result in increases in current standards, and HHS has issued confusing implementation instructions that make it likely that many states will not conduct real reevaluations by the deadline, if at all.

State AFDC policy may provide for an extra amount to be added to the need and payment standard when a unit has a "special need," meaning a need that the state recognizes as basic, but that only some units have (e.g., rent arrears, security deposit, pregnancy, etc.) If so, federal rules require that the special need allowance amount be included in both the need standard and the payment standard for all families who have the special need. See 45 C.F.R. Sec. 233.20(a)(2)(v).
"Child only" standards and "prorated" standards are generally questionable under federal law. Child only standards are standards that are lower for units that do not include an adult than for units of the same size that do include an adult. Prorated standards are standards that are a fraction of the standard for a larger sized unit rather than the regular full standard for the unit size. While the federal statute specifically authorizes prorated standards, it does so only in limited circumstances. See 42 U.S.C. Sec. 612.

**C. Persons Whose Income and Resources Are Considered**

1. Persons in the AFDC Unit

The income and resources of the persons in the AFDC unit are always considered when determining the unit's financial eligibility and grant amount. Some persons cannot be included in a unit, some persons must be included in the unit, and some persons can choose to be either excluded or included.

Only persons who are status and conduct eligible may be included in an AFDC unit. The discussion below assumes satisfaction of all applicable status and conduct requirements. (See part V for conduct eligibility requirements.)

Coresident "parents" must be included in the unit if they apply for AFDC for their dependent children. Generally, all coresident dependent children who are full or half-siblings of one another must be included in the unit if a caretaker requests aid for any one of them. 42 U.S.C. Sec. 602(a)(38) and 45 C.F.R. Sec. 206.10(a)(1)(vii).

Caretaker relatives other than parents may choose whether or not to be included in the unit when they apply for aid for children in their care, and which (if either) will be included if more than one could potentially qualify (e.g., aunt and uncle). In some circumstances, a unit will qualify for a larger AFDC benefit if the caretaker opts to be excluded. Since all of the persons in a unit receiving AFDC automatically qualify for Medicaid, the effect of exclusion on Medicaid eligibility should be considered.

HHS permits states to make a single unit out of AFDC applicants sharing a household who could qualify as separate units (e.g., two unrelated adults each caring for their own dependent child). Combining units usually results in less total aid, and it is questionable whether the federal statute permits states to combine units.

Caretaker relatives who are caring for dependent children who are not full or half siblings may select those who will be included in the unit. The Ninth Circuit has held that a caretaker who wants aid for more than one such child must be allowed to split the children into separate units, although he or she can only be a member of one unit. /35/
2. Persons Not in the AFDC Unit--Deeming Rules

Federal law generally prohibits consideration of the income and resources of persons who are not in the unit. See 45 C.F.R. Sec. 233.20(a)(2)(viii). States often violate this rule in practice.

Federal law does require consideration of the income or the income and resources of nonunit members in some circumstances, a practice commonly referred to as "deeming." A deeming rule that would otherwise apply should not be applied if the person whose income and resources would be deemed to the unit is an SSI recipient. 42 U.S.C. Sec. 602(a)(24).

The income and resources of AFDC essential persons are to be considered. 42 U.S.C. Sec. 602(a)(7). For example, when a coresident stepparent of a dependent child is not in the unit, the stepparent's income must be considered. 42 U.S.C. Sec. 602(a)(31) and 45 C.F.R. Sec. 233.20(a)(3)(xiv). Income of coresident grandparents of a dependent child must be considered if the child's caretaker is the child's parent and is under age 18. 42 U.S.C. Sec. 602(a)(39) and 45 C.F.R. Sec. 233.20(a)(3)(xviii). Income of a coresident spouse of a caretaker may be considered if the caretaker is included in the unit. Income of a coresident parent of a dependent child is considered when the parent is excluded from the unit due to status or conduct ineligibility. 45 C.F.R. Sec. 233.20(a)(3)(vi). The income and resources of an alien's sponsors are generally deemed to the sponsored alien (but not to others in the alien's unit) for three years after entry. 42 U.S.C. Sec. 615 and 45 C.F.R. Sec. 233.51.

Federal law does not prescribe specific rules for calculating the amount of income to be deemed from a conduct or status ineligible parent or from a coresident spouse of a caretaker. Generally, only nonexempt income should be considered. Federal law may be used to argue that a state must allocate some of the individuals' incomes for their own needs and for the needs of any persons whom they are supporting who are not in the unit, deeming only the excess to the unit. Additionally, in February 1991, HHS informed the states that it was accepting the decision in Simpson v. Hegstrom, /36/ holding that certain AFDC earnings disregards apply to income that is deemed from a conduct ineligible parent. /37/

D. The Calculation of Countable Resources

Federal law prescribes how the states must evaluate resources to determine whether the countable value of a unit's resources exceeds the $1,000 resource limit. 45 C.F.R. Sec. 233.20(a)(1), 233.20(a)(3), 233.20(a)(4), 233.20(a)(6), and 233.20(a)(11). The countable value of resources equals the value of all property that is considered a resource for AFDC purposes, minus the value of exempt resources and minus the value of disregarded resources.

Generally, any property, including savings, that a unit member owns is considered a resource for AFDC purposes. (Cash is generally income in the month received and a resource to the extent not spent in following months.) However, property that is legally unavailable (e.g., funds in an irrevocable trust that cannot be released), property that cannot be converted to cash due to a legal bar, property that is otherwise unavailable, and property the existence of which is unknown should not be considered a resource. See 45 C.F.R. Sec. 233.20(a)(3)(ii)(D).
Federal law requires states to value an item of property at its equity value. 42 U.S.C. Sec. 602(a)(7)(B) and 45 C.F.R. Sec. 233.20(a)(3)(i)(B). Equity value means the item's market value less any encumbrances. 45 C.F.R. Sec. 233.20(a)(3)-(ii) (last paragraph).

For a list of exempt resources, see 45 C.F.R. Sec. 233.20(a)(4)(ii) and the proposed amendments and additions published at 56 Fed. Reg. 32152-32155 (July 15, 1991).

Federal law provides for the following resource disregards: the full value of a home; nonhome real property that a family is making a good faith effort to sell until sold, but for no longer than six months or, at state option, nine months; at state option, items used for basic maintenance such as clothes, furniture, and other items of limited value essential to daily living; a burial plot; the value of a funeral agreement up to $1,500 per unit member or a lesser limit set by the state; the federal Earned Income Tax Credit (EITC), but only in the month of receipt and the month thereafter; the value of a car up to a state limit that may not exceed a maximum permissible HHS limit, currently set at $1,500 and currently being challenged in litigation; and loans and grants to the extent disregarded as income. 42 U.S.C. Sec. 602(a)(7)(B) and 45 C.F.R. Sec. 233.20(a)(3)(i)(B) and 233.20(a)(3)(iv). If the value of an item (e.g., a car) exceeds the amount that is disregarded, only the excess may be counted.

**E. The Calculation of Countable and Gross Income**

Federal law prescribes how the states must calculate a unit's gross and countable income. 45 C.F.R. Sec. 233.20(a)(1), 233.20(a)(3), 233.20(a)(4), 233.20(a)(6), and 233.20(a)(11). Countable income means the sum of all receipts that qualify as income for AFDC purposes minus any exempt amount and minus any disregarded amount. Gross income means countable income plus any child support or earnings disregarded in arriving at countable income other than the EITC or optionally disregarded dependent child JTPA earnings. In addition, at state option, the earnings of a dependent child who is a full-time student can be subtracted from gross income in such amount as state rules prescribe, for a period not to exceed six months per year. 42 U.S.C. Sec. 602(a)(18) and 45 C.F.R. Sec. 233.20(a)(3)(xiii).

Generally, all cash receipts qualify as income for AFDC purposes. However, the meaning of "income" is generally limited by the "availability" principle, 45 C.F.R. Sec. 233.20(a)(3)(ii)(D), and, to a less fully recognized extent, by the "gain" principle. The availability principle requires that receipts actually be available for unit members' basic needs. For example, social security benefits received by an AFDC caretaker as representative payee for a nonunit member should not be considered income. The gain principle requires that a receipt be a gain or profit to the individual. /38/ For example, cash proceeds from the sale of a nonliquid resource and, arguably, reimbursements for out-of-pocket expenses should not be considered income.

Federal law generally does not require states to consider unearned "in-kind" (noncash) receipts as income. If a state chooses to consider in-kind income, federal law generally prohibits the state from assigning a dollar value to the in-kind income that exceeds the amount that the state includes in the need and payment standard for the need that the in-kind income meets. /39/
For a list of income exemptions, see 45 C.F.R. Sec. 233.20(a)(4)(ii) and the proposed amendments and additions published at 56 Fed. Reg. 32152-32155 (July 15, 1991).

Federal law requires states to disregard the earnings of recipient dependent children who are students, unless they are full-time employees, and it allows states to disregard any earned (or unearned) JTPA income of a dependent child subject to certain limitations. 42 U.S.C. Sec. 602(a)(8)(A)(i) and 602(a)(8)(A)(v). Federal law allows states to disregard the earnings of applicant dependent children who are full-time students if the state disregards such earnings when calculating gross income. 42 U.S.C. Sec. 602(a)(8)(A)(vi).

Federal law provides the following monthly disregards for other earnings: the first $90 of gross earnings; unreimbursed work-related dependent care costs up to $200 for a child under age two, and up to $175 for other dependents; and, during the first four months of employment, $30 plus one-third of net earnings of the $90 disregard, and $30 in the next eight months of employment. 42 U.S.C. Sec. 602(a)(8)(A)(ii)-602(a)(8)(A)(iv) and 602(a)(8)(B)(ii). The EITC is always completely disregarded. 42 U.S.C. Sec. 602(a)(8)(A)(viii).

Federal law requires states to disregard the first $50 of each amount that a family receives in a month that represents proceeds from a child support payment or payments that were made in the month when due. 42 U.S.C. Secs. 602(a)(8)(vi) and 657(b)(1). Implementation of this disregard is closely tied to the state's implementation of the federal requirement that it pass through a portion of the child support that it collects with respect to a family receiving AFDC.

HHS regulations require states to disregard nonexempt loans and grants except to the extent obtained and used for current living costs. 45 C.F.R. Sec. 233.20(a)(3)(iv)(B). In the wake of court decisions successfully challenging the consideration of loans used for current living costs, HHS announced in 1989 that it planned to amend the regulations to require complete exclusion of all bona fide loans, and that states could adopt such a policy immediately. In July 1991, it issued proposed regulations to accomplish this result. /40/

Other income disregards include income tax refunds (but such refunds are treated as a resource); home produce; certain state payments made by the state AFDC agency to AFDC children; at state option, small nonrecurring gifts not greater than $30 per recipient per quarter, 45 C.F.R. Sec. 233.20(a)(3)(iv); at state option, assistance from other agencies or organizations that does not duplicate AFDC, 45 C.F.R. Sec. 233.20(a)(3)(vii); at state option, income used for the support of persons who are not in the unit, subject to certain limitations, 45 C.F.R. Sec. 233.20(a)(3)(ii)(C).

F. The Lump Sum Income Rule

If a member of an AFDC unit or an essential person receives nonrecurring countable lump sum income in a month in which the unit receives or applies for AFDC, the unit will generally be disqualified for a period of months determined by dividing the total of the lump sum and any other countable income received in that month by the need standard applicable to the unit. 42 U.S.C. Sec. 602(a)(17) and 45 C.F.R. Sec. 233.20(a)(3)(ii)(F). States have the option to reduce the ineligibility period if (1) an event occurs that would have changed the amount of aid
payable to the family if the family had been receiving aid and (2) the lump sum becomes unavailable due to circumstances beyond the family's control as defined by the state, or (3) the family incurs, becomes responsible for, and pays medical expenses in a month of ineligibility. /41/

Persons who expect to receive a lump sum can avoid application of the lump sum rule by withdrawing from AFDC effective before the month in which they will receive the lump sum. (If the person who is to receive the lump sum must be included in the unit, then the whole unit must withdraw.) They can reapply in a later month as long as it is not the month in which the lump sum was received. Education of the private bar about the lump sum rule may help ensure that AFDC families who expect personal injury and similar awards can plan for receipt of the award.

Although federal law does not require advance written explanation of the lump sum rule, /42/ states can provide it. State law may provide a basis for "estopping" application of the rule when the agency misinforms a family about the consequences of the receipt of a lump sum.

V. Conduct Eligibility Requirements

A. Summary

AFDC claimants may be required to perform certain acts and be prohibited from performing others as a condition of eligibility. Federal law specifically authorizes five types of conduct eligibility requirements: a prohibition on striking, a prohibition on "fraud," a directive to furnish or apply for a social security number, a directive to participate in work programs, and a directive to cooperate with child support collection activities. State rules may create additional conduct eligibility requirements, and each such requirement has to be assessed individually to determine whether it is permissible under federal law.

Those who fail to satisfy an applicable conduct eligibility requirement are disqualified for a set period or for as long as they fail to satisfy the requirement, and in some cases other unit members are also disqualified. Disqualification means that such persons are not counted as unit members when the state determines the need and payment standard amount that applies to the unit in which they would otherwise be included. State policy may also provide for the use of prorated or child only standards, both of which are questionable under federal law.

B. The Prohibition on Striking

AFDC claimants, including dependent children, are disqualified for any month in which they are "participating in a strike" on the last day of the month, and, if a caretaker relative who is a parent is so participating, the children are also disqualified. 42 U.S.C. Sec. 602(a)(21) and 45 C.F.R. Sec. 233.106.
Benefits should be provided to an otherwise eligible striker unless it is reasonable to expect that participation in a strike will continue through the last day of the month. See 45 C.F.R. Sec. 233.31(b)(1). If benefits are provided and participation continues on the last day of the month, an overpayment will be assessed. If benefits are denied and participation ceases before the end of the month, the denial should be treated as having created an underpayment.

**C. The Prohibition on Fraud**

Since April 1988, federal law has allowed states the option to establish "fraud control" programs under which individuals are disqualified when there is a judicial or administrative finding that they have (1) "intentionally" (2) "made a false or misleading statement or misrepresented, concealed, or withheld facts" or "committed any act intended to mislead, misrepresent, conceal, or withhold facts or propound a falsity" (3) "for the purpose of establishing or maintaining a family's eligibility . . . or of increasing (or preventing a reduction)" in the amount of aid. 42 U.S.C. Sec. 616. The disqualification period is 6 months for the first such offense (referred to by HHS as an "intentional program violation"), 12 months for the second offense, and life for the third.

States adopting such a program must give all applicants written notice of the penalties during the application process. They may not impose penalties based on administrative--as opposed to judicial--findings of intentional program violations until HHS finalizes the implementing regulations that it proposed at 55 Fed. Reg. 18912-18918 (May 7, 1990).

**D. The Social Security Number Requirement**

AFDC claimants, including dependent children, must as a condition of eligibility provide their social security numbers (SSNs) to the AFDC agency or apply for SSNs if they do not already have them. 42 U.S.C. Sec. 1320b-7(a)(1) and 45 C.F.R. Sec. 205.52. They may apply either directly to the Social Security Administration (SSA) or through the AFDC agency if the agency has an agreement with SSA. The AFDC agency must assist the claimant in applying for an SSN and should not deny, delay, or discontinue aid pending issuance or verification of the SSN if the claimant has cooperated. 45 C.F.R. Sec. 205.52(b) and 205.52(c).

**E. Work Program Participation**

Federal law requires states to establish work programs for AFDC claimants. See 42 U.S.C. Secs. 681-687. AFDC claimants must participate in these programs and accept job offers as a condition of eligibility if called upon to do so unless federal rules "exempt" them, in which case they may participate but may not be "sanctioned" (disqualified) for failure to comply with work program rules.

from WIN to JOBS. States were required to conform their work programs to the new rules no later than October 1, 1990. By October 1, 1992, each state must operate a JOBS program in each political subdivision in which it is feasible to do so. 42 U.S.C. Sec. 682(a)(1)(D). The federal JOBS rules apply to state work programs even if a state calls its program by some other name.

Federal JOBS rules specify exemptions, sanctions, certain activities that may or must be included in the state program, and certain procedures that states must follow before assigning an individual to an activity or imposing a sanction. Federal JOBS rules give states considerable latitude over the mix of activities that will be included in the program, the selection of individuals who will be called upon to participate, program assignments, and the stringency with which the participation mandate will be administered.

Generally, federal AFDC law does not create an entitlement to participate in a work program or to any particular type or quantum of employment, education, or training service. Federal AFDC law does, however, create an entitlement to child care in some circumstances.

Federal JOBS funding is limited to $1 billion a year except for FY 1994 ($1.1 billion) and FY 1995 ($1.3 billion), and this sum is allocated among the states based principally on the number of adult AFDC recipients in the state. 42 U.S.C. Sec. 603(k) and 603(l). To receive their full allocation, states must meet certain requirements, including a "participation rate" requirement that grows more stringent through the mid-1990s and that pressures states to stress quantity of assignments over quality of assignments. See 42 U.S.C. Sec. 603(l)(3) and 603(l)(4) and 45 C.F.R. Sec. 250.74 and 250.78.

1. Exemptions

Persons below age 19 may be exempt based on their age. 42 U.S.C. Sec. 602(a)(19)(C)(v) and 45 C.F.R. Sec. 250.30(b)(1). Those below age 16 are automatically exempt. Those age 16 or 17 are exempt if they are full-time students, unless they are in college. Those age 18 who are full-time students, except those who are in college, may be exempt if the state covers as dependent children persons age 18 who are expected to complete their schooling before reaching age 19.

Caretakers with very young children may be exempt based on their child caring responsibilities. 42 U.S.C. Sec. 602(a)(19)(C)(iii), 602(a)(19)(D), and 602(a)(19)(E) and 45 C.F.R. Sec. 250.30(b)(9) and 250.32. Caretaker relatives are generally exempt if they are "personally providing care" for a child below age 3 or, at state option, below a lower age, which can not be lower than age 1. However, this exemption does not apply to parent caretakers below age 20 who have not completed high school, or to more than one parent in an AFDC-UP unit, and states have the option to make it inapplicable to any AFDC-UP parent. Also, if a caretaker is going to school, a question may be raised regarding whether he or she is "personally providing care" for the child.

Individuals are also exempt if they are too ill or incapacitated to participate, over age 59, needed in the home to care for an incapacitated or ill household member, too remote from the
work program site, more than three months pregnant, a full-time VISTA volunteer, or already working more than 30 hours per week. 42 U.S.C. Sec. 602(a)(19)(C) and 45 C.F.R. Sec. 250.30(b). HHS policy permits states to limit the exemption for those working more than 30 hours per week, and this policy seems contrary to the statute.

Caretakers "personally providing care" for a child below age six generally may not be required to participate for more than 20 hours per week. 42 U.S.C. Sec. 602(a)(19)(C)(iii) and 45 C.F.R. Sec. 250.30(b)(9). However, nonexempt caretaker parents under age 20 who have not completed high school may be required to participate in high school or an equivalency program on a full-time basis. 42 U.S.C. Sec. 602(a)(19)(E) and 45 C.F.R. Sec. 250.32.

2. Program Components

A state's JOBS program must include high school education, basic and remedial education, education in English proficiency, job skills training, job readiness activities, job development and job placement activities, and at least one of the following: job search, on-the-job training, community work experience programs (CWEP) (work relief), and work supplementation programs. The state program may also include other components such as college. While the state program must include all of the required components, the state can choose the number of slots or openings that it will provide for each component.

Federal rules constrain use of most of these components in various ways, and state failure to abide by these constraints should provide a defense to a threatened sanction for refusal to participate in the component. For example, federal rules generally limit the number of weeks that an individual can be required to engage in job search, and the number of hours per month that an individual can be required to participate in a CWEP program.

3. Program Assignments

Before individuals are assigned to a program component or referred for employment, the state generally must "assess" them and develop an "employability plan" for them. 42 U.S.C. Sec. 682(b)(1) and 45 C.F.R. Sec. 250.41(b) (applicants may be assigned to job search for up to three weeks prior to assessment). Failure to conduct a proper assessment or to develop an appropriate employability plan and failure to abide by the employability plan in making program assignments should provide a defense to a threatened sanction for refusal to participate.

Generally, individuals may be assigned to any program component that is consistent with their assessment and employability plan. Caretaker parents under age 20 who have not completed high school cannot be required to participate in any activity other than an educational activity. However, those age 18 or 19 may be assigned to another activity if they fail to make good progress in an educational activity or if an educational assessment determines that education is inappropriate for them. 42 U.S.C. Sec. 602(a)(19)(E) and 45 C.F.R. Sec. 250.32(a). Also, when a state requires caretakers who have not completed high school and who are age 20 or over to participate, it can only require them to participate in educational activities and any other
activities that do not interfere with the educational activities, unless they demonstrate a basic literacy or their employability plan identifies a long-term employment goal that does not require a high school education or its equivalent. 42 U.S.C. Sec. 682(d)(2) and 45 C.F.R. Sec. 250.32(b).

4. Child Care and Other Supportive Services

The state AFDC agency must provide supportive services that are necessary for participation in a JOBS component or in an approved activity that is intended to prepare for participation in a JOBS component, such as assessment. 42 U.S.C. Sec. 602(g)(1) and 45 C.F.R. Sec. 255.2(a) and 255.2(e). The services to be provided include child care, transportation, and other "work-related" expenses. Services must be provided to both nonexempt and exempt participants.

The AFDC agency also must provide child care whenever it is necessary for a recipient to accept or retain employment or to participate in an approved education or training activity, including non-JOBS activities. 42 U.S.C. Sec. 602(g)(1). (Contrary to the statute, federal regulations, 45 C.F.R. Sec. 255.2(a)(2), require states to provide child care only for approved JOBS activities in areas in which a JOBS program has been established.) States may, for example, approve college attendance. It is questionable whether federal law permits a state to refuse to approve participation in an education or training activity solely because such approval would require the state to provide child care.

AFDC agencies must inform applicants and recipients about their child care rights. 42 U.S.C. Sec. 682(c) and 45 C.F.R. Sec. 255.2(g)(1). Those rights include, among others, the right to agency assistance in finding child care, the right to choose or to refuse to use an informal child care arrangement such as a relative or neighbor, and the right to choose the type of child care if more than one type is available.

5. Sanctions

Nonexempt individuals can be sanctioned if they refuse to participate in JOBS or to comply with permissible JOBS rules without good cause. The sanction continues until the failure or refusal to participate ceases or, if longer, for three months if it is the second time that an individual has been sanctioned, and for six months if the individual has already been sanctioned twice. 42 U.S.C. Sec. 602(a)(19)(G) and 45 C.F.R. Sec. 250.34. If a sanctioned individual is the principal earner parent in an AFDC-UP family, the second parent is also disqualified during the sanction period unless he or she is participating in JOBS. 42 U.S.C. Sec. 602(a)(19)-602(a)(19)(G)(i)(II) and 45 C.F.R. Sec. 250.34(c)(2).

An individual should not be sanctioned unless the individual committed a deliberate act of noncompliance. For example, failure to keep a JOBS appointment of which the individual was not notified is not deliberate noncompliance. Automatic rescheduling of missed appointments seems to reduce the number of instances in which the procedures leading to sanction are initiated inappropriately.
An individual should not be sanctioned if he or she had "good cause" for the noncompliance. 42 U.S.C. Sec. 602(a)(19)(G) and 45 C.F.R. Sec. 250.35. Good cause should include, among other things, agency failure to provide necessary supportive services, assignments that violate specific federal rules such as those limiting use of CWEP and job search, assignments that are inconsistent with an appropriate assessment and employability plan, and circumstances beyond an individual's control that prevent participation.

Before an individual may be sanctioned, the agency must offer an opportunity for "conciliation" and, if conciliation does not resolve the issue, the agency must offer an opportunity for a hearing. 42 U.S.C. Sec. 682(h) and 45 C.F.R. Sec. 250.36. While the conciliation procedure may address the question of whether the failure to comply was without good cause, it should not be limited to this question. An individual should be offered the opportunity to avoid a sanction by agreeing to participate in the future in accordance with program rules, even if the conciliator believes that unjustified noncompliance may have occurred in the past.

**F. Child Support Assignment and Cooperation**

1. What Is Required

The caretaker relative must assign to the state the support rights of all dependent children in the AFDC unit, and, if he or she is in the unit, his or her own support rights. /45/ This assignment covers support due during the period in which the individual entitled to support is receiving AFDC and for periods prior to application for aid. 42 U.S.C. Sec. 602(a)(26)(A) and 45 C.F.R. Secs. 232.11 and 302.51(f). In most states, the assignment takes effect automatically on submission of an application for aid.

The caretaker also must cooperate in establishing paternity, if needed, and in obtaining support, unless he or she has "good cause" for refusing to do so. 42 U.S.C. Sec. 602(a)(26)(B) and 45 C.F.R. Sec. 232.12. /46/ Cooperation requires steps such as providing information about the identity and location of the absent parent, appearing for interviews and court hearings, and turning over to the state support payments received directly from the absent parent while the assignment is in effect. 45 C.F.R. Sec. 232.12(b).

The standards for good cause for refusal are stringent. States sometimes apply them even more narrowly than permitted, and they may provide scant notice of the right to claim good cause. If a good cause claim is granted, a state may validly seek to obtain support without the caretaker's cooperation if this would not be harmful. In addition, an individual may have good cause for a refusal to comply with one part of the cooperation process but not all--good cause at one stage may not relieve him or her of the obligation to cooperate in the future. Cooperation at one stage does not preclude him or her from later raising a good cause claim. 42 U.S.C. Sec. 602(a)(26)(B) and 45 C.F.R. Sec. 232.40-232.49.

States' methods of enforcing the cooperation requirements are often illegal. For example, standards for determination of noncooperation may be inadequate; improper, onerous requirements may be imposed, such as completion of "paternity questionnaires" or attendance
at repetitive interviews or numerous court hearings; and "good cause" may not be recognized when an individual is unable to take an action because of a problem such as a breakdown in child care or transportation.

If a state suspects noncooperation because the caretaker is providing limited information, it must allow him or her to attest to the lack of other information, 45 C.F.R. Sec. 232.12(b)(3), and it should accept the attestation as credible unless it has substantial evidence to the contrary. /47/

The decision regarding whether an individual is cooperating and, if not, whether the individual has good cause for noncooperation must be made by the IV-A agency, not the IV-D agency.

2. Sanctions for Noncompliance

A caretaker who fails to cooperate without good cause is ineligible for aid for as long as such failure continues. 42 U.S.C. Sec. 602(a)(26)(B).

VI. Distribution of Support Collections to a Family Receiving AFDC

The first $50 of any monthly support payment made through withholding from income other than tax refunds or otherwise paid in the month when due should be paid to the family (passed through), regardless of when the IV-D agency receives the payment. Generally, the state may apply any remainder to reimbursement for AFDC paid to the family. 42 U.S.C. Sec. 657(b) and 45 C.F.R. Sec. 302.51, as revised in 56 Fed. Reg. 22353 (May 15, 1991). The support passed through to the family is disregarded in determining the family's eligibility for AFDC and the amount of AFDC payable. /48/

HHS allows states to treat mailed payments as made on the date of postmark or when received by the legal entity responsible for first making the collection. 45 C.F.R. Sec. 302.51(a). /49/

Using the date-of-receipt approach reduces pass throughs to the family if more than one month's worth of payments is received in a month. Families are also harmed by state failure to obtain information about the date of withholding.

Child support collections can affect financial eligibility for AFDC. 42 U.S.C. Sec. 654(5) and 45 C.F.R. Secs. 232.20 and 302.32.

If the IV-D agency continues to collect support after AFDC benefits cease, it must give the family all collections up to the amount of the current monthly support obligation and any outstanding arrears accrued since AFDC was terminated. Once AFDC is terminated, the family can choose whether or not to have the state collect the support or to receive it directly from the absent parent. 42 U.S.C. Sec. 657(c) and 45 C.F.R. Sec. 302.33 and 302.51(e)-(f), as revised at 56 Fed. Reg. 8003 (Feb. 26, 1991).
States are required promptly to give families the amount of the child support collection to which they are entitled, generally within 15 days of the date on which the support is first received in the state. 45 C.F.R. Sec. 302.32(f).

States often do not provide adequate notice of child support collections or of the manner in which such collections have been distributed, or an opportunity to challenge the distribution through a fair hearing, but many courts have found that due process requires more than HHS requires. /50/

VII. Procedural Eligibility Requirements

A. Summary

If, during the application process, the caretaker does not comply with agency procedures for demonstrating that the unit meets substantive eligibility requirements, the application is denied and a new application has to be filed. Failure to comply with requirements to demonstrate continuing eligibility results in a case closing. The unit then has to reapply, if it is still eligible. Nationally, failure to comply with procedural eligibility requirements seems to be the most common reason for application denials and case closings. Many families denied benefits for this reason are substantively eligible. /51/ Federal "quality control" policy encourages excessive proceduralism and procedural denials. /52/

B. Requirements for Applicants

Caretakers must usually (1) complete the application form; (2) be interviewed; and (3) provide evidence that corroborates ("verifies") their description of family circumstances. They may have to allow a home visit. Delays in the application process and denials for failure to verify are common. Advocates can sometimes get these denials reversed at the administrative level. Although generally no specific federal limits are placed on state verification requirements, it is possible to formulate federal claims to challenge particularly egregious verification policies. /53/

C. Requirements for Recipients

Procedural requirements include (1) monthly reporting; (2) periodic eligibility redetermination interviews; and (3) other reporting or interview requirements on an ad hoc or state-selected basis. Substantively eligible families whose cases are closed for procedural reasons often have their cases reopened, and states can--but often do not--provide benefits retroactive to the closing date.
1. Monthly Reporting

Until recently, federal law mandated states to require certain families to file a monthly report form on family circumstances and allowed states to require other families to do so. Now, federal law leaves it to each state to decide whether to require any families to file monthly reports and, if so, which families. 42 U.S.C. Sec. 602(a)(14).

Federal regulations give the states great discretion in designing monthly reporting systems. /54/ 45 C.F.R. Sec. 233.36 and 233.37. Generally, if a family fails to file a form by the due date or files an incomplete form, it must be given ten days to submit a complete form. Case closings for noncompliance are quite common and result from failure to return the report form, failure to submit a form that meets the agency standard of completeness, and failure to submit required verification. Payments may be delayed or reduced even if problems in the submission of the form are corrected. Failure to file a timely report of earnings results in loss of the earnings disregards unless the family had good cause. Timeliness is defined by the state. 42 U.S.C. Sec. 602(a)(8)(B)(i)(III) and 45 C.F.R. Sec. 233.37(c).

2. Periodic Eligibility Redetermination Interviews

Federal regulations generally require the states to "redetermine" recipients' eligibility at least once every 6 months, and to conduct a "face-to-face" redetermination at least once every 12 months. 45 C.F.R. Sec. 206.10(a)(9). Closings for noncompliance result from missing the redetermination appointment and from failure to submit required verification.

VIII. Administrative Processes

A. Applications Process

The federal regulations provide for a right to apply "without delay" but lack specific protections against abusive state practices that may prevent, deter, or delay application. /55/ See 45 C.F.R. Sec. 206.10(a)(1). When immediate assistance is required, federal law allows states to provide benefits before eligibility has been verified.

Notice of the application decision--and the first check if the application is approved--must be mailed within 45 days of the date of application (or within a shorter period specified by the state). 45 C.F.R. Sec. 206.10(a)(3). /56/ Federal law allows aid to be effective from the date of application and requires aid to be effective no later than the earlier of the date of authorization of payment or the 30th day after the date of application. 45 C.F.R. Sec. 206.10(a)(6).

B. Appeals Process
Federal law creates a right to appeal virtually all adverse decisions to a state agency "fair hearing." See 42 U.S.C. Sec. 602(a)(4) and 45 C.F.R. Sec. 205.10(a)(5). Some states with state-supervised, locally administered programs have a two-stage appeals process, with an initial hearing before the local agency, and a right to appeal to a state fair hearing.

Federal regulations require "adequate" notice--notice giving reasons and explaining appeal rights--of virtually all agency decisions, including denials, awards, terminations, reductions, and suspensions, changes in the manner or form of payment, and any other decision affecting eligibility or benefits. 45 C.F.R. Sec. 205.10(a)(3) and 205.10(a)(4). Federal regulations with some exceptions require "timely" notice of decisions to terminate, suspend, or reduce benefits. "Timely" means that notice must be mailed at least 10 days in advance of the payment date. 45 C.F.R. Sec. 205.10(a)(4). Federal regulations also require states to give applicants and recipients a reasonable time, but not more than 90 days, in which to appeal an adverse action. 45 C.F.R. Sec. 205.10(a)(5)(iii).

When timely notice of a decision to reduce, suspend, or terminate benefits is required, benefits generally must be continued unchanged until and unless an adverse hearing decision is issued, if a hearing is requested within the timely notice period. 45 C.F.R. Sec. 205.10(a)(6). When concurrent (rather than timely) notice is given of a decision to suspend, reduce, or terminate benefits, full benefits generally must be reinstated and continued unchanged, unless and until an adverse hearing decision is issued if a recipient requests a hearing within 10 days of the mailing of the notice. 45 C.F.R. Sec. 205.10(a)(7). Recipients may waive aid pending. 45 C.F.R. Sec. 205.10(a)(6)(i)(C) and 205.10(a)(7)(i).

Federal regulations guarantee specific hearing rights, including the rights to be represented, to present evidence, to confront and cross-examine adverse witnesses, and to examine, before the hearing, the case record and all documents to be used by the agency. See 45 C.F.R. Sec. 205.10(a)(13). Hearing decisions must be issued and complied with within 90 days of the date on which the hearing was requested. 45 C.F.R. Sec. 205.10(a)(16).

IX. Other Rules

A. Overpayments

The federal statute requires the recovery of all overpayments, including those due to agency error. 42 U.S.C. Sec. 602(a)(22). (In limited circumstances, state law may provide a basis for "estopping" recovery of an overpayment.) Overpayments include payments that were correct, based on the circumstances anticipated to exist in a month at the time that the payment was issued, but that were more than the correct amount based on the actual circumstances, due to an unanticipated change.

Overpayments from current recipients can be recovered by repayment, by reducing the current grant, or both. The federal statute generally limits the amount by which current benefits can be reduced to ten percent of the payment standard. States can recover at a lower rate. 45 C.F.R.
Sec. 233.20(a)(13)(i)(A). Overpayments from former recipients are collected by appropriate action under state law. Except in fraud cases, a state can forgo recovery from former recipients of overpayments under $35 and of those over $35 when collection is not cost-effective. 45 C.F.R. Sec. 233.20(a)(13)(vi).

B. Underpayments

The federal statute requires correction of all underpayments. 42 U.S.C. Sec. 602(a)(22). Underpayments include payments that were correct based on the circumstances anticipated to exist in a month at the time that the payment was issued but that were less than the correct amount based on the actual circumstances, due to an unanticipated change.

Many agencies lack procedures to detect underpayments and automatically correct those that are discovered. Current interpretations of the eleventh amendment to the U.S. Constitution bar federal courts from ordering states to make retroactive payments due because of invalidation of a practice or policy that caused underpayments. /59/

Generally, states seem to have adopted HHS's position that correction of underpayments is not to be made for former recipients who are no longer eligible. See 45 C.F.R. Sec. 233.20(a)(13)(ii). Following litigation successfully challenging this position, HHS announced in 1989 that it would now provide federal matching for corrective payments to underpaid former recipients, and that it planned to amend the regulations to require such payments. /60/ However, HHS has not yet amended its regulations.

C. Manner of Payment

The federal statute generally requires that benefits be paid directly to the caretaker with no restrictions on their use. 42 U.S.C. Sec. 606(b) and 45 C.F.R. Sec. 234.11. However, the federal statute allows benefits to be paid to "vendors" or to be issued as two-party checks when a caretaker so requests or is determined to be unable to manage unrestricted benefits in a manner consistent with his or her children's welfare. /61/ "Vendors" are persons such as landlords who furnish goods or services to the family. Two-party checks are checks made out jointly to the caretaker and a vendor. 42 U.S.C. Sec. 606(b) and 45 C.F.R. Sec. 234.60. The federal statute also allows benefits to be paid to a protective payee when the caretaker has not met certain conduct eligibility requirements or is unable to manage unrestricted benefits. 42 U.S.C. Secs. 602(a)(19)(G), 602(a)(26)(B), and 606(b).

D. Confidentiality

The federal statute generally limits disclosure of information about AFDC claimants to purposes connected with the administration of AFDC or other federal or federally assisted programs. 42 U.S.C. Sec. 602(a)(9).
footnotes

1. Mail requests for Center Publications to Publications, Center on Social Welfare Policy and Law, 275 Seventh Ave., 6th Fl., New York, NY 10001-6708. Requests should include the Center Pub. No., which is the number preceding the document title.


3. See Center Pub. No. 161, REFERENCE AND STATISTICAL SOURCES FOR LEGAL RESEARCH IN PUBLIC ASSISTANCE PROGRAMS, for a listing of applicable federal statutes and rules, information about relevant state materials, and a listing of other research tools.


7. All references to sections of 45 C.F.R. are references to provisions in the October 1990 codification unless otherwise indicated.

8. See Center Pub. No. 641, HHS REORGANIZATION, for more information about HHS organization.


12. Id. at 51.

13. 1991 GREENBOOK, supra note 9, at 640-641.

14. Id. at 597-598.
15. Id. See Center Pub. No. 210, ANALYSIS OF AFDC BENEFIT LEVELS, for more information about state benefit levels. See also Center Pub. No. 211, THE INADEQUACY OF BENEFITS AND DANGERS OF COERCION, and Center Pub. No. 803, CHILDHOOD POVERTY AND PUBLIC TRANSFERS IN INTERNATIONAL PERSPECTIVE.


21. See Center Pub. No. 316, AFDC AND MEDICAID BENEFITS FOR CARETAKER RELATIVES WHERE ONLY CHILD(REN) RECEIVES SSI, OR SOME CHILD(REN) RECEIVES SSI AND OTHER CHILD(REN) HAS INCOME.

22. HHS Action Transmittal FSA-87-7 (1987) (Clearinghouse No. 46,820).

23. See Center Pub. No. 312, THE EFFECT OF JOINT CUSTODY OR SIMILAR ARRANGEMENTS ON AFDC ELIGIBILITY. (An earlier version was published at Johnson, Joint Custody Arrangements and AFDC Eligibility, 18 CLEARINGHOUSE REV. 2 (May 1984).)


26. See HHS Action Transmittal SSA-AT-86-1 (1986), stating that unmarried--as well as married--parents are both covered.

27. The minor parent provision summarized in part III.D, supra. also applies to minor pregnant women.


30. For more detailed information, see Center Pub. No. 252, METHODS USED BY STATES TO DETERMINE AFDC PAYMENTS, and Center Pub. No. 253, AN EXPLANATION OF FILL THE GAP BUDGETING AS USED IN THE AFDC PROGRAM, published at 23 CLEARINGHOUSE REV. 153 (June 1989).


32. For more information on litigation challenging need and payment standards, see Center Pub. No. 212, STANDARD OF NEED AND BENEFIT LEVEL LITIGATION. See also Center Pub. No. 213, BIBLIOGRAPHY OF MATERIALS THAT DESCRIBE METHODS OF ANALYZING AFDC BENEFIT LEVELS AND NEEDS STANDARDS.

33. See Center Pub. No. 214, MEDICAID PROVISIONS RESTRICTING CUTBACKS IN AFDC.

34. See Center Pub. No. 215, THE AFDC NEED AND PAYMENT STANDARD REEVALUATION REQUIREMENT.

35. Beaton v. Thompson, 913 F.2d 701 (9th Cir. 1989) (Clearinghouse No. 40,233).


41. See Center Pub. No. 251, THE AFDC LUMP SUM RULE.


44. See Center Pub. No. 425, THE AFDC JOBS PROGRAM; see also Center Pub. No. 423, WHY NOT GIVE OPPORTUNITY A CHANCE: THE PROBLEMS CAUSED BY WELFARE WORK REQUIREMENTS.
45. For further information about the child support issues discussed in this article, see Center Pub. No. 710, AN ADVOCATE'S GUIDE TO CHILD SUPPORT COOPERATION AND DISTRIBUTION FOR FAMILIES RECEIVING AFDC; THE GOOD CAUSE EXCEPTION TO THE CHILD SUPPORT COOPERATION REQUIREMENT, also published in 21 CLEARINGHOUSE REV. 339 (Aug./Sept. 1987); Johnson & Blong, The AFDC Child Support Cooperation Requirement, 20 CLEARINGHOUSE REV. 1389 (Mar. 1987).

46. See also 42 U.S.C. Sec. 1396k, imposing assignment and cooperation obligations under Medicaid, and 42 U.S.C. Sec. 602(a)(26)(C), requiring cooperation in pursuit of third-party liability for medical costs.

47. See Tomas v. Rubin, 926 F.2d 906 (9th Cir. 1991) (Clearinghouse No. 46,219).

48. See discussion of the income test in part IV.E, supra.

49. Several courts have held that mailed payments are made when mailed, but one court has concluded that treating a mailed payment as made when received is not inconsistent with the statute.


52. Id. See also Center Pub. No. 632, ESTABLISHMENT OF A NEW AFDC QUALITY CONTROL PROGRAM.


54. See Center Pub. No. 638, MONTHLY REPORTING TRAINING OUTLINE.

55. See Center Pub. No. 634, QUESTIONS TO BE ANSWERED IN IDENTIFYING PROBLEMS IN THE AFDC APPLICATION, CONTINUING ELIGIBILITY, AND FAIR HEARING PROCESSES.

56. See Center on Social Welfare Policy and Law, Protecting the Filing Date of AFDC Applications, 22 CLEARINGHOUSE REV. 134 (June 1988).

57. See Center Pub. No. 635, FEDERAL NOTICE AND FAIR HEARING REGULATIONS APPLY TO GRANT TERMINATIONS AND REDUCTIONS UNDER FEDERAL STATUTORY CHANGES.


61. See Center Pub. No. 637, PAYMENT OF AFDC RECIPIENTS' BENEFITS TO LANDLORDS.