

to the TFAG payable for the next succeeding fiscal year, and this penalty cannot be excused (see § 286.235).

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

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

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

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

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

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

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

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

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

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

(2) [Reserved]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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### **§ 286.215 When are the TANF penalty provisions applicable?**

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

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

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

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

(2) [Reserved]

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

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

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

(2) Specify the amount of the penalty;

(3) Specify the reason for our determination;

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

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

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

(1) Demonstrates that our determination is incorrect because our data or