

than 30 days prior to the effective date of the termination, where such effective date is mutually agreed upon by the Tribe and the affected State(s).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Tribes may use TFAGs for expenditures that:

(1) Are reasonably calculated to accomplish the purposes of TANF, including, but not limited to, the provision to

low income households with assistance in meeting home heating and cooling costs; assistance in economic development and job creation activities, the provision of supportive services to assist needy families to prepare for, obtain, and retain employment; the provision of supportive services to prevent out-of-wedlock pregnancies, and assistance in keeping families together, or

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

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

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

(b) The following restrictions apply to IDA funds:

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

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

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

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

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

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

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

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

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(2) Count withdrawals as resources in determining eligibility, or

(3) Take such other steps as the Tribe has established in its Tribal plan or written Tribal policies to deter inappropriate use.

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

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

(1) Families or individuals that do not otherwise meet the eligibility criteria contained in the Tribal Family Assistance Plan (TFAP); or

(2) For more than the number of months as specified in a Tribe's TFAP (unless covered by a hardship exemption); or

(3) Individuals who are not citizens of the United States or qualified aliens or who do not otherwise meet the definition of "eligible families" at § 286.5.

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

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

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

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

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

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

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

(b) ACF will negotiate a limitation on administrative costs with each Trib-

al TANF applicant individually for the second year of a program's operation based on the applicant's proposed administrative cost allocation. No Tribal TANF grantee may expend more than 30 percent of its TFAG for administrative costs during the second year.

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

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

(2) [Reserved]

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

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

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

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

(c) Designing, administering, monitoring, and controlling a sample are