

§ 260.59

good cause domestic violence waivers of work participation requirements must demonstrate that it achieved participation rates above the threshold at § 261.51(b)(3) of this chapter, when such waiver cases are removed from the calculations at §§ 261.22(b) and 261.24(b) of this chapter.

(c) We may take federally recognized good cause domestic violence waivers of work requirements into consideration in deciding whether a State has achieved compliance or made significant progress towards achieving compliance in meeting the work participation rates during a corrective compliance period.

(d) To receive the penalty relief specified in paragraphs (a), (b), and (c) of this section, the State must submit the information specified at § 265.9(b)(5) of this chapter.

§ 260.59 What penalty relief is available to a State that failed to comply with the five-year limit on Federal assistance because it provided federally recognized good cause domestic violence waivers?

(a)(1) We will determine that a State has reasonable cause if it failed to comply with the five-year limit on Federal assistance because of federally recognized good cause domestic violence waivers granted to victims of domestic violence.

(2) More specifically, to receive reasonable cause under the provisions at § 264.3(b) of this chapter, a State must demonstrate that:

(i) It granted federally recognized good cause domestic violence waivers to extend time limits based on the need for continued assistance due to current or past domestic violence or the risk of further domestic violence; and

(ii) When individuals and their families are excluded from the calculation, the percentage of families receiving federally funded assistance for more than 60 months did not exceed 20 percent of the total.

(b) We may take federally recognized good cause domestic violence waivers to extend time limits into consideration in deciding whether a State has achieved compliance or made significant progress towards achieving compliance in meeting the five-year limit

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on Federal assistance during a corrective compliance period.

(c) To receive the penalty relief specified in paragraphs (a) and (b) of this section, the State must submit the information specified at § 265.9(b)(5) of this chapter.

[64 FR 17878, Apr. 12, 1999]

Subpart C—What Special Provisions Apply to States that Were Operating Programs Under Approved Waivers?

§ 260.70 What is the purpose of this subpart?

(a) Under section 415 of the Act, if a State was granted a waiver under section 1115 of the Act and that waiver was in effect on August 22, 1996, the amendments made by PRWORA do not apply for the period of the waiver, to the extent that they are inconsistent with the waiver and the State elects to continue its waiver.

(b) Identification of waiver inconsistencies is relevant for the determination of penalties in three areas:

(1) Under § 261.50 of this chapter for failing to meet the work participation rates at part 261 of this chapter;

(2) Under § 264.2 of this chapter for failing to comply with the five-year limit on Federal assistance at subpart A of part 264 of this chapter; and

(3) Under § 261.54 of this chapter for failing to impose sanctions on individuals who fail to work.

(c) This subpart explains how we will determine waiver inconsistencies and apply them in the penalty determination process for these penalties.

§ 260.71 What definitions apply to this subpart?

(a) *Inconsistent* means that complying with the TANF work participation or sanction requirements at section 407 of the Act or the time-limit requirement at section 408(a)(7) of the Act would necessitate that a State change a policy reflected in an approved waiver.

(b) *Waiver* consists of the work participation or time-limit component of the State's demonstration project under section 1115 of the Act. The component includes the revised AFDC requirements indicated in the State's

waiver list, as approved by the Secretary under the authority of section 1115, and the associated AFDC provisions that did not need to be waived.

(c) *Control group* and *experimental group* have the meanings specified in the terms and conditions of the State's demonstration.

§ 260.72 What basic requirements must State demonstration components meet for the purpose of determining if inconsistencies exist with respect to work requirements or time limits?

(a) The policies must be consistent with the requirements of section 415 of the Act and the requirements of this subpart.

(b) The policies must be within the scope of the approved waivers both in terms of geographical coverage and the coverage of the types of cases specified in the waiver approval package.

(c) The State must have applied its waiver policies on a continuous basis from the date that it implemented its TANF program, except that it may have adopted modifications that have the effect of making its policies more consistent with the provisions of PRWORA.

(d) An inconsistency may not apply beyond the earlier of the following dates:

(1) The expiration of waiver authority as determined in accordance with the demonstration terms and conditions; or

(2) For any specific inconsistency, the date upon which the State discontinued the applicable waiver policy.

(e) The State must submit the Governor's certification specified in § 260.75.

(f) In general, the policies in this subpart do not have the effect of delaying the date when a State might be subject to the work or time-limit penalties at §§ 261.50, 261.54, and 264.1 of this chapter or the data collection requirements at part 265 of this chapter.

§ 260.73 How do existing welfare reform waivers affect the participation rates and work rules?

(a) If a State is implementing a work participation component under a waiver, in accordance with this subpart, the provisions of section 407 of the Act will

not apply in determining if a penalty should be imposed, to the extent that the provision is inconsistent with the waiver.

(b) For the purpose of determining if the State's demonstration has a work participation component, the waiver list for the demonstration must include one or more specific provisions that directly correspond to the work policies in section 407 of the Act (i.e., change allowable JOBS activities, exemptions from JOBS participation, hours of required JOBS participation, or sanctions for noncompliance with JOBS participation).

(c) Corresponding to the inconsistencies certified by the Governor under § 260.75:

(1) We will calculate the State's work participation rates, by:

(i) Excluding cases exempted from participation under the demonstration component and, if applicable, experimental and control cases not otherwise exempted, in calculating the rate;

(ii) Defining work activities as defined in the demonstration component in determining the numerator; and

(iii) Including cases meeting the required number of hours of participation in work activities in accordance with demonstration component policy, in determining the numerator.

(2) We will determine whether a State is taking appropriate sanctions when an individual refuses to work based on the State's certified waiver policies.

(d) We will use the data submitted by States pursuant to § 265.3 of this chapter to calculate and make public a State's work participation rates under both the TANF requirements and the State's alternative waiver requirements.

§ 260.74 How do existing welfare reform waivers affect the application of the Federal time-limit provisions?

(a)(1) If a State is implementing a time-limit component under a waiver, in accordance with this subpart, the provisions of section 408(a)(7) of the Act will not apply in determining if a penalty should be imposed, to the extent that they are inconsistent with the waiver.