

§ 264.70

(2) If the State fails to replace funds during the subsequent year, then we will assess an additional penalty of no more than two percent of the adjusted SFAG during the year that follows the subsequent year.

(b) A State must expend such replacement funds under its TANF program, not under "separate State programs."

(c) We will assess a penalty of no more than two percent of the adjusted SFAG plus the amount equal to the difference between the amount the State was required to expend and the amount it actually expended in the fiscal year.

(1) We will assess the maximum penalty amount if the State made no additional expenditures to compensate for the reductions to its adjusted SFAG resulting from penalties.

(2) We will reduce the percentage portion of the penalty if the State has expended some of the amount required. In such case, we will calculate the applicable percentage portion of the penalty by multiplying the percentage of the required expenditures that the State failed to make in the fiscal year by two percent.

(d) The reasonable cause and corrective compliance plan provisions at §§ 262.5 and 262.6 of this chapter do not apply to this penalty.

Subpart B—What Are the Requirements for the Contingency Fund?

§ 264.70 What makes a State eligible to receive a provisional payment of contingency funds?

(a) In order to receive a provisional payment of contingency funds, a State must:

(1) Be a needy State, as defined in § 260.30 of this chapter; and

(2) Submit to ACF a request for contingency funds for an eligible month (i.e., a month in which a State is a needy State).

(b) A determination that a State is a needy State for a month makes that State eligible to receive a provisional payment of contingency funds for two consecutive months.

(c) Only the 50 States and the District of Columbia may receive contin-

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gency funds. Territories and Tribal TANF grantees are not eligible.

§ 264.71 What determines the amount of the provisional payment of contingency funds that will be made to a State?

We will make a provisional payment to a State that meets the requirements of § 264.70, within the following limits:

(a) The amount that we will pay to a State in a fiscal year will not exceed an amount equal to $\frac{1}{12}$ times 20 percent of that State's SFAG for that fiscal year, multiplied by the number of eligible months for which the State has requested contingency funds;

(b) The total amount that we will pay to all States during a fiscal year will not exceed the amount appropriated for this purpose; and

(c) We will pay contingency funds to States in the order in which we receive requests for such payments.

§ 264.72 What requirements are imposed on a State if it receives contingency funds?

(a)(1) A State must meet a Contingency Fund MOE level of 100 percent of historic State expenditures for FY 1994.

(2) A State must exceed the Contingency Fund MOE level to keep any of the contingency funds that it received. It may be able to retain a portion of the amount of contingency funds that match countable State expenditures, as defined in § 264.0, that are in excess of the State's Contingency Fund MOE level, after the overall adjustment required by section 403(b)(6)(C) of the Act.

(b) A State must complete an annual reconciliation, in accordance with § 264.73, in order to determine how much, if any, of the contingency funds that it received in a fiscal year it may retain.

(c) If required to remit funds under the annual reconciliation, a State must remit all (or a portion) of the funds paid to it for a fiscal year within one year after it has failed to meet either the Food Stamp trigger or the Unemployment trigger, as defined in § 264.0, for three consecutive months.

(d) A State must expend contingency funds in the fiscal year in which they are awarded.