

Excerpts from the TANF Final Rule: Preamble and Regulations Related to Domestic Violence

Compiled by Jenny Schultz Pappariella
National Resource Center on Domestic Violence (800-537-2238)

On April 12, 1999, the U.S. Department of Health and Human Services (HHS) issued a final set of regulations to provide federal, state and tribal governments with direction in the administration of the Temporary Assistance for Needy Families program. Before issuing the Final Rule, HHS published a Notice of Proposed Rulemaking that included key provisions of TANF. The notice provided the public with an opportunity to submit comments regarding the proposed regulations.

The only policy area that provoked a considerable number of “single issue” comments was domestic violence. HHS received about twenty sets of comments from domestic violence, women’s, legal and other groups focusing specifically on the proposed domestic violence provisions in the Notice of Proposed Rulemaking. In the domestic violence sections of the attached Preamble (see pp. 2-14) and regulations (see pp. 15-18), HHS addressed comments and concerns raised by these groups.

In order to advocate effectively for battered women in the welfare arena, it is important for domestic violence advocates to be familiar with the TANF Final Rule. A command of the basic language pertaining to domestic violence within the Preamble and the regulations will help advocates engage in thoughtful and educated discussions with policy-makers and welfare personnel regarding how battered women can best be served by the TANF office in their area.

Attached you will find excerpts from the final TANF guidelines relating to domestic violence. The Final Rule in its entirety can be found on the HHS website at www.acf.dhhs.gov/programs/ofa/finalrule.htm.

EXCERPTS from the Preamble of the TANF FINAL RULE

IV. Discussion of Cross-Cutting Issues **D. Treatment of Domestic Violence Victims**

Background

The Administration has shown a strong commitment to reducing domestic violence and helping victims of domestic violence access the safety and supportive services that they need to make transitions to self-sufficiency. In the proposed rule, we showed this commitment by promoting implementation of the Family Violence Option (FVO), a TANF State plan provision that provides a specific method for addressing the needs of domestic violence victims receiving welfare.

Under section 402(a)(7) of the Act, States may elect the FVO. This State plan option provides for identification and screening of domestic violence victims, referral to services, and waivers of program requirements for good cause. In the NPRM, we proposed to grant “reasonable cause” to States that either failed to meet the work participation rates or exceeded the limit on exceptions to the five- year time limit because of program waivers granted under this provision. To be considered for this purpose, a “good cause domestic violence waiver” would need to incorporate three components: (1) Individualized responses and service strategies, consistent with the needs of individual victims; (2) waivers of program requirements that were temporary in nature (not to exceed 6 months); and (3) in lieu of program requirements, alternative services for victims, consistent with individualized safety and service plans.

In addition, to be considered in determining reasonable cause for exceeding the time-limit exceptions, such waivers had to be in effect after an individual had received assistance for 60 months, and the individual needed to be temporarily unable to work.

Our proposed rules attempted to remain true to the statutory provisions on work and time limits and to ensure that election of the FVO was an authentic choice for States. In deciding to address these waiver cases under “reasonable cause” rather than through direct changes in the penalty calculations, we tried to both reflect the statutory language and maintain the focus on moving families to self- sufficiency. At the same time, we were giving States some protection from penalties when their failures to meet the standard rates were attributable to the granting of good cause domestic violence waivers that were based on individual assessments, were temporary, and included individualized service and safety plans. We hoped our proposal would alleviate concern among States that attention to the needs of victims of domestic violence might place them at special risk of a financial penalty.

We welcomed comments on whether our proposed approach and language achieved the balance we were seeking. Also, to ensure that these policies have the desired effect, we proposed to limit the availability of “reasonable cause” to States that have adopted the FVO. We indicated that we reserved the right to audit States claiming “reasonable cause” to ensure that good cause domestic violence waivers that States include in their “reasonable cause” documentation met the specified criteria. And we said we intended to monitor the number of good cause waivers granted by States and their effect on work and time limits. We wanted to ensure that States identify victims of domestic violence so that they may be appropriately served, rather than be exempted and denied services that could lead to independence. We also wanted to ensure that the provision of good cause waivers did not affect a State's overall effort in moving families towards self-sufficiency. Thus, we said we would be looking at information on program expenditures and participation levels to see if States granting good cause waivers were making commitments to assist all families in moving toward work.

If we found that good cause waivers were not having the desired effects, we said we might propose regulatory or legislative remedies to address the problems that we identified.

In the final rule, we have consolidated the provisions in a new subpart in order to make our policies more coherent. We have also made some changes to align the regulatory text more closely with the statutory language. For example, we modified the six-month time limit placed on good cause domestic violence waivers. Recognizing that the statute authorizes waivers for “as long as necessary,” we have incorporated similar language in the rule, but called for six-month redeterminations. We have also incorporated statutory language describing the Family Violence Option, including its reference to confidentiality.

Comments and Responses

(a) General Approach

Most commenters generally approved of the way that the proposed rule attempted to protect victims of domestic violence. A significant number commended DHHS for recognizing the significance of domestic violence as a national problem and acknowledging the link between domestic violence and poverty. Many expressed the view that the approach we took was reasonable and provided States with the penalty protection that they needed. However, a few disagreed with the basic approach we took, and a substantial number of commenters raised concerns about specific aspects of the proposed rule.

Response: Our rules do not limit a State's authority to grant “good cause” waivers under the Family Violence Option, but they do limit the circumstances under which we will provide special penalty relief to States granting such waivers. In other words, if a State's

waivers do not comply with the standards in these rules, the State does not get special consideration in our penalty determinations if it fails to meet the work participation requirements or exceeds the limit on Federal time-limit exceptions.

To emphasize this distinction, in the final rules, we created a new term “federally recognized good cause domestic violence waivers” at Sec. 260.51. A “good cause domestic violence waiver” refers to any waiver granted by a State consistent with the FVO. A “federally recognized good cause domestic violence waiver” refers to a waiver that also meets the standards that we have established for special consideration in our penalty determinations.

As we discuss in more detail below, we made some additional changes to the proposed rule in response to the comments that we received. We also moved the provisions on domestic violence (including the definition provisions that were in Sec. 270.30 of the proposed rule) to a new subpart B of part 260. In addition, we revised the language at Sec. 264.30(b). The revised language explicitly recognizes that individuals may receive waivers of child support cooperation requirements under the FVO and that our rules would treat such waivers like good cause exceptions granted under the child support statute (at section 454(29) of the Act).

In summary, the final rule retains the same basic approach as the proposed rule--i.e., it gives States penalty relief if their failure to comply with the work participation rate or time-limit standards is attributable to the granting of good cause domestic violence waivers that meet certain Federal standards. It retains a requirement for service and safety plans, but makes important modifications related to policies on the duration of the waivers that we would recognize, confidentiality protections, work expectations, information that the State must provide with respect to its service strategies, and the standards for time-limit waivers. In addition, the preamble clarifies the flexibility available to States in delivering services to victims of domestic violence and the mechanisms in place for protecting victims from unfair penalties.

Comment: A minority of the commenters argued that we should exclude individuals granted waivers of work requirements under the FVO from the calculation that determines a State's overall work participation rates for each month in the fiscal year.

Response: We chose to address this as a State penalty-relief issue, in large part because we believe that keeping victims of domestic violence in the denominator of the work participation rates represents a better reading of the statute. Section 407 makes no reference to domestic violence cases or to a State's good cause waiver of work requirements under the Family Violence Option. In the statutory provisions on calculating work participation rates (at section 407(b)), there are only two explicit exemptions from the calculation: one for a single custodial parent of a child under 12 months old and the other for a recipient who is being sanctioned. There is no mention of the victims of domestic violence or cross-reference to the waivers granted under the FVO.

We believe that victims of domestic violence and the objectives of the Act will best be served if we maintain the integrity of the work requirements and promote appropriate services to the victims of domestic violence. We do not want our rules to create incentives for States to waive work requirements routinely, especially in cases where a recipient can work; service providers who work closely with victims of domestic violence attest that work is often a key factor in helping victims escape their violent circumstances.

We do realize that, in certain cases, working or taking steps toward independence may aggravate tensions with a batterer and place the victim in further danger. Under the final rule, States may provide temporary waivers of work requirements in such cases. Also, States may grant waivers to extend time limits to families that were not able to participate in work activities or to make due progress towards achieving self-sufficiency within 60 months; we would give Federal recognition to waivers granted to extend time limits under such circumstances. We have revised the language on service plans to provide that work elements in a service plan should be consistent with the statutory expectations about ensuring safety and fairness. We have also modified the language on waivers to extend time limits (as discussed in a subsequent comment and response).

We continue to believe that removing victims of domestic violence from the work participation rate calculation could result in inappropriate exemptions or deferrals of work requirements for victims of domestic violence. As an alternative, commenters suggested that we could protect against this result by requiring States to give waiver recipients access to appropriate education and training services. However, we do not believe such a requirement would suffice; States will have an inherent interest in focusing their resources on individuals who are part of the participation rate calculations and who could put them at penalty risk.

Comment: Many commenters expressed general concerns about the proposed definition of the good cause domestic violence waiver. They argued that it should be more in line with the statutory language and less prescriptive.

Response: We added the extra criteria related to Federal recognition of waivers (at Sec. 260.55) because we wanted to assure that victims of domestic violence would receive appropriate protections and services and the goals of TANF would be sustained. At the same time, as we have discussed, we have made a few modifications to the provisions that make the rules more consistent with the statute and responsive to the specific concerns that commenters raised.

To ensure that our rules promote access to appropriate services, we have added reporting requirements at Secs. 260.54 and 265.9(b)(5) designed to ensure that States seeking Federal recognition of their good cause domestic violence waivers implement meaningful alternative service strategies for victims of domestic violence. The new reporting will tell us and other interested parties about the strategies and procedures States have put in place

to ensure that these families receive appropriate supports. It will also give us information on the aggregate number of good cause domestic violence waivers granted by the State each year.

Comment: One commenter expressed concerns about the administrative burden that States would face in filing a claim of reasonable cause.

Response: We have not regulated specific requirements that States must meet in filing reasonable cause claims. While States must provide information sufficient to justify their claims, the burden associated with demonstrating reasonable cause should not be great. In fact, we would encourage States to present their reasonable cause arguments as succinctly as possible.

State data reporting systems will contain information on the number of cases that received federally recognized good cause domestic violence waivers every month. States will be able to rely on that data in justifying their reasonable cause claims.

(b) Time Limits on Good Cause Waivers

Comment: A significant number of commenters objected to the six-month durational limit that we placed on good cause domestic violence waivers. They said that six months did not provide enough time and that the length of waivers should be determined on a case-by-case-basis. They also argued that our proposed rule could create an additional administrative burden on States for cases where a waiver needed to be renewed. They noted that the six-month limit is neither required by statute nor consistent with the statutory language that waivers continue “as long as necessary.” Finally, commenters noted that they found our policy authorizing extension or renewal of waivers only in the preamble language; at a minimum, they wanted this policy to be added to the regulatory text.

Response: In the NPRM we said that we did not intend that all good cause waivers should last six months. Rather, the length of the waiver should reflect the State's individualized determination of what length of time a client needs. This was our way of giving States significant leeway in how they implemented their Family Violence Option programs. However, we agree with the commenters that our rules should be more consistent with the statute and have revised the final rule accordingly. At the same time, the rule continues to assure that these cases will receive periodic attention from service workers. More specifically, like the statute, it allows for the waiver to be granted for “as long as necessary.” However, at Sec. 260.55(b) and (c), it also requires that a reassessment will take place every 6 months to determine if the waiver is still necessary and if the service plan is still appropriate.

(c) Adoption of the Family Violence Option

Comment: A small number of commenters expressed concern that, by providing special consideration only to States that have opted for the FVO, we could be penalizing States that did not choose the option.

Response: As we stated in the proposed rule, we consciously tied penalty relief to State implementation of the FVO because we felt the FVO provided a constructive framework for identifying, screening, and serving victims of domestic violence. Also, because the FVO is a State plan provision, there are some statutory expectations on States that adopt it, the public will have access to information about it, and consultation with local governments and private sector organizations will take place.

Comment: A couple of commenters said that we should mandate that any State seeking relief from penalties for not meeting work participation rates or for exceeding the cap on exemptions to the time- limits must officially adopt and properly implement the FVO within 60 days as part of the corrective plan.

Response: States have the option of submitting corrective plans for our review, and this final rule provides wide latitude to States in developing the content of those plans. In that context, we do not believe it would be appropriate to be very prescriptive about what a State must include related to adoption of the FVO. Also, we want States to adopt the FVO based on broad policy and programmatic considerations, not because such a step would give them a quick way to avoid penalty liability.

It is important that States understand that, to us, compliance means more than adoption of the Family Violence Option. In deciding whether a corrective compliance plan is acceptable, we will consider the strides that a State has already taken toward developing and implementing a broad strategy to serve victims of domestic violence and ensure their safety.

Comment: A small number of commenters expressed concern that the regulations should require all States to demonstrate that the Family Violence Option is being implemented statewide.

Response: We reviewed the TANF State plan provisions at section 402 and found no specific requirement that the provisions there be implemented on a statewide basis. In fact, because the statutory language at section 402(a)(1)(A)(i) refers to TANF as a “program, designed to serve all political subdivisions in the State (not necessarily in a uniform manner),” it would be a reasonable interpretation of the statute to conclude that plan provisions need not be implemented statewide.

If we were sure that a statewide requirement would produce the optimal policy results, we would have the authority to add such a requirement to our standards for waivers in determining penalty relief. However, we are not convinced that a statewideness requirement would result in better protections or more appropriate services for victims

of domestic violence. For example, if a State could not enact statewide legislation for political reasons or could not implement a program in remote areas of the State for administrative reasons, a statewideness requirement might preclude any residents of the State from benefiting from the FVO.

Thus, under the statute and this rule, there can be variations in the implementation of the FVO across a State. However, we hope that all States will work toward statewide implementation because we believe that recipients would generally be better served under a statewide program. Also, we point out that States can expect broader protection against penalties if they implement statewide.

We would like to take this opportunity to clarify the meaning of the phrase “optional certification” in section 402(a)(7). Under this provision, election of the Family Violence Option is optional, i.e., States may use their own discretion in deciding if they will elect the option. However, for States that have adopted the option, the State plan certification is not optional. States adopting the option must submit the certification with their State plan or submit a State plan amendment and notify the Secretary of DHHS within 30 days.

(d) Scope of Penalty Relief Available

Comment: A couple of commenters pointed out that our “reasonable cause” proposal gave States very limited penalty relief with respect to FVO waivers. If a State did not fully meet the work participation rates or time-limit cap when we removed waiver cases from the calculations, it could get no other consideration. For example, our proposed rules did not consider such waivers in deciding whether a State qualified for penalty reductions under Sec. 271.51 or in deciding the potential size of reductions under that provision.

Response: In the revised language at Sec. 260.58(b), we indicate that we will consider good cause domestic violence waivers in deciding eligibility for, and the amount of, penalty reduction under Sec. 261.51. In Secs. 260.58(c) and 260.59(b), we indicate that we may take waivers into consideration in deciding if a State qualifies for penalty relief as the result of its performance under a corrective compliance plan.

Also, while Secs. 260.58 and 260.59 set specific criteria for automatic reasonable cause determinations based on domestic violence waivers, under the revised language at Sec. 262.5(a), the Secretary has some discretion to grant reasonable cause in cases where a State could not attribute its failure entirely to one of the established “reasonable cause” criteria. Thus, a State could request that we grant “reasonable cause” in cases where federally recognized good cause domestic violence waivers did not justify “reasonable cause” in and of themselves, but were one of several factors contributing to its failure.

Taking waivers into consideration in deciding penalty reduction under Sec. 261.51 seemed to be a logical extension of our proposed “reasonable cause” provision. Under the statute and rules, the penalty reduction under Sec. 261.51 is available based on the degree

of noncompliance. If two States had the same participation rate, but one could attribute its failure in part to the granting of federally recognized good cause domestic violence waivers and the other could not, we think that the State granting waivers is complying to a greater degree and deserves a smaller penalty. The revised rules at Sec. 260.58(b) reflect this philosophy.

The revised rules do not provide for automatic penalty relief for waivers granted during a corrective compliance period. As we have indicated in the response to another comment, we do not want States to look to the FVO as a quick fix for their penalty problems. Under these rules, at Secs. 260.58(c) and 260.59(b), we reserve discretion whether to give an individual State credit for good cause domestic violence waivers in determining whether it has achieved compliance during the corrective compliance period. In making this decision, we would expect to look at evidence provided by the State that it had adopted the FVO and had implemented a broad, thoughtful, and long-term strategy for identifying and serving victims of domestic violence.

(e) Service Plans and Work Requirements

Comment: We received a number of comments on the requirement in the proposed rule that waivers be accompanied by service plans that “lead to work.” They argued that this language diverted the focus of the FVO away from the safety considerations emphasized in the statute and that the reference to work had no statutory basis.

Response: As we indicated in the proposed rule, we believe that work is an important part of service plans because many victims of domestic violence need to make progress on that front in order to escape their abusive situations. In Sec. 270.30 of the proposed rule, we indicated that good cause domestic violence waivers must be designed to lead to work. However, we recognize that, in the short-term, safety issues and other demands on the family may preclude specific steps toward work. Thus, we have added new regulatory text at Sec. 260.55(c) to clarify that States have the ability to postpone work activities when safety or fairness issues would so indicate. For example, if a victim of domestic violence needs time to recover from injuries, secure safe and stable housing, and get her children resettled, or needs to stay at home or in a shelter to avoid danger, there may be a need to postpone work activities.

We encourage States to incorporate work activities as a key component of the service plan for victims of domestic violence, to the extent possible. Also, we note that, with our removal of the 6-month limit on the duration of waivers, these final rules may make it more feasible to do so.

Comment: Several commenters expressed concerns that the service plan requirements in the proposed rules would make victims of domestic violence more vulnerable to sanctions (i.e., penalty reductions) for not meeting welfare agency expectations. TANF caseworkers are trained to sanction participants who do not adhere to the caseworkers'

instructions or who do not comply with eligibility conditions. Additionally, they stated that, in certain circumstances, an appropriate service plan for a victim may be to do nothing. Forcing victims to take specific steps within a fixed time frame may make their situation more precarious. They also argued that services provided by domestic violence counselors would be better for victims since these workers understand that developing a plan for the family's safety can be emotionally painful and may involve continuous reassessments.

Response: The FVO provides for waiver of program requirements “where compliance with such requirements would make it more difficult for individuals receiving assistance to escape domestic violence or unfairly penalize such individuals.” Thus, it would be inconsistent with the FVO for domestic violence victims to be more at risk of program sanctions than other individuals receiving assistance. In other words, States should be giving victims of domestic violence the same, or greater, access to “good cause” for failing to comply or cooperate with work, personal responsibility, and child support requirements. They also should consider the needs of victims of domestic violence in deciding eligibility for State time-limit exemptions and exceptions.

In general, we view service plans not as additional requirements for victims of domestic violence, but as alternatives to normal program requirements. In developing these plans, and determining if an individual has good cause for not complying with a plan, States should take the other demands on the family and the family's ability to respond into account. States should also recognize that a battered woman often does not have control over her own actions and respect a victim's judgment of whether she can safely take certain action steps (e.g., move out of her home).

Comment: A significant number of commenters asked that we delete the requirement for a service plan because they felt it placed an additional burden on TANF caseworkers who may not be equipped to engage in this type of work and raised potential privacy issues. Commenters also wanted to see a requirement that States provide referrals to supportive services, as specified in the statute.

Response: Implicit in these comments seems to be an assumption that TANF caseworkers would have full responsibility for developing and enforcing service plans. This is not our assumption, and it is not consistent with the evolving nature of the TANF program. The TANF statute does not have the same statutory or regulatory requirements for “single State agency” administration that the AFDC program did. Thus, under TANF, other public and private agencies can make discretionary decisions on behalf of the TANF agency.

In the context of the FVO, States have a lot of flexibility in deciding the appropriate roles for TANF staff and domestic violence service providers in administering these provisions. The statutory language in section 402 provides for State referral of domestic violence victims to counseling and supportive services. It makes no distinction as to who will provide these services. Thus, services may be provided within the TANF agency,

with referrals to specially trained agency staff, or by referrals to an outside agency. There is also no specification as to when these referrals can occur; for example, they could occur before or after the service plan is in place.

If there are concerns about the ability of TANF staff within a State to perform certain roles, e.g., because of resource constraints or expertise, the TANF agency can and should work with third parties on the development of service plans and the delivery of supportive services. Also, readers should note that we modified the regulatory text in Sec. 260.55 to include an expectation that assessments and service plans be developed by persons trained in domestic violence. This regulatory text does not prescribe any specific training curriculum, any specific staff credentials, or any specific administrative structure for delivering services. However, it does require that staff performing these functions have some training in domestic violence. The regulatory change reflects our view and the view of commenters about the critical importance of these activities. Staff need some level of special knowledge and expertise in order to make appropriate decisions in these highly sensitive case situations.

At the Federal level we have been investing resources to improve the capacity of TANF staff to screen, identify, and serve victims of domestic violence. We supported a project in Anne Arundel County, Maryland, to pilot test such an effort. In 1997, ACF awarded a grant to train all of Anne Arundel County's Department of Social Services staff on domestic violence. This training has now been incorporated into the regular training for all new employees. This project is one of the first in the nation and has become a model for other States considering adopting a State domestic violence curriculum. In addition, we are developing resource materials that agencies can use as part of our Welfare and Domestic Violence Technical Assistance Initiative, under the National Resource Center on Domestic Violence. The first two "practice papers" issued under this initiative address the subjects of "Building Opportunities for Battered Women's Safety and Self Sufficiency" and "Family Violence Protocol Development." You may contact the National Resource Center at its toll-free number, 1-800- 537-2238.

Comment: A couple of commenters felt that our rules should specify that service plans should also provide for referrals to appropriate alternative support, such as SSI and child support.

Response: One of the expectations for all TANF recipients is to cooperate in establishing paternity and obtaining child support. Under both the Family Violence Option and the rules of the Child Support Enforcement program, the State may waive these requirements if the individual has "good cause" for not cooperating. Thus, we would expect child support referrals except in cases where it creates a risk to the family or is otherwise inappropriate.

Our rules generally expect that service plans will help enable victims to attain the skills necessary to "lead to work" and to become self-sufficient because economic self-sufficiency is a major goal of the TANF program. However, our rules also envision that the plans will reflect individualized assessments of the needs and circumstances of

victims and their families. The rules recognize that work requirements are not necessarily appropriate in some cases and that some women will need extra time on assistance because of their current or past circumstances.

We would not prescribe the specific content of a State's assessments or the specific nature of its referrals. However, we would point out that, for a State's TANF program to achieve long-term success, families will need to receive appropriate supports and referrals. Also, based on State practice in recent years, it seems fairly clear to us that States understand the value of making appropriate referrals to SSI.

(f) Waivers of Time Limits

Comment: Some commenters felt that our regulatory interpretation on time-limit waivers appeared to be contrary to the purpose of the welfare reform statute. A majority recommended that the final regulations should allow States to “stop the clock” for families and give them good cause domestic violence waivers at the time they are at risk of violence, not just at the time that they approach the 60-month time limit. A number of commenters had similar concerns about the proposed language that only recognized time-limit waivers for cases that were “unable to work.”

They felt that the proposed definition of good cause domestic violence waiver would not necessarily be consistent with an individual's circumstances. They argued that some domestic violence victims might need an extended period of time to set up a new household, help their children adjust to new surroundings, and receive counseling. If the trauma of the abusive relationship is substantial, a woman might not be psychologically ready to develop the employment skills that are required under TANF. In these types of cases, the clock should be stopped until the victim is healthy and feels safe enough to engage in work activities. Similarly, the clock should be stopped if States determine that abused women are not able to comply with the Federal work requirements. They also expressed concerns that our proposed policies would treat victims inequitably, based on the particular timing of their domestic abuse situations.

Response: Although we have not adopted the specific suggestion of commenters to recognize waivers that “stop the clock” and automatically exempt families from the time limit, we have revised the final rules to give Federal recognition to a much broader array of waivers to extend the time limits. Under the final rules, we will recognize such waivers, based on need, due to current or past domestic violence or the risk of further domestic violence. Thus, States will be able to provide victims with specific assurances that: (1) They can receive assistance for as long as necessary to overcome the effects of abuse; and (2) extensions will be available in the future based on their current inability to move forward. For example, States could look at whether victims were unable to pursue work or child support for any period of time while they were on assistance or whether a current or prior unstable housing situation creates a need for extended assistance. As a result, States could advise a victim that the family will receive an extension for as long as necessary if the family accrues 60 months of assistance.

We encourage States to give victims the assurance they need that: 1) They will not be cut off assistance when they reach the Federal time-limit if they still need assistance; and (2) they will be able to return for assistance if the need recurs (NOTE: emphasis added). Such assurances are important because they will alleviate pressure on victims to take steps that might jeopardize their personal or their family's safety. We intend to defer to State judgments on the need for such waivers and the length of time such waivers are needed. For example, if a State granted a waiver that extended a family's eligibility for assistance based on the length of time that the victim was unable to participate in work activities, we would recognize a State waiver that extended assistance for that period of time.

The disaggregated data reporting will indicate those cases whose time limit has been extended based on a federally recognized domestic violence waiver, as reported by the State. (We will also get information on the aggregate number of waivers granted under the annual report.)

As we have stated previously, we remain concerned that individuals granted waivers receive appropriate attention from TANF staff, access to services, and appropriate consideration of their safety issues. Therefore, we have added new annual reporting requirements at Sec. 265.9(b)(5) that should give us insight into actual State practice in these waiver cases and tell us how frequently such waivers are being granted. In addition, at Secs. 260.54, 260.58, and 260.59, we have specified that a State may receive special penalty consideration under these regulatory provisions if it submits this information. The primary purpose for creating criteria for Federal recognition of a State's good cause domestic violence waivers was to set in place a structure for ensuring that victims receive appropriate alternative services. In addition, the reporting will provide a public description of the basic strategies that the State has put in place.

Comment: A few commenters expressed concern about the proposed language in Sec. 274.3 that appeared to require that the victim of domestic violence receive both a hardship exemption from the 60-month time limit and a separate good cause domestic violence waiver based on inability to work. The language in the NPRM stated that, in order to qualify for exclusion from the calculation of work participation rates, families must have good cause domestic violence waivers that were in effect after the family received a hardship exemption from the limit on receiving assistance for 60 or more months. They expressed concern that the effect of this requirement would be that a State wishing to use the FVO must include domestic violence as part of the hardship extension criteria. Commenters stated that this is not supported by law and could result in some States not being able to benefit from the penalty relief that we were trying to provide.

Response: The language in the NPRM apparently did require that both a hardship exemption and a good cause domestic violence waiver be in effect. We agree with the commenters that waivers should not have to meet both requirements, and we have deleted the problematic language from the final rule.

(g) Confidentiality

Comment: A large number of commenters expressed concerns about the lack of attention paid to confidentiality. Commenters argued that individual case files should not be kept. Such files could have a negative effect on victims, potentially discouraging them from seeking services and even endangering them, if special attention is not paid toward protecting the files. They asked us to clarify in both the preamble and final regulation that we would neither require nor expect States to include sensitive information in their files that could jeopardize a woman's safety or security. They recommended that States retain and report information in an aggregated form to protect the anonymity of victims and their children.

Response: We have revised the regulation to incorporate the statutory language on confidentiality found in the FVO (see Sec. 260.52). We also encourage States to consider the special needs of victims of domestic violence and to consult with providers of domestic violence services as they develop procedures to "restrict the use and disclosure of information" on recipients, pursuant to section 402(1)(A)(iv). The experience of domestic violence service providers should help shed light on questions such as what information is sensitive, what particular cautions should be taken with victims of domestic violence, and what practices work best in ensuring confidentiality.

We recognize the importance of this issue. However, in order to administer these provisions and have effective and accountable programs, it will be necessary for States to maintain records that identify victims and recipients of good cause domestic violence waivers. Since it is vital to keep this information, States should consider whether their standard confidentiality safeguards are sufficient to protect victims or whether they should institute additional safeguards. For example, these could include establishing special safeguards for both computer and paper files, training TANF staff about the importance of confidentiality for domestic violence victims and specific procedures to be used in their workplace, using extreme caution when determining whether to release the whereabouts of victims to anyone, and handling disclosures of abuse with extreme sensitivity.

(h) Notice Requirements

Comment: A small number of commenters asked to see language in both the preamble and the text of the regulation requiring that States provide TANF applicants written notice when a request for a good cause domestic violence waiver is denied.

Response: Under section 402(a)(1)(B)(iii), in their TANF plans, States must set forth objective criteria for fair and equitable treatment and explain how they will provide opportunities for hearings for recipients who have been adversely affected. Although we are not regulating this provision, in light of the restrictions on our regulatory authority at section 417, we encourage States to send notices in these cases as a matter of fairness and equity and to treat these waiver denials as adverse actions.

EXCERPTS from Regulations – FINAL TANF RULE

Subpart B - What Special Provisions Apply to Victims of Domestic Violence?

Sec. 260.50 What is the purpose of this subpart?

Under section 402(a)(7) of the Act, under its TANF plan, a State may elect to implement a special program to serve victims of domestic violence and to waive program requirements for such individuals. This subpart explains how adoption of these provisions affects the penalty determinations applicable if a State fails to meet its work participation rate or comply with the five-year limit on Federal assistance.

Sec. 260.51 What definitions apply to this subpart?

Family Violence Option (or FVO) means the provision at section 402(a)(7) of the Act under which a State certifies in its State plan if it has elected the option to implement comprehensive strategies for identifying and serving victims of domestic violence. Federally recognized good cause domestic violence waiver means a good cause domestic violence waiver that meets the requirements at Secs. 260.52(c) and 260.55.

Good cause domestic violence waiver means a waiver of one or more program requirements granted by a State to a victim of domestic violence under the FVO, as described at Sec. 260.52(c).

Victim of domestic violence means an individual who is battered or subject to extreme cruelty under the definition at section 408(a)(7)(C)(iii) of the Act.

Sec. 260.52 What are the basic provisions of the Family Violence Option (FVO)?

Section 402(a)(7) of the Act provides that States electing the FVO certify that they have established and are enforcing standards and procedures to:

- (a) Screen and identify individuals receiving TANF and MOE assistance with a history of domestic violence, while maintaining the confidentiality of such individuals;
- (b) Refer such individuals to counseling and supportive services; and
- (c) Provide waivers, pursuant to a determination of good cause, of normal program requirements to such individuals for so long as necessary in cases where compliance would make it more difficult for such individuals to escape domestic violence or unfairly penalize those who are or have been victimized by such violence or who are at risk of further domestic violence.

Sec. 260.54 Do States have flexibility to grant good cause domestic violence waivers?

(a) Yes; States have broad flexibility to grant these waivers to victims of domestic violence. For example, they may determine which program requirements to waive and decide how long each waiver might be necessary.

(b) However, if a State wants us to take the waivers that it grants into account in deciding if it has reasonable cause for failing to meet its work participation rates or comply with the five-year limit on Federal assistance, has achieved compliance or made significant progress towards achieving compliance with such requirements during a corrective compliance period, or qualifies for a reduction in its work penalty under Sec. 261.51 of this chapter, the waivers must be federally recognized good cause domestic violence waivers, within the meaning of Secs. 260.52(c) and 260.55, and the State must submit the information specified at Sec. 265.9(b)(5) of this chapter on its strategies and procedures for serving victims of domestic violence and the number of waivers granted.

Sec. 260.55 What are the additional requirements for Federal recognition of good cause domestic violence waivers?

To be federally recognized, good cause domestic violence waivers must:

- (a) Identify the specific program requirements that are being waived;
- (b) Be granted appropriately based on need, as determined by an individualized assessment by a person trained in domestic violence and redeterminations no less often than every six months;
- (c) Be accompanied by an appropriate services plan that:
 - (1) is developed by a person trained in domestic violence;
 - (2) reflects the individualized assessment and any revisions indicated by the redetermination; and
 - (3) to the extent consistent with Sec. 260.52(c), is designed to lead to work.

Sec. 260.58 What penalty relief is available to a State whose failure to meet the work participation rates is attributable to providing federally recognized good cause domestic violence waivers?

(a) (1) We will determine that a State has reasonable cause if its failure to meet the work participation rates was attributable to federally recognized good cause domestic violence waivers granted to victims of domestic violence.

(2) To receive reasonable cause under the provisions of Sec. 262.5(b) of this chapter, the State must provide evidence that it achieved the applicable rates, except with respect to any individuals who received a federally recognized good cause domestic violence

waiver of work participation requirements. In other words, it must demonstrate that it met the applicable rates when such waiver cases are removed from the calculations at Secs. 261.22(b) and 261.24(b) of this chapter.

(b) (1) We will reduce a State's penalty based on the degree of noncompliance to the extent that its failure to meet the work participation rates was attributable to federally recognized good cause domestic violence waivers.

(2) To receive a reduction based on degree of noncompliance under the provisions of Sec. 261.51 of this chapter, a State granting federally recognized good cause domestic violence waivers of work participation requirements must demonstrate that it achieved participation rates above the threshold at Sec. 261.51(b)(3) of this chapter, when such waiver cases are removed from the calculations at Secs. 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 Sec. 265.9(b)(5) of this chapter.

Section 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 Sec. 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 on Federal assistance during a corrective compliance period.

Annual State Reporting Requirements – excerpt from Preamble and Sec. 265.9

From Preamble – Special Comments on the Proposed Annual Program and Performance Report:

(1) Family Violence Option.

If a State has adopted the Family Violence Option and wants Federal recognition of good cause domestic violence waivers granted under subpart B of part 260 of this chapter, the State must provide: (1) a description of the strategies and procedures in place to ensure that victims of domestic violence receive appropriate alternative services, and (2) an aggregate figure for the total number of good cause waivers granted.

This new reporting requirement in paragraph (b)(5) of this section will tell us and other interested parties about the activities States are carrying out to ensure that individuals granted waivers receive appropriate attention from TANF staff, access to services, and appropriate consideration of their safety issues. In addition, at Secs. 260.54, 260.58, and 260.59, we have specified that a State may receive special penalty consideration under these regulatory provisions if it submits this information.

From Sec. 265.9 What information must the State file annually?

(b) Each state must provide the following information on the TANF program:

(5) If the State has adopted the Family Violence Option and wants Federal recognition of its good cause domestic violence waivers under subpart B of part 260 of this chapter a description of the strategies and procedures in place to insure that victims of domestic violence receive appropriate alternative services and an aggregate figure for the total number of good cause domestic violence waivers granted[.]