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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 286

RIN 0970-AC40

Temporary Assistance for Needy Families (TANF) Carry-Over Funds

AGENCY: Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule implements the statutory change to section 404(e) of the Social Security Act as enacted by the American Recovery and Reinvestment Act of 2009. This change allows States, Tribes and Territories to use Temporary Assistance for Needy Families (TANF) program funds carried over from a prior year for any allowable TANF benefit, service or activity. Previously these funds could be used only to provide assistance. This final rule applies to States, local governments, and Tribes that administer the TANF program.

DATES: Effective April 6, 2010, the interim final rule amending 45 CFR part 286 which was published at 74 FR 25161 on May 27, 2009, is adopted as a final rule without change.

FOR FURTHER INFORMATION CONTACT: Robert Shelbourne, Director, Division of State TANF Policy and Acting Director, Division of Tribal TANF Management, Office of Family Assistance, ACF, at (202) 401-5150.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

Section 417 of the Social Security Act (42 U.S.C. 617) limits the authority of the Federal government to regulate State conduct or enforce the TANF provisions of the Social Security Act, except as expressly provided. We have interpreted this provision to allow us to regulate where Congress has charged HHS with enforcing certain TANF provisions by assessing penalties. Because the improper use of Federal TANF carry-over funds can result in a financial penalty pursuant to 42 U.S.C. 609(a)(1), we have the authority to regulate in this instance.

II. American Recovery and Reinvestment Act of 2009

On February 17, 2009, the President signed the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), which included a provision to lift the restriction on unspent Federal TANF funds reserved or ``carried over'' into a succeeding fiscal year. Prior to Public Law 111-5, carry-over funds could only be used to provide assistance (i.e., ongoing basic needs payments, and supportive services such as transportation and child care to families who are not employed). Section 2103 of Division B of Public Law 111-5 amends section 404(e) of the Social Security Act (Act) by allowing States, District of Columbia, the Territories and Tribes to use the carry-over funds for any allowable TANF benefit, service, or activity (such as job skills training or re-training activities, employment counseling services, parental counseling services, teen pregnancy prevention activities, services for victims of domestic violence, after-school programs)--and not just assistance.

III. Response to Public Comment and Regulatory Provisions

The interim final rule was published May 27, 2009, and provided a 60-day comment period. Only one comment was received from an advocacy organization that simply expressed

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support for the regulation; thus, no changes have been made to the provisions of the interim final rule in the final rule. As discussed below, section 2103 of Public Law 111-5 requires a change in the Tribal TANF regulation at 45 CFR 286.60. The TANF regulations at 45 CFR Part 263, applicable to States and Territories, require no change.

PART 286--TRIBAL TANF PROVISIONS

Section 286.60: Must Tribes obligate all Tribal Family Assistance Grant funds by the end of the fiscal year in which they are awarded?

Under prior law, section 404(e) of the Act, entitled ``Authority to Reserve Certain Amounts for Assistance,'' allowed States and Indian Tribes operating approved Tribal TANF programs (Tribes) to reserve Federal TANF funds that they receive ``for any fiscal year for the purpose of providing, without fiscal year limitation, assistance under the State or tribal program funded under this part'' (Title IV, Part A of the Act). Based on the reading of this section, we concluded that States and Tribes could only use reserve or ``carry-over'' funds to provide TANF assistance, defined in 45 CFR 260.31 for States and in 45 CFR 286.10 for Tribes, and to pay for the administrative expenses associated with providing the assistance. The statutory wording also precluded States from transferring ``carry-over'' funds to either the Social Services Block Grant Program (SSBG) under title XX of the Act or the Child Care and Development Block Grant Program (also known as the Child Care Discretionary Fund within the Child Care and Development Fund (CCDF)). (The transfer provision in section 404(d) of the Act does not apply to Tribes.)

Section 2103 of Division B of Public Law 111-5 (American Recovery and Reinvestment Act of 2009) amended section 404(e) of the Social Security Act. The amendment allows States and Tribes to use unspent

Federal TANF funds carried over from prior fiscal years ``to provide, without fiscal year limitation, any benefit or service that may be provided under the State or tribal program funded under this part.'' Thus, States and Tribes are no longer restricted to using carry-over TANF funds to provide benefits that specifically meet the definition of assistance. States and Tribes may expend carry-over funds for any allowable TANF benefit, service, or activity. Because the amended section 404(e) continues to specify that carry-over funds may only be used ``under this part''--i.e., in the TANF program, States may not transfer any carry-over funds to either CCDF or the SSBG program. States may only transfer current year Federal TANF funds (up to the statutory limit) to these programs.

Accordingly, we have amended Sec. 286.60 because the limitation on the use of carry-over funds explicitly appears in this section. We have deleted paragraph (b) which previously read, ``A Tribe may expend funds beyond the fiscal year in which awarded only on benefits that meet the definition of assistance at Sec. 286.10 or on the administrative costs directly associated with providing that assistance.'' This sentence is no longer accurate because the law removes the restriction. We have revised the remaining language to provide that a Tribe may reserve amounts awarded to it, without fiscal year limitation, to provide assistance, benefits, and services in accordance with the requirements under Sec. 286.35 or Sec. 286.40, if applicable.

No change in the regulations related to the State TANF program is necessary, as those regulations speak more broadly to improper uses of TANF funds. Specifically, Sec. 263.11(b) currently states that ``We will consider use of funds in violation of * * * sections 404 and 408 and other provisions of the Act * * * to be misuse of funds.'' This statement is not impacted by the change to section 404(e) of the Act.

IV. Paperwork Reduction Act

There are no information collection activities imposed by this regulation, nor are any existing requirements changed as a result of their promulgation. Therefore, the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) regarding reporting and recordkeeping, do not apply.

V. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in this Act to include small businesses as defined by the Small Business Administration, non-profit organizations that are not dominant in their markets, and small governmental jurisdictions. This rule will affect primarily the 50 States, the District of Columbia, certain Territories, and Indian Tribes operating approved Tribal TANF programs. Therefore, we certify that this rule will not have a significant impact on small entities.

VI. Regulatory Impact Analysis

Executive Order 12866 requires the review of regulations to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this final rule is consistent with these priorities and principles. This

regulation implements a statutory change in the use of Federal TANF block grant funds carried over from a prior fiscal year included in the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5). Further, we certify that this change is not an "economically significant regulatory action" under Section 3(f)(1) of Executive Order 12866. It will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. TANF block grant awards remain the same; this change in statute simply allows carry-over funds under the TANF program to be used for broader purposes.

The Department, however, has determined that this rule is significant for the purposes of review under Section 3(f)(4) of Executive Order 12866; accordingly, it was reviewed by the Office of Management and Budget (OMB).

VII. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$133 million or more in any one year. The Department has determined that this rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than \$133 million in any one year.

VIII. Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. Chapter 8.

IX. Assessment of Federal Regulation and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may negatively affect family well-being. If the agency's

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determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law.

The Department has determined that this regulation does not negatively affect family well-being. The purpose of the TANF program is to strengthen the economic and social stability of families. This rule lifts the restriction on the use of Federal TANF carry-over funds so that States and Tribes may provide the services that families need to attain and maintain self-sufficiency.

X. Executive Order 13132

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local government officials in the development of regulatory policies with Federalism implications. Consistent with this

Executive Order, we solicited comments from State and local government officials on the interim final rule.

XI. List of Subjects in 45 CFR Part 286

Carry-over, Reserve, Prior fiscal years, Federal TANF funds.

(Catalog of Federal Domestic Assistance Program Number 93.558,
Temporary Assistance for Needy Families Program)

Dated: November 20, 2009.

Carmen R. Nazario,
Assistant Secretary for Children and Families.

Approved: January 19, 2010.
Kathleen Sebelius,
Secretary, Department of Health and Human Services.

PART 286--TRIBAL TANF PROVISIONS

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Accordingly, the interim final rule amending 45 CFR part 286 which was published at 74 FR 25161 on May 27, 2009, is adopted as a final rule without change.

[FR Doc. 2010-7530 Filed 4-5-10; 8:45 am]
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