credit program must be reasonably calculated to accomplish one of the purposes of the TANF program, as specified at § 260.20.

(b)(1) In addition, pursuant to the definition of expenditure at § 260.30, we would only consider the refundable portion of a State or local tax credit to be an allowable expenditure.

(2) Under a State Earned Income Tax Credit (EITC) program, the refundable portion that may count as an expenditure is the amount that exceeds a family's State income tax liability prior to application of the EITC. (The family's tax liability is the amount owed prior to any adjustments for credits or payments.) In other words, we would count only the portion of a State EITC that the State refunds to a family and that is above the amount of EITC used as credit towards the family's State income tax liability.

(3) For other refundable (and allowable) State and local tax credits, such as refundable dependent care credits, the refundable portion that would count as an expenditure is the amount of the credit that exceeds the taxpayer's tax liability prior to the application of the credit. (The taxpayer's liability is the amount owed prior to any adjustments for credits or payments.) In other words, we would count only the portion of the credit that the State refunds to the taxpayer and that is above the amount of the credit applied against the taxpayer's tax bill.

§ 260.35 What other Federal laws apply to TANF?

(a) Under section 408(d) of the Act, the following provisions of law apply to any program or activity funded with Federal TANF funds:

(1) The Age Discrimination Act of 1975;

(2) Section 504 of the Rehabilitation Act of 1973;

(3) The Americans with Disabilities Act of 1990; and

(4) Title VI of the Civil Rights Act of 1964.

(b) The limitation on Federal regulatory and enforcement authority at section 417 of the Act does not limit the effect of other Federal laws, including Federal employment laws (such as the Fair Labor Standards Act (FLSA), the Occupational Safety and Health Act (OSHA) and unemployment insurance (UI)) and nondiscrimination laws. These laws apply to TANF beneficiaries in the same manner as they apply to other workers.

§ 260.40 When are these provisions in effect?

(a) In determining whether a State is subject to a penalty under parts 261 through 265 of this chapter, we will not apply the regulatory provisions in parts 260 through 265 of this chapter retroactively. We will judge State actions that occurred prior to the effective date of these rules and expenditures of funds received prior to the effective date only against a reasonable interpretation of the statutory provisions in title IV–A of the Act.

(b) The effective date of these rules is October 1, 1999.

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

§ 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.

§ 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 §§ 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 § 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.

§ 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.

§ 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 § 261.51 of this chapter, the waivers must be federally recognized good cause domestic violence waivers, within the meaning of §§ 260.52(c) and 260.55, and the State must submit the information specified at § 265.9(b)(5) of this chapter on its strategies and procedures for serving victims of domestic violence and the number of waivers granted.

§ 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 § 260.52(c), is designed to lead to work.

§ 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 § 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 §§ 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.