

(e)(1) In the immediately succeeding fiscal year, a State must expend additional State funds to replace any reduction in the SFAG resulting from penalties.

(2) The State must document compliance with this replacement provision on its TANF Financial Report (or Territorial Financial Report).

**§ 262.2 When do the TANF penalty provisions apply?**

(a) A State will be subject to the penalties specified in § 262.1(a)(1), (2), (7), (8), (9), (10), (11), (12), (13), and (14) for conduct occurring on and after the first day the State operates the TANF program.

(b) A State will be subject to the penalties specified in § 262.1(a)(3), (4), (5), and (6) for conduct occurring on and after July 1, 1997, or the date that is six months after the first day the State operates the TANF program, whichever is later.

(c) For the time period prior to October 1, 1999, we will assess State conduct as specified in § 260.40(b) of this chapter.

**§ 262.3 How will we determine if a State is subject to a penalty?**

(a)(1) We will use the single audit under OMB Circular A-133, in conjunction with other reviews, audits, and data sources, as appropriate, to determine if a State is subject to a penalty for misusing Federal TANF funds (§ 263.10 of this chapter), intentionally misusing Federal TANF funds (§ 263.12 of this chapter), failing to participate in IEVS (§ 264.10 of this chapter), failing to comply with paternity establishment and child support requirements (§ 264.31 of this chapter), failing to maintain assistance to an adult single custodial parent who cannot obtain child care for child under six (§ 261.57 of this chapter), and failing to reduce assistance to a recipient who refuses without good cause to work (§ 261.54 of this chapter).

(2) We will also use the single audit as a secondary method of determining if a State is subject to other penalties if an audit detects lack of compliance in other penalty areas.

(b)(1) We will use the TANF Data Report required under part 265 of this

chapter to determine if a State failed to meet participation rates (§§ 261.21 and 261.23 of this chapter) or failed to comply with the five-year limit on Federal assistance (§ 264.1 of this chapter).

(2) Data in these reports are subject to our verification in accordance with § 265.7 of this chapter.

(c)(1) We will use the TANF Financial Report (or, as applicable, the Territorial Financial Report) as the primary method for determining if a State has failed to meet the basic MOE requirement (§ 263.8 of this chapter), meet the Contingency Fund MOE requirement (§ 264.76 of this chapter), or replace SFAG reductions with State-only funds (§ 264.50 of this chapter).

(2) Data in these reports are subject to our verification in accordance with § 265.7 of this chapter.

(d) We will determine that a State is subject to the specific penalties for failure to perform if we find information in the reports under paragraphs (b) and (c) of this section to be insufficient to show compliance or if we determine that the State has not adequately documented actions verifying that it has met the participation rates or the time limits.

(e) To determine if a State has met its MOE requirements, we will also use the supplemental information in the annual report required in accordance with § 265.9(c) of this chapter.

(f) States must maintain records in accordance with § 92.42 of this title.

**§ 262.4 What happens if we determine that a State is subject to a penalty?**

(a) If we determine that a State is subject to a penalty, we will notify the State agency in writing, specifying which penalty we will impose and the reasons for the penalty. This notice will:

(1) Specify the penalty provision at issue, including the penalty amount;

(2) Specify the source of information and the reasons for our decision;

(3) Invite the State to present its arguments if it believes that the information or method that we used were in error or were insufficient or that its actions, in the absence of Federal regulations, were based on a reasonable interpretation of the statute; and