IN THE MATTER OF THE PROPOSED ADOPTION OF DEPARTMENT OF HUMAN SERVICES AMENDMENTS TO RULES GOVERNING THE AID TO FAMILIES WITH DEPENDENT CHILDREN (AFDC) PROGRAM, PARTS 9500.2060 TO 9500.2880.

MINNESOTA DEPARTMENT OF HUMAN SERVICES

STATEMENT OF NEED AND REASONABLENESS

INTRODUCTION

The above-entitled rule amendments are authorized by Minnesota Statutes, section 256.851 which requires the commissioner of human services to adopt rules necessary to implement the AFDC program.

The proposed amendments incorporate changes in federal and state law and clarify certain provisions that have been the source of some confusion in the past. The proposed rules also bring the AFDC program into conformity with food stamp policy to the extent permitted by federal law. Consistency between the AFDC and food stamp programs is necessary and reasonable because of the statewide automated eligibility project (MAXIS) that the department is developing. This project will computerize eligibility determination for the AFDC and food stamp programs. The greater the similarity between the two programs, the simpler and less costly it will be to program the MAXIS system and administer the AFDC program.

The proposed rule amendments have been developed in consultation with an advisory committee composed of representatives from counties, service providers, legal aid and the department of jobs and training. This committee met twice to discuss various drafts of the proposed amendments. The language of the proposed rules reflects input received from this committee.

SPECIFIC RULE PROVISIONS

The above-entitled rules are affirmatively presented by the department in the following narrative in accordance with the provisions of the Minnesota Administrative Procedure Act, Minnesota Statutes, chapter 14 and the rules of the Attorney General's Office.

9500.2060 DEFINITIONS.

Subpart 35. County of financial responsibility. This amendment simply adds a reference to Minnesota Statutes, chapter 256G, the Minnesota Unitary Residence and Financial Responsibility Act. This Act was enacted in 1987. The reference is necessary to ensure consistency between the AFDC rule and the state statute.

Subpart 39. Dependent child. This amendment changes the definition of a dependent child who is 18 years of age or older. The amended definition continues to limit dependency status to full-time students. The changes to this definition are necessary and reasonable because they make the definition consistent with federal regulations. These regulations permit a state to consider 18 year old children as dependents only if the children are "full-time students in a secondary school, or in the equivalent level of vocational or technical training . . .." 45 CFR §233.90(b)(3). The language of the proposed amendment is identical to the language in federal law.

Subpart 58. Full-time student. The proposed amendment to this definition deletes the language that specifies the attendance requirements for full-time student status. The deleted language identifies 20 hours per week of classroom attendance or some combination of classroom attendance and employment activity as the minimum threshold of full-time student status. As amended, this subpart defines full-time attendance in accordance with the standard in place at the school the recipient is attending. This change is necessary to simplify administration of the AFDC program and make it consistent with food stamp policy. The change is reasonable because it simplifies adminstration of the AFDC program and makes the rule consistent with food stamp policy in a manner that is consistent with federal law and acceptable to the advisory committee.

Subpart 90. Minor caretaker. Currently, this subpart defines minor caretaker to include both individuals under age 18 and 18-year-olds who are full-time students. This is inconsistent with federal regulations which define minor caretaker as someone "under the age selected by the state pursuant to section 233.90(b) **without regard to school attendance** (emphasis added)." 45 CFR §233.20(a)(3)(xviii). Therefore, the proposed amendment to this definition deletes the language that includes 18-year-old full-time students as minor caretakers. This change is necessary to make the AFDC rule consistent with federal regulations.

Subpart 113. Recipient. Currently, this subpart defines recipient to exclude individuals who return "uncashed assistance checks." The proposed amendment expands the exclusion slightly to include the failure to access an assistance payment by electronic transfer. This expansion is necessary to bring the rule up to date with current operating procedures which permit the payment of assistance by electronic transfer. Failure to access cash assistance by electronic transfer is analogous to failure to cash a benefit check. As such, the proposed amendment is reasonable because it accords the same treatment to both situations in defining the term recipient.

Subpart 118. Residence. This entire subpart defining the term residence is deleted. This change is necessary and reasonable because residency is an eligibility factor. As such, residency is more properly explicated in the eligibility section of the rule (part 9500.2140). A definition of the term in the definition section of the rule is potentially confusing to the extent it differs from the more complete description of residency in the section on eligibility. The current definition in this subpart is also inaccurate because of the 1987 enactment of the Minnesota Unitary Residence and Financial Responsibility Act. This Act repealed the statute referenced in the current definition and replaced it with residency provisions that are applicable to all income maintenance programs administered by the commissioner.

9500.2100 APPLICATION FOR ASSISTANCE.

Subpart 4. Assessment of and issuance for initial needs. This subpart requires a local agency to determine whether an applicant has emergency needs that must be met through emergency assistance before determining whether the applicant is eligible for AFDC. The proposed amendment to this subpart deletes language that specifies when emergency assistance payments must be counted as AFDC payments. Deletion of this language is necessary and reasonable because the statutory authority on which the language is based was eliminated in the 1988 legislative session. See Laws 1988, chapter 689, article 2, section 135.

Subpart 6. Processing application. This subpart currently requires local agencies to process AFDC applications within 45 days of the date of application. The proposed amendment to this subpart changes the time period to 30 days. This change is necessary and reasonable because the 30 day period is now required by state statute as amended in the 1988 legislative session. Id.

Subpart 9. Additional applications. The proposed amendment to this subpart permits the use of addendums to existing AFDC applications as a way of adding mandatory and non-mandatory individuals to an assistance unit. The amendment also provides for different eligibility dates depending on whether the new assistance unit member is a mandatory or non-mandatory individual. Eligibility for a mandatory member of the assistance unit begins with the date the new member entered the home or the date the new member was required to be included in the assistance unit. Eligibility for a non-mandatory individual begins with the date the signed addendum is submitted to the local agency. The proposed language is necessary and reasonable because it makes the rule consistent with federal regulations. Federal regulations define application as a written expression of desire to receive AFDC. As such a written addendum should be sufficient to bring someone into an assistance unit if the person qualifies for AFDC as a part of that assistance unit. See 45 CFR §206.10(b)(2); and exhibit 1 (AFDC Action Transmittal, SSA-AT-86-1).

9500.2140 BASIC ELIGIBILITY REQUIREMENTS.

Subpart 2. Minnesota residence.

This subpart specifies the conditions under which the residency component of AFDC eligibility is satisfied. The proposed amendment to this subpart adds the term "voluntarily" to item B. This addition is necessary and reasonable because voluntary entry into the state is part of the definition of residency under federal law governing the AFDC program. See 45 CFR §233.40.

Subpart 5. Physical presence.

Items A to C of this subpart provide the conditions under which a caretaker's or child's temporary absence from the home will not affect eligibility. Item C, subitem (2) is amended to reference the definition of foster care in state statute. The reference is necessary to clarify the meaning of the term foster care under state law. The reference is reasonable because it ensures that the AFDC program is administered in accordance with applicable state law governing foster care.

Item C, subitem (7) provides for the continued provision of benefits when a recipient child has run away from home and another person has not made application for the child. The amendment to this subitem provides for continued benefits when a recipient child has been taken from home without the consent of the recipient caretaker or a court order and the caretaker has initiated legal action for the return of the child. This amendment is necessary to ensure that the home can be maintained for the return of the child who under the law is expected to return. The amendment is reasonable because the abduction situation is analogous to the runaway situation. In both instances the recipient caretaker is still legally recognized as the party responsible for the care and supervision of the child and in both situations the recipient caretaker does not initiate the child's departure. The two month period of continued benefits enables the recipient caretaker to maintain the home for the child's return and gives the family and/or the family court system time to resolve the situation and provide for the return of the departed child.

9500.2340 PROPERTY LIMITATIONS.

Subpart 2. Real property limitations. Item A, subitem (2) of this subpart specifies the total amount of land that can be excluded in determining eligibility for AFDC. The proposed amendment to this provision makes the provision consistent with statutory changes enacted in the 1988 legislative session. Laws 1988, chapter 689, article 2, section 124.

Subpart 3. Other property limitations. This subpart identifies the property that must be excluded in determining whether the value of an applicant's property exceeds the $1000 limit. Items A, B, H, J and Q are amended slightly to add clarity and consistency with other laws and policies.

Item A provides for the exclusion of one motor vehicle when its equity value does not exceed $1500. Currently, this subpart uses the loan value listed in the N.A.D.A. Used Car Guide as the basis for determining the equity value of a vehicle. The proposed amendment to this subpart bases the equity value of a vehicle on its average trade-in value instead of its loan assessment. This change is necessary and reasonable because it makes this provision consistent with state food stamp policy. See Food Stamp Manual, section V-A(i). The trade-in value is also more accurate than the average loan value as an approximation of fair market value. Therefore, trade-in value is more precise in implementing federal regulations which provide for the determination of equity by reference to fair market value. See 45 CFR §233.20(a)(3)(ii)(F)(4).

Item B currently provides for the exclusion of personal property needed to produce earned income, including tools, implements, farm animals and inventory. It does not exclude motor vehicles used to provide transportation of persons or goods. The proposed amendment to this item expands the exclusion to encompass checking and savings accounts used exclusively for the operation of a self-employment business and any motor vehicle if the vehicle is essential for the operation of a self-employment business. The amendment is necessary and reasonable because it makes this rule provision consistent with current federal AFDC regulations and state statute. See Minn. Stat. §256.73 subd. 2; and exhibit 2 (November 26, 1986 letter from United States Department of Health and Human Services to Commissioner Levine).

Item H currently provides for the exclusion of money held in escrow under part 9500.2380, subpart 7, item B, by a self-employed person, when the money is used for those purposes at least quarterly. The proposed amendment to this item requires use of the escrow money "annually" rather than quarterly. The amendment is necessary and reasonable because the expenses for which the money would be retained in escrow under part 9500.2380, subpart 7, item B are generally annual expenses. The expenses listed include employee tax withholding, property taxes and "other costs which are commonly paid at least annually . . .." The amendment to this item makes it consistent with part 9500.2380, subpart 7, item B which it references.

Item J currently provides for the exclusion of income received in a budget month until the end of a corresponding payment month. The proposed amendment expands the exclusion to apply to income received during the course of the budget month, without regard to the payment month. This change is necessary and reasonable because it makes the AFDC rule consistent with the practice in other public assistance programs and will reduce quality control errors in the AFDC program.

Item Q is added to the list of exclusions in this subpart. The proposed item excludes lump sums from resources. Lump sums that create a period of ineligibility are excluded from the date of receipt through the period of ineligibility. Lump sums that do not create a period of ineligibility are excluded only through the budget month.

Lump sums are treated as income in the month they are received. As such, the receipt of a lump sum can make a recipient ineligible for AFDC by placing a recipient above the income limits of the AFDC program. When a lump sum exceeds a recipient's standard of assistance for more than one month then the lump sum is budgeted over successive months until it is exhausted. This can result in an ineligibility period that can span several months or more. See 45 CFR §233.20(a)(3)(ii)(F)(months of an AFDC family's ineligibility is "derived by dividing the sum of the lump sum income and other income by the monthly need standard for a family of that size.")

The exclusion of lump sums as proposed in this item is necessary and reasonable because, under federal law, money cannot be considered both income and a resource simultaneously. Since lump sums are treated as income, it is necessary to exclude lump sums from resources when determining whether a person is eligible for AFDC. See 45 CFR §233.20(a)(3)(ii)(E)(income and resources must be reasonably evaluated).

A lump sum that does not create a period of ineligibility is treated as income through the end of the budget month. As such, it is reasonable to exclude the lump sum from resources only for that month. A lump sum that creates a period of ineligibility is budgeted as income over more than one month. Therefore, it is reasonable to apply the resource exclusion for lump sums accordingly so that a lump sum is excluded from resources for the entire time during which it is counted as income but no longer.

9500.2380 INCOME.

Subpart 2. Excluded income.

Items F through H currently exclude certain types of educational grants and loans from income. The proposed amendments to these items would exclude all educational grants and loans, including income from work study programs. These amendments are necessary and reasonable because of statutory changes to Minnesota Statutes, section 256.74, subd. 1, item 2, enacted in 1987. The statutory changes broadened the exclusion relating to educational grants and loans to include all such income. The rule changes merely conform to these statutory changes.

Item M of this subpart currently excludes insurance payments that are designated as compensation for the loss of function or a body part or for the payment of medical bills. The proposed amendment to this item would limit the exclusion to the portion of an insurance settlement that is designated and used to pay medical, funeral and burial expenses, or to repair or replace insured property. The amendment is necessary and reasonable because it makes this provision consistent with Minnesota Statutes, section 256.74, subdivision 1, clause (7). It also brings this provision into conformity with governing federal regulations. See 45 CFR §233.20(a)(3)(ii)(F) (nonrecurring income received to cover medical, funeral, burial or resource replacement costs is excluded from the AFDC income calculation only if the income is "used for the purpose for which it is paid.").

Item O currently excludes assistance payments made to correct underpayments in a previous month. The amendment to this item requires local agencies to exclude such a corrective payment when determining an assistance unit's income and resources in the month when the payment is made and in the following month. This amendment is necessary to make the rule provision consistent with statutory changes enacted by the 1988 legislature. See Laws 1988, chapter 689, article 2, section 128. The amendment is reasonable because it is identical to the language in the 1988 legislation.

A new item AA is added to this subpart. This new item excludes family subsidy program payments made from state funds to cover the special needs of families with children with mental retardation or related conditions. This addition is necessary and reasonable because federal regulations require the exclusion of state-funded family subsidy payments. See 45 CFR §§233.20(a)(4)(iv) and 233.20(a)(3)(vii).

Subpart 6. Self-employment deductions.

Items A through N of this subpart specify the costs that cannot be deducted as self-employment expenses. The proposed amendment to item F of this subpart would specify the "maximum standard mileage rate" in the Internal Revenue Code as the limit on deductible transportation costs. The amendment is necessary to clarify that the standard mileage rate referred to in this item does not include other IRS adjusted rates. The amendment is reasonable because it codifies department intent and current practice. It also ensures that this provision will be applied uniformly throughout the state as required by federal regulations. See 45 CFR §233.10(a)(1)(iv).

Subpart 7. Self-employment budget period.

This subpart currently provides that gross receipts from self-employment must be budgeted in the month in which they are received. The subpart also provides that, with certain exceptions, self-employment expenses must be budgeted against gross receipts in the month in which the expenses are paid.

The proposed amendment to this subpart adds language that delineates the start of the self-employment budget period. The amendment identifies the month of application as the beginning of the budget period for AFDC applicants and identifies the first month of self-employment as the beginning of the budget period for recipients. The department has received a large number of policy interpretation requests concerning the meaning of the self-employment budget period for AFDC clients. Therefore, the amendment to this subpart is necessary to clarify the meaning of self-employment budget period. The amendment is reasonable since it codifies current practice. Moreover, the amendment ensures that the budget period reflects the actual period of time during which the applicant or recipient is receiving self-employment income.

Subpart 9. Rental income.

This subpart currently provides that income from rental property must be considered self-employment earnings when "effort is expended by the owner to maintain or manage the property." The proposed amendment equates income from rental property with self-employment earnings when the owner spends an average of 20 hours per week on maintenance or management of the property. The change is necessary to make AFDC policy consistent with food stamp policy. The amendment is reasonable because it will enable department and county staff to coordinate the implementation of the AFDC and food stamp programs. It is also reasonable inasmuch as it will provide a meaningful, enforceable standard to apply in determining whether a recipient is really maintaining or managing rental property.

9500.2420. DOCUMENTING, VERIFYING AND REVIEWING ELIGIBILITY.

Subpart 4. Factors to be verified.

The amendments to this subpart are all based on the recommendations of the AFDC Client Verification Committee. Creation of this committee was mandated by Minnesota Statutes, section 256.73, subdivision 7. This committee is composed of state and county workers, legal services staff and a former and current AFDC client. The committee's statutory purpose was to recommend and implement ways to reduce verification procedures at the local level.

Item A, subitem (2) currently requires verification of the age and citizenship or resident alien status of each adult and child applying for assistance. The amendment to this provision eliminates verification of age unless age is required to establish eligibility. The amendment also eliminates verification of citizenship and resident alien status. These changes are necessary to expedite the eligibility determination process and make procedures in the AFDC program consistent with those in the food stamp program. The changes are reasonable because they were recommended by the AFDC Client Verification Advisory Committee and are within the parameters of federal law and state statute. Age verification will still be required when age is a basis of eligibility such as in the case of an 18 year old who is eligible until age 19 on the basis of full-time student status. See 45 CFR §233.10(b)(2)(ii)(a)(1). Verification of citizenship may still be required under certain conditions pursuant to item C.

Item A, subitem (3), as proposed, requires verification of the identity of each adult applying for assistance. This verification requirement is necessary to ensure that AFDC procedures are consistent with procedures in the food stamp program. The requirement is reasonable because it was recommended by the AFDC Client Verification Advisory Committee and is consistent with state and federal laws governing the AFDC program.

Item A, subitem (4), as proposed, restates the current requirement of subitem (2) that the resident alien status of each adult and child applying for assistance be verified. However, the proposed rule adds to the current requirement by limiting mandatory verification of alien status to applicants/recipients who indicate that they are not U.S citizens. The addition is reasonable because resident alien status is not relevant to AFDC eligibility if the applicant for assistance is a U.S. citizen. The addition is also reasonable inasmuch as it was recommended by the verification committee and is consistent with the department's statutory mandate to reduce verification procedures. Minn. Stat. §256.73 subd. 7.

Item A, subitems (7), (11), (12) and (13) of the current rule are all WIN-related requirements. The proposed rule deletes these requirements. The deletions are necessary and reasonable because the WIN program has been eliminated.

Item A subitem (9) requiring the verification of marital status is deleted by the proposed rule amendments. This deletion is reasonable because it was recommended by the verification committee.

Item A, subitem (11), as proposed, requires verification of residence. This requirement is necessary because residence is a condition of eligibility for AFDC under federal law. See 45 CFR §233.40. The requirement is reasonable because it is acceptable to the verification committee and will help ensure accurate eligibility determinations, thereby reducing the risk of quality control errors and the loss of federal financial participation.

Item B, subitem (6) currently requires verification of dependent care costs of an employed caretaker when the costs are acknowledged by the applicant/recipient or obtained through a federally mandated verification system. The proposed amendment to this subitem limits verification of these costs to the time of AFDC application or eligibility redetermination or at the time a change in provider is reported. This change is necessary to eliminate unnecessary verification. The change is reasonable because dependent care costs determined at the time of application or redetermination are unlikely to change unless the recipient's provider changes. The verification committee approved this proposed amendment as a reasonable means of expediting the eligibility determination process.

Item B, subitem (7) currently requires verification of the number of hours a person is absent from a child when the person is exempt from WIN on the basis of child care responsibilities. The proposed rule deletes this provision because the WIN program has been eliminated. The deletion is necessary and reasonable in light of the elimination of the WIN program.

Item C currently permits the verification of certain eligibility factors not identified in item A or B if the verification is based on (1) reasons documented in the case file, or (2) written procedures that identify the circumstances which may require additional verification. The proposed

amendment to this item allows verification of a factor not identified in item A or B if based on reasons documented in the case file or if based on unique circumstances that the Department has approved as justifying verification of the factor on a county-wide basis.

The factors that may be verified under item C are listed in subitems (1) through (6). The proposed rule replaces residence with citizenship as a permissible verification factor under subitem (4). This change is necessary to make the provision consistent with item A which, as proposed, eliminates citizenship as a mandatory verification factor. The change in this item is reasonable because it recognizes that citizenship is a condition of AFDC eligibility under federal law. 45 CFR §233.50. As such, verification of citizenship may be necessary in specific instances where false claims of citizenship are suspected or in some counties where false claims of citizenship have been a problem. The amendment to subitem (4) ensures that counties have the authority to verify citizenship where justified and, consequently, to avoid quality control errors that could result in the loss of federal financial participation.

The proposed rule leaves marital status subject to possible verification under subitem (5). However, the proposed rule eliminates the reference to mandatory verification of marital status under item A, subitem (9). Elimination of this reference is necessary and reasonable because mandatory verification of marital status is eliminated by the proposed rule. The reasons for eliminating mandatory verification of marital status are discussed above in reference to item A, subitem (9).

9500.2440 FAMILY COMPOSITION AND ASSISTANCE STANDARDS.

Subpart 2. Filing unit composition.

This subpart identifies who must be included in the filing unit for AFDC application purposes. The subpart provides for the inclusion of "all blood related and adoptive minor siblings of the dependent child." The proposed amendment to this subpart lists half-siblings for inclusion in the filing unit. This addition is necessary because the department has received a large number of policy interpretation requests asking whether half-siblings should be included in the filing unit. It is reasonable to include half-siblings in the filing unit since federal law requires the inclusion of "any blood-related or adoptive brother or sister." 45 CFR §206.10(a)(1)(vii)(B). Half-siblings are, by definition, blood-related relatives. Listing half-siblings in this subpart will provide needed clarification on filing unit composition.

Subpart 5. Application of standards.

Item D of this subpart currently applies the child standard of assistance to an assistance unit that has no adult member because the parents do not have income to meet the needs of the children and are excluded from the assistance unit due to noncooperation with WIN or child support enforcement. The proposed amendment to this subpart changes the cross-references to the rule's WIN provisions. This change is necessary because of previous rule changes which repealed the rule parts referenced in this item and replaced them with new rule parts which contain substantially the same language. The change is reasonable because it ensures the continued implementation of the language formerly contained in the rule parts that have

been repealed. The proposed amendment also eliminates the parents' income as a determinant of the applicable standard of assistance. This change is necessary and reasonable because the United States Department of Health and Human Services (federal agency) has indicated to the department that the payment standard cannot be based on the income of certain family members, including sanctioned parents.

9500.2500 AFDC ELIGIBILITY TESTS.

Subpart 2. When to terminate.

This subpart currently provides for the termination of assistance when an assistance unit is prospectively ineligible for AFDC for at least two consecutive months. The proposed amendment to this subpart requires a local agency to apply the payment eligibility and gross income tests to determine whether an overpayment was made during one or both of the two months prior to the payment month in which a recipient was terminated because of excess income. The amendment is necessary to clarify how overpayments should be determined. The amendment is reasonable because it is consistent with federal regulations as interpreted by the federal agency in a letter from Kay Willmoth to Commissioner Levine dated August 19, 1986. See exhibit 3.

Subpart 4. Gross income test.

Items A to G of this subpart identify the income that must be considered in the gross income test. Under item G, subitem (3), the gross income test must consider a stepparent's income minus $75 for work expenses when employment equals or exceeds 30 hours per week or $74 when employment is less than 30 hours per week. The proposed amendment to item G eliminates the $74 deduction for employment of less than 30 hours and simply requires the deduction of $75 for work expenses regardless of the number of hours worked. This change is necessary to ensure compliance with federal law which provides for the disregard of $75 dollars of a stepparent's work expenses. See AFDC Action Transmittal, FSA-AT-87-4; and Public Law 99-514, section 1883(b), Exhibit 5. The change is reasonable because it is consistent with governing federal law.

9500.2580, B. EMPLOYMENT DISREGARDS

This part currently allows parents who are part of the assistance unit to receive monthly deductions for care of dependents. A parent may deduct $160 per dependent when employment equals or exceeds 30 hours per week, or $159 per dependent when employment is less than 30 hours per week.

The proposed amendment to this part does three things: 1) it classifies dependents into those two and older and those under age two. 2) it increases the deductible amount for a parent who works 30 or more hours per week to $175 per dependent age two or older and $200 per dependent under age two. 3) it increases the deductible amount for a parent who works less than 30 hours per week to $174 per dependent age two or older and $199 per dependent under age two. This amendment is necessary to make the rule consistent with the Family Support Act of 1988 (Public Law 100-485) and Minnesota Statutes section 256.74, subd. 1(5). The amendment is reasonable because it fully and accurately reflects the language of the Family Support Act of 1988 and the language of 1988 state legislation.

9500.2640 CORRECTION OF OVERPAYMENTS AND UNDERPAYMENTS.

Subpart 4. Recouping overpayments from a current recipient.

This subpart currently provides for recoupment of an overpayment by reducing monthly assistance payments to an amount which, when added to anticipated net income and liquid assets, equals 95% of the AFDC family allowance. This subpart provides for a reduction to 99% of the family allowance when the overpayment was due in whole or in part to agency error.

The proposed amendments to this subpart do three things: (1) they provide expressly for voluntary repayment of an overpayment; (2) they remove liquid assets from the recoupment calculation; and (3) they provide for reduction of a client's payment by 3% of the assistance unit's AFDC family allowance for recoupment purposes once a state computerized client eligibility and information system is implemented in one or more counties. The 3% reduction level applies regardless of whether responsibility for the overpayment rests with the client or the agency. The amendments to this subpart are necessary to make the rule consistent with legislative changes enacted by the 1988 legislature. See Laws 1988, chapter 689, article 2, section 126. The amendments are reasonable because they fully and accurately reflect the language in the 1988 legislation.

Subpart 5. Determining net income.

This subpart specifies how to calculate a client's net income for purposes of recoupment. The amendment to this subpart simplifies the calculation such that net income is determined by deducting the following from earned income: (1) the first $75 of each individual's earned income; (2) expenses directly related to and necessary for the production of goods and services; and (3) an amount equal to the actual expenditures, not to exceed the $175 or $200 limit as stated in part 9500.2580, subpart B, for persons not engaged in full-time employment, for the care of each dependent child or incapacitated individual living in the same home and receiving aid. The amendment is necessary to make the rule consistent with statutory changes enacted by the 1988 legislature. See Laws 1988, chapter 689, article 2, section 126. The amendment is reasonable because it provides for the determination in accordance with this 1988 legislation.

9500.2680 PAYMENT PROVISIONS.

Subpart 1. Payments.

This subpart sets forth time limits for mailing monthly assistance payments and replacement checks. The amendment to this subpart extends these timeliness requirements to payments that are made by means other than check.

The amendment is necessary because of the advent of the electronic benefit system in some counties which provides AFDC assistance by dispensing cash electronically. The amendment is reasonable because the need for prompt timely payment of benefits is no less when benefits are provided by electronic transfer than when payment is by check.

Subpart 2. Protective, vendor and two-party payments; when allowed.

See justification under subpart 4 below for the reason why a review of the need for and method of payment (protective, vendor or two-party agreement) is extended from 6 months to 12 months. This subpart has simply been changed to be consistent with the change in subpart 4.

Subpart 3. Choosing payees for protective, vendor and two-party payments.

This subpart currently requires the local agency to consult with a caretaker regarding the selection of a protective payee. The amendment to this subpart requires the local agency to notify the caretaker of a consultation date. It permits the local agency to choose a protective payee without client consultation if the client fails to respond to the request for consultation by the effective date of the notice. The amendment is necessary to ensure the appropriate use of protective payees when a caretaker fails to respond to a notice requesting consultation. Currently, the AFDC rule permits the use of protective payees under certain specified circumstances, including situations where the caretaker has exhibited a continuing pattern of mismanaging funds. Without the proposed amendment, caretakers can avoid the otherwise authorized use of protective payees simply by refusing to meet with local agency staff to consult on the choice of a payee. The amendment is a reasonable means of ensuring that counties can exercise their authority to use protective payees.

Subpart 4. Discontinuing protective, vendor, and two-party payments.

This subpart specifies when protective, vendor or two-part payments must be discontinued. The amendments to this subpart (1) change the rule part references to the WIN program, and (2) change the mandatory review of a protective payee's performance from once every six months to once every twelve months. The change in rule part references is necessary and reasonable because of the adoption of rule amendments in 1988 which placed the WIN provisions in different rule parts. The actual language of the WIN provisions has not been altered. The change in the review requirement is necessary because mandatory six month reviews were excessively burdensome and unnecessary. The twelve month interval for reviews is reasonable because twelve months is the time period specified in federal regulations. 45 CFR §234.60(a)(9).

9500.2700 APPLICANT AND RECIPIENT RESPONSIBILITIES.

Subpart 5. Household reports.

The amendment to this subpart eliminates item B which provides for the termination of assistance when a household report form is not received by the local agency until after the month in which the form is due. The item also requires reapplication to reinstate assistance. The amendment to this subpart is necessary and reasonable because of statutory changes enacted by the 1988 legislature. See Laws 1988, chapter 689, article 2, section 125. This change in the statute provides that the late submittal of reports does not require reapplication.

Subpart 6. Late household report forms.

The amendment to this subpart provides for the reinstatement of benefits without reapplication when the recipient submits a complete household report form within a calendar month after the month in which assistance was

received. This amendment is necessary and reasonable because of statutory changes enacted by the 1988 legislature. See Laws 1988, chapter 689, article 2, section 125. The amendment to this subpart simply inserts the language added to statute in 1988.

Subpart 9. Requirement to provide social security numbers.

This subpart currently requires an applicant or recipient to provide the local agency with his or her social security number. The amendment to this subpart extends this requirement to all members of the assistance unit. The amendment is necessary to make the rule consistent with federal regulations which define "applicant or recipient" for purposes of providing social security numbers as "the individuals seeking or receiving assistance and any other individuals whose needs are considered in determining the amount of assistance". 45 CFR §205.52(e). The amendment is reasonable because the definition of assistance unit in part 9500.2060, subpart 15 of the rule is essentially identical to the definition of applicant or recipient in the relevant federal regulation. Moreover, a letter from Kay Willmoth to Commissioner Levine dated May 16, 1986 indicates that the federal agency believes that the federal regulation requires the social security numbers of all assistance unit members. See exhibit 4

Subpart 12. Good cause exemption from cooperating with support requirements.

Item H of this subpart is amended to allow counties to pursue child support without the caretaker's cooperation when a caretaker has good cause for not cooperating. This amendment is necessary because there are some situations where caretaker cooperation is not needed to obtain child support and it is wasteful to spend state and federal AFDC dollars as a substitute for the legal obligation of a child's parent. The amendment is reasonable because it is consistent with federal regulations which permit states to pursue child support without the participation of a caretaker when the caretaker has good cause for not cooperating if the support can be pursued without the risk of harm to the child or caretaker relative. 45 CFR §232.49(a) and (b).

9500.2740 APPLICANT AND RECIPIENT RIGHTS AND LOCAL AGENCY RESPONSIBILITIES TO APPLICANTS AND RECIPIENTS.

Subpart 7. Mailing of notice.

This subpart currently provides for a notice of action to be sent to a recipient no later than the effective date of the action when a recipient submits a monthly or quarterly household report form that requires an adverse action be taken. The amendment to this subpart consists of deletion of the quarterly household report form. This amendment is necessary as it has not been shown to reduce the error rate among recipients who have no earned income and to reduce county expenditures incurred processing household report forms. This amendment is consistent with the requirements of 45 CFR 233.28 (a).

Subpart 13. Right to protection.

This subpart currently provides for the referral of a minor caretaker to the local agency's social services unit when the caretaker does not live with his or her parent or legal guardian. It also requires the local agency to

inform the caretaker that assistance is not conditioned on the caretaker's cooperation with the social services unit. The amendments to this subpart exempt minor caretakers from referral if they live in a group or foster home licensed by the Department. The amendments also require the local agency to inform minor parents that their assistance may be paid in the form of protective or vendor payments if they do not cooperate in the development of or participate in a social service plan. These changes are necessary to make the rule consistent with changes in state statute enacted in 1988. See Laws 1988, chapter 689, article 2, section 132. The amendment that extends the exemption from referral to minor caretakers in licensed foster care is reasonable because the exemption was extended in this way by the 1988 changes in state statute. The amendment that requires local agencies to inform parents of the protective/vendor payment sanction for noncooperation in the development of a social service plan is reasonable because these sanctions are applicable under the 1988 statutory changes. It is reasonable to inform recipients of the sanctions that could be imposed on them.

9500.2800 AFDC PAYMENTS FOR FUNERALS, HOUSING AND SPECIAL NEEDS.

Subpart 3. State appropriation for special needs.

This subpart currently provides for the quarterly reallocation of remaining special needs funds to counties that spent special needs funds in excess of their allocations. The amendment to this subpart does three things. First, when the statewide allocation is underspent it provides for reallocation to all counties once counties that exceeded their allocations have been compensated. Second, when the statewide allocation is overspent, it provides for the reallocation of unspent funds from counties that underspent to counties that exceeded their allocations. Third, the amendment requires counties that exceed their allocations to reimburse the state for the state share of the overexpenditure at the end of the fiscal year.

The amendment to this subpart is necessary because of a 1988 legislative audit report which found that the department was not determining special needs payments according to agency rules as it should be. Although there is currently some language in this subpart on reallocation, the current language does not provide sufficient direction to ensure compliance. The current language is silent on what to do when the special needs allocation is overspent and it says nothing about reimbursement for the state share of an overexpenditure. Furthermore, the current language does not provide any guidence on what to do with any excess funds once the overspent counties have been compensated.

The amendment to this subpart is reasonable because, unlike the current language, it provides for the proportionate reallocation of special needs funds to local agencies according to AFDC assistance units served by each local agency. Moreover, the amendment will be administratively more efficient since it will allow reallocation to be done in one step instead of the current four step process. The amendment will ensure that all counties are treated fairly. A county that overspends its special needs allocation does so because of a greater demand in that county for the use of special needs funds. Therefore, it is reasonable to allocate excess special needs funds to these counties before distributing the excess statewide. Similarly, it is reasonable to redistribute funds from counties that underspend to counties that overspend since those that overspend clearly have a greater demand for special needs funds than the counties that do not exceed their allotment.

Subpart 8a. Employment preparation expenses.

Part 9500.2800 is amended by adding this subpart. The subpart permits local agencies to pay for child care, transportation, tuition, and other incidental expenses related to employment preparation if funds for the non-federal share of employment special needs expenses are available. The subpart, however, also imposes a number of restrictions on special needs payments for employment preparation. Items A to G specify these restrictions.

The authority for local agency payment of employment preparation expenses out of the non-federal share of the employment special needs funds is necessary to ensure that available special needs funds are used to help recipients prepare for employment. It is reasonable to pay a recipient's employment preparation expenses out of the special needs funds because preparation is critical to obtaining the permanent, self-sustaining employment that can end the recipient's dependence on AFDC. It is necessary to specify the restrictions on the use of these special needs fund to comply with federal law which requires the state agency to "describe [the special needs] that will be recognized and the circumstances under which they will be included." 45 CFR §233.20(a)(2)(v).

Item A restricts payments under this subpart to expenses that are the obligation of the recipient. This item is necessary to ensure that special needs payments go only to those who are actually entitled to special needs benefits. The restriction is reasonable because special needs payments are part of the AFDC grant and therefore cannot be provided to individuals who are not AFDC recipients.

Item B requires the local agency to determine whether other funding sources are available to cover all or part of the recipient's special needs expense. The item then restricts the special needs fund to expenses that cannot be met through other funding sources. The item further provides that educational grants and scholarships are considered available resources only when considering an employment special need payment for tuition. Restricting the fund to expenses that cannot be met through other funding sources is necessary to ensure that services are not duplicated and that employment special needs funds are used only as a last resort. The restriction is reasonable because the special needs program was designed as a supplemental program of last resort. It is reasonable to consider educational grants and scholarships available only for tuition because the special needs program is intended to help recipients obtain the services and training needed to become self-sufficient. Applying educational assistance to non-tuition related special needs could discourage recipients from seeking such assistance and ultimately from seeking further education. This would undermine the purpose of the special needs program.

Item C requires that the expense be documented in an employability plan developed by an individual or agency approved by the local agency to develop employability plans. This requirement is necessary to ensure that the expense is truly related to employment and that the service being purchased will be appropriate for the recipient's situation and skill level and will have a reasonable chance of improving the recipient's employability. The requirement is reasonable because it promotes the efficient, effective use of resources available for employment special needs.

D. Item D requires the local agency to provide pre-payment approval for the expense. This item is necessary to ensure that payments are made for services that are allowable under this subpart and likely to help prepare the recipient for employment. The item is reasonable because it helps prevent the waste of limited resources in the special needs fund.

E. Item E prohibits a local agency from making special needs payments for expenses directly related to on-the-job activities, including work study jobs of an employed recipient. This item is necessary to ensure compliance with federal regulations which prohibit the use of special needs for expenses resulting from employment or participation in CWEP or employment search. 45 CFR §233.20(a)(2)(v). This item is reasonable because it incorporates the requirement contained in federal regulations.

F. Item F prohibits a local agency from making special needs payments for expenses resulting from participation in the Community Work Experience Program (CWEP) or the Employment Search Program (ESP). This item is necessary to ensure compliance with federal law which provides that "work expenses and child care . . . resulting from employment or participation in a CWEP or an ESP cannot be special needs." 45 CFR §233.20(a)(2)(v). This item is reasonable because it essentially recapitulates the federal regulation that it seeks to implement.

G. Item G requires the local agency to make payment for employment preparation expenses directly to the recipient unless the recipient requests vendor payment. Item G also identifies the specific employment preparation expenses covered by employment special needs under this subpart. It is necessary to identify these expenses to comply with federal law which requires the state agency to "describe [the special need items] that will be recognized and the circumstances under which they will be included". 45 CFR §233.20(a)(2)(v). It is reasonable to include the expenses listed in subitems 1 to 6 because payment for these expenses is commonly recognized as a barrier which prevents recipients from participating in employment preparation activities.

Subpart 10. Post payment verification.

The addition of this subpart does two things: 1) it ensures that the special need payments are used by recipients as authorized by the county agency; 2) it also provides that any special need payment be considered an overpayment if verification as described above is not received by the county agency. This amendment is reasonable and necessary because it assures that special need payments are treated as assistance payments and therefore subject to the overpayment provisions as described in federal regulations. See CFR 45 233.20 (a)(2)(v), and 233.20 (a)(13).

9500.2820 **EMERGENCY ASSISTANCE.**

Subpart 15. Termination of utility service.

This subpart provides for the payment of assistance on an emergency basis when one of more of a recipient's utilities is terminated or threatened with termination. The subpart also sets forth limitations in items A and B on the provision of emergency assistance for utilities. The amendments to this subpart consist of the deletion of subitems (1) and (2) in item B and the addition of an item C. The deletions in item B are necessary and

reasonable because by their terms they are effective only between October 1, 1986 and September 30, 1988. The proposed item C provides that the limitations in items A and B cannot be construed to prevent the issuance of emergency assistance when the assistance is necessary to protect the life or health of a child. This is necessary and reasonable because the overriding purpose of the state statute and federal law providing for emergency assistance is to protect the life and health of children. This proposed item ensures that the purpose of emergency assistance as intended by Congress and the State Legislature takes precedence over the limitations on emergency assistance imposed by items A and B.

Subpart 16. Amounts of payment.

The deletions in this subpart are necessary and reasonable because the language being deleted is, by its terms, no longer effective.

9500.2880 COUNTY OF RESPONSIBILITY POLICY AND DISPUTES.

Subpart 1. Determining the county of financial responsibility.

This subpart deals with situations where an assistance unit includes members who have been the financial responsibility of a number of different counties. The current rule assigns financial responsibility in these situations based on the number of children in the assistance unit and the relative age of the children. The proposed rule changes the basis for assigning financial responsibility. It assigns financial responsibility to the county initially responsible for the assistance unit member with the earliest date of application. This change is necessary to comport with the change made to state statute in 1987 with the passage of the Minnesota unitary residence and financial responsibility act. The change is reasonable because it incorporates this statutory change. See Minnesota Laws 1988, chapter 719, article 8, section 26.

Subpart 2. Change in residence.

This subpart is amended to incorporate provisions of the Minnesota unitary residence and financial responsibility act concerning nonexcluded status. This subpart is necessary to ensure compliance with the act. It is reasonable because it makes clear that a county assumes financial responsibility for a recipient only if the recipient has resided in the county in "nonexcluded status" for two calendar months as required by statute. See Minn. Stat. §256G.07 subd. 1. It is also reasonable not to apply the two month delay in transfering financial responsibility when the dependent child is simply moving from one caretaker to another. If the delay were applied to such a situation the caretaker without the child would receive assistance meant to benefit the child.

Subpart 4. Excluded time.

The current subpart 4 is entitled "out-of-county placement." It addresses financial responsibility for recipients who move from one county to another because of placement in residential treatment or care. It assigns financial responsibility to the county of residence at the time the recipient's plan was developed and provides for the transfer of financial responsibility two months after the plan is completed. The amendment to this

subpart changes the title of the subpart and replaces the current language with language that assigns financial responsibility based on the recipient's county of residence outside an excluded time facility. The amendment is necessary to make this subpart consistent with the Minnesota unitary residence and financial responsibility act. The amendment is reasonable because it is consistent with the unitary residence act which bases financial responsibility on residence in nonexcluded status and provides for the transfer of financial responsibility two months after nonexcluded residency in the new county. Minn. Stat. §256G.07 subdivision 1.

Subpart 5. Settlement of disputes.

This subpart provides the procedures for disputes between counties concerning financial responsibility for assistance to recipients. The amendment to this subpart necessarily deletes language that is inconsistent with the Minnesota unitary residence and financial responsibility act. The amendment is reasonable because it replaces the deleted language with language that incorporates the procedures in the unitary residence act. See Minn. Stat. §256G.09.

Expert Witnesses/Small Business

If this rule is heard in public hearing, the Department does not intend to have outside expert witnesses testify on its behalf. The proposed rule amendments do not affect small businesses as defined in Minnesota Statutes, section 14.115.

Date: 6/11/89

CHARLES C. SCHULTZ
Deputy Commissioner

Exhibit 1

CENTRAL FILE COPY

Aid to Families with Dependent Children (AFDC) Action Transmittal

U.S. Department of Health and Human Services
Social Security Administration
Office of Family Assistance

Transmittal No. SSA-AT-86-1 Date January 13, 1986

TO : STATE AGENCIES ADMINISTERING APPROVED PUBLIC ASSISTANCE PLANS AND OTHER INTERESTED PARTIES

SUBJECT : The filing unit provision at §2640 of the Deficit Reduction Act of 1984.

REGULATORY REFERENCE : 45 CFR 206.10(a)(1)(vii)

PURPOSE : To instruct States regarding proper implementation of the requirement that certain family members must file for assistance as a unit.

BACKGROUND: Under prior law, family members who lived together were not required to file for AFDC benefits as a unit; a parent filing for a dependent child could choose to include or exclude himself or herself and other potentially eligible children from the assistance unit. This allowed the family to maximize the AFDC benefit and family income. States were not able to count either income or resources of excluded individuals in determining need and payment for the eligible child, except that income of a parent was considered available to children under 21, and income of a spouse was considered available to the other spouse.

Section 2640 of DRA, which added section 402(a)(38) to the Act, requires that an application on behalf of a dependent child must include as applicants certain potentially eligible relatives living in the same household as the dependent child. Any income and resources of these relatives is counted in making the determination under section 402(a)(7).

Interim final regulations which included the assistance unit provision were published in the Federal Register on September 10, 1984. Since that time we have received numerous questions from States and other interested parties concerning all factors of the AFDC program affected by this provision. In an effort to assist States in implementing this provision until final regulations are published, we are providing the instructions below.

Additional regulatory changes and instructions will be included when the final rule is published. Nevertheless, the instructions below clarify the areas of greatest concern, as determined by the questions we have received.

INSTRUCTION: The assistance unit rule

Section 402(a)(38) of the Act requires that the following individuals, if living in the same household as the dependent child and otherwise eligible, be included in the assistance unit:

- o the parent(s) of a dependent child;
- o the brothers and sisters of the dependent child who are themselves dependent children within the age limit set by the State.

Notwithstanding the above, certain parents and siblings must be excluded from the assistance unit because they are not eligible for assistance under other provisions of the Act. For example:

- o individuals who receive SSI benefits;
- o aliens who fail to meet the citizenship and alienage requirements at section 233.50;
- o aliens who are ineligible due to the deemed income or resources of their sponsors, or due to sponsorship by an agency or organization pursuant to section 233.51; and;
- o individuals ineligible due to receipt of lump sum income.

Individuals who must be included in the assistance unit

First, any parent who is living in the same household as the dependent child must be included in the unit. "Parent", as defined in section 233.90(a)(1), includes a natural or adoptive parent and a stepparent in States with laws of general applicability holding them legally responsible to the same extent as a natural parent. In cases of eligibility due to incapacity or, in States with an AFDC-UP program, unemployment of the principal earner, both parents must be included in the assistance unit if otherwise eligible under the Act.

Second, blood-related or adoptive brothers and sisters who are living in the same household as the dependent child and who meet the eligibility requirements for AFDC must also be included in the unit.

As an example, in States without laws of general applicability, if a dependent child's household consists of his mother, stepfather and stepbrother, under the new law the assistance unit must include the dependent child and his mother. His stepfather's income would be considered available to the assistance unit after application of the stepparent income disregards (at section 233.20(a)(3)(xiv)), which would include an amount for the support of his child. If application is made on the stepbrother's behalf, he and his natural parent could receive benefits as part of the same assistance unit or as a separate unit in accordance with State policies on budgeting assistance units.

In States with laws of general applicability, the stepparent must be included in the assistance unit, since he or she is considered the same as a natural parent; however, stepbrothers and stepsisters of the dependent child need not be included in the assistance unit.

All of the income and resources of the individuals required to be included in the assistance unit must be considered in determining eligibility and payment for the assistance unit. In this connection, the statute specifically provides for the inclusion of title II benefits, notwithstanding section 205(j) of the Social Security Act. Where title II benefits are paid to a representative payee on behalf of a member of the assistance unit and the payee lives in the same household as the assistance unit, the title II benefits must be counted as income. When the representative payee does not live in the household, the title II benefits are included only to the extent that the payee makes them available for the support of the beneficiary. Prior AFDC policy, as stated in State Letter 1088, which permitted the exclusion of a child receiving title II benefits and his title II income, was revoked by the interim final regulation.

Consolidating multiple assistance unit households

When an individual is required to be in two or more assistance units living in the same household, these units must be consolidated. Two examples follow.

- A household consists of a mother and her three children. All receive AFDC. One of these children then has a baby. If an application is filed on the grandchild's behalf, it must be a member of the grandmother's unit. Previously, a State might have paid the grandchild or the grandchild and his mother as a separate unit. But the assistance unit provision requires that the minor mother be in the unit with her child and in the unit of her siblings. Thus, they must all form one unit.

  It is important to note that there is no requirement that the family seek assistance for the grandchild in the example above.

- A mother and her child live with her second husband, who is disabled, and his child. Both parents receive AFDC, but as separate units. (In this situation, there is no requirement to consolidate assistance units, though the State may choose to do so.) They then have a child. Since this child is eligible for AFDC due to the father's incapacity, the child is required to be included in the assistance units of both half-siblings. As a consequence, all five family members must be consolidated in a single assistance unit.

Outside of this policy, it is up to the State to establish policy on the number of assistance units in the household, e.g., when an individual not related to a member of an assistance unit as a parent, brother or sister lives in the household and files for assistance.

Parents and siblings who must not be included in the assistance unit.

Under the new statute, parents and siblings must be included in the assistance unit, unless they are ineligible to receive AFDC under another provision of the Act. These are people whose ineligibility is based on a specific statutory exclusion which does not involve a failure to cooperate. Some examples of individuals in this group are:

- o parents and siblings who receive SSI benefits. Section 402(a)(24) of the Act provides that an individual who is receiving benefits under title XVI cannot be considered as a member of the assistance unit nor have his income or resources considered for purposes of determining need or payment;

- o parents and siblings who are aliens and are ineligible for AFDC because they have been sponsored by an agency or organization or because of the application of sponsor-to-alien deeming provisions in accordance with section 415 of the Act and section 233.51;

- o parents and siblings who are aliens and are ineligible for AFDC because they do not meet the citizenship and alienage requirements at section 402(a)(33) of the Act and section 233.50;

- o parents and siblings previously entitled to AFDC who are ineligible due to receipt of lump sum income.

When any of the individuals listed above are no longer ineligible to receive AFDC, e.g., SSI eligibility ends, the State must include them in the assistance unit in accordance with the methods described in the section below titled "Implementation of this provision."

Treatment of sanctioned persons who are required to be included in the assistance unit

Individuals who are subject to sanction are those who are not ineligible due to a specific statutory exclusion which absolutely bars their eligibility, but rather due to a failure on their part to fulfill an eligibility requirement, such as participation in the WIN program or assignment of child support.

The income and resources of sanctioned individuals who are required to be included must be counted in determining the unit's eligibility and payment. However, in keeping with the nature of a sanction, the needs of such persons will not be included. As a result, these individuals are not to be considered recipients for purposes of the earned income disregards at section 233.20(a)(11) of the regulations.

Sanctioned individuals who are otherwise required to be included in the assistance unit are treated as follows:

- income and resources of these individuals are included in determining eligibility and payment amount of the assistance unit.

- in determining need and the amount of assistance, the needs of such individuals are excluded.

- the earned income of these individuals will be counted without providing the disregards in section 233.20(a)(11). The full amount of their income will be considered available to the assistance unit.

However, a family which is eligible for the $50 child support disregard at section 402(a)(39) of the Act will be unaffected by the sanction policy (except where the principal earner is sanctioned). This is true because the statutory language makes the $50 disregard available to the family rather than to any specific individual.

Persons who fail to cooperate

The section above describes treatment of those individuals required to be included in the assistance unit who are subject to a specific sanction provided in the regulations. We received other comments and questions regarding treatment of individuals who are required to be included in an assistance unit but fail to cooperate in some other eligibility requirement for which the regulations do not provide sanctions. This group includes those who fail to provide information about a family member required to be included in a unit and applicants who fail to comply with an initial eligibility requirement, such as enumeration or WIN registration.

In the interim final rules, we indicated that "failure to include an individual who is required to be in the assistance unit...makes the entire unit ineligible." Many commenters misinterpreted this statement as a requirement to terminate an entire family's benefits any time an individual who should have been included had not been included, or any time a member refused to cooperate. In order to determine how such individuals must be treated, the State must first determine the effect of the failure to cooperate.

If the caretaker relative does not notify the State concerning an individual required to be in the unit, the State will normally include that individual as described below under "Implementation of this provision."

There are two situations where failure to cooperate will have an effect on eligibility. When a caretaker relative refuses to provide information about an individual required to be included in the assistance unit, it may not be possible for the State to determine that unit's eligibility or payment. For example, a State learns of a

sibling's presence in a household, and requires that the caretaker provide necessary information concerning this sibling. The caretaker relative, knowing inclusion of this child and his income will reduce the family's grant, refuses. In this situation, because it does not have all information concerning the child's income, the State is unable to determine the family's eligibility or payment and must deny benefits to the entire family.

However, if an individual refuses to comply with an eligibility requirement, such as WIN registration, or enumeration, that individual will be treated in the same way as a sanctioned individual, as described above. For example, a 17 year old sibling, who is required to be included in an assistance unit, returns home. Although the caretaker promptly notifies the State of his return, he refuses to register for WIN. Rather than make the entire family ineligible, the sibling's income and resources are counted, as required by the statute, but his needs are excluded, and he is not paid any benefits.

This approach is taken so long as the failure to meet a specific requirement does not also prevent the State from adequately determining income and resources of the family. For example, if that 17 year old refuses to be enumerated, the State must determine whether it is able to accurately verify income of all family members. If the State is not able to accurately verify income of all family members, the State must deny benefits for the entire family.

Implementation of this provision

Before DRA, an individual could not be included in an assistance unit until an application was filed on his or her behalf. The statute now requires inclusion of certain individuals as of October 1, 1984, or as of the date they are required to be included in an assistance unit. However, under some circumstances a State may not be aware of such individuals until some time after the date they would be required to be included.

The following procedure is the most reasonable approach and should be followed when adding such individuals to an assistance unit.

When a State learns of an individual who is required to be included in an assistance unit the State must:

- inform the family of the requirements of the assistance unit provision;

-redetermine eligibility for the assistance unit, including income and resources of the additional individual, retroactive to the date that the individual was required to be included in the unit;

- in redetermining eligibility and the amount of payment, the State must include the needs of the additional individual;

- if the calculation results in an overpayment, the State must follow established procedures to recover or collect the overpayment;

- if the calculation results in an underpayment, payment is made only for months in which all eligibility requirements were met, such as WIN registration, enumeration, and child support assignment;

- after the family is notified of the requirements of the assistance unit provision, the individual's income and resources will be considered (as with all members of the assistance unit), but his needs will be included only from the time all conditions of eligibility are met.

Below are additional questions we have received regarding the assistance unit provision, as well as answers to those questions.

Question:

We received many questions concerning inclusion of a "non-needy" sibling who is supported by an absent parent. For example, a mother and child receive AFDC. A 16 year-old sibling, who lives with them, is receiving court-ordered support from his absent father. This support exceeds his increment of the need standard. Must this child be included?

Answer:

Yes. The statutory change introduces the concept that certain family members must file for AFDC as a unit. The congressional conference committee report for this provision clearly indicates that Congress intended to eliminate the family's option of excluding certain family members in order to maximize family benefits. This new provision is similar to the current practice in the Food Stamp program, in which the entire household is treated as a unit in determining eligibility for food stamps.

Now, in the AFDC program, in determining a family's eligibility, the State must first include as part of the assistance unit all parents, and all natural and adoptive brothers and sisters who meet the AFDC entitlement factors at section 406(a)(1) and (2) of the Act, and anyone else the family wishes to be included. Only after the State has determined which family members comprise the assistance unit does the State determine need. The need determination for the assistance unit is made considering all income and resources of all individuals in the unit. Thus, this is a two step process. First, the composition of the assistance unit must be determined. Second, income is considered in relation to the determination of need.

The 16 year old child receiving court-ordered support payments described in the comment above must be included, since he is a sibling who meets all factors of entitlement. His income would then be considered in determining need for the entire assistance unit.

Question:

Some States requested clarification of the words "otherwise eligible" as used in section 206.10 of the interim final regulation.

Answer:

"Otherwise eligible" means that the individual is not precluded from eligibility by some other provision of Part IV-A of the Social Security Act and with respect to children, means that the individual meets the requirements of section 406(a)(1) and (2). Individuals excluded under some other provision are listed in the preamble in the section titled "Individuals who must not be included." Such individuals do not include those who are ineligible solely due to some action or inaction on their part, such as failure to cooperate in WIN registration.

Question:

Must a State include both parents of an AFDC child when the parents are not married.

Answer:

Before DRA, we had stated that in incapacity and AFDC-UP cases, the second parent could receive benefits only if he or she was the spouse of the incapacitated or unemployed parent. The statute now requires that both parents be included in the assistance unit where the basis for deprivation is either incapacity or unemployment. There is no indication in the legislative history that Congress intended to include only married parents.

Question:

Must a parent who is not exercising parental responsibility, for example, a mentally incapacitated parent, be included in an assistance unit?

Answer:

Yes. In this situation, another individual would usually be the specified relative, but the parent would be included in the unit. Previously, States would not have paid both a parent and a grandparent in the same unit, unless one was included as an essential person in States with an essenti person policy. DRA introduces the concept of the parent who must be included in the unit solely due to the assistance unit provision.

Question:

States are currently permitted to include in the grant children who are away at school. How does the assistance unit provision affect this policy?

Answer:

All siblings who meet the AFDC factors of eligibility living in the household of an eligible child must be included in the unit. If the State determines that a child who is temporarily absent because he is away at school is living in the household, that child must be included in the assistance unit.

Question:

Must individuals who receive other needs-based benefits, such as state aid to the disabled, be included?

Answer:

Only those specifically excluded by the statute are not included. All eligible parents and siblings must be included.

Question:

Must an individual actually file, or does the original application include all individuals required to be included, even those who join the unit later?

Answer:

The original application includes all individuals required to be included by the assistance unit provision as of 10/1/84. Individuals required to be included who join an existing assistance unit after 10/1/84 are included in the application already on file as of the date they join the unit, or the date they are required to be included, whether by birth or adoption, or by beginning to live with the existing assistance unit. To reduce mispayments, States may wish to provide information regarding this requirement at application and, for the next redetermination cycle, to recipients.

Question:

How does the assistance unit provision affect payment of benefits to pregnant women, pursuant to section 233.90(c)(2)(iv) of the regulations?

Answer:

The regulation at section 233.90(c)(2)(iv) requires that eligibility be determined as if the "child had been born...." As a consequence of the assistance unit provision, in making this determination, the State must consider income and resources of all individuals in the household who would be required to be included in the unit when the child is born (and application is filed.) If eligibility would exist for this unit, then the pregnant woman is eligible; the State would then determine payment based on only the pregnant woman's income and resources.

Question:

What action must a State take in the following situation? A mother and her child receive AFDC. She remarries, and has a second child. Although the father appears to be disabled, he is not receiving a disability-related benefit, and has never filed for such benefits. The new child is a sibling of the eligible child and is potentially eligible for AFDC if the father meets the State's definition of incapacity. What should the eligibility worker do?

Answer:

The statute requires that the sibling must be included unless he is ineligible. Because the sibling may be eligible based on incapacity of his parent, the agency must determine the father's eligibility. (The father would also be required to be included if he is eligible.)

Question:

A mother, her minor child, and the minor's child live together. If the grandmother files for AFDC for her grandchild, who must be included in the unit? If the minor mother is included, is she treated as a parent or as a child for purposes of need and payment?

Answer:

In the case above, the minor mother must be included in the unit with her child. If the only reason she is included is the requirement that a parent file with her AFDC child, she would be considered an adult for purposes of income disregards and need and payment standards. If the grandmother, the minor mother, and the minor's child seek assistance, the State must determine who is exercising responsibility for the control and care for the grandchild. If the State determines that the minor mother is, in fact, the caretaker, then the grandmother can only be included in the unit if the State has an essential person policy. If the grandmother is not included, her income would be counted pursuant to section 233.20(a)(3)(xviii) of the regulation. If the State determines that the grandmother is the caretaker, the minor mother would still be required to be included in the unit as the parent, and would be treated as an adult. Thus, the State cannot automatically require that such a minor mother be treated as an AFDC child even in cases where the minor mother meets all AFDC eligibility factors as a dependent child. However, if the grandmother is the caretaker relative of both, and applies for both as such, the minor mother and the grandchild would both be considered dependent children.

Similarly, if a minor mother is drawn into an assistance unit as a sibling, she will be treated as an adult or as a dependent child, depending on the circumstances involved. This will occur when the minor mother has siblings living in the household who receive AFDC as dependent children.

Question:

Is there a definition of "household" for purposes of applying this provision?

Answer:

Many parts of this provision are based on the concept of "living in the same household". Siblings and parents must be included when living in the same household; two assistance units which share a common member are consolidated to form one unit when the members live in the same household; the income of the parents of a minor parent is counted when they are living in the same household.

We have determined that, in order to provide States flexibility, and to allow for regional variation in domestic arrangements, the term "household" will be defined by each State. The definition must, however, clearly indicate the presumption that family members living in common quarters must be treated as a single household for purposes of the provisions listed above. Exceptions should be limited to situations such as clear landlord/tenant relationships as verified by tax returns or other evidence.

Question:

Are the resources of a stepparent counted when his or her spouse is required to be included in an assistance unit as the natural or adoptive parent of a dependent child.

Answer:

No. The State must count only those resources owned by the natural or adoptive parent. However, this may include resources owned jointly with the stepparent.

Question:

Is allocation for the needs of dependents outside the unit permitted in counting the income of a parent?

Answer:

Yes. States are permitted to allocate income of a parent to dependents outside the unit before counting such income. The allocation may not exceed the amount of the dependents' need, as determined by the State's need standards, pursuant to section 233.20(a)(3)(ii)(C) of the regulations.

Question:

How does the assistance unit provision affect families of children who are in joint custody of more than one family during a month? Must siblings in both families file?

Answer:

If deprivation exists, the State must establish one residence for purposes of determining AFDC eligibility. The child is considered to be living in this household when applying the assistance unit provision.

Question:

A household consists solely of a mother, her daughter, and her daughter's child. The grandmother adopts the grandchild, and then files for AFDC for that grandchild (now her child). Who must be included in the unit?

Answer:

The unit would consist of at least the adoptive parent and the adopted child. If the natural mother is under the age limit selected by the State at §233.90(b) and is not otherwise ineligible, she would be included as an AFDC child, since she would be an adoptive sister.

Question:

Which caretaker relative should receive the AFDC payment in an assistance unit that included multiple caretaker relatives due to the requirement to consolidate assistance units. This is seen as a particular problem where one caretaker relative has no responsibility for children of another caretaker relative.

Answer:

There is no Federal requirement regarding the determination of which caretaker relative in an assistance unit should receive the assistance payment. This determination is left to the State, and should be made based on the case situation, as well as family preference.

EFFECTIVE DATE: October 1, 1984

INQUIRIES TO: Regional Administrator, Office of Family Assistance.

Jo Anne B. Ross

Jo Anne B. Ross
Associate Commissioner
for Family Assistance