



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

OCT 29 2007

Washington, D.C. 20201

TO: Daniel C. Schneider
Acting Assistant Secretary for Children and Families

FROM: Daniel R. Levinson
Inspector General

Daniel R. Levinson

SUBJECT: Review of Improper Temporary Assistance for Needy Families Basic Assistance Payments in New York State for July 1 Through December 31, 2005
(A-02-06-02015)

Attached is an advance copy of our final report on improper Temporary Assistance for Needy Families (TANF) basic assistance payments in New York State. We will issue this report to the New York State Office of Temporary and Disability Assistance (the State agency) within 5 business days. The Administration for Children and Families (ACF) and the Office of Management and Budget requested this audit.

The TANF program, which the Federal and State Governments jointly fund and administer, is a block grant program that provides eligible families with work opportunities and other assistance, including basic assistance payments for such ongoing basic needs as food, clothing, shelter, and utilities. Federal and State laws, regulations, and other requirements establish TANF eligibility, payment, and documentation requirements.

Our objectives were to determine whether the State agency made TANF basic assistance payments to or on behalf of recipient families in accordance with Federal and State requirements and adequately documented eligibility and payment determinations. In addition, we determined whether the State agency accurately reported basic assistance expenditures to ACF.

From July 1 through December 31, 2005, the State agency made some TANF basic assistance payments that did not meet Federal and State requirements and did not adequately document all eligibility and payment determinations. We did not identify any errors in 81 of the 150 payments in our statistical sample. However, the remaining 69 payments were improper. For 47 of these payments, the recipient families were ineligible for TANF basic assistance or the payments were calculated improperly, and for 22 payments, the case files did not contain all required documentation supporting eligibility and payment determinations.

Based on our sample results, we estimated that the overall TANF improper payment rate was 28.5 percent of the Federal dollars expended and 46 percent of the number of payments made for

basic assistance during the 6-month audit period. Specifically, we estimated that the State agency paid \$46,714,659 (Federal share) for 348,410 improper payments.

In addition, the State agency inaccurately reported basic assistance expenditures to ACF, primarily by reporting expenditures for items that did not meet the definition of basic assistance. For the audit period, the State agency reported a total of \$576,039,848 in Federal and State expenditures for basic assistance on its quarterly reports. However, data in the State agency's payment system, which we verified, showed that basic assistance payments for the period totaled \$327,838,477, a difference of \$248,201,371.

We recommend that the State agency:

- use the results of this review to help ensure compliance with Federal and State TANF requirements by (1) reemphasizing to recipients the need to provide accurate and timely information and (2) requiring its district office employees to verify eligibility information and maintain appropriate documentation in all case files,
- consider conducting quality control reviews of TANF basic assistance eligibility and payment processes,
- determine the current eligibility of all recipients identified in this review as improperly enrolled in the TANF program and ensure that further assistance is denied for those who remain ineligible,
- recalculate assistance budgets for all recipients identified in this review as having received improperly calculated payments, and
- ensure that TANF basic assistance expenditures are accurately reported on its quarterly reports to ACF.

In its comments on our draft report, the State agency did not specifically address our recommendations. The State agency agreed that 24 sampled payments might have been improper and provided additional information on 18 other payments that we had determined were improper. After reviewing the State agency's comments and additional documentation, we allowed 5 of the 18 payments, modified the error amounts and/or error categories for 12 payments, and modified our statistical estimates and error rates accordingly. Our revised findings, as well as our recommendations, are valid.

If you have any questions or comments about this report, please do not hesitate to call me, or your staff may contact Joseph J. Green, Assistant Inspector General for Grants and Internal Activities, at (202) 619-1175 or through e-mail at Joe.Green@oig.hhs.gov or James P. Edert, Regional Inspector General for Audit Services, Region II, at (212) 264-4620 or through e-mail at James.Edert@oig.hhs.gov. Please refer to report number A-02-06-02015.

Attachment

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF IMPROPER
TEMPORARY ASSISTANCE FOR
NEEDY FAMILIES BASIC
ASSISTANCE PAYMENTS
IN NEW YORK STATE FOR JULY 1
THROUGH DECEMBER 31, 2005**



Daniel R. Levinson
Inspector General

October 2007
A-02-06-02015

Office of Inspector General

<http://oig.hhs.gov>

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OAS FINDINGS AND OPINIONS

The designation of financial or management practices as questionable or a recommendation for the disallowance of costs incurred or claimed, as well as other conclusions and recommendations in this report, represent the findings and opinions of the HHS/OIG/OAS. Authorized officials of the HHS divisions will make final determination on these matters.





DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General
Office of Audit Services

REGION II
Jacob K. Javits Federal Building
26 Federal Plaza, Room 3900
New York, NY 10278

OCT 31 2007

Report Number: A-02-06-02015

Mr. David A. Hansell
Commissioner
New York State Office of Temporary and Disability Assistance
40 North Pearl Street
Albany, New York 12243

Dear Mr. Hansell:

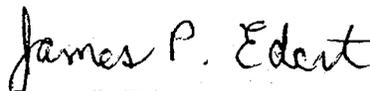
Enclosed is the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), final report entitled "Review of Improper Temporary Assistance for Needy Families Basic Assistance Payments in New York State for July 1 Through December 31, 2005." We will forward a copy of this report to the HHS action official noted on the following page for review and any action deemed necessary.

The HHS action official will make final determination as to actions taken on all matters reported. We request that you respond to this official within 30 days from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

Pursuant to the principles of the Freedom of Information Act, 5 U.S.C. § 552, as amended by Public Law 104-231, OIG reports generally are made available to the public to the extent the information is not subject to exemptions in the Act (45 CFR part 5). Accordingly, within 10 business days after the final report is issued, it will be posted on the Internet at <http://oig.hhs.gov>.

If you have any questions or comments about this report, please contact Brenda Ryan, Audit Manager, at (212) 264-4677 or through e-mail at Brenda.Ryan@oig.hhs.gov. Please refer to report number A-02-06-02015 in all correspondence.

Sincerely,


James P. Edert
Regional Inspector General
for Audit Services

Enclosure

Direct Reply to HHS Action Official:

Clinton McGrane
Grants Officer
Administration for Children and Families
Department of Health and Human Services
26 Federal Plaza, Room 4114
New York, New York 10278

EXECUTIVE SUMMARY

BACKGROUND

The Temporary Assistance for Needy Families (TANF) program, a block grant program, provides eligible families with work opportunities and other assistance, including basic assistance payments for such ongoing basic needs as food, clothing, shelter, and utilities. The Federal and State Governments jointly fund and administer the TANF program. The Administration for Children and Families (ACF), Office of Family Assistance, administers the program at the Federal level.

Federal and State laws, regulations, and other requirements establish TANF eligibility, payment, and documentation requirements. To be eligible for TANF, a needy family must, among other requirements, include a minor child or pregnant woman, not exceed established time limits for receiving assistance, engage in work activities, not exceed income and resource thresholds established by the State, meet citizenship and residency requirements, submit a written application for benefits, and furnish the Social Security number of each family member. The State must maintain records on the provision of assistance, including facts to support eligibility and payment determinations.

In New York State, the Office of Temporary and Disability Assistance (the State agency) administers the TANF program. The State agency's district offices determine the eligibility of applicants and the payment amounts for basic assistance. From July 1 through December 31, 2005, the State agency made 757,413 monthly basic assistance payments totaling \$327,838,477 (\$163,919,239 Federal share) to or on behalf of TANF recipient families.

ACF and the Office of Management and Budget requested this pilot review in New York and two other States for fiscal year 2007 performance and accountability reporting. The purpose of the pilot review is to test a methodology to measure the amount of improper payments in the basic assistance portion of the TANF program. Upon completion of the pilots, the methodology will be refined, as appropriate, and used to measure and calculate a national TANF error rate for basic assistance payments in fiscal year 2008.

OBJECTIVES

Our objectives were to determine whether the State agency made TANF basic assistance payments to or on behalf of recipient families in accordance with Federal and State requirements and adequately documented eligibility and payment determinations. In addition, we determined whether the State agency accurately reported basic assistance expenditures to ACF.

SUMMARY OF FINDINGS

From July 1 through December 31, 2005, the State agency made some TANF basic assistance payments that did not meet Federal and State requirements and did not adequately document all eligibility and payment determinations. We did not identify any errors in 81 of the 150 payments in our statistical sample. However, the remaining 69 payments were improper:

- For 47 payments, the recipient families were ineligible for TANF basic assistance or the payments were calculated improperly.
- For 22 payments, the case files did not contain all required documentation supporting eligibility and payment determinations.

The State agency did not conduct statewide quality control reviews to detect these types of errors.

Based on our sample results, we estimated that the overall TANF improper payment rate was 28.5 percent of the Federal dollars expended and 46 percent of the number of payments made for basic assistance during the 6-month audit period. Specifically, we estimated that the State agency paid \$46,714,659 (Federal share) for 348,410 improper payments, including \$46,170,836 for 323,163 overpayments and \$543,823 for 25,247 underpayments. The following table summarizes our statistical estimates.

Statistical Estimates of Improper Payments

Error Category	Improper Payment Rate		Improper Payments	
	Federal Dollars	No. of Payments	Federal Dollars	No. of Payments
Eligibility and payment calculation errors	14.95%	31.33%	\$24,502,765	237,323
Documentation errors	13.55%	14.67%	22,211,894	111,087
Overall	28.50%	46.00%	\$46,714,659	348,410

In addition, the State agency inaccurately reported basic assistance expenditures to ACF, primarily by reporting expenditures for items that did not meet the definition of basic assistance. For the audit period, the State agency reported a total of \$576,039,848 in Federal and State expenditures for basic assistance on its quarterly reports. However, data in the State agency's payment system, which we verified, showed that basic assistance payments for the period totaled \$327,838,477, a difference of \$248,201,371.

RECOMMENDATIONS

We recommend that the State agency:

- use the results of this review to help ensure compliance with Federal and State TANF requirements by (1) reemphasizing to recipients the need to provide accurate and timely information and (2) requiring its district office employees to verify eligibility information and maintain appropriate documentation in all case files,
- consider conducting quality control reviews of TANF basic assistance eligibility and payment processes,
- determine the current eligibility of all recipients identified in this review as improperly enrolled in the TANF program and ensure that further assistance is denied for those who remain ineligible,
- recalculate assistance budgets for all recipients identified in this review as having received improperly calculated payments, and
- ensure that TANF basic assistance expenditures are accurately reported on its quarterly reports to ACF.

STATE AGENCY'S COMMENTS AND OFFICE OF INSPECTOR GENERAL'S RESPONSE

In its comments on our draft report (Appendix E), the State agency did not specifically address our recommendations. The State agency agreed that 24 sampled payments might have been improper and provided additional information on 18 other payments that we had determined were improper. After reviewing the State agency's comments and additional documentation, we allowed 5 of the 18 payments, modified the error amounts and/or error categories for 12 payments, and modified our statistical estimates and error rates accordingly. Our revised findings, as well as our recommendations, are valid.

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A – FEDERAL REQUIREMENTS RELATED TO TEMPORARY ASSISTANCE FOR
NEEDY FAMILIES BASIC ASSISTANCE

B – STATE REQUIREMENTS RELATED TO TEMPORARY ASSISTANCE FOR
NEEDY FAMILIES BASIC ASSISTANCE

C – SAMPLE DESIGN AND METHODOLOGY

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INTRODUCTION

BACKGROUND

The Administration for Children and Families (ACF) and the Office of Management and Budget (OMB) requested this pilot review in New York and two other States for fiscal year 2007 performance and accountability reporting. The purpose of the pilot review is to test a methodology to measure the amount of improper payments in the basic assistance portion of the Temporary Assistance for Needy Families (TANF) program. Upon completion of the pilots, the methodology will be refined, as appropriate, and used to measure and calculate a national TANF error rate for basic assistance payments in fiscal year 2008.

Improper Payments Information Act of 2002

The Improper Payments Information Act of 2002 (Public Law 107-300) requires Federal agencies to estimate and report to Congress on the annual amount of improper payments in their programs, the causes of the improper payments, and the corrective actions taken. Section 2(d)(2) of this Act (31 U.S.C. § 3321) defines an improper payment as:

... (A) any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and (B) any payment to an ineligible recipient, any payment for an ineligible service, any duplicate payment, payments for services not received, and any payment that does not account for credit for applicable discounts.

To clarify this definition, OMB Circular A-123, Appendix C, part I.A, states that “when an agency’s review is unable to discern whether a payment was proper as a result of insufficient or lack of documentation, this payment must also be considered an error.”

Temporary Assistance for Needy Families Program

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193) established the TANF program to help families progress from welfare to self-sufficiency. The Federal and State Governments jointly fund and administer the program. At the Federal level, the ACF Office of Family Assistance administers the program. Within broad national guidelines established by Federal statutes, regulations, and other requirements, States have significant flexibility in designing their programs and determining eligibility requirements.

The Federal Government provides TANF funds in the form of block grants, which are specified amounts directly allocated to States. To be eligible for a TANF block grant, a State must submit a State plan to ACF within the 27-month period prior to the Federal fiscal year in which the funds are to be provided. The State plan is an outline of how each State will operate its TANF program, including program administration, criteria for determining eligibility and

delivering benefits, and assurances against fraud and abuse. ACF reviews the State plan for completeness but does not issue an approval. ACF has stated that a determination that a plan is complete does not constitute its endorsement of State policies.¹

Pursuant to section 401 of the Social Security Act (the Act), the TANF program provides assistance and work opportunities to needy families. As a general rule, States must use the funds for eligible families with a minor child or pregnant woman and for one of the four purposes of the TANF program, including providing assistance to needy families.² Federal regulations (45 CFR § 260.31(a)(1)) define assistance as cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs, including, but not limited to, food, clothing, shelter, and utilities. Such assistance is referred to as "basic assistance."

States may use various funding options to provide benefits and services under their TANF programs (e.g., commingled Federal and State funds or segregated State funds). The funding option chosen determines what specific requirements apply and whether a particular use of funds is appropriate. Commingled Federal and State funds are subject to Federal laws and requirements.

New York's Temporary Assistance for Needy Families Program

In New York State, the Office of Temporary and Disability Assistance (the State agency) administers the TANF program. The State agency uses two computerized payment and information reporting systems, the Benefit Issuance and Control System and the New York City Payments System, to process and pay TANF basic assistance benefits. The information from these systems flows into the State agency's Welfare Reporting Tracking System, which tracks recipient payment history.

The State agency has opted to commingle Federal and State funds in its TANF program. The State agency, on average, funds 50 percent of its basic assistance expenditures from the Federal TANF block grant, and the State and its local districts share the remaining 50 percent.

The State agency requires individuals to submit written applications for TANF basic assistance. The State agency's district offices review the applications and determine whether individuals meet TANF eligibility requirements. For each applicant determined eligible, the district office determines the amount of assistance to be paid to the family. As part of the application process, the district office sends a letter informing the applicant of his or her responsibility to notify the district office of any changes that might affect eligibility or payment status. Every 6 months thereafter, the district office must verify any updated information and redetermine the individual's eligibility.

¹See 64 Federal Register 17720, 17847 (April 12, 1999).

²The other purposes of TANF are to (1) end the dependence of needy parents by promoting job preparation, work, and marriage; (2) prevent and reduce out-of-wedlock pregnancies; and (3) encourage the formation and maintenance of two-parent families (section 401 of the Act).

Federal and State Requirements Related to Temporary Assistance for Needy Families Basic Assistance

The State agency must comply with certain Federal requirements in determining and redetermining eligibility and payment amounts. Federal regulations (45 CFR §§ 205.51–205.60 and parts 260–264) set forth basic TANF eligibility requirements that States must impose on families receiving assistance, including time limits and work requirements for adults. Appendix A of this report contains the specific Federal requirements related to TANF basic assistance.

In addition, the New York State plan, Title 18 of the New York Code of Rules and Regulations (NYCRR), and State guidance establish TANF basic assistance requirements. The State plan incorporates Federal requirements and establishes all other eligibility requirements, such as income and resource levels and standards of need³ for determining eligibility, as set forth in 18 NYCRR parts 350–352, 369, and 385. Appendix B of this report contains the specific State requirements related to TANF basic assistance.

OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

Our objectives were to determine whether the State agency made TANF basic assistance payments to or on behalf of recipient families in accordance with Federal and State requirements and adequately documented eligibility and payment determinations. In addition, we determined whether the State agency accurately reported basic assistance expenditures to ACF.

Scope

Our audit period covered July 1 through December 31, 2005. We did not review the overall internal control structure of the State TANF program. Rather, we reviewed the State agency's procedures relevant to the objectives of the audit.

We performed fieldwork from October 2006 to January 2007 at the State agency in Albany, New York; the New York City Human Resource Administration (a State agency district office) in New York, New York; and various other district offices throughout the State.

³The State sets the standard of need based on the number of household members and uses the standard to determine eligibility for TANF basic assistance (18 NYCRR § 352.1).

Methodology

To accomplish our objectives, we:

- reviewed Federal and State laws, regulations, and other requirements related to TANF basic assistance eligibility and payment amounts;
- held discussions with ACF headquarters and regional office officials and with State officials to obtain an understanding of policies, procedures, and guidance for determining TANF basic assistance eligibility and payment amounts;
- obtained a list of TANF basic assistance payments for the period July 1 through December 31, 2005, from the State agency's Welfare Reporting Tracking System;
- combined all payments to or on behalf of each recipient family in a month and obtained a universe of 757,413 monthly payments totaling \$327,838,477 (\$163,919,239 Federal share);
- validated the universe of payments, including reported expenditures; and
- selected a simple random sample of 150 payments from the universe of 757,413 monthly payments, as detailed in Appendix C.

For each of the 150 sampled items, we determined whether the corresponding case file (electronic or paper) contained sufficient information for the district office to have made a TANF basic assistance eligibility determination on the date of initial determination or redetermination. We also attempted to obtain sufficient independent information to determine whether the recipient family was eligible for TANF basic assistance and received the proper payment amount on the payment date selected. Specifically, we determined whether:

- the case file contained a completed application from the recipient family head of household;
- the case file contained a Social Security number for each member of the recipient family and, if so, whether the Social Security Administration (SSA) had issued the number to the family member;
- the recipient family resided in New York State by checking driver's licenses, rental agreements, or Federal, State, or local government correspondence;
- each family member's identity, including name and age, was adequately documented in the case file (e.g., birth certificates, adoption papers, court decrees, and passports);

- each noncitizen family member's citizenship status in the case file matched the information on file with the U.S. Citizenship and Immigration Services's Systematic Alien Verification for Entitlement program;
- the recipient family's income was at or below the income threshold required to be eligible for TANF basic assistance on the payment date selected by reviewing information from the State Department of Taxation and Finance, the State Welfare Management System's Resource File Integration system, and the case file;⁴
- the recipient family's resources were at or below the resource threshold required to be eligible for TANF basic assistance on the payment date selected by checking the Resource File Integration system and the State Department of Motor Vehicles records on automobile ownership;
- the recipient family was not receiving concurrent payments from more than one State by checking the ACF Public Assistance Reporting Information System;
- no member of the recipient family was a fugitive felon or parole violator by checking the State felon database and the Federal Bureau of Investigation's National Crime Information Center;
- the recipient family complied with child support requirements by reviewing information from the case file and the State agency's Office of Child Support Enforcement;
- assistance was not provided to any adult member, minor head of household, or minor spouse in the recipient family for a total of more than 60 cumulative months by reviewing information from the State agency's Welfare Reporting Tracking System; and
- the parent or caretaker in the recipient family met work requirements by reviewing the case file.

We used a variable appraisal program to estimate, for the total universe of 757,413 TANF monthly basic assistance payments, the total dollar value of payments with eligibility or calculation errors and with documentation errors (overpayments, underpayments, and combined over/underpayments). We used an attribute appraisal program to estimate, for the total universe, the total number of these improper payments (overpayments, underpayments, and combined over/underpayments).

⁴The Resource File Integration system, a subsystem of the Welfare Management System, uses Social Security numbers to compare individuals in the Welfare Management System against individuals in the resource files of various State and Federal agencies, including the State Department of Taxation and Finance, the State Department of Labor, and SSA.

In addition, we determined the improper payment rate in dollars by dividing the estimated improper dollars by the total Federal dollars in the universe. We also determined the improper payment rate for the number of payments in error by dividing the estimated number of improper payments by the total number of payments in the universe.

We conducted our review in accordance with generally accepted government auditing standards.

FINDINGS AND RECOMMENDATIONS

The State agency made some TANF basic assistance payments that did not meet Federal and State requirements and did not adequately document all eligibility and payment determinations. Of the 150 payments in our statistical sample, 69 payments totaling \$9,252 (Federal share) were improper because the recipient families were ineligible for TANF basic assistance, the payments were calculated improperly, or the case files did not contain all required documentation supporting eligibility and payment determinations. The 69 improper payments consisted of 64 overpayments totaling \$9,144 and 5 underpayments totaling \$108. We did not identify any errors in the remaining 81 payments.

Based on our sample results, we estimated that the overall TANF improper payment rate was 28.5 percent of the Federal dollars expended and 46 percent of the number of payments made for basic assistance during the 6-month audit period. Specifically, we estimated that the State agency paid \$46,714,659 (Federal share) for 348,410 improper payments, including \$46,170,836 for 323,163 overpayments and \$543,823 for 25,247 underpayments. (See page 13 for additional statistical estimates.)

In addition, the State agency inaccurately reported basic assistance expenditures to ACF, primarily by reporting expenditures for items that did not meet the definition of basic assistance. For the audit period, the State agency reported a total of \$576,039,848 in Federal and State expenditures for basic assistance on its quarterly reports. However, data in the State agency's Welfare Reporting Tracking System, which we verified, showed that basic assistance payments for the period totaled \$327,838,477, a difference of \$248,201,371.

IMPROPER PAYMENTS

Table 1 on the next page summarizes the errors noted in the 69 improper payments in our sample.

Table 1: Summary of Improper Payments

Type of Error	Improper Federal Payments	No. of Improper Payments
Eligibility and Payment Calculation Errors		
Recipient families were ineligible:		
Income threshold exceeded on payment dates	\$1,533	8
Household composition requirements not met	677	3
Resource threshold exceeded on the payment date	180	1
Social Security number not furnished	<u>248</u>	<u>1</u>
Subtotal	\$2,638	13
Payments were calculated improperly:		
Incorrect household size	\$490	12
Incorrect household income	1,219	11
Incorrect shelter amount	184	6
Noncompliance with work requirements	273	4
Noncompliance with child support requirements	<u>49</u>	<u>1</u>
Subtotal	<u>\$2,215</u>	<u>34</u>
Subtotal	\$4,853	47
Documentation Errors		
Documentation was not sufficient to support eligibility and payment determinations	<u>\$4,399</u>	<u>22</u>
Total	\$9,252	69

We have provided details on each of these payment errors to the State agency.

Eligibility and Payment Calculation Errors

Recipient Families Were Ineligible

State regulations (18 NYCRR § 351.1(b)(1)(ii)) require social service districts to inform each applicant and recipient, at the time of application and subsequently, of his or her initial and continuing responsibilities to furnish accurate, complete, and current eligibility information. In addition, 18 NYCRR § 351.1(b)(2)(iv) requires each applicant and recipient to make a timely report to the district of any changes in his or her needs or resources.

Pursuant to 45 CFR § 263.2(b)(3), income and resource thresholds are established by the State and must be included in the State plan. Generally, income thresholds vary based on the number of family members in the household. Federal regulations (45 CFR §§ 205.51 and 205.55) establish requirements for income and eligibility verification. These regulations, which govern the Income and Eligibility Verification System, require a State to request information from other agencies to verify individuals' eligibility for assistance under the State plan and the correct amount of assistance payments for applicants and recipients.

Pursuant to 18 NYCRR §§ 352.23(b) and (b)(2), the maximum amount of assets that a family may own and still qualify for assistance is \$2,000. However, the family is allowed one automobile valued up to \$4,650 (fair market value) if the automobile is not used for work activities and up to \$9,300 if the automobile is needed for the applicant to seek or retain employment or travel to and from work activities.

Section 408(a)(1) of the Act requires that a State not use any part of the TANF grant to provide assistance to a family unless the family includes a minor child who resides with the family or includes a pregnant woman. Regulations (18 NYCRR § 369.3(b)(1)) state that when a child or minor has been living with one parent and it becomes necessary for the child to move permanently to the home of the other parent or to the home of an eligible adult relative, a new application is required, and the other parent or eligible adult relative must be designated as grantee provided the other conditions of eligibility are met. The former case must be closed for statistical purposes and a new case opened.

In addition, 45 CFR §§ 205.52(a)(1) and (2) require, as a condition of eligibility, that each individual requesting TANF basic assistance furnish his or her Social Security number to the State. If the individual cannot recall or was not issued a Social Security number, the individual is required to apply to SSA for a number through procedures adopted by the State or local agency. If such procedures are not in effect, the individual must apply directly for such number, submit verification of such application, and provide the number upon its receipt.

Of the 150 sampled payments, 13 payments totaling \$2,638 (Federal share) were made to or on behalf of recipient families who did not meet Federal and State eligibility requirements:

- For eight payments totaling \$1,533 (Federal share), the recipient families' household incomes exceeded the TANF basic assistance income threshold on the payment dates.
- For three payments totaling \$677 (Federal share), the recipient families did not include a minor child or the parent was deceased and the State agency had not closed the case.
- For one payment totaling \$180 (Federal share), the recipient family's resources exceeded the TANF basic assistance resource threshold on the payment date.
- For one payment totaling \$248 (Federal share), the recipient family member had not furnished her Social Security number. Information in the case file confirmed that the recipient had never applied for a Social Security number.

Payments Were Calculated Improperly

State regulations (18 NYCRR §§ 352.32(a) and (b)) state that an estimate of needs (budget) must be prepared for each new or reopened public assistance case when the application for assistance is approved. The budget form contains an estimate of the recipient's regularly recurring needs and the resources available to meet those needs. State regulations (18 NYCRR

§ 352.3) establish, for each district, the maximum shelter allowance for the household size. These items are based on the circumstances in each case and the policies and allowance schedules of the State agency. The budget must be recalculated whenever there is a change in the recipient's needs or resources or in the State agency's allowance schedules.

State regulations (18 NYCRR § 352.31(a)(2)), as implemented by the State agency's Administrative Directive # 04-ADM-05, effective July 1, 2004, state that when an individual or a family lives in the same dwelling unit with a family member receiving Supplemental Security Income (SSI), the presence of the legally responsible SSI adult or the SSI child must be considered when determining the household's standard of need. The SSI individual's SSI benefit counts only against his or her need, not against the needs of the other family member(s) seeking assistance.

Federal regulations (45 CFR § 261.10(a)(1)) require that a parent or caretaker receiving assistance engage in work activities when the State has determined that the individual is ready to do so or when he or she has received assistance for a total of 24 months, whichever is earlier. If an individual refuses to engage in work, the State must reduce or terminate the amount of assistance payable to the family, subject to any good cause or other exceptions the State may establish (45 CFR § 261.14(a)).

Pursuant to 18 NYCRR § 385.12(d), a public assistance recipient who refuses or fails without good cause to comply with employment requirements must be considered temporarily ineligible, resulting in a prorated reduction of the assistance grant. State regulations (18 NYCRR § 385.2(b)) exempt an applicant for or recipient of public assistance from participation in public assistance work activities if he or she is determined to be (1) ill or injured to the extent that he or she is unable to engage in work activities for up to 3 months, as verified by medical evidence; (2) 60 years of age or older; (3) under the age of 16 or under the age of 19 and attending a secondary, vocational, or technical school full time; (4) disabled or incapacitated; (5) needed in the home because another member of the household requires his or her presence due to a verified mental or physical impairment, and the district official has determined that no other member of the household is appropriate to provide such care; (6) pregnant, beginning 30 days prior to the medically verified date of the delivery of the child; or (7) the parent or other caretaker relative in a one-parent household who is personally providing care for a child under 12 months of age.

Federal regulations (45 CFR § 264.30(a)) require the State agency to refer to the child support enforcement agency all appropriate individuals in the family of a child for whom paternity has not been established or for whom a child support order needs to be established, modified, or enforced. Referred individuals must cooperate in establishing paternity and in establishing, modifying, or enforcing a support order with respect to the child. Section 408(a)(2) of the Act provides that if an individual does not cooperate with the State in establishing paternity or in establishing, modifying, or enforcing a support order, the State must reduce assistance by at least 25 percent or, at the State's option, may deny the family any assistance.

State regulations (18 NYCRR § 351.2(l)(7)(i)) provide that the State agency may grant waivers to temporarily suspend various public assistance program requirements, including child support and paternity cooperation requirements. State regulations (18 NYCRR § 369.2(b)(4)(iv)) provide good cause exemptions for noncooperation with child support enforcement, i.e., circumstances in which cooperation is not in the best interest of the child.

Of the 150 sampled payments, 34 payments totaling \$2,215 (Federal share) were made to or on behalf of recipient families who were eligible for basic assistance but for whom payments were calculated improperly:

- Twelve payments totaling \$490 (Federal share) were calculated using an incorrect household size, such as the exclusion of SSI family members for budgeting purposes. The 12 payments consisted of 8 overpayments totaling \$401 and 4 underpayments totaling \$89.
- Eleven overpayments totaling \$1,219 (Federal share) were calculated using incorrect income amounts.
- Six payments totaling \$184 (Federal share) were calculated using incorrect shelter amounts. The six payments consisted of five overpayments totaling \$165 and one underpayment totaling \$19.
- Four overpayments totaling \$273 (Federal share) were calculated without a reduction for a recipient family member who did not comply with work requirements and did not qualify for an exemption from the State agency.
- One overpayment totaling \$49 (Federal share) was calculated without a reduction for a recipient family member who did not cooperate with child support requirements and did not qualify for an exemption from the State agency.

Documentation Errors

State agencies are required to maintain records regarding applications and eligibility determinations for the provision of financial assistance. Included in such records should be facts supporting initial and continuing eligibility determinations (45 CFR § 205.60(a)). OMB Circular A-123, Appendix C, part I.A, states that when a Federal agency's review is unable to discern whether a payment was proper as a result of insufficient or lack of documentation, this payment must be considered an error.

Pursuant to 18 NYCRR § 350.4, a State-prescribed written application must be completed for each case. Regulations (18 NYCRR §§ 351.21(a) and (b)(2)) require that contacts with or concerning recipients be made as frequently as individual need, change in circumstances, or the proper administration of assistance or care may require. All variable factors of need and eligibility must be reconsidered, reevaluated, and verified at least every 6 months.

Pursuant to 18 NYCRR § 351.1(b)(2)(ii), each applicant and recipient, as a condition of eligibility, must furnish evidence of those factors that affect eligibility and the amount of entitlement, including (1) identity, (2) residence, (3) family composition, (4) rent payment or cost of shelter, (5) income from any source, (6) savings and other resources, and (7) lawful residence in the United States if the applicant is an alien resident. In addition, State agency guidance ("Temporary Assistance Source Book," Chapter 25, sections C and D) requires local districts to use the State-prescribed Alcohol and Drug Abuse Screening and Referral form to screen all heads of households and adult household members applying for assistance and to maintain the completed form in the case file. In addition, Chapter 9, section R(3)(b)(2), of this book requires local districts to obtain a completed Child Support Enforcement Referral form for each absent parent.

The case files for 22 sampled payments totaling \$4,399 (Federal share) did not contain adequate documentation to support eligibility and payment determinations. For these overpayments, the missing documentation included at least one of the following: an application covering the payment month; an Alcohol and Drug Abuse Screening and Referral form; and facts supporting income, household composition, shelter expense, participation in work activities, and cooperation with child support enforcement.

STATE REPORTING OF TEMPORARY ASSISTANCE FOR NEEDY FAMILIES EXPENDITURES

States are required to report TANF financial data on a quarterly basis to ACF (45 CFR part 265). Pursuant to 45 CFR §§ 265.7(a) and 265.4(a), each State's quarterly reports must be complete, accurate, and filed within 45 days of the end of the quarter. A complete and accurate report means that (1) the reported data accurately reflect information available to the State in case records, financial records, and automated data systems; (2) the data are free from computational errors and are internally consistent; and (3) the reported data include all applicable elements (45 CFR § 265.7(d)).

OMB approved the ACF-196 form for periodic TANF financial reporting. Line 5a of the form should consist of basic assistance expenditures for the quarter, as defined by 45 CFR § 260.31(a)(1). Pursuant to 45 CFR § 260.31(a), assistance includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses), as well as supportive services, such as transportation and child care provided to families whose household heads are not employed.

For the period July 1 to December 31, 2005, the State agency reported a total of \$576,039,848 in Federal and State maintenance-of-effort expenditures for basic assistance on line 5a of its

ACF-196.⁵ However, the universe of basic assistance payments provided by the State agency based on data in its Welfare Reporting Tracking System, which we verified, was \$327,838,477, a difference of \$248,201,371.

The State agency provided a reconciliation of the difference between the amount reported on line 5a of the ACF-196 and the amount in its Welfare Reporting Tracking System for the period July 1 to September 30, 2005. For this 3-month period, the State agency reported a total of \$291,666,513 in Federal and State expenditures for basic assistance on line 5a of the ACF-196. For the same period, basic assistance payments recorded in the Welfare Reporting Tracking System totaled \$162,884,012. According to the State agency's reconciliation, the difference of \$128,782,501 was attributable to:

- amounts included on the ACF-196 that did not meet the definition of ongoing basic assistance, including payments for emergency assistance, domestic violence shelter, temporary shelter for the homeless, parks and recreation costs, camp fees, client carfare, relocation costs, replacement of lost and stolen checks, and disaster-related assistance (\$96,018,558);
- timing and proration differences in the business rules governing claims reported on the ACF-196 and payments included in the Welfare Reporting Tracking System (\$29,286,938); and
- unexplained differences (\$3,477,005).

ACF uses the information reported on the ACF-196 to determine how States spent their TANF funds and whether States met their maintenance-of-effort levels, as required by 45 CFR § 263.1. Without accurate information, ACF cannot verify that States met their maintenance-of-effort requirements. A determination that a State had not met its maintenance-of-effort requirements could result in reduced TANF funding under 45 CFR § 263.8.

CONCLUSION

Some of the sampled payments did not meet Federal and State eligibility, payment, or documentation requirements. For these payments, (1) recipient families did not fully disclose information at the time of application or eligibility redetermination and did not notify the State agency's district offices of changes in financial situation or other changes affecting eligibility, (2) the district offices did not verify all information provided to support applications, (3) the district offices did not implement the SSI budgeting policy addressed in the State agency's Administrative Directive # 04-ADM-05 in a timely manner, or (4) the district offices did not

⁵State maintenance-of-effort funds are the minimum State financial contribution to the TANF program in a fiscal year. A State must spend State funds in an amount equal to at least 80 percent of the amount spent in fiscal year 1994. However, if the State meets the minimum work participation rate requirements established by 45 CFR §§ 261.21 and 261.23, the minimum basic maintenance of effort for that fiscal year is 75 percent of the fiscal year 1994 amount.

maintain appropriate documentation to support eligibility and payment determinations. The State agency did not conduct statewide quality control reviews to detect the types of errors we found.

As a result, we estimated that the TANF improper payment rate was 28.5 percent of the Federal dollars expended and 46 percent of the number of payments made for basic assistance during the 6-month audit period. Specifically, we estimated that the State agency paid \$46,714,659 (Federal share) for 348,410 improper payments, including \$46,170,836 for 323,163 overpayments and \$543,823 for 25,247 underpayments. Table 2 summarizes our statistical estimates. (See Appendix D for details on our sample results and projections.)

Table 2: Statistical Estimates of Improper Payments

Error Category	Improper Payment Rate		Improper Payments	
	Federal Dollars	No. of Payments	Federal Dollars	No. of Payments
Eligibility and payment calculation errors	14.95%	31.33%	\$24,502,765	237,323
Documentation errors	13.55%	14.67%	22,211,894	111,087
Overall	28.50%	46.00%	\$46,714,659	348,410

We are not recommending recovery of the overpayments identified in this report primarily because ACF decided to assess penalties⁶ in the TANF program rather than take disallowances in response to audit findings.

The State agency also inaccurately reported basic assistance expenditures on its ACF-196 quarterly reports, primarily by including items that did not meet the definition of basic assistance. For the audit period, basic assistance expenditures reported on the quarterly reports differed from the verified amounts in the State agency’s Welfare Reporting Tracking System by \$248,201,371. Without accurate information, ACF cannot verify that States met their maintenance-of-effort requirements.

RECOMMENDATIONS

We recommend that the State agency:

- use the results of this review to help ensure compliance with Federal and State TANF requirements by (1) reemphasizing to recipients the need to provide accurate and timely information and (2) requiring its district office employees to verify eligibility information and maintain appropriate documentation in all case files,

⁶Penalties are set forth in section 409 of the Act.

- consider conducting quality control reviews of TANF basic assistance eligibility and payment processes,
- determine the current eligibility of all recipients identified in this review as improperly enrolled in the TANF program and ensure that further assistance is denied for those who remain ineligible,
- recalculate assistance budgets for all recipients identified in this review as having received improperly calculated payments, and
- ensure that TANF basic assistance expenditures are accurately reported on its quarterly reports to ACF.

STATE AGENCY'S COMMENTS AND OFFICE OF INSPECTOR GENERAL'S RESPONSE

In its June 28, 2007, comments on our draft report, the State agency did not specifically address our recommendations. The State agency agreed that 24 sampled payments might have been improper and provided additional information on 18 other payments that we had determined were improper.

After reviewing the State agency's comments and additional documentation, we revised 17 of the 18 payment determinations. Specifically, we allowed five payments, adjusted the error amounts for seven payments, reclassified three documentation errors as payment errors and adjusted the error amounts, and reclassified two payment errors as documentation errors. We revised our statistical estimates and error rates accordingly. Our revised findings, as well as our recommendations, are valid.

The State agency's specific comments and our responses follow. Appendix E contains the State agency's comments, excluding personally identifiable information and information from a Government Accountability Office (GAO) letter that was not relevant to this report.

Documentation Errors

State Agency's Comments

The State agency commented that OMB Circular A-123, Appendix C, part 1.A, which expanded the definition of an improper payment to include documentation errors, was not in effect for the audit period (July through December 2005) because it was not released until August 10, 2006. The State agency also said that payments found in error due to missing documentation did not represent misspent funds. In addition, the State agency said that some documentation errors related to only a portion of the grant and that the entire payment amounts therefore should not have been considered in error.

Office of Inspector General's Response

In issuing Appendix C to Circular A-123, OMB stated that the Appendix clarified and updated requirements to support Governmentwide compliance with the Improper Payments Information Act, including clarification of the definition of an improper payment. The cover memorandum to Appendix C states that "this revised guidance is effective for agencies to use immediately and for the fiscal year 2006 Performance and Accountability Report reporting." Because we conducted this audit to obtain information for the fiscal year 2007 "Performance and Accountability Report," part I.A of Appendix C was in effect for our audit period.

We agree that an error due to missing documentation does not necessarily represent misspent funds; however, part I.A of Appendix C provides that if an agency's review is unable to discern whether a payment is proper as a result of insufficient documentation, the payment must be considered an error. We also agree that the entire payment amounts should not be considered in error when the missing documentation pertains only to a portion of the grant. Accordingly, we revised the error amounts for three documentation errors.

Federal Share

State Agency's Comments

The State agency said that we used a preset Federal share to determine payment error amounts and that TANF has no preset Federal share for cases the State designates as federally related assistance payments. The State agency added that it had the option of applying a minimal Federal share rate to the more complicated cases and an enhanced Federal share rate to the more straightforward cases.

Office of Inspector General's Response

To determine payment error amounts, we used the 50-percent Federal share cited in the State agency's "Temporary Assistance Source Book" and confirmed by e-mails from the State agency's finance and quality assurance staff. The State agency did not offer an alternative Federal share for our use. We acknowledge that the State agency has the option of funding cases at different rates as long as the State meets its basic maintenance-of-effort requirement. Although the State agency may have exercised this option, it could not support different Federal and State funding rates for specific cases.

Mandated Payments

State Agency's Comments

The State agency commented that, according to an April 2006 SSA report to Congress on overpayments in SSA's disability programs and a related letter dated September 6, 2006, from

GAO, both OMB and GAO had stated that payments made incorrectly due to program design or legal requirements were “unavoidable” and should not be included in a payment error rate.

Office of Inspector General's Response

Federal law requires SSA to make Social Security payments to an individual engaged in due process proceedings until the individual's eligibility for such payments is determined. For purposes of complying with the Improper Payments Information Act, OMB issued very specific guidance to SSA to exclude from its improper payment calculations any Social Security payments made to individuals engaged in due process proceedings because these payments are statutorily mandated. This OMB guidance involves only requirements under Federal Social Security laws and therefore should not be relied upon by other Federal agencies as a Governmentwide policy document. Moreover, the TANF block grant clearly does not provide statutory rights to TANF basic assistance payments, and our calculation of improper payments did not include payments to applicants or recipients availing themselves of their due process rights to TANF basic assistance payments. Thus, even if the OMB guidance issued to SSA were applicable to ACF, it would not affect our findings.

Administrative Processing Period and Payment Adjustment Lag

State Agency's Comments

The State agency commented that we did not follow reasonable standards in evaluating improper payments related to earned income. Specifically, the State agency said that, according to State regulations, a recipient makes a timely report of income changes if the changes are reported within 10 days of receipt of the initial or increased earnings. The State agency is then entitled to an administrative processing period to effectuate changes. The State agency commented that we did not consider this processing period when determining improper payments. The State agency added that we also did not accept the Payment Adjustment Lag principle, which provides States a reasonable period to make adjustments for new or revised information without incurring quality control penalties.

The State agency also stated that we had relied heavily on wage information from the State's Resource File Integration system, which was not available to district office employees during the audit period.

Office of Inspector General's Response

We reviewed each sampled case in accordance with the State agency's policies and procedures and used applicable Federal and State statutes, regulations, policies, and related requirements to determine improper payments. We took into account the administrative processing period when it was warranted. However, in accordance with the State agency's policies and procedures, the administrative processing period did not apply to recipients who did not report changes in circumstances. We did not apply the Payment Adjustment Lag principle because the

principle is not addressed in current laws, regulations, or other requirements related to the TANF program, nor did we assess any quality control penalties.

To verify income on the selected payment dates, we used data from the Resource File Integration system, as well as from the State Department of Taxation and Finance and the case file (e.g., pay statements, tax returns, and letters from employers). We acknowledge that the State agency may not have had all of this information available at the time of payment. However, 18 NYCRR § 351.1(b)(1)(ii) requires social service districts to inform each applicant and recipient, at the time of application and subsequently, of his or her initial and continuing responsibilities to furnish accurate, complete, and current eligibility information. In addition, 18 NYCRR § 351.1(b)(2)(iv) requires each applicant and recipient to make a timely report to the district of any changes in his or her needs or resources. Thus, even without access to the Resource File Integration system, the State agency was required to obtain information on income changes.

Supplemental Security Income

State Agency's Comments

The State agency said that many of the household composition errors we identified related to the State's policy on prorating TANF benefits in households with SSI individuals. The State agency commented that this was a new policy in the later stages of implementation during the audit period and that there was a delay in systems support for the policy in its New York City district. The State agency also commented that we had retroactively applied SSI eligibility to individuals beginning on the date of application, not the date that the individuals actually began receiving SSI benefits.

Office of Inspector General's Response

We applied State regulations (18 NYCRR § 352.31(a)(2)) to determine the appropriate household composition for recipient families with SSI individuals. These regulations were implemented by the State agency's Administrative Directive # 04-ADM-05 on July 1, 2004, a year before our audit period began.

We relied on the Resource File Integration system's interface with SSA to determine SSI eligibility dates. After submitting comments on our draft report, the State agency provided additional information from SSA's online inquiry system showing SSI payment histories. Based on this additional information, we revised the error amount for one payment and allowed the entire amount for another payment.

Sanctions

State Agency's Comments

The State agency commented that we had classified entire monthly payments as errors if one recipient family member should have been sanctioned. The State agency also said that employment and substance abuse sanctions resulted in a pro rata reduction in the benefit amount and that child support sanctions resulted in a 25-percent reduction in the household's needs. In addition, the State agency said that it was outside our authority to assert that a sanction should have been imposed in any given month.

Office of Inspector General's Response

We did not question the entire monthly payment when one recipient family member should have been sanctioned. Based on State regulations, policies, and procedures, we recalculated the basic assistance amount that the recipient family should have received on the payment date if the sanctioned family member had been removed from the calculation.

Federal regulations (45 CFR § 261.14(a)) provide that if an individual refuses to engage in work, the State must reduce or terminate the amount of assistance payable to the family, subject to any good cause or other exceptions the State may establish. Section 408(a)(2) of the Act provides that if an individual does not cooperate with the State in establishing paternity or in establishing, modifying, or enforcing a support order, the State must reduce assistance by at least 25 percent or may deny the family any assistance. The State may provide good cause exemptions for noncooperation with child support enforcement, i.e., circumstances in which cooperation is not in the best interest of the child. We considered a payment for a recipient family member who did not comply with work or child support requirements as improper only when the family member did not qualify for an exemption established by the State agency.

Excess Child Support Payments

State Agency's Comments

The State agency said that child support payments in excess of the recipient grant amount should not result in a payment error because the excess amount collected offsets the amount of TANF benefits provided.

Office of Inspector General's Response

Pursuant to the State agency's "Temporary Assistance Source Book," district office employees must use the amount of the current child support obligation when recalculating an assistance budget. If child support payments to the recipient family exceed the recipient grant amount, the recipient family is ineligible for that month. If the ineligibility continues for a second consecutive month and the recipient family is reasonably assured of a stable income for future

months, the district office must close the assistance case. We included payments that did not meet these requirements as eligibility errors in the category “income threshold exceeded on payment dates.”

Audit Objectives

State Agency's Comments

The State agency commented that the audit objectives on page 3 of the draft report differed from those in Appendix C and that we added to the original objective.

Office of Inspector General's Response

The audit objectives on page 3 differ from those in Appendix C because the Appendix applies only to the statistical sampling used to accomplish our first objective. We informed the State agency of the modification to the audit objectives during the audit, consistent with Government Auditing Standards.

Basic Assistance Expenditures

State Agency's Comments

The State agency said that there was ambiguity in what could be considered assistance versus nonassistance for purposes of reporting basic assistance payments on the ACF-196. According to the State agency, our conclusion that ACF could not verify whether the State agency met its maintenance of effort because of reporting differences between the ACF-196 and the Welfare Reporting Tracking System was erroneous and misleading.

Office of Inspector General's Response

Regulations (45 CFR § 260.31(a)(1)) define assistance as cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses), as well as supportive services, such as transportation and childcare provided to families whose household heads are not employed. Payments for emergency assistance, domestic violence shelter, temporary shelter for the homeless, parks and recreation costs, camp fees, client carfare, relocation costs, replacement of lost and stolen checks, and disaster-related assistance are not considered basic assistance and should not be reported on line 5a of the ACF-196.

ACF uses the information reported on the ACF-196 to determine how States spent their TANF funds and whether States met their maintenance-of-effort levels. Without an accurate reporting of basic assistance on the ACF-196, ACF cannot calculate the State agency's actual maintenance-of-effort levels.

APPENDIXES

**FEDERAL REQUIREMENTS RELATED TO TEMPORARY ASSISTANCE
FOR NEEDY FAMILIES BASIC ASSISTANCE**

- Section 401 of the Social Security Act (the Act) states that one purpose of the Temporary Assistance for Needy Families (TANF) program is to provide assistance to needy families.
- The Federal Register, Vol. 64, No. 69, page 17825 (April 12, 1999) defines a needy family as one that is financially deprived, i.e., lacking adequate income and resources.
- Regulations (45 CFR § 260.31(a)(1)) define assistance as cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses), as well as supportive services, such as transportation and childcare provided to families whose household heads are not employed.
- Regulations (45 CFR § 263.2(b)) state that cash assistance benefits may be provided only to or on behalf of eligible families.
- Section 408(a)(1) of the Act requires that a State not use any part of the grant to provide assistance to a family unless the family includes a minor child who resides with the family or includes a pregnant woman.
- Section 408(a)(7) of the Act and 45 CFR § 264.1(a)(1) provide that a State may not use Federal TANF funds to provide assistance to a family that includes an adult who has received Federal assistance for more than 60 cumulative months. However, 45 CFR § 264.1(c) allows States the option to extend assistance beyond the 5-year limit for up to 20 percent of the average monthly number of families receiving assistance during the fiscal year on the basis of hardship, as defined by the State, or battery of a family member.
- Regulations (45 CFR § 261.10(a)(1)) require that a parent or caretaker receiving assistance engage in work activities when the State has determined that the individual is ready to do so or when the individual has received assistance for a total of 24 months, whichever is earlier.
- Regulations (45 CFR §§ 205.52(a)(1) and (2)) require, as a condition of eligibility, that each applicant for or recipient of aid furnish his or her Social Security number to the State or local agency. If the individual cannot recall or was not issued a Social Security number, the individual is required to apply to the Social Security Administration (SSA) for a number through procedures adopted by the State or local agency. If such procedures are not in effect, the individual must apply directly for such a number, submit verification of such application, and provide the number upon its receipt.

- Regulations (45 CFR § 205.52(g)) require the State agency to submit all unverified Social Security numbers to SSA for verification.¹
- Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193, as codified, in part, at 8 U.S.C. §§ 1601–1646) requires a TANF recipient to be a citizen or national of the United States or a qualified alien. Legal resident aliens and other qualified aliens who entered the United States on or after August 22, 1996, are ineligible for assistance for the first 5 years after entry.
- Regulations (45 CFR § 263.2(b)(3)) state that TANF basic assistance income and resource thresholds are established by the State and must be included in the State plan. The income and resource thresholds, which are subject to adjustments, vary based on the number of members in the household.
- Regulations (45 CFR §§ 205.51 and 205.55) establish requirements for income and eligibility verification. These regulations governing the Income and Eligibility Verification System require States to request information from other Federal and State agencies to verify individuals' eligibility for assistance under the State plan and the correct amount of assistance payments for applicants and recipients.
- Regulations (45 CFR § 264.30(a)) require the State agency to refer to the child support enforcement agency all appropriate individuals in the family of a child for whom paternity has not been established or for whom a child support order needs to be established, modified, or enforced. Referred individuals must cooperate in establishing paternity and in establishing, modifying, or enforcing a support order with respect to the child.
- Section 408(a)(2) of the Act provides that if an individual does not cooperate with the State in establishing paternity or in establishing, modifying, or enforcing a support order, the State must reduce assistance by at least 25 percent or may deny the family any assistance.
- Section 408 of the Act prohibits assistance for individuals who (1) fail to assign support rights to the State, (2) fail to attend high school or an equivalent training program when the individual is a teenage parent, (3) fail to reside in an adult-supervised setting when the household head is a teenager, (4) are fugitive felons or parole violators, or (5) are minor children absent from the home or parents who fail to notify the State agency of the absence.
- The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193, as codified, in part, at 8 U.S.C. §§ 1601–1646), section 115(a)(1), prohibits assistance for individuals who have been convicted of a drug-related felony.

¹The State agency may accept as verified a Social Security number provided directly to the State agency by SSA or by another Federal or federally assisted benefit program that has received the number from SSA or has submitted it to SSA for verification.

- Regulations (45 CFR § 205.60(a)) require State agencies to maintain records regarding applications and eligibility determinations for the provision of assistance. Included in such records should be facts supporting initial and continuing eligibility determinations.
- Regulations (45 CFR part 265) establish that States must report TANF financial data on a quarterly basis to ACF. Pursuant to 45 CFR §§ 265.7(a) and 265.4(a), each State's quarterly reports must be complete, accurate, and filed within 45 days of the end of the quarter. A complete and accurate report means that (1) the reported data accurately reflect information available to the State in case records, financial records, and automated data systems; (2) the data are free from computational errors and are internally consistent; and (3) the reported data include all applicable elements (45 CFR § 265.7(d)).

**STATE REQUIREMENTS RELATED TO TEMPORARY ASSISTANCE
FOR NEEDY FAMILIES BASIC ASSISTANCE**

- Regulations (18 NYCRR § 352.1) establish that a social service district will determine public assistance eligibility for all household members.¹
- Regulations (18 NYCRR § 350.4) require that a State-prescribed written application be completed for each case.
- Regulations (18 NYCRR § 369.1(b)) state that to receive family assistance, a family must include (1) a minor child who resides with a custodial parent or another adult caretaker who is related to the child by blood, marriage, or adoption or (2) a pregnant woman.
- Regulations (18 NYCRR § 369.3(b)(1)) state that when a child or minor has been living with one parent and it becomes necessary for the child to move permanently to the home of the other parent or to the home of an eligible adult relative, a new application is required, and the other parent or eligible adult relative must be designated as grantee provided the other conditions of eligibility are met. The former case must be closed for statistical purposes and a new case opened.
- Regulations (18 NYCRR § 369.2) require that eligibility for family assistance be determined based on financial need, age, welfare of the child or minor, residence in the State, living arrangements, relationship of the child to the relative, and applicable durational time limits. Applicants must be advised that a Social Security number is required for each person in the public assistance household and that the Social Security number will be used in administering the State's family assistance program.² Applicants must also be advised of the requirement to comply with the Child Support Enforcement Program and with work requirements.
- Sections (B)(xxiii) and (B)(viii) of the State plan require, as a condition of eligibility, that recipient family members participate in the State's fingerprint imaging program and be screened for alcohol and substance abuse.
- State agency guidance ("Temporary Assistance Source Book," Chapter 25, sections C and D) requires local districts to use the State-prescribed Alcohol and Drug Abuse Screening and Referral form to screen all heads of households and adult household members applying for assistance and to maintain the completed form in the case file. In addition, Chapter 9, section R(3)(b)(2), of this book requires local districts to obtain a completed Child Support Enforcement Referral form for each absent parent.

¹NYCRR = the New York Code of Rules and Regulations.

²The family assistance program is the State agency's temporary assistance program for families. The program is subject to Federal TANF rules and is funded with Federal, State, and local money.

- Regulations (18 NYCRR § 369.2(c)) state that a child is eligible for assistance if he or she is under age 18 or if he or she is under age 19 and a full-time student regularly attending a secondary school or in the equivalent level of vocational or technical training.
- Regulations (18 NYCRR § 369.2(e)) state that to be eligible for assistance, a child or minor must live in the State at the time of application.
- Regulations (18 NYCRR §§ 352.23(b) and (b)(2)), as implemented by sections (B)(x) and (B)(x)(2) of the State plan, specify that the maximum amount of assets that a family may own and still qualify for assistance is \$2,000. However, the family is allowed one automobile valued up to \$4,650 (fair market value) if the automobile is not used for work activities and up to \$9,300 if the automobile is needed for the applicant to seek or retain employment or travel to and from work activities.
- Regulations (18 NYCRR §§ 352.32(a) and (b)) state that an estimate of needs (budget) must be prepared for each new or reopened public assistance case when the application for assistance is approved. The budget form contains an estimate of the recipient families' regularly recurring needs and the resources available to meet those needs. These items are based on the circumstances in each case and the policies and allowance schedules of the State agency. The budget must be recalculated whenever there is a change in the recipient's needs or resources or in the State agency's allowance schedules.
- Regulations (18 NYCRR § 352.3) establish, for each district, the maximum shelter allowance for the household size.
- State agency Administrative Directive # 04-ADM-05, effective July 1, 2004, states that when an individual or a family lives in the same dwelling unit with a family member receiving Supplemental Security Income (SSI), the presence of the legally responsible SSI adult or the SSI child must be considered when determining the household's standard of need. The SSI individual's SSI benefit counts only against his or her need, not against the needs of the other family member(s) seeking assistance.
- Regulations (18 NYCRR § 351.2(l)(7)(i)) provide that the State agency may grant waivers to temporarily suspend various public assistance program requirements, including child support and paternity cooperation requirements. Also, 18 NYCRR § 369.2(b)(4)(iv) provides good cause exemptions for noncooperation with child support enforcement, i.e., circumstances in which cooperation is not in the best interest of the child.
- Regulations (18 NYCRR § 385.12(d)) state that a public assistance recipient who refuses or fails without good cause to comply with employment requirements must be sanctioned through a prorated reduction of the assistance grant.

- Regulations (18 NYCRR § 385.2(b)) exempt an applicant for or recipient of public assistance from participation in public assistance work activities if he or she is determined to be (1) ill or injured to the extent that he or she is unable to engage in work activities for up to 3 months, as verified by medical evidence; (2) 60 years of age or older; (3) under the age of 16 or under the age of 19 and attending a secondary, vocational, or technical school full time; (4) disabled or incapacitated; (5) needed in the home because another member of the household requires his or her presence due to a verified mental or physical impairment, and the district official has determined that no other member of the household is appropriate to provide such care; (6) pregnant, beginning 30 days prior to the medically verified date of the delivery of the child; or (7) the parent or other caretaker relative in a one-parent household who is personally providing care for a child under 12 months of age.
- Regulations (18 NYCRR § 351.1(b)(2)(ii)) require each applicant and recipient, as a condition of eligibility, to furnish evidence of those factors that affect eligibility and the amount of entitlement, including (1) identity, (2) residence, (3) family composition, (4) rent payment or cost of shelter, (5) income from any source, (6) savings and other resources, and (7) lawful residence in the United States if the applicant is an alien resident.
- Regulations (18 NYCRR § 351.1(b)(1)(ii)) require the social service district to inform each applicant and recipient, at the time of application and subsequently, of his or her initial and continuing responsibilities to furnish accurate, complete, and current eligibility information. Also, 18 NYCRR § 351.1(b)(2)(iv) requires each applicant and recipient to make a timely report to the district of any changes in his or her needs or resources. A report is considered timely if made within 10 days of the changes.
- Regulations (18 NYCRR § 369.4) require that personal contacts and redeterminations of eligibility be made in accordance with 18 NYCRR part 351 and include a reevaluation and reconsideration of all variable factors of need and other factors of eligibility, including the financial need of the child and parent or other relative, the welfare of the child or minor, the child's living arrangements with a parent or other relative, the employment status of employable individuals, and the 60-month durational limit applicable to the assistance program.
- Regulations (18 NYCRR § 351.20(b)) state that, in connection with the periodic redetermination of eligibility, the social service district should (1) require that the recipient complete the State-prescribed form and submit appropriate supporting data; (2) determine the need for additional information from the recipient and/or collateral sources; (3) conduct a face-to-face interview with the recipient to verify factors of eligibility; (4) make an appropriate collateral investigation, as required, when the recipient is unable to secure documentation of eligibility factors to establish continued eligibility; (5) evaluate all the information gathered for completeness, relevancy, and consistency; (6) identify the eligibility factors subject to change that call for prompt

review of continuing eligibility; and (7) advise the recipient of his or her continuing responsibility to keep the agency informed of changes in circumstances.

- Regulations (18 NYCRR §§ 351.21(a) and (b)(2)) state that contacts with or concerning recipients must be made as frequently as individual need, change in circumstances, or the proper administration of assistance or care may require. All variable factors of need and eligibility must be reconsidered, reevaluated, and verified at least every 6 months.

SAMPLE DESIGN AND METHODOLOGY**AUDIT OBJECTIVES**

Our objectives were to determine whether the New York State Office of Temporary and Disability Assistance made TANF basic assistance payments to or on behalf of recipient families in accordance with Federal and State requirements and adequately documented eligibility and payment determinations.

AUDIT UNIVERSE

The universe consisted of all TANF basic assistance payments made during the 6-month audit period that ended December 31, 2005.

SAMPLING FRAME

The sampling frame was a computer file containing 757,413 monthly basic assistance payments to or on behalf of TANF recipients in New York during the 6-month period that ended December 31, 2005. The total TANF reimbursement for the 757,413 payments was \$327,838,477 (\$163,919,239 Federal share).

SAMPLE UNIT

The sample unit was a monthly TANF basic assistance payment to or on behalf of a recipient family during the audit period. The payment included all basic assistance payments made to or on behalf of the family within the month, including utilities, rent, and cash payments.

SAMPLE DESIGN

We used a simple random sample.

SAMPLE SIZE

We selected a sample size of 150 monthly TANF basic assistance payments.

SOURCE OF THE RANDOM NUMBERS

The source of the random numbers was the Office of Inspector General, Office of Audit Services (OAS), statistical sampling software, RAT-STATS 2005, version 6. We used the random number generator for our simple random sample.

METHOD FOR SELECTING SAMPLE ITEMS

We sequentially numbered the payments in our sampling frame and selected the sequential numbers that correlated to the random numbers. We then created a list of 150 sampled items.

CHARACTERISTICS TO BE MEASURED

We based our determination of whether each sampled payment was improper on Federal and State laws, regulations, and other requirements. Specifically, if at least one of the following characteristics was met, we considered the payment under review improper:

- The recipient family did not meet one or more eligibility requirements.
- The recipient family was eligible for assistance but received an improper payment amount (overpayment or underpayment).
- The case file did not contain sufficient documentation to support eligibility and payment determinations as required by Federal and State regulations.

ESTIMATION METHODOLOGY

We used both the OAS variable and attribute appraisal programs in RAT-STATS to appraise the sample results.

We used the variable appraisal program to estimate the total dollar value of TANF basic assistance payments with eligibility or calculation errors and with documentation errors (overpayments, underpayments, and combined over/underpayments). We used the attribute appraisal program to estimate the total number of these improper payments.

In addition, we determined the improper payment rate for the dollars expended by dividing the estimated improper dollars by the total Federal dollars in the universe. We also determined the improper payment rate for the number of payments in error by dividing the estimated number of improper payments by the total number of payments in the universe.

SAMPLE RESULTS AND PROJECTIONS

OVERALL SAMPLE RESULTS AND PROJECTIONS

Sample Details

Value of Universe (Federal Share)	No. of Payments in Universe	Value of Sampled Payments (Federal Share)	Sample Size
\$163,919,239	757,413	\$32,409	150

Overall Sample Results

	Value of Improper Payments (Federal Share)	No. of Improper Payments
Overpayments	\$9,144	64
Underpayments	108	5
Overall	\$9,252	69

Overall Projection of Sample Results
Precision at the 90-Percent Confidence Level

	Overall		Overpayments		Underpayments	
	<u>Variable Appraisal</u>	<u>Attribute Appraisal</u>	<u>Variable Appraisal</u>	<u>Attribute Appraisal</u>	<u>Variable Appraisal</u>	<u>Attribute Appraisal</u>
Midpoint	\$46,714,659	348,410	\$46,170,836	323,163	\$543,823	25,247
Lower limit	34,982,802	295,994	34,407,584	271,509	113,146	10,018
Upper limit	58,446,515	401,735	57,934,088	376,486	974,499	52,111

Calculation of Overall Improper Payment Rate

Dollar value of payments	<u>Projected improper dollars</u>	\$46,714,659	= 28.50%
	Total Federal dollars in universe	\$163,919,239	
Number of payments	<u>Projected No. of improper payments</u>	348,410	= 46.00%
	Total No. of payments in universe	757,413	

**SAMPLE RESULTS AND PROJECTIONS FOR
ELIGIBILITY AND PAYMENT CALCULATION ERRORS**

Sample Results—Eligibility and Payment Calculation Errors

	Value of Improper Payments (Federal Share)	No. of Improper Payments
Overpayments	\$4,745	42
Underpayments	108	5
Overall	\$4,853	47

Projection of Sample Results—Eligibility and Payment Calculation Errors
Precision at the 90-Percent Confidence Level

	Overall		Overpayments		Underpayments	
	Variable Appraisal	Attribute Appraisal	Variable Appraisal	Attribute Appraisal	Variable Appraisal	Attribute Appraisal
Midpoint	\$24,502,765	237,323	\$23,958,942	212,076	\$543,823	25,247
Lower limit	17,294,660	190,051	16,730,504	166,680	113,146	10,018
Upper limit	31,710,870	288,857	31,187,381	262,506	974,499	52,111

Calculation of Improper Payment Rate—Eligibility and Payment Calculation Errors

Dollar value of payments	<u>Projected improper dollars</u>	<u>\$24,502,765</u>	= 14.95%
	Total Federal dollars in universe	\$163,919,239	
Number of payments	<u>Projected No. of improper payments</u>	<u>237,323</u>	= 31.33%
	Total No. of payments in universe	757,413	

**SAMPLE RESULTS AND PROJECTIONS FOR
DOCUMENTATION ERRORS**

Sample Results—Documentation Errors

Value of Improper Payments (Federal Share)	No. of Improper Payments
\$4,399	22

Projection of Sample Results—Documentation Errors
Precision at the 90-Percent Confidence Level

	Variable <u>Appraisal</u>	Attribute <u>Appraisal</u>
Midpoint	\$22,211,894	111,087
Lower limit	11,931,383	76,826
Upper limit	32,492,404	153,570

Calculation of Improper Payment Rate—Documentation Errors

Dollar value of payments	$\frac{\text{Projected improper dollars}}{\text{Total Federal dollars in universe}}$	$\frac{\$22,211,894}{\$163,919,239} = 13.55\%$
Number of payments	$\frac{\text{Projected No. of improper payments}}{\text{Total No. of payments in universe}}$	$\frac{111,087}{757,413} = 14.67\%$



NEW YORK STATE
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE
40 NORTH PEARL STREET
ALBANY, NEW YORK 12243-0001

Eliot Spitzer
Governor

David A. Hansell
Commissioner

June 28, 2007

Mr. James P. Edert
Regional Inspector General
For Audit Services
Department of Health & Human Services
Region II
Jacob K. Javits Federal Building
New York, NY 10278

Dear Mr. Edert:

This letter serves as our formal response to the U.S. Department of Health and Human Services (DHHS), Office of Inspector General (OIG) Draft Report entitled "Review of Temporary Assistance for Needy Families (TANF) Basic Assistance Improper Payments in New York State (Report Number A-02-06-02015)" that was sent to Commissioner Hansell on May 10, 2007.

Prior to listing our specific comments on the findings, I must reiterate New York State's fundamental belief that a return to a public assistance program that is focused on payment errors is misguided. Such a focus will result in the unnecessary diversion of resources that have, for the past ten years, been successfully devoted to transforming the TANF program into a transitional, work focused and work supported program. As a result, caseloads across the country have plummeted, more female-headed households than ever have joined the workforce, overall and child poverty rates are lower than in 1996, and the strong focus on assessing employability has also assisted those who are unable to work to access more suitable disability programs and rehabilitation efforts.

New York State has effectively reduced its TANF caseload by 75% since the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) and been able to reinvest its TANF Block Grant on such important work supports as a State earned income tax credit, increased child care and case management services, all provided in accordance with the stated purposes of the TANF program. The TANF program today has more integrity than the former Aid to Families with Dependent Children (AFDC) program ever had, with its work oriented emphasis that reduces people's need for assistance, rather than the payment error focus under AFDC. Today, any error percentage has much less of an impact than it did in the former AFDC era because basic assistance is now such a small portion of total expenditures (about 13.4%) of the TANF Block Grant in New York State. Furthermore, establishing a national payment error rate and comparing different states is no longer valid. Under the AFDC program, all states had to administer their AFDC program under specific federally-prescribed rules. PRWORA allows states to administer their TANF Block Grant funds in significantly different ways (such as using different eligibility criteria, different sanction rules, different standards of need, and different budgeting methodologies, as well as using the money for various non-basic assistance items). Comparing the TANF program from state to state is simply not meaningful. Furthermore, the greatest source of legitimate overpayments the auditors found was the earned income factor. In a state like New York, with a generous earned income disregard, a relatively high standard of need and less punitive work activity compliance sanctions, there is more likelihood of a high earned income related error rate. There are more recipients on our caseload who are working and those who are working often experience fluctuating income which requires more budget adjustments. There also may be more recipients willing to take the sanction, since the remainder of their family can continue to receive benefits.

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These are reasons why the establishment of a national error rate is problematic, unless there is some adjustment for factors such as those outlined above. The OIG audit approach is second-guessing whether the shift of State/local resources from the emphasis on rules enforcement to engagement and work supports was efficient. In essence it is making a judgment about welfare reform itself, well after the fact and ignoring the clear successes of the past decade.

I am attaching an August 16, 2006, letter from the former Office of Temporary and Disability Assistance Commissioner Robert Doar to Dr. Wade F. Horn which outlines New York State's continuing position regarding the return to a payment error focus for the TANF program. As stated in this letter, New York State has not abandoned its attention to program integrity for TANF basic assistance. This is evidenced by the management and review activities listed in the letter.

When PRWORA established the TANF Block Grant Program, a federal quality control payment accuracy audit function was not included in the law or in the companion regulations. State staff who had been devoted to dealing with payment accuracy audits prior to PRWORA and examining every finding in detail are no longer in place. This staff has been redeployed to other forms of monitoring and training of staff, all of which have greatly contributed to the reduced caseloads. It takes time and effort to shift back to a payment accuracy model and diverts resources from other necessary tasks. This is evidenced by New York City Human Resources Administration's (HRA's) case by case response to the review findings which they were unable to formally provide to us until May 22, after the draft report was issued. This time was needed to gather the information and documentation necessary for them to contest the findings. State staff reviewed HRA's response and agrees with them that for a variety of reasons many of the errors cited should not have been. Because HRA's response brings into question the accuracy of the auditors' findings in many of the cases cited, I am taking the opportunity now to provide you with their comments. They also have provided us with materials documenting the reasons for challenging many of the specific findings.

If an error rate is now being established for states and is to result in financial penalties, then the specifics of that entire process should have been stated clearly from the outset so that states would have had the opportunity to reestablish the processes for challenging each and every finding, prior to being assessed any financial penalties. A process for monitoring, that may have been required under the Improper Payments Information Act of 2002, should have been more fully developed over the five years since its passage and not, as was the case with this audit, put together haphazardly in response to pressure to demonstrate some form of monitoring. This is patently unfair, arbitrary, capricious and prejudicial to the states that simply did not have the time or the process in place to deal with an audit of this magnitude and the consequences that may result.

I also must emphasize that the auditors found few errors related to actual federal TANF requirements such as the time limits, fugitive felons, child in care, etc. The review mostly found problems with State requirements, and under TANF regulations, states were intentionally given wide latitude to develop their own requirements, in addition to existing federal rules.

Following are our specific comments on the findings, followed by HRA's comments:

- On page 1 of the draft report, the auditors presented a definition of an improper payment. They explained that the Office of Management and Budget (OMB) expanded on the definition in OMB Circular A-123, Appendix C, part I.A. stating that "when an agency's review is unable to discern whether a payment was proper as a result of insufficient documentation, this payment must also be considered an error."

Per Government Auditing Standards, Section 4.15, "criteria" is defined as follows: "The laws, regulations, contracts, grant business practices, and benchmarks against which performance is compared or evaluated. Criteria identify the required or desired state or expectation with respect to providing a context for evaluating evidence and understanding the findings."

The OMB circular referred to in the report was released on August 10, 2006. The review period in New York State was July 2005-December 2005. Since this "law, regulation, contract, grant business practice, and benchmark" was not even in effect for the period of review, the criterion cannot justifiably be used to audit improper payments for that period of time.

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About half of the payments found in error were the result of missing documentation. This does not mean that these payments represent misspent funds. In a normal Quality Control process, State reviewers would attempt to obtain the documents.

- Unlike its predecessor AFDC program, TANF has no pre-set federal share for cases we decide to designate as federally related Family Assistance, as compared to our option to designate cases as State Maintenance of Effort (MOE). Yet OIG has decided to assume such a rule in calculating its estimated federal share error. In our administrative role overseeing local districts, the state may use a certain federal share as a guideline for simplifying reimbursement, but that need not apply to each case; the state could apply a minimal federal share rate (e.g., 5% or less) to the more complicated cases, like those with income, or mixed households such as those with an SSI recipient, and could use an enhanced FFP rate (e.g., 95%) for the most straightforward cases, averaging out to the 50% FFP reimbursement rate we currently use as a guideline. It seems this audit is encouraging states to take this option, to avoid adverse findings of improper payments. In the same manner that states were discouraged by DHHS in the early years of TANF not to "game the system" by shifting the low work participation cases to MOE in order to meet participation rate mandates (which NYS did not do), OIG seems to be encouraging greater complexity and therefore state workload.
- An April 2006 Congressional Response Report on Overpayments in the Social Security Administration's Disability Programs (A-01-04-24065) contained an OMB Guidance Chart on Defining Erroneous Payments (attached). This chart was issued in August 2003. In this chart, OMB classifies payments made incorrectly due to program design as unavoidable. Two examples of program design cited in this guidance are (1) program is designed to issue benefits on the first of the month and changes in the recipient's status occur during the month, causing the recipient's eligibility to change, and (2) program design requires that the agency make payments based on estimated earnings. Because the Social Security Administration (SSA) cannot prevent these overpayments from being made, OMB states that these types of payments are not considered to be erroneous payments and should not be reflected in the agency's erroneous payment rate. Many of the earned income payment errors cited in the Draft OIG Audit Report were similarly unavoidable and should not be considered in our erroneous payment rate. If the OIG auditors followed these same rational guidelines, New York State's erroneous payment rate would be significantly reduced.
- Furthermore, in a September 6, 2006 letter (attached) to Senator Tom Coburn regarding improper payments, Mr. McCoy Williams from the United States Government Accountability Office (GAO) states that GAO agrees with OMB that a payment made because of a legal requirement to make the payment, subject to subsequent determinations that the payment is not due, should not be included in an estimate of an agency's improper payments because it does not meet the definition of an improper payment.
- A large percentage of the actual payment error cases involved earned income. We advised the auditors at the entrance conference that we were already aware of the earned income error factor due to food stamp reviews and were taking steps to correct it, but that to some extent an earned income error factor is an accompanying liability of an intensive focused drive to get people to work. With more people working there are going to be delays in reporting, frequent changes in income, and other complications, that while worthy of our best efforts to correct, are frankly outweighed by the beneficial policy effects of moving families to employment.

Notwithstanding that, the auditors did not even follow reasonable standards in evaluating improper payments related to earnings. When evaluating an improper payment, an auditor must provide the state with timeframes to budget new or increased earnings. According to New York State regulations, a client makes a timely report of income changes if reported within 10 days of receipt of the initial or increased earnings. The worker needs a period of time to secure documentation (typically 10 days) and the client is entitled to a "10 day" notice stating that the public assistance grant is reduced or discontinued. Depending on the dates surrounding these events and the worker's ability to change the system to reflect the new amount, the timeframe for making the change will be two semi-monthly benefit cycles. This "administrative processing period", which provides up to 30 days before public assistance benefits are reduced, was not

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considered in the audit. An auditor should use these same timeframes when making determinations of improper payments.

It also should be noted that the auditors seemed to rely heavily on Resource File Integration (RFI) information which was not available to the front line worker at the time covered by the audit.

- A similar concept to the earned income "administrative processing" period is the Payment Adjustment Lag (PAL) concept. For agency error improper payments, the OIG audit incorrectly estimates New York State's TANF error rate when information was reported to the agency but not acted on timely. One way it does this is by refusing to provide for such longstanding auditing concepts as the Payment Adjustment Lag principle (used in AFDC error rate calculation and a similar concept applied in Food Stamps reporting rules). This concept provides states, and districts in this State, a reasonable period of time (normally a minimum of the month of change and following month) without incurring any quality control penalty. Had this State foreseen that a quality control error rate would continue under PRWORA, it would have passed State TANF legislation providing for reasonable standards such as this.
- Most of what the auditors identify as household composition errors relate to the proration of TANF benefits in households containing Supplemental Security Income (SSI) individuals. This was a new policy in the later stages of implementation at the time covered by the audit. Furthermore, in NYC there was a delay in systems support which likely led to some of the errors when workers tried to implement the changes manually. This policy is currently in litigation. Therefore, these payments that were cited as household composition errors are really an anomaly and represent no improper payment pattern.
- Some payments were cited for lack of documentation, but the documentation related to only one component of the grant, not the entire grant. In such cases, the entire payment cannot be considered to be in error if only the documentation for one component of the grant was lacking. New York State's TANF standard of need and grant can consist of several components: the shelter allowance, the non-shelter allowance, a fuel allowance and various special needs allowances, as appropriate. If a case lacked documentation of a shelter expense, a shelter allowance should not be included in standard of need or benefit amount. However, that does not mean that the family was ineligible for the other components of the grant.
- There were some cases where the auditors cited the entire monthly payment as being in error because they said one of the individuals in the case should have been sanctioned. Notwithstanding the fact that the auditors should not even be questioning a district's decision on when to impose the sanction, whether it be for employment, substance abuse or child support non-compliance, the monthly grant is reduced but the case is still eligible for a benefit. In New York State, employment and substance abuse sanctions result in a pro rata reduction in the benefit amount and child support sanctions result in a 25% reduction in the household's needs. The auditors' position reflects a fundamental lack of understanding of how New York State's program works.
- There were some cases that were cited where child support in excess was not used to close the case. This does not result in a "payment error" because the child support collected by the local district offsets the amount of TANF benefits provided. Although this is not a payment error, we have taken steps to improve the administration of excess support calculations for other reasons.
- There were several cases where the auditors retroactively applied SSI eligibility to cases that were not determined eligible for SSI until a much later date. For example, a member of the TANF case applies for SSI in April and is determined eligible for and begins to receive recurring SSI the following November. The individual receives a retroactive SSI benefit back to the date of application in April, but before sending that retroactive SSI benefit to the recipient, SSA deducts from the retroactive benefit the individual's incremental share of the TANF grant from April through November. The auditors cited cases for incorrect budgeting because the case included an SSI recipient beginning in April, the date of application, not the date the individual was determined eligible for SSI. Individuals are not SSI recipients until the month they actually begin to receive recurring SSI benefits and therefore the auditors should not have cited these cases as errors.

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- There were some cases where the auditors contended the local district did not impose a sanction in a timely fashion. Imposing a sanction is a subjective decision and the State currently tries to encourage engagement over sanction in order to assist clients to become self-sufficient and to comply with the stricter participation rates resulting from TANF reauthorization. The State gains little by sanctioning clients and is using more case management and negotiation to engage clients. Although sanctions are a tool to gain compliance, it is inappropriate and outside the scope of authority for an auditor to say that in any given month a sanction should have been imposed.
- The audit objectives on page three of the draft Report differ from the audit objectives on page one of Appendix C. On page 3, the last sentence is in addition to the original audit objective.
- Page two of the draft Report indicates that the auditors still do not understand New York's fundamental systems when they state that the Welfare Reporting Tracking System (WRTS) processes and pays TANF basic assistance benefits. That statement is inaccurate because the Benefit Issuance and Control System for districts outside New York City is the primary payment system and New York City has its own payment system to issue benefits. WRTS is a system that receives information on benefits paid.
- The draft Report indicates on page six that New York State is reporting basic assistance payments inaccurately. There are numerous instances where costs may be considered assistance or non-assistance depending upon interpretation of the regulations. **Please note that HHS regional office staff and Single Audit staff annually review our supporting documentation to the financial reports and have never raised the reporting issues noted in this report.** Since there is ambiguity in what can be considered assistance vs. non-assistance and there are changes that may need to be made to one or more reporting systems, we will pursue agreement with HHS on the proper categorizations before we finalize any actions.
- The auditors indicate on page 11 of the draft Report, that because of the reporting differences on the TANF financial report and WRTS, the Administration for Children and Families cannot verify that New York State meets its maintenance of effort. Regardless of how the costs should be categorized on the report or WRTS in New York State's situation, it should not raise a question of eligibility for MOE. These were expenditures made on behalf of TANF or MOE eligible families under PRWORA and to come to that conclusion just because they may not have been reported on the proper line of a report under the auditors' interpretation of the TANF regulations, is erroneous and misleading.

HRA challenges the findings in 27 of the 29 cases cited. Seventeen of these cases were cited for actual payment errors and 10 for lack of documentation to support eligibility. HRA maintains that these issues came up during the audit process and that HRA discussed them with the auditors:

- Incorrect budgets were prepared by the OIG auditors in 6 cases representing \$565 in cited erroneous payments.
- Information obtained from December, 2006 RFI, SDX clearances, etc. was retroactively applied to 8 cases for review months between July, 2005 and December, 2005 (12-18 months prior) representing \$2,116 in cited erroneous payments. This information had not even been posted to the system until months after the review period or incorrect information was being applied.
- One case representing \$167 in cited erroneous payment was cited for not prorating shelter for undocumented aliens having no income. This is not a State policy.
- Two cases representing \$45 were cited for budget calculations that failed to include an SSI household member and correctly prorate the budget. This was a recent policy change for which State system support for such budgeting was not yet available.
- Of the 21 cases cited as having insufficient documentation to support eligibility/payment determinations, HRA challenges 10 of these cases which represent \$2,217.34 in cited erroneous payments. These cases include 7 cases representing \$1,755.14 in cited erroneous payments where all supporting documentation had been provided to the auditors, many on several different occasions. There were also three cases representing \$462.20 in cited erroneous payments for which sufficient supporting documentation was provided to re-compute a corrected budget.

The draft report indicates that the audit found that 74 out of 150 payments that were reviewed (49%) were improper. It further indicates that \$9,848 out of the \$32,409 of the State's TANF funds that were reviewed (30%) were improper. However, for the reasons detailed above in this response, a review of the findings by State and local district staff reveals that, at most, 24 (16%) of the payments may have been incorrect and that, at most, \$2,334 (7.2%) of the State's TANF funds may have been incorrectly spent. These results are remarkably consistent with the degree and kinds of errors (such as earned income and household composition) that we are aware of through means such as Food Stamp error reviews of TANF cases and the continuing TANF payment error reviews conducted by the NYC HRA.

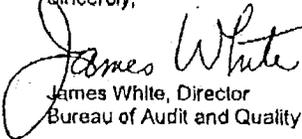
The following chart summarizes how our disagreements with the conclusions in the draft report led to this lower estimate:

Reason For Difference	Number of payments	Amount of TANF funds	OIG payment sample #'s
Unavoidable at the time of payment	11	\$1,671.11	3,11,22,36,38,50,76,114,119,132,150
Misunderstanding of State policy or rules	12	\$828.08	51,58,63,71,81,83,88,95,104,106,126,140
Documentation is sufficient	4	\$547.79	53,75,129,131
Documentation that was missing only impacted part of payment	Note: These payments and the balance of any payment attributed to missing documentation are included in the row associated with OMB Circular A-123 below.	\$345.13	(20,40,98,130,144)
Excess child support/TANF recovered though child support process	2	\$196.61	2,46
Administrative time (payment adjustment lag) needed to complete the adjustment to grant	2	\$128.00	15,102
Subtotal--State and local disputed errors	31	\$3,716.72	
Alleged errors due to insufficient documentation for payments made prior to OMB Circular A-123	19	\$3,797.07	20,29,40,59,65,91,92,94,98,107,117,118,121,124,130,136,137,141,144
Total--amounts the State disputes as being characterized as improper	50	\$7,513.79	
Amounts the State agrees might be in error	24	\$2,334.21	

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In conclusion, our analysis indicates that, although there is room for improvement, State and local district staff have been able to achieve over a 90% accuracy rate in terms of making correct assistance payments while also achieving remarkable results from added program requirements such as engaging clients in employment, screening and referring for treatment and rehabilitation and diversion to other more appropriate programs that have been the hallmarks of welfare reform.

Sincerely,

A handwritten signature in cursive script that reads "James White". The signature is written in black ink and is positioned above the typed name and title.

James White, Director
Bureau of Audit and Quality Improvement

Attachments

1

August 16, 2006

Dr. Wade F. Horn, Ph.D
Assistant Secretary
U.S. Department of Health and Human Services
Administration for Children and Families
370 L'Enfant Promenade, SW - 6th Floor
Washington DC 20447

Dear Dr. Horn:

I understand that there is growing interest in Washington in reestablishing a payment error rate method of accountability comparison between the states in respect to the IV-A (TANF) assistance program. Evidence of this interest is a recent letter that I received from James Edert, the Region II HHS Inspector General. The letter indicates that his staff will be conducting a review to determine a TANF basic assistance "improper payment rate" for New York State and that the review was requested by the Office of Management and Budget in conjunction with HHS ACF in response to the Improper Payments Act. New York is one of three states being singled out this year for such a review along with Michigan and Pennsylvania, with eight more states targeted next year in what seems to be a planned annual payment accuracy review process.

For the several reasons detailed below, most notably that we are now ten years into TANF and the program has virtually no resemblance to the old AFDC Program, I believe that this return to a payment error focus is misguided, superfluous and will result in a misapplication of TANF program resources. Therefore I enlist your support in rejecting this approach at the outset:

- The fundamental shift from AFDC to TANF was from a rules based eligibility program to a work and transitional supports program i.e. from payment rates to participation rates. A return to the tried and failed "payment accuracy" measurement process will only invite states to divert resources into technical policy and regulatory machinations to avoid errors as well as result in increased litigation costs from being forced to challenge every federal audit action or decision. It will recall the days when workers consumed with meeting an error rate leaned over their desks and said to clients, "it will be easier for both of us if you just quit/don't take that part-time job."
- The basic cash assistance caseloads have dropped by approximately two-thirds since the inception of TANF. Funds that were formerly expended for basic assistance are now reinvested in services such as child care and work supports such as earned income tax credits.

- The former AFDC program was based on many specific eligibility rules outlined in federal regulations and thus lent itself to a payment accuracy comparison between the states since all states were, by and large, playing under the same set of rules. However, TANF has few eligibility rules. Yes, there must be a child in the household and there are time limits but there are no federal TANF rules that govern the majority of more complex payment eligibility issues such as:
 - Counting of income and resources
 - Income disregards
 - Correction of overpayments and underpayments
 - Frequency of recertifications
 - Receipt of lump sum payments
 - Gross income tests
 - Deeming of income
 - Filing unit provisions
 - Authorization of grants

- It is reasonable to assume that states have modified many rules in the above areas under TANF compared to what they had been under AFDC. One need only look at the variations on earned income disregard policy to get some sense of the diversity and variance that now exist among the states. **This will make it impossible to compare one state to the next in terms of payment accuracy.**

- Although payment accuracy is not (and should not be) a national focus under TANF, I think that you will find that state program managers have continued to pay attention to program integrity for basic assistance under TANF. This only makes common sense, since the TANF MOE provision still requires a significant investment of state funds and the TANF block grant itself constitutes a huge resource for the states to manage prudently. Some examples of this type of management in New York include:
 - The State conducts yearly TANF reviews to ensure that its local offices follow basic federal eligibility requirements such as the presence of a child in the household and that exemptions from time limits have been verified and documented.
 - As a result of its reviews, the State initiates corrective actions to correct problems that are identified. For example, the State (after noting that these actions were not always done timely by front line workers) now automatically converts cases that have passed the TANF time limit to its MOE assistance program.
 - State and local managers under TANF have increasingly used methods such as finger imaging, interstate matches, front and back-end review of error prone cases, home visits and reliance on a host of traditional and newly developed (i.e. National Directory of New Hires) resource and income matches to ensure program integrity and that assistance only goes to eligible individuals in the correct amounts.

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- State TANF managers keep track of Food Stamp (FS) payment accuracy trends among cases receiving both TANF and FS and work jointly with FS management on errors that cross programs. One example is the accuracy of client reporting and agency budgeting of earned income. Work has focused on getting local offices to pay more attention to information sources that reveal earned income, to insist on proper documentation and to focus supervisor review on this error element as well as other elements that cross program lines.
- In New York City, where by far the largest percentage of TANF basic assistance recipients resides, the local TANF agency still conducts its own TANF payment accuracy studies. Local and state managers use this information to track error trends and correct problems.
- State TANF managers are most familiar with the complexities of their own programs and can zero in on areas that require special studies into correct eligibility and payment accuracy. Recent special reviews and initiatives in New York include budgeting of income for AIDS cases, payment of personal needs allowances to residents of drug and alcohol treatment facilities, and budgeting of earned income for residents of family homeless shelters.
- Finally, the work focus of TANF itself is perhaps the most significant contributor to program integrity. Clients (now more than ever under the interim final rules that you just promulgated) must be accountable, must engage in job searches as applicants, and as recipients must put in time into activities that mirror work if they are not already working. If they do not comply they are subject to sanction which in New York is a partial sanction that raises their profile as a case subject to special review and fraud investigation. Such clients have great difficulty engaging in fraudulent activity such as working off the books which was prevalent under the former AFDC system which had no effective way to account for such activity under its payment accuracy system.

Either I or my Deputy Commissioner Russell Sykes would be happy to discuss these issues with you further or answer any questions you may have. I hope that you will give my concerns serious consideration as you weigh the future direction to go on this issue, because a return to a federal payment accuracy model is exactly the wrong course to take if the federal government and the states wish to continue and extend the major gains made to date under TANF.

Sincerely,

/s/ RD 08/16/06

Robert Doar

cc: James Edert

OMB Guidance on Defining Erroneous Payments (issued August 2003)

The following table identifies the types of SSA payments, programs affected, current reporting status, reasons for the payments, and their classification. There are two classifications:

- Unavoidable - Payments resulting from legal or policy requirements. These payments are not considered erroneous.
- Avoidable - Payments that should be reflected in the erroneous payment estimate because they could be reduced through changes in administrative actions.

Types of Payments	Program	Current Status	Reason for Overpayment/Underpayment	OMB Classification
Payments following a cessation of eligibility due to a continuing disability review (CDR)	DI and SSI	Not currently reflected as an error	When SSA is required by law to make payments during the appeals process, these payments are not erroneous.	Unavoidable
Payments made under the Goldberg-Kelly due-process Supreme Court decision.	SSI	Reported as unavoidable erroneous payment in APP.	When due process requires SSI payments to continue, although the agency has determined that a payment reduction or termination is in order, such payments are not erroneous.	Unavoidable
Payments made incorrectly due to program design	SSI	Reported as unavoidable erroneous payment in APP.	The law requires SSI payments to be made on the first of the month based on projected income for that particular month. Changes in the recipient's status can occur during the month, which causes the recipient's eligibility to change. Because SSA cannot prevent the overpayment from being made, this situation should not be reflected in the agency's erroneous payment rate.	Unavoidable
Payments issued after Death	Old-Age and Survivors Insurance (OASI), DI and SSI	Not currently reflected as an error	Dollars released after death (either electronically or in the form of a paper check), which are reclaimed by Treasury or returned unendorsed, should not be reflected in the Agency's erroneous payment rate. Conversely, payments made after death which are improperly cashed or withdrawn, and are subject to overpayment recovery, should be reported.	Unavoidable except for fraud or misuse
Non-Receipt of Payment	OASI, DI and SSI	Not currently reflected as an error	Duplicate payments issued in accordance with the Robinson-Reif Court decision are unavoidable and should not be reflected in the Agency's reports on erroneous payments. The only exception is duplicates incorrectly sent to abusers.	Unavoidable except for fraud or misuse

Types of Payments	Program	Current Status	Reason for Overpayment/Underpayment	OMB Classification
Payments based on medical eligibility	DI and SSI	Not currently reflected as an error	Payments are not erroneous if they are the result of a medical improvement review standard or a situation where the beneficiary would have been ineligible had the law permitted retroactive ineligibility.	Should not be included in the erroneous payment estimate Unavoidable
Payments made for life II beneficiaries based on earnings estimates	DI and OASI	Not currently reflected as an error	When program design requires that the agency make payments based on estimated earnings, these payments should not be considered erroneous.	Unavoidable
Undetected Error	OASI, DI and SSI	Not currently reported as an error	The agency should not reflect undetected error in its erroneous payment rate unless it has evidence that a specific type of erroneous payment was made.	Should not be included in the erroneous payment estimate Avoidable
Duplicate payments to attorneys, vendors and employees	Admin. Expense	Not currently reported as an error	Systems do not capture when the overpayment occurs; however, this type of error does not meet the reporting threshold.	Avoidable

Office of Inspector General note: The State agency attached a copy of this letter from the Government Accountability Office to its comments. We have included only the first page and the page relevant to the State agency's comments in this Appendix.



September 6, 2006

The Honorable Tom Coburn
Chairman, Subcommittee on Federal Financial Management, Government
Information, and International Security
Committee on Homeland Security and Governmental Affairs
United States Senate

Subject: *Improper Payments: Posthearing Questions Related to Agencies
Meeting the Requirements of the Improper Payments Information Act
of 2002*

Dear Mr. Chairman:

On March 9, 2006, we testified¹ before your subcommittee at a hearing entitled, "Reporting Improper Payments: A Report Card on Agencies' Progress." At the hearing, we discussed our findings on federal agencies' challenges in meeting the requirements of the Improper Payments Information Act (IPIA) of 2002 based on our review of agencies' fiscal year 2005 performance and accountability reports (PAR) and annual reports. Our review focused on the extent to which agencies have performed the required assessments to identify programs and activities that were susceptible to significant improper payments, the annual amount estimated by the reporting agencies, and the amount of improper payments recouped through recovery audits.

This letter responds to your June 15, 2006, request that we provide answers to follow-up questions relating to our March 9, 2006, testimony. Your questions, along with our responses, follow.

1. *The Department of Homeland Security reported that it had assessed all programs and activities and found none to be susceptible to making significant improper payments. Their independent auditor reported that the Department did not institute a systematic method of reviewing all programs and*

¹GAO, *Financial Management: Challenges Remain in Meeting Requirements of the Improper Payments Information Act*, GAO-06-482T (Washington, D.C.: Mar. 9, 2006).

excess of \$250,000 to \$300,000. Payments in the high-value category are not reviewed any differently than payments with lower dollar values. During their internal control testing, the auditors identified one improper payment in excess of \$1 million, which had not been detected by NRC. The auditors made four recommendations to NRC to strengthen controls over its disbursements. Going forward, agency management at this agency and the other seven agencies listed above will need to ensure their risk assessment methodologies measure the potential or actual effect of major management challenges and internal control weaknesses identified from financial statement audits in order to assist in identifying programs and activities susceptible to significant improper payments.

3. *Should "unavoidable overpayment" statistics at the Social Security Administration be reported to the Office of Management and Budget? Why would this be important, and how could the Social Security Administration implement such a process?*

As we previously reported to your subcommittee,⁸ OMB has allowed the Social Security Administration (SSA) to exclude from its estimate of improper payments those payments that it had to make following constitutional, statutory, or judicial requirements even though those payments are subsequently determined to be incorrect.⁹ OMB deemed these types of payments to be "unavoidable" improper payments,¹⁰ as there are no administrative changes SSA could implement that would eliminate the requirement to make such payments. Although the definition of improper payments does not use the terms "avoidable"¹¹ or "unavoidable," we agree with OMB that a payment that was made because of a legal requirement to make the payment, subject to subsequent determinations that the payment is not due, should not be included in an agency's estimate of its improper payments because it does not meet the definition of an improper payment under the act.

Currently, SSA does not track or publicly report on these types of payments. In addition, OMB has reported that it is not aware of other agencies that are similarly legislatively mandated to make these types of payments nor does OMB require governmentwide reporting of these types of payments. Because agencies are not currently required to track, monitor, and report these types of payments on a governmentwide basis, the magnitude of this issue is unknown.

⁸GAO, *Post-Hearing Questions Related to Agency Implementation of the Improper Payments Information Act*, GAO-06-1029R (Washington, D.C.: Sept. 16, 2005).

⁹IPIA defines an improper payment as a payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements, and includes any payment to an ineligible recipient, any payment for an ineligible service, any duplicate payment, any payment for services not received, and any payment that does not account for credit for applicable discounts.

¹⁰OMB defines "unavoidable" payments as payments resulting from legal or policy requirements.

¹¹OMB defines "avoidable" payments as payments that could be reduced through changes in administrative actions.