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Summary of TANF Final Rule

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The final rules implementing changes in the Temporary Assistance for Needy Families (TANF) program made by the Deficit Reduction Act of 2005 are scheduled for publication in the *Federal Register* on February 5, 2008; this summary is based on the pre-publication version made available for public inspection.

The effective date of the new rules is October 1, 2008, the start of federal fiscal year 2009. However, in some cases, the changes do not affect the regulatory language, but only clarify the rules as previously issued, or change guidance issued by the Department of Health and Human Services (HHS) but not incorporated into the regulations. It is possible that states could implement these changes prior to October 1 by submitting an amended work verification plan to HHS.

Counting of Education and Training toward Participation Rate

Supervision and Documentation

- The final rule allows states to count up to one hour of unsupervised homework time for each hour of class time, plus any additional supervised study time. Thus, for example, a student enrolled in 12 hours a week of classes could claim 12 hours a week of unsupervised homework, and would have to attend office hours or a supervised study hall for the remaining six hours a week. Total homework time counted for participation cannot exceed the hours required or advised by the educational program. This overturns the interim rule policy under which states could only count homework time that was supervised and monitored.

- However, the rule still requires that documentation be kept for all hours of class time. This documentation could be a central electronic file or paper (e.g. signed attendance sheets.) It no longer needs to be submitted biweekly.

- HHS clarifies that participation in distance learning can be counted, subject to the same documentation rules as other classes. HHS has approved work verification plans that state that they will use the automatic logging functions of distance learning software to provide the documentation.

Post-secondary education

- The final rule allows education leading to a baccalaureate or advance degree to count as vocational educational training. This overturns a restriction imposed by the interim final rule.

- By statute, vocational educational training is limited to 12 months. The preamble language clarifies that activities counted as vocational education can also count as job skills training directly related to employment as long as they are directly related to a specific job or occupation. Job skills training is not subject to a durational limit, but is only countable when combined with 20 hours a week of a "core activity" such as unsubsidized or subsidized employment (including work-study).

Basic education and ESL

- Basic education and English as a Second Language (ESL) can count under vocational educational training if they are a necessary and regular part of the work activity. The final rule removes language under the interim rule that limited basic education and ESL to "a limited duration" as part of vocational education.

- The preamble clarifies that basic education and ESL can not count as stand-alone activities under vocational educational training, even as part of as sequence leading to an occupational program.

- It clarifies that basic education and ESL can count as education directly related to employment or as job skills training directly related to employment. These must be combined with a core activity.

- The rule deletes the requirement that participants be making "good or satisfactory progress" from the definitions of education directly related to employment and satisfactory attendance at secondary school or in a course of study leading to a GED. States have flexibility to set their own standards if they choose.

- By statute, education directly related to employment and satisfactory attendance at secondary school is limited to individuals without a high school diploma or equivalency certificate. HHS clarifies that states have the authority to determine on a case-by-case basis whether an individual with a non-US diploma that is not comparable to a US diploma should be allowed to participate in these activities.

Under other work activities

- HHS clarifies that any paid training, whether provided off-site or at the work site, fits the definition of on-the-job training.

- HHS rejects the suggestion made by some commenters that training could be included as part of work experience, comparable to the existing language regarding community service.

Serving Individuals with Disabilities and Other Barriers to Participation

No deeming of participation

- Many commenters suggested that states should be allowed to deem as fully participating, individuals with disabilities who participate to the full extent required under a modified work plan that accommodates their disabilities. HHS entirely rejected this recommendation. They include strong preamble language on the legal requirement to provide equal access to services to individuals with disabilities and offer to provide further technical assistance to states.

No expansion of services into additional work activities

- Prior to the interim final rule, some states had counted services aimed at removing barriers to employment under activities such as work experience and community service. This was barred under the interim final rule, and HHS continues this policy under the final rule.

- The only activity under which barrier removal activities may be counted towards the participation rate requirement remains job search and job readiness assistance, which is subject to a time limit. However, as discussed below, HHS made some modifications to the rules regarding how this limit is applied, which gives states some additional flexibility.

- The final rule deletes the language from the interim final rule limiting job search and job readiness activities to "those who are otherwise employable." The meaning of this phrase was never entirely clear, but some had expressed concerns that it would limit access to services for individuals with multiple barriers to employment.

- In order for treatment/rehabilitation activities to count as job readiness, the need for them must be determined by a qualified medical, substance abuse, or mental health professional, but the final rule removes the requirement that the need be "certified."

- The rule does continue the interim final rule policy that says that barrier removal activities may be counted under subsidized employment, such as a transitional jobs program, but only if the participant is paid for all hours of activity.

Definition of a work-eligible individual

- Under the interim final rule, HHS allowed states, on a case by case basis, to exclude individuals receiving SSI benefits from the definition of a work-eligible individual (and thus from counting toward the participation rate calculation). Under the final rule, HHS extends to this to recipients of the comparable program in the territories (Title XVI) and to SSDI recipients. HHS rejected suggestions that recipients of state disability benefits should also be excluded, on the grounds that such programs do not have consistent eligibility requirements across states.

- HHS clarifies that when an application for disability benefits is approved retroactively, states may legally submit revised data for that individual (showing her as a SSI/SSDI recipient and thus making him or her no longer work-eligible). However, such a revision may only be made until December 31 for the preceding fiscal year. Since the application process for these benefits often takes multiple years, this policy only provides limited relief to states.

- Under the interim final rule, a parent caring for a disabled family member living in the home could be excluded from the work participation rate, but only if the disabled family member did not attend school full-time. The final rule removes this limitation. The rule now says simply that there must be "medical documentation to support the need for the parent to remain in the home to care for the disabled family member." The preamble language notes that this does not absolve states of their responsibility to help families find appropriate child care for children with disabilities.

Job Search and Job Readiness

Counting of weeks towards the statutory limits

- By statute, job search and job readiness activities are limited to six weeks per year (12 in states that meet the definition of "needy state") and no more than four consecutive weeks. In the interim final rule, HHS had proposed that any counting of an hour of participation during a seven day period used up a full week of participation towards these limits.

- HHS has changed these rules in the final rule. For the purpose of the six (or 12) week annual limit on participation, a week is defined as 20 hours for a single custodial parent with a child under age 6, and 30 hours for all other work-eligible individuals. This allows credit for activities that are spread out over time.

- However, for the purpose of the four week limit on consecutive participation in job search and job readiness assistance, the regulations retain the previous definition of seven consecutive days. Any countable participation during a week uses up one of the four weeks.

- The regulations also say that this limit now applies to the preceding 12 month period, rather than a fiscal year

- This creates some complicated reporting issues. To maximize credit, states should not report more hours than needed for WPR, or report hours when recipient won't be counted towards WPR. States can combine job search/job readiness with "excused absences" from other activities to bridge the "week off." HHS is explicit that states won't be subject to a data penalty for failing to report all hours, or for reporting them sometimes as job search, sometimes as excused absence, or sometimes as "other work activities."

Other counting issues

- Job search and job readiness activities no longer need to be documented on a daily basis.

- No more than once per individual, a state can take an individual's average participation in job search/job readiness over three to four days, and multiply it by a five day workweek to get a deemed level of participation for the whole week.

- States can not use the number of interviews as a proxy for hours of participation. Actual time spent must be recorded.

- The preamble says that travel time between interviews can be counted as part of job search/job readiness, but not the travel time to the first interview or home from the last one.

- The preamble reiterates that job search/job readiness activities must have a direct connection to improving employability or finding employment. Looking for housing is explicitly mentioned as not countable. There is no explicit discussion of whether looking for child care can be counted.

Other Participation Rate Issues

- The final rule limits holidays to 10 days per year, to be listed by the state in their work verification plan.

- The final rule converts the excused absence policy to an hourly basis – states can count up to 80 hours of excused absence per recipient, of which no more than 16 can be in a month. The preamble notes that this does not prevent states from providing more generous excused absences to the participants.

- All activities must be supervised; however, supervision does not need to be in-person, but can be by telephone or electronic contact where these methods are suitable.

- Clarifies that supervision is only needed for days an individual is scheduled to participate.

- No longer requires daily documentation of job search and job readiness assistance or biweekly documentation of other unpaid work activities.

- Clarifies that electronic participation records are acceptable.

- Clarifies that language about the limited duration of subsidized employment and on the job training, and expectations that the employer would hire participants at the end were recommendations, not requirements

- Rejects the claim that individuals who have been sent sanction notices but not yet had their benefits reduced can be counted as "subject to sanction" and thus removed from the participation rate calculation.

Spending

- The final rule incorporates guidance that HHS has previously provided on how to calculate the caseload adjustment under the "excess MOE" provision. HHS notes that a state that has claimed excess MOE can not subsequently revise its financial data to replace these expenditures with TANF dollars. Inclusion of this provision suggests that HHS is not going to try to eliminate the "excess MOE" provision.

- Under the final rule, HHS limits the new statutory provision allowing states to claim non-assistance pro-family expenditures to other than to "eligible families" under MOE to activities that are countable under the healthy marriage promotion and responsible fatherhood grants. This would mean that states could not claim activities that lead to family formation goals but are not included in the specific list of activities supported under those programs, unless these programs were limited to "eligible families." .

- Explicitly confirms that expenditures for higher education are an allowable use of TANF funds. This has always been the case, but some readers were alarmed by HHS' statement in the preamble to the interim final rule that TANF was not intended to be a scholarship program.

Other

- The rule explicitly that states should net out child support retained when calculating the TANF benefit for fair labor standards act (FLSA) purposes. This requirement has been in effect for years, but was not explicitly discussed in the FLSA discussion in the interim final rule.

- The rule reflects the guidance that the Food and Nutrition Service (FNS) has issued regarding the steps that a state must take to adopt a mini-Simplified Food Stamp Program and benefit from the provision allowing a recipient participating in work experience for the maximum number of hours allowable under the FLSA to be deemed as fully meeting the core hour requirement. The interim final rule included some requirements that FNS subsequently explained were not necessary.

- The rule allows for adjusting of FY 2005 base-year caseload for two-parent families in which one parent receives TANF and the other does not. (p. 165-166)

- The final rule restores an illustrative list of types of eligibility changes that must be accounted for in calculating the caseload reduction credit. This list had been included in the 1999 TANF regulations, but dropped from the interim final rule.