



Education and Training for TANF Recipients: Opportunities and Challenges under the Final Rule

Elizabeth Lower-Basch
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On February 5, 2008, the U.S. Department of Health and Human Services (HHS) published the final rules implementing changes in the Temporary Assistance for Needy Families (TANF) program made by the Deficit Reduction Act of 2005 (DRA).¹ While these rules do not affect the overall statutory limitations on counting education and training toward the work participation rates, they do lift some of the restrictions included in the interim final rule of June 29, 2006 and the subsequent guidance to states.

This paper explains the changes in the new rules that affect recipients’ access to education and training, and the actions that states will need to take in order to take advantage of these changes.²

What’s changed?

- Postsecondary education can count under vocational education
- Up to one hour of unsupervised homework time can count per hour of class time
- Basic education and ESL can count under vocational educational training, as long as embedded

What hasn’t?

- Statutory list of countable activities
- Vocational education limited to 12 months; other education activities must be combined with work
- All hours of participation must be monitored and documented
- Basic education and ESL cannot count as vocational education as part of a sequence of activities.

¹ 73 *Federal Register* 6772-6828.

² For a listing of all the provisions in the Final Rule, see Elizabeth Lower-Basch, *Summary of TANF Rules* Center for Law and Social Policy, January 2008.

For a full overview of the changes made by the DRA and the guidance that had been issued by HHS prior to the final rule, see Sharon Parrott, et al. *Implementing the TANF Changes in the Deficit Reduction Act: ‘Win-Win’ Solutions for Families and States, Second Edition*. Center on Budget and Policy Priorities and Center for Law and Social Policy, February 2007. <http://www.clasp.org/publications/tanfguide.pdf>

Background on the TANF Participation Rate and Work Verification Requirements

Despite the clear connection between education and success in the labor market, the TANF system has invested relatively little in what should be an important component of a welfare-to-work strategy. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which created the TANF block grant, established work participation rate requirements that states had to meet or risk penalty—50 percent for all families, 90 percent for two-parent families—and limited the degree to which education and training activities could count toward that rate.

In particular, by statute, for all recipients other than teens, job skills training, education directly related to employment, and secondary school or equivalency classes can count toward the work rates only when combined with at least 20 hours per week (30 hours per week for two-parent families) of participation in a “core” work activity, such as subsidized or unsubsidized employment or community service. The one category in which stand-alone education and training can count toward the participation rate (for recipients other than teens) is vocational educational training. However, vocational educational training is subject to a lifetime limit of 12 months per recipient. In addition, no more than 30 percent of participants counted toward a state’s work rates may be in vocational educational training or be a teen head-of-household engaged in educational activities.

The DRA did not change the basic framework of the participation rate, but it included a number of changes that increased its significance to states and added recordkeeping requirements:

- Because welfare caseloads had fallen dramatically since 1996, the “caseload reduction credit” provided to states meant that, prior to the DRA, almost no states were in danger of failing to meet the participation rate requirements. This meant that states were more willing to allow recipients to participate in activities that would increase their employability, such as substance abuse treatment or extended educational activities, even if they were not countable towards the federal participation rate. The DRA reset the caseload reduction credit, so states only receive credit for caseload declines since 2005.
- The DRA said that the participation rate will also apply to cases where assistance is provided with state-only funds, if that spending is claimed toward the maintenance of effort (MOE) requirement. Prior to the DRA, some states had used such non-TANF “separate state programs” to support low-income parents attending school.
- The DRA authorized HHS to issue federal definitions for each of the countable work activities, and created a new penalty for states that failed to comply with HHS regulations regarding how hours of participation are monitored and documented. Prior to the DRA, each state had been able to establish its own definitions for the countable activities.

In the interim final rule implementing the DRA, HHS prioritized limiting the overlap among the statutory list of activities and ensuring consistency across states. In order to ensure that no state inappropriately claimed credit, it mandated that states create elaborate systems to monitor and document every hour of participation. In the process, it made it harder for states to tailor work activities and combine services in order to meet participants' needs and help them progress toward economic stability.

To implement the DRA provisions on verification of participation hours, HHS requires all states to submit a "work verification plan" (WVP) for approval. These plans must include the state's definition of each of the work activities, consistent with the federal definitions provided by HHS. The plans must describe how the state will track and monitor participation to ensure that only hours meeting this definition will be reported under each category, as well as the state's internal controls for ensuring accuracy of data.

In some cases where the interim final rule was ambiguous, HHS used the WVP process as a way to further direct state policy. For example, while the interim final rule said that states could count up to 10 days of excused absence in any 12-month period, HHS rejected any state's WVP that said the state would convert this into an hourly limit. The final rule issued last month contains a number of modest changes from the interim final rule and the guidance that HHS has given states since then. Many of the changes respond to concerns that CLASP and numerous other organizations submitted in response to the interim final rule. The rule also provides some helpful clarifications in areas where states were concerned that they might be subject to penalty. While the final rule is in many respects an improvement over the interim final rule, HHS could have done more to relieve the administrative burden on states, participants, and education and training providers.

Counting of Education and Training Toward Participation Rate

Counting of Hours, Supervision, and Documentation

Under both the interim final and the final rule, HHS states that reported participation must be based on actual hours of attendance; it may not be deemed based on successful completion of a course. All participation must be supervised daily; however, in the final rule, HHS clarifies that supervision does not need to be in-person, but can be by telephone or electronic contact when suitable. HHS also clarifies that "daily" supervision does not require contact on days an individual is not scheduled to participate. In most cases, the instructor is the person expected to supervise individuals participating in an educational activity.

The interim final rule had said that homework time must also be supervised and documented in order to be counted as participation. 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, and the state must document the homework or study expectations of the program. The most simple way to meet this requirement is for an educational institution to develop a general policy about the number of hours of homework or study time that are expected per class hour, which can be included in the case file of all participants.

Under both the interim final and the final rule, HHS is clear that documentation must be kept for all hours of class attendance. This documentation could be a central electronic file or paper (e.g. signed attendance sheets). Where the interim final rule had said that this documentation must be sent to the TANF office biweekly, the preamble to the final rule simply notes that states must report data on a monthly basis, and that the case file documentation must support these reports.

In the final rule, HHS clarifies that participation in distance learning can be counted, subject to the same documentation rules as other classes. Even before the rule was issued, HHS had approved work verification plans that state that they will use the automatic logging functions of distance learning software to provide the documentation, but this clear statement provides additional reassurance to states. Note that recipients participating in distance learning can, like other student-recipients, claim credit for time spent on unsupervised homework.³

Under the interim final rule, HHS made provision for states to count limited excused absences for individuals in unpaid countable work activities. These were limited to 10 days in a 12-month period, no more than two of which could be claimed in a month. In the final rule, HHS modifies this provision to apply on an hourly basis; the limits on excused absences are thus 80 hours in a 12-month period, and 16 hours in a month. HHS notes that states may choose to provide more generous excused absences; the limits only apply to counting of the hours as participation.

In addition to the excused absences, the interim rule allowed states to identify in their work verification plans holidays during which recipients could be deemed as participating. Some states proposed in their initial WVPs to include extended school holidays, such as the week between Christmas and New Year's Day. However, HHS subsequently issued guidance limiting the holiday provision to 10 days per year, which must be listed in the WVP. In the final rule, HHS incorporates this limitation into the rule at 261.60(b). This limit means that states will, in many cases, need to identify additional activities in which to engage students during academic breaks. This could include job search/job readiness activities (subject to the limits on counting of this activity) or subsidized or unsubsidized work.

³ For more detailed information on the use of distance learning in TANF programs, see: Matt Lewis, *Distance Learning Can Help Low-Income Parents Attend School: TANF Agencies Should Adopt Supportive Policies*, Center for Law and Social Policy, March 2008. http://www.clasp.org/publications/distance_learning_final.pdf

Post-secondary Education

In the interim final rule, HHS had explicitly excluded education leading to a baccalaureate or advance degree from the definition of vocational educational training. The final rule overturns this arbitrary restriction. This flexibility could be important to individuals who come onto TANF when they are close to completing such a degree, and also encourages states to allow recipients to attend college full-time for a year, without any additional work requirement. This would enable them to complete a portion of their coursework before they need to combine school and work.

As noted previously, vocational educational training is limited by statute to 12 months per recipient. The preamble to the final rule clarifies that activities counted as vocational education can also be counted as job skills training directly related to employment, as long as they are directly related to a specific job or occupation. This is important because job skills training is not subject to a durational limit; however, it is only countable when combined with 20 hours a week of a “core activity.” This means that students who have used up their 12 months of eligibility under vocational educational training can continue to be counted under job skills training, as long as they combine that training with unsubsidized or subsidized work (including work-study).

In addition, the preamble to the interim rule included a statement that TANF was not intended to be a scholarship program. Several commenters pointed out to HHS that scholarships can be justified under several of the purposes of TANF, and that states do in fact use TANF funds in this way. In the final rule, HHS acknowledges this point and explicitly confirms that expenditures for higher education are an allowable use of TANF funds.

Basic Education and English as a Second Language (ESL)

In the preamble to the interim final rule, HHS said that basic education could count under vocational educational training as long as it was of limited duration and a necessary and regular part of the work activity. In the final rule, HHS removes the language that limits basic education to “a limited duration” but continues to say that it must be combined with, or embedded into, the vocational educational training. HHS explicitly rejected suggestions that a sequence of activities including intensive stand-alone basic education leading to a vocational program should be countable. HHS also clarifies in the preamble to the final rule that vocational educational training can include ESL, subject to the same restrictions as basic education.

In the preamble to the final rule, HHS clarifies that basic education and ESL can count either as education directly related to employment or as job skills training directly related to employment. These must be combined with a core activity.

In the preamble to the interim final rule, HHS said that participants in education directly related to employment or attending secondary school must be making “good or satisfactory progress.” HHS had solicited comments on what criteria to use in

determining this. Several commenters responded with concerns about the effect of such standards on individuals with disabilities, who might make slower progress than other students, while others noted that many basic education programs do not use formal grading systems. In the final rule, HHS dropped this language, while leaving states the option of setting their own standards if they choose.

By statute, education directly related to employment and satisfactory attendance at secondary school are both limited to individuals without a high school diploma or equivalency certificate. CLASP and others pointed out that some individuals may have high school diplomas from countries other than the U.S. that are not comparable, and do not signify the same level of achievement. In the final rule, HHS clarifies that states have the authority to determine on a case-by-case basis whether an individual with a non-U.S. diploma, or for whom it is not possible to determine whether they have such a diploma, should be allowed to participate in these activities. However, HHS stated that it did not have the authority to expand these activities to include individuals with a diploma or certificate, but with low basic skills.

Education and Training Under Other Work Activities

Another category in which training activities can be counted toward the work participation rate is “on the job training,” which is defined as training that is given to a paid employee while he or she is engaged in productive work and that provides knowledge and skills essential to the full and adequate performance of the job. In the interim final rule, HHS solicited comments on whether the definition of OJT should be expanded to include other aspects of training. However, in the final rule HHS rejected suggestions to expand OJT to include any form of unpaid training, or to include training for prospective employees. HHS did clarify that any paid training, whether provided off-site or at the work site, fits the definition of on-the-job training.

In the preamble to the interim final rule, HHS acknowledged that community service programs could, in some circumstances, incorporate training activities, such as when a participant is sent to a computer training class in order to learn the skills needed to participate. However, in the preamble to the final rule, HHS rejects the suggestion made by some commenters that training could be included as part of work experience, for the same reason. HHS also rejects the proposal to allow basic education and ESL to be counted under job search and job readiness activities.

State Action Required

The new rules go into effect October 1, 2008, the start of federal fiscal year 2009. States that wish to take advantage of the flexibility provided under the new rules will have to make corresponding changes to their plans. Because some of the changes in the final rule are mandatory, such as the change in the way weeks of job search and job readiness activities are tracked, it is likely that all states will need to revise their WVPs, and submit them to HHS in time to be approved by that date.

Unfortunately, HHS has indicated that wherever there is a change of policy, even if it does not affect the formal regulatory language, states should not adopt the new policy until that date. For example, as noted previously, in the final rule, HHS converted the 10 day limit on excused absences to an 80-hour limit. Even though it is possible to read the interim final rule as consistent with that policy, HHS does not expect to approve effective dates prior to October 1 for revised WVPs that reflect the new policy.

In a few cases, where the final rules only clarified existing policy, states may wish to revise their plans immediately. For example, some states did not include provisions for distance learning in their WVP, or imposed unnecessary restrictions on it. They can submit a revised WVP that allows for distance learning at any time. There is no limit on how often a state may revise its plan, so making some changes immediately does not preclude further improvements later on.

Conclusion

Many welfare recipients lack the education needed to successfully compete in the labor market. By enabling recipients to participate in education and training activities, states can help improve their long-term employment and earnings outcomes. Expanding access to education and training for welfare recipients is particularly important at a time when economic prospects are dim, and unemployment rates for less skilled workers are rising.

The final rule issued by HHS contains modest but meaningful changes that may improve recipients' access to education and training. In particular, the provision allowing states to credit students for time spent on homework—without requiring them to attend supervised study halls—will significantly reduce the burdens on low-income students who are often juggling the demands of work, school, and family. States should take advantage of these provisions as soon as possible.

The final rule retains the overall expectation that every hour of participation must be monitored and documented. States and educational institutions should work together to develop systems to track participation while minimizing the stigma placed on students who are welfare recipients and the burden on both students and educators. States should also work to ensure that caseworkers inform recipients about the ways that they can meet their participation requirements through education and training.

Appendix: Definitions of Work Activities Under Final Rule

From *Federal Register*; Reauthorization of the Temporary Assistance for Needy Families Program, Final Rule, pages 6821-2, Feb. 5, 2008.

2. Revise § 261.2 to read as follows:

§ 261.2 What definitions apply to this part?

(a) The general TANF definitions at §§ 260.30 through 260.33 of this chapter apply to this part.

(b) Unsubsidized employment means full-or part-time employment in the public or private sector that is not subsidized by TANF or any other public program.

(c) Subsidized private sector employment means employment in the private sector for which the employer receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing an individual.

(d) Subsidized public sector employment means employment in the public sector for which the employer receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing an individual.

(e) Work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available means a work activity, performed in return for welfare, that provides an individual with an opportunity to acquire the general skills, knowledge, and work habits necessary to obtain employment. The purpose of work experience is to improve the employability of those who cannot find unsubsidized full-time employment. This activity must be supervised by an employer, work site sponsor, or other responsible party on an ongoing basis no less frequently than once in each day in which the individual is scheduled to participate.

(f) **On-the-job training** means training in the public or private sector that is given to a paid employee while he or she is engaged in productive work and that provides knowledge and skills essential to the full and adequate performance of the job.

(g) Job search and job readiness assistance means the act of seeking or obtaining employment, preparation to seek or obtain employment, including life skills training, and substance abuse treatment, mental health treatment, or rehabilitation activities. Such treatment or therapy must be determined to be necessary and documented by a qualified medical, substance abuse, or mental health professional. Job search and job readiness assistance activities must be supervised by the TANF agency or other responsible party on an ongoing basis no less frequently than once each day in which the individual is scheduled to participate.

(h) Community service programs mean structured programs and embedded activities in which individuals perform work for the direct benefit of the community under the auspices of public or nonprofit organizations. Community service programs must be limited to projects that serve a useful community purpose in fields such as health, social service, environmental protection, education, urban and rural redevelopment, welfare, recreation, public facilities, public safety, and child care. Community service programs are designed to improve the employability of individuals not otherwise able to obtain unsubsidized full-time employment, and must be supervised on an ongoing

basis no less frequently than once each day in which the individual is scheduled to participate. A State agency shall take into account, to the extent possible, the prior training, experience, and skills of a recipient in making appropriate community service assignments.

(i) Vocational educational training (not to exceed 12 months with respect to any individual) means organized educational programs that are directly related to the preparation of individuals for employment in current or emerging occupations. Vocational educational training must be supervised on an ongoing basis no less frequently than once each day in which the individual is scheduled to participate.

(j) Job skills training directly related to employment means training or education for job skills required by an employer to provide an individual with the ability to obtain employment or to advance or adapt to the changing demands of the workplace. Job skills training directly related to employment must be supervised on an ongoing basis no less frequently than once each day in which the individual is scheduled to participate.

(k) Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency means education related to a specific occupation, job, or job offer. Education directly related to employment must be supervised on an ongoing basis no less frequently than once each day in which the work eligible individual is scheduled to participate.

(l) Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate means regular attendance, in accordance with the requirements of the secondary school or course of study, at a secondary school or in a course of study leading to a certificate of general equivalence, in the case of a work-eligible individual who has not completed secondary school or received such a certificate. This activity must be supervised on an ongoing basis no less frequently than once each day in which the individual is scheduled to participate.

(m) Providing child care services to an individual who is participating in a community service program means providing child care to enable another TANF or SSP recipient to participate in a community service program. This is an unpaid activity and must be a structured program designed to improve the employability of individuals who participate in this activity. This activity must be supervised on an ongoing basis no less frequently than once each day in which the individual is scheduled to participate.