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Model Comments on TANF Interim Final Rule *Transitional Jobs Providers*

August 10, 2006

On June 29, 2006 the Department of Health and Human Services (HHS) issued regulations regarding the Temporary Assistance for Needy Families (TANF) program.¹ These regulations were required as part of the Deficit Reduction Act of 2005 (DRA; PL 109-171), which also substantially increased the effective targets for the proportion of TANF recipients who participate in federally countable work activities for a specified number of hours each week. Although these regulations were issued on an interim final basis, meaning that they are effective immediately, HHS is accepting comments on the regulations until August 28, 2006.

These regulations define the activities that are countable toward the work participation rate requirements, describe how the states must monitor and verify the hours that TANF recipients participate, and add some categories of parents who only receive benefits on behalf of their children to the work participation rate calculation. In general, the regulations provide narrow definitions of the work activities — narrower than many states have utilized over the last ten years when the legal authority to establish definitions (subject to HHS oversight) rested with states. Moreover, in many cases the preamble language goes beyond the actual regulatory text in restricting state flexibility.

We believe that the following provisions are the top priorities for Transitional Jobs providers who wish to submit comments to HHS regarding the regulations:

- **Job search and job readiness activities, barrier removal activities and education and training may not be counted as part of a program of subsidized employment.** The regulations (45 CFR §261.2) are clear that such services, which are a typical part of the Transitional Jobs model, may not be counted toward the participation rate as part of “subsidized employment.” Job search and barrier removal activities may be counted as part of “job search and job readiness assistance;” however, that activity may only be counted for six weeks per year in most states, with no more than four weeks consecutive.

This policy does not support the ultimate goal of subsidized employment and work experience programs -- to move participants into unsubsidized jobs. It does

¹ The regulations were published at 71 Federal Register 37454–37483, and are available online through GPO Access at: <http://www.gpoaccess.gov/fr/index.html>

not make sense to discourage clients from combining subsidized employment or work experience with activities that will enable them to be hired into unsubsidized jobs and leave welfare.

HHS asserts that the restrictive definition of subsidized employment was needed in order to prevent states from subverting the time limits on job search and job readiness. However, the statutory time limit on job search and job readiness activities was designed to prevent clients from being left to languish indefinitely in unproductive job search, not to create barriers to helping recipients move into unsubsidized employment after participating in other services. As part of the President's welfare reauthorization proposal, HHS itself promoted a program model that encouraged recipients to combine work and job search or job readiness activities.

Moreover, it appears that these restrictions were in part driven by HHS' desire to draft definitions of work activities that are "mutual exclusive from one another." However, there is no statutory basis for this desire. In other parts of the regulation, HHS acknowledges that the listed work activities are often overlapping. In particular, HHS notes that other activities may be "embedded" into community service and allows short-term training or similar activities to be counted as part of community service as long as they are "of limited duration and are a necessary or regular part of the community service."

Recommendations:

HHS should expand the definition of subsidized employment to allow the counting of job development and barrier removal activities as well as education and training when they are an integral part of the subsidized employment program. Such a provision could include a limitation on the number of hours a week that non-employment activities could be counted. In addition, HHS should regulate that de minimis participation in job search and job readiness activities should not be considered as using up a week of the time limit.

HHS should allow states to deem less than full hours of participation to count for the full required number of hours when needed to make accommodations required under the Americans with Disabilities Act. This would be parallel with the deeming that is allowed in order to respond to the requirements of the Fair Labor Standards Act (FLSA).

- **Preamble language indicates an expectation that the recipient will continue in unsubsidized employment with the same employer.** At 71 FR 37458, HHS states "At the end of the subsidy period, the employer is expected to retain the participant as a regular employee without receiving a subsidy." While the preamble language does not have the same force of law as the regulation itself, some states may believe that this language prohibits counting recipients who are participating in existing Transitional Jobs programs that place participants in

short-term subsidized placements that do not end in a permanent placement with the employer. For example, many transitional jobs placements are made in nonprofit organizations since these organizations will often provide enhanced supervision and developmental opportunities for participants in exchange for employees that they might not usually be able to afford.² These programs generally do not expect the nonprofit organizations to continue to employ the participants after the subsidy period ends, but assist recipients in obtaining an unsubsidized position with another employer.

While we are supportive of HHS' intention to prevent states from placing recipients in positions that only serve to subsidize employers' labor costs and do not link participants to unsubsidized employment, this language is unnecessarily restrictive. It does not recognize the existence of the transitional jobs models discussed above which link participants to temporary subsidized jobs in which they can gain transferable skills and work experience, which will allow them to move into permanent unsubsidized employment with another employer. Usually, these placements take place in the non-profit or government sector. Transitional Jobs programs typically collaborate with local representatives from organized labor to ensure that unsubsidized workers are not displaced as a result of the program.

Recommendation:

In the statute, Congress listed public and private sector subsidized employment as separate work activities; therefore, it is reasonable to have different expectations depending on the sector of the employer. While it may be appropriate to limit subsidized employment in the private sector to programs where there is an expectation of continued employment with that employer, subsidized employment in the public sector (including not-for-profit organizations) should not be so limited. However, the state should describe in the Work Verification Plan how the program will link participants to unsubsidized jobs and how it will avoid displacement of current workers.

- **Support HHS decisions that reduce burdens on employers.** Under the regulations, hours of employment (including unsubsidized employment, subsidized employment, and on-the-job training) may be projected for up to 6 months based on one month's worth of verified hours of participation. In addition, recipients in unsubsidized employment are assumed to be working for the full number of hours for which they are paid, even if some of these hours reflect paid leave. These provisions significantly reduce the burden on employers and the stigmatization of recipients, and HHS should be commended for them.

² Kirby, Gretchen, et al. 2002. *Transitional Jobs: Stepping Stones to Unsubsidized Employment*. Washington DC: Mathematica Policy Research, Inc. Available online at: <http://www.mathematica-mpr.com/publications/PDFs/transitionalreport.pdf>.

Recommendation:

Recipients in subsidized employment and on-the-job training should be assumed to be working for the full number of hours for which they are paid, even if some of these hours reflect paid leave. This will make the policies regarding the 3 types of paid employment parallel and similarly reduce the burden on employers.

Comments are due on or before **August 28, 2006** and may be submitted in writing to:

The Office of Family Assistance
Administration for Children and Families
5th Floor East
370 L'Enfant Promenade, SW
Washington, DC 20447

or submitted electronically at <http://www.regulations.acf.hhs.gov>.

The most effective comments are individualized and describe how your particular program would be affected by the regulations.

If you have any questions regarding these model comments, contact Allegra Baider abaider@clasp.org or Elizabeth Lower-Basch elowerbasch@clasp.org.