

# CLASP

CENTER FOR LAW AND SOCIAL POLICY

## **Model Comments on TANF Interim Final Rule** *Education and Training Work Activities*

**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.<sup>1</sup> These regulations were required as part of the Deficit Reduction Act of 2005 (DRA; PL 109-171), which 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.

Below, we highlight the provisions in the regulations that may impact the ability of TANF clients to participate in education and training activities. In addition, we provide suggestions for policy makers and practitioners who may want to provide comments to HHS.

**Vocational educational training is defined in ways that limit state and local flexibility to provide training programs for TANF recipients that respond to employer needs.**

**The regulations' preamble stipulates that "basic skills education may be counted as vocational educational training as long as it is of limited duration and is a necessary or regular part of the vocational education training."**

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<sup>1</sup> 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>

We appreciate that HHS recognizes the importance of basic skills education as a key component of training necessary for lower-skilled individuals to succeed in the labor market. Unfortunately, those TANF recipients with the lowest skills often get stuck in low-wage jobs with little opportunity for advancement. By making explicit the eligibility of basic skills education and English as a Second Language (ESL) under various education and training provisions, we believe HHS is encouraging states to make available training that will help ensure that all families, including those with the lowest skills, have access to better jobs.

We are concerned, however, that HHS has stated that basic skills education is acceptable only if it is of limited duration. Some of the most successful vocational educational training programs designed for lower-skilled adults, including those which last up to a year or longer, seamlessly integrate basic skills with vocational educational training, thus making the combined program longer than if each component were provided separately. HHS and the states may arbitrarily define “limited duration” rather than acknowledging the diversity of programs which successfully provide basic education as a component of vocational educational training and, in turn, lead to increased wages upon completion.

*Recommendation:*

Basic skills education should be countable as part of vocational educational training if it is a necessary or regular part of the vocational training program or if it is necessary for a TANF recipient to access vocational educational training which will lead to employment with higher wages. If the “limited duration” language is kept, HHS should clarify that it does not apply to programs that integrate basic skills into a vocational educational training program.

**The regulations do not explicitly include English as a Second Language as a necessary part of vocational educational training. (45 CFR §261.2)**

Although HHS’ failure to mention ESL in the context of vocational educational training may simply be an oversight, states may be unwilling to count it without clear guidance from HHS that it is permissible. Just like basic skills training, ESL can be a necessary requirement to participate in vocational educational training or the labor market.

*Recommendation:*

HHS should explicitly include ESL necessary for vocational educational training in its definition of vocational educational training, as well as basic skills education.

**The regulations narrow the definition of vocational educational training “to programs that prepare participants for a specific trade, occupation, or vocation.”... HHS notes in the preamble, “Even so, this definition could overlap with other TANF work activities that provide training, including on-the-job training and job skills training. Since we want to define work activities that are mutually exclusive, we are interested in comments on how States currently implement this component and whether the definition should be broadened.”**

Although we can appreciate HHS' desire for mutual exclusivity in the work activity definitions in order to provide clear lines between each activity and ease comparability across states, it is unreasonable to expect that there will be no overlap between the types of training provided across work activities. This desire should not outweigh the strong evidence that programs with the most successful outcomes combine services and approaches. Such a requirement will hinder the ability of program providers to offer programs which adequately prepare participants for particular trades or occupations that help them become self-sufficient and will prevent employers from filling jobs in demand occupations with TANF recipients who have been trained in programs designed to meet the changing needs of the labor market. In addition, requiring providers to track and report hours of participation in such integrated programs under different work activities increases the reporting burden.

Employers, in combination with the state and educational institutions, know best what types of vocational educational training is necessary "to give individuals the knowledge and skills to perform a specific occupation" (Preamble). As the preamble itself states, it is easy to imagine the same training being provided under vocational educational training as that provided by an employer through on-the-job training or job skills training directly related to employment, particularly for lower skilled TANF participants.

*Recommendation:*

HHS should develop more flexible definitions of work activities which recognize that many of the most successful welfare-to-work programs include a mix of overlapping work activities. HHS should also allow a mix of activities to be counted under the primary component of a program.

**The regulations preclude postsecondary education that leads to a baccalaureate from counting as vocational educational training.**

It is extremely short-sighted to deny recipients the opportunity to work toward a baccalaureate degree, because individuals with baccalaureate degrees have higher earnings than those with high school diplomas and associate degrees, and are much more likely to be economically self-sufficient in the long run. Sixty-three percent of the 18.9 million new jobs that will be created between 2004 and 2014 are projected to be filled by those with at least a bachelor's degree. Workers with a bachelor's degree earn an average of \$51,206 a year, while those with a high school diploma earn \$27,915, and those without a high school diploma average \$18,734.<sup>2</sup> Several states have recognized this fact, and have allowed qualified TANF recipients to meet their participation requirements by attending college, including pursuing baccalaureate degrees. As there is already a statutory limit on the length of time during which a recipient may participate in full-time education, there is no risk that states will abuse this flexibility.

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<sup>2</sup> DOL/ETA Fact Sheet "Why America Needs an Educated and Prepared Workforce" available at: <http://www.doleta.gov/budget/1%20Why%20America%20needs%2007.pdf>

HHS' policy is particularly counter productive when a student is nearing completion of a degree. In some cases, recipients have started programs under the previous TANF rules. In other cases, a student nearing completion of a degree may experience such financial hardship that she needs to apply for TANF. In either situation, the recipient should be allowed to complete the degree if it is possible within the statutory limit on vocational educational training.

Recommendation:

HHS should allow states to count under vocational educational training TANF participants working toward a baccalaureate degree. At a minimum, such coursework should be allowed so long as the recipient is within 12 months of completing the degree.

**Study time is integral to successful participation in education and training.**

**The preamble of the regulations bars states from counting “unsupervised homework time as part of the hours of participation” in education programs and instead requires states to count “monitored study sessions” for which “it can document hours of participation.” (45 CFR §261.2)**

We commend HHS for recognizing the necessity of study time for the successful completion of vocational educational training and other education and training related to employment. In order to successfully complete any educational program, study time is necessary. Previously, some states did not count any of the hours students invested in their academic success through study or provide child care to support study time, although it is commonly accepted at the postsecondary level that courses require two or more hours of preparation time for each hour of class time. Therefore, the provision that monitored study hours can be counted toward participation encourages states to reward students for their studying efforts.

However, the requirement that study time be monitored is an area of significant concern in the current regulations and a change from prior HHS policy. The notion that adults need to be “monitored” in order to qualify for countable study hours is inconsistent with prevailing practices at postsecondary institutions. If a TANF recipient is progressing in school, it is evident she is spending time studying. In addition, it is also burdensome to the student and to the program provider. States need the flexibility to allow study time for those facing transportation barriers and living in rural areas, where arranging monitored study time may be particularly challenging.

Recommendation:

HHS should offer states the option to replace the “monitored” study time requirement with an allowance of two hours of unmonitored study time for one hour of class time if a TANF recipient is making satisfactory progress, as defined by the State or the education

institution, or to allow states to count actual study time if it is monitored. If this recommendation is not followed, HHS should allow states flexibility in developing mechanisms for monitoring participation, not just in-person supervision.

**This limitation on unsupervised study time also applies to 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 and 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.**

Both of these provisions also include the requirement that students make good and satisfactory progress in order to continue in the activity. In order to satisfactorily progress in a course of study, regardless of whether it is at the secondary level or in preparation for the GED, it is necessary for that student to study. Complying with the monitored study time requirement will be burdensome for education and training providers, including high schools. This requirement will also be burdensome for program participants and could interfere with the individual's ability to make good and satisfactory progress.

*Recommendation:*

HHS should offer states the option to replace the “monitored” study time requirement with an allowance of one hour of unmonitored study time for one hour of class time if a TANF recipient is making satisfactory progress, as defined by the State or the education institution, or to allow states to count actual study time if it is monitored.

**Programs should accommodate the needs of individuals with disabilities.**

**The preamble states that to count as participating in education directly related to employment or satisfactory attendance at secondary school, participants need to be making “good or satisfactory progress.” (45 CFR §261.2) HHS invites comments regarding what constitutes good or satisfactory progress.**

We agree that this standard should be largely left up to “the educational institutions or program in which the recipient is enrolled,” but states and HHS should be careful to avoid developing criteria for monitoring “satisfactory progress” that will discourage serving people with barriers. Such individuals may require a longer time than others to reach benchmarks or complete programs.

*Recommendation:*

The regulations should note that definitions of “good or satisfactory progress” should include appropriate accommodations for individuals with disabilities. HHS should

clarify that under no circumstances will a state retroactively be denied credit toward the participation rate calculation on the basis that a client who participated for the required hours failed to make adequate progress.

**The regulations do not make any accommodations to states that are trying to comply with both the requirements of the Americans with Disabilities Act (ADA) and the work participation requirements.**

ADA requires that reasonable accommodations be made to enable individuals with disabilities to participate in public programs. This may require modifying the hours of participation required or the specific activities assigned.

*Recommendation:*

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.

**The regulations include burdensome reporting requirements for welfare-to-work programs.**

**The Interim Final Rule contains a number of requirements regarding the reporting and hours of participation that impose significant potential burdens on education and training providers. Specifically, the regulations require:**

- **Only actual hours of participation may be reported, not scheduled hours. (45 CFR 261.60) A limited exception is provided for excused absences and holidays.**
- **All hours of participation must be verified through documentation (45 CFR 261.61). A state may not report data on the basis of “exception reporting” where clients are assumed to be participating for all scheduled hours unless a report to the contrary is received. Time sheets and school attendance records are mentioned in the preamble as possible forms of documentation.**
- **Hours of participation in education and training programs must be documented no less frequently than every two weeks. (45 CFR 261.62) This is distinct from the requirement that participation must be supervised at least daily. (45 CFR 261.2)**
- **State procedures must be described in the state Work Verification Plan, which is subject to HHS approval. (45 CFR §261.61(a))**

These requirements have the potential to be burdensome to providers of education and training. Programs that do not serve TANF recipients exclusively may not have the infrastructure to monitor participation in these ways. Typically, postsecondary institutions

do not monitor attendance. The regulations therefore provide an incentive for TANF agencies to limit recipients to participating in programs that are targeted toward such populations, rather than allowing them to participate in mainstream programs that serve both TANF and non-TANF recipients and may offer additional opportunities to advance in the labor market. If TANF recipients participate in mainstream programs, care must be taken to ensure that plans to monitor participation do not stigmatize these recipients, and create an additional barrier to continued program participation.

*Recommendations:*

HHS should amend the regulations in the following ways in order to alleviate this burden on providers:

- HHS should allow states flexibility to develop plans to monitor participation, including allowing states to project future hours based on documented actual hours and allowing progress in assigned programs as evidence of participation.
- As long as clients are making satisfactory progress in an education and training program, use the providers' definitions of holidays and excused absence procedures.
- Clarify that distance learning programs are countable and that electronic records of student participation are adequate evidence of supervision.

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

The Office of Family Assistance  
Administration for Children and Families  
5<sup>th</sup> 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 Amy-Ellen Duke [aduke@clasp.org](mailto:aduke@clasp.org) or Elizabeth Lower-Basch [elowerbasch@clasp.org](mailto:elowerbasch@clasp.org).