CHAPTER I: Changes to TANF Requirements Under the Deficit Reduction Act and Interim Final Regulations

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 established the TANF block grant and a set of rules related to receipt of TANF-related benefits, including work participation requirements, time limits, child support-related requirements, and immigrant-eligibility rules.

The 1996 law and subsequent federal regulations also established rules about the types of benefits and services that triggered key TANF-related requirements. For example, certain requirements applied if the TANF-funded benefit received by a family was considered "assistance" — which meant the benefit was designed to meet ongoing basic needs or provide supports (such as child care and transportation) to families in which the parents were not employed. Similarly, certain requirements applied depending upon whether the benefit was funded with federal TANF funds or state MOE funds and how the funding was structured. As states developed their TANF programs, they had to weigh when to structure benefits as "assistance" or "non-assistance" as well as how to structure funding use of federal funds versus state funds.

The DRA significantly changed the structure of federal TANF work requirements. Moreover, the interim final regulations issued by HHS in June 2006 adopted narrow definitions of the work activities that can count toward the work rates and instituted significant *new* requirements related to state monitoring of recipients' participation in work activities. How these changes affect states will depend in part on when states choose to structure benefits as "assistance" and when states choose to provide assistance with state funds that do not count toward the MOE requirement. This chapter reviews the changes imposed by the DRA and the interim final regulations and examines when various TANF-related rules apply to benefits provided through TANF- and MOE-funded programs.

While HHS accepted public comments on the interim final regulations — receiving comments from roughly 500 individuals, organizations, states, and other entities — and may make changes to them before finalizing them, the rules are effective as published until they are superseded. (The preamble to the regulations is significantly more restrictive than the regulations themselves in many cases, but it does not have the same legal force as the regulations themselves.)

As part of the interim final regulations, states were required to submit Interim Work Verification Plans to HHS by September 30, 2006. These plans describe the set of activities the state will include in its welfare-to-work program, how the state will monitor participation in work activities, how the state will comply with the time limits on certain types of activities (such as job search and vocational educational training), and how the state will determine who is "work eligible" — a new term in the interim final regulations that defines which adults are included in the work rate.[1]

HHS has now asked all states to resubmit Work Verification Plans by February 28, 2007 to conform with additional guidance it provided in late December 2006.[2] Then HHS will review these revised plans and may again ask states to make further changes in their plans. Final plans, which must be approved by HHS, are supposed to be in place before the end of federal fiscal year 2007 (September 30, 2007), and states are required to be fully compliant with their plans starting in FY 2008. Precisely how HHS will implement the DRA, its new regulations, and the preamble language will not be clear until the work verification plan back-and-forth process has been completed. While the guidance HHS has issued does not have the force of rules, HHS can refuse to approve any work verification plan that is inconsistent with the guidance.

TANF Work Participation Requirements

Under the 1996 law, a specified proportion of the families in each state who were receiving assistance in a TANF-funded program had to participate in a set of federally defined work activities for a specified minimum number of hours each month. Each state had two such work requirements: one for all families with an adult receiving assistance (the so-called "all-families" rate) and another rate just for two-parent families receiving assistance. A state that failed to meet one or both rates could be penalized.

Starting in 2002, the work requirements were 50 percent for all families and 90 percent for two-parent families. However, these rates were adjusted downward by a "caseload reduction credit": each state's target was reduced one percentage point for each percentage-point decline in the state's TANF caseload since 1995 that occurred for reasons other than eligibility changes.

The DRA makes four key changes to the work rate structure:

- It modifies the caseload reduction credit so that as of October 1, 2006, adjustments to the work participation rates are based on caseload declines after 2005 rather than 1995.[3]

- It specifies that as of October 1, 2006, a state's work participation rate will be based on the combined number of families receiving assistance in TANF programs and state-funded

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[1] To be precise, an adult who is defined as "work-eligible" is included in the work participation rate calculation unless she has a child under the age of 12 months (and has not exceeded the 12-month lifetime limitation on this exception) or she is subject to a sanction and has not been sanctioned for more than three of the past 12 months.

[2] "Further Guidance on Work Verification Plans," U.S. Department of Health and Human Services, Administration for Children and Families, December 20, 1006. Referred to as "Further Guidance" hereafter.

[3] DRA Sec. 7102(a).

programs that count toward the state's MOE requirement.[4] (Programs funded solely with state MOE dollars did not count toward work rates under the 1996 law.)

- It directs HHS to adopt regulations no later than June 30, 2006, specifying uniform methods for reporting hours of work, the type of documentation needed to verify reported hours of work, whether an activity can be treated as one of the federally listed work activities for purposes of the work rates, and the circumstances under which a parent who resides with a child receiving assistance should be included in the work rates.[6] (These regulations were published on June 29, 2006, at 71 Federal Register 37454-37483.)

- It establishes a new penalty of up to 5 percent of a state's block grant if a state fails to implement procedures and internal controls consistent with the Secretary's regulations.[7]

The resulting structure is described below.

What Work Participation Rates Must States Meet Under the DRA?

Effective October 1, 2006, the all-families work participation requirement is 50 percent and the two-parent requirement is 90 percent; both rates are then reduced by the number of percentage points by which the state's caseload falls below 2005 levels for reasons other than eligibility rule changes.[8]

In subsequent years, 2005 will remain the base year for calculating the caseload reduction credit. For example:

- If the combined caseloads of a state's TANF and MOE programs fall by 5 percent between 2005 and 2006, the state will be required to meet a 45 percent all-families rate in 2007.

- If a state's combined caseload falls by 5 percent in 2006 but then returns in 2007 to its 2005 level, the state will face a 50 percent all-families rate in 2008.

The following rules related to the caseload reduction credit, established by the 1996 law and existing federal TANF regulations, will remain unchanged under the DRA:

- A state may *not* count caseload declines resulting from a tightening of income and resource limits or enactment of time limits, full-family sanctions, or other new requirements that deny assistance when a family fails to meet program requirements.[9]

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[4] DRA Sec. 7102(b).

[6] DRA Sec. 7102(c).

[7] DRA Sec. 7102(c)(2).

[8] 42 U.S.C. §§607(a), 607(b)(3).

[9] 45 C.F.R. §261.42(a)(1). The interim final regulations did not include a sentence from the existing regulations that lists the examples of the types of eligibility changes that may affect the caseload reduction credit. HHS has given no indication, however, that this omission was intended to reflect a change in policy, nor did HHS have the authority to make this change here.

How Is the "TANF Caseload" Defined?

Policymakers and the media often talk about the "TANF caseload" and some requirements states must meet depend, in part, on the size of its caseload and whether the caseload has fallen. However, the term "TANF caseload" often is reported in different ways. The following provides a guide to how the "TANF caseload" is sometimes defined.

The "caseload" typically refers only to families receiving assistance in a TANF program. While less than 40 percent of TANF and state MOE funds are spent on benefits that are considered "assistance" — that is, ongoing benefits (typically cash) that help a family meet their basic needs — most federal requirements apply only to families receiving "assistance" and most federal and state TANF caseload statistics refer only to families receiving assistance.

The "caseload" often refers to families receiving assistance in a TANF-funded program but can include families receiving assistance in a "separate state program." States can provide assistance to families in several ways — they can provide them with TANF-funded assistance, assistance that is partially funded with TANF or MOE funds, assistance that is MOE-funded but provided within a TANF-funded program, or MOE-funded assistance in a program that receives no federal TANF funds (called a "separate state program.") Historically, HHS has considered everyone receiving assistance (TANF or MOE-funded) in a TANF-funded program part of the TANF caseload and has provided additional data on families receiving assistance in a separate state program. Because TANF work requirements now apply to all of these groups of families, HHS may change its standard caseload reporting.

The TANF requirements that apply to states and families depend on how the assistance is financed. As discussed on page 21, work, time limit, and child support requirements all apply to somewhat different groups of assistance recipients. Under the DRA, work requirements apply to families (with some exceptions) receiving TANF or MOE-funded assistance. Months in which a family that includes an adult receives TANF-funded assistance count against the family's 60-month federal time limit. And states must send a share of child support collected on behalf of a family receiving assistance (TANF or MOE-funded) in a TANF-funded program to the federal government.

In the calculation of a state's caseload reduction credit, families served through separate state programs are part of the "caseload." With some additional exclusions, the caseload reduction credit is based on decreases in caseloads receiving assistance in both a state's TANF program and separate state programs that address basic needs and are used to meet the MOE requirement. 45 CFR § 261.42 (b).

A state may exclude some assistance recipients from its own statistics on its "welfare caseload." As states consider whether to expand TANF or MOE "assistance" to additional groups of working families, some are considering distinguishing between the total number of families receiving any form of TANF or MOE assistance and the number of families they consider to be a part of its basic assistance caseload. For example, Arkansas's basic TANF assistance program is called the Transitional Employment Assistance (TEA) Program. Arkansas has a *separate* program called Work Pays which provides $204 per month to working poor families that have *left* the state's basic TANF program. While both sets of families receive TANF-funded assistance and will be considered part of the TANF caseload in federal data reports, Arkansas makes a distinction between its TEA caseload and its Work Pays caseload in state-generated data.

- A state *may* count caseload declines resulting from new or more vigorously utilized enforcement mechanisms or procedural requirements adopted to enforce existing eligibility criteria, e.g., verification techniques designed to identify ineligible families.[10]

Some issues relating to the caseload reduction credit remain unresolved:

- **Can states reduce their measured caseload if they are spending in excess of their MOE requirement?** The original TANF regulations state that if a state spends in excess of its MOE requirement, the state "need only include the pro rata share of caseloads receiving assistance that are required to meet basic MOE requirements."[11] In past years, only Delaware has taken advantage of this provision.[12] However, a number of states have taken this option for the 2006 Caseload Reduction Credit Report which will govern the state's credit for the work participation rate in 2007. HHS has suggested that it considers this provision to be a "loophole" and would like to revise it. However, the process for HHS to properly amend the rule to remove this option will take some time; therefore, it remains in place for 2006 Caseload Reduction Reports governing the credit for 2007.

- **Can states get a caseload reduction credit for caseload declines that are attributable to the establishment of a non-MOE state-funded program that provides assistance to some families that would have previously been served in the TANF or MOE-funded program?** Some states are considering establishing state-funded programs that provide assistance to some families and are not claimed toward the MOE requirement (see box on page 22). Such programs may be appropriate for families for whom the federal TANF requirements are unrealistic, such as two-parent families, families in which an adult has a disability, and recipients the state wants to allow to attend postsecondary education programs. HHS staff has said verbally that moving families into such programs will be treated as an eligibility change for the purpose of the caseload reduction credit — i.e., that these families will be added back into the caseload when HHS determines the size of the credit. However, it is unclear whether HHS has the authority to do this if the families remain eligible for the TANF program and, thus, no eligibility change has been made in the program.[13]

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[10] 45 C.F.R. §261.42(a)(2).

[11] 45 C.F.R. §261.43(a)(2).

[12] Delaware used an approach that deducted from its caseload the number derived by dividing its excess MOE spending by the average annual per case. The state computed its "average cost per case" by dividing *total* TANF and MOE spending by the number of families receiving assistance in its TANF program. This actually resulted in a larger per-case cost than the average cost of providing assistance to the families in the state's TANF assistance program, because the state uses some of its TANF and MOE funds to finance benefits and services — such as child care — for families that are not receiving TANF assistance. Some states have submitted caseload reduction credit methodologies to HHS that computed an average cost per case based on the average cost of providing assistance to a family in the state's basic TANF assistance program.

[13] If HHS holds that serving families in a non-MOE state-funded program constitutes an "eligibility change," then states can use the resulting caseload decline from placing families in a non-MOE program to offset caseload increases that result from other policy changes, such as expanding assistance to more working families. For example, if a state a reduced its caseload by 2,500 families by serving them in a non-MOE state-funded program, the state would have to "add back" these families for the caseload reduction credit calculation if this were considered an eligibility change. If , however, the state also expanded its earnings disregard or expanded assistance to working families and those policy changes *increased* the state's caseload by 2,000 families, then instead of "adding back" for purposes of the caseload reduction credit the 2,500 families no longer receiving ongoing TANF assistance in an average month due to the SSF,

Who Is Considered in the Calculation of a State's Work Rates?

The DRA made two significant changes to who is considered in the calculation of a state's work participation rates. First, as noted above, the participation rates now apply to the combined assistance caseloads of programs funded with federal TANF and/or state MOE funds.[14] Second, the DRA required HHS to establish regulations regarding the circumstances under which a parent who does not receive assistance but lives with a child who does receive assistance should be included in the work rates. (Under prior rules, only cases in which an adult — or minor head of household — received assistance were included in the work rates.)

The new rules at 45 CFR §261.2(n) create a new term, "work-eligible individual," which is used to define those individuals who now will be included in the work participation rates. A "work-eligible individual" is:

- **An adult (or minor head-of-household) who receives assistance.** (This recipient adult could be a parent or relative. These cases have always been included in the work participation rates.) The exceptions, under which an adult receiving assistance is *not* included in the work participation rates, are as follows:
    - an individual receiving MOE-funded assistance under an approved Tribal TANF plan (unless the state chooses to include such families in the work participation rates); and
    - a parent caring for a family member with a disability who is living in the home and does not attend school full-time.[15]
- **A non-recipient parent living with a child receiving assistance.** The exceptions to this rule are discussed below. It should be noted that child-only cases in which the children live with a non-recipient relative *other* than a parent are *not* considered "work-eligible" and thus are not included in the work rates; also, federal TANF time limits do not run on child-only cases.

The general rule under the "work-eligible individual" concept is that when a parent who is not receiving assistance resides with a child who is receiving assistance, the parent is included in the work participation rates unless specified exceptions are met. The three exceptions are:

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the state would only need to "add back" 500 cases — the difference between the caseload decline and the caseload increase that resulted from eligibility changes.

[14] DRA Sec. 7102(b).

[15] For the purposes of this exclusion from the definition of "work-eligible," states must define the following terms in their work verification plans: "disabled," "family member," and "attending school full-time." States have taken a variety of approaches: some have adopted narrow definitions of these terms (thereby reducing the number of adults who would be excluded from the work rates), while others have adopting broad definitions. A degree of confusion surrounds the definition of "attend school full-time." Some states have equated full-time school *enrollment* with full-time school *attendance,* which seems problematic because some children with disabilities may be enrolled full-time but miss class frequently due to their health condition.

Counting the Work Participation of Non-Custodial Parents

Programs that help non-custodial parents prepare for and find jobs can help states meet their work requirements. If a non-custodial parent with a child receiving TANF assistance participates in countable work activities, that parent can count toward the state's work rates.

The preamble to the 1999 TANF regulations notes that a state may choose to include the non-custodial parent (living apart from the child) as a member of the child's eligible family. (If non-custodial parents are included in the state's definition of "family," the family would *not* be considered a "two-parent family" for purposes of the two-parent work rate.) To count the work participation of a non-custodial parent, a state must provide some benefit to that parent that meets the definition of "assistance." If it does so, the state may not retain the non-custodial parent's child support payments as reimbursement for this assistance. (See preamble to 1999 TANF rules at 64 Fed. Reg. 17761.) These provisions were not affected by the interim final regulations.

- **An alien parent who is ineligible to receive assistance due to his or her immigration status.** This includes immigrants who are ineligible because they are not "qualified" under the 1996 law, as well as qualified immigrants who are ineligible due to the five-year bar on federal TANF assistance. (If a state is providing assistance to parents subject to the five-year bar through an MOE-funded state replacement program, the case now will be included in the work rates because all families with an adult receiving assistance in MOE-funded programs are now part of the work rates. Some state replacement programs have provided MOE-funded assistance within their TANF-funded program and have always included these families in their work participation rates.)

- **A parent receiving Supplemental Security Income (SSI).** Although disabled, some SSI recipients may be employed or participating in work-related activities. States have the option of including in their work participation rates, on a case-by-case basis, parents who are receiving SSI but are participating for sufficient hours in a countable work activity. Doing so does not obligate states to include *all* cases in which a parent receives SSI.

- **A minor parent who is not the head (or the spouse of a head) of household.** While the drafting is a bit unclear, HHS apparently intended to exclude all minor parents — including those who are recipients on another adult's case — who are not the head of household or the spouse of the head of household. HHS notes that it does not include these individuals in the work rates because it wants to encourage them to stay in school.

In addition, two categories of families containing a work-eligible individual may be excluded from the work participation rates for limited periods at state option:

- single-parent families that include a child under age 1 (such families can be excluded for up to 12 months);[16]

[16] 42 U.S.C. §607(b)(5).

- families under penalty for failure to meet work requirements (such families can be excluded for up to three months in each 12-month period).[17]

Finally, it is important to note that under the DRA and the interim final regulations, two-parent families in which one parent has a disability (as defined by the state) continue to be treated as single-parent families for purposes of the work participation rates calculations. The two-parent participation rate is calculated by dividing the number of adults in two-parent families participating in countable activities for the specified number of hours each month by the total number of two-parent families in a TANF- or MOE-funded program where both families are work-eligible individuals.[18]

Implications of the New "Work-Eligible" Regulations

Because of the new rule, several kinds of non-recipient parents of children receiving assistance will be included in the work participation rates for the first time, including:

- **Partial sanction cases.** Several states reduce the TANF grant provided to a family by removing the parents' "needs" from the grant calculation when the parent does not comply with program requirements. These cases have always been considered "child-only" in the past because only the children were receiving assistance and such cases were previously excluded from the work participation rate calculations. States will now have to include these families in their work rates, though states can exclude sanctioned families from the calculation for up to three months in any 12-month period.

- **Time-limited cases.** A handful of states continue assistance to children when their parents reach the TANF time limit. Often these child-only benefits are provided with MOE funds. These parents must now be included in the work rates if they otherwise meet the work-eligible individual definition.

- **Disqualified parents.** A number of other disqualifications can result in a parent — but not her child(ren) — being declared ineligible for assistance in a TANF-funded program. These include disqualifications for fleeing felons, drug-related felons (although states can opt out), and past fraud. Under the new regulations, these individuals must be included in the work rates. However, statements by HHS staff suggest that HHS may not have intended this result and may revisit the provision.

Some states are providing benefits to children in significant numbers of families that fall into one of the above categories. These states will be seriously affected by this rule change and are likely to have difficulty meeting the work rates.

Finally, the preamble to the interim final regulations notes that for some two-parent families consisting of one eligible and one ineligible parent, the new definition of work-eligible individual could add the ineligible parent to the state's work rates, which in turn means the case would be considered a two-parent family for work rate purposes.

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[17] 42 U.S.C. §607(b)(1)(B)(ii)(II).

[18] DRA Sec. 7102(b).

More generally, it is important to note that while the federal government defines the set of adults who are included in the *federal* work participation rate calculation, states are free to exempt families that do not fall into one of the above categories from their own work requirements.

How Many Hours Must a Family Participate in Order to Count?

To count toward the all-families work rate in a given month, a single-parent family with a child under age 6 must participate for an average of 20 hours a week; all other single-parent families must participate for an average of 30 hours a week.[19] To count toward the two-parent family work participation rate, a family not receiving federally funded child care must participate for 35 hours a week; a family receiving federally funded child care must participate for 55 hours a week.[20]

The new regulations impose significant new requirements on states regarding their monitoring and documentation of work participation. For example:

- **Unpaid work activities must be "supervised daily."** The interim final regulations state that unpaid work activities, such as job search and readiness activities, vocational educational training, work experience, and community service, must be supervised daily. The largest concern this raises is in the area of job search programs, as many states in the past claimed credit for some job searching that is self-directed. States' work verification plans outline varying approaches to meeting this requirement, including permitting phone contact rather than in-person contact and allowing for the availability of daily assistance but less-than-daily required interaction.

- **All hours of participation in unpaid work activities must be documented.** States can use a variety of types of documentation, but someone is supposed to verify to the state agency that each hour of participation was, in fact, completed. States are particularly concerned that this rule could prove stigmatizing for recipients engaged in mainstream education and training programs that serve both TANF and non-TANF recipients and burdensome for participants and providers alike.

- **The preamble to the regulations states that homework time must be monitored in order to count, though the actual regulations (which carry the force of law) do not include this language.** This has garnered significant opposition among states and others, since most vocational educational programs require significant out-of-classroom work but do not offer supervised study halls. Nor is there any evidence that supervised study halls for adults are a good use of resources or useful to parents who must juggle school and family obligations and, sometimes, work.

- **Hours in *paid* work can be tracked using a different mechanism.** Under the regulations, states can project forward a recipient's hours of participation in paid employment (unsubsidized or subsidized, including paid on-the-job training programs) for up to six months using current information about hours of employment. For example, if a recipient gets a job and is working 32 hours per week, the state can verify her current hours of employment and assume that she

[19] 42 U.S.C. §607(c)(1)(A); 42 U.S.C. §607(c)(2)(B).

[20] 42 U.S.C. §607(c)(1)(B).

will continue to work 32 hours per week over the next six months. If the recipient reports that she has lost her job or her hours have been reduced — which would happen if, for example, she sought to have her benefits adjusted to reflect her reduced earnings — the state must change the hours of employment at that point. This rule lines up nicely with the rules in place in most states for reporting changes in income for the Food Stamp Program and allows states a simple mechanism with minimal paperwork burdens on families to track hours of employment for working families.

- **When the number of hours a recipient can participate in a work experience program or community service is limited by the minimum wage requirements of the Fair Labor Standards Act (FLSA), the state can deem the hours she is permitted to participate under the FLSA as meeting her full core hourly requirement.** The FLSA applies to work experience programs or community service programs when an employer-employee relationship is established.[21] Under the FLSA, a recipient must receive benefits that at least equal the minimum wage multiplied by her hours of participation. The interim final regulations state that if recipients participate for the maximum number of hours allowed under the FLSA, the state may deem them as meeting the core hour requirement (20 hours for the all-families rate, 30 hours for the two-parent rate) *if* the state includes the value of their food stamp benefits in the FLSA calculation. In order to count food stamps toward this calculation, the state must adopt a mini-Simplified Food Stamp Program, which many states now have done.

- **Certain holidays and excused absences can count as participation in unpaid activities.** Under the interim final regulations, a state can establish holiday policies; if a recipient misses scheduled hours of unpaid work activities due to the holiday, those hours can count as participation in the work rate calculation. HHS has indicated that states must include a detailed listing of holidays in their Work Verification Plans. In addition, up to two days per month — and 10 days per year — of "excused absences" can count as hours of participation. This rule only applies to participation in unpaid activities.[22]

What Activities Count as Participation?

The 1996 law sets forth 12 categories of work activities that can count toward the work participation rates. Neither the law nor subsequent regulations, however, defined what could be considered in each of these 12 categories; there were no federal rules defining "community service" or "work experience," for example. The interim final regulations contain definitions for each of these categories.

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[21] It is likely that an "employer-employee" relationship is established in many mandatory programs that require community service. If a recipient is required to participate in community service for a set number of hours each week and risks loss of benefits if she does not meet this requirement, the program becomes very similar to a work experience program and likely creates an employer-employee relationship, which in turn triggers the FLSA requirements.

[22] Recipients in paid employment can be counted as working for any hours for which they are paid. In addition, once a state has determined the number of hours which an employed recipient is working, it can use the number to project hours of work for the next six months. Thus, hours of work the recipient misses over the next six months — paid or unpaid — do not have to be tracked by the state as long as the recipient does not report losing her job or having a significant reduction in hours of employment.

The new definitions are quite narrow — much narrower than the definitions states had developed and used to determine their work participation rate previously.[23] For example, activities designed to address barriers to employment (such as mental health treatment) can count toward the work participation rates only under the category of "job readiness activities," which are limited to six weeks per year for many states. The new regulations also prohibit states from counting recipients in bachelor's degree programs toward the participation rates under the category of "vocational educational training."

By statute, in the all-families participation rate calculation, nine activities — often referred to as "core" activities — can count toward any hours of participation. Three other "non-core" activities count only when the individual also has completed at least 20 per week of core activities.[24] (For the two-parent rate, families must complete 30 hours of core activities, or 50 hours if the family receives subsidized child care.[25]) The nine core activities and their new definitions, provided by the interim final regulations, are:

- **unsubsidized employment** — "full- or part-time employment in the public or private sector that is not subsidized by TANF or any other public program" (§261.2(b));

- **subsidized private-sector employment** — "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 a recipient" (§261.2(c));

- **subsidized public-sector employment** — "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 a recipient" (§261.2(d));

- **work experience** — "a work activity, performed in return for welfare, that provides an individual with an opportunity to acquire the general skills, training, knowledge, and work habits necessary to obtain employment. The purpose of work experience is to improve the employability of those who cannot find unsubsidized employment. This activity must be supervised by an employer, work site sponsor, or other responsible party on an ongoing basis no less frequently than daily" (§261.2(e));

- **on-the-job training** — "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 full and adequate performance of the job. On-the-job training must be supervised by an employer, work site sponsor, or other responsible party on an ongoing basis no less frequently than daily" (§261.2(f));

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[23] Wade Horn, Assistant Secretary for Children and Families at HHS, has suggested that the definitions merely reflect the plain language of the 1996 statute. Others have noted that HHS had authority prior to the DRA's enactment to determine states' compliance with the TANF work requirements and, thus, had the authority (indeed, the obligation) to disallow credit for participation in activities that fell outside the statutory list of activities. That is, if HHS believed that the statute prohibited credit for certain types of activities, it could and should have disallowed that credit prior to the DRA. HHS's failure to do so suggests that HHS — under both this and the former administration — believed that the statutory terms could be interpreted more broadly than HHS has chosen to interpret them under these regulations.

[24] 42 U.S.C. §607(c)(1)(A); 42 U.S.C. §607(d); 45 C.F.R. §261.31.

[25] 42 U.S.C. §607(c)(1)(B); 45 C.F.R. §261.32.

- **job search and job readiness assistance, for up to six weeks a year (12 weeks in "needy states")** — "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 for those who are otherwise employable. Such treatment or therapy must be determined to be necessary and certified by a qualified medical 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 daily" (§261.2(g));

- **community service programs** — "structured programs and embedded activities in which TANF recipients 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 recipients not otherwise able to obtain employment, and must be supervised on an ongoing basis no less frequently than daily. 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" (§261.2(h));

- **vocational educational training, for up to 12 months per recipient** — "organized educational programs that are directly related to the preparation of individuals for employment in current or emerging occupations requiring training other than a baccalaureate or advanced degree. Vocational educational training must be supervised on an ongoing basis no less frequently than daily" ((§261.2(i)); and

- **providing child care services to an individual who is participating in a community service program** — "providing child care to enable another TANF recipient to participate in a community service program. This activity must be supervised on an ongoing basis no less frequently than daily" (§261.2(m)).

The three non-core activities are:

- **job skills training directly related to employment** — "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 daily" (§261.2(j));

- **education directly related to employment, for recipients without a high school diploma or equivalent** — "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 daily" (§261.2(k)); and

- **satisfactory attendance at secondary school or in a course of study leading to a GED, for recipients without a high school diploma or equivalent** — "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

recipient who has not completed secondary school or received such a certificate. This activity must be supervised on an ongoing basis no less frequently than daily" (§261.2(l)).

In addition, for married or single-parent recipients under age 20, participating in education directly related to employment for at least 20 hours a week or maintaining satisfactory attendance at secondary school (or its equivalent) can count toward any hours of participation.[26]

Under the 1996 law, no more than 30 percent of the families that count toward a state's work rates may do so through vocational educational training or by being parents under age 20 who are attending school or education directly related to employment.[27] (A more detailed discussion of the circumstances under which education and training can count toward the participation rate can be found on page 33, in Chapter II.)

Of course, a state may choose to allow a family to participate in activities that do not count toward federal work rates. In some cases, such activities may be an important part of an effective individualized self-sufficiency plan. However, a state's decisions about whether to do so are likely to be affected by the state's strategy for meeting the federal work rates.

What Happens If a State Fails to Meet Its Required Work Rates?

If a state fails to meet one or both participation requirements, it will be penalized unless HHS determines that the state had "reasonable cause" or the state prepares a plan for corrective compliance that is then approved by HHS and implemented by the state. HHS has significant flexibility to define "reasonable cause," though the statute requires HHS to grant reasonable cause if the state failed to meet the work participation rates because it was providing federally recognized good cause domestic violence waivers to victims of domestic violence.[28] HHS has generally chosen to limit the circumstances under which a state may claim reasonable cause for failure to comply, preferring to encourage states to submit corrective compliance plans.[29] HHS also can *reduce* a state's penalty based on the extent of non-compliance.

The maximum penalty for failure to meet the all-families work rate is 5 percent of the state's adjusted State Family Assistance Grant (SFAG) for the first year of failure. (The adjusted SFAG is equal to the basic TANF block grant minus amounts transferred to the child care or social services block grants and amounts spent through tribal TANF programs.) The maximum penalty then grows by 2 percentage points for each subsequent year of noncompliance, though the total cannot exceed 21 percent of the state's adjusted SFAG.[30]

If the state fails to meet the two-parent participation rate, the maximum penalty equals the maximum penalty for the all-families rate multiplied by the share of the state's caseload that consists

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[26] 42 U.S.C §607(c)(2)(C).

[27] 42 U.S.C. §607(c)(2)(D); 45 C.F.R. §261.33

[28] 45 C.F.R §261.52(b)(1); 45 C.F.R. §260.58.

[29] 45 CFR §262.5; 45 CFR §262.6.

[30] 42 U.S.C. §609(a)(3)(B); 45 C.F.R §261.50.

of two-parent families.[31] For example, if 8 percent of the state's cases are two-parent families, the maximum penalty in the first year of noncompliance is 8 percent of 5 percent, or 0.4 percent of the adjusted SFAG. If the state fails both rates, the maximum penalty is 5 percent.

States that are penalized must spend additional state funds to make up the amount of the federal penalty. (These expenditures are not counted as MOE.) Any state that fails to do so is subject to an additional penalty of up to 2 percent of its basic TANF grant.[32] Moreover, if a state fails to meet one or both work participation rates for any reason — even if it is granted "reasonable cause" or qualifies for a reduced penalty[33] — its MOE requirement for that year is 80 percent of its 1994 state spending on TANF-related programs, rather than the 75-percent requirement for states that meet both participation rates.[34] States that fail to meet only the two-parent rate must still meet the higher MOE spending level.

The Timeline for Work Participation Rate Penalties

It is useful to understand the timing of penalties, particularly for the initial years of implementation as states are adjusting to the new requirements and working to develop new policies and programs to meet the federal requirements. The likely timeline for a state that fails to meet the work rates in FY 2007 is as follows:

- **Data on work participation for FY 2007 is due to HHS by December 31, 2007.** These data can be revised by the state until March 31, 2008.

- **HHS computes the work participation rates for states.** In some years, this process has been delayed quite significantly — as of January 2007, for example, the work rates for FY 2005 were not yet available from HHS. HHS has said that it will try to compute the rates in a more timely fashion in the future and that the FY 2007 rates likely will be completed in the summer of 2008.

- **If a state fails to meet the FY 2007 rate, it has 60 days to make a claim of reasonable cause or submit a corrective compliance plan.** A state whose reasonable cause claim is denied has an additional 60 days from the denial date to submit a corrective compliance plan.

- **Most states' corrective compliance plans will likely run through FY 2009.** The plan must end at the end of the fiscal year that ends at least six months after the plan is approved. Thus, for most states, the plan period is likely to end September 30, 2009.

- **If the compliance period ends on September 30, 2009, the state will be judged to have met the terms of its corrective compliance if it meets the work participation rates in FY 2009.** Those data must be submitted to HHS by December 31, 2009 and can be revised until March 31, 2010.

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[31] 45 C.F.R. §261.51(a)(1).

[32] 42 U.S.C §609(a)(12); 45 C.F.R §262.1(a)(12).

[33] 64 Fed. Reg. 17816 (April 12, 1999).

[34] 42 U.S.C. §609(a)(7)(B)(ii).

- **HHS likely will determine states' FY 2009 work participation rates in FY 2010.**

- **If the state did not achieve its required work participation rate in FY 2009 (and therefore did not meet the terms of the corrective compliance plan it submitted after failing to meet its work rate in FY 2007), HHS will impose a penalty in the first fiscal year following the fiscal year in which the penalty determination was made — in this case, FY 2011.**

Thus, penalties for failing to meet the work rates in FY 2007 are unlikely to be assessed until FY 2011.

When Do TANF-Related Requirements Apply?

As noted previously, the issue of which TANF-related requirements apply in specific cases depends on several variables: whether the benefits being provided are considered "assistance," whether they are paid for with federal TANF funds, and whether they are provided in a program that is funded in whole or part with federal TANF funds. States must keep these variables in mind when they consider how to help a family.

"Assistance" includes benefits (cash or non-cash) that are designed to meet ongoing basic needs, as well as supportive services such as child care and transportation assistance that are provided to families that are not employed.[35] "Non-assistance" benefits are those that do not fall within the definition of assistance. They include: services that do not function as income support (such as education or counseling), non-recurring short-term benefits that provide less than four months of support, and certain supportive services provided to families in which an adult is employed (such as cash assistance used to offset work expenses and child care and transportation assistance). Wage subsidies — i.e., subsidies to employers that are used to help pay someone's wages — are not considered assistance.[36]

Federal work requirements apply to certain families receiving assistance in TANF- or MOE-funded programs, while federal time limits and child support requirements apply to families receiving assistance in TANF-funded programs:

- **Work requirements.** The DRA changed the rules in this area. Under the DRA, all families with an adult or minor head of household receiving "assistance" in a TANF- or MOE-funded program are counted when determining the state's work participation rates. Previously, families receiving assistance in programs funded entirely with state MOE funds outside of the TANF program were not subject to federal work requirements.

- **Federal time limit.** Months in which a family that includes an adult receives "assistance" funded in whole or part with federal TANF funds count against the family's 60-month federal time limit on assistance. While states are free to impose their own time limits on non-assistance or on assistance provided with MOE funds, the federal rules apply only to federally funded assistance.

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[35] 45 C.F.R. §260.31.

[36] Ibid.

Would Some Families Be Better Served in a Program Outside the TANF/MOE Structure?

Federal requirements — both those in statute and those put in place by the new regulations — may make it difficult for states to serve some groups within of poor families in the most appropriate and effective manner within a TANF or MOE-funded program. Because the federal work rates are difficult to meet, states will feel pressure to engage most recipients of TANF- or MOE-funded assistance in the kinds of activities — and for the number of hours — that will enable the state to count these individuals toward the work rate.

Some families may be more appropriately served in a program outside the TANF and MOE structure, that is, through state-funded, non-MOE programs, often referred to as "solely state funded" programs or SSF programs. For example, parents with serious barriers to employment may need to engage in activities that do not count toward the participation rate such as mental health counseling, substance abuse treatment, activities to stabilize the family's housing or to manage a domestic violence situation. Participation in a narrow set of activities that count toward the federal participation rate may be a poor match for these families. Similarly, some states have had significant success engaging some recipients in postsecondary education through programs that last more than 12 months or programs that result in a bachelor's degree. Because some post-secondary education activities also are not countable toward the participation rate, these recipients also may be better served in a program outside the TANF and MOE structure. Finally, some states may want to serve two-parent families in an SSF to avoid penalties for failing to meet the high two parent participation rate which is widely viewed as unrealistically high.

To establish an SSF, a state need not spend additional state resources, though states are likely to need to increase their overall investment in welfare reform programs in order to improve outcomes for families. Instead, a state can swap funding. That is, it can use the federal TANF and state MOE funds freed up by reducing the number of families receiving TANF/MOE assistance (because those families are now being served in a solely state-funded program) to fund state programs that meet the TANF purposes, and then use the freed-up state funds to finance the SSF.

While states may want to model some aspects of their SSF on their TANF program for ease of administration, they should be aware that some federal requirements will differ. States are free to place time limits on their SSF, for example, but the federal time limit will not apply to families receiving SSF-funded assistance. Similarly, states must distribute child support collected on behalf of families receiving SSF-funded assistance to the families, though states can count as much or as little of that child support income as they wish when determining the SSF benefit level. (Currently, most states withhold the child support collected on behalf of TANF families, and states are required to send a share of those collections back to the federal government.[a])

In considering whether to establish an SSF program, states should consider questions such as: Which families should it serve? What benefits and should it include? How should it be financed? Should recipients have a choice between the SSF program and the regular TANF program? And, since some have questioned whether SSF programs could undermine the federal government's long-term support for TANF funding, states should consider how to ensure that their SSF program is defensible to federal policymakers and the public. Still, SSF programs may be the best way to ensure that some families receive the most appropriate and effective forms of help.

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[a] There has been significant confusion about these child support rules. For a discussion of these and other issues related to SSF programs see, "Designing Solely State-Funded Programs: Implementation Guide for One "Win-Win" Solution for Families and States," by Liz Schott and Sharon Parrott, Center on Budget and Policy Priorities, December 7, 2006.

- **Child support requirements.** Families that receive "assistance" in a program that receives federal TANF funding are required to assign their rights to child support to the state and cooperate with child support enforcement efforts. The state has the option to pass through some or all of the collected child support to the families, but regardless of its policy in this area it must send the federal government a portion (based on the state's Medicaid matching rate) of the child support it collects on behalf of families receiving assistance in a TANF-funded program. Starting in October 2008, the federal government will waive its share, up to a monthly limit of $100 per child and $200 per family, of the collected child support that states that pass through to the families.

  The federal child support statute requires states to distribute current child support collections (and, in most cases, arrears) to families once they are no longer receiving assistance in a TANF-funded program — including those families that receive assistance in a state-funded program. (This includes both MOE and non-MOE programs.)

In addition, federal law restricts states' ability to use TANF funds (and, to a lesser extent, MOE funds) to provide assistance *or* non-assistance benefits to many immigrants. Most benefits and services provided with federal TANF funds can be provided only to: 1) citizens, or 2) non-citizens who are considered "qualified immigrants" *and* either have been in the United States for more than five years or meet certain narrow exceptions to this five-year bar. ("Qualified" immigrants include: legal permanent residents; refugees, asylees, and other specified groups who were allowed to enter the United States for humanitarian reasons; and several other smaller categories of immigrants.) States can, however, use MOE funds to provide benefits and services to these qualified immigrants in their first five years in the United States and to immigrants who are not qualified but are in the country legally (or with certain types of government permission). A state also can use MOE funds for those non-qualified immigrants who are not legally present if it has passed a law affirmatively providing for such benefits.