CHAPTER I: Changes to TANF Requirements Under the Deficit Reduction Act

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 benefit received by a family was considered "assistance" — which typically 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 did or did not apply depending upon whether the benefit was funded with federal TANF funds or state "maintenance-of-effort" (MOE) funds and how the funding was structured. As states developed their TANF programs, they had to weigh when to use federal funds versus state funds as well as when to structure benefits as "assistance" or "non-assistance."

The Deficit Reduction Act of 2005 (DRA) significantly changed the structure of federal TANF work requirements. How these changes affect states will depend in part on when states choose to structure benefits as "assistance." States' choices about how and when to use MOE funds also may change in light of the new rules. This chapter reviews the changes imposed by the DRA and examines when various TANF-related rules apply to benefits provided through TANF- and MOE-funded programs.

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 participation 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 participation requirement for all families was 50 percent, and the requirement for two-parent families was 90 percent. However, these rates were adjusted downward by a "caseload reduction credit": each state's rate 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 participation rate structure:

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

- It specifies that as of October 1, 2006, a state's participation rate calculation will be based on the combined number of families receiving assistance in TANF and state-funded programs that count toward the state's MOE requirement. (Programs funded solely with state MOE dollars did not count toward work rates under the 1996 law.[2])

- 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 participation rates, and the circumstances under which a parent who resides with a child receiving assistance should be included in the work participation rates.[3]

- 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.[4]

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 work participation 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.[5]

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

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

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[1] Deficit Reduction Act (DRA) Sec. 7102(a).

[2] DRA Sec. 7102(b).

[3] DRA Sec. 7102(c).

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

[5] 42 U.S.C. §§607(a), 607(b)(3).

- If a state's combined caseloads fall by 5 percent in 2006 but then return in 2007 to their 2005 level, the state would 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.[6]

- 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.[7]

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

The all-families work participation rate is calculated by dividing the number of adults participating in countable activities for the specified number of hours each month (discussed below) by the total number of families receiving assistance each month that include an adult or minor head of household. The participation rate applies to the combined assistance caseloads of programs funded with federal TANF and/or state MOE funds, as noted above.[8] At state option, the following families can be excluded from this calculation:

- single-parent families that include a child under age one (such families can be excluded for up to 12 months);[9]

- families receiving assistance under a tribal family assistance plan or tribal work program;[10] and

- families under penalty for failure to meet work requirements (such families can be excluded for up to three months in each 12-month period).[11]

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 receiving assistance in a TANF- or MOE-funded program.[12] States have the option of excluding the following two-parent families from the participation rate:

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[6] 45 C.F.R. §261.42(a)(1).

[7] 45 C.F.R. §261.42(a)(2).

[8] 42 U.S.C. §607(b); S. 1932, Sec. 7102(b).

[9] 42 U.S.C. §607(b)(5).

[10] 42 U.S.C. §607(b)(4).

[11] 42 U.S.C. §607(b)(1)(B)(ii)(II).

[12] 42 U.S.C. §607(b); S. 1932, Sec. 7102(b).

- families receiving assistance under a tribal family assistance plan or tribal work program;[13] and

- families under sanction for failure to meet work requirements (such families can be excluded for up to three months in each 12-month period).[14]

If one parent in a two-parent family has a disability, the family is not included in the two-parent participation rate but is included in the all-families rate.

A state is free to exempt families that do not fall into one of the narrow categories listed above from the work requirement, but such families will still be included in the federal participation rate calculation.

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

To count toward the all-families work participation 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 families must participate for an average of 30 hours a week.[15]

To count toward the two-parent family 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.[16]

What Activities Count as Participation?

The 1996 law sets forth 12 categories of work activities that can count toward work participation rates. Neither the 1996 statute nor subsequent regulations defined what could be considered in each of these 12 categories — for example, there are no federal rules which define what is meant by "community service" or "work experience." HHS is expected to establish definitions for these activities in regulations issued by June 30, 2006. How those regulations are crafted could have a significant impact on the program design options available to states.

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

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[13] 42 U.S.C. §607(b)(4).

[14] 42 U.S.C. §607(b)(2)(B).

[15] 42 U.S.C. §607(c)(1)(A); 42 U.S.C. §607(c)(2)(B).

[16] 42 U.S.C. §607(c)(1)(B).

only when the individual also has completed at least 20 per week of core activities. The nine core activities are:

- unsubsidized employment;
- subsidized private-sector employment;
- subsidized public-sector employment;
- work experience;
- on-the-job training;
- job search and job readiness assistance, for up to six weeks a year;
- community service programs;
- vocational educational training, for up to 12 months; and
- providing child care services to an individual who is participating in a community service program.

The three non-core activities are:

- job skills training directly related to employment;
- education directly related to employment; and
- satisfactory attendance at secondary school or in a course of study leading to a GED.[17]

In addition, for married or single-parent recipients under age 20, maintaining satisfactory attendance at secondary school (or the equivalent) or participating in education directly related to employment for at least 20 hours a week can count toward any hours of participation.[18]

The 1996 law limits the portion of participating families that may count through participation in certain educational activities. Not more than 30 percent of families counting toward participation rates may do so through participation in vocational educational training or by being parents under age 20 counting though school attendance or education directly related to employment. For example, if a state attains a 50-percent participation rate, no more than 15 percent (30 percent of 50 percent) can count through these activities.[19] (A more detailed discussion of the circumstances under which education and training activities can count toward the participation rate can be found on page 22, in Chapter II.)

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[17] 42 U.S.C. §607(c)(1)(A); 42 U.S.C. §607(d); 45 C.F.R. §261.31.

[18] 42 U.S.C §607(c)(2)(C).

[19] 42 U.S.C. §607(c)(2)(D); 45 C.F.R. §261.33

In the two-parent family participation rate calculation, at least 30 of the 35 hours a week of required work activities must consist of core activities. If the family receives federally funded child care, at least 50 of the required 55 hours of work activities must consist of core activities.[20]

Of course, a state may choose to allow a family to participate in activities that do not count toward federal participation 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 federal participation rates.

What Happens If a State Fails to Meet a Participation Requirement?

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 determine "reasonable cause" though the statute does require HHS to grant reasonable cause if the reason the state failed to meet the work participation rate was that the state was providing federally recognized good cause domestic violence waivers to victims of domestic violence.[21] 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 participation 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 amount of the maximum penalty then grows by 2 percentage points for each subsequent year of noncompliance, though the total cannot exceed 21 percent of adjusted SFAG.[22]

If the state fails to meet the two-parent participation rate, the maximum penalty is limited by the share of the state's cases that include two-parent families.[23] For example, if 5 percent of the state's cases are two-parent families, the maximum penalty in the first year of noncompliance is 5 percent of 5 percent, or 0.2 percent of the adjusted SFAG. If the state fails both rates, the maximum penalty is 5 percent.

If a state is penalized, the state must expend state funds in the amount by which the state is penalized to replace the reduction to its TANF block grant. Any state that fails to do so is subject to an additional penalty of up to 2 percent of its basic TANF grant.[24] Moreover, if a state fails to meet one or both participation rates for any reason — even if it is granted "reasonable cause" or qualifies

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[20] 42 U.S.C. §607(c)(1)(B); 45 C.F.R. §261.32.

[21] 45 C.F.R §261.52(b)(1); 45 C.F.R. §260.58.

[22] 42 U.S.C. §609(a)(3)(B); 45 C.F.R §261.50.

[23] 45 C.F.R. §261.51(a)(1).

[24] 42 U.S.C §609(a)(12); 45 C.F.R §262.1(a)(12).

for a reduced penalty[25] — its MOE requirement for that year is equal to 80 percent of its 1994 state spending level, rather than the 75-percent requirement for states that meet both participation rates.[26]

When Do TANF-Related Requirements and Restrictions Apply to Families Participating in a TANF- or MOE-Funded Program?

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 in 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.[27] "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 — subsidies to employers that are used to help pay someone's wages — are not considered assistance.[28]

Federal work, time limit, and child support requirements apply to certain families receiving assistance in TANF- or MOE-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 (and no TANF funds) were not subject to federal work requirements.

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

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[25] 64 Fed. Reg. 17816 (April 12, 1999).

[26] 42 U.S.C. §609(a)(7)(B)(ii).

[27] 45 C.F.R. §260.31.

[28] Ibid.

- **Child support requirements.** Families that receive "assistance" in a program that receives federal TANF funding — whether the actual benefits the family receives are federally funded or not — 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 support to the families.

In addition, federal law contains restrictions on using TANF and, to a lesser extent, MOE funds to provide assistance *or* non-assistance benefits to many immigrants. Under federal law, 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 exceptions to the 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 state MOE funds to provide benefits and services to these qualified immigrants in their first five years in the United States and to immigrants who do not meet the definition of 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.