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CHANGES IN FEDERAL TANF RULES COULD HELP STATES MEET WELFARE REFORM GOALS

Measures that Increase State Flexibility but Require Accountability Could Improve Welfare-to-Work Efforts

By Sharon Parrott

The Deficit Reduction Act (DRA), enacted in early 2006, reauthorized the Temporary Assistance for Needy Families (TANF) block grant. The effect of the DRA is to significantly increase the proportion of TANF recipients that states would be required to engage in a specified set of work activities for a federally-prescribed number of hours each week.

The law also grants broad new regulatory authority to the Department of Health and Human Services — the federal agency that oversees the TANF block grant — in several areas. In June 2006, HHS issued an Interim Final Rule — a regulation that was immediately effective. The Interim Final Rule¹ includes new definitions of each of the allowable work activities, new requirements for how states must track and verify recipients' hours of participation, and new policies for which families would and would not be included in the work participation rate calculations. Taken together, most states as well as many outside analysts view the new regulations as restrictive. The definitions in the regulations significantly narrow the kinds of employment-related programs for which states can get credit in the work

KEY FINDINGS

- The Deficit Reduction Act (DRA) of 2006 and HHS's interim regulations significantly reduce states' flexibility to design TANF programs that meet the diverse needs of their low-income families.
- Congress can make legislative changes to address some of the most serious concerns that states and others have raised about the DRA and the interim regulations.
- For example, Congress can give states more flexibility to design employment-related programs for persons with disabilities, to integrate training and work experience with job readiness and job seeking activities, and to reduce the paperwork required to track hours of participation.

¹ The Interim Final Rule included a long preamble that preceded the actual regulations. In some cases, the preamble provided greater detail about what HHS intended in a regulation and in other cases the preamble actually included requirements that are not found in the regulations. As a legal matter, the regulations, not the preamble, have the force of law. However, HHS is requiring states to develop work verification plans that are consistent with the preamble language, not just the regulations. For simplicity, in this document, when we describe the requirements "under the Interim Final Rule" we are including provisions that appear in either the preamble or the regulations.

participation rate calculation and include stringent new requirements on states that mean that every hour of participation must be verified.²

Last August, HHS received more than 500 sets of comments from states, organizations, and members of the public about the regulations. The comments from state human service agencies and organizations representing states (such as the National Governors Association and the American Public Human Services Association) were remarkably consistent in their criticisms of the Interim Final Rule.

While HHS has the authority to make major changes in the regulations, there has been little indication from the agency that it is inclined to do so.³ Congress, however, could make legislative changes that could address some of the most serious concerns that states and others have raised about the Interim Final Rule as well as the underlying statute itself. In fact, on June 26, NGA released a letter to the chairmen and ranking members of the Senate Finance Committee and the House Ways and Means Committee that urges Congress to “enact legislation that will help us better administer the Temporary Assistance for Needy Families (TANF) program and restore flexibility to this successful program.”⁴ The letter summarizes the states’ concerns this way, “While we believe that some of the requirements found in both the DRA and the interim final rules help establish a level playing field among the states and regions; others are unduly burdensome, and we ask for your help in restoring some common sense aspects of this critical program.”⁵

The areas of serious concern that states have highlighted in either their comments on the regulations or the NGA letter (or both) include the following:

- States often cannot get credit toward the work participation rate when they individualize the work requirements for recipients with disabilities, as they are required to do under the Americans with Disabilities Act, Section 504 of the Rehabilitation Services Act, and HHS’s own Office of Civil Rights guidance on this issue. (See page 3.)
- New rules and policies make it more difficult for states to get credit when they integrate different kinds of work activities into a single program. (See page 7.)

² States are permitted to engage recipients in activities that do not count toward the federal participation requirements, but because the overall participation rates are difficult for states to meet, doing so increases the risk that a state will fail to meet federal requirements and will be subject to a fiscal penalty.

³ See the Testimony of Sidonie Squier, Director of the Office of Family Assistance, Administration for Children and Families, Department of Health and Human Services, <http://waysandmeans.house.gov/hearings.asp?formmode=view&id=5582>, March 6, 2007.

⁴ Letter from Gov. Corizine and Gov. Douglas (chair and vice-chair of the NGA Human Services Committee) on behalf of the National Governors Association to Sen. Baucus, Sen. Grassley, Rep. Rangel, and Rep. McCrery. <http://www.nga.org/portal/site/nga/menuitem.cb6e7818b34088d18a278110501010a0/?vgnextoid=674a16c9a1863110VgnVCM1000001a01010aRCRD>.

⁵ Ibid.

- Some of the requirements for tracking and verifying hours of participation are burdensome and counterproductive, particularly for participants in education and training programs that serve non-TANF and TANF recipients alike. Required verification of homework time also poses particular problems for many states and families. (See page 10.)
- Definitions of educational activities and policies on study time make it more difficult for states to get credit when they engage individuals in postsecondary education programs, basic education, and English as a Second Language programs. (See page 16.)

In addition to these issues, Congress should consider additional changes that are unrelated to the new regulations but reflect legislative proposals that had significant support during the TANF reauthorization debate but were not included in the final legislation, in most cases because they were legislative changes that are not allowed in a “reconciliation” bill. (The DRA was part of larger budget reconciliation bill that has special rules about the kinds of provisions that can and cannot be included within it.) This includes eliminating the separate work participation rate that applies to two-parent families, an issue raised in the NGA letter.

TANF Requirements and Individuals with Disabilities⁶

More than 20 of the states that submitted comments on the regulations called for changes to how the rules consider participation in employment activities by recipients with disabilities. NGA, APHSA, and state agencies made the case for the need for greater flexibility to deem recipients with disabilities — as determined by a medical professional — as meeting the work requirements if they participate in appropriate activities for the number of hours they are able to given their circumstances.

The new NGA letter talks extensively about the problems the new rules pose for states that want to engage recipients with disabilities and other barriers to employment in appropriate and effective work activities:

With an increased number of TANF participants facing severe barriers to work, key rehabilitative and supportive services (such as substance abuse, behavioral and mental health and domestic violence treatment) play an integral role in moving participants to work and retaining employment. Under the interim final rule, states must count these services as job search/job readiness - one of the most restrictive categories in the program. This category currently limits services to a total of six weeks and no more than four weeks in a row. Furthermore, the interim rule would require states to count the treatment hours received during a week, no matter how few, as a full week.

Governors urge Congress to restore states' ability to count rehabilitation and supportive services as a category other than job search/job readiness. Ideally, since these services are so unique and vital to the populations they serve, they should be given their own separate category...

⁶ For a more extensive discussion of the issues related to the new TANF requirements and individuals with disabilities, see, “The New TANF Requirements and Individuals with Disabilities: State Comments to the TANF Regulations Illustrate Problems Posed by Inflexible Federal Requirements,” by Sharon Parrott, Center on Budget and Policy Priorities, March 2007, <http://www.cbpp.org/3-1-07tanf.htm>.

**TABLE 1: SUMMARY OF CONCERNS RAISED BY STATES AND OTHERS
ABOUT THE TANF REQUIREMENTS AND POTENTIAL SOLUTIONS**

Concern	Possible Solution
<p>People with Disabilities States do not get credit when individuals with disabilities participate in activities but need modifications (as required by the ADA and Section 504 of the Rehabilitation Act) in standard work requirements.</p>	<p>Allow states to develop modified employment plans for individuals who are found to have a disability by a qualified professional and give states credit if the individual complies with the plan. Ensure appropriate oversight by requiring states to submit data to HHS about families receiving modifications.</p>
<p>Promoting Integrated Work Activities When employment programs are multi-faceted, combining work experience or vocational education with job search and job readiness activities, states are supposed to track precisely what the individual is doing each hour of the day. This is onerous on providers and creates a disincentive to integrating programs.</p>	<p>Allow states to report all hours of participation in an activity according to the main activity of the program, so long as that main activity constitutes a significant majority of the hours of participation.</p>
<p>Tracking Vocational Educational Training Individuals in vocational educational training programs must get third-party verification for hours they attend class, putting new burdens on community colleges and forcing recipients to divulge their status as TANF recipients to teachers and, in many cases, classmates.</p>	<p>Allow self-reported or scheduled hours of participation to count <i>as long as the individual is making satisfactory progress</i> in the class. Community colleges already track satisfactory progress.</p>
<p>Study Time States cannot claim the time recipients spend on homework and class preparation unless it is done in a supervised setting, something that is often unavailable and is costly to establish (including both the cost of running the study hall and child care for participants).</p>	<p>Allow a standard amount of preparation and study time (or self-reported study time) to count toward the participation rate, <i>as long as the individual is making satisfactory progress</i> in the class.</p>
<p>English Language and Remedial Education States cannot count standalone ESL programs or remedial education programs as core activities.</p>	<p>ESL should be countable as a core activity when the state determines it is a necessary skill to attain employment or engage in further education and training. Remedial education should be countable as a core activity when it is a precursor to further training.</p>
<p>Bachelor Degree Programs Bachelor degree programs do not count toward the participation requirements, even for 12 months.</p>	<p>Allow these programs to count.</p>
<p>Partial Credit States receive no credit when an individual participates during the month, but falls short of the required hours of participation.</p>	<p>Allow states partial credit in recognition of the efforts made by the state when a family is engaged but fails to meet the full participation requirement. (was in earlier versions of TANF reauthorization legislation in both the House and Senate Finance Committee).</p>
<p>12-Month Limit on Education and Training States that decide that education and training programs that exceed 12 months are a good investment get no credit toward the participation rate after the individual has participated for 12 months.</p>	<p>Allow states the option of engaging qualified recipients in longer-term education and training programs (was in the Senate Finance Committee TANF reauthorization bill.)</p>
<p>Use of Carry-Over TANF Funds States cannot use unspent TANF funds on the full array of TANF-allowable purposes, but must use these funds on benefits that meet the definition of “assistance.”</p>	<p>Allow states to spend unspent funds from prior years on any TANF-allowable activity (was in both the House-passed and Senate Finance Committee TANF reauthorization bills).</p>

While the interim final rule recognizes that states are legally bound by the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, it fails to distinguish between individuals with disabilities and other TANF clients with respect to required weekly work participation. This failure places states in the unreasonable position of either facing penalties or violating the ADA by requiring individuals to work longer hours than they are medically permitted by law. Furthermore, although individuals who are on Supplemental Security Income (SSI) can be excluded from the work participation rate calculation, the determination of SSI status can take up to 24 months during which individuals may not be excluded.

Congress should allow these individuals, if they are working at their medically prescribed maximum level, to be considered as working at the full participation rate.

Under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Services Act, states are required to make modifications in their TANF programs — including their welfare-to-work programs — for individuals with disabilities whose conditions warrant special consideration. HHS’s Office of Civil Rights reiterated states’ obligations to make modifications in work activities when needed by a recipient with a disability and has stated that such modifications might include reducing the number of hours an individual is required to participate (this might be necessary, for example, for individuals with health problems that limit their physical activities), allowing recipients to remain in activities (such as education and training) for longer periods of time (recipients with learning disabilities may need longer to complete educational programs), and engaging recipients in different types of activities to help them become job ready (individuals who need mental health or substance abuse treatment might need a different mix of activities than other TANF recipients).

While HHS reiterated states’ obligations under the ADA and Section 504 in the preamble to the Interim Final Rule, the rules themselves mean that if a state makes these kinds of modifications in an individual’s work activity requirements, then the state will be at higher risk for failing to meet the federal work participation requirements because that individual will not count toward the rates.

Given the conflict between the disability laws and the TANF requirements, states have asked HHS to allow them to count toward the work participation requirements those recipients who participate in work activities but whose participation differs from the standard requirements because of disability-related modifications that were made by the state. States noted in their comments that the rule does provide additional flexibility to states when the TANF statute that requires 20 hours of core work activities conflicts with minimum wage rules under the Fair Labor Standards Act (FLSA) that do not allow states to require recipients to “work off” their TANF and food stamp benefits at an effective wage rate that is below the minimum wage. States argued in their comments that the rules could have made a similar accommodation in cases where states’ obligations under disability laws conflicts with standard TANF work participation requirements. In addition, NGA, APHSA and many state agencies asked for flexibility to exclude recipients awaiting an SSI eligibility determination and recipients with severe temporary disabilities that preclude participation from the work rate calculation.

- **National Governors Association (comments on the regulations):** “Governors continue to believe that states should have maximum flexibility in receiving credit for key rehabilitative and supportive services such as substance abuse, behavioral/mental health and domestic violence treatments in one or more work activity. These services are an imperative part of moving recipients, with barriers, to work and retaining employment. States need credit for these services in work activities that are fully countable for all hours of participation without time limit.”
- **American Public Human Services Association:** “The preamble ‘encourages States to make every effort to engage individuals with disabilities in work activities.’ However, we are concerned that the regulations have placed new limitations on the ability of states to accommodate the special needs of persons with disabilities who wish to participate in the TANF program. It is critical that states have maximum flexibility in receiving credit for key rehabilitative and supportive services such as substance abuse, behavioral/mental health, and domestic violence treatments in more than one activity. These services are an imperative part of moving recipients with barriers to work and retaining employment.”
- **Iowa Department of Human Services:** “While the preamble makes numerous references to ‘encouraging’ states to engage persons with disabilities to the fullest extent, the rule offers little in practical terms enabling states to do so in a meaningful manner. In general what’s missing, and is most needed, are more and better mechanisms to allow TANF recipients who are themselves disabled, although not receiving SSI, to meet work participation requirements or be excluded from the definition of work eligible.”

Suggested revisions: Revise the regulation to exclude SSI parents as a class from the definition of work eligible with the option for states to include on a case-by-case basis in those instances when the SSI parent may be engaged in enough countable work hours to meet the work rate... Add to the list of exclusions parents who are disabled to the extent that they cannot be engaged in work activities and have medical documentation to support this determination... Allow states to deem persons with disabilities to be meeting work requirements if they are participating the maximum number of hours allowed by a medical professional.”

- **Maine Department of Health and Human Services:** “DHHS strongly suggests that the definitions of work activities be broadened to accommodate individuals with limited or no skills and individuals with significant physical and/or emotional challenges. There should be fewer hours required to fulfill the work requirements for these individuals... Not acknowledging the success of these efforts is punitive to TANF participants and to states that are providing appropriate and effective services to help individuals become independent of government assistance.”

These concerns have been echoed by many experts in disability-related issues. The Consortium for Citizens with Disabilities — a coalition of national consumer, advocacy, provider and professional disability organizations — submitted comments on the regulations in which they stated:

Two key principles of the ADA and Section 504 require that all program participants be provided (1) individualized treatment; and (2) an effective and meaningful opportunity to participate. To fulfill these principles, states must treat individuals on a case-by-case basis and provide reasonable accommodations, auxiliary aids and services to program participants. States are required to ensure equal access through the

provision of appropriate services, to modify policies, practices and procedures to provide such access and to adopt non-discriminatory methods of administration. As currently written, states will find it difficult if not impossible to meet the requirements of TANF, as interpreted in the regulations, and also meet their ADA obligations.

Addressing the Concerns – TANF Rules and People with Disabilities

On June 28, bipartisan legislation (S.1730) introduced by Senators Smith (R-OR), Conrad (D-ND), Stabenow (D-MI), Collins (R-ME), and Snowe (R-ME) would address these concerns by allowing states to get credit toward the work participation rate when individuals with disabilities participate in employment-related activities, even if the individual needs modifications to the standard work requirements. These modifications could include allowing them to participate in different types of activities, relaxing the durational limits on activities such as job search and job readiness and vocational educational training, and reducing the hourly participation requirements. Such a provision would encourage states to identify individuals with disabilities, to develop appropriate employability plans, and to help recipients comply with those plans.

Some may be concerned that if states are given this new flexibility, a state will erroneously claim that an individual has a disability or make modifications in an individual's work requirements that are unnecessary. Strong accountability measures can be put in place, however, to guard against such problems and to give the Department of Health and Human Services the information it needs to monitor states' use of such flexibility. S. 1730 includes the following accountability measures:

- A requirement that a qualified professional make a determination that the individual has a disability that could affect his or her ability to comply with standard work requirements.
- A requirement that employment plans for such individuals be reviewed periodically to determine whether the individual is making progress toward employment, whether the modifications to the work requirements are still necessary, and whether changes in the employment plan are warranted.
- A requirement that the state provide data to HHS about the types of disabilities that are identified, the types of modifications made to employment plans, and compliance rates with modified plans.

Promoting Integrated Work Activities

Under the Interim Final Rule, states must document precisely what a recipient is doing each hour that they are engaged in a work activity. This means, for example, that if a work experience program includes a job readiness and job search component, the state is supposed to track the time spent in job search/readiness activities *separately* from the time spent doing direct work experience. Mechanically, this means that each provider must not only document the hours that a recipient participated in the program, but precisely what the recipient was doing each hour that s/he is participating. Similarly, if a vocational training program includes job readiness and job search

Guidance Issued After the Interim Final Rule Adds Additional Restrictive Rules

HHS has issued two sets of guidance (in December 2006 and in April 2007) to states subsequent to the release of the Interim Final Rule. Taken together, the guidance provides further restrictions on states' flexibility to design and implement welfare-to-work programs.

For example, under the guidance documents:

- **Arranging child care and addressing domestic violence issues cannot be considered a job readiness activity.** These limitations were not in the Interim Final Regulations and are particularly surprising given that under the statute, states are not permitted to count participation in job readiness activities for more than four consecutive weeks and for more than six (or in some cases, 12) weeks over the course of the year. Given the tight durational limits on these activities, it is surprising that HHS would choose to exclude from this category certain activities that for many recipients are a necessary precursor to employment.

- *Child Care:* While the regulations say that job readiness activities include “preparation to seek or obtain employment,” the subsequent guidance documents state that the time a recipient spends arranging child care so that s/he can participate in activities or go to work *cannot* be counted toward the work requirements as job readiness or any other countable work activity. The guidance says that arranging child care is only indirectly related to “to finding or preparing for a job.”

Under this interpretation, many recipients will be unable to meet the work requirements in the first couple of weeks receiving assistance. Many single parents with young children must arrange child care before they can participate in other activities. The statute itself recognizes this, prohibiting states from sanctioning families with young children who are unable to participate due to a lack of child care.

- *Domestic Violence:* The April guidance also states that arranging housing to address a domestic violence issue is not directly related to preparing for employment and, thus, can not be counted as job readiness. (This prohibition was not in the December guidance.) Like arranging child care, establishing safe housing and otherwise addressing domestic violence issues — such as securing protective orders — can be a necessary prerequisite to finding employment. Individuals without safe housing or necessary protective orders may be unable to safely travel to and from work or job training, may miss work or training classes after being injured by an abusive partner, and may be unable to concentrate on new job tasks or classroom material. In its guidance, HHS suggests that states consider granting such individuals a “Family Violence Option waiver” from work participation, but some states have been reluctant to use these waivers because recipients granted such waivers are *not* excluded from the work participation rate.
- **States can only count hours missed due to 10 holidays per year.** The Interim Final Rule states that, “For participation in unpaid work activities, it [the state] may also include excused absences for hours missed due to holidays and a maximum of an additional 10 days of excused absences in any 12-month period...” (261.60(b)) In its guidance to states on the work verification plan, HHS required states to list out the holidays it would include under this provision in its work verification plan. Then, in its latest guidance, HHS decided that no more than 10 holidays per year could be considered under this provision, regardless of whether a state had more than 10 recognized holidays or whether education and training providers — such as community colleges that have breaks between semesters — were closed and unavailable to recipients for additional days.

activities, the state must not only document each hour of participation, but must determine precisely what the recipient was doing each hour she is participating.

This is not only administratively burdensome — these rules could result in *less effective* work experience and training programs that do not integrate job readiness skills and job seeking activities. Under the Interim Final Rule, if a state reports *even one hour* of participation in job search and job readiness activities in a week, then that week counts against the limit on the number of weeks that an individual can participate in these activities and count toward the participation rate. Once an individual has exhausted his or her six weeks of allowable job search/readiness (or, in some cases, 12 weeks), hours spent in these activities do not count toward the participation requirements, making it harder for programs that integrate these activities to engage recipients for enough countable hours to meet the federal participation standards.

The goal of vocational training and work experience programs is to help recipients *prepare for and find jobs*, not keep “busy” for 30 hours per week in vocational training or work experience. The most successful programs are those with a strong work focus that help recipients take the experience and training they have received and use it to secure employment. To do so, individuals need to have job readiness training to gain skills in workplace behaviors, time management, and conflict resolution and they need help — and time — to actually look for jobs.

State comments reflect these concerns. For example:

- **National Governors Association (comments on regulations):** “As currently written in the interim final rule, many activities that would be allowable under job search/job readiness would amount to only 5-10 hours in a week. It is our understanding that under the Department’s interpretation of statute, states would have to count these 5-10 hours during a week as an entire week of job search/job readiness...For the past 10 years, job search/job readiness has been an integral part of all work activities and states should have the option and flexibility to continue using this work category in a similar fashion.”
- **American Public Human Services Association:** “We recommend that job search be included as an allowable activity as a part of all core and non-core work activities. In many states, job search is considered to be an integral part of all work activities; while clients might be engaged in vocational education, for example, they might also be required to participate in ongoing job search activities. We urge you to amend the interim final rule such that job search is not confined to one activity that is time limited to no more than 6 weeks and no more than 4 weeks consecutive. The goal of securing unsubsidized employment should be the ultimate goal for clients, and restricting this activity is contrary to the purpose of the TANF program.”
- **Oklahoma Department of Human Services:** “We ask you to consider allowing job search in any activity leading to employment and to not count as job search while it is a part of any other activity. Job search is a requirement for activities such as a work experience placement and subsidized employment. When included as part of these activities job search should be counted on an hourly basis, which would preserve the limited number of days in this activity.”

Addressing Concerns – Promoting Integrated Work Activities

There are several ways to change either the statute or the regulations to address this issue.

- States could be permitted to classify hours of participation based on the *primary* activity in which recipients are engaged. This could mean, for example, that all hours in which a recipient participates in a work experience program would count under the “work experience” category, as long as the primary activity participants are engaged in is onsite job tasks. This would eliminate the need to keep tabs on precisely what an individual was doing *each hour* that they were engaged in a program and would foster integrated programs.
- Another option — one many states mentioned in their comments, in part because it is a smaller modification of the Interim Final Rule the Administration had released — would be to measure the four and six week durational limits on job search and job readiness activities on an hourly basis, so that the six week limit would only be hit when a recipient had participated in such activities for 180 hours (six weeks times 30 hours per week) or 240 hours (six weeks times 40 hours per week). This lessens the disincentive to integrate job search and job readiness activities into other employment-related programs, but would still mean that states would be required to track what recipients were doing each hour. If this approach is taken, Congress should consider either changing the limitation on *consecutive weeks* of participation to a limitation on the number of consecutive weeks in which most or all of the hours were in job search and job readiness activities. In addition, Congress should consider increasing modestly the total number of allowable job search/readiness hours if this approach is taken.

Simplifying the Tracking and Verification of Participation in Work Activities

States also have raised additional concerns about the prescriptive nature of the Interim Final Rule in the area of how they are supposed to track and verify hours of participation. These include:

- A concern that states may be unable to get professors and teachers in community colleges and other education and training programs that serve TANF and non-TANF recipients alike to submit attendance verification since they do not collect attendance for other adult learners — and that requiring them to do so may make such institutions more reluctant to serve TANF recipients. States also have raised a concern that recipients could be stigmatized if they are required to ask teachers to track their attendance or sign “proof of attendance” forms. There is early anecdotal evidence from California that some counties are having difficulty obtaining verification of attendance in community college classes.
- A concern that states do not have a mechanism for obtaining third-party verification of attendance in distance learning/online classes which are increasingly being used by community colleges. In Kentucky, for example, about 30 percent of all recipients who were participating in community college programs through the “Ready to Work” program prior to the DRA did some or all of their classes online.

States also have raised concerns that the regulations micromanage their data collection schedules, requiring some work program providers to provide information to the state every two weeks and

others — those that engage recipients in job search and job readiness activities — to provide information *daily*.

- **National Governors Association (comments on the regulations):** “Although many of the documentation requirements found in the new regulations are necessary to establish a level playing field among the states and regions, some are unduly burdensome. Governors strongly urge HHS to take a common sense approach in creating practical and achievable documentation and verification requirements...”
- **American Public Human Services Association:** “We ask HHS to ease and clarify daily supervision requirements. We request that the term “daily” that is used to describe supervision be removed from the rule...”

Recognizing the expense involved to states and contractors, we ask that HHS allow for broad state flexibility when reviewing State Verification Plans in the area of monitoring that will take into account present state information systems and staffing capabilities. We also ask that job search and job readiness activities are consistent with other activities by documenting them a bi-weekly basis.”

- **Nevada Division of Welfare and Supportive Services:** “Nevada is concerned about the verification and documentation requirements of activity hours, specifically those in the Job Search/Job Readiness category and urge HHS to consider the undue burden they are placing on the states and TANF recipients. The interim rule states documentation, not just supervision, of hours must be provided daily. In urban areas where clients rely on public transportation and multiple transfers, many clients would spend a great deal of time traveling to and from the Welfare Office for supervision and verification – time that could be better spent on the job search. In rural areas of Nevada, clients can live 60-120 miles away from the nearest Welfare Office making it virtually impossible to directly supervise or document hours daily.”
- **Kentucky Cabinet for Health and Family Services: Dept for Community Based Services:** “In many community and technical colleges, teachers or professors do not take attendance or roll in their classes. It is an understanding that as part of a student’s success in passing a class, the responsibility for attendance is placed on the student. Therefore, in most situations, school attendance records are not available.

This creates a problem for states trying to establish documentation procedures to account for actual classroom hours for participation purposes. Previously in Kentucky, we tried to implement a procedure that would have teachers and professors complete each month to verify participation. Teachers and professors were unresponsive and did not cooperate with our program requirements. This resulted in Kentucky changing its procedure allowing self-declaration and monitoring of grades to ensure the participant was attending school.

With the new requirements, Kentucky believes it will be necessary to again try to implement verification of class attendance by teachers and professors. Based on past experience, Kentucky does not believe this will be a viable solution based on compliance of individuals who are not responsible for ensuring class participation. Additionally, an individual may be stigmatized if required to ask a professor or teacher to sign a document after each class verifying attendance.

Kentucky does not believe this is fair to the participant. Kentucky would request that DHHS expand the documentation requirement to allow more flexibility in documenting participation in an education activity.

Another concern with the documentation of education is in regards to online courses. Many accredited schools now offer classes online to assist in making access to education more attainable for instance for those who do not have transportation to be able to attend classes. Kentucky is at a loss on how to document the hours spent doing online class work and would like to have some guidance from DHHS on how to document participation.”

- **Connecticut Department of Social Services:** “Your requirements will hinder state efforts to move TANF recipients into employment by diverting scarce agency and provider resources to bureaucratic paperwork activities in order to document hours of participation consistent with your requirements. Staff and financial resources diverted for this purpose will not be available for program activities that help move those we serve towards self-sufficiency. In addition, these rules will undermine our efforts to engage our TANF recipients in the mainstream workforce development system by requiring differential treatment that will not only potentially stigmatize the program participants, but also potentially create reluctance amongst our workforce partners to serve the TANF population. We strongly recommend that you revise the requirements concerning daily supervision and frequent reporting of program participation to more reasonable intervals that can still assure accurate reporting of actual hours of participation.”

Since the release of the April guidance, states have expressed additional concerns about requirements included in the guidance about the forms of acceptable verification. In the guidance, for example, HHS has said that only *written* verification is acceptable and that, for example, states cannot verify hours of employment through a telephone conversation with an employer.

The states’ concerns are echoed by community colleges themselves. In a letter to Rep. McDermott, chair of the Subcommittee on Income Security and Family Support of the House Ways and Means Committee, the President and CEO of the American Association of Community Colleges wrote:

Colleges currently monitor students to ensure that they are making “satisfactory progress” in their programs in accordance with the regulations established pursuant to the Higher Education Act. Since community colleges do not single out TANF recipients who enroll in classes, this new provision would force our faculty and staff to take the time before each class to take attendance on every student, whether or not any of the students were currently receiving TANF funds. Community colleges enroll more than eleven million students annually. Thus, this would translate to an extremely costly new requirement for the colleges. Surely the regulations promulgated by the Department of Education that govern the federal student assistance programs should be sufficient to ensure careful oversight and responsible monitoring of students by the colleges without imposing another cumbersome layer of reporting requirements.

Currently, many students enrolled in postsecondary education certificate and degree programs take a combination of classroom and distance education courses. Some courses utilize both classroom and online instruction. Based on preliminary information, AACC is concerned that some states may interpret the new HHS regulations so narrowly

that they may refuse to accept online instruction courses (or portions of courses) as countable toward the participation requirements, and that a significant percentage of recipients could therefore lose their eligibility...⁷

Addressing Concerns — Tracking and Verifying Hours

While improving accountability is a worthwhile goal, a better balance could be struck between ensuring that states do not get credit for hours that recipients do not participate and the cost of diverting vast resources — both financial and staff time — to data reporting. Moreover, in some cases, the rigid requirements may actually produce *less reliable* data than otherwise would be the case. If states are forced to verify 100 percent of hours of participation they report to the federal government, they will be forced to leave out hours in which a recipient participated but a piece of paper documenting the participation is missing from the case file.

The following are ways in which the verification requirements could be changed to reduce the administrative burdens on states, providers, and families while maintaining a high standard of data accuracy:

- *States could be permitted to report hours in education and training programs based on scheduled hours or attendance sheets filled out by the recipient **as long as the participant was making satisfactory progress** in the education and training program.* Since recipients who do not attend class will not make satisfactory progress in the program, grades and other measures of satisfactory progress are a reasonable form of verification. Such a provision would solve a number of problems raised by states, including difficulty getting professors and teachers to submit paperwork, the stigma that could result of students who are TANF recipients are treated differently than other students, and issues related to tracking distance learning programs.
- *Eliminate requirements now in the regulations that prescribe how often the data on participation must be transmitted to the state agency.* Under the regulations, information about participation in job search/readiness activities must be provided to the state daily and information about other unpaid activities must be provided every two weeks. States should have the flexibility to establish their own timeframes for the collection of information about hours from families and providers — this is unnecessary micromanaging of state procedures.
- *Clarify that penalties associated with failing to meet the requirements of a states' work verification plan will only be imposed if a state fails on a systemic basis to verify hours of participation.* Penalties should not be imposed for failing to verify a small share of reported hours or missing verification in a small share of cases.

⁷ Letter from George Boggs, President and CEO of the American Association of Community Colleges, to Rep. McDermott, March 20, 2007.

Homework Time

The Interim Final Rule includes particularly unrealistic verification requirements for homework and study time. Under the rule, states cannot count time spent on homework unless that time is spent in a *supervised* study hall setting. This appears to stem from a view by HHS that because unsupervised homework time cannot be verified by a third party, it cannot be counted toward the work participation rate.

Most community colleges and other education and training providers do not provide supervised study sessions for adult learners and many parents would prefer to study at home as they juggle their work and family responsibilities. Moreover, creating such supervised study halls would add real expense to these programs — both for staff to supervise the study halls and for the additional child care that these parents would need.

Since homework and studying are critical to student success in education and training programs, it would make far more sense for states to be permitted to count usual or expected homework and study time — or student’s self-reported hours spent doing homework or studying. To guard against counting hours for students who are not doing the required out-of-classtime work, states could be permitted to count self-reported or expected study time *for those students who are making satisfactory progress in the education and training program*. (Students who are not doing the outside work are unlikely to make satisfactory progress in the program.)

Absent such an approach, states either have to require this time be spent in a supervised setting (something that would be costly and may have little pay-off in terms of improved outcomes) or require parents to participate in additional hours of other work activities because their study time is not countable. Requiring parents to participate in additional hours of other activities will make it less likely that they will have time to complete assignments and study the material and puts their success in the training program in jeopardy.

NGA, APHSA, and a number of states commented on this aspect of the Interim Final Rule:

- **National Governors Association (comments on regulations):** “Homework/study time is an integral part of successfully completing most education programs. HHS should allow states to develop common sense practices for determining the amount of homework/study time needed for a recipient to satisfactorily progress in a course...The new requirements will be unduly administratively burdensome for states by documenting and monitoring hours that virtually every learning institution has already adopted as an accepted practice. In addition, this rule would increase expenditures for staff, space costs, and child care.”
- **American Public Human Services Association:** “For both Vocational Education and Education Related to Employment, we ask that states be allowed to continue to count study time if it is based on the instructor or educational institution’s requirements of the amount of hours of study required to pass each class even if not supervised. States should be allowed to adopt the homework standard set by the course or instructor, or proposed an alternate measure in their Work Verification Plan... It is important to note that most TANF recipients are single mothers and need to study at home and only after the daily responsibilities of work, education, and caring for her children are met. Supervised homework would require additional time away

from family, additional child care, and transportation expense and administrative costs to accommodate.”

- **Idaho’s Department of Health and Welfare:** “Study time is an important activity that assures success in any educational pursuit. Requiring monitored study sessions in order to count this study time will be burdensome for single mothers who would normally study at home with their children. Attendance at a study hall would require additional child care for the children in these families and reduce the opportunity for quality family time.”
- **Minnesota’s Department of Human Services:** “The regulations require that only supervised study time be counted toward the work requirements. This is an unreasonable requirement that places an undue burden on students, workers, and support services such as transportation and child care. Requiring parents to report somewhere to study would, in many cases, require additional child care and transportation funding. It would take parents away from their children for longer periods of time and stigmatize the students by setting them apart from their classmates. Most parents study at home after their children are in bed or along with their older children. This increases the amount of time they are available to their children and gives the children a role model for their own study efforts.”

The American Association of Community Colleges’ (AACC) letter also addresses this issue:

The preamble to the interim final regulations specifically prohibits counting as “work” any time spent in preparation for vocational education classes. Preparation time is indispensable in order for a student to progress successfully through a college program. Although the regulation allows for counting monitored study sessions, this approach is impractical since it would entail significant additional institutional costs and would involve substantially increased child care costs for most TANF participants.

This approach to micromanaging study time stands in stark and disappointing contrast to the federal student aid program regulations. Under the latter regulations, undergraduate students who are taking as few as 12 credit hours per semester are deemed to be “full time” students for purposes of calculating eligibility for student financial assistance, including Pell Grants, Federal Work-Study, and student loans. This reflects the widely accepted standard that for every hour of class time, a student is expected to spend at least two hours preparing. Preparation time is essential for vocational education students and we urge HHS to reconsider this policy to allow for at least one hour of preparation for every hour spent in class.⁸

Addressing Concerns —Homework Time

Congress can address these concerns by allowing states to count expected out-of-class time for homework (but not more than two hours for every hour of class time) and studying — or, alternatively, recipients’ self-reported hours of study — toward the participation rate without independently verifying those hours as long as the recipient is making *satisfactory progress* in the program.

⁸ Ibid.

Definition of Vocational Educational Training

Research on welfare-to-work programs over the last ten years has shown that the most successful strategies for helping parents to work more consistently and to increase their earnings emphasize employment and provide a range of services that include strong education and training components.⁹ Higher levels of education are closely associated with increased earnings and lower rates of unemployment.

Unfortunately the final interim regulations limit the ability of states to put qualified recipients in education and training programs that can help them raise their skill levels so they can secure higher paying, more stable jobs that offer prospects for advancement.

States have raised three main concerns about the regulations related to education and training:

- The regulations go too far in restricting the circumstances under which English language programs and basic skills programs can count as vocational educational training.
- The regulations prohibit states from counting bachelor degree programs as vocational educational training, even when the state determines that the individual is likely to succeed in the bachelor degree program and that the program is likely to lead to stable employment.
- The verification requirements are too burdensome for community colleges, other providers, and families and make it difficult for states to give students the time they need for homework and study because, unless supervised, these hours do not count toward the participation rates. (These issues are discussed above.)

In their comments on the Interim Final Rule, NGA and APHSA made the following over-arching comments:

- **National Governors Association (comments on regulations):** “We believe that vocational educational training needs to be designed and well-suited for the population it serves. There should be greater flexibility under this work activity to include some basic skills training or ESL. It is also important that programs such as career pathways, which can combine work and education, be countable. Also, explicitly prohibiting baccalaureate or advanced degrees from the definition does not take into account the reality of today’s employment environment and prevents states from creatively working with universities to support low-income families.”
- **American Public Human Services Association:** “Recognizing that combining education with employment training is a successful model for moving TANF recipients towards self-sufficiency, education is an important part of many state TANF programs. We recommend expanding the definition of Vocational Education to include post-secondary education. For many clients, the combination of work and higher education has led to the end of welfare and

⁹ Hamilton, G. *Moving People from Welfare to Work: Lessons from the National Evaluation of Welfare-to-Work Strategies*. U.S. Department of Health and Human Services. 2002. Available at <http://aspe.hhs.gov/hsp/newws/synthesis02/>.

entry into higher wage jobs. Also, we recommend that vocational education include basic skills training as well as English as a Second Language (ESL) without limitation.”

Basic Education and ESL

Under the Interim Final Rule, basic education and English language programs cannot count as vocational educational training (or as any other “core” work activity) unless these activities are “embedded” in a program designed to provide skills related to a particular job or occupation and of limited duration.¹⁰ These activities can be counted as “non-core” activities — that is, participation in these activities can count toward the participation rate if combined with at least 20 hours of participation in so-called “core” activities consisting of employment in subsidized or unsubsidized jobs, work experience, vocational educational training, or job search/readiness activities (subject to stringent durational limits).

While programs that provide basic skills alone are often not enough to help a parent improve her employment prospects, the regulation itself is unduly restrictive, as it seems to exclude programs in which recipients first participate in basic skills program and then move on to further training. Such programs can be effective and do link basic skills training with further career-specific training, but they do so in a sequential rather than “embedded” fashion.

In the case of English language programs, states also have asked for more flexibility. In some cases, English language skills alone may be enough to move someone into employment. In other cases, English language skills may be a prerequisite to further career training. In both instances, states should receive credit for participation in programs designed to teach needed English language skills.

Many states commented on these issues. For example:

- **Washington State’s Department of Social and Health Services:** “ACF should allow the blending of basic education for the entire length (up to 12 months) of vocational education. The ‘of limited duration’ language is unnecessarily restrictive and contradicts ACF’s recognition that basic skills education ‘may enhance preparation for the labor market’, particularly for lower-skills individuals... We recommend that ACF include English as a Second Language (ESL) in its definition of vocational educational training....

...ACF should explicitly include developmental/remedial or prerequisite courses in its definition of vocational educational training. These courses can be a necessary requirement for some parents to participation in vocational educational training or the labor market itself.”

- **Colorado Department of...:** “Basic skills training should be counted as an allowable vocational education activity if it is provided as part of a program or is required for entry into an education program.”

¹⁰ 71 Fed. Reg. at 37461 (June 29, 2006).

- **Michigan Department of ...:** “We have found that many of our clients have significant deficits in reading, writing, and math skills. These clients need basic skills education to allow them successfully obtain and retain even entry level employment. We were disappointed that this activity was not included in the regulations as a core activity. Individuals must have these skills to move toward self-sufficiency. The final regulations need to count all hours in these programs toward federal work participation requirements and allow states maximum flexibility to design programs that meet this need.

The AACC letter echoes these concerns:

AACC supports the expansion of opportunities for adult basic education to help individuals acquire the necessary prerequisites to successfully matriculate in and complete vocational education programs. While the interim final rule for TANF recognizes the need for basic skills education, it limits its inclusion as an eligible work activity to “temporary” instances. More flexibility should be permitted to allow concurrent or consecutive enrollment in vocational education and basic skills education classes. Similarly, the interim final rule omits English Language Learners (formerly, English as a Second Language) programs from the definition of “vocational education.” English language classes, like adult basic education, are an integral part of, or precursor to, many vocational education programs. It would be helpful if TANF recipients were able to access these programs in advance of enrolling in more targeted vocational education programs. The same standards could be used for determining eligibility for these programs – the institution could certify that the English Language Learners (ELL) or adult basic education classes were necessary for the TANF recipient to complete a vocational education program.¹¹

Addressing Concerns —Basic Education and ESL

Congress could address these concerns by allowing basic education to count as vocational educational training or another core work activity (an activity that counts toward all hours of required participation) as long as the program is designed to help the recipient prepare for further career training or enter into a particular job or occupation directly. Congress also should clarify that English language instruction counts as vocational educational training (or another core work activity) if the state has determined that with improved English language skills the individual either will be employable or will be prepared to enter into further vocational training.

Bachelor Degree Programs

The TANF statute itself provides for only limited access to education and training. Under the statute, no more than 30 percent of recipients engaged in work activities can be in certain educational activities and the statute limits participation in vocational education training for individual recipients to 12 months over a recipient’s lifetime.¹² Some states — including Kentucky, Maine, California, and Nebraska — found these limitations problematic even before the DRA was enacted and allowed recipients to participate in education and training programs — including bachelor degree granting programs — for longer than 12 months. Some states provided assistance

¹¹ George Boggs, *Ibid.*

¹² More precisely, no more than 30 percent of recipients who count toward the work participation rates can be engaged in vocational educational training or, in the case of a recipient under the age of 20, engaged in secondary school or its equivalent.

to such families in programs funded entirely with state maintenance-of-effort (MOE) funds (funds states must spend in order to qualify for their federal TANF funding) because prior to the DRA, such families were not considered in the state's work participation rate.

States now have fewer options for allowing some families to participate in longer-term education and training programs. Under the DRA, families receiving assistance in MOE-funded programs are included in the state's work participation rate calculation and, thus, serving them in such programs no longer provides states the added flexibility they once had. Moreover, because the overall work participation rates are more difficult for states to meet, it is riskier for states to allow families to engage in work activities that do not count toward the participation rate. For these reasons, some states have urged Congress to change the DRA to allow them to count participation in longer-term education and training programs when such programs are appropriate to an individual's circumstances.

Despite the already-restrictive statute, the Interim Final Rule made things still worse by defining "vocational educational training" to *exclude* all programs that results in a bachelor degree under *any* circumstances.¹³ This means that even for a 12 month period, a state cannot count an individual in a BA program as participating in vocational educational training, even if the state has determined that the program is preparing the individual for a career and is likely to result in employment. Participating in an BA degree program cannot count under any other "core" activity — work activities that can count toward the first 20 hours of participation.

More than 15 state agencies submitted comments that called for allowing states to get credit when a recipient is in a BA or postsecondary education program. For example:

- **Kentucky's Department for Community Based Services:** "Education is the corner stone to many individuals lifting out of welfare and becoming self-sufficient. Many studies have shown that individuals achieving a 4 year or advanced degree have higher incomes than individuals who participate in work-first activities. Kentucky asks that the Department for Human Services reconsider the exclusion of the pursuit of baccalaureate or advanced degree in its definition of vocational educational training and job skills training."
- **Utah's Department of Workforce Services:** "We ask that restrictions to counting participants in this category be removed. Utah only approves post-secondary education after careful screening for likely success such as going into high demand jobs or completing their degree within a specific period of time. For that handful of recipients, it has meant an end of the TANF receipt and entry into high wage jobs."

Addressing Concerns —Bachelor Degree Programs

Congress can address this issue by explicitly allowing postsecondary education programs to count as vocational educational training. Moreover, a number of states want to allow qualified recipients to participate in education and training programs for more than 12 months. Twelve months is not sufficient for many recipients to complete programs that provide the kind of career training or

¹³ 45 C.F.R 261.2(i) as amended at 71 Fed. Reg. 37475 (June 29, 2006).

degree opportunities that can enable recipients to secure jobs that can support their families. Options for providing states with more flexibility in this area are discussed on page 18.

Additional Legislative Changes to the TANF Program

The comments that states and others submitted in response to the Interim Final Rule generally were limited in scope to those areas in which commenters thought that the regulations themselves should be changed. Commenters did not generally discuss areas in which they thought changes were needed to the underlying TANF statute because such changes cannot be made by the Department of Health and Human Services but must originate on Capitol Hill.

It is worth noting, however, that states and others have supported various other changes to the TANF statute. This includes some provisions that were included in both House and Senate Finance Committee versions of stand-alone TANF reauthorization legislation, most of which were excluded from the TANF provisions of the Deficit Reduction Act because they were provisions without a direct budgetary impact and, thus, could not be included in the DRA because the DRA was a “reconciliation bill.” (A “reconciliation bill” cannot include legislative changes that do not affect federal spending or revenues.) In addition, there were a couple of provisions in the Senate Finance Committee bill — a *bipartisan* proposal — that continue to enjoy broad support among states and others.

These additional changes include:

- **Partial Credit:** The House-passed TANF bill and the Senate Finance Committee bill gave states “partial credit” when families participated in work activities but did not meet the minimum hourly participation requirements. Partial credit provides states with an incentive to engage families in work activities even if initially the family is unable to meet the full hourly participation requirements and provides states with partial compensation for the fact that many families miss hours of participation for legitimate reasons, including that recipients themselves get sick or are needed to care for a sick child.
- **Elimination of the separate two-parent work participation rate:** Both the House-passed TANF bill and the Senate Finance Committee bill would have eliminated the separate 90 percent participation rate that applies to two-parent families. The DRA did not eliminate this separate rate. It is widely believed that this change was not made because maintaining the unrealistically high work participation rate *increased* the penalties that the Congressional Budget Office assumed would be imposed on states for failing to meet the TANF work participation requirements. The reduction in federal spending that results from states being assessed fiscal penalties for failing to meet the work participation requirements helped proponents of including TANF reauthorization in the reconciliation bill make the case that the TANF provisions as a whole affected federal spending.

The NGA letter to the chairmen and ranking members of the Senate Finance and House Ways and Means committees highlights the importance of this issue:

Maintaining a 50% work participation rate for all families was a common theme in every major legislative effort to reauthorize TANF in 2005, and is a principle also shared by the Administration. However, the

DRA required states to meet an unrealistic 90% participation rate for two-parent families. Governors strongly support efforts to maintain the flat 50% rate for all families, regardless of size.

- **Giving states additional flexibility to engage recipients in postsecondary education.** The Senate Finance Bill included a provision known as "Parents as Scholars" that would allow states to get credit for recipients who participate in vocational education and postsecondary educational programs for longer than 12 months. Under the proposal, recipients would be required to combine schooling and work after the first 24 months of participation and the share of recipients who could meet the work requirements in such a program would be limited to 10 percent. Such a provision would give states flexibility to develop education and training programs that can prepare *qualified* recipients for careers that offer more adequate wages and opportunities for advancement.
- **Providing credit to states when families leave TANF for work:** While the House-passed bill did not include such a provision, both the Administration's TANF reauthorization proposal and the Senate Finance Committee bill would have eliminated the caseload reduction credit and provided states with some sort of credit when families left welfare for work. Under the Administration approach, states would have been permitted to count such families in the work participation rate calculation; under the Senate Finance Committee approach, states would have received a credit that would be applied to the participation rate they had to meet based on the number of families leaving TANF for work relative to the size of their assistance caseload. Under both approaches, this new credit would have replaced the caseload reduction credit. The DRA adopted the House-bill approach instead, keeping but changing the caseload reduction credit so that states get credit toward their participation rate based on the extent to which their caseload declines — for *whatever* reason — below 2005 levels (rather than 1995 levels as under prior law).

To be sure, some states may prefer to get credit toward their participation rate based on declines in the number of families receiving assistance, but many analysts and others view such a policy as providing a strong incentive to states to restrict poor families' access to needed assistance. Over the past decade, the share of families poor enough to qualify for TANF assistance under states own eligibility rules that actually receive income assistance through TANF has plummeted — falling from between 75 and 85 percent in the 1980s and early 1990s to 45 percent in 2003, the last year for which data are available. Indeed, more than half of the caseload decline since the mid-1990s is due to the fact that TANF programs now serve a much smaller share of families poor enough to qualify for aid, *not because of a reduction in the number of very poor families.*

There were several relatively technical legislative changes that were included in the House and Senate Finance bills that had broad support, such as:

- **Change in the how carry-over funds can be used:** Both the House-passed TANF bill and the Senate Finance Committee bill would have allowed states to use TANF funds from prior years on any activity that is allowable under the TANF rules. Under current law, such funds can only be spent on activities that meet the definition of assistance which excludes, for example, education and training programs and child care and other supports for working families.

- **Modifying the definition of assistance:** Both bills would have altered the current regulatory definition of "assistance" — benefits that meet the definition trigger certain TANF requirements, such as time limits, work requirements, and child support, depending on how those benefits are financed. Under the bills, child care and transportation benefits would have been defined as "non-assistance" — under the current regulations, these benefits are considered assistance if they are provided to a non-working parent. This has created difficulties in using TANF and MOE funds for child care and transportation because the job status of recipients must be tracked, even if they are not receiving TANF-related cash assistance.