



COALITION ON HUMAN NEEDS

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August 27, 2006

Mr. Robert Shelbourne
Director, Division of State TANF Policy
Office of Family Assistance
Administration for Children and Families
5th floor East
370 L'Enfant Promenade, SW
Washington, DC 20447

Re: 45 CFR Parts 261, 262, 263, 265
RIN 0970-AC27
Reauthorization of the Temporary Assistance for Needy Families Program

Dear Mr. Shelbourne:

Thank you for the opportunity to comment on the Interim Final Rule for the reauthorization of Temporary Assistance for Needy Families (TANF). The Coalition on Human Needs (CHN) is an independent non-profit alliance of religious, civil rights, policy, service provider, labor, and other advocacy organizations concerned about the needs of low-income and vulnerable people. CHN does not receive government funding.

Our members are persuaded by considerable evidence that poor parents with serious problems to overcome are more likely to move to stable employment with decent pay if they receive an individualized package of work preparation services. These services may include on-the-job training mixed with classroom instruction, basic skills development, job placement help, English as a second language, and counseling or rehabilitation. Program models which employ some or all of these services have a better likelihood of enabling people who have not completed high school to master skills sufficient to qualify for postsecondary credentials that will lead to good jobs. The blending of job search, basic skills development or other training connected to a specific job is an effective way of providing the preparation needed. Some of our member organizations are well acquainted with the research surrounding such programs; others serve low-income families directly and see the difference such a set of services makes in their lives.

There are a number of instances in the regulations that discourage various forms of education, from basic skills and English language training to coursework leading to a baccalaureate degree. Here too, HHS could remain within the framework of the law and allow states more flexibility to incorporate education into its work activities. Failure to do this denies parents the opportunity to move beyond poverty wages.

In addition, our members know that certain families are forced to rely on TANF because the parent has a disabling condition or is caring for a child with a disability. When

families in such need are unable to receive assistance, they suffer preventable hardships, an affront to deeply held American values of ensuring protection and opportunity for those most in need.

The Interim Final Rule includes provisions that will make it more difficult for states to provide the blended mix of work activities described above and to accommodate the needs of families beset by disability. The Rule goes beyond what is required by the reauthorizing legislation in the Deficit Reduction Act (Pub. L. 109-171) and in some sections runs counter to the provisions of other law, such as the Americans with Disabilities Act. We therefore respectfully submit that it is within HHS's authority to revise provisions in the Rule to make clear that states are authorized to design programs combining several activities that together provide effective preparation for work, and that such programs can be modified as appropriate for people with disabilities.

In addition, we believe that the provisions in the Interim Final Rule spelling out the proofs for work participation are far more restrictive than the authorizing law requires. Because burdensome documentation rules will result in loss of benefits for certain families who badly need the assistance, we urge you to change these sections.

Allowing Successful Welfare-to-Work Models With Mixed Activities to Count in the Participation Rate

We recommend that HHS modify the definitions of work activities in 45 CFR §261.2 to allow job preparation and barrier removal activities, and education or training to be integrated into subsidized employment, work experience, on-the-job training, and community service programs. All these worksite-based programs should be treated similarly by allowing states to include targeted activities that increase the likelihood that participants will be able to compete successfully for unsubsidized employment.

We urge HHS to broaden its definition of on-the-job training to allow classroom vocational instruction designed to provide preparation for a specific job. The Interim Final Rule seeks comments on whether its on-the-job training definition should be broadened "...beyond paid employment to include other aspects of training" (45 CFR §261.2(f)). We believe that it should be broadened in this way, since successful worksite models have included classroom training as appropriate to provide skills necessary for the job.

We agree with HHS that states should not be able to satisfy their participation rates by replacing worksite activities with many hours of job search. Too often, states have assigned job search in lieu of appropriate preparation for employment. But that is entirely different from integrating relevant training or other barrier removal activity into a work setting. All worksite-based activities, whether subsidized employment, work experience, community service, or on-the-job training, should allow this mix of relevant and appropriate activities.

Job search and job readiness activities are limited by statute to 6 weeks, of which no more than 4 may be consecutive (or 12 weeks in states defined as "needy" for purposes of qualifying for the contingency fund). The preamble counts those activities as taking up a week "...regardless of how many hours the individual participated in the course of those seven days." (71 Federal Register 37460). We urge HHS to modify its Rule to allow job

search or job readiness activities of short duration (such as less than 8 hours per week) to be incorporated in any worksite-based programs without counting towards the limited number of weeks for job readiness and job search.

Allowing States More Flexibility to Include Education and Training in its Menu of Work Activities

HHS recognizes that basic skills instruction can be a part of vocational education, but says it should be “of limited duration” (71 Federal Register 37461). We urge that this language be eliminated or clarified to indicate that it does not apply to vocational education that integrates basic skills training throughout its program.

For those whose English is very limited, English language instruction is vital. However, the Rule does not mention English language training as an allowed component of vocational education. We suggest that English language training be added to basic skills instruction as accepted components of vocational education (45 CFR ' 261.2).

The Interim Final Rule specifies that vocational education should not include education programs that lead to a baccalaureate or advanced degree (45 CFR ' 261.2(i)). We see no statutory reason to exclude courses that lead to a degree, and many reasons why such exclusion would be poor policy. Vocational education is limited to 12 months by statute; but students may have come close to completing a degree program prior to receiving TANF, or may have been enrolled in a degree-granting program through a separate state program such as Maine’s Parents as Scholars. It is in the best interests of the family and the state to allow the parent to complete or come closer to completing a degree program, since those programs will be most likely to lead to stable jobs with decent pay and benefits. Excluding such programs in some states may be a switch in policy that prevents a student from completing a course of study the state has been investing in for some time. That would be wholly counterproductive.

It is helpful that the preamble recognizes that study time should count towards the participation rate (71 Federal Register 37461), but unfortunate that it requires that the study time be supervised. Many states have allowed a certain amount of unsupervised study time to count (such as an hour or more of study for each hour of classroom instruction), and this approach ought to be allowed as long as the student is making satisfactory progress. Supervised study could be advantageous to the student, but states and educational institutions ought to have the flexibility to determine what they wish to provide. Parents in school have long conducted their study at night after their children are asleep; if they make satisfactory progress the effectiveness of their hours of participation is in effect assessed positively.

Providing Appropriate Activities and Accommodations for People with Disabilities

The Coalition on Human Needs’ members who are expert advocates on behalf of people with disabilities do not want blanket exemptions from work activities for parents with disabilities who are receiving TANF. We know that adults receiving TANF are more likely to have disabilities than comparable other individuals, and need opportunities to overcome the barriers they face – including rehabilitation or other treatment and skills that will help them find jobs. HHS acknowledges that adults with disabilities are entitled to the

protections of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 (71 Federal Register 37456). But HHS' interpretation of this protection is that states should not attempt to count as participants people whose disabilities prevent the full 30 hours of weekly work and/or require modifications in those activities. "That is why the participation requirement is only 50 percent." (Preamble, 71 Federal Register 37466.) We believe that states are far more likely to provide appropriate services for people with disabilities if those services will lead to more individuals counted as participating. Many states will have to engage thousands more people in work activities, with approximately the same funding they have been receiving for the past 10 years. (Child care funding rose by \$200 million a year, but the high performance bonus and out of wedlock birth prevention bonus, together worth \$300 million a year, were eliminated. States that received either of the bonuses were allowed to use the funds for general TANF purposes. New funding for marriage promotion and to encourage responsible fatherhood can only be used for these new activities, leaving some states with less funding to support work preparation and cash assistance.) States will be under pressure to concentrate their resources on individuals who have the greatest chance of satisfying the participation rules.

HHS can instead modify the definitions of work activities for people with disabilities as defined under the ADA or Section 504, and can also count people with qualifying disabilities as participating even if they cannot work the full 30 hours each week.

Definition of allowable activities: We urge HHS to change the rule either by allowing states to broaden the definition of any of the 12 work activities in order to provide accommodations for a person with disabilities under ADA, or specifically to broaden the definition of community service to include appropriate activities for people with disabilities.

If HHS chooses the former approach, states would be allowed to count activities under an individualized employment plan for a person with disabilities as defined under ADA or Section 504, even if those activities differ from the definitions currently in 45 CFR ' 261.2 in order to accommodate a disability.

If HHS chooses to broaden the definition of community service, it can amend 45 CFR ' 261.2(h) to include activities designed through an individualized employment plan for people with disabilities as defined by ADA or Section 504.

Work hours: Under the Americans with Disabilities Act and Section 504 of the Rehabilitation Services Act, the state must provide individualized treatment and access to services or benefits. This applies to TANF work activities. An individualized plan might identify that the person's disability (or the responsibility of caring for a family member with a disability) makes it impossible for them to carry out the required 20 or more hours per week. HHS should modify 45 CFR " 261.31 and 261.32 to count the number of hours established in an individualized plan for a person with disabilities as satisfying the work requirement, even if the hours are fewer than the 20-30 hours per week otherwise required. This would be comparable to the treatment of hours when benefits do not equal the minimum wage; in order to be in compliance with the Fair Labor Standards Act, states are directed to count a lesser number of hours as satisfying the work requirement (45 CFR ' 261.31(d)).

Caring for family members with disabilities: We urge HHS to clarify that individuals caring for family members with disabilities are excluded from the category of “work-eligible individual” under the following circumstances:

- ~~✍~~ If the person cared for lives at home and is enrolled in school full time, but does not attend during vacation periods or because of excused absences for health or other reasons;
- ~~✍~~ If the family member cared for does not live in the same residence as the caregiver (such as a parent or other adult relative). (Revise preamble, 71 Federal Register 37462, to make these provisions clear. Also strike “living in the home” from 45 CFR ' 261.2(n)(2)(i).)

If caregivers are defined as work-eligible (for example during periods when a child with a disability is attending school full-time), they should be counted as participating successfully even if they must miss required work hours because of the child’s excused absences, doctor visits, or other caregiving demands (see Work hours, above). 45 CFR ' 261.60(b) should be amended to specify that absences from work activities because of sickness, caring for a sick family member, or carrying out responsibilities such as school or court visits or meetings with child welfare personnel will not be subtracted from the count of hours for purposes of satisfying participation rates.

Excluding applicants for SSI and SSDI and individuals with disabilities that prevent work for less than 12 months from being defined as “work-eligible.” The rule gives states the option of excluding adults who are receiving SSI from the “work-eligible” category (45 CFR ' 261.2(n)(1)(iii). We urge HHS also to exclude people applying for SSI or SSDI, people receiving SSDI, and people whose disabling condition will not qualify for SSI because it is expected to last for less than 12 months (such as a broken leg). A person with a short-term disability should remain excluded from work-eligible status for as long as appropriate medical professionals judge the condition to prevent participation.

Tracking participation without resorting to reporting requirements that are unduly burdensome for states, service providers, and families

While states and HHS have a legitimate interest in assurances that appropriate numbers of parents are participating in TANF work activities, such assurances can be obtained without burdensome paperwork requirements. Members of the Coalition on Human Needs are especially concerned about onerous documentation rules because we have seen how such rules drive eligible and needy families away from services important to their well-being. Before the most recent reauthorization of the Food Stamp program, for example, low-income working families were excluded from Food Stamps in large numbers because they simply could not take time out from work to make repeated visits to the office to document continued eligibility. Both the Bush Administration and Congress agreed that eligible working families should not be excluded from receiving Food Stamps for this reason, and streamlined documentation requirements to reduce the number of office visits and lessen the paperwork. Similarly, it is important that eligible families are not driven away from TANF because they are unable to comply with unnecessarily frequent requests for documentation. There are already powerful incentives for states to reduce the caseload below 2005 levels (they receive a caseload reduction credit that reduces the proportion of recipients who must be engaged in work); massive verification requirements will make it

still more attractive just to push families off the rolls. In addition, it is important that TANF recipients have the option of participating in work preparation programs not specifically designed for them, perhaps through the Workforce Investment Act (WIA), and these programs may not be set up to provide frequent documentation.

HHS makes a reasonable interpretation of the law in allowing hours of employment, subsidized or unsubsidized, including on-the-job training, to be projected for up to 6 months based on the verification of one month's hours of participation. (45 CFR ' 261.61(c)) We strongly urge HHS to take the same approach for education and training activities. The Interim Final Rule now calls for documenting participation in education and training at least every two weeks (45 CFR ' 261.62). States instead should be allowed to develop monitoring plans that include projecting future hours based on initial documentation of hours. Perhaps most important, continued satisfactory progress in education and training, as measured by grades or similar evaluations, is an adequate measure of participation. Asking for more will discourage community colleges or other training providers from enrolling TANF participants, since the programs are not set up to provide more frequent documentation.

HHS also reduces the burdens on employers, states, and workers, by assuming that individuals in unsubsidized employment have worked all the hours for which they have been paid, without asking for documentation about use of paid leave (45 CFR ' 261.61(b)). We recommend that this approach is extended to TANF recipients engaged in subsidized employment and on-the-job training, in order to be consistent and spare all these employers unnecessarily burdensome documentation requirements.

Finally, we urge HHS not to single out job search and job readiness activities for far more stringent documentation requirements. The rule requires documentation of participation on a daily basis (45 CFR ' 261.62(g)). Although other activities must be supervised daily, this is the only set of activities that must also be documented daily. We urge HHS to allow job search and job readiness activities to be documented on a bi-weekly basis, as is required for all other work activities.

Again, we appreciate the opportunity to provide these comments, and believe strongly that the changes called for will make it far more likely that parents will receive the preparation they need to secure employment, while at the same time providing necessary accommodations for people with disabilities.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Deborah Weinstein", with a long horizontal flourish extending to the right.

Deborah Weinstein
Executive Director

