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OFFICE OF FAMILY STABILITY LETTER # 49A
July 17, 2006

TO: Directors, County Departments of Job and Family Services

FROM: Jeanne Carroll, Deputy Director
Office of Family Stability

SUBJECT: TANF Reauthorization: New HHS Regulations

On June 29, 2006, the U.S. Department of Health and Human Services ("HHS") issued new "interim final" regulations related to Temporary Assistance to Needy Families ("TANF") to provide states with specific direction in implementing the TANF Reauthorization provisions of the Deficit Reduction Act of 2005. The primary focus of the regulations is on defining work activities, verifying hours participated in work activities, ensuring accuracy of the work participation data reported to HHS, and meeting the 50% all family and 90% two parent work participation rates.

Overview of the regulations

Work Activities:

HHS stated in the preamble to the regulations that states had too much flexibility in defining work activities which caused inconsistencies in work activity definitions, verification of participation and counting hours of participation. While the list of federal work activities has not changed in the federal law established by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, all of the work activities are now explicitly defined in the regulations. HHS has said that it is using "common sense definitions" for all work categories.

Pertinent changes include:

- Combining activities: All activities must be defined and counted separately. States cannot combine activities such as job search/job readiness, vocational education, etc. as part of a work experience program. Each activity must be counted separately.
- Fair Labor Standards Act: Only for purposes of work experience, community service and subsidized employment, the new regulations permit states to deem recipients as having met the core work activity requirement when they work the maximum number of hours under the minimum wage requirement of the Fair Labor Standards Act but their hours worked fall short of the minimum number of hours required by TANF. Families that need additional hours beyond the core activity requirement must satisfy them in some other TANF work activity. The deeming provision can only be used if the state has a food

stamp workfare program and a "Simplified Food Stamp Program" as defined by 7 U.S.C. §2035 and approved by the U.S. Department of Agriculture Food and Nutrition Service.

- Job search and job readiness: Job search and job readiness must focus on activities that are strictly related to seeking or preparing for employment, but can include activities such as life skills training, substance abuse treatment, mental health treatment or rehabilitation services for those who are otherwise employable. Remedial education and English as a Second Language are expressly excluded from this definition.
- Work experience: Work experience (WEP) has been strictly limited to activities that provide an individual with an opportunity to acquire the general skills, training, knowledge and work habits necessary to obtain employment and must be supervised by an employer, work site sponsor or other responsible party daily.
- Subsidized employment: Supportive work for individuals with disabilities could be counted as subsidized employment when it is work in an integrated setting for wages consistent with those paid to non-disabled workers with similar job functions.
- Community service: Community service programs have been defined as structured work programs for the direct benefit of the community and the participant via public or nonprofit organizations.
- Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency: Participants must make "good or satisfactory progress" in order for their hours to count and such activities must be related to a specific occupation, job or job offer.
- Exclusions: Unsupervised homework/study time no longer counts as a work activity. Post-secondary education has been expressly excluded from the definitions for any of the work activities.

Also important to note is that in the new regulations, all federally defined work activities state that the activity must have daily supervision. HHS has indicated that this is the method for how a person's activity and participation is accounted for, and that ongoing constructive guidance is provided to the person engaged in the activity.

Excused Absences

The regulations include a new provision allowing for excused absences for participation in unpaid work activities. Actual hours of participation in unpaid work activities may include excused absences for hours missed due to holidays and a maximum of an additional 10 days excused absences in any 12 month period, no more than two of which may occur in a month. In order to count an excused absence as actual hours of participation, the individual must have been scheduled to participate in an allowable work activity for the period of the absence that the state reports as participation. The state must describe its excused absence policies and definitions as part of the Work Verification Plan (see below).

Work-Eligible Individuals

HHS has added additional categories of individuals that must be included in the work participation rate. The regulations specify that parents in child-only cases must be included when the parents are sanctioned, when the parents reach the time limits, and, at state option, when a parent who receives SSI works or participates in the Ticket to Work program. A minor parent who is not the head of household or spouse of the head of household, an immigrant who is ineligible to receive assistance, at state option a recipient of SSI, and a parent providing care for a

disabled family member living in the home who does not attend school on a full-time basis are explicitly excluded from the work participation rate.

Verification of Hours

The most significant pronouncement by HHS on the verification and reporting of hours is that it will not accept hours reported by "exception reporting" (assuming participation unless a report to the contrary is received). States must track and verify actual hours of participation, and must do so frequently.

Additionally, all actual hours of participation must be verified through specific and frequent documentation. The less like employment the activity, more frequent verification is required. Job search and job readiness require documentation of participation on a daily basis. Other unpaid work activities require documentation no less than every two weeks. States may report projected actual hours of unsubsidized and subsidized employment or on the job training for up to six months on the basis of prior, documented actual hours of work. For non-employment activities, service providers must document actual hours and contractual arrangements with service providers should require documentation of hours. Hours of participation in self-employment may be derived by dividing the individual's self-employment income by the minimum wage.

Ensuring Accuracy of Reported Data:

To ensure accuracy in the reporting of work activity participation by work-eligible individuals each state must establish and employ:

- procedures for determining whether its work activities may count for participation rate purposes;
- procedures for determining how to count and verify reported hours of work;
- procedures for identifying who is a work-eligible individual; and
- internal controls to ensure compliance with the procedures.

By October 1, 2006, states must submit an interim Work Verification Plan to HHS for approval. The plan must set forth the procedures for determining how the activities and hours reported for federal participation rates are in compliance with the regulations, and how the state will maintain internal controls to ensure compliance and to ensure accuracy of reporting on the quarterly data report. HHS will review the plan for completeness and approve it if it believes that it will result in accurate reporting of work participation information. If HHS does not approve the plan, the state has 60 days to amend the plan and include all necessary changes as part of a final approved Work Verification Plan.

If a state fails to submit an interim or complete Work Verification Plan by the due dates, HHS will reduce the state's TANF block grant by five percent. If a State fails to maintain adequate internal controls to ensure a consistent measurement of work participation, HHS will reduce the state's TANF block grant by one percent the first year, two percent the second year, three percent for the third year, four percent for the fourth year and five percent for the fifth and subsequent years.

Work Participation Rates

The regulations reiterated that the caseload reduction credit has been recalibrated to compare caseload reduction to caseloads as of FFY 2005. Work participation rates have remained unchanged: 50% for all family assistance groups and 90% for two parent assistance groups. States whose caseloads have not experienced recent declines will be subject to the full 50% all family and 90% two parent work participation rates starting October 1, 2006.

Under existing federal regulations states are subject to a penalty of up to 21% of the state's TANF block grant for failure to satisfy the minimum participation rates. For any federal penalties, the state must expend additional state funds to replace any reduction in the state's TANF block grant resulting from penalties. Further, states are subject to an 80% maintenance of effort ("MOE") requirement unless they meet the work participation rates (the MOE requirement is reduced to 75%).

Timeframe for implementation:

States must comply with the requirements in the regulations by October 1, 2006 or be subjected to potential penalties during FFY 2007. States must submit an interim Work Verification Plan by October 1, 2006. States are held accountable for failure to maintain adequate internal controls and work verification procedures for conduct that occurs after October 1, 2007.

ODJFS Implementation Progress

The Ohio Department of Job and Family Services (ODJFS) has been preparing for implementation of TANF Reauthorization changes since the passage of the Deficit Reduction Act. In Am.Sub. SB 238 of the 126th General Assembly, language was enacted into uncodified law that provides ODJFS with the authority to promulgate regulations to implement the Deficit Reduction Act that may be inconsistent with the Ohio Revised Code. ODJFS must submit recommended legislative changes to the Governor and General Assembly by January 1, 2007. We are currently drafting rules to implement the new HHS interim regulations. These rules will be made available to counties for review and comment. In order to take advantage of the new regulation regarding deeming of work hours when the FLSA is implicated, we are researching the requirements for implementing a Simplified Food Stamp Program pursuant to 7 U.S.C. §2035.

We are in the process of determining needed system changes to implement the regulations. We have allocated additional TANF resources for needed CRIS-E and reporting changes and are now drafting business requirements. In the near future we will seek comments from counties regarding the planned changes to CRIS-E.

Additionally we are now drafting an interim State Work Verification Plan which will be submitted to HHS. The plan will include the internal controls the state will employ to monitor the accuracy of work participation data entered by the counties and submitted to HHS.

To keep counties informed we continue to engage in a number of activities. We will be issuing more Family Stability letters as more details are known. We will be holding informational sessions with counties starting at the end of August 2006. More detailed technical assistance sessions and CRIS-E training are also planned in subsequent months. We have developed a website with links to useful information about developments related to TANF Reauthorization. The website is located at: http://jfs.ohio.gov/ofam/TANF_Info.pdf. We will also feature the new regulations during the next monthly technical assistance video conference to be held on July

19, 2006. We will review the regulations and provide an update on state implementation and training.

Counties should begin to review their existing work activity assignments in light of these new regulations and make appropriate adjustments. Attached is a list of questions and a chart to assist in this review. We will also post this letter and the attachment on our TANF Reauthorization website.

If you have any questions about DRA, TANF Reauthorization or the HHS interim final regulations, you can submit them to the WACTA or TANF-FSTA mailbox.

Attachments

JCC:eak

c:	Barbara Riley, Director	Loretta Adams, OJFSDA
	Fred Williams, Assistant Director	Crystal Allen, PCSAO
	Bruce Madsen, Assistant Director	Kim Newsome, OCDA
	Neva Terry, Assistant Director	Larry Long, CCAO
	ODJFS Deputy Directors	