



Center for Public Policy Priorities

August 28, 2006

Office of Family Assistance
Administration for Children and Families
5th Floor East
370 L'Enfant Promenade SW
Washington DC 20447

RE: Comments on the TANF Interim Final Regulations (71 FEDERAL REGISTER 37454–37483)

The Center for Public Policy Priorities is a multi-issue policy organization that studies issues affecting low-income Texans. Since 1995, the center has been the primary source of independent information in Texas on state and federal efforts to transform the nation's welfare system. The center served on the advisory committee that helped craft Texas' 1995 welfare reform legislation and has been a central figure in TANF policy and budget decisions throughout the last ten years. We appreciate this opportunity to recommend improvements to the interim final regulations.

As we begin the second decade of welfare reform, the primary goal of TANF policy should be to encourage states to broaden their focus from simply reducing caseloads, to investing in proven strategies for moving recipients into well-paying jobs that offer a pathway to the middle class. We believe that the final interim TANF regulations undermine this goal by unduly restricting state flexibility to offer work activities that will help recipients—especially persons with disabilities or other barriers to employment—gain the skills they need to succeed in the workforce. Combined with the higher work participation targets set forth in the Deficit Reduction Act (DRA), the regulations create a disincentive for states to invest the necessary resources to develop appropriate services for TANF recipients. Instead of supporting states' efforts to move its welfare recipients into jobs, the regulations create an incentive for states to reduce caseloads by any means possible. Finally, the more cumbersome reporting requirements in the regulations will inhibit states' ability to effectively administer TANF.

Impact of the Regulations on Texas

Over the last decade, TANF caseloads have fallen 75% in Texas. Initially, the caseload decline was the result of a determined effort to move recipients into low-wage employment that required few skills. This "work first" approach was initially successful because those jobs were plentiful during the economic boom of the late 1990s. Research with TANF leavers has shown, however, that this approach did not result in moving those families out of poverty. The majority worked for below-poverty wages, had difficulty retaining employment, and faced significant material hardships. Unfortunately, the regulations restrict

states' ability to design welfare-to-work and job initiatives that have proven effective in increasing long-term self-sufficiency, which would improve outcomes for TANF leavers and reduce recidivism.

In 2000, as the economy weakened, TANF caseloads began a steady climb. Texas' response was to implement a full-family sanction. This policy succeeded in reversing the upward trend in caseloads; since the policy went into effect in 2003, caseloads have fallen another 50%. Many TANF recipients are now forced off the program before they can find job.

With the decline in TANF caseloads has come a change in the population the state serves:

- 60% of the caseload is child-only;
- A greater share of the population faces barriers to employment, including disability: 25% of mandatory adults are exempt from the work requirement; 95% of these adults are exempt due to incapacitation or because they are caring for an ill or disabled family member.

Until now, Texas has answered the challenge of serving an increasingly hard-to-employ TANF population by not directly confronting it. Instead of developing specialized work activities for persons with disabilities that could help them enter and succeed in the workforce, the state has chosen to exempt most parents with disabilities, or those caring for persons with disabilities, from meeting the work requirement. With the changes to the work participation rate calculation in the DRA, Texas now has to find ways to either serve these parents or push them off the program, which could have a devastating impact on their families.

The interim final regulations do not encourage states to take the high road approach. At the same time that states are being asked to do more to help persons with disabilities, the regulations impose new restrictions on the type of work activities that count toward the federal work requirement. If these restrictions are not relaxed, Texas has no incentive to invest in the services necessary to prepare this population for or work. Without this incentive, Texas is likely to choose the low road approach and implement policy changes designed to force those least likely to participate successfully in work activities off the program.

Recommended Changes

1. The regulations should encourage states to design welfare-to-work and job initiatives that have proven effective in increasing long-term self-sufficiency.

Research shows that access to postsecondary education is critical to move people out of poverty. Currently, few TANF recipients in Texas have continued access to adult education, literacy, and ESL programs that are connected to work. Welfare reform research has indicated that a "mixed" or "blended" strategy, i.e., combining work experience with relevant classroom education or occupational training, yields positive results in terms of wage attainment and self-sufficiency.

The regulations should be revised to provide states with the flexibility to collapse welfare-to-work program hours under a single work activity category, especially if a smaller fraction of hours are spent on other job preparation activities.

Unfortunately, the interim final rules make it difficult to develop welfare-to-work programs that integrate a variety of skills that increase TANF leaver success and increase wages over time. The rigid definitions of countable work activities remove the incentive for relatively low-wage states like Texas to use every opportunity to equip welfare recipients with basic skills while looking for unsubsidized employment. In Texas, TANF leavers earn an average of \$7.08/hour, and about 7% of leavers have earnings at or above 200% of the federal poverty line—a common self-sufficiency benchmark.

The regulation should be revised so that states retain the flexibility to determine whether certain job preparation activities, such as ESL instruction, are, in fact, vocational educational training.

States should be able to count postsecondary programs that lead to a bachelor's degree. This prohibition in the rules makes it harder for the state to reach its statewide goal of enrolling more Texans in higher education by 2015, a statewide plan called *Closing the Gaps*. In Texas, the average worker with a bachelor's degree has earnings more than twice that of a high school graduate. Additionally, Texans with bachelor's degrees have the most stable wage growth over time. Also, a large proportion of Texas' workforce does not have English proficiency. This factor depresses wages, as most higher-wage employers demand English proficiency in the workplace. In fact, many industry sectors and occupations are effectively closed to non-English speakers, further limiting the career opportunities for TANF leavers.

2. The regulations should encourage states to serve all TANF recipients, including persons with disabilities who are likely to succeed in the workforce if adequately prepared, as well as the small share of recipients who are not able to work or participate in work activities because they are incapacitated or are caring for a family member who is incapacitated.

A significant share of families receiving TANF assistance in Texas includes a family member with a disability. Some of these adults may be able to meet the work requirements and ultimately succeed in the workforce if given the necessary training and skills; others face such a severe impairment that they will never be able to work. In many cases, parents are caring for family members with disabilities. These adults may need a modification of their work requirement in order to participate successfully while accommodating their need to be at home. In Texas, many of these families are now exempt from the work requirement. Should Texas decide to remove these exemptions, the state will have to invest more in specialized services in order to provide effective employment services for individuals with disabilities.

This approach is not just good public policy: states are required to make these accommodations under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Services Act. Moreover, in the preamble to the interim final regulations,

HHS exhorts states to do more to help persons with disabilities enter and succeed in the workforce. At the same time, the regulations' narrow definition of work activities and inflexibility over the required number of hours a recipient must participate mean states will not get credit for many of these activities.

To provide states with the incentive to engage recipients with disabilities in activities that are tailored to their individual needs and designed to help them enter the workforce, the center recommends the following changes:

States should be given the latitude to adopt a broader definition of work activities when a person with a disability needs accommodations under the ADA or Section 504.

States should be allowed to devise specialized employment plans for persons with disabilities, or those who are caring for family members with disabilities, that enable the individual to participate and the state to count that individual as having met the federally required number of hours of participation.

Texas has never invested the resources necessary to develop appropriate services for persons with disabilities, and will certainly do nothing new to help these families if they do not get credit toward the federal work requirements for their efforts.

Some recipients with disabilities or who are caring for family members with disabilities will not be able to participate for as many hours as is required under the standard federal rules. This flexibility will give states an incentive to engage these recipients for the number of hours they are able to participate. Without this flexibility, and given Texas' full family sanction policy, such persons will likely be forced off the program immediately for failure to comply with the work requirement. Research with sanctioned families has consistently shown that sanctioned parents face multiple employment barriers, significant hardships after losing cash assistance, and are more likely to remain jobless.

States should get credit for recipients who fail to meet the required number of hours of work activities in a given month, but otherwise participate in that month, if that failure is the result of a need to care for a family member with a disability.

When caring for a family member with a disability, unanticipated needs may arise from time to time that mean the recipient will occasionally have to miss hours of scheduled participation. For example, the family member may fall ill and need to go the doctor. Or, the recipient may need to meet with other caregivers in the family member's support network to coordinate that person's care. States should be allowed to establish criteria for determining whether a person has a good cause for missing hours of scheduled participation and be allowed to receive credit toward the work participation rate for that person.

The regulations should be revised to exclude from the work participation rate calculation parents who are awaiting approval of their SSI application as well as persons who have severe — but temporary — disabilities.

The interim final rules recognize that there are some parents whose disabilities are so severe that they should not be considered "work eligible" and, therefore, be exempted from the work participation rate calculation. As written, the rules only exempt parents receiving SSI benefits. This exemption from the work participation rate calculation should be expanded to also include parents who have applied but not yet been approved for SSI. It should also include persons with temporary disabilities of the same severity. At a minimum, states should be able to retroactively exclude parents from the work rate calculation after their SSI application is approved. Such an expansion of this exemption would also give states the incentive to outreach potentially eligible recipients for SSI. Many TANF recipients with disabilities in Texas are not receiving SSI even though they clearly qualify.

The exemption from the work participation rate calculation for parents caring for a family member with a disability should be expanded to include family members living outside the recipient's home.

The interim final rules recognize that some parents are not "work eligible" because they are caring for family members with disabilities, but the rules only apply to parents caring for family members living within the recipient's home. Persons with disabilities fare best when living in the setting most appropriate to their needs, which may be outside of their immediate home. However, parents caring for that person likely face similar obligations as if the family member resided with them.

3. The regulations should strike a balance between holding states accountable and imposing unduly burdensome administrative requirements on them.

The DRA directed HHS to develop rules for how states count hours of participation in work activities and verify the hours reported. Unfortunately, the interim regulations are unnecessarily burdensome and do not give states enough options for monitoring participation and progress in certain work activities. The regulations also erect unreasonable timeframes for state agencies to gather this documentation. Further, the regulations fail to address the additional burdens these new requirements potentially create for recipients, who are already struggling to meet program rules while caring for their families. Moreover, Texas, like many states, is struggling to administer its public safety net with shrinking resources. Ultimately, the new requirements will undermine Texas' ongoing effort to improve efficiency in the administration of benefits in order to be able to invest more in the services themselves.

To ease administrative burdens on states and families while ensuring that states account accurately and fully the extent to which program recipients are engaged in work activities, the center endorses the recommendation from the Texas Workforce Commission that states be allowed to verify work activities on a weekly basis, as is the current policy. We also suggest the following revisions to the regulations as a means to reduce the paperwork and financial burden on states:

Instead of tracking and verifying the actual hours that a recipient participates in vocational and other education and training programs, states should be allowed to record recipients as

having participated the standard number of hours that the program typically meets, assuming the recipient is making satisfactory progress in that program.

This change would allow states to focus on whether recipients are meeting program goals – the real measure of success – instead of hourly participation, which increases the burden of paperwork for the state.

Eliminate the requirement that hours spent on homework and study time be supervised in order to be counted.

Again, the regulations should be focused on ensuring that recipients succeed in education and training programs, which they can only do if granted the flexibility to devise their own study routines. Requiring states to supervise this study time will make it much harder for states to give recipients sufficient time to finish homework and more difficult for recipients to balance their parenting obligations with the need to prepare for class.

The excused absence policy should be modified so that states receive credit toward their work participation targets when recipients miss hours of participation for specific and unavoidable reasons, such as illness, a sick child, and court or school appointments.

TANF rules are designed to teach good parenting skills and penalize parents when they fail to exhibit positive parenting behaviors. In Texas, when parents fail to follow these rules – such as missing a child’s doctor appointment – the family loses its assistance. Yet, program rules must be designed not only to admonish parents when they fail, but to reward parents when they succeed. The regulations’ excused absence policy is an example of the lack of balance between punitive action and positive reinforcement. Parents may often need more than two days per month (as the regulations currently allow) to take care of a sick child. If parents – and states – are penalized for the time they need to take off from work when a child falls ill, in effect, parents are being punished for doing as they’re told – which is to care for their children. The excused absence policy should be revised to allow states to establish good cause criteria for missing hours of participation due to unavoidable parenting obligations. Texas currently employs good cause exemptions, based on individual and family circumstances, to help parents avoid penalties when they miss work due to circumstances beyond their control.

Conclusion

As Texas charts a course for the second decade of TANF, we are at a fork in the road. The state could take the low road and continue to pursue policies that restrict access to assistance to poor families by any means, or travel the high road and refocus TANF on giving parents the necessary skills to enter, advance, and succeed in the workplace.

Unfortunately, without significant modifications to the DRA or the new federal regulations, federal law does not encourage states to take the high road. The final interim regulations are unnecessarily rigid in their interpretation of the DRA. They will inhibit states’ efforts to meet the work requirement and increase their incentive to reduce caseloads. The regulations

will make it harder for states to engage persons with disabilities in work activities both by restricting the types of programs that may be counted toward meeting the work requirement and limiting the amount of time that may be spent in certain activities. Texas is already exploring eliminating its work exemptions for people with disabilities as a means to meet the higher work participation targets. Without the flexibility to design specialized work activities and employment plans for this population, most persons with disabilities, or those caring for family members with disabilities, are likely to be forced off the program for failure to comply with the work rules. The result will be a TANF program that continues to fail the extremely poor and vulnerable families it is intended to help.

Sincerely,

A handwritten signature in black ink, appearing to read 'Celia Hagert', with a long horizontal stroke extending to the right.

Celia Hagert
Senior Policy Analyst

A handwritten signature in brown ink, appearing to read 'Don Baylor', with a stylized, cursive script.

Don Baylor
Policy Analyst