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Improving the Interim Final Temporary Assistance Rules to Ensure the Fulfillment of HHS Secretary Leavitt's Promise of "More Opportunities for Education and Job Training" for Low-wage Working Parents

Comments of The Workforce Alliance (TWA) on Interim Temporary-Assistance Rules

Introduction and Summary of Recommendations

Earlier this year, Secretary Leavitt declared that, "Welfare reform is helping millions of people climb out of poverty. Now, we want to go the next step and help them climb the job ladder *by creating more opportunities for education and job training.*"¹ Similarly, the House Committee on Ways and Means gave equal emphasis to job training in its statements about Temporary Assistance reauthorization, explaining that at least half of Temporary Assistance beneficiaries will be able to "work *or train.*"²

Secretary Leavitt was right to emphasize the paramount importance of creating more opportunities for education and job training in Temporary Assistance. According to HHS research, some 4 out of 5 parents who currently receive Temporary Assistance have worked more than half their lives.³ In addition, as Assistant Secretary Horn has pointed out in Congressional testimony, about one third of current Temporary-Assistance beneficiaries have low-wage jobs. Low-wage workers like these would benefit economically and socially if they were provided with greater opportunities for education and training.⁴ Moreover, given their hard work and efforts, both as workers and as parents, they've *earned* the opportunity for education and training to help them advance.

¹ HHS, Welfare Reform Reauthorized, News Release, February 8, 2006, accessed on February 10, 2006 at <http://www.hhs.gov/news/press/2006pres/20060208.html> (italics added).

² February 2006 report of the House Committee on Ways and Means, Subcommittee on Human Resources, accessed on August 24, 2006 at: <http://waysandmeans.house.gov/media/pdf/welfare/022706welfare.pdf> (italics added).

³ Susan Hauan and Sarah Douglas, *Potential Employment Liabilities Among TANF Recipients: A Synthesis of Data from Six State TANF Caseload Studies*, U.S. Department of Health and Human Services, Office of the Assistant Secretary of Planning and Evaluation, October 2004, accessed on August 24, 2006 at: <http://aspe.hhs.gov/hsp/leavers99/emp-liab04/>.

⁴ We are primarily concerned with the economic benefits of education and training, both for individuals and for America's economic competitiveness more generally. But given the Administration's proposal to make "child well-being" the overarching purpose of Temporary Assistance, it is worth noting that research also finds positive effects of parental education on parental and child well-being. For example, in a synthesis of research, Barbara Wolfe and Robert Haveman of the University of Wisconsin conclude that there is "consistent evidence that increases in a mothers' education levels are associated with decreases in the likelihood that their daughters will give birth out of wedlock. Wolfe and Haveman also conclude that there is substantial evidence that parents' education has a positive effect on their children's health. See Barbara L. Wolfe and Robert H. Haveman, "Social and Nonmarket Benefits from Education in an

The Workforce Alliance (TWA) is a national coalition of community-based organizations, community colleges, unions, business leaders and local officials advocating for public policies that invest in the skills of America’s workers, so they can better support their families and help American businesses better compete in today’s economy. Our network includes a wide variety of education and training providers who, in collaboration with their private- and public-sector partners, have long-standing track records of successfully training low-wage workers—including people on public assistance—for skilled, long-term employment.

Based on the real-world experiences of those local stakeholders, we have eight recommendations for improving HHS’s interim regulations.

Recommendation #1: HHS Should Adopt a “Light-Touch” Regulatory Approach in these Rules that Maximizes the Extent to Which Temporary Assistance Can Function as Part of a Seamless Workforce-Development System

Recommendation #2: The Regulations Should Clearly Specify that Up to Twelve Months of Associate Degree Coursework may be Counted as Vocational Educational Training

Recommendation #3: The Regulations Should Specify that Up to Twelve Months of Baccalaureate Degree or Advanced Degree Coursework may be Counted as Vocational Educational Training

Recommendation #4: HHS Should Adopt a Standard of “Good or Satisfactory Progress” for Vocational Education

Recommendation #5: HHS Should Allow States to Count Up to Two Hours of Unmonitored Study Time for One Hour of Class Time for Temporary Assistance Beneficiaries who are Making Satisfactory Progress.

Recommendation #6: HHS Should Allow States to Count Vocational English-as-a-Second Language (VESL) and Basic Skills Education as Part of Vocational Education

Recommendation #7: HHS Should Eliminate the “Limited Duration Requirement” that Applies to the Counting of Basic Skills Education as Vocational Education

Recommendation #8: HHS and DoEd Should Provide Separate Guidance on the Relationship Between the Temporary Assistance Reporting Requirements and the Family Educational Rights and Privacy Act (FERPA)

Advanced Economy,” in Education in the 21st Century: Meeting the Challenges of a Changing World, Federal Reserve Bank of Boston, June 2002, <http://www.bos.frb.org/economic/conf/conf47/conf47g.pdf>.

Analysis and Recommendations

Recommendation #1: HHS Should Adopt a “Light-Touch” Regulatory Approach in these Rules that Maximizes the Extent to Which Temporary Assistance Can Function as Part of a Seamless Workforce-Development System.

Temporary Assistance should no longer be viewed as a “welfare” program for a small subset of poor families. Rather, it should be treated an integral part of our nation’s workforce-development and higher-education system, a system that includes a number of other important programs and policies, including the Workforce Investment Act, the Higher Education Act, and tax-based policies that promote skills acquisition. Temporary Assistance has an important role to pay in “filling the gaps” that exist in this system, particularly for low-wage workers with children. Moreover, programs and policies like Temporary Assistance, HEA, and WIA should work together to ensure that all Americans have access to quality education and training.

HHS should regulate in manner that makes it easier for Temporary Assistance to function as part of a seamless workforce-development system. In our view, this counsels in favor of a “light-touch” regulatory approach. Such an approach would adopt the minimum level of regulation necessary to “ensure consistent measurement” of participation rates, as required by section 7102(c) of the DRA. “Consistent measurement”—the only substantive standard that Congress requires HHS to meet in promulgating these new rules—is a relatively minimal standard. It requires clear definitions of activities, but says little else about how HHS should define activities.

Sections 401 and 417 of the Temporary Assistance law provide further substantive guidance. Section 401 states that it is the purpose of the Temporary-Assistance program to increase state flexibility in meeting the goals set forth in that section and section 417 restricts the regulatory authority of the federal government. Anything other than the light-touch regulatory approach we recommend is inconsistent with these two provisions.

Recommendation #2: The Regulations Should Clearly Specify that States May Count Up to Twelve Months of Associate Degree Coursework as Vocational Educational Training

The regulations do not specifically say that Associate Degree coursework is countable as vocational education training. However, HHS has clarified in non-regulatory materials posted on its website that associate degrees count as vocational education.⁵ We recommend that HHS amend the interim rule to clarify that Associate Degree coursework may be counted as vocational educational training.

⁵ Types of Vocational Education Available to TANF Clients, http://peerta.acf.hhs.gov/pdf/Voc_Ed_Trng.pdf.

Recommendation #3: The Regulations Should Specify that States May Count Up to Twelve Months of Baccalaureate Degree or Advanced Degree Coursework as Vocational Educational Training

The regulations exclude Baccalaureate and Advanced Degree Programs from the definition of vocational educational training. The primary explanation for this exclusion is that TANF “was not intended to be a college scholarship program. Programs supported by the Higher Education Act of 1965 support these longer-term educational activities.”

HHS cites no legislative history in support of this understanding of Congressional intent. We found no evidence of such intent in our review of the relevant legislative history. If anything, Congressional intent would support quite the opposite. HHS has allowed states to count college toward the rates as vocational education for nearly a decade. Congress has not acted to restrict the counting of college and said nothing about the matter when it reauthorized the program this year, even though it was clearly aware of the practice.⁶ As a practical matter, Congress has “implicitly ratified” the long-standing policy of counting BA coursework as vocational educational training.⁷

Moreover, the fact that “[p]rograms supported by the Higher Educational Act of 1965 support these longer-term educational activities” is irrelevant to whether or not college coursework should be countable in Temporary Assistance. There is no overarching federal “silo policy” that mandates that if one federal program supports longer-term education, then other programs may not. However, the rules would effectively adopt such a silo policy.

⁶ As noted above, Congress only directed HHS to adopt regulations that ensure “consistent measurement” of participation rates. As long as the rules specify that BA coursework is allowable as vocational education, this consistent-measurement standard is met.

⁷ In *Commodity Futures Trading Comm’n v. Schor*, 478 U.S. 833, 846 (1986), the Supreme Court explained that:

It is well established that when Congress revisits a statute giving rise to a longstanding administrative interpretation without pertinent change, the “congressional failure to revise or repeal the agency’s interpretation is persuasive evidence that *the interpretation is the one intended by Congress.*” *NLRB v. Bell Aerospace Co.*, [416 U.S. 267, 274-275](#) (1974) (footnotes omitted). See also *FDIC v. Philadelphia Gear Corp.*, [476 U.S. 426](#) (1986).

In the recent reauthorization, Congress made no “pertinent change” that would suggest that the previous interpretation of vocational educational training that allowed BA coursework in no longer the one “intended by Congress.” In our view, this does not mean that “anything goes”—that is, that HHS cannot adopt definitions of activities that exclude some activities that are currently counted by states. Where particular activities clearly fall outside of any reasonable interpretation of a countable activity—bed rest, for example, is not reasonably included within the definition of vocational educational training—we believe HHS has the authority to exclude it. However, that is not the case with BA coursework, which is quite reasonably included within the definition of vocational education, since it is “education” and also relevant to one’s “vocation” as conventionally understood as an “occupation” or “calling.” See American Heritage Dictionary, Third Edition.

This silo approach is contrary to other Administration statements that endorse the greater alignment of federal programs such as TANF and HEA. For example, in its 2002 TANF reauthorization proposal, the White House explained:

Other major Federal assistance programs serving low-income populations provide similar assistance to TANF. Yet the potential effectiveness of all these programs combined is greatly compromised by differences in administrative practices and program rules.

HEA programs include federal assistance programs that serve low-income populations, just as Temporary Assistance serves such populations. HHS should adopt rules that maximize “the potential effectiveness” of “these programs [HEA and TANF] combined” instead of compromising their effectiveness by adopting “differences in administrative practices and program rules.” A program rule that allows BA coursework to “count” for HEA purposes, but not for Temporary Assistance purposes is an example of such a rule. Absent very explicit statutory language that directs divergent treatment and provides HHS with absolutely no discretion to allow alignment, HHS should adopt a rule that maximizes the potential alignment of TANF and HEA.

It also should be noted that the prohibition on counting BA and advanced degree coursework would lead to a particularly odd result in the case of parents who could obtain a BA or advanced degree in less than 12 months. As the Interim Rule is currently written, states could get credit for placing such an individual in some other kind of vocational training program for up to 12 months, but could not get credit for the individual’s time spent in course work over the same 12 months to complete her degree. This absurd result is not mandated by the Temporary-Assistance law and is irrational as a matter of policy, given the wealth of research documenting the significant increases in income and job stability that accompany the completion of a BA or advanced degree.

Recommendation #4: HHS Should Adopt a Standard of “Good or Satisfactory Progress” for Vocational Education

The Interim Regulations requires vocational educational training to be “supervised on an ongoing basis no less frequently than daily.” The DRA requires the Secretary to set out “uniform methods for reporting hours of work”, but does not require “daily supervision.”⁸ In the preamble to the rules, HHS provides no justification for choosing a standard of daily supervision for TANF recipients in vocational training (or in any training and education activities) over other types of less onerous measures.

The DRA also requires the Secretary to set out “the type of documentation needed to verify reported hours of work”⁹ by those receiving TANF assistance. The regulations leave it to states to determine how service providers are to report client participation,

⁸ Section 7102(c)(1)(i)(A)(i)(II) of the DRA.

⁹ Section 7102(c)(1)(i)(A)(i)(III).

suggesting, however, that documentation could include time sheets, service provider attendance records, and school attendance records.¹⁰

Taken together, these requirements could be extremely onerous and difficult to meet for institutions providing vocational training. For example, not all training providers (including some community colleges) keep attendance records on their clients. Some may have to create these systems from scratch. Students could also experience these requirements as demeaning, given that most of them are adults who are working part-time, attending training part-time, and taking care of children.

The standards entail other operational difficulties, as well. For example, they could pose particular implementation challenges for distance and web-based learning initiatives, which are increasingly common at community colleges. Nearly two-thirds (62 percent) of public two-year institutions offered distance education courses in 1997-98,¹¹ including courses resulting in a certificate. A significant number of these courses are offered through one-way pre-recorded video and similar methods where an instructor is not literally present and attendance is not taken.

TWA recommends that HHS adopt a standard of “good or satisfactory progress” for vocational education, similar to the one proposed for education directly related to employment. Such a standard could be developed by the education or training institution and include both a qualitative measure (such as grade point average) and a quantitative measure (such as time frame for completion). The Pell Grant program has a similar standard of “satisfactory progress” that is used to determine a student’s continuing eligibility.¹² Here again, HHS should adopt a light-touch regulatory approach that allows for greater alignment of federal programs rather than less.

Recommendation #5: HHS Should Allow States to Count Up to Two Hours of Unmonitored Study Time for One Hour of Class Time for Temporary Assistance Beneficiaries who are Making Satisfactory Progress.

The interim final regulations require that time spent doing homework must be in a supervised setting to count toward a TANF recipient’s work participation.¹³ It is commonly accepted at the postsecondary level that courses require two or more hours of preparation time for each hour of class time.

However, the requirement that study time be “monitored” is an area of significant concern in the current regulations and a change from prior HHS policy. The notion that adults need to be “monitored” in order to qualify for countable study hours is inconsistent

¹⁰ 45 C.F.R. §261.61(d).

¹¹ U.S. Department of Education, “Distance Education at Postsecondary Education Institutions: 1997-98” (Washington, 2000), p. iii.

¹² Title 20, Chapter 28, Subchapter IV, Part F, § 1091.

¹³ Preamble, p. 37461.

with prevailing practices at postsecondary institutions. If a TANF recipient is progressing in school, it is evident she or he is spending time studying.

Recommendation #6: HHS Should Eliminate the “Limited Duration Requirement” that Applies to the Counting of Basic Skills Education as Vocational Education

The Interim Rules provide that basic skills education may only be counted as vocational education if the basic skills instruction is of “limited duration.” Many successful vocational education programs designed for lower-skilled adults seamlessly integrate basic skills with vocational training, thus making the calendar period over which the basic skills instruction is provided longer—and highly variable from occupation to occupation—than if such instruction had been provided as a stand-alone program. As such, any attempt to define an acceptable “duration” would ignore the variety of contexts under which basic skills education is currently provided.

HHS should therefore eliminate the “limited duration” requirement for programs that integrate basic skills and vocational education. The “limited duration” requirement is also problematic because it is likely to lead to measurement inconsistencies among states.

Recommendation #7: HHS Should Specify that Vocational English-as-a-Second Language (VESL) is Included within the Definition of Vocational Educational Training.

The interim regulations attempt to “shoehorn” ESL into a single activity—actually two activities, job skills training and education directly related to employment. This is a mistake and appears to be based on a lack of understanding about the diverse nature of current ESL delivery, which often takes place in conjunction with a range of other countable activities, including vocational education, job readiness, on-the-job training and work experience.

We recommend that the regulations recognize that ESL can be an integral component of various countable activities. ESL should thus be countable under those activities *so long as the ESL provided is generally consistent with the definition of that activity*. In particular, vocational ESL (VESL) should be included within the definition of vocational education, and intensive “work-readiness” ESL, such as Minnesota’s longstanding and successful program, should be included within the definition of job readiness.

Recommendation #8: HHS and DoEd Should Provide Separate Guidance on the Relationship Between the Temporary Assistance Reporting Requirements and the Family Educational Rights and Privacy Act (FERPA)

The Family Educational Rights and Privacy Act (FERPA)¹⁴ is a federal law that protects students' privacy interests in their educational records. Institutions that receive funds from the U.S. Department of Education (DoEd) must comply with FERPA. This would include training and education organizations serving TANF recipients. Many of these organizations likely also receive funding under other federal education programs, such as the Perkins Act, Adult Education and Family Literacy Act, and Higher Education Act.

FERPA gives students the right to inspect and review their education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. Under FERPA, records may be released only after a student provides prior written consent.¹⁵

Given the new documentation requirements placed on vocational training providers (and other training providers under other work participation categories), the interim final regulations should provide guidance (including, for example, sample release forms) about how these organizations can comply with FERPA within the context of the new TANF regulations. In the alternative, HHS and DoEd should provide such guidance separately when the final regulations are issued.

¹⁴ 20 U.S.C. §1232g.

¹⁵ U.S. Department of Education, Office of Vocational and Adult Education, Program Memorandum OVAE/DVTE 2001-02, available at: www.ed.gov/about/offices/list/ovae/pi/cte/uiferpa.html.