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Local Commissioners Memorandum

Section 1

Transmittal:	06-LCM-10
To:	Local District Commissioners
Issuing Division/Office:	Division of Employment and Transitional Supports
Date:	September 29, 2006
Subject:	Federal Work Participation Rate Requirements Under the Interim Final TANF Rule
Contact Person(s):	WTW Technical Advisor
Attachments:	Attachment A: Federal Definitions for Countable Work Activities
Attachment Available On – Line:	x

Section 2

Summary

This LCM formalizes in policy new work definitions and countable hours effective under federal law and regulations governing the Temporary Assistance for Needy Families (TANF) block grant as of October 1, 2006. It also provides districts with guidance on proper reporting and with suggested strategies to successfully meet the effectively higher TANF work participation rates.

The Office of Temporary and Disability Assistance has been discussing these effective changes with local districts since the enactment of the Deficit Reduction Act in February 2006, through various venues including a TANF Implementation Local Workgroup initiated by OTDA and the New York Public Welfare Association, which has met via conference call on several occasions to share and discuss implementation procedures, documents and strategies. OTDA has also been providing local districts for the last several months, a monthly management report which measures a local district's performance in relation to meeting federal work participation rates under TANF and provides disaggregated caseload detail by various categories so districts can effectively target their efforts to meet the higher effective work rates which take effect on October 1, 2006. OTDA will continue to provide this monthly report to assist districts to effectively manage their respective temporary assistance caseload.

I. Purpose

The purpose of this memorandum is to inform districts of changes in the federal work participation rate requirements that are in effect as of October 1, 2006, and to identify changes that must be made to comply with the Interim Final Temporary Assistance for Needy Families (TANF) regulations published

June 29, 2006, by the federal Department of Health and Human Services (DHHS) so that the work activities in which temporary assistance applicants and recipients are engaged and the corresponding hours of participation that are reported are consistent with federal requirements. The guidance also provides districts with work activity definitions that shall govern all work activity assignments for temporary assistance applicants and recipients.

II. Background

The DHHS issued the Interim Final TANF rule on June 29, 2006. Districts were provided these regulations and summary information regarding their effect on New York's temporary assistance work programs in a letter transmitted by the Office of Temporary and Disability Assistance (OTDA) on June 30, 2006. OTDA staff has worked in partnership with the TANF Implementation Local Workgroup to develop New York State's response to the federal regulations. This State/local workgroup met over the past two months to develop the enclosed work activity definitions and other aspects necessary to comply with the federal requirements. The workgroup will continue to meet to develop additional guidance and systems support to ensure local needs are adequately considered during the course of program implementation.

Failure to meet new federal work participation rates will result in the State being required to meet an 80% maintenance of effort (MOE) requirement as opposed to the reduced 75%, if the State meets the work participation rate, and would necessitate an increase in MOE-countable State and local expenditures of approximately \$114.6 million. In addition, a potential penalty of up to 5% of the State's adjusted TANF grant (approximately \$95 million) could also be assessed in the first year of failure to achieve the federal participation rate, with increased penalties in subsequent years of failure to achieve the federal participation rate.

III. Program Implications

Districts must ensure that work activities in which temporary assistance applicants and recipients are engaged and the corresponding hours of participation that are reported are consistent with the requirements detailed below:

1. Work Eligible Individuals

The Interim Final TANF rule at 45 CFR §261.22(a)(2), effective October 1, 2006, provides that the federal participation rate is calculated based on the hours of participation of work-eligible individuals. A work eligible individual as defined at 45 CFR §261.2(n) includes adults (or minor child head of household) who may be exempt or nonexempt under State rules and are receiving assistance that is funded with TANF MOE funds in addition to those receiving TANF-funded assistance. Districts have received monthly combined TANF/MOE participation rate data for several months.

Parents of a Disabled Family Member Residing in Household

Districts are reminded that parents of a disabled family member who are currently assigned an employability code of "38" do not fit the federal definition of participation in community service and therefore, will no longer be deemed as participating in community service effective October 1, 2006. However, the Interim Final TANF rule provides that the definition of a work eligible individual excludes a parent providing care for a disabled family member living in the home who does not

attend school on a full-time basis, provided that the need for such care is supported by medical documentation (45 CFR §261.2(n)(2)(i)). Therefore, cases in which the only parent is providing care for a disabled family member who is not attending school full-time will be excluded from the work participation rate calculation (i.e., removed from the denominator) by OTDA as part of the methodology used to establish work participation rates effective October 1, 2006. Districts should be aware that cases in which one parent is caring for a disabled household member who is a work eligible individual will remain in the denominator due to the presence of the work eligible individual.

Federal regulations do not permit parents of a disabled family member who is in school “full time” or caretakers of a family member living outside of the home to be removed from the participation rate calculation. New York State has defined “in school full time” to mean those persons who are in school for more than 30 hours per week; therefore, in these instances the parent should not be assigned an employability code of “38.” One exception is that a parent caring for a disabled family member who is attending school more than 30 hours per week may be assigned an employability code of “38” and excluded from the denominator if verified by the school and a medical professional that the disabled family member is only able to remain in school if the parent is immediately available and is regularly needed to address the needs of the child.

Required Action

Districts must review each temporary assistance case to ensure that cases which include a parent providing care on a full-time basis for a disabled family member residing in the household who is not attending school full-time are properly coded with employability code “38” and that medical documentation supporting the exemption is available and current. Districts should no longer assign a parent caring for a disabled family member in school full-time (as defined above) or caring for a non-household member with an employability code of “38” but instead assign them an employability code of “16 – work limited.” A new employability code will be developed in the future to more discretely identify this category of work-limited individuals.

Districts may, on a case by case basis, determine that a parent caring for a disabled family member who attends school is able to participate due to the fact that the district is able to accommodate special circumstances of the household including the need for appropriate child care and a flexible or reduced work schedule as needed. If the district determines that the parent is able to participate in work activities and the district will require the parent to participate, the individual must be assigned an employability code of “16-work limited” and notified that he or she is no longer exempt from participation in work activities.

2. Federal Definitions for Countable Work Activities

The Interim Final TANF rule defines each of the federal work activities. The definitions, included as Attachment A to this LCM, incorporate the guidance included in the Interim Final TANF rule at 45 CFR §261.2 and the corresponding Preamble discussion. Districts were previously notified that the definitions are much more restrictive effective October 1, 2006, and intended to primarily be mutually exclusive. Therefore, work activity definitions cannot include components of other, distinct activities that are defined separately. For example, while districts were previously permitted to include a job search component as part of a work experience assignment and report the combined hours as work experience, the Interim Final TANF Rule prohibits reporting combined activities as

one activity. Additionally, as districts were previously informed, the definition of Community Service in particular is defined much more narrowly.

Required Action

The work activity definitions in Attachment A are effective October 1, 2006, for all households with dependent children and districts must review each enrollment to ensure consistency with federal standards.

3. Countable Hours of Participation

Actual Hours of Participation

According to the Interim Final TANF rule published by the DHHS only **actual** hours of participation may be reported and can be counted toward the participation rate calculation. Additionally, DHHS has specifically stipulated in 45 CFR §261.60 that it is not acceptable for the State to report scheduled hours of participation and that actual affirmative reporting of hours of participation in the work activity is required (exception reporting is not permitted). DHHS has provided for counting hours of participation in self-employment and projected actual hours of employment in certain instances, as described below.

Required Action

Work Activities other than Paid Employment

Districts must conduct a review of all Welfare-To-Work Caseload Management System (WTWCMS) entries (New York City will need to review NYCWAY entries) for recipients receiving temporary assistance to ensure all participation reported is consistent with the work activity definitions included in Attachment A and must ensure that actual hours are supported by documentation which is maintained, either as part of the case record or if entered by the provider as part of the provider's records. For example:

- Hours of participation reported under a work activity must meet the definition for that work activity.
- Unsupervised study time no longer counts toward the calculation of actual hours of participation for any educational or vocational training activity and **cannot** be included in the hours of participation reported to OTDA. OTDA is in the process of removing the field titled "Study Time" that is on the WTWCMS.
- Federal regulations only permit participation in substance abuse treatment or other treatment to be reported as Job Readiness Training. Hours that an individual is participating in substance abuse or other treatment should be entered on the WTWCMS as "Treatment Plan for Substance Abuse" or "Treatment Plan for Other than Substance Abuse", respectively. Guidance on specific WTWCMS changes that districts who have been reporting individuals in "Treatment Plan for Substance Abuse" or "Treatment Plan for Other than Substance Abuse" as a component of Community Service will need to make in order to modify offerings and report hours of participation related to "Treatment Plan for Substance Abuse" or "Treatment Plan for

Other than Substance Abuse” was issued on Monday, September 18, 2006. The State participation rate reporting logic will also be modified to deem the actual hours of participation in “Treatment Plan for Substance Abuse” or “Treatment Plan for Other than Substance Abuse” as job readiness training and track such participation towards the federal work participation rate, subject to the federal limit of no more than 6 weeks in a federal fiscal year, of which no more than 4 weeks may be consecutive. Districts do not need to remove individuals who require substance abuse treatment beyond the 4 or 6 week limitations permitted for participation rate calculation and may continue to report such enrollments but these enrollments will not count in the work participation numerator beyond the weekly limitations.

Districts must be diligent about collecting actual documented hours of participation for each of the unpaid work activities and recording these hours on the WTCMS, no later than the 15th of the month following the report month.

Districts are advised that changes to the State participation rate reporting logic will be completed to consider only actual hours of participation entered on the WTCMS and no longer consider scheduled hours for unpaid work activities as of the October 2006 participation rate report. Districts must ensure that actual hours of participation for the month of October are documented and entered on WTCMS no later than November 15, 2006. Additionally, NYCWAY must only report actual documented hours of participation effective with the participation occurring on or after October 1, 2006.

Documentation of Hours in Paid Employment

The Interim Final TANF rule permits hours of paid employment, such as unsubsidized or subsidized employment and paid On-The-Job Training (OJT) positions to be based on current documentation and projected for no more than six months, or with updates provided whenever a change in the number of hours worked is reported. Districts should ensure that local procedures are consistent with these federal requirements and that mechanisms are in place for timely information sharing between Temporary Assistance and employment functions. Districts should also confirm that:

- Hours of employment, whether subsidized, unsubsidized or paid OJT, which are reported to OTDA, are consistent with documentation received from the employer and that documentation is maintained by the district. Consistent with current policy, participation reports will use hours of work based upon either the Automated Budgeting and Eligibility Logic (ABEL) or WTCMS entries, whichever is most recent, based on the effective dates of the temporary assistance budget or WTCMS schedule, respectively.
- Absent other documentation of the hours of employment for self-employed individuals, districts may document the number of hours of work for a self-employed individual by dividing the individual’s net income after subtracting business expenses (this is the amount budgeted before disregards in the ABEL system by the federal minimum wage. If hours other than the net income divided by the federal minimum wage are reported as hours of work, then alternate documentation other than self-attestation must be maintained to verify the hours of work reported.

4. Excused Absences

The Interim Final TANF rule permits **limited** excused absences to count as actual hours of participation in those instances where the participant was already enrolled in the respective work activity and had been scheduled to participate during the period that the participant was absent.

Holiday Time

In addition to excused absences described below, countable hours in work activities will include holidays regularly observed by a provider or employer and may include all national and State observed holidays.

Hours of Excused Absence

In addition to the number of hours an individual has worked or participated in a countable work activity, the actual hours of participation may include paid leave time for employed recipients, hours missed due to holidays and up to 80 hours of excused absence for unpaid leave or for a countable work activity during any 12 month period, but no more than 16 hours of excused absence during any month as part of the actual hours of participation reported via the WTWCMS or NYCWAY.

Required Action

Districts must review attendance policies for work activities other than unsubsidized or subsidized employment to ensure that mechanisms are in place for identifying and reporting excused absences from work activities in a timely manner. Districts may grant hours of excused absence in those instances where the district determines that the individual's conduct was not willful or the district determines that the individual had good cause for not complying with the assigned work activity. Good cause may include circumstances beyond the individual's control, including, but not necessarily limited to: illness of the individual or another household member requiring care; a household emergency; required meetings with child support and child welfare caseworkers; school, court or medical appointments; or, lack of adequate childcare. Districts are advised that only hours that an individual was scheduled and expected to participate in a countable work activity and the individual's failure to attend was not willful and was with good cause may be reported as an excused absence. For example, excused absence does not include time pending a disability determination review.

Districts must track excused absences to ensure that the number of hours reported towards the participation rate does not exceed the 80 hours in any 12 month period and 16 hours per month as described above until WTWCMS has been modified to track excused absences. Hours of excused absence which exceed the federal limits may not be reported as hours of participation. OTDA intends for systems changes to support accurate tracking and reporting of these excused absences in order to comply with federal requirements to be in place no later than October 1, 2007.

5. Documentation of Participation

The Interim Final TANF rule requires that documentation be maintained to support the hours of participation reported towards the federal work participation rate. Acceptable documentation may vary depending on the type of work activity in which the individual is engaged. For example, documentation for the hours that an individual is participating in paid employment may include pay stubs, employer records or time and attendance records. Documentation for the hours that an

individual is participating in unpaid work activities may include attendance sheets or other documentation developed by the provider to verify attendance.

Required Action

Districts must review local procedures to ensure that documentation to support the hours of participation is collected and entered onto the WTWCMS or NYCWAY, as appropriate, in a timely manner. Documentation to support the hours of participation reported by the district will be subject to review by Federal and State representatives and must be maintained, either as part of the case record or if entered by the provider as part of the provider's records.

6. Other Considerations

The provisions outlined in the Interim Final TANF rules are effective October 1, 2006. These increased federal participation requirements also emphasize the importance of engaging individuals in work activities as soon as possible. In addition to the information provided above, OTDA has also identified the following areas that districts may also want to consider as they evaluate welfare-to-work efforts to ensure compliance with federal requirements:

- Provide information to agencies that serve families that are receiving temporary assistance to inform them of the increase in federal work participation requirements due to changes to the caseload reduction credit and to discuss the programmatic activity changes including those related to substance abuse treatment or other treatment that must be implemented no later than October 1, 2006.
- Engage public and non-profit organizations in a discussion of the potential for developing work experience sites to help individuals who do not secure employment to gain workplace skills that will help them to become employed. Districts may want to consider dedicating a staff member to facilitate the development of worksites in public or not for profit organizations, including those that may not have been interested in developing agreements in the past.
- Confirm that diversion and non-assistance payments instead of countable assistance payments are authorized when appropriate to issue emergency assistance prior to the eligibility determination of ongoing assistance. This will prevent cases that have not been determined eligible for ongoing temporary assistance benefits from appearing in the district's universe and denominator of the work participation rate calculation. (Districts should refer to GIS 06-TA/DC034, released on September 21, 2006, for additional information on non-assistance payments.)
- Review existing procedures to ensure timely and accurate sharing of information between TA and employment functions. For example, districts should confirm that the initial report of employment and any reported changes in employment or the hours worked are distributed to the TA and employment function in a timely manner and that hours of work entered on ABEL are consistent with the documentation received.
- Review local procedures for assessing and engaging individuals in work activities to ensure that individuals are engaged in work activities as early as possible.

- Review local procedures to ensure that clients who are determined to be exempt from work requirements, but who are not appropriate for disability benefit referrals are referred to and engaged in rehabilitative services to help them become employable and that mechanisms are in place to monitor and report attendance and progress.

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