



THE WELFARE WAIVERS: How They Really Do Water Down Work Requirements

Russell Sykes, *Senior Fellow*

BACKGROUND

The federal welfare reform of 1996, formally known as the Personal Responsibility and Work Opportunity Reconciliation Act, was among the most significant domestic policy achievements in modern American history.¹

Its passage meant that, for the first time, welfare recipients would be expected to work toward self-sufficiency and that the welfare bureaucracy's focus would be on facilitating employment rather than simply writing checks. For decades prior to the reform's passage, welfare had essentially been viewed as an entitlement. Benefits were offered to qualified participants, with few strings attached. But under the new program, Temporary Assistance to Needy Families (TANF), beneficiaries were required to go to work, search for work, participate in short-term training or education, or undergo drug and alcohol counseling.

The author is the former deputy commissioner for the Center for Employment and Economic Supports (CEES) in New York State's Office of Temporary and Disability Assistance. In that role he was responsible for policy development, federal, state and local relations, and oversight of many of New York's major income support programs, including the Temporary Assistance for Needy Families (TANF) Block Grant to states, Welfare to Work Programs, the Federal Food Stamp Program, the Low Income Home Energy Assistance Program (LIHEAP), the State Supplemental Security Income (SSI) Program, and the development of New York's online integrated access portal, "MyBenefits."

And it worked. Since 1996, welfare caseloads have dropped by more than 50 percent. Millions of Americans once consigned to a lifetime of dependency have moved into the mainstream culture of work.

Now, however, welfare reform is potentially being undercut. In July 2012, the federal Department of Health and Human Service (HHS) announced that it would begin “encouraging states to consider new, more effective ways to meet the goals of TANF, particularly helping parents successfully prepare for, find, and retain employment.” To that end, HHS issued a “guidance” memorandum expressing its willingness to unilaterally waive existing TANF rules “to allow states to test alternative and innovative strategies, policies, and procedures that are designed to improve employment outcomes for needy families.”² The HHS memo undermines TANF’s work rules by:

- Doing away with work participation rates in some instances;
- Extending periods of education and training;
- Liberalizing the counting of subsidized employment; and
- Discouraging one-time non-assistance payments.

The Obama administration said that the change was a response to requests by governors for more flexibility in administering the program and that it was not intended to “waive or dismantle” the work requirement.³ But in some key respects, the HHS waiver is inconsistent with this statement. The language itself signals the agency’s willingness to water down the program’s current focus on work participation rates as the primary test of each state’s compliance with the goals of welfare reform.

HOW TANF HAS SUCCEEDED

The 1996 welfare reform was in large measure a corrective to a previous policy failure. The Aid to

Families with Dependent Children (AFDC) program, enacted in 1935, was a well-intentioned New Deal effort to provide financial assistance to single-parent households during the Great Depression. At the time, AFDC beneficiaries were mostly widows. By the 1960s and 1970s, it had evolved into a gigantic entitlement program primarily serving never-married mothers and undermining the values of work and family formation.

Numerous reform efforts sputtered before 1996. Then, a Republican Congress and a Democratic president, Bill Clinton, swept away AFDC, replacing it with TANF. TANF was structured as a \$16.5 billion block grant to states, providing them with the flexibility to shape their own welfare programs within four broad parameters set by the federal government.⁴

First, and most significantly, able-bodied welfare recipients would now be required to work. Caseworkers could no longer write checks and let clients languish on the rolls. In order to receive their federal block-grant monies, states had to ensure that 50 percent of adult clients receiving assistance met defined work requirements.⁵ Additionally, the reform required that states maintain 75 percent of their pre-TANF welfare spending, known as their maintenance of effort level, in order to receive federal block-grant funds. That requirement rose to 80 percent of pre-TANF spending for states that did not meet work participation rates.

States could be penalized for not meeting work participation rates or maintaining the maintenance of effort level but also could receive credit in the form of reduced required work participation rates for additional spending above the maintenance of effort level.⁶

Three other key aspects of the reformed program:

- Federal TANF benefits were temporary, limited to five years in a lifetime, beyond which states would pay for any continuing benefits.
- Clear child-support cooperation rules were adopted, compelling single mothers to help identify and locate the fathers of their children.⁷

- Assistance in job search, job placement, and other crucial support services were regularly provided. Where adults failed to comply with work rules, their entire family's TANF benefits could be suspended.⁸

Many states took a “work first” approach, focusing on getting people rapidly employed and then using the savings resulting from reduced caseloads to help clients stay on the job, including by:

- Allowing clients to keep more of their earnings before completely losing welfare cash assistance;⁹
- Increasing spending on child care and other work supports such as transportation, short-term job training, and ramped-up child-support collections;
- Creating or expanding state earned income-tax credits, adding significant economic benefits to working households (New York is a prime example of this approach);¹⁰ and
- Offering more one-time payments for emergency expenses that could push a family onto the full-time welfare rolls.¹¹

The reforms were highly successful. Dire predictions of widespread homelessness or families driven into poverty were proved wrong. Welfare caseloads dropped an average of 50 percent in the first 15 years after TANF's enactment, with decreases in some states reaching 85 percent.¹² In New York State, the caseload fell by nearly two-thirds—from 1.6 million in 1996 to 564,427 in the most recent 2012 figures.¹³

The national poverty level did not increase but instead fell from 13.7 percent in 1996 to 12.5 percent in 2007, before beginning to rise thereafter because of the prolonged recession.¹⁴ Greater numbers of poor, single mothers entered the labor market than ever before.

In 2005, TANF was reauthorized for five years. In response to the actions of some states that weakened work requirements by allowing questionable activities to qualify as employment, the reauthorizing legislation defined 12 categories of activities that could be counted toward work participation standards.¹⁵

Since 2010, TANF has been temporarily extended through a series of continuing resolutions.¹⁶ The program's most recent extension was for only six months, and it expires on March 27, 2013.¹⁷

HOW THE WAIVER COULD UNDERMINE WORK RULES

The HHS memo assumes that the agency has the administrative authority to waive the work participation rate requirement in the law in order to test different approaches to holding states accountable. But in the 16 years since TANF was enacted, HHS has repeatedly turned down waiver requests from states regarding work requirements or other provisions of the law, stating on each occasion that the agency did not have the authority to grant waivers.¹⁸ For the first three years of the Obama administration, HHS adhered to this historical stance. In July 2012, it abruptly abandoned it.

Despite the administration's claims that waivers will not be allowed that dilute the emphasis on work, some of the specific language can be read otherwise.

Doing away with work participation rates in some instances

In at least two sections, the HHS memo uses specific language indicating that the agency will approve other activities “in lieu of work participation rates,” including:

- “[P]rojects that test the impact of a comprehensive universal engagement system in lieu of certain participation rate requirements”;¹⁹ and

- “[P]rojects that demonstrate attainment of superior employment outcomes if a state is held accountable for negotiated employment outcomes in lieu of participation rate requirements.”²⁰

The clear concern here is that the administrative memo could actually lead to an expanded TANF caseload by allowing activities that are not governed by work participation rates.

Extending periods of education and training

Another permissible waiver would be for “projects that test systematically extending the period in which vocational educational training or job search/readiness programs count toward participation rates, either generally or for particular subgroups, such as an extended training period for those pursuing a credential.”

“The purpose of such a waiver,” the HHS memo adds, “would be to determine through evaluation whether a program that allows for longer periods in certain activities improves employment outcomes.”

States have tried these approaches before, to little avail. That is the main reason that current TANF law limits vocational education to 30 percent of the countable caseload.²¹ Able-bodied adults in pre-TANF times could languish in training and education programs for long periods without actively looking for or finding employment.

Liberalizing the counting of subsidized employment

HHS says that it would allow “projects under which a state would count individuals in TANF-subsidized jobs but no longer receiving TANF assistance toward participation rates for a specified period of time in conjunction with an evaluation of the effectiveness of a subsidized jobs strategy.”²²

Subsidized employment is sometimes a useful strategy for moving people off welfare because it provides job

experience and skills in the workplace. But subsidized public and private employment is already an allowable activity for those receiving TANF assistance. How the new requirements differ from current rules and what is meant by the phrase “no longer receiving TANF assistance” are not clear.

All or a portion of a TANF grant for a subsidized job is often given to a private or public employer to be passed on to the beneficiary as wages. Those in subsidized jobs may no longer technically be counted on the caseload, but to say that these households are no longer receiving TANF assistance is misleading. And, if the subsidized job does not turn into an unsubsidized job within a reasonable period of time—say, six months—then the employer has received a free or near-free employee who could ultimately return to TANF.

Greater clarity is needed to ensure that subsidized employment is not substantially extended while still being counted against work participation rates.

Discouraging one-time non-assistance payments

The HHS memo states that the agency “will not approve a waiver for an initiative that appears substantially likely to reduce access to assistance or employment for needy families”—an indication that the federal government will not support further efforts to help people without adding them to the rolls.

Under current law, under an approach known as “diversion,” states can utilize TANF funds as one-time payments to meet the short-term needs of poor people. These needs include child care, transportation, or help paying a utility bill. New York has been a leader in providing such emergency assistance, helping poor people find or keep jobs without having to enroll them in the TANF program. Nationally, such “non-assistance” expenditures accounted for 70 percent of TANF funds in 2009, but recipients of these supports are not counted in the TANF caseload.²³

While it may be reasonable to offer states added flexibility, it should not be achieved at the cost of sacrificing clear, straightforward, and measurable work participation rates. Unfortunately, as things now stand, the states currently in penalty status for failing to meet work requirements and others might jump at the chance to be held to more permissive guidelines.

How HHS intends to apply these various changes remains unclear. The five-page memo is often vague and seemingly contrary in passages that propose alternatives to a clear focus on work. For example, the memo does not define the phrase “comprehensive universal engagement system.” The phrase “superior employment outcomes” might be interpreted as simply allowing the addition of more people to the TANF caseload and assigning them to poorly defined activities that may not constitute real work. Education and training are worthwhile pursuits, but they are not the same as actual work. There is cause to worry that the core TANF message of welfare-to-work could be undermined

STATES ALREADY HAVE GREAT FLEXIBILITY

As noted earlier, while states must provide cash benefits to eligible participants, they have great flexibility to invest block-grant funds in efforts to help people get jobs as well as provide work support to those who leave welfare.

States also have leeway to reduce their nominal 50 percent work participation rate. The federal government provides a 1 percent reduction in a state’s work rate for each 1 percent decrease in caseload. Alternatively, a state can use its own funds to exceed maintenance of effort spending. For every \$100 million that states spend over their required level, they can reduce their work rate by roughly 1 percent.

HHS defines “maintenance of effort” spending very broadly. In New York, for example, nearly \$800 million of the total amount spent on the state’s counterpart to the federal earned income-tax credit (EITC) by itself reduces the nominal 50 percent rate to 42 percent.²⁴

After accounting for all caseload reduction since 2005 and the additional maintenance of effort spending, New York’s effective work participation rate was only 11.5 percent in 2009.²⁵ Numerous other states take advantage of this provision.

In general, this provision has fostered spending on programs that help people move from welfare to work rather than returning to TANF dependency, but it has faced harsh criticism from some members of Congress. States may disinvest in certain post-welfare supports if their ability to reduce their effective work participation rate is repealed, as has been suggested.²⁶

WHAT SHOULD BE DONE TO BUILD ON WELFARE REFORM

The next Congress and president should work together, in the same bipartisan spirit reflected in the original 1996 reform, to produce a TANF reauthorization law that builds on the success of reform, rather than turning back the clock through waivers. Several changes to TANF—pursued, preferably, through actual legislation or regulation—would help states without undermining work participation rates. Possibilities include:

- While the 2005 TANF reauthorization tightened the definition of work, it added reporting requirements and strict work verification provisions that went beyond the scope of reasonable federal oversight.²⁷ Reducing reporting requirements and greatly altering work-verification reporting through technology, such as finger imaging to verify attendance at activities, would allow states to focus less on compliance and more on moving beneficiaries into meaningful employment.
- State TANF programs work diligently to enroll disabled adults in the Federal Supplemental Security Income (SSI) program. But some people who do not meet SSI eligibility rules also cannot meet the 30-hour weekly TANF work requirement. As disability ad-

vocates clamor for work rights under the Americans for Disability Act, the federal TANF program should grant partial credit for at least 15 hours of work by those who qualify as borderline-disabled.

- Assessing the “work readiness” of those newly eligible for TANF assistance is time-consuming. Furthermore, there is currently no allowance made for the time it takes to develop an individualized plan for moving beneficiaries into short-term activities that will ultimately lead to employment. To solve this problem, the first 45 days of TANF eligibility should be exempted from the rate requirement.
- The 90 percent work participation rate requirement for two-parent, intact families on TANF should be legislatively eliminated and conformed to the 50 percent rate for singles and all-family households. The 90 percent rate is unattainable and conflicts with two other TANF goals: marriage and family formation. Why give low-income couples a financial disincentive to marry?

CONCLUSION

Some leading congressional Republicans have challenged HHS secretary Kathleen Sebelius’s

legal authority to unilaterally waive existing TANF requirements. Legislation to overturn the waiver authority passed the House but not the Senate.²⁸

Moreover, the Government Accounting Office says that HHS’s issuance of the change as an administrative memo circumvents the normal requirement for public and congressional comment on such regulatory changes.²⁹ While the dispute over the legality of the department’s action continues—and could even result in litigation—the department’s offer to waive the established TANF work guidelines will remain in effect. The intense scrutiny of this backdoor action may force meticulous review of any state proposal to alter the program rules, if any are submitted. But the risk remains that some of the progress of the past 15 years will be squandered. If the new HHS policy survives a potential legal challenge and ongoing congressional challenges, it is hard to see how it would not undermine the clear work participation rates in TANF.

When the latest TANF extension expires in late March of 2013, Congress should fully reauthorize the program, making necessary changes and maintaining the measurable focus on work. Returning to the old days of welfare—when virtually any assignment counted as work—is a step in the wrong direction and a truly bad idea.

ENDNOTES

- ¹ Temporary Assistance for Needy Families (TANF) was passed as part of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, Public Law 104-193.
- ² U.S. Department of Health and Human Services, Office of Family Assistance, "TANF-ACF-IM-2012-03, Guidance concerning waiver authority under Section 1115," July 12, 2012, <http://www.acf.hhs.gov/programs/ofa/resource/policy/im-ofa/2012/im201203/im201203?page=all> (hereafter cited as TANF-ACF-IM-2012-03).
- ³ White House Blog, "Welfare, Work and America's Governors," <http://www.whitehouse.gov/blog/2012/08/12/welfare-work-and-america-s-governors>.
- ⁴ Gene Falk, Congressional Research Services (CRS) Report for Congress, "The Temporary Assistance for Needy Families (TANF) Block Grant: A Primer on TANF Financing and Federal Requirements," 2007, <http://www.policyarchive.org/handle/10207/bitstreams/2326.pdf>.
- ⁵ TANF has three work participation rates: 50 percent for single-parent households; 90 percent for two-parent households (a rate that virtually no state can attain); and a 50 percent all-families rate, which is a combination of the first two rates.
- ⁶ 45 CFR 261.43 (b), <http://cfr.vlex.com/vid/261-case-rdquo-calculating-caseload-19933792>.
- ⁷ This provision has helped states greatly increase their level of child-support collections on behalf of custodial parents (usually mothers) and has provided another significant source of income to supplement wages when the household leaves welfare.
- ⁸ Some states, including New York, have chosen to suspend benefits only for adults in such cases, but the vast majority of states end the total benefit until the adult complies with work requirements.
- ⁹ This is known as an earnings disregard. By disregarding a portion of a TANF recipient's earned income, overall household income increases by combining work with welfare and providing an incentive to work.
- ¹⁰ New York's generous efforts turn an \$8.50/hour job (\$17,680 annually) for a single-parent household of three in New York City into an annual income of over \$33,000, as evidenced by this chart: <http://otda.ny.gov/resources/work-supports/worksupports-NYC.pdf>.
- ¹¹ Such payments typically go to car repairs, maintaining child-care arrangements, avoiding evictions, or meeting utility or fuel emergencies.
- ¹² Pamela J. Loprest, Urban Institute and HHS Office of Planning, Research and Evaluation, Brief no. 08, "How Has the TANF Caseload Changed over Time?," March 2012, http://www.acf.hhs.gov/sites/default/files/opre/change_time_1.pdf.
- ¹³ New York State Office of Temporary and Disability Assistance, "Temporary and Disability Statistics," July 2012, <http://otda.ny.gov/resources/caseload/2012/2012-07-stats.pdf>; of the total, 253,029 are TANF recipients and 311,427 are state safety-net recipients because they are not TANF-eligible or because they have exhausted their five-year federal eligibility or because they are enrolled in a separate state program for two-parent families.
- ¹⁴ According to U.S. Bureau of the Census reports, Poverty in the United States: 1997 and 2007, <http://www2.census.gov/prod2/popscan/p60-201.pdf> and <http://www.census.gov/hhes/www/poverty/data/incpovhlth/2007/highlights.html>.
- ¹⁵ Gene Falk, CRS Report to Congress, "A Guide to the New Definitions of What Counts as Work Participation," 2006, <http://www.nationalaglawcenter.org/assets/crs/RS22490.pdf>.
- ¹⁶ Continuing resolutions are agreements by Congress to extend the current appropriations of a program for a designated period of time, usually no longer than a year.
- ¹⁷ "H.J. Res. 117, the Continuing Appropriation Resolution, 2013," <http://www.cbo.gov/publication/43581>.
- ¹⁸ GAO 12-1028R, "Waivers Related to the Temporary Assistance for Needy Families Block Grant," September 2012, <http://www.gao.gov/products/GAO-12-1028R>.
- ¹⁹ TANF-ACF-IM-2012-03.
- ²⁰ Ibid.

²¹ TANF changed previous welfare policy by placing new limits on “vocational education,” limiting TANF participants’ enrollment in higher education to 12 months over their maximum five years in the program, and asserting that only 30 percent of working participants per state could be enrolled at any one time.

²² TANF-ACF-IM-2012-03.

²³ Loprest, “How Has the TANF Caseload Changed over Time?.”

²⁴ New York actually spends closer to \$1 billion on its state EITC, but some of it is disallowed as excess maintenance of effort spending under TANF, including spending that was already in place before the 1996 passage of TANF and spending for non-TANF-eligible populations.

²⁵ Gene Falk, Congressional Research Service, “Temporary Assistance to Needy Families Welfare Waivers,” appendix, p. 14, September 6, 2012, <http://democrats.edworkforce.house.gov/sites/democrats.edworkforce.house.gov/files/documents/112/pdf/TANF-CRSMemo-9.6.12.pdf>.

²⁶ National Governors Association, October 6, 2008 letter—TANF MOE Rule, http://www.nga.org/cms/home/federal-relations/nga-letters/archived-letters--2008/col2-content/main-content-list/title_october-6-2008.html.

²⁷ The 2005 TANF reauthorization and subsequent HHS final rule included a new federal fiscal penalty of 1–5 percent of the state’s TANF block grant that will be applied if states fail to meet the new work-verification procedures, which include rigorous documentation of work activity participation. The work-verification rules are complex, time-consuming, and overly prescriptive. They divert time away from finding people jobs, and they place an added burden on staff, employers, and other third parties who must adhere to them.

²⁸ H.R. 6140 and same as S.3397 <http://www.gpo.gov/fdsys/pkg/BILLS-112hr6140ih/pdf/BILLS-112hr6140ih.pdf> and <http://www.gpo.gov/fdsys/pkg/BILLS-112s3397is/pdf/BILLS-112s3397is.pdf>.

²⁹ Alfred Regnery, “Did Obama Change Work Law?,” American Conservative Union, Sept. 26, 2012, <http://conservative.org/battleline/did-obama-change-work-law>.