



## Executive Summary:

# TANF §1115 Waiver Authority

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### BACKGROUND

On July 12, 2012, the Administration for Children and Families (ACF) issued a program information memorandum<sup>1</sup> which outlined authority for HHS to waive certain requirements of the TANF program. This authority comes from §1115 of the Social Security Act (SSA).

Under §1115, the Secretary of Health and Human Services (HHS) has authority to consider and approve experimental, pilot, or demonstration projects which are likely to assist in promoting the objectives of the TANF program as outlined in Section 602 of the U.S. Code.

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### HHS GUIDANCE

HHS has indicated in the IM that the Secretary is interested in allowing states to test alternative and innovative strategies, policies, and procedures that are designed to improve employment outcomes.

The guidance indicates that their waiver authority covers all of Section 402, but with regard to work participation requirements at Section 407 (42 USC 607), the Secretary will only consider approving waivers that make changes intended to lead to more effective means of meeting the work goals of TANF.

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### TANF STATE PLAN REQUIREMENTS

Section 602 outlines the contents that must be included in each state's TANF State Plan. Under the §1115 waiver authority, the Secretary of HHS could approve projects or waivers to any of the following requirements if the state makes a compelling argument that the proposal will further the goals of TANF. HHS has indicated that they will not entertain any proposals that would restrict equitable access to Indians (see 14 below).

- (1) Conduct a program that provides assistance to needy families with (or expecting) children and provides parents with job preparation, work, and support services to enable them to leave the program and become self-sufficient.
- (2) Post 24-Month Assistance Work Requirement – Require a parent or caretaker receiving assistance under the program to engage in work once the parent or caretaker has received assistance under the program for 24 months, consistent with section 607(e)(2).
- (3) Work Activity Engagement – Ensure that parents and caretakers receiving assistance under the program engage in work activities in accordance with section 607 of this title.

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<sup>1</sup> See TANF-ACF-IM-2012-03, *Guidance concerning waiver and expenditure authority under Section 1115*, dated July 12, 2012.

- (4) Non-Disclosure – Take such reasonable steps to restrict the use and disclosure of information about individuals and families receiving assistance.
- (5) Out-of-Wedlock Pregnancy Reduction – Establish goals and take action to prevent and reduce the incidence of out-of-wedlock pregnancies and establish numerical goals for reducing the illegitimacy ratio of the State.
- (6) Statutory Rape Education – Conduct a program, designed to reach State and local law enforcement officials, the education system, and relevant counseling services, that provides education and training on the problem of statutory rape so that teenage pregnancy prevention programs may be expanded in scope to include men.
- (7) In-State Migration – Option to treat families moving into the State from another State differently than other families under the program (state was sued and did not implement this provision).
- (8) Non-Citizen Benefits – Option to provide assistance to non-citizens.
- (9) Equitable Treatment Requirement – Fair and equitable treatment requirement including adverse action process.
- (10) Community Service Requirement – Require community service employment after 2 months of TANF receipt for parents or caretakers who are not exempt and not engaged in work (Washington opted out of this provision).
- (11) Operate a Child Support Program.
- (12) Operate a Foster Care and Adoption Assistance program.
- (13) Program Administration – specify which State agency or agencies will administer and supervise the program and provide assurances that local governments and private sector organizations have been consulted and have had at least 45 days to submit comments on the plan.
- (14) Equitable Access – Provide Indians with equitable access to assistance.
- (15) Fraud & Abuse Prohibition – Maintain standards and procedures to ensure against fraud and abuse, including standards and procedures concerning nepotism, conflicts of interest among individuals responsible for the administration and supervision of the State program, kickbacks, and the use of political patronage.
- (16) Domestic Violence Option – Optional certification of standards and procedures to ensure the state will screen for and identify domestic violence.

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## **WORK REQUIREMENTS**

HHS is willing to permit states to test approaches and methods other than those identified in Section 607. Any waivers to work participation requirements must make changes that lead to more effective ways of meeting the work goals of TANF. Following are the work requirements specified in 42 USC 607 –

- (1) Work participation rates for All-Family and Two-Parent family caseloads – sets the 50% and 90% requirements.

- (2) Calculation of Participation Rates – sets the formula for the numerator and denominator in calculating the rates. Includes the caseload reduction criteria, option to exclude Tribal TANF program recipients, and single custodial parents with a child under 12 months of age.
- (3) Engaged in Work – sets the number of hours per week for all family (30 hours) and two-parent family (35 hours); defines the core and optional activities; increase two-parent requirement to 55 hours when federal child care is provided.
- (4) Defines Work Activities –
  - unsubsidized employment;
  - subsidized private sector employment;
  - subsidized public sector employment;
  - work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;
  - on-the-job training;
  - job search and job readiness assistance;
  - community service programs;
  - vocational educational training (not to exceed 12 months with respect to any individual);
  - job skills training directly related to employment;
  - 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;
  - satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate; and
  - the provision of child care services to an individual who is participating in a community service program.
- (5) Defines Penalties Against Individuals – provides for a pro-rata reduction or termination (at state option); and includes exception for single parent with child under age 6 who cannot find child care.
- (6) Nondisplacement Requirement – prohibition of using TANF participants to fill vacancies due to layoffs or to cause an involuntary reduction in force.
- (7) Work Eligible Individuals & Verification of Hours Requirements – Requirement to count and verify reported hours of work and to define who is a work-eligible individual.

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#### **WAIVER OPPORTUNITIES**

Washington currently faces potential penalties for failure to meet the All-Family and Two-Parent work participation targets for FFY 2012. In reviewing the waiver authority that HHS has recently issued, there are some potential areas that may be helpful to improve our performance and meet the targets.

The work participation requirements for engaged in work would be one area to consider. This is the requirement which identifies those core activities that count for 30 hours per week and those optional activities that count for 10 hours per week for a single parent (5 hours per week for a two-parent family).

A waiver to permit the optional activities to count as full-time, core activities would permit us to focus on the educational needs of parents who have not completed high school or who are in need of additional education to retain or maintain employment.

This would also align with our WorkFirst redesign efforts to engage parents in activities that are most appropriate to enable them to progress toward self-sufficiency.

Permitting us to count these part-time activities as full-time activities would make a significant improvement in our participation rates at a time when we face potential penalties.

Another potential waiver would be to test extending the 12 month limit on vocational educational activities to 24 months. This would permit parents to extend the training period to pursue a credential needed for employment.

Finally, consider requesting a waiver to permit counting individuals who were in TANF-subsidized jobs but no longer receiving TANF toward the participation rate for a specified period such as 6 months or one year.

All of these proposals would further the TANF employment outcome purpose while aligning with the WorkFirst redesign efforts.

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#### **CONGRESSIONAL CONCERNS**

On July 12, Dave Camp, Chairman House Committee on Ways and Means, and Orrin G. Hatch, Ranking Member, Senate Finance Committee, sent a letter to HHS Secretary Sebelius expressing their deep concerns with the Information Memorandum (IM) that proposes to grant §1115 waivers to the TANF work participation requirements (42 USC 607).

The letter expressed their doubts that HHS had legal authority to grant waivers to the TANF work participation requirements based upon the logic of the IM. They point out that Section 402 (42 USC 602) is the administrative requirement for states to prepare a State Plan that outlines their TANF program. They believe that the Secretary's rationale that waivers of Section 607 (42 USC 607) can be permitted through the administrative reference in Section 402 is in error and requested that the Secretary provide a detailed explanation of the legal reasoning behind the guidance.

They set a deadline of Monday, July 16, 2012, for the receipt of the response from HHS so that they may consider the legal arguments and plan their next steps. The letter stated that they will actively resist efforts to undermine the progress made by the TANF program.

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