



**Michelle Lujan Grisham, Governor**  
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August 21, 2023

Administration for Children & Families  
U.S. Department of Health & Human Services  
330 C Street S.W.  
Washington, D.C. 20201

Re: TANF Data Reporting for Work Participation

To Whom It May Concern:

I am writing on behalf of the State of New Mexico Human Services Department (HSD) in response to the Department of Health and Human Services Federal Register Vol. 88, No. 122, Tuesday, June 27, 2023, Notices, seeking comments on the “Proposed Information Collection Activity; Proposed Information Collection Activity, TANF Data Reporting for Work Participation.”

HSD currently has no comment on the amount of time estimated to complete the data collection; however, the usefulness of the data collecting in determining the success of the TANF program is questionable. The number of TANF participants who meet a set number of work hours is not reflective of the success of the TANF program. By the nature of being on TANF, these participants have barriers and issues that hinder their ability to secure and maintain long term employment. By mandating that states place participants in work activities to meet work requirements and focusing on the issues (behavioral and physical) that prohibit participants from keeping their employment as a secondary, uncounted activity is not how participants will address their barriers.

Additionally, HSD recommends that all educational activities should count as core hours and that there should be no limitation on the length of time a TANF participant can engage in this activity while still meeting federal engagement requirements. Many New Mexico TANF participants have not received their High School Equivalency (HSE) degree. Without an HSE, these TANF participants may face insurmountable hurdles to secure long term, sustainable employment that would enable them to no longer need federal support services. By not allowing participants to focus on securing their HSE while meeting their TANF core requirements, we will be doing them an injustice and not giving them the tools they will need to leave TANF and continue to thrive and succeed.

HSD has specific comments to proposed changes to the ACF-199 and the ACF-209 Data Reporting Instructions and the Work Verification Plan Guidance.

## Comments to ACF-199 TANF and ACF-209 Data Reporting Instructions

*Item 9: Disposition (Page 5): Enter 1 to indicate that the data reported is complete and accurate. States that submit sample data should not report cases that are “listed-in-error”.*

### NM Comment:

NM pulls a sample of active TANF cases monthly; how will states handle cases that were selected in error? There are instances when a case pulled in the sample will have the TANF grant benefit recovered due to an agency or client error or the TANF grant is solely support services for a specific month.

Typically, NM codes those cases as listed in error and the case is disregarded from the work participation rate calculation. How will these types of situations be handled in the future?

*Item 49: Work Participation Status (Page 21): 07 = Excluded from two-parent work participation rate, disabled (using the state’s definition of “disabled”).*

### NM Comment:

Currently a client with a work participation status of 07 was simply “exempt, disabled.” The proposed new definition of a code 07 is “excluded from the two-parent work participation rate.” Will that continue to be an acceptable code for a single parent household with a state approved disability waiver?

Code 08, used by NM to designate a mandatory client who has an approved federal caretaker waiver, has been removed and does not appear as a valid work participation status. Was the intention to remove the federal caretaker waiver as an approved status? And how will these waivers be reflected on the ACF-199?

*Items 63: Number of Deemed Core Hours for Overall Rate (Page 26) : States no longer need to report this, the number of deemed core hours for overall rate will be automatically calculated and added if a work-eligible individual participates in these activities the maximum number of hours permitted under the minimum wage provision of the Fair Labor Standards Act (FLSA) and the maximum hours do not fulfill the “core” hour participation requirement, we will “deem” the core hour requirement to be met.*

### NM Comment:

To be clear, states will code the work participation status as meeting if the state believes the case would be “deemed” to the core hours; however, the hours reported would be less than the required hours to meet the work participation rate.

*Item 64: Number of Deemed Core Hours for the Two-Parent Rate (Page 27): States no longer need to report this; the number of deemed core hours for the two-parent rate will be automatically calculated and added if these two-parent work-eligible individuals participate in these activities the maximum number of hours permitted under the minimum wage provision of the Fair Labor Standards Act (FLSA) and the maximum hours do not fulfill the “core” hour participation requirement, we will “deem” the core hour requirement met. Enter 00.*

### NM Comment:

Again, to be clear, states will code the work participation status as meeting if the state believes the case would be “deemed” to the core hours; however, the hours reported would be less than the required hours to meet the work participation rate. If both adults were in an unpaid work activity, ACF will add the “deemed” hours to one adult to ensure that the case would meet both the All-Family rate and the Two-Parent Rate or will ACF divide the deemed hours between both adults which may cause the case to not meet the All-Family rate?

### **Comments to Work Verification Plan Guidance**

*Excused Absences (Page 12): In conjunction with the actual hours policy, the interim final rule also introduced to the regulations the concept of giving states credit for excused absences for a TANF participant in unpaid activities. Under the interim final rule, a state can define and count reasonable short-term, excused absences for hours missed due to holidays and a maximum of 10 additional days of excused absences in any 12-month period, no more than two of which may occur in a month. To count an excused absence as actual hours of participation, the individual must have been scheduled to participate in a countable work activity for the period of the absence that the state reports as participation.*

*Describe the state’s excused absence policies for unpaid work activities. This includes its policies for holidays as well as the ten additional excused absences that the state may count in a 12-month period. If the policies vary by work activity, the state should describe how they vary and for which activities.*

### *Guidance:*

- ***The excused absence policy applies only to unpaid workactivities.***
- ***The 10-day excused absence policy cannot be converted to an hourly standard (e.g., 10 days cannot be converted to 80 hours). Any absence for any part of a day counts as one of the days available for excused absences.***

### NM Comment:

The interim final rule contradicts the directions in the ACF-199 Data Reporting Instructions. On page 22 of the Data Reporting Instructions, it states: “For participation in unpaid work activities, it may include excused absences for hours missed due to a maximum of 10 holidays in the preceding 12-month period and **up to 80 hours of additional excused absences** in the preceding 12-month period, no more than 16 of which may occur in a month, for each work-eligible individual.” However, the guidance in the Work Verification Plan explicitly states that the state cannot convert to 80 hours.

NM strongly believes that the requirement should continue to be 80 hours and not 10 days. By utilizing 80 hours, participants utilize hours as they would in a paid employment situation that offers paid sick leave. An employee would not need to take a day off when only a few hours are required.

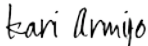
Additionally, instituting a change from 80 hours to 10 days will involve enormous expense for the state to reprogram the current case management system which tracks the use of the hours. States would require additional federal administrative funding to implement this update. Without additional funding, many states will have a delay in implementation.

1. *Work Experience-Guidance-FLSA* determination is with DOL; Does this mean states can no longer assume that all unpaid activities will be subject to FLSA?
2. *Excused Absences*-New criteria “the 10-day excused absence policy cannot be converted to an hourly standard (e.g., 10 days cannot be converted to 80 hours). Any absence for any part of the day counts as one of the days available for excused absences.” NM suggests this remain at 80 hours.

We appreciate the opportunity to comment on the TANF data gathering tools. As state leaders, we are eager to collaborate to build processes that will support low-income individuals as healthy, productive, and successful members of our communities. Please do not hesitate to contact HSD to provide further information.

Sincerely,

DocuSigned by:

Kari Armijo

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Kari Armijo, Acting Cabinet Secretary  
State of New Mexico Human Services Department