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## Administrative Directive

### Section 1

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| <b>Transmittal:</b>                    | 08-ADM-07  |
| <b>To:</b>                             | Local District Commissioners   |
| <b>Issuing Division/Office:</b>        | Center for Employment and Economic Supports  |
| <b>Date:</b>                           | October 1, 2008  |
| <b>Subject:</b>                        | Implementation of Final Temporary Assistance for Needy Families (TANF) Rule  |
| <b>Suggested Distribution:</b>         | Employment Coordinators<br>Temporary Assistance Directors<br>WMS Coordinators<br>Child Care Directors<br>WTWCMS Liaisons |
| <b>Contact Person(s):</b>              | Employment Technical Advisor or Employment and Advancement Services Bureau at (518) 486-6106                             |
| <b>Attachments:</b>                    | Attachment A - Federal Definitions for Countable Work Activities   |
| <b>Attachment Available On – Line:</b> | yes  |

### Filing References

| Previous ADMs/INFs     | Releases Cancelled | Dept. Regs.  | Soc. Serv. Law & Other Legal Ref.  | Manual Ref.   | Misc. Ref.  |
|------------------------|--------------------|--|--|---|---|
| 06 ADM-17<br>07 LCM-15 | 06 ADM-17          | 385.2<br>385.6<br>385.8<br>385.9<br>385.10<br>385.11<br>385.12<br>385.13 | 153<br>332<br>333<br>335-b<br>336<br>336-a<br>336-c<br>336-d<br>336-e<br>336-f<br>45 C.F.R. Parts 261,<br>262, 263 and 265<br>Public Law 109-171 | Temporary Assistance and Food Stamp Employment Policy Manual:<br>Section 385.2<br>Section 385.6<br>Section 385.8<br>Section 385.9<br>Section 385.10<br>Section 385.11<br>Section 385.12<br>Section 385.13 | GIS 06 TA/DC006<br>GIS 06 TA/DC036<br>14 NYCRR §819.2 |

## Section 2

### I. Summary

This Administrative Directive (ADM) provides information regarding federal and State work participation rate requirements for households with dependent children in effect as of **October 1, 2008**, as required by the Final Temporary Assistance for Needy Families (TANF) regulations published on February 5, 2008, by the U.S. Department of Health and Human Services (DHHS). **This administrative directive replaces 06 ADM-17 effective October 1, 2008**, and provides the formal policy established by the Office of Temporary and Disability Assistance (OTDA) in accordance with the Final TANF regulations regarding federal and State work requirements and participation rate calculation and reporting requirements for households with dependent children. Significant changes contained within the final TANF rule and therefore changes to the policy outlined in 06 ADM-17 include:

- Clarification that only a **parent** who is needed at home full-time to care for a disabled family member living in the household may be excluded from the definition of a “work-eligible individual.” A case may be removed (unless there is countable participation) from the participation rate denominator in those instances in which such parent is the only adult individual or minor child head of household in the household (as any other “work-eligible individual” would cause inclusion of the case in the participation rate calculation). The requirement that the disabled family member not be attending school full-time no longer applies as of October 1, 2008.
- Clarification that only a **parent** who is receiving Social Security Income (SSI) or Social Security Disability Income (SSDI) benefits may be excluded from the definition of a “work-eligible individual.” A case may be removed (unless there is countable participation) from the participation rate denominator in those instances in which such parent is the only adult individual or minor child head of household in the household (as any other “work-eligible individual” would cause inclusion of the case in the participation rate calculation).
- Changes in the hours of participation that may be reported towards the work participation requirements to include certain travel time by an individual participating in job search. The Final TANF rule indicates that travel time between job interviews may be reported as hours of participation, but not the time associated with travel from home to the first employer or from the last employer to home.
- Clarification that the hours that an individual is engaged in an on-site background check or assessment to determine an individual’s suitability for a particular work activity assignment may be reported as hours of participation in that work activity. For example, the time that an individual spends in an assessment to determine whether a work experience assignment is suitable may be reported as

participation in work experience, but not the time that an individual spends in an employment assessment that is completed in accordance with 18 NYCRR §385.6.

- Additional flexibility that permits districts to include as reported hours of participation in educational activities:
  - up to one hour of unsupervised homework/study time for each hour of class time towards the hours of participation in an educational activity, provided that the total number of hours of homework/study time do not exceed the documented hours expected by the educational provider; and
  - actual hours of participation in educational activities provided through distance learning to the extent that such activities otherwise meet the respective work activity definition, include supervision and are adequately documented.
- Modifies the federal time limit related to the number of hours of participation in job search/job readiness training assistance that may count toward the federal participation rate. More specifically, the Final TANF regulations convert the six-week limitation during each federal fiscal year for job search/job readiness training assistance to an hourly equivalent limitation based on the number of hours of participation in the preceding 12-month period. An individual's participation in job search/job readiness training assistance activities will count toward the work participation rate requirement for up to 120 hours in the preceding 12-month period for single parent households with a child under the age of six or for up to 180 hours in the preceding 12-month period for all other households. Additionally, consistent with current practice, the hours of participation in such work activities can only be counted towards the participation rate for no more than four consecutive weeks.

Upstate Welfare Reform Tracking System (WRTS) tracking of participation in job search/job readiness training assistance will continue to be based on the previous federal limits of no more than six weeks per federal fiscal year and no more than four consecutive weeks until the change to track hours of participation in such activities is completed within the Welfare-To-Work Caseload Management System (WTWCMS) (the anticipated completion of this change is the first quarter of 2010).

- Establishes a limit of no more than ten approved holidays, which was specified by the State in the Work Verification Plan, for which an individual's scheduled hours of participation in a work activity was expected, but did not occur on that day due to the holiday may be reported toward the work participation rate.
- Converts the ten-day limit (no more than two days monthly) pertaining to excused absence that may be reported as hours of participation to an hourly limitation of

up to 80 hours in the preceding 12 month period, with no more than 16 hours in any month.

- Describes the methodology that states must use to determine the number of families that may be added to the calculation of the caseload reduction credit as a result of excess MOE spending.

Districts were informed of these changes via a letter transmitted by OTDA on March 17, 2008.

## **II. Purpose**

The purpose of this administrative directive is to provide information regarding the work participation rate requirements for households with dependent children in effect as of October 1, 2008, and to identify changes that districts must implement to ensure that the work activities in which temporary assistance applicants and recipients are engaged and the corresponding hours of participation that are reported, and used in the participation rate calculation, are consistent with the federal requirements outlined in the Final TANF rule issued by the Department of Health and Human Services (DHHS). This ADM also provides information on the internal controls that districts must follow to document that the hours of participation are countable and accurately reported, defines countable work activities and outlines the requirements for documenting and reporting hours of participation.

## **III. Background**

The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 authorized the Temporary Assistance for Needy Families (TANF) Block Grant program. Under PRWORA, states were granted significant flexibility to design programs to meet families' basic needs and help individuals enter the workforce. States were required to meet minimum federal participation rates (for federal fiscal year 2002 and thereafter the required rates, prior to any caseload reduction credit, were 50% for all families with an adult or minor head of household receiving federal assistance, and a separate rate of 90% for two-parent families receiving federal assistance), but were given the authority to establish definitions for each of the countable federal work activities. The caseload reduction credit provided a point-for-point reduction in the required participation rate for each percentage point the average monthly caseload decreased in the prior FFY as compared to FFY 1995. The required participation rate after the caseload reduction credit for many states, including New York, was nominal.

The Deficit Reduction Act (DRA) of 2005 (Public Law 109-171), maintained the federal participation rates for "All Families" receiving assistance at 50% and authorized the following employment program related changes effective October 1, 2006:

- The calculation of the "All Families" work participation rate was modified to include families receiving Safety Net assistance that is funded with dollars that New York counts towards the TANF maintenance of effort (MOE) requirement.

Each of these households is now included in the participation rate calculation in the same manner as TANF-funded assistance families in a combined TANF/MOE rate.

- The caseload reduction credit was modified, effective FFY 2007, so that any reduction in the work participation rate is based on the percentage that the caseload has declined since FFY 2005, rather than FFY 1995, resulting in a reduced caseload reduction credit and an effective required federal participation rate much closer to the official 50% rate requirement.
- The federal DHHS was required to promulgate regulations by June 30, 2006, to define which activities constitute countable “work activities”, to establish standards for reporting and documenting hours of work, and to define when a child-only case is included in the federal work participation rate calculation. By September 30, 2006, states were required to have procedures in place and internal controls to ensure compliance with these federal standards. A new fiscal penalty based on the extent to which a state fails to establish and maintain work participation verification procedures and equal to one percent of the state’s adjusted TANF grant will be assessed for the first year that a State is determined to be out of compliance with maintaining work participation verification procedures. This penalty increases by one percent for each subsequent year, up to a maximum of five percent, that a State is determined to be out of compliance with maintaining work participation verification procedures.

DHHS issued the Interim Final TANF regulations on June 29, 2006. Districts were provided the Interim Final TANF rule and summary information regarding its 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. The provisions of the Interim Final TANF rule were also discussed during conference calls with local districts and through telephone meetings with the TANF Implementation State and Local Workgroup. OTDA released 06 ADM-17 on December 28, 2006, to provide information regarding the participation rate calculation requirements for households with dependent children, consistent with the Interim Final TANF regulation in effect as of October 1, 2006. OTDA released 07 LCM-15 on October 30, 2007, to inform districts of changes in State employment program policy for families with dependent children resulting from federal changes related to the documentation and reporting of work activities as detailed in New York’s Work Verification Plan (WVP) approved by DHHS on September 25, 2007.

DHHS issued the Final TANF Regulations to implement the changes authorized by the Deficit Reduction Act of 2005 on February 5, 2008. OTDA transmitted a letter on March 17, 2008, to notify districts of the release of the Final TANF Regulations and to inform districts of the significant changes made by the Final TANF rule. **This administrative directive replaces 06 ADM-17 and provides information regarding the work participation rate requirements for households with dependent children in effect as of October 1, 2008.**

#### **IV. Program Implications**

The DRA and the Final TANF rule maintain the federal participation rates, prior to the caseload reduction credit for “All Families” receiving assistance at 50% and “Two-Parent Families” receiving assistance at 90%. The Final TANF rule also modified the methodology for calculating the federal participation rates and established definitions for each countable work activity.

A primary goal of the TANF program continues to be helping low-income families enter the workforce and achieve self-sufficiency. Districts must continue to evaluate their welfare-to-work efforts to ensure compliance with federal requirements and avoid potential fiscal penalties. Failure to meet federal work participation rates will result in the State being required to meet a higher 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 million. In addition, a potential penalty of up to 5% of the State’s adjusted TANF grant also could be assessed for the first year in which the federal participation rate is not achieved, with increased penalties in subsequent years of failure to achieve the federal participation rate up to a maximum of 21% of the State’s adjusted TANF grant. Such fiscal penalties would be assessed by district in accordance with Section 153 of Social Services Law.

Districts were informed in 06 LCM-09 of the funding methodology and claiming mechanism used to separately fund two-parent families. Such action was taken to avoid the unreasonable federal 90% “Two-Parent Families” work participation rate requirement. Although, as a result, certain two-parent households are removed from the federal TANF/MOE work participation rate, the policies included in this directive apply to all households with dependent children, including all two-parent families. “Two-Parent Families” that are funded with non-MOE expenditures will not be included in the calculation of the safety net without dependent children participation rate, yet remain subject to work requirements.

##### **A. Work Eligible Individuals**

The Final TANF rule, at 45 CFR §261.22(a) (2), provides that effective October 1, 2008, the federal work participation rate is calculated based on the hours of participation by “work-eligible individuals” and all cases including a “work-eligible individual” are included in the work participation rate denominator, unless otherwise excluded by the Final TANF rule. A “work-eligible individual” as defined at 45 CFR §261.2(n) includes adults (or minor child heads of household) who are receiving assistance funded by federal TANF or State/local MOE funds. These individuals may be exempt or nonexempt from participation in work activities under State rules, however, such individuals will nonetheless be included as a “work-eligible individual”, unless otherwise excluded by the Final TANF rule. The term “work-eligible individual” also includes a non-

recipient parent living with a child who is receiving assistance, unless the **parent** is:

- A minor parent and not the head of household;
- A non-citizen who is ineligible to receive assistance due to his or her immigration status;
- Providing full-time care for a disabled family member living in the home, based on medical documentation to support the need for the parent to remain in the home to care for that family member;
- A recipient of Supplemental Security Income (SSI) benefits; or
- A recipient of Social Security Disability Insurance (SSDI) benefits.

All adults or minor heads of households receiving temporary assistance, whether actively receiving assistance or sanctioned (prorata or incremental), funded by TANF or State/local MOE funds are considered to be “work-eligible individuals”, unless specifically excluded by federal regulation as discussed in Section IV-A of this directive. The State participation rate reporting logic will continue to evaluate the participation of all active adults and minor heads of households and include such cases in which the reported participation meets the minimum federal standards to be included in the participation rate calculation. In those instances where reported participation is not sufficient to include the case in the participation rate calculation numerator, the system will remove those cases that may be removed or excluded from the participation rate calculation denominator based on the case meeting one or more of the federal criterion to exclude the case from the participation rate calculation denominator (e.g., a case which includes a sanctioned individual, but for no more than three months in the previous 12-month period or a single parent family in which the parent is the caretaker of a child under 12 months of age and the case has not exhausted the federal 12-month limit for this exclusion).

Cases in which the only adult or minor head of household is a parent who is receiving SSI or SSDI will be deemed to be a child-only case and will be excluded from the work participation rate denominator. The Final TANF rule also permits States to retroactively exclude parents who are determined eligible for SSI or SSDI from the definition of a “work-eligible individual” and exclude the case from the participation rate denominator retroactive to the month that the individual started receiving SSI/SSDI benefits in those instances where the case does not include another adult who is otherwise a “work-eligible individual.” The Final TANF rule generally requires that retroactive adjustments to data for the respective federal fiscal year must be submitted by December 31<sup>st</sup> following the end of the federal year on September 30<sup>th</sup>. The State will exclude such cases from the participation rate denominator for federal reporting purposes to assist the State and therefore districts in achieving the federal participation rate. However, there are currently no mechanisms in place to retroactively exclude such cases when calculating each

district's participation rate. Additionally, the Final TANF rule allows the State to include cases in which the SSI/SSDI parent whose family is receiving temporary assistance and is working or otherwise participating for a sufficient number of hours to count towards the federal participation rate. OTDA continues to explore a systemic process to identify such cases for inclusion in the participation rate calculation. However, the ability to include such cases in the calculation of the participation rate will only be possible for federal sample reporting purposes at this time.

## **1. Caretakers of a Disabled Child or Other Disabled Family Member Living in Household**

### **a. Full-Time Care**

Individuals who are determined by the district, based on documentation provided, to be needed in the home to provide full-time care for a disabled family member are exempt and cannot be required to participate in temporary assistance work activities in accordance with Section 332 of the Social Services Law and 18 NYCRR § 385.2. Additionally, individuals caring for a disabled family member no longer meet the federal definition of participation in community service and, as advised in 06 ADM-17, therefore cannot be deemed as participating in community service based on their caretaker status as of October 1, 2006.

Under the Final TANF rule, only a **parent** who is needed in the home to provide full-time care for a disabled family member (who need not be the child of the parent) who is living in the home may be excluded from the definition of a “work-eligible individual”, provided that the need for such care is supported by medical documentation (45 CFR §261.2[n] [2] [i]). The requirement in the Interim Final TANF rule to document that the disabled family member is not attending school full-time no longer applies as of October 1, 2008, however, the determination that the parent is needed at home full-time to care for a disabled family member who is living in the household must still be based on medical documentation.

OTDA is revising the definition for employability code “38” to be consistent with the Final TANF rule. Effective October 1, 2008, only parents who are needed in the home full-time to care for a disabled family member who is living in the household can be assigned an employability code of “38-Parent Needed in the Home Full Time to Care for a Disabled Family Member/Exempt.” Additionally, parents who are appropriately assigned an employability code of “48-Needed in the Home to Care for Incapacitated Child Full-Time-Time Limit Exemption (see 01 ADM-03 for information on time limit exemptions)” will also be excluded from the definition of a work-eligible individual.” OTDA will exclude parents who are coded “38” or “48” from the definition of a “work-eligible individual” and cases in which the only adult is coded “38” or “48” will be excluded

from the federal work participation rate calculation (i.e., removed from the denominator) as part of the methodology used to establish work participation rates effective October 1, 2008.

**Non-parent** caretakers who are determined by the district, based on documentation provided, to be needed in the home full-time to care for a disabled family member cannot be excluded from the federal participation rate calculation in accordance with the Final TANF rule, but will continue to be exempt and cannot be required to participate in temporary assistance work activities under State law. Such non-parent caretakers should be assigned an employability code of “58-Non-Parent Needed in the Home Full-time to Care for an Incapacitated/Disabled Family Member/Exempt.” This new employability code is scheduled to be available on or about October 20, 2008. Cases in which the only “work-eligible individual” is coded “58” will not be excluded from the federal participation rate calculation consistent with the Final TANF rule.

Districts should also be aware that cases in which one parent is caring for a disabled household member who is also a “work-eligible individual” will remain in the denominator due to the presence of the “work-eligible individual.” For example, a case which includes a parent who is assigned an employability code of “38” based on the district’s determination that the parent is needed to care for another parent in the household who is disabled and assigned an employability code of “43-SSI Application Filed” would not be removed from the participation rate denominator because the disabled parent is still considered to be a “work-eligible individual”, unless he/she is specifically excluded by federal regulations as discussed in Section IV.A of this ADM. Any case that includes a “work-eligible individual” remains in the participation rate denominator, unless otherwise specifically excluded by federal rules, even if a second adult is not a “work-eligible individual.”

b. Part-Time Care

Individuals, including parents and non-parent caretakers who the district has determined, based on documentation provided, are needed in the home part-time to care for a disabled family member may be assigned an employability code of “40-Parent or Non-Parent Needed in the Home Part-Time to Care for an Incapacitated/Disabled household member/Non-Exempt.” Use of employability code “40” will not cause the individual to be excluded from the definition of a “work-eligible individual”, but may help districts identify instances where the caretaker has limitations on the number of hours that the individual may be assigned to work activities due to his/her part-time caretaker status.

c. Definitions

The following terms are used to determine whether a parent or non-parent caretaker who is caring for a disabled child or other disabled family member should be assigned an employability code of “38”, “40” or “58”, respectively:

***Disabled*** is defined as a temporary or permanent incapacity that is medically documented. The medical documentation must indicate the expected length of the incapacity/need for care and districts are responsible for obtaining updated medical documentation at application, recertification or any other time the documentation suggests that the parent/caretaker's full-time presence may no longer be needed. For example, if the documentation obtained at application indicates that the status will be reevaluated in four months, the district should request updated documentation to determine whether or not the parent/caretaker is still needed at home full-time to care for the disabled family member by the end of the fourth month. Districts will generally need to request updated documentation after three months in those instances where the documentation obtained from the disabled family member's doctor does not include information which identifies the length of time that the parent/caretaker is needed to care for the disabled family member and the district is not able to reasonably determine, based on the disabled individual's prognosis, that the need is expected to continue until the next recertification. For situations which involve caring for a disabled family member who appears to have a permanent disability which will require the parent/caretaker's full-time care, the district should obtain documentation to support the use of employability code "38" or “58”, respectively, at least annually.

It is recommended that districts, where possible, use the AFA function on WMS to monitor the duration of medical exemptions in which the parent/caretaker is needed at home full-time to care for a disabled family member who is living in the household. OTDA intends to provide districts that use the Welfare-To-Work Caseload Management System the ability to apply reminders (ticklers) for this purpose when the Welfare-To-Work Caseload Management System is converted to .NET. If the family member is no longer disabled or no longer requires full-time care for a disability, the district would assign a new employability code, based on the information available, for the caretaker to indicate that he or she is now a “work-eligible individual” and notify the recipient of the requirement to participate in work activities.

***Family member*** may include any individual who is related by blood, marriage, adoption, guardianship or other established relationship.

## **2. Parents receiving Social Security Income (SSI) or Social Security Disability Income (SSDI)**

Individuals, including parents in receipt of SSI should continue to be assigned an employability code of “44-Incapitated/Disabled (In receipt of SSI)-Exempt.” Such individuals are typically not active public assistance recipients and are therefore not a “work-eligible individual.” Additionally, OTDA will consider cases in which the only adult is receiving SSI and also receiving temporary assistance, such as families who are residing in a shelter, to be child-only and exclude such cases from the participation rate calculation.

OTDA is establishing a new employability code of “54-Parent in Receipt of SSDI-Exempt” to identify parents receiving temporary assistance who are also receiving SSDI and may be excluded from the definition of a “work-eligible individual.” This new employability code is scheduled to be available on or about October 20, 2008.

Non-parents who are in receipt of SSDI and who receive temporary assistance should continue to be assigned an employability code based on the individual’s status, generally “36-Incapitated/Disabled (More than 6 Months)-Exempt”, unless the district determines that another employability code (other than “54”) is more appropriate. Such individuals cannot be assigned an employability code of “54” since he/she is not a parent. Federal rules only permit the exclusion of SSDI recipients who are also parents.

Note: While SSI/SSDI recipients are exempt and cannot be required to participate in work activities, such individuals remain eligible to participate in work activities on a voluntary basis while their family continues to receive temporary assistance and would therefore be eligible for supportive services which the district has determined are needed in order to enable the recipient to participate in the designated employment activity. Districts should assign an employability code based on the guidance provided above regardless of whether or not the SSI/SSDI recipient is voluntarily participating in work activities. Otherwise, assigning a different employability code may result in a case which is not countable and which could have potentially been excluded from the participation rate denominator to be included in the participation rate calculation.

### **B. Federal Definitions for Countable Work Activities**

The Final TANF rule established definitions for each countable federal work activity. The work activity definitions established by OTDA, included as Attachment A to this ADM, incorporate the guidance included in the Final TANF rule at 45 CFR §261.2 and the corresponding Preamble discussion, as well as New York’s Work Verification Plan. Except for the changes described in Section 2.I (Summary) of this ADM, the standards described in 18 NYCRR § 385.8 for counting hours of participation in each work activity toward the federal

participation rate are not changed by this release or the Final TANF rule (45 CFR Parts 261, 262, 263 and 265). Work activities continue to be grouped into “core” and “non-core” activities.

Core work activities count for all hours of participation, subject to the respective limitations noted for vocational education and job readiness training assistance/job search and include unsubsidized and subsidized employment, work experience, community service, on-the-job training, vocational education (not to exceed 12 months in the individual’s lifetime), job readiness training assistance/job search (not to exceed 120 hours in the preceding 12 months for single parent households with a child under the age of six/180 hours in the preceding 12 month period for all other households receiving temporary assistance and no more than four weeks consecutive) and provision of child care for an individual participating in community service. “Non-core” work activities only count for hours of participation once the individual has achieved the 20 hours per week in a “core” work activity and include job skills training directly related to employment, education directly related to employment and satisfactory attendance in secondary school.

Districts were previously notified that work activity definitions for households with dependent children are much more restrictive effective October 1, 2006, and intended primarily to be mutually exclusive. However, the final TANF rule did recognize that some educational activities can be categorized under more than one work activity. More specifically, the Preamble to the final TANF rule states that many of the training activities counted under vocational education training can also count under job skills training directly related to employment and basic skills education and English as a Second Language (ESL) instruction can count under vocational educational training, if such activities are a necessary and regular part of the work activity and also can count under education directly related to employment. Additionally, the final TANF rule clarified that hours of participation in which an individual is getting paid by an employer may be reported as unsubsidized or subsidized employment or OJT based on the arrangement with the employer (see Attachment A for a description of paid work activities) regardless of whether the individual is participating in a supportive activity or traditional employment. For example, the hours that an employed individual is paid by his/her employer, to attend a training program or to attend a supportive activity, such as substance abuse treatment, mental health treatment, and rehabilitation activities may be reported as hours of employment. Otherwise, work activity definitions cannot include components of other, distinct activities that are defined separately. For example, while districts were previously (prior to October 1, 2006) permitted to include a job search component as part of a work experience assignment and report the combined hours as work experience, the 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, specifically excluding

certain activities previously included in a number of community service definitions established by districts.

### **C. Countable Hours of Participation**

Hours of participation must meet the definition of the work activity to be reported as that work activity. Furthermore, hours of participation must be reported separately for each work activity. For example, the hours of participation in work experience must meet the definition of work experience and cannot include hours of participation in other activities. Hours of participation in which an individual is concurrently assigned and engaged in other activities must meet the definition and be reported under that activity.

Districts and program providers should review program offerings to determine the most appropriate activity under which the participation should be reported. For example, a job readiness training assistance program may incorporate some activities such as basic education or training in a computer software application and it may be beneficial to report time spent in these activities as education or job skills training which is not subject to a time limitation. Also, one area where definitions overlap is vocational education and job skills training. Vocational education activities could also be reported as job skills training (although not all job skills training constitutes vocational education). Therefore, if an individual is also employed or engaged in work experience for 20 hours weekly, it may be beneficial to report participation in training as job skills training which has no time limitation rather than reporting the participation as vocational education.

#### **1. Actual Hours of Participation in Work Activities other than Paid Employment**

Districts were previously notified, via 06 ADM-17 and other correspondence that only **actual** hours of participation may be reported and counted toward the participation rate calculation. Additionally, DHHS has specifically stipulated in 45 CFR § 261.60 that it is not acceptable to report scheduled hours of participation and that actual affirmative reporting of hours of participation in the work activity is required (i.e., exception reporting is not permitted). These requirements were not changed by the Final TANF rule. DHHS has provided for projected actual hours for participation in self-employment and other paid employment, but otherwise only actual hours of participation, including holiday time and excused absence which do not exceed federal limits may be reported toward the participation rate for all other work activities, consistent with the information outlined in this ADM.

Note: DHHS has approved as part of New York's Work Verification plan that actual hours of participation for a teen parent who is the head of household or a married teen and is satisfactorily attending secondary

school may be reported as participating based on confirmation that the teen parent is enrolled in secondary school. The State participation reporting logic will consider a teen parent who has been assigned an employability code of “17- Teen Head of Household or Married Teen in Secondary School/Equivalent/Other Education - Non-Exempt” and has an active enrollment in secondary school on WTWCMS to be countable towards the federal participation rate. Districts should continue to ensure that such individuals are attending secondary school on a consistent basis and making progress towards attaining a high school diploma.

#### Homework/study time

In addition to supervised homework/study time, the Final TANF rule at 45 CFR § 261.60(e) provides states with additional flexibility to count the time a recipient studies for an education or training activity. Specifically, the Final TANF rule permits states to count, toward federal work participation requirements, up to one hour of unsupervised homework/study time associated with an allowable educational activity for each hour of class time, provided that the total number of hours of supervised and unsupervised homework/study time reported towards the federal participation rate does not exceed the documented number of hours of study expected by the education program. A document from the educational program must be obtained to document the number of hours of homework/study time it expects as necessary for program participants. The interim Final TANF rule did not permit any unsupervised homework/study time to count toward hours of participation.

Example: An educational provider documents that 20 hours of homework/study time is necessary for an individual participating in 15 hours of vocational education training per week. The hours of participation reported toward the participation rate may include the actual class time (up to 15 hours in this example), up to 15 hours of unsupervised homework/study time, and up to an additional 5 hours of supervised homework/study for a total of 35 hours of participation in vocational education training for the week. The class time and the supervised homework/study time reported towards the participation rate must be supported by documentation that is maintained by the district or educational provider, based on the district's procedure.

Districts are encouraged to review current policies regarding permissible homework/study time and to establish policies that support educational advancement that also comply with federal work participation requirements.

### Travel time

The Final TANF rule continues to exclude travel (commuting) time to and from work activities from the hours of participation that may be reported towards the participation rate. However, hours of participation in job search activities may include travel time between job interviews, but not the time associated with travel from home to the first employer or from the last employer to home. Such travel time between employers should be documented and reported as part of the hours that the individual is actually participating in job search activities.

## **2. Hours of Participation in Paid Employment, Including Paid On-The-Job Training**

The Final TANF rule permits hours of paid employment including unsubsidized or subsidized employment and paid On-the-Job Training (OJT) positions to be based on current documentation and projected forward, but for no more than six months, and with updates provided whenever a change in the number of hours worked is reported. Hours of employment reported to OTDA, whether unsubsidized, subsidized or on-the-job training must be consistent with documentation received and documentation of the hours of work must be maintained by the district. In determining the amount of average income or hours of work, the hours should generally be based on an average of verified income and hours reported for the preceding four weeks, if available, and adjusted for other known and verified information demonstrating that one or more of those proceeding weeks was unusual or to reflect changes expected to continue.

As described in 07 LCM-15, DHHS has approved New York's request for additional flexibility regarding documentation of the four paid work activities (unsubsidized employment, subsidized private sector employment, subsidized public sector employment and On-The-Job Training (OJT)). DHHS has approved the reporting of hours of paid employment based on a client's self-attestation of job entry for up to four weeks in certain circumstances. Self-attestation of hours of employment at job entry is acceptable in those instances in which the employer does not cooperate with efforts to obtain documentation or prior to the time that the client has routine employer documentation, such as a pay stub to verify hours of paid employment and the district has concluded that requesting such documentation would jeopardize the job entry or future job entries by other temporary assistance clients. In these instances, districts would review the information provided by the client to determine whether the individual's reported wages and hours of employment appear reasonable. Reported hours that do not appear reasonable based on the wages should not be reported (e.g., when the reported hours and wages demonstrate

compensation at less than minimum wage). In all instances, districts must obtain verification, such as pay stubs or other documentation, no later than four weeks following the job entry. Verification of the number of hours of work may also be obtained through the hours reported by the employer through the Work Number.

In those instances where the employer verification suggests that the individual is not working the number of hours previously reported, the district needs to verify that the change in the number of hours of paid employment will continue and prospectively adjust the hours of paid employment in a timely manner based upon the current documentation. If the change in hours of paid employment is not expected to continue (temporary change) then this information should be documented in the file, but an adjustment to the number of hours of paid employment entered on WTCMS or budgeted on ABEL (Automated Budgeting and Eligibility Logic) would not be necessary for the balance of the six month period or until a change in the number of hours of paid employment that the individual is working is reported, whichever occurs first.

Consistent with current policy, the State participation rate reporting logic will use hours of work based upon either the ABEL or WTCMS entries, whichever is most recent, as determined by the “from date” of the temporary assistance budget or WTCMS schedule. Hours of paid employment for recipients in New York City will be based on the information verified and reported by the Human Resources Administration (HRA) including information entered on NYCWAY or other systems used by HRA.

### **3. Self-Employment**

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 certain allowable (as described in 95 INF-33) business expenses (this is the amount counted as temporary assistance gross income before earned disregards in the ABEL budget) 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. Alternate documentation may include statements from individuals for whom the self-employed individual provides services, and time records used to document child care payments to those serving as child care providers.

#### 4. **Holiday Time**

In addition to actual hours of participation, the Final TANF rule permits countable hours of participation in work activities to include hours of participation that are scheduled, but did not occur due to the observance of a holiday. However, the Final TANF rule limits holiday time which may be countable towards the participation rate to no more than **ten** (10) days per year and requires states to designate in the Work Verification Plan which days will be counted as holidays. OTDA has opted to use the following federal holidays as those days for which participation in countable work activities was missed, but may be reported as holiday time towards the federal participation rate: New Year's Day, Martin Luther King Jr. Day, Washington's Birthday (Presidents' Day), Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day and Christmas Day. Only when a participant was scheduled and expected to participate on one of these days, and did not participate due to the worksite/provider being closed due to the holiday may the scheduled hours be reported as holiday time.

Additional hours or days beyond the designated holidays which are missed due to the site being closed due to the holiday, would continue to constitute good cause for nonparticipation. These hours cannot be reported as actual or holiday hours, but may be reported as excused absence, subject to the federal limits described below. In this instance, the hours of participation missed would be reported as a countable excused absence and not holiday time. Hours which are scheduled, but missed due to an observed holiday **and excused absence which exceed federal limits do not count towards the** federal participation rate, but may be reported on the WTWCMS as not countable excused absence.

#### 5. **Excused Absences**

The prior regulatory limit for excused absence(s) which may be reported towards the federal participation rate continues to apply, but effective **October 1, 2008**, the Final TANF rule converts the ten-day limit (not more than two days monthly) to an hourly limitation of up to 80 hours in the preceding twelve-month period, with no more than 16 hours in any month. Therefore, 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 as described above and up to 80 hours of excused absence from a countable work activity during any 12-month period, but no more than 16 hours of excused absence during any month. These hours would all be reported and subsequently counted as actual hours of

participation reported via the WTCMS or NYC Work, Accountability and You (NYCWAY) System.

Districts must grant hours of excused absence in those instances where the district determines that the individual's conduct was not willful and/or the district determines that the individual had good cause for not complying with the assigned work activity consistent with OTDA regulations (18 NYCRR §385.11, 385.12 and 385.13). 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. A notation or other documentation to explain the reason that the hours of participation were missed due to good cause must be entered in the participant file or otherwise maintained by the provider for all hour(s) of excused absence(s) reported towards the federal work participation rate. 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. Furthermore, excused absences that exceed the federal limits noted above cannot be reported as actual countable hours of participation, but may be reported on the WTCMS as not countable excused absence.

## **6. Deeming Hours of Participation in Work Experience**

An individual who is participating in work experience for the number of hours derived by dividing the household's temporary assistance and food stamp allotment by the higher of the federal or State minimum wage will be deemed as meeting the 20 hour core work requirement, even when the result of such calculation is fewer than 20 hours.

The WTCMS will continue to display an estimate of the maximum number of hours that an individual may be assigned to work experience based on the most recently stored public assistance and food stamp budgets stored on Automated Budgeting and Eligibility Logic (ABEL), but the determination of whether the case is eligible to be deemed as meeting the "core" work requirement based on actual participation in work experience will be made by the State participation rate reporting logic. Specifically, the State participation rate reporting logic was modified effective October 1, 2006, to deem a case as meeting the 20-hour "core" work requirement in those instances in which the average weekly actual hours in work experience reported (including holiday time and excused absences as described in this ADM) are equal to the number of hours

derived by dividing the household's temporary assistance deficit amount (from the temporary assistance budget) and food stamp allotment amount for the respective month by the higher of the federal or State minimum wage, then divided by 4.333 and rounded down to the nearest whole number to calculate the number of required hours weekly. In those instances where the household is deemed to be meeting the 20-hour "core" work requirement based on participation in work experience, the participant would also need to participate in additional countable work activities for a minimum of 10 hours weekly, if the household is required to meet the 30-hour participation requirement. True single parent families with a child under 6 years of age would be countable based on the deemed 20 hours of participation in work experience.

The State and Federal participation reporting logic will not deem hours of participation in community service which are equal to the calculation of the household's temporary assistance deficit amount plus food stamp allotment amount divided by the higher of the State or federal minimum wage because as defined in Attachment A, community service assignments are generally voluntary in nature. Nonetheless, individuals cannot be mandated to perform community service for more hours than the number derived by the grant calculation described above. Furthermore, individuals who agree to participate in a community service activity, but do not comply with a voluntary community service assignment, cannot be sanctioned, but should be reevaluated and assigned to work activities consistent with the individual's employment assessment and employability plan.

## **7. Distance Learning**

Distance learning is a method of providing formal learning where students and instructors are separated by geography, time or both during the instructional period.

For all educational or job skills work activities, countable hours of participation may include up to ten hours weekly through a distance learning model. For hours of participation to be reported towards the federal participation rate, the educational or job skills work activity must meet the federal definition for the respective work activity and all hours or participation via distance learning participation must be documented by on-line participation or completion of instructional learning packets or workbooks. The district is responsible for verifying and documenting these actual hours of participation and must ensure that such activities are supervised. Mechanisms for verifying and documenting actual hours of supervised participation may include on-line tracking of time participating in the educational activity, combined with intermittent review of work assigned to and completed by the student or reasonable approximations of

the time required to complete work packets as determined by the education provider and approved by the social services district. Detailed records of the instruction provided, dates when student packets were sent out and received, performance on the assigned work as well as the assignments completed by all students on the roster must be maintained.

Any distance learning component must be supported by face-to-face instructional support, unless otherwise approved by OTDA. Districts should discuss situations which do not include face-to-face instructional support with their Employment Technical Advisor and will need to submit a description of the component including the instructional support provided to OTDA for review and approval.

Educational activities may be provided solely through distance learning instruction in those instances where the participant is determined by the district to be unable to participate in traditional classroom instruction because of a medical or mental health condition or other factors, such as the recommended training is not available locally or the individual is employed 20 or more hours weekly. Distance learning is not generally appropriate for job readiness training assistance activities, such as development of appropriate workplace behaviors, given that such individuals who require such interventions would most benefit from more intensive and directed instruction. In all instances, districts are expected to ensure that progress with the educational or job skills activity is being achieved by the distance learning participant and districts must reevaluate the appropriateness of the assignment when expected levels of progress are not made.

Hours of participation in allowable educational activities, including those which are provided through distance learning, may include supervised homework/study time and up to one hour of unsupervised homework/study time for each hour of instructional support, provided that the number of hours of supervised and unsupervised homework/study time reported towards the federal participation rate does not exceed the documented number of hours expected by the education program. Unsupervised participation in educational activities, homework/study time or study time which exceeds the federal limit cannot be reported as participation. However, monitored study sessions that are an integral component of the educational activity and are within the homework/study time expected by the educational provider may be reported as participation under the respective educational work activity and documentation of actual hours must be maintained by the district or if participation is reported directly by the provider.

## **D. Documentation of Participation**

The Final TANF rule requires that documentation be maintained to support the hours of participation reported towards the federal work participation rate. Failure to maintain adequate documentation to support the hours of participation reported towards the federal participation rate may result in a determination by DHHS that New York is not in compliance with the Work Verification Plan and subject the State and districts to a federal fiscal penalty.

### **1. Acceptable Documentation**

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 or the district, whichever is the appropriate part in each respective district to verify attendance. At a minimum, monthly attendance records should include:

- The participant's name;
- The actual hours of participation for each activity for each day of participation;
- The number of hours missed due to holiday time observed by the worksite;
- The number of hours granted as excused absence;
- The total number of hours of participation for each activity; and
- The name and contact information of the person verifying the hours of participation.

Districts must obtain attendance sheets or other documentation to support the actual hours of participation in unpaid work activities, holiday time and hours of excused absence reported towards the federal participation rate no less than monthly. The following description is an example of one approach that districts may choose to verify actual hours of participation in any unpaid work activity:

- The district must obtain an upfront schedule for each participant that indicates the days and hours of participation expected each

week during the month, including any days that the individual will be scheduled, but is expected to miss because of an observed holiday. Obtaining the individual's schedule is important not only for collecting attendance information pertaining to the individual's participation in countable work activities, but also to support efforts to coordinate participation in other work activities or other client activities.

- Districts must obtain confirmation from the worksite in writing (or electronic submission) no less frequently than monthly indicating whether or not the participant attended as scheduled. The information submitted must include the name of the worksite, the name of the assigned work activity, the name and contact information of the individual responsible for verifying attendance and the participant's name.
- In all instances, separate reporting of attendance is required for separate activities. For example, if an individual is participating in both adult basic education and work experience, the hours of participation must be obtained by the district for each activity so they may be reported separately.

Districts are encouraged to require providers to report specific hours attended and hours not attended, as opposed to confirmation of a pre-determined schedule. Actual hours attending and not attending is encouraged as the information will permit reporting of partial hours of participation and the ability to assess whether or not intervention is warranted to support ongoing participation and make other decisions. For example, in those instances where the provider determines, based on the district's guidance, that the individual had good cause for the hours of participation not attended, the district could report such hours of participation as excused absence, which may be countable hours, if within federal limitations.

If the district does not have the provider report hourly participation and it obtains information that the individual did not attend as scheduled, the district would need to begin the conciliation process, as described in 18 NYCRR §385.11 and/or contact the client. Immediate contact is recommended to secure ongoing engagement.

Districts will need to obtain information from the provider of holidays the provider is not open/operating and other breaks that will preclude participation by the participant. Districts are encouraged to arrange for alternate enrollments during these periods to support achievement of federal work participation requirements. In some instances, the

acceptance of weekly hours as study time, subject to federal requirements, could mitigate the need for alternate hourly enrollments.

All hours of participation (actual for unpaid work activities, actual prospective for paid employment, including OJT) should be entered into the WTCMS (NYCWAY for NYC) no later than the 15<sup>th</sup> of the month following the report month and documentation must be maintained as discussed below.

## **2. Record Retention Requirements**

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 by alternate means that permits the district to locate the attendance record for any individual reported as participating. If attendance information is entered by the provider directly on to the WTCMS or NYCWAY, documentation must be maintained as part of the provider's records. Documentation of all hours of participation must be maintained by the district for no less than six years from the date the information is submitted to the State.

## **3. Internal Control Requirements**

Districts were previously informed of the requirement to establish internal controls to ensure that hours of participation are consistent with federal and state requirements, and accurately reported. For example, districts were required, as part of the biennial local temporary assistance and food stamp employment plan (see 07 LCM-13), to describe:

- The process that will be used to identify “work-eligible individuals”;
- The procedures that will be used to document and report hours of participation; and
- The mechanism that will be used to ensure the hours of participation are countable and accurately reported under the reported work activity.

## **V. Required Action**

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:

**A. Work-Eligible Individuals**

**1. Caretaker of a Disabled Child or Other Disabled Family Member Living in Household**

As noted above, only **parents** who are needed at home full-time to care for a disabled family member who is living in the home may be excluded from the definition of “work-eligible individual.” Districts must review all cases which include an individual who has been assigned an employability code of “38” at the next client contact or recertification, whichever occurs first, and adjust the individual’s employability code based on the requirements outlined in this ADM. Parents who are determined to be needed at home full-time, based on medical documentation, to care for a disabled family member who is living in the household should continue to be coded “38.”

Non-parent caretakers who are determined by the district to be needed at home to care for a disabled family member who is living in the household continue to be exempt from public assistance work requirements under State rules, but are not excluded as a “work-eligible individual” and therefore cannot be assigned an employability code of “38.” Such non-parent caretakers would generally be assigned an employability code of “58”, unless the district determines that another employability code is more appropriate. Districts must continue to ensure that documentation is maintained to support the determination that the parent/non-parent is needed at home full-time to care for a disabled family member living in the home.

**2. Parents receiving SSDI**

Districts will need to review temporary assistance cases which include an active adult who is receiving SSDI at the next client contact or recertification, whichever occurs first, and should assign an employability code of “54” to parents who are receiving SSDI.

Non-parent caretakers receiving SSDI, should be assigned an employability code of “36”, unless the district determines that another employability code (other than “54”) would be more appropriate.

Districts must also ensure that the relationship, employability and individual disposition status codes are entered correctly on to the Welfare Management System (WMS) for all individuals to ensure that the State participation rate reporting logic accurately identifies those individuals who are “work-eligible” and when a case may be properly excluded from the work participation rate denominator. For example, a non-citizen who

is ineligible to receive assistance due to his or her immigration status and whose children are receiving assistance should be coded, on screen five of WMS, with an individual disposition status code of “08-Inactive-Excess Restricted Income/Non-Applying HH Member (PA Only).” Please note that the definition for individual disposition status code “08” will be changed in October 2008 to “08-Inactive/Non-Applying Ineligible Household Member.”

**B. Federal Definitions for Countable Work Activities**

The work activity definitions in Attachment A are effective October 1, 2008, for all households with dependent children. Districts must ensure that each WTCMS enrollment (New York City must review NYCWAY enrollments) for each temporary assistance applicant and recipient in households with dependent children are consistent with the work activity definitions in Attachment A for all participation reported on or after October 1, 2008.

**C. Countable Hours of Participation**

Districts should assign temporary assistance applicants and recipients to appropriate work activities not to exceed 40 hours per week. In all instances, the hourly limitations on work experience must be adhered to and as well as instances when an individual has a medical condition which limits the number of hours he/she is able to participate in work activities. Hours of participation in work activities must meet the following requirements.

**1. Work Activities other than Paid Employment**

Districts must ensure that assigned work activities and all WTCMS entries, including hours of participation (New York City must ensure that work activities and all NYCWAY entries, including hours of participation) for temporary assistance recipients with dependent children are consistent with the work activity definitions included in Attachment A. Documentation to support the hours of participation reported by the district must be maintained either as part of the case record or by alternate means that permits the district to locate the attendance record for any individual reported as participating. If attendance information is entered by the provider directly on to the WTCMS or NYCWAY, documentation must be maintained 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.
- Hours of participation in job search may include travel time between employers, but not the time associated with travel from home to the first employer or from the last employer to home.

- Hours of participation in unpaid internships that are part of a non-graduate student's curriculum (if the internship is approved by the district according to section 3.6(e) of the district's bi-annual Employment Plan), regardless of whether the non-graduate education program is approved, are reported as work experience.
- No more than one hour of unsupervised homework/study time for each hour of class time may be reported towards the federal participation rate. Additionally, the total hours of supervised and unsupervised homework/study time reported towards the participation rate cannot exceed the number of hours expected by the education provider. In such instances, the district must ensure that documentation from the educational provider to verify the number of hours of homework/study time expected is maintained as part of the district or provider's documentation.
- Federal regulations permit participation in substance abuse treatment or other treatment to be reported as Job Readiness Training Assistance. Districts were previously advised those 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 Other than Substance Abuse", respectively. On September 18, 2006, OTDA issued guidance on the specific WTWCMS changes that districts need to make to modify offerings and report hours of participation related to "Treatment Plan for Substance Abuse" or "Treatment Plan Other than Substance Abuse" if they have been reporting individuals in "Treatment Plan for Substance Abuse" or "Treatment Plan Other than Substance Abuse" as a component of Community Service.

The State participation rate reporting logic was modified effective October 1, 2006, to deem the actual hours of participation in "Treatment Plan for Substance Abuse" or "Treatment Plan Other than Substance Abuse" as job readiness training assistance and track such participation toward the federal work participation rate, subject to the federal limit on job search/job readiness training assistance activities. Districts may not remove from treatment individuals who require substance abuse treatment beyond the federal limit permitted for participation rate calculation purposes and should continue to report such enrollments. However, these enrollments will not cause the individual to count in the work participation numerator beyond the federal 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 WTWCMS no later than the 15<sup>th</sup> of the month following the report month. NYC will continue to use NYCWAY and other local systems to collect and record hours of participation in countable work activities.

## **2. Documentation and Reporting of Hours in Paid Employment**

For unsubsidized or subsidized employment and paid OJT, districts should project actual hours of employment for up to six months based on the verified number of hours available when the employment is documented. Districts must ensure that hours of paid employment that are based on a client's self-attestation at job entry are reasonable and do not exceed four weeks. In all instances, districts must obtain verification no later than four weeks following the job entry. Verification may include pay stubs or other documentation, such as the number of hours reported by the employer through the Work Number.

After the four weeks that may be reported based on self-attestation, the hours of paid employment should generally be based on an average of verified hours reported for the preceding four weeks, if available, and adjusted for other known and verified information demonstrating that one or more of those preceding weeks was unusual, or to reflect verified changes. Districts should not wait until the individual has worked for four weeks before entering employment information onto the WTWCMS or NYCWAY. Information should be entered as soon as possible after documentation to verify the projected actual hours of employment (e.g., employer statement) is received by the district. If fewer than four weeks of documented hours of work is available, districts may use as few as one week's worth of documented hours of work to project hours of paid employment for up to six months. In all instances when a change is reported, hours of work must be acted upon in a timely manner as described below.

Districts are required to reevaluate the number of hours of work whenever a change is reported. If a change in the number of hours of paid employment is reported and is expected to continue, it must be acted upon to adjust the hours of work from the date the change was reported and projected, based on the documentation available, no later than two weeks from the date the information was provided. The adjusted hours of work may be reported prospectively for up to six months or until another change is reported, which must be acted upon no later than two weeks, as noted above.

Districts should ensure that local procedures for district workers and providers are consistent with these requirements, and that mechanisms are in place for timely information sharing between temporary assistance and employment staff, in districts with separation of those duties. Districts should also confirm that hours of employment, whether subsidized, unsubsidized or paid OJT, which are reported to OTDA as of October 1, 2006, are consistent with documentation received from the employer and that documentation is maintained by the district.

### **3. Self-Employment**

Absent other documentation of the hours of employment for self-employed individuals, districts should calculate the number of hours of work for a self-employed individual by dividing the individual's net income after subtracting certain allowable (as described in 95 INF-33) business expenses (this is the amount counted as TA gross income before earned disregards in the ABEL budget) 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. Alternate documentation may include statements from individuals for whom the self-employed individual provides services and time records used to document child care payments for those serving as child care providers.

### **4. Holiday Time**

Districts should report scheduled hours of participation in countable work activities which are missed due to one of the holidays designated on page 12 in Section 2.IV of this ADM as hours of participation in the field labeled "holiday time" on the schedule input screen on WTWCMS (NYC needs to ensure that holiday time is reported separately from actual hours of participation consistent with the information outlined in this ADM). Districts are further advised that documentation to verify the hours of participation must identify the number of hours and days that were designated as holiday time for each activity.

### **5. Excused Absences**

Districts must review attendance policies for work activities other than unsubsidized or subsidized employment and OJT to ensure that mechanisms are in place for identifying and reporting excused absences from work activities in a timely manner.

Districts must track and report hours of excused absences separately from actual hours of participation and holiday time. WTWCMS will be modified, effective October 21, 2008, to ensure that hours of excused absence(s) that are reported towards the participation rate do not exceed 80 hours in the preceding 12-month period, and no more than 16 hours in any month, as described above. NYC needs to ensure that hours of excused absence are reported separately from actual hours of participation consistent with the information outlined in this ADM. Excused absences above the federal limit should be reported on WTWCMS in the not countable excused absence field. Unexcused absences should continue to

be reported on WTCMS in the unexcused absence field. Excused absences above the federal limit and unexcused absences never count toward the work participation rate calculation.

## **6. Deeming Participation in Work Experience**

Individuals who are participating in work experience for the number of hours derived by dividing the household temporary assistance grant including food stamp benefits by the higher of the federal or State minimum wage will be deemed as meeting the “core” work requirement, even if the average weekly actual hours in work experience are less than 20 hours per week. Districts should enter the actual hours of work experience and the reporting system will deem the additional hours, if any, to equal the 20 hour core requirement. Districts should assign individuals in such cases to additional countable work activities for a minimum of 10 hours weekly, if the household is required to meet the 30-hour participation requirement in order to count towards the federal participation rate.

### **D. Documentation of Participation**

Districts must review local procedures to ensure that documentation to support the hours of participation is collected and entered onto the WTCMS or NYCWAY, as appropriate and in a timely manner. Districts must also ensure that documentation to verify all hours of participation is maintained by the district, or if entered by the provider as part of the provider’s records, for no less than six years from the date the information is submitted to the State. For example, districts must ensure that time sheets which support the number of hours of participation in unpaid work activities or paystubs that document the number of hours of paid employment are maintained by the district, or if entered by the provider, as part of the provider’s records as described above. Districts are responsible for ensuring that data entered by district staff and providers is accurate and reported in a timely manner.

## **VI. Systems Implications**

In addition to the local implementation workgroup mentioned above, OTDA has also established an interagency workgroup to identify changes which must be made to the WTCMS and the State participation rate reporting logic to ensure that data reported to the DHHS is consistent with federal reporting requirements and the Final TANF rule. For example:

- The State participation rate reporting logic has been changed 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. Additionally, NYCWAY must only report actual documented hours of participation effective with the participation occurring on or after October 1, 2006.

- The State participation rate reporting logic has been modified effective October 1, 2006, to compare the maximum number of hours that an individual can be assigned to work experience. This is derived by dividing the household's temporary assistance deficit amount (from the public assistance budget) plus the food stamp allotment amount by the higher of the federal or State minimum wage, divided by 4.333 and rounded down to the nearest whole number to the average weekly actual hours in work experience reported via WTCMS. The State reporting logic will deem a case as meeting the 20-hour core work requirement in those instances in which the average weekly actual hours of participation (including holiday time and countable excused absence which are consistent with this ADM) in work experience reported for the month are equal to the number of hours in work experience supported by the calculation described above, even if the hours are less than 20.
- The WTCMS has been modified to remove the field for study time effective December 1, 2006. As of October 2007, entry of holiday leave has been limited to the ten State designated holidays. Additionally, the WTCMS has been modified to record and track excused absences which are subject to the federal limits and those hours of excused absence which exceed the federal limits. The change to track excused absences from the daily calculation of excused absences that was implemented as part of the Interim Final TANF rule in October 2007, to an hourly calculation of excused absences will be implemented in October 2008.
- New employability codes of "54" and "58" are being added to WMS, and the definition for employability code "38" and "40" will be redefined consistent with federal requirements. These changes should be completed on or about October 20, 2008. Individuals with employability code "54" will be included as a disabled individual in the logic that determines that otherwise two-parent household is considered, for participation purposes to be a single parent household.
- The adjustment to track hours of participation in job search and/or job readiness training assistance activities in accordance with the federal limits of no more than 120 hours for single parent households with a child under the age of six/180 hours for households without a child under the age of six in the preceding twelve month period is scheduled to follow the WTCMS conversion to .NET and is expected to be completed in the first quarter of 2010. Hours of participation in job search/job readiness training assistance will continue to be tracked against the six week limit per federal fiscal year with no more than four consecutive weeks until this change has been completed. Districts will be advised when this change has been completed.

## **VII. Other Considerations**

OTDA is in the process of updating State regulations, employment policy, and other information in the Temporary Assistance and Food Stamp Employment Manual

consistent with the Final TANF regulations. For example, OTDA is updating the Work Activities Countability Desk Guides (LDSS-4923 for TANF and SN MOE Families and LDSS-4924 for SN Non-MOE).

Districts will be advised separately as soon as the updates identified above have been completed.

### **VIII. Effective Date**

October 1, 2008, unless otherwise specified.

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#### **Issued By**

**Name:** Russell Sykes

**Title:** Deputy Commissioner

**Division/Office:** Center for Employment and Economic Supports