

Summary of Policy Guidance

Prohibition Against Discrimination on the Basis of Disability in the Administration of TANF (Temporary Assistance for Needy Families) Department of Health and Human Services Office for Civil Rights

The United States Department of Health and Human Services (HHS) is issuing policy guidance on the prohibition of discrimination on the basis of disability in Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 in the administration of TANF programs.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) created Temporary Assistance for Needy Families (TANF), and repealed the Aid to Families with Dependent Children Program (AFDC), the Job Opportunities and Basic Skills Training program (JOBS) and the Emergency Assistance program (EA). Both the Americans with Disabilities Act of 1990 (ADA) and the Rehabilitation Act of 1973 apply to TANF programs. See 42 U.S.C. § 608(c) (Federal TANF statute reiterating ADA/Section 504 application to TANF programs). Title II of the ADA provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity. 42 U.S.C. § 12131. Section 504 of the Rehabilitation Act of 1973 prohibits the same discrimination by entities that receive Federal financial assistance. 29 U.S.C. § 794.

On August 27, 1999, the HHS Office for Civil Rights (OCR) issued two-part guidance on civil rights laws and welfare reform.¹ These materials explain how Federal civil rights laws apply to certain aspects of welfare reform. The purpose of the present guidance is to respond to a myriad of additional questions that have been raised by State agencies, counties, service providers, and persons with disabilities regarding the obligations to adopt methods for administering welfare programs to ensure equal opportunity for persons with disabilities in all aspects of a TANF program, including applications, assessments, work program activities, sanctions, and time limits. The guidance also is necessary because the Department has indicated that States may be subject to penalties if audits show that they "over-sanction," i.e., impose sanctions on individuals when sanctions are inappropriate.²

This policy guidance clarifies the obligations Title II of the ADA and Section 504 impose on State and local government entities, and on recipients of Federal financial assistance from HHS involved in TANF activities, in fulfilling their responsibilities pursuant to Title II of the ADA and Section 504 of the Rehabilitation Act.³ Specifically, this guidance identifies essential requirements of an ADA-504 compliant TANF program that the Office for Civil Rights will

¹ *"Civil Rights Laws and Welfare Reform—Overview"* and *"Technical Assistance for Caseworkers on Civil Rights Law and Welfare Reform,"* Office for Civil Rights, U.S. Department of Health and Human Services, August 1999, www.hhs.gov/progorg/ocr/ocrtanfpr.htm.

² 64 FR 17793 (April 12, 1999).

³ For ease of reference and readability, in this guidance we use the term "TANF agency" to mean both "covered entities" as defined by Section 504 (including any State or local agency, private institution or organization, or any public or private entity that (1) operates, provides or engages in health or social service programs and activities and that (2) receives federal financial assistance from HHS directly or through another recipient/covered entity), and State and local governmental entities covered by Title II of the ADA.

apply in its compliance reviews and/or investigations of complaints of discrimination on the basis of disability in TANF programs. These requirements are not new; rather, they reiterate ADA Title II and Section 504 principles that OCR has been enforcing for many years.

The guidance also sets out "promising practices" – policies, procedures and other recommended steps that recipients and covered entities can take to ensure meaningful access to TANF programs by people with disabilities. These "promising practice" provisions are not mandatory requirements; they are one way for a TANF agency (as noted in footnote 3, this guidance uses the term "TANF agency" to refer to all covered entities under Section 504 and State and local governmental entities under Title II of the ADA) to meet obligations to ensure equal access through the provision of appropriate services, modify policies, practices and procedures to provide such access, unless doing so would result in a fundamental alteration to the program, and to adopt non-discriminatory methods of administration. Descriptions of possible approaches that comply with Section 504 and the ADA in this guidance should not be construed to preclude States from devising alternative approaches to meet these legal requirements.

OCR has provided substantial technical assistance for more than 20 years to recipients and covered entities seeking to ensure that people with disabilities can meaningfully access social service programs. This guidance applies that experience to the relatively new challenges presented in the complex context of administering TANF programs, and is consistent with OCR's commitment to seeking voluntary compliance by recipients and covered entities and its commitment to providing technical assistance. OCR will continue to be available to provide such assistance.

Policy Guidance
Prohibition Against Discrimination on the Basis of Disability
in the Administration of TANF (Temporary Assistance for Needy Families)

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Policy Guidance

Prohibition Against Discrimination on the Basis of Disability in the Administration of TANF (Temporary Assistance for Needy Families)

A. BACKGROUND

1. Legislative and Regulatory Framework

On August 22, 1996, President Clinton signed into law the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).⁴ This legislation repealed the Aid to Families with Dependent Children program (AFDC), the Job Opportunities and Basic Skills Training program (JOBS) and the Emergency Assistance program (EA) and created Temporary Assistance for Needy Families (TANF).

PRWORA requires that programs established with TANF funds serve one of four purposes, to:

- (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
- (4) encourage the formation and maintenance of two-parent families.⁵

⁴ P.L. 104-193. This legislation is codified at 42 U.S.C. §601 et seq. Regulations implementing the legislation may be found in 45 C.F.R. Parts 260-265.

⁵ Section 401 of TANF (42 U.S.C. §601); 45 C.F.R. §260.20. While this guidance focuses largely on the first and second purposes of TANF, the information in the guidance also applies to the third and fourth purposes.

Under TANF, States have flexibility in how they respond to individual family needs. In return, States are expected to move towards a strategy that provides appropriate services for needy families.⁶

PRWORA also specifies, among other things, that Section 504 of the Rehabilitation Act (Section 504) and the Americans with Disabilities Act (ADA) apply to any program or activity that receives Federal TANF funds.⁷ Title II of the ADA also applies to the programs and activities of all State and local government entities. Title II and Section 504 require State and local government entities and HHS Federal fund recipients to ensure equal access through the provision of appropriate services, to modify policies, practices and procedures to provide such access unless these modifications would fundamentally alter the nature of the service, program, or activity, and to adopt non-discriminatory methods of administration. The inclusion of these civil rights protections ensures equal opportunity for persons with disabilities to benefit from all aspects of welfare reform, including access to the proper support services to enable such individuals to work and to keep their families healthy, safe and intact.⁸

⁶ 64 FR 17722 (April 12, 1999).

⁷ Section 408(d) of TANF, 42 U.S.C. §608(d); 45 C.F.R. § 260.35.

⁸ Presidential Task Force on Employment of Adults with Disabilities, "*Re-charting the Course: First Report of the Presidential Task Force on Employment of Adults with Disabilities*" at Appendix-17 (November 15, 1998), www.dol.gov/sec/public/programs/ptfead/rechart.htm, (hereafter "*Re-charting the Course*"). The Task Force was established pursuant to Executive Order 13078 (March 13, 1998). Other statutory requirements affecting the civil rights of beneficiaries with disabilities in the context of welfare to work may also apply. *See, e.g.*, Section 188 of the Workforce Investment Act of 1998 (WIA), 29 U.S.C. § 2938, and its implementing regulations at 29 C.F.R. Part 37. These provisions bar discrimination on various grounds, including disability, in programs and activities that are operated by One-Stop partners and are part of the One-Stop Center delivery system established by the WIA, even if the programs are not physically located within a One-Stop Center. *See* 29 C.F.R. §§ 37.2(a)(2), 37.4 (definition of "recipient"). If States opt to include their TANF programs as part of their One- Stop systems,

2. The Challenges

Notwithstanding gains in work for many TANF clients, other families with multiple barriers to work are at risk of losing benefits before obtaining employment or of being unable to benefit from TANF job training, education and other programs. Some former welfare beneficiaries have succeeded in moving to work despite extraordinary obstacles. However, others, due to known or unrecognized disabilities, need additional training, accommodations, and support services to prepare for or succeed at work.

According to a recent report by the Presidential Task Force on Employment of Adults with Disabilities, studies show that as much as 40 percent of the adult welfare population may have learning disabilities. The studies also found that up to 28 percent of welfare beneficiaries have mental health conditions.⁹ A significant number of these beneficiaries also have physical disabilities, while some have multiple impairments or face multiple barriers to work.¹⁰

Reports of the Presidential Task Force on Employment of Adults with Disabilities point to a multitude of employment barriers faced by persons with disabilities, including inadequate work opportunities resulting from discrimination and inadequate education and job skills, as well

their programs may be subject to the jurisdiction of the Department of Labor's Civil Rights Center.

⁹ Id.

¹⁰ Eileen P. Sweeney, *Recent Studies Indicate that Many Parents Who are Current or Former Welfare Recipients Have Disabilities or Other Medical Conditions*, Center on Budget and Policy Priorities, February 2000, www.cbpp.org/2-29-00wel.htm. Of course, not every person with such disorders or conditions is covered by the ADA or Section 504. Individuals are protected by these statutes when their physical or mental condition substantially interferes with a major life activity. See discussion of legal definition of disability in Part C, infra.

as lack of access to health insurance. The complexity of existing work incentives and lack of benefits counseling also raise significant employment hurdles for people with disabilities.¹¹

3. State Activities

In the course of its enforcement activities, OCR has found that States vary significantly in the extent to which they have planned and implemented policies, practices, and procedures to identify barriers to employment for people with disabilities and provide necessary supports and services. Many States have undertaken substantial efforts to address the needs of individuals with disabilities, especially for individuals with learning disabilities. Other States, however, have no systems established for assessing the needs of people with disabilities or for ensuring access to programs or services of their TANF programs. In still others, although States have made significant efforts to design TANF policies, practices and procedures promising equal opportunity for individuals with disabilities, TANF agency personnel lack adequate training and educational or training programs identified as necessary for beneficiaries are not available.

For some public entities, TANF policies relating to individuals with disabilities consist only of exemption from TANF requirements. This practice, however, denies individuals with disabilities access to TANF services and results in discriminatory exclusion of many individuals

¹¹ "Re-charting the Course" at page 5; Presidential Task Force on Adults with Disabilities, *Re-charting the Course: If Not Now, When? The Second Report of the Presidential Task Force on Adults with Disabilities*, at 1, (Nov. 15, 1999), www.dol.gov/dol/_sec/public/programs/ptfead/ifnotnow.htm. Other barriers include the lack of adequate care for a child with a disability and inaccessible or non-existent transportation. See, e.g., Timmons, Jaimie Ciulla, Susan Foley, Jean Whitney-Thompson and Joseph Green, *Negotiating the Landscape: The Path to Employment for Individuals with Disabilities in the TANF System*, Institute for Community Inclusion/UAP Research and Training Center on Promoting Employment, Children's Hospital, at 27-28 (March 1999), www.childrenshospital.org/ici.

with disabilities from the program.¹² The Federal TANF statute is founded on the public policy that individuals formerly on welfare will be better off if provided with job and/or training opportunities rather than continued public assistance. This same policy should be applied, where appropriate, to those formerly eligible for public assistance who have disabilities, but who can work if provided with modified training or accommodated job opportunities. Applying and implementing this policy may require modification of agency procedures, policies and practices to allow people with disabilities to benefit from the employment and training opportunities offered to others.

4. OCR Guidance

On August 27, 1999, the HHS Office for Civil Rights (OCR) issued two-part guidance explaining how Federal civil rights laws apply to certain aspects of welfare reform on civil rights laws and welfare reform.¹³ The purpose of the present guidance is to respond to additional questions that have been raised by State agencies, counties, service providers, and persons with disabilities regarding the obligations to adopt methods for administering the TANF program to ensure equal opportunity for persons with disabilities in all aspects of the program, including applications, assessments, work program modifications, sanctions, and time limits.

¹² See, e.g. "*Civil Rights Laws and Welfare Reform—An Overview*" and "*Technical Assistance for Caseworkers on Civil Rights Law and Welfare Reform*," Office for Civil Rights, U.S. Department of Health and Human Services, August 1999, www.hhs.gov/progorg/ocr/ocrtanfpr.htm (stating that although individuals with disabilities may be eligible under some State programs for exemptions from work requirements and time limits, program providers may not refuse to allow a person with a disability to participate in training programs or be employed because the person has a disability).

¹³ Id.

This policy guidance clarifies the obligations Title II of the ADA and Section 504 impose on State and local government entities that are involved in the delivery or administration of TANF programs, and on recipients of Federal financial assistance from HHS involved in TANF activities, in fulfilling their responsibilities pursuant to Title II of the ADA and Section 504 of the Rehabilitation Act. Specifically, this guidance identifies essential requirements of an ADA-504 complaint TANF program that the Office for Civil Rights will apply in its compliance reviews and/or investigations of complaints of discrimination on the basis of disability in TANF programs. These requirements are not new; rather, they reiterate ADA Title II and Section 504 principles that OCR has been enforcing for many years. This guidance is limited to the social services context, and is not intended to address the obligations of employers under Section 504 or Title I of the ADA.

The guidance also sets out "promising practices" – policies, procedures and other recommended steps that recipients and covered entities can take to ensure meaningful access to TANF programs by people with disabilities. Many of the "promising practices" are based on reports of current TANF practices in a number of States and other localities. These "promising practice" provisions are not mandatory requirements; they are one way for a TANF agency (as noted in footnote 3, this guidance uses the term "TANF agency" to mean all covered entities under Section 504 and State and local governmental entities under Title II of the ADA) to meet the obligation to provide individuals with disabilities with an equal opportunity to benefit from TANF programs, to reasonably modify TANF policies for individuals with disabilities and to adopt non-discriminatory methods of administering TANF programs. Descriptions of possible approaches that comply with Section 504 and Title II of the ADA in this guidance should not be

construed to preclude States from devising alternative approaches to meet these legal requirements.

This guidance does not, and is not intended to, reflect the best of the full range of TANF practices with respect to individuals with disabilities. The "promising practices" portion of the guidance should therefore be regarded as a work in progress while States continue to develop more and better solutions to issues raised by disability in administering TANF programs.

B. LEGAL AUTHORITY

The Disability Policy Framework

The legal framework governing the administration of programs, projects, and activities by State agencies and service providers are set out in regulations promulgated by the Department of Justice¹⁴ and the Department of Health and Human Services.¹⁵ A recitation of the key provisions is set out in OCR's August 27, 1999 Technical Assistance materials concerning welfare reform and disability issues.

Two concepts central to Section 504 and Title II of the ADA are of particular importance to administration of TANF programs in a manner that ensures equality of opportunity for individuals with disabilities. These concepts are: (1) individualized treatment; and (2) effective and meaningful opportunity.

Individualized treatment requires that individuals with disabilities be treated on a case-by-case basis consistent with facts and objective evidence. Individuals with disabilities may

¹⁴ 28 C.F.R. Part 35.

¹⁵ 45 C.F.R. Part 84.

not be treated on the basis of generalizations and stereotypes.¹⁶ Such prohibited treatment would include denying TANF beneficiaries with disabilities access to parts of the TANF agency's program based on the stereotypical view, unsupported by any individual assessment, that people with disabilities are unable to participate in anything but the most rudimentary work activities.

Moreover, individuals with disabilities must be afforded the opportunity to benefit from TANF programs that is as effective as the opportunity the TANF agency affords to individuals who do not have disabilities,¹⁷ and must also be afforded "meaningful access" to TANF programs.¹⁸ TANF agencies must provide reasonable accommodations, auxiliary aids and services, and communication and program accessibility, unless the agency can demonstrate that such provision would result in a fundamental alteration in the nature of the program or in undue financial and administrative burdens. TANF agencies must also make reasonable modifications

¹⁶ See 28 C.F.R. Part 35, Appendix A, § 35.130(b), at 466 (Department of Justice commentary to ADA Title II regulations, identifying regulatory provisions as "intended to prohibit exclusion and segregation of individuals with disabilities and the denial of equal opportunities enjoyed by others, based on, among other things, presumptions, patronizing attitudes, fears and stereotypes about individuals with disabilities. Consistent with these standards, public entities are required to ensure that their actions are based on facts applicable to individuals and not on presumptions as to what a class of individuals with disabilities can or cannot do."). See also School Board of Nassau County, Fla. v. Arline, 480 U.S. 273, 284 (1987) (Supreme Court decision stating that Section 504's "basic purpose" is "to ensure that handicapped individuals are not denied jobs or other benefits because of the prejudiced attitudes or the ignorance of others.")

¹⁷ See 28 C.F.R. § 35.130(b)(1)(ii), (iii), (iv), (vii) (ADA regulations); 45 C.F.R. § 84.4(b)(1)(ii), (iii) (Section 504 regulation). See also Alexander v. Choate, 469 U.S. 287, 304-06 (1985) (Supreme Court decision, discussing proper interpretation of HHS' Section 504 regulations requiring that individuals with disabilities be provided with health and human services that offer an equal opportunity to benefit from such programs and thus, are "as effective" as services provided to individuals without disabilities).

¹⁸ See Choate at 301-07 (discussing proper interpretation of Section 504 requirement that individuals with disabilities have meaningful access to federally assisted benefits).

to policies, practices, and procedures when the modifications are necessary to avoid discrimination on the basis of disability unless the agency can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.¹⁹

In addition, the "methods of administration" or operating methods of a TANF agency must not have a discriminatory effect. Specifically, a public entity may not directly or through contract or other arrangement utilize criteria or methods of administration that, among other things, have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability, or that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities.²⁰

In this guidance, the Office for Civil Rights addresses three key requirements of Title II of the ADA and 504 that are relevant to the rights of TANF beneficiaries with disabilities. These requirements are: (1) to ensure equal access through the provision of appropriate services; (2) to modify policies, practices and procedures to provide such access, unless doing so would result in a fundamental alteration to the program; and (3) to adopt non-discriminatory methods of administration. The essential components of these requirements are set forth below, along with promising practices that outline steps that TANF agencies and providers can take to accommodate the needs of TANF beneficiaries with disabilities. The promising practices are

¹⁹ See 28 C.F.R. § 35.130(b)(7), 28 C.F.R. § 35.149-151; 28 C.F.R. § 160-164. See also Choate at 301 (eligibility for federally assisted benefits "cannot be defined in a way that effectively denies otherwise qualified handicapped individuals the meaningful access to which they are entitled; to assure meaningful access, reasonable accommodations in the grantee's program or benefit may have to be made.")

²⁰ 28 C.F.R. §35.130(b)(3); 45 C.F.R. §84.4(b)(4).

illustrative and are not mandatory requirements. Thus, a TANF agency's failure to take particular steps outlined in this promising practices will not by itself result in a finding of noncompliance by OCR.

a. Ensuring Equal Access to TANF Programs Through the Provision of Appropriate Services to People with Disabilities

The TANF agency provides TANF beneficiaries who have disabilities with appropriate services. These services are designed to afford TANF beneficiaries who have disabilities with an opportunity to participate in or benefit from the TANF program that is equal to the opportunity the agency affords to non-disabled individuals.

b. Modifying Policies, Practices and Procedures to Ensure Equal Opportunity

The TANF agency modifies policies, practices and procedures when necessary to ensure equal opportunity for people with disabilities. Modifications required may affect all stages of the TANF program, from application to training, education and work stages, to ensure that people with disabilities have an equal opportunity to benefit from TANF programs. The TANF agency should undertake a comprehensive examination of its own policies, practices and procedures to determine changes necessary to ensure that TANF participants with disabilities have an equal opportunity to benefit, or otherwise ensure that necessary modifications to policies, practices and procedures are made.

c. Non-Discriminatory Methods of Administration

The TANF agency operates its program in such a way as to ensure that individuals with disabilities are not subjected to discrimination on the basis of disability. In order to ensure that the agency's policies and practices do not subject individuals to disability-based discrimination, the TANF agency should: train its staff to provide equal access to TANF programs for

individuals with disabilities; ensure that training occurs for staff of service providers who have contractual or vendor relationships with the TANF agency; establish clear written policy that incorporates modifications to policies, practices and programs made to ensure access for persons with disabilities; conduct regular oversight of TANF programs and services to ensure that people with disabilities have equal access; or otherwise ensure that its policies and practices do not subject individuals with disabilities to discrimination.

Section D of the guidance provides additional details about legal requirements and about "promising practices" that may assist TANF agencies in carrying out their legal obligations.

C. COVERAGE

1. Covered Entities ("TANF Agencies")

Title II of the ADA covers all States, as well as counties and other local governments administering all or part of a TANF program. In addition, Section 504 covers all entities that receive Federal financial assistance from HHS, either directly or indirectly, through a grant, contract or subcontract.²¹ Under Section 504, "covered entities" include any State or local agency, private institution or organization, or any public or private entity that (1) operates, provides or engages in health or social service programs and activities and that (2) receives federal financial assistance from HHS directly or through another recipient/covered entity. Examples of covered entities include but are not limited to State, county and local welfare agencies, programs for families, youth and children, job training and welfare to work agencies and their contractors, subcontractors and vendors, whether public or private, for-profit or

²¹ See 42 U.S.C. § 2000d-4a (defining "program or activity" with respect to the applicability of Section 504 in federally-assisted programs).

nonprofit, and other providers who receive Federal financial assistance from HHS. As noted earlier, this guidance uses the term "TANF agency" to refer to covered entities under Section 504 and State and local governmental entities under Title II of the ADA.

2. Protected Individuals

Federal definitions govern who is considered an individual with a disability for purposes of compliance with the ADA and Section 504. The ADA and Section 504 define a "disability" with respect to an individual to mean a physical or mental impairment that substantially limits one or more of the major life activities of such individual, a record of such an impairment, or being regarded as having such an impairment. See 28 C.F.R. § 35.104 (definitions section of ADA Title II regulations); see also U.S. Department of Justice, The Americans with Disabilities Act: Title II Technical Assistance Manual, at 4-9 (Nov. 1993); see also 45 C.F.R. § 84.3(j)(1)(I) (definitions section of Section 504 regulations). The definition of disability under the ADA and Section 504 is a different definition of disability than that typically used to determine eligibility in programs that provide cash assistance based upon disability, such as the Federal Supplemental Security Income and Social Security Disability Insurance programs. It may also be different than the definition of disability that some States use in determining whether an individual may be exempt from certain program rules in TANF.

D. LEGAL REQUIREMENTS AND "PROMISING PRACTICES"

1. The Legal Requirement to Ensure Equal Access to TANF Programs Through the Provision of Appropriate Services

TANF agencies must afford qualified individuals with disabilities an opportunity to participate in or benefit from TANF programs that is equal to the opportunity the agency offers to individuals without disabilities.²² In order to comply with this legal requirement, TANF agencies must provide TANF beneficiaries with disabilities with services that are appropriate, and that give these beneficiaries an equal opportunity to benefit from the agency's job placement, education, skills training, employment and other TANF activities.

The TANF statute and regulations require the TANF agency to assess the "skills, prior work experience and employability" of beneficiaries.²³ It is critical that TANF beneficiaries with disabilities receive an assessment that allows them equal opportunity to benefit from TANF programs and the assessment process. This assessment should incorporate an individualized analysis of each person's ability to meet the program requirements, rather than on stereotypes or assumptions about the effect of a type of a disability. TANF agencies should tell applicants and beneficiaries that, although disclosure of disability is not required, individuals can alert the agency to a disability.²⁴ Agencies should also inform applicants and beneficiaries that any

²² See 28 C.F.R. § 35.130(b)(1)(ii),(iii) (ADA regulation); 45 C.F.R. § 84.4(b)(1)(ii),(iii) (Section 504 regulation).

²³ See 42 U.S.C. § 608(b)(1); 45 C.F.R. § 261.11.

²⁴ We recognize that TANF agencies may benefit from further technical assistance concerning certain issues related to screening and assessment, including appropriate agency decisions regarding which beneficiaries should be offered screening or assessment, the point at which screening or assessments should be offered to beneficiaries, agencies' obligations if a beneficiary refuses to disclose a disability or refuses an accommodation that is offered after screening or

disclosure is voluntary. At a minimum, intake workers should be able to recognize potential disabilities, and to conduct an initial screening to identify possible disability for those individuals who agree to undergo screening. Such screening should be conducted only by trained staff, using screening tools that have been properly validated. If there is an initial indication that an individual has a disability that may impact his/her ability to successfully complete or benefit from a current or proposed program assignment based on applicant or beneficiary disclosure, an initial screening or other information, the TANF agency should give the individual an opportunity for a more comprehensive evaluation or assessment.²⁵

The appropriate services provided by the TANF agency should be based on the agency's review of its own programs (see discussion of "diagnostic review," in Section D.2), on TANF beneficiaries' needs as identified through the agency's screening and assessment processes, or on other methods the TANF agency utilizes to ensure that appropriate services are provided. For example, an individual with a learning disability or mental retardation may need specialized instruction in reading and writing before the individual can comply with a TANF plan that requires the individual to obtain employment. A person may also need on-the-job training and

assessment, and how TANF agencies can appropriately implement screening or assessment practices.

²⁵ TANF agencies should also protect the confidentiality and privacy of information regarding the existence of disability. Employers are subject to specific requirements with respect to obtaining information about the disabilities of employees and job applicants. See 42 U.S.C. § 12112(d); 29 C.F.R. §1630.14 (ADA statutory and regulatory provisions governing disability-related inquiries in the employment context); see also U.S. Equal Employment Opportunity Commission, "Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act," (July 27, 2000), www.eeoc.gov/docs/guidance-inquiries.html, and other information available on the EEOC website, www.eeoc.gov.

mentoring. A person may need job skills training or employment opportunities in settings that are accessible for individuals with mobility impairments.

The TANF agency's obligation to ensure equal access to TANF programs for individuals with disabilities also includes the obligation to ensure that service providers have the requisite knowledge, experience, and expertise to serve beneficiaries with disabilities.²⁶ Without such providers, TANF beneficiaries with disabilities may be deprived of equal access to TANF programs while they wait for services, or are diverted to inappropriate services. Since the TANF statute establishes a 60-month limit on TANF benefits and allows more stringent limits at State option, a TANF agency's failure to ensure an adequate supply of knowledgeable service providers for people with disabilities may result in their being terminated from the TANF rolls without having obtained the job skills or work experience necessary to move successfully from welfare to self-sufficiency.

TANF agencies must also ensure that individuals with disabilities have access to the entire range of TANF programs and services for which they are qualified, with or without reasonable accommodation.²⁷ Agencies must provide TANF programs in the most integrated

²⁶ The ADA and Section 504 prohibit TANF agencies from utilizing "methods of administration" that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability. See 28 C.F.R. § 35.130(b)(3)(I) (ADA regulations); 45 C.F.R. § 84.4(b)(4) (Section 504 regulations). Commentary to ADA regulations makes clear that the "methods of administration" covered by these ADA includes agencies' "official written policies" and "actual practices." See 28 C.F.R. Part 35, Appendix A § 35.130, at 467 (1996).

²⁷ Regulations promulgated under the ADA and Section 504 prohibit the provision of "different or separate aid, benefits or services" to people with disabilities "unless such action is necessary to provide [these individuals] with aid, benefits or services that are as effective as those provided to others." See 28 C.F.R. § 35.130(b)(1)(iv) (ADA regulations); 45 C.F.R. § 84.4(b)(1)(iv) (Section 504 regulations).

setting appropriate to the needs of individuals with disabilities.²⁸ Thus, agencies should take steps to ensure that individuals with disabilities can participate in all programs and services for TANF beneficiaries, not just those programs and services that are designed solely for individuals with disabilities.²⁹

TANF agencies have the obligation to ensure effective communication with individuals who have hearing, speech, or visual impairments. TANF agencies must provide such persons with auxiliary aids (including such aids as interpreters, note-takers, and materials in alternative formats) if necessary to ensure effective communication, so long as providing these aids does not cause a fundamental alteration in the TANF program or result in undue financial or administrative burdens.³⁰ In addition, TANF agencies may not exclude individuals with disabilities by providing TANF services in buildings that are inaccessible to people with mobility impairments. The TANF agency is not, however, required to make structural changes in existing

²⁸ 28 C.F.R. § 35.130(d).

²⁹ 28 C.F.R. § 35.130(b)(1)(iv); 28 C.F.R. § 35.130(b)(2) (ADA regulations); 45 C.F.R. § 84.52(a)(5) (Section 504 regulations). For example, a TANF agency should establish an explicit practice of allowing qualified individuals with disabilities access to all services and programs that are a part of the State's TANF program.

³⁰ See 28 C.F.R. § 35.160(b) (ADA regulations); 45 C.F.R. § 85.52(d) (Section 504 regulations). For example, if a TANF agency generally provides printed information about job training programs, it must, where necessary and not a fundamental alteration, provide this information in Braille or on audiotape for individuals with vision impairments. Similarly, a TANF agency must ensure that vendors providing adult basic education programs utilize sign language interpreters for TANF beneficiaries enrolled in the program who have hearing impairments, when interpreters are necessary to ensure effective communication for these beneficiaries and do not constitute a fundamental alteration.

facilities where other methods are effective in achieving equal access.³¹ New construction and alterations to existing facilities must be made accessible and useable by persons with disabilities except where structurally impracticable.³²

Finally, TANF agencies frequently use contracts and vendors in the administration of their TANF programs. Agencies should be aware that these contractual and financial relationships do not eliminate TANF agencies' responsibility to ensure that TANF beneficiaries are not subjected to disability-based discrimination, even if such discrimination is more directly the result of unlawful treatment by TANF contractors and vendors. Implementing regulations for Section 504 and Title II of the ADA state clearly that a recipient of federal funds (in the context of Section 504) or a State or local government program (in the context of the ADA), may not directly or indirectly (e.g., "through contractual or other arrangements") put into place, or allow to be into place, a system or program which has the effect of subjecting qualified individuals with disability to discrimination on the basis of disability.³³ Thus, TANF agencies are responsible for ensuring that the opportunities afforded TANF applicants and beneficiaries with disabilities to participate in TANF program benefits and services are equal to the

³¹ For example, a TANF agency located on the second floor of a building with no elevator could conduct intake interviews in an accessible ground floor office for TANF applicants who have mobility impairments. However, when the ground-floor office is unavailable for evening job counseling sessions involving both TANF beneficiaries with disabilities and beneficiaries without disabilities, the agency should host the session in an alternate, accessible location.

³² See, e.g. 28 C.F.R. § 35.150(a)(3) (Title II ADA regulations requiring procedural safeguards in cases in which requested structural modifications will not be made).

³³ See 28 C.F.R. § 35.130(b)(8) (ADA regulations); 45 C.F.R. § 84.4(b)(1) (Section 504 regulations).

opportunities afforded to applicants and beneficiaries without disabilities, even if the TANF agency carries out its program through the use of contractual or other arrangements.³⁴

³⁴ We recognize that TANF agencies may benefit from further technical assistance concerning specific ways to ensure that individuals with disabilities have an equal opportunity to benefit from TANF programs run by contractors and vendors.

Promising Practices in the Provision of Equal Access to TANF Programs

Examples of practices that, if effectively implemented, would assist TANF agencies in **ensuring that individuals with disabilities are provided with an assessment that affords equal opportunity to benefit from TANF programs, including the assessment process,** include:

- The TANF agency utilizes a combination of screening and assessment tools to determine whether TANF beneficiaries face a variety of obstacles, including physical, emotional, learning or behavioral disabilities.³⁵
- The TANF agency trains its case workers to administer a client interview guide and objective screening instruments designed to identify TANF beneficiaries who may have learning disabilities. The TANF agency then refers beneficiaries who appear to have learning disabilities for an in-depth assessment by the State vocational rehabilitation agency or by mental health or education providers.³⁶
- When there is an initial indication that applicants and beneficiaries may have disabilities as a result of applicant or beneficiary disclosure, an initial screening or other information, these individuals are offered the opportunity to receive a comprehensive assessment. This assessment determines: whether the individual in fact has disabilities; the nature of any disability; the extent to which the individual is capable of employment or participation in employment-related (e.g. job training or education) activities and under what conditions; the implications of the disability on securing and maintaining employment; the appropriateness of a particular work assignment or plan for employment; the need for reasonable

³⁵ This approach is being utilized by the States of Washington and Utah. See Thompson, Terri S., and Kelly S. Mikelson, Screening and Assessment in TANF/WtW: Ten Important Questions TANF Agencies and Their Partners Should Consider, Office of the Assistant Secretary for Planning and Evaluation/Office of Planning, Research and Evaluation, U.S. Department of Health and Human Services, Forthcoming (February 2001), at 29, 42 & Appendix A at A-3 (hereafter "Ten Important Questions"). See also id., at Appendix B, at A-18 (describing separate screening tool specifically for learning disabilities utilized by Washington and eight other States). As noted previously in this guidance, staff should, of course, be trained to administer such documents.

³⁶ This approach is being utilized by the State of Kansas. See Ten Important Questions, at 31 & Appendix A at A-19.

accommodations, reasonable modifications to policies, the provision of auxiliary aids and services and communication assistance; the need for training and education prior to employment; the applicability of work participation rules and time limits, and the appropriateness of applying sanctions. To the extent the State requires the development of an individual responsibility plan, the components of the plan must be based on results of such assessments as are undertaken by the State.

- The TANF agency ensures that qualified personnel, including specialized staff, conduct comprehensive assessments.³⁷ Specialized staff may provide assessments and other assistance for TANF beneficiaries who are unable to complete work activities, do not remain employed and who are recommended for further assessments by a service provider.³⁸ The agency might also decide to adopt a team approach to assessments, including psychologists and other medical, vocational, and rehabilitation experts, who are trained in making assessments of adults with disabilities in the employment context.
- The agency ensures that any screening or assessment tools it uses are validated for the purposes for which they are intended.

Examples of practices that, if effectively implemented, would assist TANF agencies in

providing appropriate services to ensure equal access to individuals with disabilities

include:

- A TANF agency provides appropriate counseling services (e.g., mental health services, anger management counseling) to TANF beneficiaries with mental or emotional disabilities who have barriers to employment and self-sufficiency.³⁹

³⁷ This approach is being utilized by the States of Kentucky (in eight designated counties) and Tennessee. See Ten Important Questions, at 42-43.

³⁸ This approach is being utilized by the State of Tennessee. See Ten Important Questions, at 43.

³⁹ The TANF agency can appropriately pay for these counseling services with Federal TANF funds. See U.S. Department of Health and Human Services, Administration for Children and Families, Helping Families Achieve Self-Sufficiency: A Guide on Funding Services for Children and Families Through the TANF Program, at 14 (Dec. 21, 1999) (providing examples for the appropriate use of funds) (hereafter TANF Funding Guide), www.acf.dhhs.gov/programs/ofa/funds2.pdf. TANF funds cannot, however, be used for medical services (with the exception of pre-pregnancy family planning services). See 42 U.S.C. § 608(a)(6).

The TANF agency establishes linkages and partnerships with other public (including State education and vocational rehabilitation agencies, State community colleges), nonprofit or private agencies to fulfill these aspects of their obligations under the Title II of the ADA and Section 504.

- To evaluate and properly serve TANF beneficiaries who may be hampered by a variety of barriers to employment, the TANF agency enters into a partnership with the State vocational rehabilitation agency to provide assessment and follow-up services for long-term TANF beneficiaries. TANF beneficiaries who are eligible for vocational rehabilitation services are provided with such services. The vocational rehabilitation agency develops an "employability plan" for beneficiaries who are ineligible, and refers these beneficiaries back to the TANF agency for plan implementation.⁴⁰
- TANF beneficiaries identified by case workers as having learning, mental and physical disabilities are referred to providers who have contracted with the agency to provide services for individuals with these disabilities and for other TANF beneficiaries identified by the agency as "hard to serve." The contractors help TANF beneficiaries prepare for, find and maintain jobs.⁴¹

⁴⁰ This approach is being utilized in the State of Georgia, through an agreement between the Georgia Department of Family and Children's Services (the TANF agency) and the Division of Rehabilitation Services (the vocational rehabilitation agency). See Georgia TANF Project Overview: The Assessment of TANF Recipients.

⁴¹ This approach is utilized by the State of Maine. Among the strategies used by contractors are assessing disabilities and other barriers, coordinating with TANF agency staff to develop a service plan for TANF beneficiaries, helping beneficiaries access needed services and providing job search assistance. See Thompson, Terri S., Pamela A. Holcomb, Pamela Loprest and Kathleen Brennan, State Welfare-to-Work Policies for People with Disabilities: Changes Since Welfare Reform, Office of the Assistant Secretary for Planning and Evaluation/Office of Planning, Research and Evaluation, U.S. Department of Health and Human Services, at 19-20 (Oct. 1998) (hereafter "Changes Since Welfare Reform"), www.urban.org/welfare/wel2work_es.html; Holcomb, Pamela A. and Terri S. Thompson, State Welfare-to-Work Policies for People with Disabilities: Implementation Challenges and Considerations, Office of the Assistant Secretary for Planning and Evaluation/Office of Planning, Research and Evaluation, U.S. Department of Health and Human Services at 33 (August 2000) (describing this approach as in use specifically in Portland, Maine), www.urban.org/welfare/wel-wrk-2k.html. Similarly, in a pilot program in one county in New Jersey, a TANF agency has entered into partnerships with mental health providers to create teams in which providers work with TANF agency staff to identify TANF beneficiaries with mental illness, assess these beneficiaries' clinical needs, and link these beneficiaries to mental health services and supported employment. See Ten Important Questions, at 32.

- In order to ensure an adequate supply of providers, the TANF agency reimburses providers in such a way as to facilitate, rather than impede, equal opportunity for individuals with disabilities to benefit from the TANF program. Where the State establishes a system of outcome-based reimbursement (*i.e.*, of paying service providers only when TANF beneficiaries complete a program) the TANF agency takes into consideration the additional costs of providing services to persons with disabilities so that service providers do not reject such persons, or provide them with inappropriate or inadequate services to persons with disabilities.
- When individuals with disabilities leave the TANF program, the TANF agency conducts "exit interviews" that include a discussion of whether the individuals believe that any disabilities they have were appropriately assessed, and whether the individuals' disability-related needs were addressed and accommodated. The agency utilizes this information to refer individuals with disabilities to other support services that may assist them after they are no longer TANF beneficiaries, and to evaluate the agency's own effectiveness in serving beneficiaries with disabilities (*see, e.g.*, discussion of "diagnostic review," in Part D.2, below).

Examples of practices that, if effectively implemented, would assist TANF agencies in **affording individuals with disabilities access to all TANF programs for which they are qualified** include:

- The TANF agency enters into a partnership with a non-profit agency to provide supportive services that enable individuals with developmental disabilities to participate in the work activities of subsidized public and private employment.
- The TANF agency provides a special job training course for TANF beneficiaries with speech and hearing impairments, but it does not require these individuals to participate in the special program or refuse to permit individuals with speech and hearing impairments to participate in job training courses in which both individuals with disabilities and individuals without disabilities participate.

Examples of practices, that, if effectively implemented, would assist TANF agencies in **providing individuals with disabilities with equal access to TANF programs when TANF services are provided through contractual and other relationships** include:

- The TANF agency obtains information from contractors and vendors as part of the agency's diagnostic review process (*see* discussion of diagnostic review in Part

D.2 below) that includes information about accessibility, reasonable accommodations and appropriate services for people with disabilities.

- The TANF agency provides training and technical assistance to contractors and vendors regarding the needs of and appropriate services for individuals with disabilities.
- The TANF agency provides training and technical assistance to contractors and vendors regarding reasonable modifications to policies, practices and procedures and reasonable accommodations and auxiliary aids for individuals with disabilities.
- The TANF agency monitors contractors and beneficiaries for compliance with Title II of the ADA and Section 504 (see additional discussion of monitoring in Part D-3, below).

2. The Legal Requirement to Modify Policies, Practices and Procedures to Ensure Equal Access to TANF Programs and Services

Program providers are required to make reasonable modifications to policies, practices, and procedures that deny equal access to individuals with disabilities unless a fundamental alteration in the program would result.⁴²

In order to ensure that necessary modifications are made, the TANF agency may need to conduct a diagnostic review of agency policies, practices and procedures. Based on this review, the agency would determine changes necessary to ensure that people with disabilities have an equal opportunity to benefit from TANF programs. As part of this review, the TANF agency would conduct a thorough assessment of the prevalence of various populations of people with disabilities who participate in its TANF programs. Based on this information, the entity analyzes each step of the TANF program to determine what changes are necessary to ensure people with

⁴² See 28 C.F.R. § 35.130(b)(7) (ADA regulation); see also *Alexander v. Choate*, 469 U.S. at 301 (Supreme Court decision concerning Section 504, stating that “reasonable accommodations in the grantee’s program or benefit may have to be made” in order to ensure meaningful access to the program or benefit.)

disabilities have an equal opportunity to access and benefit from TANF programs and related activities. Appropriate areas for modification following a diagnostic review include: (1) the application process and procedures relating to notifying beneficiaries of their rights; (2) the nature and requirements of TANF programs; and (3) policies and practices to aid individuals in sustaining TANF program participation. Programs appropriate for a diagnostic review include TANF, "welfare to work," child care, and any other forms of Federally assisted or State or local government-run programs related to TANF activities. Alternatively, the TANF agency may engage in other means to ensure that necessary modifications are made to policies, practices and procedures.

TANF agencies should also make reasonable modifications in policies and practices that govern exemptions for individuals who are unable to meet requirements and sanctions for such failure. For example, TANF agencies may exempt individuals with disabilities from work requirements or time limits when, due to their disabilities, these individuals are unable, with or without reasonable accommodation, to participate in work or other TANF program requirements.⁴³ In addition, rather than sanctioning TANF beneficiaries who, due to their

⁴³ As set out in OCR's August 1999 welfare reform guidance, although TANF agencies may exempt individuals with disabilities, agencies may not prohibit a qualified individual with a disability from participating in work and other TANF programs because the person has a disability. Eligibility for participation in any benefit, service or program must be based on an individual assessment of each person's ability to meet the eligibility requirements rather than on stereotypes or assumptions about the effects of a type of disability. *See "Civil Rights Laws and Welfare Reform—An Overview,"* at 4. Where reasonable accommodations and reasonable program modifications would allow a TANF beneficiary with a disability to work, the agency should provide the accommodations and modifications unless doing so would fundamentally alter the TANF program. Similarly, if the TANF agency allows individuals who are exempt to volunteer to participate in TANF programs, the TANF agency should allow individuals with disabilities who are exempt to participate, and should ensure that these individuals receive the necessary accommodations to facilitate their participation, unless ensuring the participation of

disabilities, do not comply with work or other program requirements, TANF agencies may make reasonable modifications that facilitate compliance, or grant extensions or temporary exemptions to TANF requirements.⁴⁴

Promising Practices in Modifying Policies and Programs to Ensure Access for People with Disabilities

Examples of practices, that, if effectively implemented, would assist TANF agencies in modifying policies and programs to ensure access for people with disabilities include

undertaking a "diagnostic review" of current programs and practices:

- In order to better understand the barriers to employment for TANF beneficiaries, the TANF agency conducts a study to determine the prevalence of specific barriers among the TANF population, including learning disabilities, mental disabilities, physical disabilities, and possible low IQ.⁴⁵ Based on this information, the agency develops screening mechanisms and services designed to assist TANF beneficiaries with these barriers to participate in the TANF program.⁴⁶

these individuals would constitute a fundamental alteration of the TANF program.

⁴⁴ Referral to determine eligibility for Supplemental Social Security Income (SSI) and continued receipt of cash assistance pending determination is another acceptable course of action.

⁴⁵ This approach is being utilized by the State of Kansas. See Kansas Department of Social and Rehabilitation Services, State of Kansas – Kansasworks: Comprehensive Screening and Assessment (April 24, 2000). Through reviewing a variety of data, the State of Kansas determined that 30% of TANF beneficiaries screened "positive" for learning disabilities, 16% of beneficiaries appeared to have either a mental or musculoskeletal impairment, and 26% of beneficiaries scored below 80 on an IQ test. Id.

⁴⁶ Id. In response to a survey from the American Public Human Services Association (APHSA), many States indicated that aggregate client assessment data was "very important" for the planning and development of programs to meet service needs. See American Public Human Services Association Research Notes, TANF Client Assessments: Program Philosophies and Goals, Sequencing of Process, Uses of Information and State Changes or Modifications, Promising Practices and Lessons Learned, at 7 (Sept. 2000), www.aphsa.org/opd/researchnotes0900.html.

- With respect to each step of the welfare or TANF program, the TANF agency develops an "ADA/504 checklist" to ascertain accessibility for persons with various types of disabilities. See Sample Diagnostic Review Checklist at Appendix 1. The checklist covers every aspect of the entity's program, from the application stage (including checklist questions regarding assistance provided to individuals with disabilities); to the screening/assessment stage (including checklist of methods to determine the existence of disability and necessary accommodations); to the education/training and employment stage (including checklist questions used by the agency to ensure that contractors and vendors are educated about and implement appropriate accommodations).

Examples of practices, that, if effectively implemented, would assist TANF agencies in modifying policies and programs to ensure access for people with disabilities include

modifications in the application process and procedures relating to notifying beneficiaries of their rights:

- A TANF agency with a complicated application process modifies its application process to ensure the process is accessible to individuals with learning disabilities or mental retardation. The agency may do this by modifying the application form itself, by obtaining the information needed to apply for benefits through a verbal interview, by providing necessary assistance for individuals with disabilities to complete the application process, or by other similar means.
- A TANF agency includes the following language in notices:

"If you have a physical or mental condition that substantially limits one or more major life activities, you may have rights under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act. Physical or mental conditions include, for example, a learning disability, mental retardation, a history of drug or alcohol addiction, depression, a mobility impairment, or a hearing or vision impairment.

You can let us know if you have a disability.

If you cannot do something we ask you to do, we can help you do it or we can change what you have to do.

Here are some of the ways we can help:

We can call or visit if you are not able to come to our office.

We can tell you what this letter means.

If you are on [insert the name of the TANF program], we can help if you cannot do something in your plan.

We can help you devise an employability plan that allows you to work even though you have a disability.

We can help you appeal.

If you need some other kind of help, ask us. Call your caseworker or call.....⁴⁷

- Where a TANF agency's notice is sent to a person the agency knows will be unable to comprehend the notice due to a mental impairment or learning disability, the TANF agency modifies its procedures to ensure other modes of communication are attempted, such as oral communication, phone calls, and home visits, before taking a negative action based upon the notice.
- Where the TANF beneficiary would like the agency to involve a family member, a legal representative, or another advocate to assist the person in understanding TANF agency rules and the consequences of not following them, and to assist the agency to understand the beneficiary's limitations, the TANF agency incorporates such persons in the process. The TANF agency would not, however, avoid its own obligations to explain policies in a meaningful manner, or to provide interpreters or other required assistance.
- When communicating with TANF beneficiaries, the TANF agency routinely includes: (1) easy to understand instructions for those with developmental or mental impairments; (2) TTY numbers for persons who are deaf/hearing impaired; and (3) location of accessible sites for people with mobility impairments. The TANF agency also posts signage alerting people with disabilities how they can obtain further assistance.

Examples of practices, that, if effectively implemented, would assist TANF agencies in modifying policies and programs to ensure access for people with disabilities include

modifications in education, job training, work and other TANF programs:

⁴⁷ Of course, if such notice is provided, the TANF agency should in fact be ready, willing and able to assist the person receiving the notice.

- The TANF agency provides services appropriate to address the needs of beneficiaries with disabilities as identified by the beneficiary in the screening process or assessment processes, or at some other time. For example, a person with a specific learning disability or mental retardation is provided with specialized instruction in reading and writing so that the individual can comply with a TANF plan that requires the individual to obtain employment.
- The agency modifies procedures to ensure that beneficiaries with disabilities receive on-the-job training, and/or training and supports over a longer period than typically afforded if necessary, and time limits are suspended. For example, a TANF agency allows TANF beneficiaries who score below the ninth-grade level on a standardized adult basic education test to enroll in adult basic education classes. The TANF program's time limits and work requirements do not apply to these beneficiaries until beneficiaries either reach the ninth-grade level or complete adult basic education courses.⁴⁸ Similarly, an agency suspends State-imposed time limits while individuals with suspected learning disabilities are being assessed.⁴⁹
- The TANF agency continuously reviews the progress of TANF beneficiaries to ascertain whether a beneficiary's disability is affecting the ability to make progress toward meeting an employment goal. This responsibility includes providing follow-up contact on missed appointments or missed deadlines and referral for additional comprehensive assessments if the beneficiary is not making progress in ability to find work or in work assignments.
- A TANF agency broadly defines activities that "count" toward the State's TANF work participation rate⁵⁰ in order to assist TANF beneficiaries with disabilities,

⁴⁸ This approach is being utilized in Tennessee. See National Governors' Association Reports Online, [Serving Welfare Recipients with Learning Disabilities in a Work First Environment](#), at 6 (July 28, 1998) (hereafter "[Serving Welfare Recipients](#)"), www.nga.org/Pubs/IssueBriefs/1998/980728Learning.asp); National Governors' Association Center for Best Practices, Online document, [Learning Disabilities: Tennessee Learning Disabilities Initiative](#) (undated), www.nga.org/welfare/barriers/TNLearningDisabilities.asp.

⁴⁹ This approach is being used in Arkansas, and was implemented as a result of a legislative amendment. See [Ten Important Questions](#), at 17.

⁵⁰ Section 407(d) of PRWORA sets out the 12 work, training and education activities in which TANF beneficiaries may participate in order to be "engaged in work" for the purpose of counting toward the State's work participation rate requirements. Among these activities are education directly related to employment, satisfactory attendance in secondary school or a GED program for individuals without a secondary school diploma or GED certificate and job skills training

such as including supported work activities⁵¹ in the definition of subsidized private employment.⁵² TANF allows States to use their discretion in defining "countable" activities.⁵³

- A State TANF agency establishes practices that permit TANF beneficiaries with disabilities to engage in certain "allowable" activities, such as granting work credit for TANF beneficiaries who are engaged in remedial education if those beneficiaries are also working part-time, even though such activities will not "count" for purposes of the State's TANF work participation rate.⁵⁴ States may establish their own work requirements, and may choose to recognize participation in other activities toward these requirements. States may use TANF funds for a wide variety of activities designed to meet the purposes of TANF, whether or not these activities are countable toward either State or federal work requirements.

Examples of practices, that, if effectively implemented, would assist TANF agencies in modifying policies and practices to ensure access for people with disabilities include

modifications in policies and practices concerning exemptions, extensions and sanctions:

directly related to employment. 42 U.S.C. § 607(d); see also TANF regulations at 45 C.F.R. §§ 261.30-261.36 (outlining the federal work activities and how they count for purposes of the work participation rate).

⁵¹ Individuals with disabilities who receive supported employment might, for example, have the services of a "job coach" to work alongside the person with a disability and assist the person with job duties.

⁵² The Department of Health and Human Services' Administration for Children and Families has indicated that States may appropriately use Federal TANF or State "maintenance of effort" funds for this purpose. See TANF Funding Guide, at 12-13.

⁵³ The preamble to the TANF regulations makes clear that HHS intended States to have discretion and flexibility in defining "countable" work activities, so long as States' definitions are consistent with Congress' intent in drafting PRWORA. See Department of Human Services, Administration for Children and Families, Temporary Assistance for Needy Families, Final Rule, 45 C.F.R. Part 260, et al., Preamble, Section VI, 64 Fed. Reg. 17720 at 17776 (April 12, 1999).

⁵⁴ This approach is being utilized in Minnesota. See Ten Important Questions, at 21. A State can also allow TANF beneficiaries to participate in such activities as disability screening, assessment and treatment, even though these activities may not "count" for purposes of the State's work participation rate. Id., at 20-21.

- The TANF agency modifies work program procedures to ensure that, where a TANF beneficiary has a known disability that prevents the beneficiary from carrying out work requirements with or without reasonable accommodations, the individual is exempted from the work requirement.
- A TANF agency exempts individuals with disabilities from State-imposed time limits, or provides an extension to the 60-month limit imposed by federal law.
- A TANF agency requires a beneficiary with a disability to complete ten job contacts within one week. The beneficiary completes only six contacts, explaining that her disabilities - active cancer and a chronic mental illness - prevented her from securing ten contacts. Instead of sanctioning the beneficiary, the TANF agency takes her disability into consideration, and modifies the job search requirement to six contacts per week.
- A TANF agency grants TANF beneficiaries who have been diagnosed with learning disabilities an extension to State-imposed time limits for completing education and training programs when the failure to complete these programs in accord with time limits is the result of the beneficiaries' disability.⁵⁵
- A TANF beneficiary who receives mental health counseling on a regular basis during the work day requires a flexible schedule. The employer to whom the beneficiary is referred is unwilling to permit this flexibility and will hire the beneficiary only if the beneficiary agrees to keep a consistent, pre-established schedule. Rather than sanction the beneficiary for failure to obtain employment, the TANF agency either works with the employer to make the accommodation required by the beneficiary or provides the beneficiary with an alternative referral.

Examples of promising practices, that, if effectively implemented, would assist TANF agencies in modifying policies and programs to ensure access for people with disabilities also include **modifications in policies and practices that aid individuals in sustaining TANF**

program participation:

- A TANF agency that utilizes individual responsibility plans addresses in the plan not only the suitability of job opportunities, but also the needs of a beneficiary with a disability for health care, benefits counseling, and disability-related services and supports. Because many persons with disabilities face multiple barriers and require interventions funded by a multiplicity of agencies and

⁵⁵ This approach is being utilized in New Hampshire. See Ten Important Questions, at 20.

programs, the agency also provides comprehensive case management/service coordination.

- The TANF agency takes steps to ensure that the person with a disability is applying for benefits for which the person or his/her children may be eligible, including benefits available through State-operated programs such as Medicaid, Children's Health Insurance Program benefits, Food Stamps, child care, transportation assistance.
- Where a family has a child whose disability affects the parent's ability to work, the TANF agency modifies its practices to facilitate the parent's compliance with an employment plan. For example, the TANF agency grants the parent an extension of time to meet work requirements until the time that specialized child care required by her child is available, or helps identify appropriate child care so that the parent can work. Similarly, where the parent does begin to work and then is unable to work because of the repeated need to leave work to care for the child with a disability, the TANF agency establishes procedures which ensure that the parent and her family are not sanctioned for the parent's inability to retain her job.⁵⁶
- Where a TANF beneficiary, as a result of a disability, needs intervening assistance, training, or treatment in order to continue working, the TANF agency provides it. When there is a break in a person's work or training due to a disability, the agency does not simply determine the person is no longer eligible for supports such as child care, transportation, and training when she is able to return to work or training. Further, time limits may be extended.

3. The Legal Requirement to Adopt Non-Discriminatory Methods of Administration

TANF agencies may not utilize methods of administration that have the effect of subjecting qualified individuals with disabilities to disability-based discrimination.⁵⁷ This legal requirement governs both activities engaged in directly by the TANF agency, as well as activities

⁵⁶ These modifications would be consistent with the first purpose of the TANF program: to "provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives." See 42 U.S.C. § 601(1).

⁵⁷ See 28 C.F.R. § 35.130(b)(3) (ADA regulations); 45 C.F.R. § 84.4(b)(4) (Section 504 regulations).

that the agency carries out through contractual or other arrangements.⁵⁸ The phrase "methods of administration" refers to the "official written policies" of the TANF agency and to the "actual practices" of the agency.⁵⁹

TANF agencies may need to fulfill their obligation to ensure that the agency's policies and practices do not subject individuals to disability-based discrimination by TANF agencies by training staff to provide equal access to TANF programs for individuals with disabilities.

Effective training is one means of ensuring that there is not a gap between a TANF agency's written policies and procedures, and the actual practice of employees in the front line interacting with persons with disabilities. Effective training ensures that employees are knowledgeable and aware of policies and procedures relating to persons with disabilities and are trained to work effectively with persons with disabilities. The TANF agency should also ensure that similar training is provided to staff of TANF contractors and vendors to help these providers carry out TANF activities that comply with Title II and Section 504.

TANF agencies may need to fulfill their obligation to ensure that the agency's policies and practices do not subject individuals to disability-based discrimination by developing and implementing a comprehensive written policy that incorporates modifications made to policies, practices and programs. Clear written policies that describe in detail how to respond when a TANF participant has a disability should be provided to all TANF agency and provider staff who have contact with beneficiaries with disabilities. These policies should be incorporated into any

⁵⁸ See 28 C.F.R. § 35.130(b)(3) (ADA regulations); 45 C.F.R. § 84.4(b)(4) (Section 504 regulations).

⁵⁹ See 28 C.F.R. Part 35, Appendix A, § 35.130, at 467 (1996) (commentary to Title II ADA regulations).

manual, handbook or directive that sets out agency policy with respect to the State's TANF program as well any regulations promulgated by the agency.

Finally, TANF agencies may need to fulfill their obligation to ensure that the agency's policies and practices do not subject individuals to disability-based discrimination by conducting regular oversight of TANF programs and services to ensure that people with disabilities are being served. Agencies and service providers should also monitor their policies and procedures in all programs they administer regarding persons with disabilities and their implementation. For example, such monitoring should evaluate the current needs of TANF beneficiaries with disabilities, and determine whether existing screening and assessment tools and procedures are adequate, whether assistance provided is meeting the needs of such individuals, whether staff is knowledgeable about policies and procedures and how to implement them, and whether sources of and arrangements for assistance are current and viable. Further, the TANF agency should also establish procedures to monitor periodically all aspects of compliance with Section 504 and the ADA by service providers and other entities with whom it has entered into contractual or other arrangements.

Also integral to operating a non-discriminatory system consistent with Section 504 and Title II of the ADA is the obligation to establish several types of procedural safeguards, including procedures for processing ADA/504 complaints; procedures for addressing disability-related issues in placement; and procedures for raising disability-related problems prior to any imposition of sanction.

Promising Practices in Non-Discriminatory Methods of Administration

Examples of promising practices, that, if effectively implemented, would assist TANF agencies in modifying policies and programs to employ non-discriminatory methods of administration include **appropriate training practices and the creation and implementation of written policies ensuring access for people with disabilities:**

- The TANF agency trains caseworkers and service providers to:
 - (1) look for and recognize the possibility that an applicant or beneficiary has a disability;
 - (2) treat TANF beneficiaries with disabilities as individuals, and not on the basis of disability-based stereotypes;
 - (3) understand disability issues and services (including reasonable accommodations, reasonable modifications to policies, auxiliary aids and services), and referral arrangements and in the use of screening instruments;
 - (4) work with agencies with specialized expertise in addressing the needs of persons with disabilities such as vocational rehabilitation agencies;
 - (5) become knowledgeable about State policy regarding provision of services to persons exempt from work participation requirements; and
 - (6) become knowledgeable about disability benefit programs such as SSI, SSDI, Medicaid, and Medicare, as well as other benefit programs.
- Through an interagency memorandum of understanding, a State provides cross-training for employees of its TANF and vocational rehabilitation agencies regarding the needs of TANF beneficiaries with physical and developmental disabilities, and the services provided to this population by each agency.⁶⁰

⁶⁰ This approach is being utilized in four districts in the State of Vermont. This project is supported by U.S. Department of Labor Welfare-to-Work (WtW) formula grant funds. See National Governors' Association Center for Best Practices, Online document, Physical and Developmental Disabilities: Vermont Welfare-to-Work/Vocational Rehabilitation Collaboration (undated), www.nga.org/Welfare/barriers/VTWelfareToWork/asp.

- Under a contract with the State Department of Education, the State TANF agency hires a "disability support specialist" to train TANF case managers to identify TANF beneficiaries with learning disabilities and arrange for reasonable accommodations for these beneficiaries in the TANF work program. The disability support specialist also trains GED instructors to identify, modify and adapt instructional materials to meet the needs of TANF beneficiaries with learning disabilities.⁶¹
- A State provides training to employees of various State agencies, including the TANF and vocational rehabilitation agencies, regarding the modification of teaching instruction, materials and policies and practices for adults with learning disabilities. The State also conducts a "train-the-trainer" workshop for other States in its geographical region.⁶²

Examples of practices that, if effectively implemented, would assist TANF agencies in employing non-discriminatory methods of administration include **monitoring compliance with**

Title II of the ADA and Section 504 and establishing procedural safeguards:

- The TANF agency monitors its staff, its contractors and its sub-contractors to ensure implementation of programs, projects and activities in a nondiscriminatory manner by analyzing data and records and conducting reviews. The agency imposes penalties on and requires corrective actions of contractors and sub-contractors for violations noted during a review. Additionally, the agency's monitoring rules include a process for reviewing policies and procedures.
- The TANF agency systematically and routinely investigates and assesses which beneficiaries are being sanctioned and why to determine whether or not beneficiaries who are sanctioned have a disability and whether the disability substantially contributed to the beneficiaries' noncompliance. The agency's ADA/Section 504 notice includes information regarding the right to have disability taken into account if disability is a basis of non-compliance.

⁶¹ This approach is being utilized in New Hampshire. See Serving Welfare Recipients, at 4.

⁶² This approach is being utilized in Arkansas. See National Governors' Association Center for Best Practices, Online document, Learning Disabilities: Arkansas Learning Disabilities Training and Dissemination Project (undated), www.nga.org/Welfare/barriers/ARLearningDisabilities.asp.

- The TANF agency establishes and publishes procedures for resolving complaints under Section 504 and the ADA that follow the guidelines established by the Department of Labor for implementing the welfare-to-work programs and the Workforce Investment Act.⁶³
- Where a beneficiary tells the TANF agency that the proposed work assignment is not compatible with his or her disability, the agency has a procedure in place that permits the beneficiary's claim to be fully considered before placement can be made.

⁶³ See 29 C.F.R. § 37.70-37.80 (WIA nondiscrimination regulations setting forth complaint processing procedures).

APPENDIX 1

EXAMPLE OF PROMISING PRACTICE IN MODIFYING POLICIES AND PROGRAMS TO ENSURE EQUAL ACCESS

SAMPLE DIAGNOSTIC REVIEW CHECKLIST

Application Stage:

Notice/Information Issues

1. Do staff ask applicants whether assistance will be necessary during the application process due to disability?
2. Is this inquiry accompanied by examples of such assistance (e.g., "if you have a disability that affects your ability to understand or respond to questions in the application, we can help. For example, we can assist you by reading the questions to you; recording your answers, etc. Do you need this or another kind of help to fill out the application?").
3. When communicating with beneficiaries about TANF, does the agency routinely include further instructions for people with disabilities who need extra help in responding? Are these additional instructions easy to understand for those with developmental or mental impairments? Do the instructions include (1) TTY numbers for persons who are deaf/hearing impaired and (2) the location of accessible sites for people with mobility impairments?
4. Do TANF agency offices prominently feature posters or other signage alerting people with disabilities how they can obtain further assistance?

Initial Screening for Disability and Accommodation Needs

1. Do initial intake procedures used by TANF staff include a screening of applicants to ascertain potential disability and accommodation needs? Do these intake procedures allow staff to ascertain whether the person may need a more comprehensive assessment to make such a determination?
2. Are intake workers trained to recognize potential disabilities? If there is an initial indication that an individual has a disability that may impact his/her ability to successfully complete or benefit from a current or proposed program assignment based on applicant or beneficiary disclosure, an initial screening or other information, does the intake worker give the individual an opportunity for a more comprehensive evaluation or assessment?

3. Do TANF workers inform individuals that they can disclose a disability and/or a need for a reasonable accommodation?
4. Is it made clear that disclosure of disability is voluntary?
5. Are screening instruments validated for the purpose for which they are used?

Assessment of Accommodation Needs for People with Disabilities

1. Does the agency provide for an assessment after initial intake where appropriate? Does the assessment determine:
 - Whether the individual has one or more disabilities;
 - Nature of the disability;
 - Extent to which an applicant is capable of employment or participation in employment-related activities;
 - Under what conditions the individual is capable of employment;
 - Implications of the disability on immediately securing employment;
 - Appropriateness of a particular work assignment;
 - The need for reasonable accommodations, reasonable modifications to policies, provision of auxiliary aids and services and communication assistance, and/or additional training and education; and
 - Applicability of work participation rules and time limits, and the appropriateness of applying sanctions.
2. Is it clear that participating in an assessment is voluntary?
3. Are qualified personnel conducting these comprehensive assessments?
4. Where necessary to ensure equal opportunity for individuals with disabilities, does the TANF agency involve in the assessment process medical, psychological, vocational, and rehabilitation experts who are trained in making assessments of adults with disabilities related to employment?

Job Training/Education Stage

1. Where a TANF program features training or educational opportunities, are these opportunities accessible for beneficiaries with disabilities? Specifically, are they accessible for people with mobility impairments? People with impairments affecting communication? People with developmental impairments? People with mental or emotional impairments?

2. To the extent these job training and education programs are operated by other agencies or entities, are TANF agency staff trained in how to get beneficiaries with disabilities enrolled in these programs?
3. To the extent these programs are operated by other agencies or entities, has the State or primary TANF agency made the other entities aware of their obligations under the ADA and Section 504 to modify policies and procedures to ensure that people with disabilities have an equal opportunity to benefit?
4. How does the TANF agency monitor how individuals with disabilities function in training programs? Is there a method in place to ensure close tracking of whether an individual's accommodation needs are being met?

Work Program Stage

1. Was there a determination of whether modifications or accommodations to job opportunities are necessary due to disability?
2. Is the TANF agency working with employers to ensure that employers are aware of ADA obligations regarding reasonable accommodations for individuals with disabilities?
3. Is the agency working with employers to ensure that beneficiaries with disabilities are not steered to dead-end jobs?
4. How does the TANF agency monitor how individuals with disabilities function in job placements? Is there a method in place to ensure close tracking of whether an individual's accommodation needs are being met?
5. Is the agency ensuring that potential obstacles to sustaining employment for people with disabilities are being addressed?