

# CLASP

CENTER FOR LAW AND SOCIAL POLICY

By Mark Greenberg  
January 30, 2006

## **The TANF Participation Rate Structure under the Budget Reconciliation Bill: A Summary of the Rules**

The budget reconciliation bill awaiting a final vote by the House changes several key aspects of TANF participation rate rules, while leaving other parts of the law unchanged. This summary is based on the bill language, existing statutory provisions, and current regulations. In reading the following, it is important to keep in mind that the reconciliation bill directs HHS to publish regulations by June 30, 2006 addressing certain aspects of the structure.

This document is intended to describe in a straightforward way the provisions and requirements of the overall work participation rate structure if the pending bill is approved by the House and becomes law; it does not discuss policy considerations. For a discussion of key concerns presented by the bill, see Sharon Parrott, *Conference Agreement Imposes Expensive New TANF Requirements on States and Will Result in Loss of Child Care for Working Poor*, <http://www.cbpp.org/12-18-05bud2.htm>, and Mark Greenberg, *Conference TANF Agreement Requires States to Increase Work Participation by 69 Percent, but New Funding Meets Only a Fraction of New Costs*, [http://www.clasp.org/publications/tanfagreement\\_update\\_jan12.pdf](http://www.clasp.org/publications/tanfagreement_update_jan12.pdf)

### **In brief**

If the pending TANF provisions become law, then effective October 1, 2006, each state will be required to meet a 50 percent participation rate for all families, and a separately calculated 90 percent participation rate for two-parent families, with each rate adjusted downward for any caseload decline that occurs after 2005 for reasons other than changes in eligibility rules. The rates will be calculated based on the combination of families receiving TANF assistance and families receiving assistance in state-funded programs that count toward maintenance of effort requirements. Current law requirements for the number of hours needed to count as participant and the activities that count as participation were not changed. However, the bill directs HHS to publish regulations by June 30, 2006 specifying when an activity counts as one of the federally listed activities, uniform reporting requirements and verification requirements for participation, and circumstances under which a parent who resides with a child should be included in the work participation rates. The bill does not change the existing penalty structure, under which states can be penalized up to 5 percent of their block grants for the first year of not meeting work requirements, subject to provisions for reducing penalties, reasonable cause, and corrective compliance. The bill adds a new penalty of up to 5 percent for a state's failure to establish or comply with procedures for counting and verifying work activities.

### **Background: Federal Statutory Requirements and HHS Regulations**

The federal TANF statute establishes the broad framework for participation rate requirements, specifying the rates states must meet, the number of hours a family must participate to count toward

the rates, and the activities that count as participation.<sup>1</sup> Under the budget bill, HHS is directed to write federal regulations, which must be consistent with the statute, addressing

- whether an activity can be treated as one of the federally listed work activities for purposes of participation rates;
- uniform methods for reporting hours of work;
- the type of documentation needed to verify reported hours of work; and
- the circumstances under which a parent who resides with a child receiving assistance should be included in the work participation rates.<sup>2</sup>

These regulations must be issued by June 30, 2006, and may be made effective immediately as interim final regulations. Thus, the remainder of this summary describes the rules that apply prior to any new regulations issued by HHS if the bill becomes law.

Once new regulations are issued, the bill specifies that states would need to develop procedures and internal controls by September 30, 2006 consistent with the Secretary's regulations, and states could be penalized by up to 5 percent of their block grants for failure to comply with the new requirements.<sup>3</sup>

### **What Participation Rates Must States meet?**

To avoid a federal penalty, states must meet an "all-families" participation rate and a "two-parent families" participation rate. The all-families rate is 50 percent, subject to any adjustments based on a caseload reduction credit. The two-parent rate is 90 percent, subject to any adjustments based on a caseload reduction credit.<sup>4</sup>

The caseload reduction credit provides a downward adjustment in participation rates based on the number of percentage points by which the average monthly number of families receiving TANF assistance and families in separate state programs counting toward maintenance of effort requirements falls below the average monthly number in a base year for reasons other than changes in state eligibility rules.<sup>5</sup> The reconciliation bill changes the base year from 1995 to 2005.<sup>6</sup> This means, that in 2007 and each year through 2010, the caseload reduction credit would be calculated based on declines in the state's caseload since 2005. For example:

- If the combined state TANF and separate state program caseloads fall by 5 percent between 2005 and 2006 for reasons other than eligibility rules changes, the state would be required to meet a 45 percent all-families rate in 2007.
- If the state's caseload then increases, so that there is no decline between 2005 and 2007, the state would face a 50 percent all-families rate in 2008.

Under existing regulations, in calculating caseload reduction credits:

- for two-parent families, states can elect to use either the overall caseload decline or the decline in the number of two-parent families.<sup>7</sup>

---

<sup>1</sup> The TANF statutory provisions concerning participation rate requirements are contained in 42 U.S.C. §607. Penalty provisions are at 42 U.S.C. §609.

<sup>2</sup> S. 1932, Deficit Reduction Act of 2005, Section 7102(c).

<sup>3</sup> S. 1932, Sec. 7102(c) (2).

<sup>4</sup> 42 U.S.C. §§607(a), 607(b)(3).

<sup>5</sup> 42 U.S.C. §607(b)(3).

<sup>6</sup> S. 1932, Sec. 7102(a).

<sup>7</sup> 45 C.F.R. §261.40(a)(2).

- a state may not count caseload declines resulting from newly-enacted more stringent income and resource limits, time limits, full-family sanctions, or other new requirements that deny assistance when a family fails to meet program requirements.<sup>8</sup>
- a state may count reductions attributable to enforcement mechanisms or procedural requirements used to enforce existing eligibility criteria, e.g., verification techniques designed to identify or deter families otherwise ineligible under existing rules.<sup>9</sup>

### **Who’s in the Participation Rate Calculation?**

Participation rates are calculated based on the number of families participating in countable activities for a specified number of hours, as a percentage of the total number of families in the participation rate “denominator.”

Under the budget bill, the all-families participation rate denominator is based on the combination of families in which an adult or minor head of household received assistance in either TANF or a separate state program counting toward the state’s maintenance of effort requirements.<sup>10</sup> The only exclusions from this denominator would be for single parents with a child under age one, who could be excluded by the state for up to 12 months;<sup>11</sup> at state option, families receiving assistance under a tribal family assistance plan or tribal work program;<sup>12</sup> and families under penalty for failure to meet work requirements, who can be excluded for up to 3 months in a 12 month period.<sup>13</sup>

Under the budget bill, the two-parent participation rate calculation is based on the number of two-parent families receiving assistance in either TANF or a separate state program counting toward maintenance of effort requirements.<sup>14</sup> In calculating the two-parent rate, states may exclude families receiving assistance under a tribal family assistance plan or tribal work program,<sup>15</sup> and families under sanction for failure to meet work requirements for up to three months in a twelve month period.<sup>16</sup> States must count as two-parent families all families in which two natural or adoptive parents (of the same minor child) are receiving assistance and living in the home, unless both are minors and neither is the head of the household.<sup>17</sup> The family is not considered a two-parent family if the family includes a disabled parent.<sup>18</sup>

Note that the requirements apply to families receiving “assistance.” Assistance is defined by regulation to include benefits designed to meet a family’s ongoing basic needs, and to also include supportive services such as child care and transportation provided to unemployed families, unless otherwise excluded.<sup>19</sup>

---

<sup>8</sup> 45 C.F.R. §261.42(a)(1).

<sup>9</sup> 45 C.F.R. §261.42(a)(2).

<sup>10</sup> 42 U.S.C. §607(b); S. 1932, Sec. 7102(b).

<sup>11</sup> 42 U.S.C. §607(b)(5).

<sup>12</sup> 42 U.S.C. §607(b)(4).

<sup>13</sup> 42 U.S.C. §607(b)(1)(B)(ii)(II).

<sup>14</sup> 42 U.S.C. §607(b); S. 1932, Sec. 7102(b).

<sup>15</sup> 42 U.S.C. §607(b)(4).

<sup>16</sup> 42 U.S.C. §607(b)(2)(B).

<sup>17</sup> 45 C.F.R. §261.24(c).

<sup>18</sup> 42 U.S.C. §607(b)(2)(C).

<sup>19</sup> 45 C.F.R. §260.31(a). A list of benefits and services excluded from the definition of assistance is at 45 C.F.R. §260.31(b).

Also, note that HHS has previously advised states that states can elect to provide assistance to non-custodial parents, include the noncustodial parent as part of the family and count the hours of participation of the noncustodial parent toward participation rates.<sup>20</sup>

### **How Many Hours Must a Family Participate in Order to Count?**

In the all-families rate calculation, a single parent family with a child under age 6 must participate for an average of 20 hours a week in order to count toward the rates; all other families must participate for an average of 30 hours a week in order to count.<sup>21</sup>

In the two-parent family rate calculation, the family must participate for 35 hours a week in order to count, provided that if the family is receiving federally-funded child care, the family must participate for 55 hours a week in order to count.<sup>22</sup>

### **What Activities Count as Participation?**

In the all-families rate calculation, nine activities can count toward any hours of participation; and three others only count toward hours in excess of 20.

The nine activities that count toward any hours of participation are:

- Unsubsidized employment;
- Subsidized private sector employment;
- Subsidized public sector employment;
- Work experience;
- On-the-job training;
- Job search and job readiness assistance;
- Community service programs;
- Vocational educational training;
- Providing child care services to an individual who is participating in a community service program;

The three activities that only count toward hours after the first 20 are:

- Job skills training directly related to employment;
- Education directly related to employment;
- Satisfactory attendance at secondary school or in a course of study leading to a GED.<sup>23</sup>

In addition:

- A married recipient or single head of households under age 20 counts toward rates if he or she is maintaining satisfactory attendance at secondary school or equivalent; or participating in education directly related to employment for at least 20 hours a week.<sup>24</sup>
- Vocational educational training is only countable for a total of twelve months for any individual;<sup>25</sup>

---

<sup>20</sup> See preamble to final TANF regulations, 64 Fed. Reg. 17719, 17824 (April 12, 1999).

<sup>21</sup> 42 U.S.C. §607(c)(1)(A); 42 U.S.C. §607(c)(2)(B).

<sup>22</sup> 42 U.S.C. §607(c)(1)(B).

<sup>23</sup> 42 U.S.C. §607(c)(1)(A); 42 U.S.C. §607(d); 45 C.F.R. §261.31.

<sup>24</sup> 42 U.S.C. §607(c)(2)(C).

- Not more than 30 percent of families counting toward participation rates may do so through participation in vocational educational training or being parents under age 20 counting through school attendance or education directly related to employment; for example, if a state attains a 50 percent participation rate, no more than 15 percent (30 percent of 50 percent) can count through these activities;<sup>26</sup>
- Except under limited circumstances of high unemployment, job search and job readiness assistance may not count as participation for more than six weeks in a year.<sup>27</sup>

For purposes of the two-parent rates, one or both parents must participate for 35 hours a week. At least 30 of those hours must be from the nine listed above; the remaining five hours can be satisfied by any of the above-listed activities. If the two-parent family receives federally-funded child care, at least 50 of the 55 hours must be from the nine listed above; the remaining five hours can be satisfied by any of the above-listed activities.<sup>28</sup>

### **What happens if a state fails to meet a participation rate?**

If a state fails to meet one or both participation rates, the state will be penalized unless HHS determines that the state had reasonable cause or HHS accepts the state's plan for corrective compliance and the state meets the terms of its corrective compliance plan. The budget bill does not change these provisions.

### **Calculating the amount of the penalty**

The maximum penalty for failure to meet participation rates is 5 percent of the state's adjusted family assistance grant (i.e., the basic block grant before supplemental grants, after reductions for tribal grants, and after transfers) for the first year of failure; the amount of the maximum penalty then grows by 2 percentage points for each subsequent year of noncompliance, provided that the total cannot exceed 21 percent of the state's adjusted family assistance grant.<sup>29</sup>

If the state only fails the two-parent rate, the maximum penalty is limited by the share of the state's cases that include two-parent families.<sup>30</sup> For example, if 5 percent of the state's cases are two-parent family cases, in the first year of noncompliance, the maximum penalty is 5 percent of 5 percent, i.e. .2 percent. If the state fails the overall rate or both rates, the maximum penalty is 5 percent.

The penalty will be imposed for the year following HHS' final determinations that the state should be penalized and of the penalty amount.<sup>31</sup>

If a state is penalized, the state must expend state funds in the amount by which the state is penalized to replace the reduction to its state family assistance grant. If the state fails to do, the state is subject to an additional penalty of up to two percent of its adjusted state family assistance grant.<sup>32</sup>

HHS may choose to reduce a state's penalty if:

---

<sup>25</sup> 42 U.S.C §607(d)(8).

<sup>26</sup> 42 U.S.C. §607(c)(2)(D); 45 C.F.R. §261.33

<sup>27</sup> 42 U.S.C. §607(c)(2)(A); 45 C.F.R. §261.34.

<sup>28</sup> 42 U.S.C. §607(c)(1)(B); 45 C.F.R. §261.32.

<sup>29</sup> 42 U.S.C. §609(a)(3)(B); 45 C.F.R §261.50.

<sup>30</sup> 45 C.F.R. §261.51(a)(1).

<sup>31</sup> 45 C.F.R. §261.50(c).

<sup>32</sup> 42 U.S.C §609(a)(12); 45 C.F.R §262.1(a)(12).

- The state met the definition of a “needy state,” i.e. its average rate of total unemployment was at least 6.5 percent, or grew by at least 10 percent above the level in either of the prior two years, or the number of individuals receiving food stamps grew by at least 10 percent; or
- HHS determines that noncompliance was due to extraordinary circumstances such as natural disaster, regional recession or substantial caseload increase.<sup>33</sup>

The Secretary must provide a written report to Congress to justify any waiver or penalty reduction due to such extraordinary circumstances.

In addition, the state can qualify for penalty reduction if it reaches at least half of the required rate and its number of participants grew by at least 15 percent:

- To qualify for any reduction, the state must meet at least 50 percent of its required rate and the average monthly number of participants must have been at least 15 percent higher than in the prior year.<sup>34</sup>
  - For example, if the required rate is 50 percent, the state must attain a rate of at least 25 percent to qualify for any reduction. If the state had had 100 participants in the prior year, it must have at least 115 participants to qualify for penalty reduction in the subsequent year.

If the state qualifies for a reduction, the amount of the reduction is based on three factors: how close the state came to meeting the rates; the extent to which the number of participants in the program increased; and whether the state missed one or both rates and whether this was the first or a subsequent year of noncompliance. In addition, the amount of the reduction can be affected if a state’s failure to meet participation rates was in part attributable to having granted federally recognized good cause domestic violence waivers.

- First, a downward reduction is calculated based on how close the state came to meeting the rate. To calculate this, HHS will use a ratio whose numerator is the difference between the state’s actual participation rate and the level which was half of the required rate; the denominator will be the difference between the required rate and half of the required rate.<sup>35</sup>
  - For example, suppose the required rate is 50 percent, and the state attains a 30 percent rate. The numerator would be 5 percent (i.e. 30 percent actual rate minus 25 percent, half the required rate); the denominator would be 25 percent (i.e. 50 percent required rate minus 25 percent, half the required rate). The ratio of 5 percent to 25 percent is 20 percent, so the amount of penalty reduction would be 20 percent.
- Second, the amount of the penalty reduction is then increased by an adjustor to reflect how much the number of participants grew beyond the minimum 15 percent growth needed to qualify for penalty reduction. The formula is the average monthly number of individual engaged in work in the penalty year, minus the average monthly number engaged in the prior year, divided by 15 percent of the average monthly number engaged in the prior year.<sup>36</sup>
  - For example, suppose there were 120 individuals engaged in work in the penalty year, and 100 engaged in the prior year. The adjustor would be 120-100, divided by 15, resulting in 1.33, and the amount of penalty reduction would be increased by 33 percent.

<sup>33</sup> 42 U.S.C §609(a)(3)(C); 45 C.F.R. §261.51(d).

<sup>34</sup> 45 C.F.R. §261.51(b).

<sup>35</sup> 45 C.F.R. §261.51(b)(3).

<sup>36</sup> 45 C.F.R §261.51(b)(4).

- Third, the amount of the penalty will depend on whether the state missed one or both rates, and whether this is the first year in which the state failed to meet a rate.
  - If the state missed only the two-parent rate and qualifies for a reduction, its penalty will be the amount calculated based on the share of two-parent families in the caseload, times:
    - the percentage that results from calculating how far above 50 percent of the required rate for two-parent families was attained times the adjustor reflecting the extent by which the number of two-parent family participants grew by more than 15 percent.<sup>37</sup>
  - If the state missed the all-families or both rates and qualifies for a reduction, its penalty for the first year will be 5 percent times:
    - the percentage that results from calculating how far above 50 percent of the required rate for two-parent families was attained, times the adjustor reflecting the extent by which the number of two-parent family participants grew by more than 15 percent.<sup>38</sup>
  - If the state was not subject to a penalty in the prior year and met one of the required rates, it will receive the full amount of relief described above; if it failed both rates, it will receive half of the amount of relief described above. If the state was penalized in the prior year and met one of the required rates, it will receive half of the relief described above; if it did not meet either rate in either year, it will only qualify for one-fourth of the relief described above. If the state is subject to penalty for three years in a row, it will not qualify for any reduction under this provision.<sup>39</sup>
- In addition, if a state's failure to meet participation rates was in part attributable to having granted federally recognized good cause domestic violence waivers, and the state attained at least half of the required rate when such cases are excluded from the calculation, the state can qualify for penalty relief reflecting the extent to which its failure was attributable to such waivers.<sup>40</sup> If the threshold requirement is met, HHS will adjust the above calculations to exclude such cases.<sup>41</sup>

## Reasonable Cause

The federal TANF statute states that HHS may not impose a penalty for failure to meet participation rate requirements if HHS determines that the state has reasonable cause for its failure.<sup>42</sup> HHS regulations set forth the conditions under which it may find reasonable cause.

- HHS lists a set of “general factors” for reasonable cause, but also notes “While we do not anticipate routinely determining that a State had reasonable cause based on other factors, we do not want to preclude a State from presenting other circumstances.”<sup>43</sup> The general factors a State may use to claim reasonable cause include:

<sup>37</sup> 45 C.F.R. §261.51(b)(5).

<sup>38</sup> 45 C.F.R. §261.51(b)(6).

<sup>39</sup> 45 C.F.R. §261.51(c).

<sup>40</sup> 45 C.F.R. §260.58(b).

<sup>41</sup> 45 C.F.R. §261.51(b)(7).

<sup>42</sup> 42 U.S.C. §609(b).

<sup>43</sup> 64 Fed. Reg. 17805 (April 12, 1999).

- Natural disasters and other calamities (e.g., hurricanes, earthquakes, fire) whose disruptive impact was so significant as to cause the State's failure;
- Formally issued Federal guidance that provided incorrect information resulting in the State's failure; or
- Isolated problems of minimal impact that are not indicative of a systemic problem.<sup>44</sup>
- In addition, HHS indicates that it will determine that a State has reasonable cause if the state demonstrates that its failure to meet the rates was::
  - attributable to its provision of federally recognized good cause domestic violence waivers;<sup>45</sup> or
  - attributable to its provision of assistance to refugees in federally approved alternative projects under section 412(e)(7) of the Immigration and Nationality Act.<sup>46</sup>

### **Corrective Compliance**

If a state is subject to a penalty, it may still not have the penalty imposed if HHS accepts and the state complies with a corrective compliance plan.<sup>47</sup>

- A proposed corrective compliance plan must include:
  - A complete analysis of why the State did not meet the requirements;
  - A detailed description of how the State will correct or discontinue, as appropriate, the violation in a timely manner;
  - The time period in which the violation will be corrected or discontinued;
  - The milestones, including interim process and outcome goals, that the State will achieve to assure it comes into compliance within the specified time period; and
  - A certification by the Governor that the State is committed to correcting or discontinuing the violation, in accordance with the plan.<sup>48</sup>
- The corrective compliance plan must correct or discontinue the violation by the end of the first fiscal year ending at least six months after HHS' receipt of the corrective compliance plan.<sup>49</sup>
- HHS will not impose a penalty against a State with respect to any violation covered by a corrective compliance plan that HHS accepts if the State completely corrects or discontinues, as appropriate, the violation within the period covered by the plan.<sup>50</sup>
- If the state fails to completely correct or discontinue the violation pursuant to its corrective compliance plan and in a timely manner, HHS may reduce the penalty if the State demonstrates that:
  - Although it did not achieve full compliance, the State made significant progress towards correcting or discontinuing the violation. To qualify for a penalty reduction, based on significant progress toward correcting the violation, a state must reduce the difference between the participation rate it achieved in the year for which it is subject to a penalty and the rate applicable during the penalty year by at least 50 percent; or
  - The State's failure to comply fully was attributable to either a natural disaster or regional recession.<sup>51</sup>

---

<sup>44</sup> 45 C.F.R §262.5.

<sup>45</sup> 45 C.F.R §261.52(b)(1); 45 C.F.R. §260.58.

<sup>46</sup> 45 C.F.R. §261.52(b)(2).

<sup>47</sup> 42 U.S.C §609(c); 45 C.F.R. §261.53, 45 C.F.R. §262.6.

<sup>48</sup> 45 C.F.R. §262.6(d).

<sup>49</sup> 45 C.F.R. §262.6(e).

<sup>50</sup> 45 C.F.R. §262.6(i).

<sup>51</sup> 45 C.F.R. §262.6(j); 45 C.F.R. §261.53(b).



## **Impact on maintenance of effort requirements**

If a state fails to meet either participation rate for a year, the state's maintenance of effort requirement for that year is 80 percent of its prior state spending level, rather than 75 percent.<sup>52</sup> HHS has explicitly stated that the 80 percent requirement applies if the state fails to meet either rate, and that the state must actually meet the rates in order to be at the 75 percent MOE level, i.e., the fact that the state qualifies for penalty reduction or reasonable cause is not sufficient.<sup>53</sup>

---

<sup>52</sup> 42 U.S.C. §609(a)(7)(B)(ii).

<sup>53</sup> 64 Fed. Reg. 17816 (April 12, 1999).