



CDSS

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DEPARTMENT OF SOCIAL SERVICES
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ARNOLD SCHWARZENEGGER
GOVERNOR

June 16, 2010

ALL COUNTY INFORMATION NOTICE NO. I-45-10

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PENALTY FOR FAILURE TO MEET WORK PARTICIPATION RATE REQUIREMENTS IN FEDERAL FISCAL YEAR 2008

REFERENCE: WELFARE AND INSTITUTIONS CODE SECTION 10544

REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

The purpose of this letter is to transmit information regarding California's Temporary Assistance for Needy Families (TANF) work participation rate (WPR) for federal fiscal year (FFY) 2008.

The California Department of Health and Human Services received a letter from the federal Administration for Children and Families (ACF) on March 30, 2010 stating that California (1) was successful in meeting the 90 percent two-parent WPR requirement and (2) failed to meet the 50 percent All Families rate for FFY 2008.

After receiving a 90 percent caseload reduction credit (CRC), California met the federal 90 percent two-parent family rate requirement. The state also received a CRC of 21.0 percent toward the 50 percent All Families rate requirement, leaving an overall target rate of 29.0 percent. California's All Families WPR in FFY 2008 was 25.1 percent, only 3.9 percent short of the required target rate. As a result, California is subject to a fiscal penalty for failing to meet the FFY 2008 All Families WPR requirement.

Per Welfare and Institutions Code section 10544, 50 percent of any TANF fiscal penalties imposed on California will be absorbed by the state, with the remaining 50 percent being passed on to counties and distributed among them based on the degree of failure. However, the California Department of Social Services (CDSS) is currently taking steps to mitigate the penalty that the state and counties would have to absorb. CDSS convened a workgroup of TANF stakeholders including county representatives, County Welfare Directors Association (CWDA), and welfare advocate representatives to develop the state's response to the penalty letter. The stakeholder workgroup considered all response options available to the state under federal regulation that will delay, reduce or eliminate the federal penalty. These response options include disputing the penalty, applying for reasonable cause and entering into a corrective compliance plan, sequentially. However, because no basis could be established to

dispute the penalty upon analysis of the federal penalty methodology and applicable regulations, the workgroup has formulated a claim of reasonable cause that could waive the penalty as California's first response to the penalty letter. This response was articulated in a letter submitted to ACF on May 27, 2010. If the claim for reasonable cause and subsequent state responses do not prevent the penalty, the earliest that CalWORKs budgets could be affected would be in state fiscal year 2011-12, with the reduction of the FFY 2012 TANF block grant.

We will spare no effort to keep you informed of the penalty status via all county information notice and other available modes of communication.

If you have any questions regarding this letter, please contact Geoffrey Miller at (916) 654-6091.

Sincerely,

Original Document Signed By:

Kären Dickerson, Chief
Employment and Eligibility Branch

Attachment



DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR CHILDREN AND FAMILIES
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

MAR 30 2010

Ms. S. Kimberly Belshe
Secretary
Health and Human Services Agency
1600 9th Street, Suite 460
Sacramento, CA 95814

Dear Ms. Belshe:

I am pleased to inform you that California successfully met its two-parent work participation rate for fiscal year (FY) 2008 under the Temporary Assistance for Needy Families (TANF) program. After applying your State's caseload reduction credit of 90.0 percent to the required two-parent participation rate of 90 percent for FY 2008, the adjusted target rate for your State became 0.0 percent. California achieved a two-parent participation rate of 26.5 percent.

Unfortunately, the data you have reported show that your State did not meet its minimum overall work participation rate for fiscal year 2008. As you know, the required overall participation rate for FY 2008 was 50 percent. When we applied California's caseload reduction credit of 21.0 percent, your adjusted target rate became 29.0 percent. However, California achieved an overall work participation rate of 25.1 percent. This shortfall means that the State is subject to a penalty.

Caseload Reduction Credit

We calculate the caseload reduction credit using the percentage point decline in a State's average monthly assistance caseload between the base year, FY 2005, and the comparison year (the fiscal year that immediately precedes the year of the work participation rate), minus any caseload reduction resulting from changes in State or Federal eligibility requirements. If the net impact of eligibility changes is positive (i.e., caused the caseload to increase), it has no bearing on the caseload reduction credit.

In determining the comparison-year caseload, a State may choose to request credit in accordance with 45 CFR 261.43(b). Under that provision, a State that is investing State maintenance-of-effort (MOE) funds in excess of the required 80 percent or 75 percent basic MOE amount need only include the pro rata share of caseloads receiving assistance that is required to meet basic MOE requirements. TANF regulations that take effect for the FY 2009 caseload reduction credits prescribe a method of calculating the number of cases funded with excess MOE. For FY 2008, we have used an approach that many States proposed in their FY 2007 and FY 2008 caseload reduction reports. It grants a State credit for the full amount of its excess MOE, not just the assistance portion. Under this approach, we divide total excess MOE (rather than just the proportion attributed to assistance) by the average expenditures on assistance per case. This

yields the number of cases funded with excess MOE, which we subtract from the comparison-year caseload. For separate, two-parent caseload reduction credits, we assume that a State spent “excess MOE” on two-parent families before using other dollars to fund those cases. We calculated the caseload reduction credits for all States using this approach to ensure a fair and consistent standard across all States.

The tables below show the data we used to calculate the caseload reduction credit for California. Please note that the calculations use combined average monthly caseloads of TANF and any separate State programs (SSP-MOE) cases. Expenditures equal verified amounts expended during the fiscal year and may not be the same as those reported for financial data reporting purposes, due to corrections and adjustments in financial reporting. In addition, for purposes of the caseload reduction credit, FY 2007 MOE expenditures must have been reported on the financial reporting form no later than May 31, 2008, the due date for the expenditures from the second quarter of FY 2008. Finally, the caseload reduction credit cannot exceed statutory work participation rate so we cap the caseload reduction credits at 50 percent and 90 percent for the overall and two-parent work participation rates, respectively.

FY 2007 Expenditure Data for Excess MOE Calculation

Total MOE expenditures	Total assistance (Federal + MOE)	Average assistance expenditures/case	Required MOE amount	Excess MOE	Cases funded with excess MOE
\$3,412,425,756	\$3,674,957,313	\$7,787	\$2,855,258,045	\$557,167,711	71,550

FY 2008 Caseload Reduction Credit Calculation – Overall Credit

Base-year caseload (FY 05)	Comparison-year caseload (FY 07)	Adjusted comparison-year caseload (less excess MOE cases)	Net impact of eligibility changes	Caseload Reduction Credit
506,504	471,930	400,379	238	21.0%

FY 2008 Caseload Reduction Credit – Two-Parent Credit

Base-year caseload (FY 05)	Comparison-year caseload (FY 07)	Adjusted comparison-year caseload (less excess MOE cases)	Net impact of eligibility changes	Caseload Reduction Credit
42,934	36,602	0	-1	90.0%

Penalty Calculation

We arrived at the base penalty amount by applying the regulations at 45 CFR 261.50 to the data you submitted. Because California was subject to a penalty for failure to meet the participation rate in the immediately preceding fiscal year, the base penalty is last year’s penalty amount plus two percent of the FY 2008 adjusted State family assistance grant. We then reduced the penalty based on the degree of the State’s noncompliance, in accordance with the regulations at 45 CFR 261.51.

Under the regulations, there are two possible reductions for which a State may qualify. First, if the State failed only the two-parent rate, we reduce the base penalty to a percentage equal to the

proportion of two-parent families in its caseload. To receive further reduction, the State must meet two threshold tests specified in the regulations. The threshold tests require the State to achieve a participation rate that is at least half of its adjusted target rate and to increase the number of individuals it engaged in work over the prior year. If the State meets both of those tests, it qualifies for the second reduction, which is based on the severity of the State’s failure.

We consider three factors in determining the severity of the State’s failure: the degree to which the State missed the adjusted target; how many more individuals it has engaged in work over the prior year; and how many rates and how many successive years the State has failed. For the first factor, we reduce the penalty proportionally for the State’s level of achievement above the 50-percent threshold. For the second factor, we calculate an adjustment factor that rewards the State for engaging at least 15 percent more individuals in work than it engaged the prior year. We multiply those factors by the base penalty (reduced for failing only the two-parent rate, if appropriate). For the last factor, we then multiply that reduction by a percentage based on the number of rates failed and number of consecutive years of failure. A State that fails only one rate in its first year of failure receives 100 percent of the severity reduction. If the State fails both rates in the first year or one rate in the second successive year, it receives 50 percent of this reduction. If the State fails both rates in the second successive year of failure, it receives 25 percent of this reduction. A State that is in its third or greater successive year of failure will not receive any reduction for the severity of the failure.

Accordingly, the penalty amount for California is \$47,664,514. Here are our calculations using an Excel spreadsheet:

State Information

Caseload Reduction Credit	Adjusted Target	Rate Achieved ¹	Adjusted SFAG
21.0%	29.0%	25.2%	\$3,272,071,892

Reduction Above 50% Threshold	Number Engaged in Work, FY 07	Number Engaged in Work, FY 08	Adjustment Factor	Percentage of Reduction Available (due to years of failure, # of rates failed)
73.5%	64,030	71,128	0.7	50%

Penalty Calculations

Step	Base Penalty Amount	Threshold Tests	Reduction for Severity of Failure	Penalty Amount
Calculation	Prior Penalty + 2% of Adjusted SFAG	<ul style="list-style-type: none"> • Test 50% threshold • Test increase in # engaged in work 	If <i>both</i> tests met, multiply together threshold reduction, adjustment factor, percentage of severity failure reduction, and reduced penalty	Subtract reduction for severity of failure from reduced penalty
Result	\$65,441,438	Test 1: yes Test 2: yes	\$17,776,924	\$47,664,514

¹ The participation rate achieved has been adjusted to remove cases with federally recognized good cause domestic violence waivers of work, pursuant to 45 CFR 261.51(b)(7).

Right to Appeal

In accordance with 45 CFR 262.7, this letter serves as a formal notice of an adverse action. You have the right to file an appeal with the HHS Departmental Appeals Board (DAB) pursuant to 45 CFR 262.7 and 45 CFR Part 16. If you wish to do this, you should submit the appeal, including a brief and supporting documents, to:

HHS Departmental Appeals Board
Appellate Division, MS 6127
Cohen Building, Room G-644
330 Independence Avenue, SW
Washington, D.C. 20201

Please send a copy of the appeal and any supplemental filings to:

HHS Office of the General Counsel
Children, Families and Aging Division
Mailstop 4280, Cohen Building
330 Independence Avenue, SW
Washington, D.C. 20201

You must file your appeal within 60 days of the date you receive this letter. If you choose to file an appeal and the penalty is upheld, interest charges will be calculated from the date of this letter and added to the amount of the penalty in accordance with the applicable provisions at 45 CFR Part 30.

Next Steps

The regulations provide several other options that you may choose to pursue at this point. If you elect one or more of those options and the penalty is not ultimately reduced or resolved, then at the end of that process, we will issue another notice of adverse action that will provide a 60-day appeal period.

First, you may dispute the penalty, as provided at 45 CFR 262.4, if you think our finding is wrong. Second, if you believe you have reasonable cause for failing to meet the participation rate, you may make a claim explaining your grounds for an exception from the penalty in accordance with 45 CFR 262.5. Third, as provided at 45 CFR 262.6, you may enter into a corrective compliance plan to correct the violation and demonstrate how you will achieve compliance with the work participation requirements. Fourth, if the State's noncompliance was due to circumstances that caused it to be a "needy" State (as defined in section 403(b)(5)) or due to extraordinary circumstances such as a natural disaster or regional recession, you may submit information substantiating a request that we make a discretionary reduction of the penalty in accordance with the provisions of 45 CFR 261.51(d).

If you wish to pursue one of these options, you must submit the appropriate materials within 60 days of the date you receive this letter. If you think our finding is incorrect, you should submit a letter explaining the grounds for your dispute, along with any documentation of your position. To make a claim of reasonable cause for failing to meet the rate, you should submit a letter describing the grounds for a reasonable cause exception, including any documentation to support your claim. If you would like to enter into a corrective compliance plan, you should submit such a plan. The plan must indicate that the State will correct the violation in accordance with the timeframe set forth in 45 CFR 262.6 (e)(1) by achieving its minimum participation rate in the required fiscal year. In addition, the plan must analyze why the State failed to meet the requirements, describe the milestones, including interim process and outcome goals, that the State will achieve to assure it comes into compliance on time, and include a certification by the Governor that the State is committed to correcting the violation in accordance with the plan. If you think the State is entitled to a discretionary reduction, you should submit a letter with documentation substantiating the circumstances of the failure.

Please note that you may exercise the options outlined above in turn, awaiting a decision on one before submitting materials for the next. In such case, you would have 60 days from the date you receive our response to the first claim to submit the materials required to exercise another option. If we deny a dispute of the penalty amount or a reasonable cause request, or a request under 45 CFR 261.51(d), we will issue another notice of adverse action that will provide a 60-day appeal period. If you submit a timely corrective compliance plan and are ultimately unable to correct the violation in the manner and within the timeframe set forth in the plan, then we will issue another notice of adverse action that will provide a 60-day appeal period.

If we receive no written response within 60 days of the date you receive this letter, we will consider you to have waived your appeal rights and we will impose the penalty. Alternatively, you may choose to notify us that you have accepted our finding without pursuing any of the options described above. In both cases, we will impose the penalty by reducing your grant authorization in accordance with 45 CFR 262.1. Also, in the following fiscal year you will be required to expend additional State funds (which do not count toward the maintenance-of-effort requirement under TANF) to replace the reduction in your grant due to this penalty.

Please submit any materials, including a dispute of our finding of penalty liability, any claim for a reasonable cause exception, and/or a corrective compliance plan, or a request under 45 CFR 261.51(d), within 60 days to:

Mr. Dan Baker
TANF Regional Program Manager
Administration for Children and Families
90 Seventh Street, 9th Floor
San Francisco, CA 94103

If you have questions about the information in this letter or need assistance in developing your response, please contact Mr. Dan Baker, the TANF Program Manager for Region 9.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ann H. Barbagallo".

Ann H. Barbagallo
Acting Director
Office of Family Assistance

cc: The Honorable Arnold Schwarzenegger, Governor