

FINDING OF EMERGENCY

These regulations are being implemented on an emergency basis for the immediate preservation of the public peace, health and safety, or general welfare, within the meaning of Government Code Section 11346.1.

DESCRIPTION OF SPECIFIC FACTS WHICH CONSTITUTE THE EMERGENCY

1. The Legislature enacted the provisions of Assembly Bill (AB) 1808 (Section 27.7, Chapter 75, Statutes of 2006) on an emergency and urgency basis to take effect immediately. This emergency regulation will implement the pass-on of 50 percent of the federal fiscal penalty the state is assessed for not meeting the required federal work participation rate (WPR) to counties that contribute to the state's failure for not meeting the WPR with regard to the California Work Opportunity and Responsibility to Kids (CalWORKs) program.
2. The federal Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 and the supporting Temporary Assistance to Needy Families (TANF) rule specifies the penalty for failing the TANF WPR shall be five percent of the state's block grant, which would be approximately \$150 million for California. Additionally, failure to meet WPR requirements increases the state maintenance-of-effort (MOE) requirements from 75 percent of historic expenditure levels to 80 percent (approximately \$180 million).
3. Assembly Bill 1808, Section 43, gives the California Department of Social Services (CDSS) the permission to implement applicable provisions of the law, until regulations are filed with the Secretary of State, through an All-County Letter (ACL) or similar instructions from the Director of CDSS. The Department shall adopt emergency regulations, as necessary to implement the provisions no later than July 1, 2008.
4. These emergency regulations would ensure that the state has the ability to pass on half of the federal fiscal penalty to counties who contributed to the state's receiving a fiscal penalty, as required by Welfare and Institution Code Section 10544, as amended by AB 1808. Additionally, these emergency regulations would ensure that the counties have a clear understanding that they are accountable for their actions or lack thereof, and shall be subject to a share of the penalty the state receives for not meeting required federal performance outcomes.
5. A delay in the implementation would put the state at risk of not being able to pass on 50 percent of the federal fiscal penalty to the failing counties and the state would end up paying for the entire amount of the penalty. This would put an additional strain on the current state budget deficit. Additionally, a delay in the implementation of these emergency regulations would result in uncertainty of state requirements and hinder the sharing of the fiscal penalty by the County Welfare Departments due to inadequate guidelines.

6. Furthermore, a delay in the implementation of these emergency regulations would conflict with the statutory mandate that emergency regulations be adopted for the provisions of AB 1808. Relevant portions of Section 43 of AB 1808 read as follows:
 - (a) “Notwithstanding the rulemaking provisions of the Administrative Procedures Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, until emergency regulations are filed with the Secretary of State, the State Department of Social Services may implement the changes made to the Welfare and Institutions Code Section 27.7 of this act through ACLs or similar instructions from the director. The Department shall adopt emergency regulations, as necessary to implement the provisions no later than July 1, 2008.”
 - (b) “The adoption of regulations pursuant to subdivision (a) shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. The emergency regulations authorized by this section shall be exempt from review by the Office of Administrative Law (OAL). The emergency regulations authorized by this section shall be submitted to the OAL for filing with the Secretary of State and shall remain in effect for no more than 180 days, by which time the final regulations shall be adopted.”
7. AB 1808 granted CDSS an undisputed emergency to implement regulations by July 1, 2008 to enact the statutory changes made by AB 1808. However, missing the stated statutory deadline does not by consequence diminish the existence of the emergency findings of the proposed penalty pass-on regulation. AB 1808 granted CDSS an unquestioned emergency to adopt regulations by July 1, 2008 to implement its statutory changes. Passage of the statutory deadline does not terminate the existence of the emergency to adopt penalty pass-on regulations. The emergency nature of these regulations still exists and is necessary irrespective of the time allowed by statute. CDSS is supported by the opinion of Office of Administrative Law staff counsel that the language requiring regulations to be adopted no later than July 1, 2008 is merely directive.
8. Failure to implement these regulations would result in an adverse fiscal impact to the state, which would require it to absorb the entire cost of the federal fiscal penalty (approximately \$150 million) that should have been shared by those counties failing to meet the required WPR. Additionally, failure to implement these regulations would relieve the failing counties from being accountable for not meeting the required WPR, and will not encourage them to improve or fix the problem that caused them to fail.
9. The nonemergency rulemaking process set forth in the Administrative Procedures Act is sufficiently lengthy, making it impossible to adopt regulations by the time the state is assessed the adverse federal fiscal penalty or to avoid risk to the public peace, health, safety, and general welfare of the public.
10. Therefore, in order to protect the public peace, health, safety, and general welfare of the State of California, these regulations are adopted on an emergency basis.

INFORMATIVE DIGEST

As originally adopted in Assembly Bill 1542 (Chapter 270, Statutes of 1997) and authorized by Welfare and Institutions Code Section 10544, if the state is assessed a federal fiscal penalty for not meeting the federal work participation rate (WPR), then the counties failing to make the rate are held accountable and will share in the penalty, after the exhaustion of all reasonable and available federal administrative remedies. Currently, there is no existing regulation to pass on any federal penalties assessed on the state to the counties.

Assembly Bill 1808 (Section 27.7, Chapter 75, Statutes of 2006) amended Welfare and Institution Code section 10544 to clarify that 50 percent of the federal fiscal penalty the state is assessed will be passed on to the counties who fail to meet the federal work participation requirement. Previous language of Welfare and Institutions Code Section 10544 stated that the failing counties will share the penalty without specifying the percentage of the share. The amended statutory language clarifies the percentage of the federal fiscal penalty to be shared between the state and the counties failing to meet the federal rate requirement. This proposed regulation implements and makes specific the terms and requirements of Welfare and Institutions Code Section 10544.

As authorized in the amended Welfare and Institutions Code Section 10544, if a county's single allocation is reduced due to the sharing of the penalty, then the county is obligated to replace the reduction with county general funds, so that the total funding remains the same as the county's single allocation and is in addition to the funds required to meet the county's maintenance of effort requirement. Also added is the requirement that a county failing to meet the rate may be provided penalty relief, either full or partial, from sharing the fiscal penalty if the CDSS determines there were circumstances beyond the county's control that caused the county failure to meet the rate. In addition, new language allows penalty relief for a county based on the degree of success or progress in meeting federal requirements, and to the extent that there are differences between state and federal program requirements, the degree of success in meeting state participation requirements. Previous language in the Welfare and Institutions Code Section 10544 did not consider the differences between state and federal program requirements.

The amended Welfare and Institution Code Section 10544 requires that a county have good cause for failing to submit accurate and timely data used to measure the work participation rate, or it will be considered to have failed to meet the federal requirements. Section 10544 further requires that if there are differences between state and federal program requirements, a county may also be provided relief based on the degree of success in meeting state participation requirements. The definition of good cause includes, but shall not be limited to, the lack of accurate, timely, and complete instructions from CDSS.

CDSS facilitated meetings and discussions in workgroups to gather input from stakeholders in the development of the proposed regulation. That effort included co-development of methodologies and inputs from staffs of the California Welfare Directors Association (CWDA) and the state Legislature. CDSS stakeholders, like the CWDA, Welfare Advocates, California State Association of Counties, County Representatives, Department of Finance, Legislature, and the California Health and Human Services Agency, all contributed to the input and review throughout the crafting of the proposed regulation.

The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 and the supporting TANF regulations specify the penalty for failing the TANF WPR shall be five percent of the state's block grant, which would be approximately \$150 million for California. Additionally, failure to meet WPR requirements increases the state maintenance-of-effort (MOE) requirements from 75 percent of historic expenditure levels to 80 percent (approximately \$180 million). The state's California Work Opportunity and Responsibility to Kids (CalWORKs) program extended to counties specific program and administrative flexibility, which allowed counties to design programs to meet the needs that are unique to their county. Given this greater flexibility to design their own programs, counties are therefore held accountable for the failure and success of their programs. Therefore, counties are held accountable for failing to meet federal and state performance outcomes, including the federal WPR requirement, and are subject to the penalties associated for not meeting the required federal and state performance outcomes.

The proposed regulations will ensure the pass-on of penalties associated with failure to meet the federal WPR. The proposed regulations also assist CDSS in accomplishing its responsibilities to implement and administer the requirements of the CalWORKs program as set forth in the Welfare and Institutions Codes.

As authorized by Welfare and Institutions Code Section 10544, the proposed regulations implement and make specific current statutory requirements of AB 1808 (Section 27.7, Chapter 75, Statutes of 2006).

COST ESTIMATE

1. Costs or Savings to State Agencies: The potential fiscal impact (cost avoidance) to the state is dependent upon the imposition of penalties from the Federal government for failing to meet the Temporary Assistance for Needy Families (TANF) Work Participation Rate (WPR) requirements. Although California failed to meet the WPR for Federal Fiscal Year (FFY) 2007, the federal government will not be imposing a penalty for the year due to an anomaly related to the changes associated with the Deficit Reduction Act (DRA) of 2005 and their interactions with the penalty reduction formula in federal regulations. The State has not yet been advised of the status of the FFY 2008 WPR, however, the State could be subject to a penalty up to \$230 million for failing the FFY 2008 WPR, up to \$115 million of this penalty could be passed on to the counties. The year in which any penalty must be paid is dependent on the timing of notification of failure and the subsequent processes between the State and the federal government, and the State and the counties to determine the total amount of the penalty and the amount of the penalty to be passed on to the counties.
2. Costs to Local Agencies or School Districts: None.
3. Nondiscretionary Costs or Savings to Local Agencies: The potential fiscal impact (cost avoidance) to the state is dependent upon the imposition of penalties from the Federal government for failing to meet the Temporary Assistance for Needy Families (TANF) Work Participation Rate (WPR) requirements. Although California failed to meet the WPR for Federal Fiscal Year (FFY) 2007, the federal government will not be imposing a penalty for

the year due to an anomaly related to the changes associated with the Deficit Reduction Act (DRA) of 2005 and their interactions with the penalty reduction formula in federal regulations. The State has not yet been advised of the status of the FFY 2008 WPR, however, the State could be subject to a penalty up to \$230 million for failing the FFY 2008 WPR, up to \$115 million of this penalty could be passed on to the counties. The year in which any penalty must be paid is dependent on the timing of notification of failure and the subsequent processes between the State and the federal government, and the State and the counties to determine the total amount of the penalty and the amount of the penalty to be passed on to the counties.

4. Federal Funding to State Agencies: These regulations will not have an impact on federal funding.

LOCAL MANDATE STATEMENT

These regulations do not impose a reimbursable state mandate on local agencies or school districts. There are no state-mandated local costs in this order that require reimbursement under Section 17500 et.seq. of the Government Code.

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Welfare and Institutions Code Section 10540.5, 10541.7, 10544, 10553, 10554, 10809, 10852, 10853. Subject regulations implement and make specific Sections 10540.5, 10541.7, 10544, 10809, 10852, 10853, 11521, 11521.5, 15200, 15200.4, 15204.2, 15204.25, 15204.4, Welfare and Institutions Code, 45 Code of Federal Regulations Sections 260.30 through 260.33, 261.2, 261.20, 261.22, 261.40, 261.41, 261.42, 261.43, 261.44, 261.51, 261.52, 262.1, 262.2, 262.3, 262.4, 262.5, 262.7, 263.1, 265.3.