

NOTICE OF PROPOSED CHANGES IN REGULATIONS OF THE  
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (CDSS)

ITEM # 1 Penalty Pass-On Regulations

CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held as follows:

March 17, 2010  
Office Building # 8, Room 105  
744 P St.  
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The purpose of the hearing is to receive public testimony, not to engage in debate or discussion. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on March 17, 2010.

Following the public hearing CDSS may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at <http://www.dss.cahwnet.gov/ord>. Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below.

CONTACT: Office of Regulations Development  
California Department of Social Services  
744 P Street, MS 8-4-192  
Sacramento, California 95814

TELEPHONE: (916) 657-2586      FACSIMILE: (916) 654-3286  
E-MAIL: [ord@dss.ca.gov](mailto:ord@dss.ca.gov)

## CHAPTERS

Manual of Policies and Procedures (MPP), Division 91 (Employment), Chapter 91-100 (Pass-On of Federal Penalty for the CalWORKs), Section 91-101(Definitions), Section 91-110(CWD Reporting Responsibilities), Section 91-120(CWD Reporting for CDSS' Appeal of Any Federal Penalties), Section 91-130(Pass-On of Federal Penalties), Section 91-40(Notice And Relief From Pass-On of Federal Penalties).

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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 Temporary Assistance to Needy Families (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.

#### STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

#### STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### SMALL BUSINESS IMPACT STATEMENT

CDSS has determined that there is no impact on small businesses as a result of filing these regulations because these regulations are only applicable to state and county agencies.

#### ASSESSMENT OF JOB CREATION OR ELIMINATION

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

#### STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

**STATEMENT OF ALTERNATIVES CONSIDERED**

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

**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.

**CDSS REPRESENTATIVE REGARDING RULEMAKING PROCESS OF THE PROPOSED REGULATION**

Contact Person: Sue Tognet (916) 657-2586  
Backup: Everardo Vaca (916) 657-2586

**EMERGENCY STATEMENT**

These regulations are to be adopted on an emergency basis. In order to allow interested persons an opportunity to submit statements or arguments concerning these regulations, they will be considered at public hearing in accordance with Government Code Section 11346.4.