



CDSS

JOHN A. WAGNER  
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY  
**DEPARTMENT OF SOCIAL SERVICES**  
744 P Street • Sacramento, CA 95814 • [www.cdss.ca.gov](http://www.cdss.ca.gov)



ARNOLD SCHWARZENEGGER  
GOVERNOR

September 15, 2010

Regulation Package # 0909-08

CDSS MANUAL LETTER NO. EAS 10-04

TO: HOLDERS OF THE ELIGIBILITY AND ASSISTANCE STANDARDS MANUAL

**Regulation Package # 0909-08**

**Effective 8/26/10**

**Sections 91-110, 91-130, 91-140**

This manual letter has been posted on the Office of Regulations Development website at <http://www.dss.cahwnet.gov/ord/PG2306.htm>

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.

These regulations were considered at the Department's public hearing held on March 17, 2010.

Emergency regulations effective January 29, 2010 implemented and made specific the terms and requirements of Welfare and Institutions Code Section 10544. Following the emergency adoption, revisions were made to the regulations as a result of testimony received and this manual letter includes those revisions.

## FILING INSTRUCTIONS

**Revisions to all manuals are indicated by a vertical line in the left margin.** The attached pages are to be entered in your copy of the Manual of Policies and Procedures. The latest prior manual letter containing Eligibility and Assistance Standards Manual changes was EAS-10-03.

### Page(s)

985  
988-989  
992-997

### Replace(s)

Page 985  
Pages 988-989  
Pages 992-997

Attachment

HF

**TABLE OF CONTENTS**

**CHAPTER 91-100 PASS-ON OF FEDERAL PENALTIES**

	Section
Definitions.....	91-101
CWD Reporting Responsibilities.....	91-110
CWD Reporting for CDSS' Appeal of Any Federal Penalties.....	91-120
Pass-on Federal Penalties.....	91-130
Relief from Pass-on of Federal Penalties .....	91-140

**This page is intentionally left blank**

**91-110 CWD REPORTING RESPONSIBILITIES (Continued) 91-110**

- .13 Time on aid,
  - .14 Incomes available to the family,
  - .15 Actual hours of participation in work activities, and
  - .16 Employment data.
- .2 Each CWD shall:
- .21 Use the sample of county-specific and/or state cases referred by CDSS within the time frames determined by CDSS,
  - .22 Conduct data reporting activities as required by CDSS to provide statistically valid data for county-specific and/or state outcome measurement and other purposes as required by federal or state law, and
  - .23 Ensure the timeliness, accuracy, and completeness of the county-specific and state data submitted for transmission and analysis.
- .3 Each CWD shall provide data from county-specific and/or state cases each month consistent with federal and state requirements.
- .31 A random sample of county-specific and/or state cases shall be reviewed monthly.
  - .32 CWD sample reviews shall comply with standards as prescribed by current federal and state regulations.
  - .33 All case reviews shall be completed and transmitted by CWD staff to CDSS as required by CDSS and/or the United States Department of Health and Human Services (DHHS).
- .4 CWDs shall perform data collection activities as part of the CWD sample case review required by this section.
- .5 Substantial noncompliance by a CWD in meeting the requirements of this section, as documented by CDSS, shall subject that CWD to the provisions of Welfare and Institutions Code Section 10544. Examples of substantial noncompliance include the following:
- .51 Chronically missing state and federal deadlines;

<b>91-110</b>	<b>CWD REPORTING RESPONSIBILITIES (Continued)</b>	<b>91-110</b>
---------------	---	---------------

- .52 Chronically not meeting federal and state accuracy regulations;
- .53 Willfully misrepresenting data;
- .54 Failure to submit accurate, complete, and timely data, without good cause; and/or
- .55 Failure to submit complete data for each sample case for every month in a federal fiscal year.
  
- .6 CDSS shall select and review a sample of cases to validate the data reported by the CWD on the federal and/or county-specific sub-samples and/or state sub-samples and inform the county of the results of the review. CDSS may change review findings based on a difference in findings between CWD review and CDSS review of CWD cases.
  - .61 A CWD shall have twenty (20) working days from the CWD's date of receipt of a notice from CDSS of a difference in finding to dispute each difference in finding identified by CDSS.
  - .62 The burden of proof rests with the CWD to provide documentation and verification of why the CWD's finding differs with CDSS' finding.
  - .63 CDSS will evaluate and review the documentation provided by the county. Based on that review, CDSS may use the CDSS findings and/or subsequent revisions to determine if a CWD failed to meet the federal requirement and to determine penalty pass-ons.

Authority cited: Sections 10541.7, 10544, 10553, 10554, 10809, 10852, and 10853, Welfare and Institutions Code. Reference: Section 10540.5, 10541.7, 10544, and 11521.5, Welfare and Institutions Code; 45 CFR 261.2, 262.3, 262.5 and 265.3.

<b>91-120</b>	<b>CWD REPORTING FOR CDSS' APPEAL OF ANY FEDERAL PENALTIES</b>	<b>91-120</b>
---------------	--	---------------

- .1 When the state is notified that it is subject to a federal penalty, CDSS will exhaust all reasonable and available federal administrative remedies to avoid or minimize the amount of the penalty. CDSS shall require all CWDs that did not meet the federal requirement and request all other counties to provide sufficient and relevant information and documentation that may establish the basis for the state's appeal to the federal government. CWDs shall have at least 30 days from the date of notice from CDSS to provide this information. Examples of specific CWD circumstances that may be included as part of the state's appeal for having good cause for its failure to meet the work participation rate or to achieve TANF outcomes required by federal law include the following:

**91-130** **PASS-ON OF FEDERAL PENALTIES (Continued)** **91-130**

- .23 If the state fails only the two-parent participation rate, a CWD's penalty will be the penalty associated with not meeting the two-parent rate.
  
- .3 CDSS shall determine that a CWD has failed to meet applicable federal requirements when a CWD fails, without good cause, to submit accurate, timely, and complete data used to measure work participation, as required by CDSS.
  - .31 Good causes shall include, but not be limited to, the lack of accurate, timely, and complete instructions from CDSS.
  - .32 CDSS shall use all available data, including data reported pursuant to Section 91-110, to determine whether a CWD has failed to meet federal and state requirements.
  - .33 CDSS shall determine the CWD annual WPR using CWD data collected in a manner consistent with federal TANF data reporting requirements. The WPR calculations shall be based on data from a monthly sample of CWD cases as specified in Section 91-110.
    - .331 A CWD's monthly all family (overall) WPR is equal to the number of TANF cases that include a work-eligible individual who meets the federal participation requirements, divided by, the number of TANF cases that include a work-eligible individual, minus the number of such families that are in sanction in that month for no more than three of the preceding 12 months and minus the number of families with a single custodial parent who is caring for a child under age one and who does not meet TANF work participation requirements. The overall TANF all family work participation rate for a federal fiscal year (FFY) is the average of the CWD's overall TANF WPRs for each month in the FFY. The overall TANF work participation rate for each county will be the required federal rate, less the state's caseload reduction credit pursuant to federal regulations.
    - .332 The two-parent family WPR shall apply to two-parent families with two work-eligible individuals. When one of the parents is a work-eligible individual with a disability, pursuant to federal data reporting rules, the family shall not be considered a two-parent family and shall not be included in either the numerator or denominator of the two-parent WPR.
    - .333 A CWD's monthly two-parent family WPR is equal to the number of two-parent TANF family cases in which both parents are work-eligible individuals and together they meet the participation requirements, divided by, the number of two-parent family cases in which both parents are work-eligible individuals during the month, minus, the number of such two-parent families that are in sanction in that month and for no more than three of the preceding 12 months. The TANF two-parent family WPR for a FFY is the average of the CWD's two-parent TANF work participation rates for each month in the FFY. The two-parent TANF work participation rate for each county will be the required federal rate, less the state's caseload reduction credit pursuant to federal regulations.

**91-130**      **PASS-ON OF FEDERAL PENALTIES (Continued)** **91-130**

- .334      A CWD that fails, without good cause, to send accurate, timely and complete data, as required by Sections 91-110.3 and 91-130.3 for any month in a given FFY, will have its work participation rate calculated for each month the data is missing by dividing the numerator of zero by the number of TANF cases during the month as determined by CDSS.
- .4      When the state does not achieve the outcomes required by federal law and, after exhaustion of all reasonable and available federal administrative remedies, is subject to a fiscal penalty, the dollar amount of the federal penalty that shall be passed on to a CWD shall be determined as follows:
- .41 Determine the state and a CWD's share of the penalty by multiplying the dollar amount of the state's federal fiscal penalty by 50 percent,
  - .42 Determine the number of cases a CWD needed to meet the minimum WPR required by subtracting the average monthly caseload of the CWD that met the federally required WPR from the average monthly caseload required to meet the federal WPR,
  - .43 Determine a CWD's penalty percentage dividing the number of cases needed to meet the minimum WPR of each failing CWD by the total number of the cases needed to meet the minimum WPR for all of the failing counties,
  - .44 Determine a CWD's penalty pass-on amount by multiplying the dollar amount from the CWDs' 50 percent share of the federal fiscal penalty by the percentage from a CWD's penalty percentage.

---

**HANDBOOK BEGINS HERE**

---

- (a)      Determining the state and CWD's share of penalty:

Assume a federal penalty in the amount of \$186,650,000. The state share would be \$93,325,000, and the CWDs' share would be \$93,325,000.

State 50 percent share	\$93,325,000 (\$186,650,000 x 50%)
CWDs' 50 percent share	\$93,325,000 (\$186,650,000 x 50%)

- (b)      Determining the number of cases a CWD needed to meet the minimum WPR required:

---

**HANDBOOK CONTINUES**

---

**HANDBOOK CONTINUES**

Assume that four CWDs failed to meet the federal WPR requirement.

	<u>County A</u>	<u>County B</u>	<u>County C</u>	<u>County D</u>	<u>Total</u>
Cases subject to WPR	2,750	1,870	6,670	15,000	26,290
Cases required to meet WPR	1,375	935	3,335	7,500	13,145
Cases meeting WPR	1,250	370	1,670	5,000	8,290
Cases failing WPR	1,500	1,500	5,000	10,000	18,000
WPR	45.5%	19.8%	25.0%	33.3%	31.5%
(Required–Meeting)	(1375–1250)	(935-370)	(3,335-1,670)	(7,500 - 5,000)	
Number of cases needed to meet minimum WPR	125	565	1,665	2,500	4,855

NOTE: Required WPR is assumed to be 50 percent for purposes of this example. Actual required WPR may be lower than 50 percent based on the state’s federally-approved caseload reduction credit for that FFY.

(c) Determining a CWD’s penalty percentage:

	<u>County A</u>	<u>County B</u>	<u>County C</u>	<u>County D</u>	<u>Total</u>
Number of cases needed to meet minimum WPR, divided by the total needed to meet minimum WPR	125 4,855	565 4,855	1,665 4,855	2,500 4,855	4,855

---

**HANDBOOK CONTINUES**

---

**HANDBOOK CONTINUES**

Percent of total cases needed to meet minimum WPR*	2.6%	11.6%	34.3%	51.5%	100.0%
--	------	-------	-------	-------	--------

\*NOTE: Percentages are rounded for example purposes only. Actual penalty pass-on determination will use actual numbers for calculation of penalty amount.

(d) Determining a CWD's penalty pass-on amount:

<u>CWDs that failed to meet requirement</u>	<u>CWDs' 50% share of federal penalty (Example A)</u>	x	<u>CWD's penalty percentage (Example D)</u>	=	<u>Dollar amount passed on to CWD</u>
1. County A	\$93,325,000	x	2.6%	=	\$ 2,426,450
2. County B	\$93,325,000	x	11.6%	=	\$ 10,825,700
3. County C	\$93,325,000	x	34.3%	=	\$ 32,010,475
4. County D	\$93,325,000	x	51.5%	=	\$ 48,062,375

Total Dollar Amount of Federal Penalty Passed on to CWDs \$ 93,325,000

(e) Using the example described in Handbook section about "Determining the state and CWS's share of penalty" the penalty relief amount for those counties that failed to meet the required WPR is described in the following:

- (1) Determining the number of cases that are not required to participate in work activities under the CalWORKs program rules but are required to participate in work activities under TANF rules. The four types of CalWORKs cases and the source of the county-level information follows:
  - (A) CalWORKs cases where all work-required adults have a WTW sanction of more than 3 month in length and are not meeting TANF work requirements.
  - (B) CalWORKs cases where all work-required adults have a CalWORKs exemption from work requirements and are not meeting the TANF work requirements.
  - (C) All CalWORKs Safety Net cases whether meeting or not meeting the TANF work requirements.
  - (D) CalWORKs one-parent cases with a Good Cause exemption.

**HANDBOOK CONTINUES**

---

**HANDBOOK CONTINUES**

---

- (f) Determining the number of cases that are not required to participate in work activities under the CalWORKs program rules but are required to participate in work activities under TANF rules that exceed 50 percent of the TANF work-required cases in each county.

Assume that four CWDs failed to meet the federal WPR requirement.

	<u>County A</u>	<u>County B</u>	<u>County C</u>	<u>County D</u>	<u>Total</u>
Cases subject to WPR	2,750	1,870	6,670	15,000	26,290
Cases required to meet WPR	1,375	935	3,335	7,500	13,145
TANF work-required cases but not CalWORKs*	1,550	630	1,250	7,900	
TANF work-required cases but not CalWORKs that exceeds 50%	(1,500-1,375) 175	(630-935) 0	(1,250-3,335) 0	(7,900-7,500) 400	

\*NOTE: TANF work-required cases but not CalWORKs equals the sum of cases in (e)(1)(A) through (D).

- (g) Determining a CWD's penalty relief amount:

	<u>County A</u>	<u>County B</u>	<u>County C</u>	<u>County D</u>	<u>Total</u>
Number of cases needed to meet minimum WPR	125	565	1,665	2,500	4,855
TANF work-required cases but not CalWORKs that exceeds 50%	175	0	0	400	
Cases not meeting minimum WPR after adjustment	(125-175) 0	(565-0) 565	(1,665-0) 1,665	(2,500-400) 2,100	

---

**HANDBOOK CONTINUES**

---

**HANDBOOK CONTINUES**

Adjusted percentage of total of cases not meeting minimum WPR divided by the total cases	0 4,855	565 4,855	1,665 4,855	2,100 4,855
Adjusted percentage after relief	0%	11.6%	34.3%	43.3%

(h) Determining a CWD's penalty pass-on relief amount:

<u>CWDs that failed to meet requirement</u>	<u>CWD's 50% share of federal penalty</u>		<u>CWD's penalty adjusted percentage</u>		<u>Dollar amount passed on to CWD</u>	<u>Relief Amount*</u>
1. County A	\$93,325,000	x	0%	=	\$0	\$2,426,450
2. County B	\$93,325,000	x	11.6%	=	\$10,825,700	\$0
3. County C	\$93,325,000	x	34.3%	=	\$32,010,475	\$0
4. County D	\$93,325,000	x	43.3%	=	\$40,409,725	\$7,652,650

Total Dollar Amount of Federal Penalty Passed on to CWDs After Relief  
 \$83,245,900

\*NOTE: The penalty relief amount is the difference in the amount of penalty calculated in "Determining a CWD's share of penalty section" (a) above and the penalty amount calculated in (h) above with adjusted percentage.

**HANDBOOK ENDS HERE**

- .5 CDSS shall notify in writing each county that contributed to the state's failure to meet the federal requirement that a pass-on of penalty costs may be imposed. The CWD is allowed to present its arguments to appeal the penalty pass-on pursuant to Section 91-140.
- .6 CDSS shall pass on federal penalties by reducing the county's reimbursement of the single allocation expenditures by the dollar amount of the penalty pass-on determined under this section, subject to any reduction pursuant to Section 91-140.
- .7 The reduction in the county's single allocation costs shall occur in the state fiscal year (SFY) immediately following CDSS' final determination of the county's penalty pass-on amount. CDSS shall determine the penalty pass-on amount when: (1) all state appeals and remedies have been exhausted; (2) any county appeal under Section 91-140 is resolved; and (3) DHHS determines the final federal fiscal penalty amount.

**91-130** **PASS-ON OF FEDERAL PENALTIES (Continued)** **91-130**

.8 When a county's reimbursement of their single allocation expenditures is reduced by the state to offset the county's share of any federal penalty imposed, the county shall utilize county funds to replace the offset amount, so that total funding remains equal to the county's single allocation expenditures. These funds shall be in addition to the funds required to meet the county's MOE requirement.

Authority cited: Sections 10544, 10553, and 10554, Welfare and Institutions Code. Reference: Sections 10540.5, 10544, 11521.5, and 15204.4 Welfare and Institutions Code; 45 CFR 261.20, 261.22, 261.24 261.51, 262.1, and 262.3.

**91-140** **RELIEF FROM PASS-ON OF FEDERAL PENALTIES** **91-140**

- .1 A CWD may appeal the pass-on of penalty costs based upon good cause, pursuant to this section, and may have their penalty reduced or waived.
- .2 No pass-on of penalty costs shall be applied during the CWD's appeal filing period, pursuant to this section, or until CDSS has made a decision on the CWD's appeal.
- .3 Each CWD shall have 60 days from the date of CDSS' notification to provide the appeal information, pursuant to this section.
- .4 CDSS shall determine which CWD-raised issues meet the criteria for potential penalty relief pursuant to this section and may be considered in reducing or eliminating potential CWD liability for the penalty pass-on.
  - .41 A CWD may be provided relief, in whole or in part, from a penalty if CDSS determines that there were circumstances beyond the control of the county, including but not limited to the following:
    - .411 Natural disasters and other calamities (e.g., hurricanes, earthquakes, fire) whose disruptive impact was so significant as to cause the CWD's failure for which the burden of proof rests with the CWD;
    - .412 Combination of work-required exempt, safety net, work-required sanction and good cause population exceed 50 percent of the county's work-eligible population. This condition takes into account the differences between state and federal program requirements, and provides penalty relief based on the degree of success in meeting state participation requirement;

<b>91-140</b>	<b>RELIEF FROM PASS-ON OF FEDERAL PENALTIES</b>	<b>91-140</b>
---------------	---	---------------

- .413 County actions resulting from erroneous state written policy interpretations;
- .414 Mistakes made by state staff in the establishment of the county work participation rate;
- .415 The county significantly improves its county-specific work participation rate during the state's Corrective Action period and in accordance with CDSS' corrective action plan negotiated with the DHHS. Relief will be provided as follows:
  - (a) If the state does not receive a penalty reduction for significant improvement, the county will receive a penalty reduction if there is a significant improvement defined as at least equal to or over 50 percent of the rate the county is required to meet after the state's federally-approved caseload reduction credit has been applied within the same period covered by the state's DHHS accepted corrective compliance plan.
  - (b) If the state does not receive a penalty waiver, the county will receive a penalty waiver if the county meets federal WPR requirements within the same period covered by the state's DHHS accepted corrective compliance plan.
- .416 Other circumstances the county believes were beyond their control.
- .42 When a CWD is granted relief from all or a portion of its share of the penalty, that portion of the total penalty shall not be imposed on the other CWDs that failed to meet the federal requirement.
- .5 CWDs that have submitted an appeal, pursuant to this section, shall be notified in writing within 60 days of any amounts that have been reduced or eliminated.
- .6 CDSS will notify the CWD in writing within 60 days of the outcome of its appeal.
- .7 If CDSS determines that the county has not provided sufficient relevant information and documentation to establish the reason(s) for penalty relief, then relief shall not be granted.

Authority cited: Sections 10544, 10553, and 10554, Welfare and Institutions Code. Reference: Section 10544, Welfare and Institutions Code; 45 CFR 261.52, 262.4, 262.5, 262.6 and 262.7.