



STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
744 P Street • Sacramento, CA 95814 • www.cdss.ca.gov



EDMUND G. BROWN JR.
GOVERNOR

May 5, 2011

ALL COUNTY INFORMATION NOTICE NO. I-26-11

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PENALTY FOR FAILURE TO MEET WORK PARTICIPATION RATE REQUIREMENTS IN FEDERAL FISCAL YEAR 2009

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) 2009 and to request information from all counties, by May 13, 2011, that will be used to help avoid or mitigate the fiscal penalty for failing to meet the TANF WPR requirement.

The California Department of Health and Human Services received the attached letter from the federal Administration for Children and Families (ACF) on April 22, 2011 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 2009. California has 60 days to respond to the penalty letter, which is June 21, 2011.

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 percent toward the 50 percent All Families rate requirement, leaving an overall target rate of 29 percent. California's All Families WPR in FFY 2009 was 26.8 percent, only 2.2 percent short of the required target rate. As a result, California is subject to a fiscal penalty for failing to meet the FFY 2009 All Families WPR requirement.

California was also subject to a penalty in FFYs 2007 and 2008 for not meeting the All Families WPR. Due to a complex penalty reduction formula applied at the federal level, California's FFY 2007 penalty was reduced to zero. For FFY 2008, the federal reduction formula did not fully reduce the penalty so a claim of reasonable cause for the FFY 2008 failure was submitted to ACF on May 28, 2010, which included county input, and delineated the reasons the penalty should be waived, primarily based on the poor economy. ACF has not yet responded to California's FFY 2008 reasonable cause claim. If the FFY 2008 claim of reasonable cause is rejected or does not fully waive the penalty, then California will apply to go into a corrective action plan that will need ACF approval.

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. The California Department of Social Services (CDSS) is currently taking all steps available to mitigate the penalty that the state and counties would have to absorb. The CDSS will work with TANF stakeholders including county, County Welfare Directors Association (CWDA), and welfare advocate representatives to form the state's response to the penalty letter. All response options available to the state under federal regulation to reduce or eliminate the federal penalty will be considered in forming California's response. These response options include disputing the penalty, applying for reasonable cause, and entering into a corrective compliance plan.

To help CDSS prepare a response to the penalty letter, please find the attached reasonable cause questionnaire. We request that every county, regardless of WPR performance, complete the questionnaire. This will allow California to develop a comprehensive assessment of statewide conditions, which is critical to its evaluation and response. The questionnaire is designed to identify instances and areas where the economy or events such as natural disasters adversely impacted the state's ability to meet the TANF WPR requirements during the fiscal year.

This questionnaire is similar to the one used in FFY 2008 to garner county input to the state's claim of reasonable cause. It is likely that California will again submit a claim of reasonable cause for the FFY 2009 failure and it is expected this claim will again be centered on the poor economy. For counties that completed the questionnaire for the FFY 2008 claim of reasonable cause, it can be presumed that many of the same circumstances, such as a weak labor market and disaster impacts, would also apply to FFY 2009 and as such counties may consider updating their FFY 2008 questionnaire for FFY 2009. Please review and, if applicable, complete and return the attached questionnaire to Geoffrey Miller via email at Geoffrey.miller@dss.ca.gov.

To ensure that CDSS has enough time to consider and incorporate, as applicable, any and all reasonable cause arguments from counties in the state's response to the penalty letter, please submit completed questionnaires to the CDSS no later than May 18, 2011.

CDSS will continue providing updates regarding the penalty status via all county information notice and other available modes of communication.

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

Sincerely,

Original Document Signed By:

KÄREN DICKERSON, Chief
Employment and Eligibility Branch

Attachments

**Temporary Assistance for Needy Families (TANF)
Work Participation Rate Penalty FFY 2009
Reasonable Cause County Questionnaire
May 2011**

The information gathered by this questionnaire will be used to help the California Department of Social Services (CDSS) and TANF stakeholders form reasonable cause arguments to mitigate or avoid federal fiscal penalties impending upon the state for failure to meet TANF work participation rate requirements in federal fiscal year (FFY) 2009. This questionnaire is intended for all counties, including those that met the federal WPR requirement in the fiscal year.

Please indicate if any of the following applied to your county in FFY 2009 and provide supporting data as appropriate.

1. **Did your county experience the effects of economic recession in the fiscal year?** If yes, please answer the following:
 - a. What effects did the recession have on placing clients into unsubsidized employment and/or other welfare-to-work activities?
 - b. What effect, if any, did the recession have on county resources devoted to serve TANF recipient families?

2. **Did your county experience one or more natural disaster (e.g. wild fire, flood, crop freeze, etc.) during the fiscal year?** If yes, please answer the following:
 - a. What effects did natural disasters have on placing clients into unsubsidized employment and/or other welfare-to-work activities?
 - b. What effect, if any, did natural disasters have on county resources devoted to serve TANF recipient families?

3. **Were there any other factors or events that adversely affected your county's federal TANF work participation rate in the fiscal year?** If yes, please list them below and respond to 3a.
 - a. Please explain how this factor or event affected your county's ability to meet the TANF work participation rate requirement.

If you answered 'Yes' to any question above, please return this document via email to Geoffrey Miller, Program Analyst at Geoffrey.miller@dss.ca.gov. If you have any questions regarding this questionnaire, please call Mr. Miller at (916) 654-6091.



DEPARTMENT OF HEALTH & HUMAN SERVICES

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

APR 22 2011

Ms. Diana Dooley
Secretary
Health and Human Services Agency
1600 9th Street, Suite 460
Sacramento, CA 95814

Dear Ms. Dooley:

I am pleased to inform you that California successfully met its two-parent work participation rate for fiscal year (FY) 2009 under the Temporary Assistance for Needy Families (TANF) program. After applying your State's caseload reduction credit of 90.0 percent (using FY 2007 as the comparison year) to the required two-parent participation rate of 90 percent for FY 2009, the adjusted target rate for your State became 0.0 percent. California achieved a two-parent participation rate of 28.6 percent.

Unfortunately, the data you have reported show that your State did not meet its minimum overall work participation rate for fiscal year 2009. As you know, the required overall participation rate for FY 2009 was 50 percent. When we applied California's caseload reduction credit of 21.0 percent (using FY 2007 as the comparison year), your adjusted target rate became 29.0 percent. However, California achieved an overall work participation rate of 26.8 percent. This shortfall means that the State is subject to a penalty.

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 2009 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.

Penalty Reduction

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 \$113,629,834. Here are our calculations using an Excel spreadsheet:

State Information

Caseload Reduction Credit	Adjusted Target	Rate Achieved ¹	Adjusted SFAG
21.0%	29.0%	26.8%	\$3,298,266,001

Reduction Above 50% Threshold	Number Engaged in Work, FY 08	Number Engaged in Work, FY 09	Adjustment Factor	Percentage of Reduction Available (due to years of failure, # of rates failed)
84.5%	71,128	87,342	1.5	0%

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	\$113,629,834	Test 1: yes Test 2: yes	\$0	\$113,629,834

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. Rick Wever
Acting Regional TANF Program Manager
Administration for Children and Families
90-7th 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. Rick Wever, the Acting TANF Program Manager for Region 9.

Sincerely,

A handwritten signature in black ink, appearing to read "Earl S. Johnson", with a horizontal line extending to the right and a small flourish at the end.

Earl S. Johnson
Director
Office of Family Assistance

cc: The Honorable Jerry Brown, Governor