



CDSS

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DEPARTMENT OF SOCIAL SERVICES

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EDMUND G. BROWN JR.
GOVERNOR

October 14, 2015

ALL COUNTY LETTER (ACL) NO. 15-82

TO: ALL COUNTY WELFARE DIRECTORS
ALL CaWORKs PROGRAM SPECIALISTS
ALL CALFRESH PROGRAM SPECIALISTS
ALL QUALITY CONTROL SUPERVISORS
ALL CONSORTIUM PROJECT MANAGERS
ALL SPECIAL INVESTIGATION UNIT MANAGERS

SUBJECT: **DEFINITION OF FLEEING FELON AND PROBATION PAROLE VIOLATORS FOR THE CALFRESH PROGRAM**

REFERENCE: [80 FEDERAL REGISTER \(FR\) 54410](#); 66 FR 4438; THE PRIVACY ACT OF 1974 (Pub.L. 93-579, 88 STAT. 1896, ENACTED DECEMBER 31, 1974, 5 U.S.C. § 552a); ACL 97-65; ALL COUNTY INFORMATION NOTICE (ACIN) I-14-11, I-58-08

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 instructions to County Welfare Departments (CWDs) regarding the changes in eligibility in the CalFresh program to individuals with a fleeing felon warrant as well as probation or parole violators. The changes in eligibility provided within this letter are effective December 1, 2015 and are due to the issuance of final rules on September 10, 2015. This letter supersedes previous guidance regarding the definition of fleeing felons, including [ACIN 1-58-08](#) dated August 8, 2008 and [ACL 97-65](#) dated October 29, 1997. Updates to regulations regarding these changes will be issued under separate cover. This policy change shall be automated into the consortia systems by the effective date or a process must be put in place by the CWD to meet the requirements of the policy change until necessary automation changes are completed.

BACKGROUND

Provisions included in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193 (PRWORA) disqualified fleeing felons from the Supplemental Nutrition Assistance Program (SNAP) known in California as CalFresh. To be disqualified under the fleeing felon provisions of PRWORA, an individual must be either: Fleeing to avoid prosecution, custody or confinement after conviction for committing a crime or attempting to commit a crime that is a felony under the law of the place from which the individual is fleeing; or violating a condition of probation or parole imposed under Federal or State law. The intent of the law was to prohibit individuals who were intentionally fleeing to avoid prosecution or imprisonment from receiving CalFresh benefits or cash aid and to aid law enforcement officials actively seeking to apprehend those fleeing to avoid prosecution or custody by providing them with needed information as allowable under federal law.

Section 4112 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246) (the Act) amended Section 6(k) of the Act to require the Secretary of Agriculture to define the terms “fleeing” and “actively seeking” to ensure the consistent use of procedures to disqualify individuals as fleeing felons or probation or parole violators. On August 19, 2011, the U.S. Department of Agriculture's (USDA) Food and Nutrition Service (FNS) published a proposed rule (76 FR 51907), providing proposed definitions for “fleeing” and “actively seeking”, and on September 10, 2015 published the final rule (80 FR 54410) defining “fleeing” and “actively seeking.” Pursuant to Section 6(k) of the Act, the Secretary of Agriculture has defined “fleeing” and “actively seeking” for purposes of SNAP disqualification.

NEW DEFINITION OF FLEEING FELON

As authorized by 7 CFR § 273.11(n)(1)(ii), a State agency may utilize the Alternative test to establish an individual's fleeing felon status. Under this approach, an individual is a fleeing felon when a federal, state, or local law enforcement officer, acting in an official capacity, presents an outstanding felony arrest warrant that conforms to one of three National Crime Information Center (NCIC) Uniform Offense Classification Codes, to the CWD to obtain information on the location of and other information about the individual named in the warrant. The information may also be discovered while working the Fleeing Felon Match report. An individual is a fleeing felon when a warrant for arrest is presented with one of three NCIC codes.

The three NCIC codes are:

- Escape (4901)
- Flight to Avoid (prosecution, confinement, etc.) (4902)
- Flight-Escape (4999)

NEW DEFINITION OF PROBATION OR PAROLE VIOLATORS

Regulations make any individual that is found to be in violation of a condition of probation or parole imposed under a Federal or State law ineligible for CalFresh. An arrest warrant with one of the three NCIC codes for a fleeing felon need not be issued. Rather, to be considered a probation or parole violator, an impartial party, such as a judge or officially sanctioned tribunal, must determine that the individual violated a condition of his or her probation or parole imposed under federal or state law and that federal, state, or local law enforcement authorities are actively seeking the individual to enforce the conditions of the probation or parole, as defined by 7 CFR § 273.11(n)(3).

NEW DEFINITION OF ACTIVELY SEEKING FOR THE VERIFICATION OF THE STATUS OF PROBATION OR PAROLE

CWDs have the responsibility of obtaining verification of probation or parole violator status. Only for the purpose of determining if an individual is in violation of probation or parole CWDs must verify that law enforcement is actively seeking the individual. Once verification that an individual is a probation or parole violator and is being actively sought has been attained, the CWD shall take immediate action to terminate or deny CalFresh benefits.

To verify CWDs shall contact law enforcement and allow the law enforcement agency 20 calendar days from the date of the inquiry to respond to a request for information about the conditions of a probation or parole violation, and whether the law enforcement agency is actively seeking the individual. CWDs shall follow these steps, in order.

1. If the law enforcement agency does not indicate that it intends to enforce the felony warrant or arrest the individual for the probation or parole violation within 30 days of the date of the CWD's request for information, the CWD shall determine that the individual is not a probation or parole violator and document the household's case file accordingly.
2. If the law enforcement agency indicates that it does intend to enforce the felony warrant or arrest the individual for the probation or parole violation within 30 days of the date of the CWD's request for information, the CWD will postpone taking any action on the case until the 30-day period has expired.
3. Once the 30-day period has expired, the CWD shall verify with the law enforcement agency whether it has attempted to arrest the probation or parole violator.
 - If it has, the CWD shall take appropriate action to deny an applicant or terminate a participant who has been determined to be a probation or parole violator.

- If the law enforcement agency has not taken any action within 30 days, the CWD shall not consider the individual a probation or parole violator, shall document the case file accordingly, and take no further action.

Example of step 1: Applicant found to be in violation of probation, but after inquiring with issuing agency, CWD is informed agency will not act on violation within 30 days. Applicant shall not be considered ineligible for CalFresh based on probation status.

Example of steps 2 and 3: Applicant found to be in violation of probation, issuing law enforcement agency informs the CWD it does intend to act within 30 day. CWD shall take no action on eligibility determination until the expiration of the 30th day. If after the 30th day the issuing agency has taken action in regards to the violation, the applicant shall be found ineligible for CalFresh. If law enforcement has not taken action, the CWD shall not consider applicant ineligible for CalFresh based on probation status.

CWD ACTION FOR APPLICATION PROCESSING AT INTAKE AND RECERTIFICATION

CWDs shall continue to process an application while awaiting verification of probation or parole violator status. In order to meet application processing time standards (see [ACIN I-14-11](#) dated March 22, 2011), if the CWD is required to act on the case without being able to determine probation or parole violator status, the CWD shall process the application without consideration of the individual's probation or parole violator status.

IDENTIFYING POTENTIAL FLEEING FELONS AND PROBATION OR PAROLE VIOLATORS

Fleeing Felons

CWD special investigation units (SIUs) shall continue to utilize the Fleeing Felon Match (FFM) report to identify potential fleeing felons. This report matches records obtained from the Department of Justice Wanted Persons File against the Medi-Cal Master Eligibility File (MMEF). The FFM report provides counties with information on current recipients who are potential fleeing felons or probation or parole violators.

Steps to be taken to remove a person once information is received and after timely or adequate notice is given:

- For fleeing felon status, the CWD must verify identity and that the warrant is indeed active in the issuing jurisdiction.
- For fleeing felon status, there is no requirement that the individual have knowledge of the existence of the warrant with one of the three codes or that law enforcement be actively seeking the individual.

Probation or Parole Violators

CWDs shall refer to the offense code within the FFM report to determine recipients who are in violation of probation or parole and therefore ineligible for CalFresh benefits.

- For probation or parole violators the CWD must verify identity.
- For probation or parole violators the CWD must also verify that the violation is current, and that the issuing agency is actively seeking the individual, however the CWD may receive this information.

Overissuances shall be issued in cases where timely notice cannot be given prior to the next month's benefits being issued or benefits are issued pending verification of fleeing felon or probation or parole violator status.

IDENTIFYING AND ADDING NEWLY ELIGIBLE INDIVIDUALS TO THE CALFRESH HOUSEHOLD

Under current CalFresh regulations, the income and resources of individuals ineligible for CalFresh benefits due to their Fleeing Felon or Probation or Parole violator status are already counted in their entirety for CalFresh budgeting purposes (MPP § 63-503.44). Therefore, any excluded household member who becomes eligible for CalFresh benefits as a result of this letter will become an included household member, which may result in additional CalFresh benefits for the household (MPP § 63-504). Newly qualified individuals with a former fleeing felon status shall be added to the CalFresh household effective December 1, 2015. CWDs shall identify individuals who were previously excluded due to their fleeing felon status in order to add them to the case December 1, 2015. CWDs shall provide adequate notice for changes resulting in an increase in benefit level.

PRIVACY ACT REMINDER

Information concerning the status of potential fleeing felons or probation or parole violators must not be released to individuals reporting possible violations by recipients or applicants, who are not local, state, or federal law enforcement officers. State and federal confidentiality provisions still apply to individuals affected by fleeing felon or probation or parole violator classifications. CWDs are therefore reminded that the provision regarding the process of providing information to law enforcement officials only applies to local, state, or federal law enforcement officers.

TRANSITIONAL BENEFITS

CalFresh households leaving CalWORKs are permitted to receive transitional benefits, typically at the maximum allotment level for the household size. These benefits are

issued for a period of five months and once approved the benefit amount may not be changed, with few exceptions. One exception is that CWDs shall remove individuals identified as a fleeing felon or a probation or parole violator who are not eligible to transitional CalFresh benefits [7 CFR § 273.26(c)(9)]. An individual identified as a fleeing felon or probation or parole violator in a CalFresh household receiving transitional benefits, shall be removed by the first of the month following the discovery, and after timely notice has been given [7 CFR § 273.27(b)(2) and MPP § 63-504.261]. Overissuances may be issued in cases when timely notice cannot be given prior to the next month's benefits being issued.

This ACL and other CDSS Letters and Notices are available on the internet at:

<http://www.dss.cahwnet.gov/lettersnotices/default.htm>

If you have any questions regarding this letter, please contact your CalFresh county consultant or call the CalFresh Policy Bureau at (916) 654-1896.

Sincerely,

Original Document Signed By:

TODD R. BLAND
Deputy Director
Welfare To Work Division