



## Elimination of CalFresh Substitute Work Program Sanctions *Maximizing CalFresh for GA Recipients*

### **Background:**

CalFresh, formerly known as Food Stamps, is a nutrition assistance program for low-income individuals and families. In July, the state issued instructions to the counties (All County Letter 10-11) which will make it easier for unemployed Californians to get food assistance. The policy change directed by this ACL was originally included in Senate Bill 1322, authored by Senator Liu of Los Angeles and Sponsored by Western Center on Law and Poverty.

### **What changed?**

ACL 10-11 mandates that counties must no longer sanction (cut aid) to CalFresh recipients who do not meet "substitute work program" requirements. Now, CalFresh recipients may be sanctioned only if they don't meet work program requirements when their assignment to that program is mandatory as a condition of their CalFresh eligibility.

Some people are exempt from (don't have to do) work programs. For those who are not exempt, Counties have the option to require CalFresh recipients to be in their local CalFresh Employment and Training (E&T) Program, or to make a GA/GR or Refugee Resettlement work program (substitute work program) mandatory. However, even if the county requires participation in a work program for the county cash aid program, and even if these programs are funded, in part or in whole, through CalFresh, the County does *not* have to make participation a requirement for CalFresh.

### **What programs are affected?**

#### **A. What are substitute work programs?**

Substitute programs are work programs required as a condition of eligibility for General Assistance/General Relief (GA/GR) or Refugee Resettlement benefits.<sup>1</sup>

#### **B. What is the CalFresh Employment and Training (E&T) Program?**

The federal government funds CalFresh Employment and Training (E&T) to provide job training services for certain CalFresh recipients. In California, counties can use this money to provide employment and training to CalFresh recipients who do not get CalWORKs cash aid. California counties may choose whether or not to have an E&T program. A county may also choose to have only certain groups, such as the county's GA/GR population, participate in its E&T program. E&T participants can be reimbursed for transportation, dependent care, or other expenses that are reasonable and directly relate to participation in the county's E&T program.

A county may choose to make its E&T program mandatory or voluntary for CalFresh recipients. It may also choose whether to place an E&T participant in any component at all. When participation in an E&T component is mandatory, if the person assigned fails to participate and is unable to document "good cause," they will be sanctioned (ineligible for CalFresh) for one, three, then six months.

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<sup>1</sup> Code of Federal Regulations 273.7(a)(5)

### **C. What is the relationship between substitute work programs and CalFresh E&T?**

Counties are allowed to use federal E&T funds to support work programs that serve participants in multiple programs. In California, the population eligible for GA/GR and the population of CalFresh recipients who participate in E&T programs largely overlap. Thus, most counties that provide an E&T Program administer a single program or parallel programs that serve both their E&T Program participants and the participants in their GA/GR work programs, or substitute work programs.

### **D. How do E&T and substitute work programs relate to the Able-Bodied Adult Without Dependents (ABAWD) work requirement?**

An Able-Bodied Adult Without Dependents (ABAWD) is a requirement for CalFresh recipients aged 18 to 49 and who do not get CalWORKs cash aid. In order to remain eligible for CalFresh, ABAWDs must meet the ABAWD work requirement, or they will lose their CalFresh after three months.<sup>2</sup> The ABAWD work requirements are not changed by the new instructions. The ABAWD work rule is separate and apart from the E&T work rule or the substitute sanction work rule.

Currently, there exists a federal waiver to the ABAWD work requirement for the entire state of California<sup>3</sup>, so participants who are considered ABAWDs should not have to lose their CalFresh after three months if they are not working or participating in a qualifying work activity. However, because in 20 of our largest counties, many of the people who qualify as ABAWDs have been placed in mandatory E&T programs and given mandatory assignments, many of them are sanctioned if they are not working or do not participate in the E&T program, regardless of the unemployment rate or national ABAWD waiver.

### **What does ACL 10-11 mean to GA / GR recipients?**

People assigned to a GA/GR work program can avoid CalFresh sanctions<sup>4</sup> if they cannot meet their work program's requirements, even if that program is an E&T program. However, this is only possible if their county does not **require** participation in this program as a mandatory condition of eligibility for *CalFresh* (So, it could be mandatory for cash aid, and not for food aid). Nothing about ACL 10-11 changes the ability of a county to sanction GA/GR cash if a recipient fails to comply with work requirements. Prior to ACL 10-11, even if a county made placement in a work program a voluntary condition of CalFresh eligibility, participants were still to be sanctioned in CalFresh if their county also required participation in the program as a condition of eligibility for another means tested program.

### **E. Which counties are impacted?**

Any county that currently runs a work program for their GA/GR or Refugee programs that also has an E&T program is impacted by ACL 10-11. Those counties are: Alameda, Humboldt, Kern, Los Angeles, Marin, Mendocino, Monterey, Orange, Riverside, Sacramento, San Diego, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Shasta, Sonoma, Trinity and Ventura.

### **F. Does this ACL also help CalWORKs Workfare Recipients to Keep Their CalFresh?**

No. CalFresh sanctions must still be imposed for noncompliance with California Work Opportunity and Responsibility to Kids (CalWORKs recipients who do not do a mandatory assignment to workfare (Work Experience or Community service)).<sup>5</sup> The CalFresh sanction won't happen if the participant is a volunteer in workfare, or if they have a different CalWORKs welfare-to-work assignment.

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<sup>2</sup> Some ABAWDs may be exempt from work requirements for reasons that include pregnancy, care for a dependent child, physical or mental unfitness, regular participation in a drug or alcohol treatment program, half-time school attendance, employment of 30 hours or more per week, and participation in CalWORKs Welfare-to-Work activities. Counties may establish additional, temporary exemptions.

<sup>3</sup> California county board of supervisors have the right to opt-out of the ABAWD waiver. Welf. & Inst. Code § [18926](#); MPP § 63-410.33, 410.34; 7 U.S.C. § [2015\(o\)\(4\)&\(6\)](#); 7 C.F.R. § [273.24\(f\),\(g\)](#)

<sup>4</sup> By avoiding sanctions, participants will also avoid associated fair hearings and eventual re-certifications.

<sup>5</sup> State regulations, MPP § 63-407.24

## **SECTION II: MAXIMIZE THE IMPACT OF ACL 10-11 IN YOUR COUNTY**

As of October 27, 2010, counties may no longer give people CalFresh sanctions for failing to comply with a substitute work program component, unless the county has mandated participation in that component as a condition of getting CalFresh benefits. This means that in order for people within your county to benefit from the new policy, your county CalFresh officials will need to decide to assign people to the E&T program as volunteers for the purposes of CalFresh, even if they are required for GA/GR cash assistance. Advocates should begin meeting with their local CalFresh officials to discuss this policy change and work closely with them to implement it in the most beneficial way possible.

### **G. How will the counties implement the new policy?**

County Welfare Departments must adopt new CalFresh rules, or change existing rules, to ensure that voluntary E&T participants are not sanctioned for failing to meet GA/GR work requirements. These changes can be made administratively and do not require the approval of county Boards of Supervisors. Counties with E&T Plans should amend their county plan to show that they have made this change.

### **H. Will making participation in an E&T program voluntary for CalFresh purposes hurt my county's E&T funding?**

No. Counties that offer E&T receive their same 100% allocations and the same 50 percent per-participant reimbursement over that allocation regardless of whether the E&T participation is mandatory or voluntary.<sup>6</sup> Some states are running completely voluntary programs and in California, several counties are considering this shift. Counties will not be subject to any penalties, in terms of reduced funding or otherwise, if they make E&T voluntary instead of mandatory for GA/GR recipients. In all cases, however, federal reimbursements can only be claimed toward the actual cost of serving CalFresh E&T participants assigned to an allowable activity.”

### **I. Will my county need to change the work program rules for its GA/GR Program?**

No. ACL 10-11 does not change, or require counties to change, the work requirements or sanctions for GA/GR programs, even when the program's work participation is met through an E&T Program and funded by E&T.

### **J. What if my county will not make this change? Are there things I can do as an advocate to minimize the loss of CalFresh benefits when someone is mandated to participate in an E&T component as a condition of CalFresh Eligibility?**

CalFresh recipients mandated to participate in an E&T component as a condition of eligibility are given several protections from sanction. They are as follows:

**Exempt status:** Because of the possibility of sanction, Counties must carefully assess whether an individual is exempt from work requirements before determining that the individual is a mandatory E&T participant. This is easy in some cases (for example children and elderly people), however, in many cases this may be a subject of dispute. In particular, the county may disagree with a participant's belief that he or she is “physically and mentally unfit for employment”.<sup>7</sup> Appropriate verification for a claim of physical unfitness includes a written statement from a medical professional such as a nurse practitioner or physician's assistant<sup>8</sup>. As long as the county permits both exempt and non-exempt participants to **volunteer**, it makes no difference whether the individual would have met one of the criteria for exemption.

<sup>6</sup> USDA, FNS, SNAP- Administrative Notice 09- 34

<sup>7</sup> The regulation defines this as follows: “For the purposes of this paragraph (b), a State agency will define physical and mental fitness; establish procedures for verifying; and will verify claimed physical or mental unfitness when necessary. However, the State agency must not use a definition, procedure for verification, or verification that is less restrictive on food stamp recipients than a comparable meaning, procedure, or determination under the State agency's program funded under title IV-A of the Social Security Act.” 7 C.F.R. §273.7(b)(1)(ii). Note that this definition may be different from the definition for physical or mental unfitness as it is defined for people subject to the time limits in 7 C.F.R. §273.34(c)(2), as discussed below. States may find it administratively simpler to align this definition with that in 7 C.F.R. §273.34(c)(2).

<sup>8</sup> All County Letter 76-00

**Maximum Hours:** Your County must ensure that mandatory participants are not assigned more hours than is permitted. This can vary from month to month, as the CalFresh grant and the participants' work hours may vary. For example, if an individual works part time and is assigned to an additional activity, the worker must monitor that individual's working hours to ensure that the total of work and work activities does not exceed 120 in a month. This can become more complicated when there are two adults in a household, since their work activities are counted together. **Volunteers** are not subject to this limit.

**Sanctions:** When a mandatory participant fails to complete an assignment, the individual loses benefits. Sanctions range from one to three months for the first offense, up to a possible permanent loss of benefits for a third offense. All sanctions require advance written notice setting out the time period, reason, and rules. Every participant has a right to an administrative hearing to fight a proposed sanction. Typical defenses are that the individual should have been exempt or had good cause for not meeting the program rules.

**Notice of Action:** In all cases where a county proposes sanctioning a recipient, the county must give a Notice of Action (NOA). The notice must be issued at least 10 days prior to the last day of the month, and must be in writing. The notice must state that the person may show that they were (or are) exempt from the work requirement, or has good cause, or that they actually met the work requirements. The notice must also tell them what timeframes are at issue and how to appeal the sanction.

**Good cause claims:** When a mandatory E&T participant misses a mandatory E&T assignment, such as attending class, work or an appointment, the worker must decide whether the participant had "good cause" for the "failure" before sanctioning them. The recipient will need to give proof of good cause to the worker. This may involve getting statements from a medical professional or caretaker, copies of court records or subpoenas, statements from school officials or day care center if a child was sick, etc. If it is something for which there is no outside proof, the recipient should tell the worker (and back it up in writing) the good cause reason. Determining good cause can be a time consuming job and, if benefits are at stake, can lead to many hearings. **Volunteers** do not face sanctions, so good cause provisions do not apply.<sup>9</sup>

#### **K. Can I get help in working with my county to change their policies and help keep CalFresh for my county's very low-income ABAWD population?**

Yes! Western Center on Law and Poverty public benefit staff are available to help you work with your county. For help in maximizing the impact of ACL 10-11 in your county, contact:

Jessica Bartholow  
Legislative Advocate  
[jbartholow@wclp.org](mailto:jbartholow@wclp.org)  
916-442-0753 x15

Abbi Coursolle  
Greenberg Traurig Equal Justice Works Staff Attorney  
[acoursolle@wclp.org](mailto:acoursolle@wclp.org)  
213-235-2622

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#### **About Western Center on law and Poverty**

Western Center on Law and Poverty (WCLP) serves as a support center for California's legal aid community and leads the way in large-scale impact litigation, administrative advocacy, budget advocacy and legislative advocacy in an effort to ensure that low-income Californians can easily access safe and affordable housing, adequate health care, and a broad spectrum of safety net services. [www.wclp.org](http://www.wclp.org)

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<sup>9</sup> MPP § 63-410.221; 7 C.F.R. § [273.24\(a\)\(2\)](#).