



CDSS

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January 12, 2011

ALL COUNTY LETTER 11-06

REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

TO: ALL COUNTY WELFARE DIRECTORS
ALL CALFRESH COORDINATORS
ALL CONSORTIUM PROJECT MANAGERS
ALL QUALITY CONTROL SPECIALISTS
ALL CalWORKs PROGRAM SPECIALISTS

SUBJECT: SPONSOR DEEMING, INDIGENT NONCITIZEN DETERMINATION AND SPONSOR INCOME VERIFICATION

REFERENCES: 7 CFR PARTS 272 AND 273 FOOD STAMP PROGRAM: ELIGIBILITY AND CERTIFICATION PROVISIONS OF THE FARM SECURITY AND RURAL INVESTMENT ACT OF 2002 (FARM BILL OF 2002) FINAL RULE; 7 CFR 273.4(c)(3)(iv); 7 CFR 273.2(f)(1)(i); FEDERAL REGISTER VOLUME 65, NUMBER 225, NOVEMBER 21, 2000; MANUAL OF POLICIES AND PROCEDURES (MPP) SECTION 63-102 (i)(6); MPP SECTION 63-503.492 (d); ADMINISTRATIVE NOTICE 09-24; ALL COUNTY LETTER (ACL) 02-17; ALL COUNTY INFORMATION NOTICE (ACIN) I-92-08; ACIN I-23-03; ACIN I-58-08

The purpose of this letter is to inform County Welfare Departments (CWDs) of a change in policy when: (a) determining the indigence of a sponsored noncitizen, and (b) applying sponsor deeming rules in the CalFresh Program. Determination of indigence changed with the Farm Security and Rural Investment Act of 2002 (Farm Bill of 2002) from which CDSS arrived at policy consistent with prior policy interpretations. As a result of clarification recently received from the Food and Nutrition Service (FNS) Administrative Notice (AN) 09-24 and the Farm Bill of 2002, our interpretation of how eligibility is determined for indigent sponsored noncitizens has changed. The change in policy is effective immediately upon receipt of this All County Letter, and is discussed in more detail below.

Obsolete Policy

Prior instruction to determine the indigence of noncitizens is hereby obsolete. CWDs were previously instructed to obtain verification from the sponsor to determine if the sponsor's income was below 130 percent of the Federal Poverty Level (FPL). The reasoning was that without verification from the sponsor, an indigence determination could not be established. The FNS

Obsolete Policy (Continued)

clarified that this policy was incorrect. Refer to the sections below regarding new policy. **The indigent noncitizen guidance distributed in ACIN I-58-08 is no longer applicable and is obsolete.**

New Policy for Determining Indigence of Sponsored Noncitizens

The provisions of MPP § 63-405.7, regarding obligations of sponsored immigrants to obtain cooperation of their sponsor, do not apply once the CWD has determined the adult sponsored noncitizen(s) is indigent or otherwise exempted from deeming. Upon receiving an application from an adult sponsored noncitizen seeking CalFresh benefits, a CWD must first determine whether the household is indigent. To do this, the CWD must first establish whether the noncitizen “is unable to obtain food and shelter.” The term “is unable to obtain food and shelter” has been defined to mean that the sum of (1) the eligible sponsored noncitizen household’s own current income, (2) the cash contributions *actually received* from the sponsor and others, plus (3) the value of any in-kind assistance the sponsor and others provide, does not exceed 130 percent of the FPL for the household size. [7 CFR 273.4(c)(3)(iv); AN 09-24]

The adult sponsored noncitizen is entitled to self-declare that s/he is indigent, in which case a determination of deemed income from the sponsor and verification of the sponsor’s income cannot be required by the CWD; verification of the sponsor’s income creates a barrier to program access. After the indigence determination is made, the normal CalFresh Program budgeting process can begin where CWDs verify and count actual income received by the sponsored noncitizen. If the indigent adult sponsored noncitizen declares receipt of income from a sponsor or any other source, only the amount of income actually received is considered to be the income of the sponsored noncitizen. If the sponsored noncitizen is unable to obtain verification from the sponsor, the CWD must accept other verification, including a written statement from the sponsored noncitizen. Indigent households with noncitizen adults are not denied or terminated if the sponsor does not provide income verification if the noncitizen otherwise verifies receipt of the income.

Duration of Indigent Determinations

Once a determination of indigence has been made, the noncitizen must be considered indigent for 12 months from the date of eligibility, regardless of any secondary information that may be obtained from the Systematic Alien Verification for Entitlements (SAVE) system on the sponsor during this time. [See MPP § 63-503.492(d)(1)(B).] Indigence is an exception to sponsor deeming and is renewable for additional 12-month periods. [MPP § 63-503.492(d)(1)(B); ACL 02-17; and ACIN I-23-03.]

Clarification of Sponsor Deeming for Children

Sponsor deeming rules do not apply to children under the age of 18 regardless of whether the children or anyone in the household is a sponsored noncitizen. If a sponsored noncitizen parent wishes to apply for CalFresh benefits only for the children, then the parent is not required to provide information regarding the parent's sponsor for purposes of determining the eligibility of the children in the household. In this situation, a pro rata share of the noncitizen parent's income should be used to determine eligibility for the children in accordance with MPP § 63-503.442(b).

Restoration of Benefits

When counties are taking action on cases, or at recertification, cases with sponsored noncitizens should be reviewed to see if they were inappropriately, under the clarified policy, denied an indigent exemption. If so, the county should issue corrective benefits to otherwise eligible noncitizen individuals. In accordance with MPP § 63-802.122, unless specified elsewhere in the regulations, lost benefits shall be restored for not more than 12 months prior to the date the CWD discovers that a loss to a household has occurred.

When Sponsor Deeming Applies To Adults

It is only when the adult sponsored noncitizen is not indigent, wishes to apply for benefits for him/herself, and does not meet an exception to the deeming rules, that sponsor deeming applies. When the sponsored noncitizen is not indigent, the sponsor's income and resources must be verified prior to authorizing benefits.

Although sponsored adults may be subject to the sponsor deeming rules, there are several important exceptions to these rules which are listed at MPP § 63-503.49: the sponsored noncitizen achieves U.S. citizenship through naturalization, the sponsored noncitizen has 40 qualifying quarters of work, or the sponsored noncitizen leaves the U.S. permanently. In these cases, verification of a sponsor's income is not required, and should not be sought prior to issuing benefits.

There are also several circumstances under which a county may not consider a sponsor's income in determining deemed income for an adult sponsored noncitizen. These include but are not limited to: (a) the sponsored noncitizen adult wishes to apply only for his/her children or other eligible household member ("opt out"), (b) the applicant's household has income below 130 percent of FPL to render the household indigent, (c) the adult sponsored noncitizen is a domestic violence survivor or meets another exemption from sponsor deeming rules (see MPP § 63-503.492 for a full list of exemptions to deeming).

Opting Out

If the adult sponsored noncitizen wishes to opt out of the application, but wishes to apply for other people in the household, the adult opting out of benefits shall be treated as an ineligible noncitizen, and the provisions of MPP § 63-503.442 (excluded household members) apply. The

Farm Bill of 2002 provides that no information about the applicant's sponsor shall be collected in this situation. "Opting out" must be done before an eligibility determination has been made on the application.

Reporting Sponsors to the United States Citizenship and Immigration Service

As set forth in the final Farm Bill of 2002 regulations, when a sponsored noncitizen opts out of benefits prior to approval of the application, the CWD does not report sponsor information. If the sponsored noncitizen is applying for assistance rather than opting out, and is determined to meet the indigence exemption from sponsor deeming, the CWD must report the name of the sponsored noncitizen and, if provided, the address of the sponsor(s) to USCIS [MPP § 63-503.492(d)(1)(C); ACIN I-21-03; ACIN I-92-08]. Counties must send their reports to the following:

Ms. Lisa Roney
United States Citizenship and Immigration Services
Office of Policy and Planning, Room 4010
20 Massachusetts Avenue NW
Washington, D.C. 20529-0001

Affidavit of Support I-134 versus I-864

Deeming of a sponsor's income and resources to a sponsored noncitizen occurs when the sponsor has signed an enforceable Affidavit of Support, the I-864, unless the sponsored noncitizen is determined to be indigent as described in this letter. In addition, deeming does not occur if the sponsor has signed a non-enforceable Affidavit of Support, the I-134. Please note that not all Legal Permanent Residents (LPRs) are sponsored noncitizens. For more information on determinations of indigent sponsored noncitizens, federal rules can be accessed online at:

- FNS Clarification on Determining Indigence of Sponsored Noncitizens
(<http://www.fns.usda.gov/snap/rules/Memo/2009/030609b.pdf>)
- Final Rules for Eligibility and Certification Provisions
(<http://edocket.access.gpo.gov/2010/pdf/2010-815.pdf>)

If you have any questions or concerns about the content of this letter, please contact Sharon Campbell of the CalFresh Program at sharon.campbell@dss.ca.gov, or you may call (916) 654-0737.

Sincerely,

Original Document Signed By:

CHARR LEE METSKER
Deputy Director
Welfare to Work Division