



CDSS

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REASON FOR THIS TRANSMITTAL

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

July 10, 2015

ALL COUNTY INFORMATION NOTICE NO. I-58-15

TO: ALL COUNTY WELFARE DIRECTORS
ALL CALWORKS PROGRAM SPECIALISTS
ALL CALFRESH PROGRAM SPECIALISTS

SUBJECT: CALIFORNIA WORK OPPORTUNITY AND RESPONSIBILITY TO KIDS (CalWORKs) ASSET EXCLUSIONS

REFERENCE: ALL COUNTY LETTER (ACL) NOs [08-11](#), [08-37](#), AND [09-75](#); ALL COUNTY INFORMATION NOTICE (ACIN) NO. [1-28-09](#); MANUAL OF POLICIES AND PROCEDURES (MPP) SECTION [42-213.2](#); WELFARE AND INSTITUTIONS CODE (WIC) SECTIONS [11155](#) AND [11155.6](#); ASSEMBLY BILL (AB) [2466](#) AND AB [1078](#).

The purpose of this ACIN is to remind County Welfare Departments (CWDs) that with a few exceptions, CalWORKs follows CalFresh rules in terms of asset exclusions. There has been some confusion regarding which retirement and education accounts are exempt in CalWORKs; this ACIN will clarify exactly what those asset exclusions are at present.

Summary

CalWORKs regulations instruct counties to follow CalFresh rules when determining what personal property items should be excluded when evaluating property eligibility for CalWORKs, except as noted below, and then lists 401(k), 403(b), 457, 529, IRA and ESA accounts as excluded for CalWORKs recipients, and 401(k), 403(b), and 457 accounts as excluded for CalWORKs applicants. These accounts are specifically exempted for the CalWORKs Program by WIC Section 11155.6 and are therefore listed as exemptions in the CalWORKs regulations in order to ensure that they are exempted in CalWORKs regardless of current CalFresh exemptions.

These specific exemptions were added to CalWORKs prior to these accounts being exempt in CalFresh via the 2008 U.S. Farm Bill. Because all six of these accounts (i.e., 401(k), 403(b), 457, 529, IRA and ESA) are now exempt in CalFresh, there has been confusion regarding whether the three accounts that are listed as exempt for CalWORKs recipients, but are not listed as exempt for CalWORKs applicants (i.e., 529, IRA and ESA accounts), could be interpreted to imply that these accounts are only exempt for recipients and are not exempt for CalWORKs applicants. To clarify, the exemptions listed in CalWORKs regulations at MPP Section 42-213.2 are meant to be in addition to all of the other property exemptions allowed under CalFresh rules. Because all six of these accounts (i.e., 401(k), 403(b), 457, 529, IRA and ESA) are now exempt for applicants and recipients in CalFresh, they are also exempt for both applicants and recipients in CalWORKs.

Background

In 2006, only a few retirement accounts were exempt under CalFresh (and therefore CalWORKs). AB 2466 was signed into law in 2006 with the intent of promoting economic self-sufficiency and wealth-building habits among low-income households by exempting certain retirement accounts (i.e., 401(k), 403(b), 457, 529, IRA and ESA accounts) from counting as property for CalWORKs recipients. However, by specifying that these accounts were exempt ONLY for CalWORKs recipients, this bill inadvertently removed some exemptions for CalWORKs applicants, and left CalWORKs unaligned with CalFresh rules (as 401(k), 403(b) and 457 accounts were already exempted for both applicants and recipients under CalFresh).

In 2007, the Department of Social Services (CDSS) drafted AB 1078, which was created as a clean-up bill to AB 2466. The purpose of this bill was to add back the three property exclusions for CalWORKs applicants that AB 2466 had inadvertently removed, while maintaining the additional exemptions that AB 2466 had given to CalWORKs recipients (i.e., 529, IRA and ESA accounts). To that end, when the regulations for AB 2466 and AB 1078 were drafted, language was added to MPP Section 42-213.2 stating that CalWORKs shall determine property to be excluded in accordance with CalFresh regulations, "except as noted below." Then the regulations listed the six retirement accounts that are specifically excluded in WIC statute as property for CalWORKs recipients (i.e., 401(k), 403(b), 457, 529, IRA and ESA accounts) and the three accounts that are specifically excluded in WIC statute as property for CalWORKs applicants (i.e., 401(k), 403(b), and 457 accounts).

This policy was initially transmitted to counties via ACL 08-11, which explains that CalWORKs should follow CalFresh exemptions in addition to the accounts that were specifically exempt under CalWORKs law. At that time, CalFresh did not have the authority to exclude IRAs, 529, or ESA accounts, so these accounts were only exempt

for CalWORKs recipients, per WIC statute. Having additional CalWORKs exemptions in the regulations made sense when these accounts were not exempt in CalFresh, but when the 2008 U.S. Farm Bill was enacted, it exempted all six of the aforementioned education and retirement accounts, among others. Due to the changes in CalFresh exemptions, CalWORKs regulations could potentially be misinterpreted to say that CalWORKs ONLY exempts the retirement and education accounts listed, regardless of additional exemptions under CalFresh rules. However, the intent of the regulations is to guarantee that 401(k), 403(b), and 457 accounts are exempt for CalWORKs applicants and 401(k), 403(b), 457, 529, IRA and ESA accounts are exempt for CalWORKs recipients regardless of their exemption status in CalFresh.

Conclusion

Per WIC Section 11155 and MPP Section 42-213.2, CalWORKs follows CalFresh property exemption rules. Therefore the 529, IRA and ESA accounts are exempt for both CalWORKs applicants and recipients, despite only being listed as exempt for CalWORKs recipients in CalWORKs regulations. Additionally, CalWORKs exempts all of the other aforementioned accounts that CalFresh exempts for both applicants and recipients from countable resources when determining eligibility, including all of the accounts listed on page four of ACL 08-37 (all tax-preferred education accounts (e.g., 529s) and retirement accounts (e.g., IRAs, 401(a), 403(a), 403(b), 408, 408(a), 457(b), and 501(c) (18) accounts). See also ACIN I-28-09 for more information about tax preferred retirement account exemptions under CalFresh rules.

In order to avoid potential misinterpretation going forward, CalWORKs regulations will be revised to clarify that MPP Section 42-213.21 and .22 are meant to be additional exemptions, and are not meant to eliminate any exemptions for CalWORKs applicants or recipients that are allowed under CalFresh rules.

Contacts

If you have questions regarding this letter, please contact your CalWORKs county consultant directly or call the CalWORKs Eligibility Bureau at (916) 654-1322.

Sincerely,

Original Document Signed By:

KÄREN DICKERSON, Chief
CalWORKs Employment and Eligibility Branch