

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



February 3, 1997

ALL COUNTY LETTER 97-05

TO: ALL COUNTY WELFARE DIRECTORS

REASON FOR THIS TRANSMITTAL

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

SUBJECT: IMPLEMENTATION OF REGULATION PACKAGE #0196-02 PERTAINING TO THE EXEMPTION OF BONA FIDE LOANS, AND OTHER STATUTORY EXEMPTIONS IN THE AID TO FAMILIES WITH DEPENDENT CHILDREN PROGRAM (AFDC)

REFERENCE: ADMINISTRATION FOR CHILDREN AND FAMILIES ACTION TRANSMITTAL, ACF-AT-94-4

The purpose of this letter is to provide you with copies of proposed regulations which implement changes in the AFDC Program. The changes pertain to the treatment of bona fide loans and World War II restitution payments made under public law. These regulations went to Public Hearing on October 23, 1996, and are effective April 1, 1997.

SUMMARY OF REGULATIONS**Bona Fide Loans**

The new regulations provide for the exemption of all bona fide loans from consideration as income and resources (property) regardless of the source or intended purpose of the loan. All loans that have a written agreement with a clearly defined obligation to repay the funds are defined as bona fide loans and will not be counted in the AFDC eligibility or payment determination. Prior to this change, loans were exempt only if they were: (1) unavailable to meet current needs, (2) payments made under Title IV of the Higher Education Act, or (3) nongovernmental loans which met the Noia court case exemption criteria. Since the new policy expands on the existing policy which already provides for the exemption of various types of loans, we have amended the pertinent regulations, added a definition of a bona fide loan, and included handbook examples for clarity where appropriate.

Payments Mandatorily Exempt under Federal Law

Other changes include implementing Public Law 103-286 which exempts from consideration as income or resources restitution payments made to victims of Nazi persecution. Additionally, we changed the regulations to reflect Public Law 100-383 provisions that exempt restitution payments made to Aleutians relocated by the United States government during World War II. Our current regulations only address the exemption for United States citizens and permanent resident aliens of Japanese ancestry.

NOTICES OF ACTION (NOA)/FORMS

We have not identified a need to amend or develop any NOA or form regarding these changes at this time.

CONTACTS

If you have questions regarding these regulation changes, contact Julie Lopes for income questions at (916) 654-1786 and Henry Puga for property questions at (916) 654-1068. The CALNET prefix for these telephone numbers is 454.

Sincerely,



BRUCE WAGSTAFF
Deputy Director
Welfare Programs Division

Attachment

Amend Section 42-213 to read:

42-213 PROPERTY ITEMS TO BE EXCLUDED IN EVALUATING PROPERTY
WHICH MAY BE RETAINED (Continued)

42-213

.2 Personal Property to Be Excluded

The following are excluded from consideration in personal property reserve limitations (see Section 42-207.1).

a. (Continued)

b. (Continued)

c. Loans and Grants

(1) ~~Loans not available for current need because of conditions imposed by the lender, when there is a written agreement signed and dated by the lender and applicant/recipient as parties to the agreement that clearly specifies:~~

(a) the obligation of the applicant/recipient to repay the loan; and

(b) a repayment plan which provides for installments of specified amounts that continue on a regular basis until the loan is fully repaid.

(2) ~~Any unexpected portions of grants or Economic Opportunity Act or educational loans that are exempt from consideration as income under Section 44-111.43.~~

Loans and grants received under Title IV of the Higher Education Act or under the Bureau of Indian Affairs student assistance programs. (For Income Exemption see Section 44-111.43).

HANDBOOK BEGINS HERE

(a) Examples of student financial assistance under Title IV of the Higher Education Act are:

Pell Grant Program

Supplemental Educational Opportunity Grant (SEOG)

National Direct Student Loan (NDSL)

Plus Program

Byrd Honor Scholarship Programs

College Work Study Programs

HANDBOOK ENDS HERE

- (3) ~~Loans obtained to meet current needs while (a) an application is pending, (b) aid is wrongfully denied or discontinued, (c) a county is refusing to comply or is delayed in complying with a Fair Hearing decision, or (d) an aid warrant is being delayed due to no fault of the recipient.~~

Loans and grants received under the Carl D. Perkins Vocational and Applied Technology Education Act. These loans and grants are excluded only to the extent that the proceeds are used to meet attendance costs for a student attending school on at least a half-time basis, as defined by the institution. Attendance costs are defined as tuition, fees, rental or purchase of required equipment, materials, supplies, books, transportation, dependent care and miscellaneous personal education expenses.

HANDBOOK BEGINS HERE

- (a) The following examples apply to loans and grants under the Carl D. Perkins Vocational and Applied Technology Education Act only:

1. Example: Grant - Student is awarded a \$1000 grant. \$600 is for tuition, fees and books; \$400 is deposited in the bank for future use. The \$600 used to meet attendance costs is disregarded as resources. The \$400 unexpended portion deposited in the bank, is exempt if designated for future attendance costs, e.g., dependent care, and is not counted toward the property limit in the subsequent months of receipt.
2. Example: Loan - Student is awarded a \$1000 loan. \$600 is for tuition, fees and books; \$400 is deposited in the bank for future use. The recipient provides a written agreement signed and dated by the lender and recipient which indicates an obligation to repay the loan and a repayment plan. The entire loan is subject to exemption based on Section 42-213.2c.

HANDBOOK ENDS HERE

d. through z. (Continued)

.3 (Continued)

.4 (Continued)

- .5 Other property which is mandatorily and specifically exempt by federal law and shall be exempt from the effective date as specified in federal law.

.51 (Continued)

.511 through .513 (Continued)

.514 PL 100-383 which exempts payments received as restitution made to U. S. citizens and permanent resident aliens of Japanese ancestry, and payment received as restitution made to Aleuts as a result of being relocated by the United States government during World War II.

.515 through .518 (Continued)

.519 PL 103-286 which exempts payments received by victims of Nazi persecution.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 10553, 10554, 11155, 11155.1, 11155.2, 11155.5, and 11257, Welfare and Institutions Code; 45 CFR 233.20(a)(3)(i)(B); and 45 CFR 233.20(a)(3)(xxi); 45 CFR 233.20(a)(4)(ii) and (a)(4)(ii)(d); 45 CFR 233.20(a)(4)(ii)(p), and 45CFR 233.20(a)(4)(ii)(q); Sidwell v. McMahon, United States District Court (E.D. Cal.) May 7, 1990, civil no. S-89-0445; the Federal Terms and Conditions for the California Work Pays Demonstration Project as approved by the United States Department of Health and Human Services on March 9, 1994; Public Laws 97-458, and 98-647, and 103-286 and ; Federal Action Transmittal 91-23.

Amend Section 44-101 to read:

44-101 INCOME DEFINITIONS (Continued)

44-101

.5 Earned Income

.51 (Continued)

.52 Earned income also includes: (Continued)

.527 (Continued)

~~HANDBOOK BEGINS HERE~~

~~(a) Year-end EIC is split between the husband and wife when both were earners in the tax year. If only one spouse worked during the tax year, the year-end EIC is attributed only to that earner.~~

~~HANDBOOK ENDS HERE~~

.53 Earned income does not include:

.531 ~~Loans and grants, such as scholarships, obtained and used under conditions that preclude their use for current living costs that do not meet the exemption criteria specified in Sections 44-111.431, and .432.~~

.532 through .536 (Continued)

.6 through .9 (Continued)

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 10553 and 10554, Welfare and Institutions Code; and Sallis v. McMahon, Sacramento County Superior Court, case no. 364308, January 30, 1991; and 45 CFR 233.20(a)(3)(iv)(B) and (a)(4)(ii)(d).

Amend Section 44-111 to read:

44-111 PAYMENTS EXCLUDED OR EXEMPT FROM CONSIDERATION
AS INCOME (Continued)

44-111

.4 Exclusions or Exemptions of Other Payments and Income

.41 (Continued)

.42 (Continued)

.43 Loans and Grants

The following loans and grants are not considered ~~as~~ income as specified:
(See Section 42-213.2c. for treatment as property).

.431 ~~Loans made under Title III of the Federal Economic Opportunity Act
(Special Program to Combat Poverty in Rural Areas).~~

Loans and grants received under the Carl D. Perkins Vocational and Applied Technology Education Act. These loans and grants are excluded only to the extent that the proceeds are used to meet attendance costs for a student attending school on at least a half-time basis, as defined by the institution. Attendance costs are defined as tuition, fees, rental or purchase of required equipment, materials or supplies, books, transportation, dependent care and miscellaneous personal education expenses.

HANDBOOK BEGINS HERE

a. The following examples apply to loans and grants under the Carl D. Perkins Vocational and Applied Technology Education Act only:

1. Example: Grant - Student is awarded a \$1000 grant. \$600 is for tuition, fees and books; \$400 is used to meet current living expenses during the budget period. The \$600 used to meet attendance costs is exempt from consideration as income. The \$400 used to meet current needs, not associated with attendance costs, is taken into consideration as income in the month received.

2. Example: Loan - Student is awarded a \$1000 loan. \$600 is for tuition, fees and books; \$400 is used to meet current needs during the budget period. The recipient provides a written agreement signed and dated by the lender and recipient which indicates an obligation to repay the loan and a repayment plan. The full loan is subject to exemption based on Section 44-111.437.

HANDBOOK ENDS HERE

.432 (Continued)

a. (Continued)

HANDBOOK BEGINS HERE

b. Examples of Title IV and Bureau of Indian Affairs loans and grants include:

1. (Continued)

2. Carl D. Perkins Loans (NOTE: Differs from the student financial assistance provided under the Carl D. Perkins Vocational Act).

(Continued)

HANDBOOK ENDS HERE

.433 Any other grant ~~or loan~~ to any undergraduate student for educational purposes made or insured under any program administered by the Federal Secretary of Education.

.434 ~~Any other e~~ Educational loans ~~or grants~~ to undergraduate students when they are awarded on the basis of the student's need.
(Continued)

.435 Educational loans ~~and grants~~ other than those excluded in Sections 44-111.432, .433, and .434 only to the extent that the proceeds are used to meet educational expenses, such as fees, equipment, special clothing needs, transportation to and from school, child care services necessary for school attendance, etc.
(Continued)

.436 Any other ~~loans or grants~~ when it is verified that the proceeds are not available to meet current needs. For purposes of this section current needs are defined as those items covered in Section 44-115.3.

~~HANDBOOK BEGINS HERE~~

~~.437 The Department of Social Services and the counties have been prohibited by the court order in Noia v. McMahon from implementing Section 42-111.437 in respect to nongovernmental loans. Until further court order, the counties must exclude nongovernmental loans from income regardless of their availability to meet current needs when it is verified that the following conditions are met.~~

- a. ~~The terms of the loans are stated in a written agreement between the lender and the borrower, and~~
- b. ~~The agreement clearly specifies: (1) the obligation of the borrower to repay the loan; and (2) a repayment plan which provides for installments of specified amounts to begin within 90 days of receipt of the loan and continue thereafter on a regular basis until the loan is fully repaid.~~

~~As part of the verification process, the recipient is required to submit loan contract papers or a written agreement setting forth the terms of the loan regarding its amount and the repayment plan. The agreement must be signed by the lender and the recipient as parties to the agreement. (See ACL 86-44 and Errata dated June 19, 1986.)~~

HANDBOOK ENDS HERE

.437 Loans other than those excluded in Sections 44-111.431 and .432 shall be exempt. A loan is defined as specified in Sections 44-111.437a., a.(1) and a.(2):

a. A written agreement signed and dated by the lender and applicant/recipient as parties to the agreement that clearly specifies:

(1) the obligation of the applicant/recipient to repay the loan; and

(2) a repayment plan which provides for installments of specified amounts that continue on a regular basis until the loan is fully repaid.

.44 through .47 (Continued)

.5 Nonexempt Income (Continued)

.6 (Continued)

.61 Income which is mandatorily exempt under federal law includes but is not limited to:

a. through g. (Continued)

h. PL 101-383 which exempts payments received as restitution made to U. S. citizens and permanent resident aliens of Japanese ancestry- and payments received as restitution made to Aleuts as a result of being relocated by the United States government during World War II.

i. through l. (Continued)

- m. PL 103-286 which exempts payment received as restitution made to victims of Nazi persecution.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 10553, 10554, 11008.15, 11280, and 11451.7, Welfare and Institutions Code; 42 USC Section 602(g)(1)(E)(i); Section 8, Public Law 93-134; Section 2, Public Law 98-64; Section 13736, Public Law 103-66; Section 1, Public Law 100-286, Section 202(a), Public Law 100-485 and 20 USC 1087uu; 45 CFR 233.20(a)(3)(iv)(B), (a)(3)(xxi), 45 CFR 233.20(a)(4)(ii); (a)(4)(ii)(d); 45 CFR 233.20(a)(4)(ii)(p) and (q); 45 CFR 233.20(a)(11)(v)(C); 45 CFR 255.3(f)(1); Federal Terms and Conditions for the California Assistance Payment Demonstration Project as approved by the United States Department of Health and Human Services on October 30, 1992; and the Federal Terms and Conditions for the California Work Pays Demonstration Project as approved by the United States Department of Health and Human Services on March 9, 1994-; Federal Action Transmittals ACF-AT-94-27 and 94-4 and FSA-IM-89-1.