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Cross-References:	20 CFR, Section 416.1160 (POMS)
Clerical:	Yes
Handbook Revision:	Yes
Distribution:	CAP I Update Distribution List

Update 2002-4: Cash Assistance Program for Immigrants (CAPI) Indigence Exception Rule

Background

Generally, if an immigrant's sponsor signs the new "Affidavit of Support" (I-864), the income and resources of the sponsor (and the sponsor's spouse if living in the same household) are deemed to the immigrant for purposes of determining CAPI eligibility. This rule is suspended under the "Indigence Exception."

Changes

The following changes are applied with the Indigence Exception Rule:

General Information

When deeming is suspended under this exception, the only income from the sponsor that is counted is:

- Actual monies (cash) received directly from the sponsor, and
- In-kind income that the immigrant actually receives from the sponsor.

When the Indigence Exception Does NOT Apply

The Indigence Exception does NOT apply when:

- The immigrant lives with his or her sponsor, or
- The immigrant lives with someone other than the sponsor, and receives free room AND board, even if the immigrant's income is less than the SSI rate.

Note:

If the immigrant has no money to pay for food and shelter, but these costs are incurred, then the immigrant is NOT considered to be receiving these items free of charge.



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The immigrant may also be receiving only one of these items free of charge (either food or shelter), but be responsible to pay the other. As long as the immigrant is not receiving BOTH food and shelter, and the immigrant's total income is less than the Federal Benefit Rate, the immigrant is NOT considered to be receiving free food and shelter.

[Section 11.9.2]

Indigence Exception Rule Criteria

ALL of the following criteria MUST be met before the Indigence Exception rule can apply:

- Sponsor-deeming results in (or it is determined that it would result in) a denial, suspension, or reduction of CAPI benefits, AND
- The immigrant is unable to obtain both food and shelter, AND
- The immigrant completes and signs the "Cash Assistance for Immigrants Program (CAPI) Indigence Statement" (SOC 809), AND
- The EW determines that the indigence exception applies.

[Section 11.9.3]

Sponsor Deeming Results in a Denial, Suspension or Reduction

In order for the Exception Rule to apply, the amount of the sponsor's income deemed to the sponsored immigrant MUST result in a:

- Denial
- Suspension, or
- Reduction of CAPI benefits.

The determination can be made by completing the "Cash Assistance Program for Immigrants (CAPI) Sponsor to Alien Deeming Worksheet" (SOC 454). The actual denial, suspension or reduction need not take place. The completion of the SOC 454 suffices this requirement.

Example:

Mrs. Tran applies for CAPI on 10/15/02. She indicates her sponsor has abandoned her. The EW completes the SOC 454, and the deeming of the sponsor's income would result in a denial of the CAPI application. The EW does NOT have to actually deny the CAPI application. The completion of the SOC 454 in itself demonstrates that sponsor deeming would result in a denial.

[Section 11.9.4]

Determining if Unable to Obtain Food and Shelter

When the immigrant is living apart from his/her sponsor, and is NOT receiving BOTH free food AND shelter in another person's household, the immigrant is to be considered unable to obtain food and shelter if:

- The total income that the immigrant receives (from all sources) is less than the Federal SSI rate (i.e., Effective 01/01/02, \$545 for an individual; \$817 for a couple); AND
- The resources available to the immigrant are less than the applicable CAPI resource limit (i.e., \$2,000 for an individual or \$3,000 for a couple).

[Section 11.9.5]

Indigence Exception Procedures

When the criteria for this exception is met, the Eligibility Worker (EW) must follow the procedures below:

Note:

Under NO circumstances is the Indigence Exception Rule to be granted until ALL of these steps are followed.

STEP	ACTION	
1.	Obtain a completed "Cash Assistance Program for Immigrants (CAPI) Indigence Exception Statement" (SOC 809) signed by the immigrant regarding his or her living arrangements and income.	
2.	Contact the sponsor to confirm the immigrant's allegations regarding the amounts of income and resources that the sponsor provides or makes available to the immigrant.	
	If the Sponsor's Whereabouts are...	Then...
	Unknown,	The EW MUST contact Immigration and Naturalization Services (INS) using the "Document Verification Request" (G-845) to obtain the sponsor's address. If the sponsor CANNOT be located, accept the immigrant's signed allegation on a "General Affidavit" (SC 101), provided that the information does not conflict with other information in the case folder.
Known,	It is the immigrant's responsibility to ensure that the sponsor provides confirmation of the immigrant's allegations. The confirmation may also be verbal. NOTE: If the immigrant is unable to obtain the proof from the sponsor, the "Contact Action Summary" (SC 163) MUST be documented, and the Indigence Exception Rule may be approved, if otherwise eligible.	

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STEP	ACTION	
3.	Complete the "Indigence Exception Determination" (SOC 813).	
	If the Indigence Exception Rule...	Then the EW must...
	Does NOT apply,	File the SOC 813 on fastener 2, top, of the case folder.
	Applies,	<ul style="list-style-type: none"> Determine the amount of income the immigrant receives and resources available to the immigrant. Determine the CAPI eligibility payment amount based on these figures. Forward a copy of the SOC 813 to Immigration and Naturalization Services (INS) and California Department of Social Services (CDSS).

[Section 11.9.6]

Duration of Indigence Exception

When the criteria for this exception is met, deeming is suspended for 12 consecutive months. The 12 month period can begin at any time when all of the conditions are met. It can be effective with the first of the month of eligibility, or in any subsequent month.

During the 12 consecutive month period, sponsor deeming does NOT apply, even if the immigrant ceases to meet the indigence test. However, any changes in the immigrant's income, including changes in the amount of income or in-kind support provided by the sponsor, are counted as income and WOULD affect the CAPI amount.

Example:

Mrs. Trent, an immigrant whose sponsor has executed a new "Affidavit of Support" (I-864), alleges during her initial CAPI interview on October 10, 2002, that her sponsor gives her only \$350 per month in cash and no other support. Mrs. Trent lives alone. The sponsor verifies her allegation. The EW determines that the criteria for the indigence exception is met because she doesn't live with her sponsor, does not receive free room AND board from anyone else, and her income is less than the SSI rate. The first payment takes effect on November 1, 2002. The Indigence Exception period is from November 2002 until October 2003.

Effective January 2003, the sponsor receives an increase in pay, and begins to pay the sponsored immigrant \$550 a month. This amount would put her over the SSI Federal Benefit Rate, however sponsor deeming continues to be suspended until October 2003. The amount of the CAPI grant MUST be recalculated and the new lower amount issued.

[Section 11.9.7]

**Treatment of
Income and
Resources**

When deeming is suspended under this exception, the usual income and resource policies are applied. However, the following changes are applied for the sponsor's income and resources:

Income

ONLY income that the immigrant actually receives from the sponsor/sponsor's spouse is counted for CAPI purposes. Under the Indigence Exception, if the sponsor/sponsor's spouse provides NO income or support, then NO income is counted.

Resources

Resources owned by the sponsor/sponsor's spouse are ONLY considered to be the immigrant's resources if the immigrant:

- Has an ownership interest in them, AND
- Has the right, authority, or power to convert the resource to cash; AND
- Is NOT legally restricted from using the resources for his or her support.

[Section 11.9.8]

**Referrals to
INS**

The Immigration and Naturalization Services (INS) is tracking the failure of sponsors to adequately support those sponsored. It is required under Section 8 U.S. Code, Section 1631(e)(2) that INS be notified in EVERY case where the Indigence Exception rule applies. When the EW approves the Indigence Exception, the county MUST notify INS and send a copy of the notification to the California Department of Social Services (CDSS).

The EW must send a copy of the "Indigence Exception Determination" (SOC 813) to:

Immigration and Naturalization Service
Statistics Branch
425 I Street, NW
Washington, DC 20536

Also send a copy of the INS Notification to:

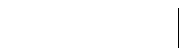
California Department of Social Services
Adult Programs Branch
Cash Assistance Program Unit
744 P Street, M.S. 19-96
Sacramento, CA 95814

[Section 11.9.9]

Implementation	The Indigence Exception Rule is effective September 1, 2002.
Intake	Any CAPI cases approved on or after September 1, 2002, MUST be reviewed to determine if the Indigence Exception Rule applies. If a CAPI case was approved or denied without applying the rule, the case must be re-reviewed and a determination made if the case qualifies under the Indigence Exception Rule.
Continuing	The Indigence Exception Rule MUST be evaluated whenever a CAPI payment is suspended or reduced due to sponsor deeming.
Supervisors	<p>EW Supervisors MUST review this Update with their respective units no later than November 15, 2002.</p> <p>In addition, when reviewing cases, EW Supervisors MUST ensure the Indigence Exception Rule was explored/applied appropriately to all cases.</p>
Forms	<p>The State has created two new forms for the Indigence Exception Rule. These forms will be distributed to District Offices at the end of October:</p> <ul style="list-style-type: none">• “Cash Assistance Program for Immigrants (CAPI) Indigence Exception Statement” (SOC 809)• “Indigence Exception Determination” (SOC 813). <p>[Copies of the forms are attached for reference.]</p>
Other Programs	This change in regulation ONLY affects the Cash Assistance Program for Immigrants (CAPI).
Clerical	See “Forms” above. Office Management Coordinators MUST ensure an adequate supply of these forms are kept in supply.

NELLIE JORGE, DIRECTOR
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Contact Person(s): Tomás Dolcini, Program Coordinator, (408) 491-6700.



Date: 11/01/02

Filing Instructions for Update 2002-4: Cash Assistance Program for Immigrants (CAPI)

Indigence Exception Rule

Remove	Replace with
Chapter 11, pp. 1-12 (04/22/02)	Chapter 11, pp. 1-18 (11/01/02)



