

Notice of Eligibility for Loans Under the Residential Care Loan Scheme (Effective On and After 15 August 2009)

Pursuant to section 153 of the Social Security Act 1964, the Director-General of Health gives notice of the following eligibility criteria for loans under the Residential Care Loan Scheme ("loan scheme") operated by the Ministry of Health which are effective on and after 15 August 2009.

Details of the loan scheme policy are set out below.

Interpretation

1. In this notice:

"Act" means the Social Security Act 1964

"amount of loan balance repayable" has the meaning in paragraph 13.17

"applicant" has the meaning in paragraph 3 or 4

"civil union" has the meaning in the Civil Union Act 2004

"client" has the meaning in paragraph 5

"Crown" means the Sovereign in right of New Zealand acting by and through the Director-General of Health

"de facto relationship" has the meaning in section 29A of the Interpretation Act 1999

"former home", in relation to a person, means the residential dwelling that was the person's principal place of residence immediately prior to the person entering long-term residential care

"key eligibility criteria" has the meaning in paragraph 3

"loan" means a residential care loan

"loan agreement" means an agreement made between the Crown and a borrower in respect of a loan

"loan balance" means the amount for the time being advanced by the Crown under a loan agreement including any default interest or other amount added to or deducted from it

"own" or "owns", in relation to a former home, means having an estate or interest in that home (or in the case of a licence to occupy, a right to be paid or repaid money on the termination of that licence); and "owned", "owner", and "ownership" have corresponding meanings

"means assessment" means a means assessment as to assets under section 146 of the Act

"period of the loan" has the meaning in paragraph 13.2(a)

"principal sum", in relation to a mortgage or charge referred to in the definition of sale proceeds, means the amount secured by that mortgage or charge at the time the loan agreement was entered into

"protected equity" means the amount of sale proceeds that a client is entitled to retain before all or any part of the loan balance is repaid, calculated as set out in paragraphs 13.18 to 13.20

"relevant asset threshold" has the meaning in paragraph 13.21

"resident assessed as requiring care" means an eligible person who:

(a) has been needs assessed as requiring long-term residential care in a hospital or rest home indefinitely; and

(b) is receiving contracted care services from a provider irrespective of whether a funder has any liability to pay for any of the cost of his or her care

"sale proceeds", in relation to a client's former home, means:

(a) the price that home was sold for after the deduction of the amount of the principal sum owing at the date of settlement of the sale under any mortgage or charge over the former home identified in the means assessment immediately preceding the loan application that the Ministry of Social Development accepts as having priority over the loan; or

(b) in the case of a licence to occupy, the amount paid or repaid on its termination

"subsidy" means a funder's liability under Part 4 of the Act in respect of a resident assessed as requiring care who has been means assessed and found to have assets equal to or below the applicable asset threshold

"termination event" has the meaning in paragraph 13.7.

2. All other terms used in this notice have the same meanings as in section 3(1) or Part 4 and Schedule 27 of the Act.

Eligibility criteria

3. A person ("applicant") may apply for a loan if the applicant meets all of the following criteria ("key eligibility criteria"):

(a) **the applicant is a resident assessed as requiring care:**

(b) **the applicant has been means assessed as to assets under Part 2 of Schedule 27 of the Act and been found to have assets above the applicable asset threshold:**

(c) **the applicant is liable to pay for the cost of contracted care services provided to him or her:**

(d) **the applicant's assets are above the applicable asset threshold only because he or she owns a former home and the applicant does not qualify for a subsidy because the value of the client's ownership of the former home means that the applicant has assets above the applicable asset threshold:**

(e) **the applicant's assets other than his or her ownership of the former home must amount to no more than \$15,000.00 for a single person and \$30,000.00 for an applicant who is married, in a civil union, or in a de facto relationship.**

4. A person ("applicant") who meets at least paragraphs (a) to (c) but not all of the key eligibility criteria may apply for a loan in exceptional circumstances demonstrated to the satisfaction of the Ministry of Social Development.

The Residential Care Loan Scheme Policy

Background

What is a residential care loan?

5. It is a loan made pursuant to a loan agreement between the Crown and a borrower (“client”) under which the Crown advances funds to the client, which are paid to the appropriate provider on the client’s behalf, on account of the client’s liability under Part 4 of the Act to pay for any contracted care services received by the client.
6. Generally, a loan is secured over the client’s former home, with the Crown’s interest being protected by a caveat lodged against the title to that home.
7. The loan balance is generally due to be repaid when the client dies or the former home is sold or otherwise disposed of (or in the case of licence to occupy, it is terminated), whichever happens first, or at any earlier time set out in the loan agreement.

Roles and responsibilities

8. The Ministry of Health is responsible for the loan scheme policy, funding contracted care services under the loan scheme, and issuing loan statements to clients. The Ministry of Social Development administers the loan scheme as an agent of the Ministry of Health under a Power of Attorney, and provides certain legal and administrative services in relation to the loan scheme. All references to the Ministry of Social Development in this notice are as agent for the Ministry of Health.

Purpose of the loan scheme

9. The purpose of the loan scheme is to assist older people who, because they own their former homes, have assets above the applicable asset threshold and are obliged to pay for the cost of contracted care services provided to them, and have limited other assets. The loan scheme recognises that for many older people their former homes are their principal assets, which they may wish to retain when they enter residential care for a time that allows them to adjust to their changed circumstances.
10. For the avoidance of doubt, the loan scheme does not operate in respect of any agreement between the client and the provider for any services that are not contracted care services, and payment for any such services remains a personal liability of the client.

Offer of loan discretionary

11. The Ministry of Social Development considers each application for a loan on a case-by-case basis. There is no obligation on the Ministry of Social Development or the Ministry of Health to offer a loan.
12. The Ministry of Social Development may offer a loan to and enter into a loan agreement with the applicant if the Ministry of Social Development is satisfied:
 - (a) **Key eligibility criteria**
The applicant meets all of the key eligibility criteria, or meets at least paragraphs (a) to (c) of the key eligibility criteria and has exceptional circumstances as described in paragraph 4; and
 - (b) **Purpose of scheme**
The application fits within the purpose of the loan scheme; and
 - (c) **Sufficient security**
The loan can be adequately secured over the applicant’s former home; and
 - (d) **Recovery**
There are no significant risks that would affect the Crown’s ability to recover and enforce repayment of the loan or the terms of the loan agreement.

Loan terms and conditions

13. Any loan will be made on terms and conditions considered appropriate by the Ministry of Social Development. These will include:
 - (a) terms and conditions relating to the matters set out in paragraphs 13.1 to 13.21; and
 - (b) any additional conditions required in the particular circumstances; and
 - (c) any other conditions required to meet the exceptional circumstances of a client who does not meet all the key eligibility requirements; and
 - (d) a term consenting to and authorising the Ministry of Health and Ministry of Social Development to provide the other with any information that is contemplated under, or necessary to administer or enforce, the loan terms and conditions or the loan scheme policy.
- 13.1 The client will be required to enter into a loan agreement recording the terms and conditions of the loan. If the former home is co-owned with another person or persons, each of the other co-owners will also be required to enter into the loan agreement as borrowers for the purpose of the Crown obtaining adequate security for the loan. Generally, a caveat will be lodged against the title to the former home as notice of the loan agreement. In the case of a licence to occupy, the licensor will be required to covenant that if the licence is terminated, the amount payable or repayable to the client on termination will be held for the Crown to the extent of the amount of loan balance repayable.
- 13.2 A loan agreement may specify that the Crown will make advances under it:
 - (a) for no more than a specified period (the “period of the loan”); or
 - (b) not exceeding a specified monetary limit; or
 - (c) subject to limits under both paragraphs (a) and (b), whichever occurs first.
- 13.3 The client is required to maintain the former home and pay all rates (which may be by way of a postponed or deferred rates scheme), insurance, and other outgoings until the loan is repaid. The assets referred to in paragraph (e) of the key eligibility criteria (up to \$15,000.00 for a single person and \$30,000.00 for a couple who are married, or in a civil union or de facto relationship) are intended to be used for living expenses and for these purposes.

- 13.4 While the loan balance remains owing the client must not:
- (a) enter into, or allow to be entered into, any agreement, deed, mortgage, charge, encumbrance, or other arrangement (other than rates deferment or postponement) that charges or gives security over the former home; or
 - (b) draw down or obtain, or allow to be drawn down or obtained, any advance or further advance under and secured by any mortgage, charge, or other security over the former home at the date the loan agreement was entered into (for example, a reverse equity mortgage).
- 13.5 The client is required to contribute the New Zealand Superannuation, or any other benefit, that he or she receives, less the personal allowance, to the cost of the contracted care services provided to him or her. The amount to be advanced under the loan agreement will be reduced accordingly.
- 13.6 The Ministry of Health will send a statement of the loan balance to the client on a quarterly basis.
- 13.7 While the client remains a resident assessed as requiring care, the Crown will continue to make advances under the loan agreement towards the cost of contracted care services in relation to the client and paid to the appropriate provider on the client's behalf until the first of the following events occurs (the "termination event"):
- (a) the client dies or earlier permanently leaves long-term residential care;
 - (b) the former home is sold or otherwise disposed of (or in the case of a licence to occupy, it is terminated);
 - (c) a new or reviewed means assessment determines that the client's assets are equal to or below the applicable asset threshold;
 - (d) the period of the loan specified in the loan agreement ends;
 - (e) advances made reach the monetary limit specified in the loan agreement.
- 13.8 The amount from time to time advanced by the Crown under paragraph 13.7 is the cost of contracted care services in relation to the client not exceeding the maximum contribution less the amount of the client's contribution in accordance with paragraph 13.5.
- 13.9 If a new or reviewed means assessment determines that the client's assets are equal to or below the applicable asset threshold, the client will transfer from the loan scheme to a subsidy. The Crown's liability to make advances towards the cost of contracted care services under the loan agreement will cease with the close of the day before the date that the funder's liability arises under section 141(3) or (4) of the Act, the client will be given notice of the loan balance, and the repayment provisions of the loan agreement will apply.
- 13.10 If the client transfers from the loan scheme to a subsidy and any amounts were advanced under the loan agreement between the day that the funder's liability arises and the day that the means assessment or review was completed, an appropriate adjustment to the loan balance will be made before that balance is notified.
- 13.11 If the client transfers from the loan scheme to a subsidy and it is discovered before the loan balance is repaid that the client or his or her spouse or partner had any assets that were not taken into account in the means assessment or review that determined the client's eligibility for subsidy, or had any assets that were taken into account but whose values were understated, the Ministry of Social Development may increase the amount of loan balance repayable by the amount of any subsidy paid to a provider in respect of the client to which the client was not entitled.
- 13.12 During the term of the loan agreement, the client and any other persons who are parties to the loan agreement must promptly notify the Ministry of Social Development of any of the following circumstances:
- (a) a change in the financial circumstances of the client or of the client's spouse or partner (other than any increase in the client's loan balance or in the value of the former home or any other of their assets);
 - (b) the death of the client's spouse or partner;
 - (c) the client's spouse or partner becoming a resident assessed as requiring care;
 - (d) a change in the relationship status of the client or of the client's spouse or partner.
- 13.13 The Ministry of Social Development will carry out a review of the client's means assessment:
- (a) on the occurrence of any of the events referred to in paragraph 13.12(b) to (d); or
 - (b) on notification under paragraph 13.12(a) or by the Ministry of Health of information that is sufficient for the Ministry of Social Development to consider that the client's assets have fallen or are about to fall below the applicable asset threshold.

Repayment of loan

- 13.14 The amount of loan balance repayable must be repaid:
- (a) except where paragraph (b) applies, not later than 12 months after the client dies; or
 - (b) if the client dies and his or her spouse or partner is a resident assessed as requiring care who also has a loan secured over the former home, not later than 12 months after that spouse or partner dies; or
 - (c) immediately on the earlier sale or other disposal of the former home; or
 - (d) in the case of a licence to occupy, immediately after the amount payable or repayable on its earlier termination becomes due for payment.
- 13.15 If repayment is late, default interest on the amount of loan balance repayable may be charged at the rate stated in the loan agreement and added to the amount of loan balance repayable.
- 13.16 The amount of loan balance repayable must be repaid before the security or obligation under the loan agreement, and any caveat on the title to the former home, will be released.
- 13.17 The "amount of loan balance repayable" is, subject to paragraph 13.11 and 13.15, the amount, not exceeding the amount of the loan balance then owing, calculated by deducting the client's protected equity from the sale proceeds of the former home.

- 13.18 Where the client holds or held the former home jointly or as a tenant in common with some other person or persons, the client's protected equity is calculated by deducting from Amount X the total amount of assets (other than the former home) that the client was assessed as having in:
- (a) the means assessment immediately preceding the loan application, if the client has never qualified for a subsidy; or
 - (b) in any other case, the means assessment that determined that the client was eligible for a subsidy.
- 13.19 In paragraph 13.18, "Amount X" is the relevant asset threshold multiplied by the fraction that represents or represented the client's ownership in the former home (for example, if the client and other owner are or were the only joint tenants or tenants in common in equal shares, the fraction is 0.5 or 1/2).
- 13.20 In all other cases, the client's protected equity is calculated by deducting from the relevant asset threshold the total amount of assets (other than the former home) that the client was assessed as having in:
- (a) the means assessment immediately preceding the loan application, if the client has never qualified for a subsidy; or
 - (b) in any other case, the means assessment that determined that the client was eligible for a subsidy.
- 13.21 For the purposes of paragraphs 13.19 to 13.20, "relevant asset threshold" is the applicable asset threshold at the termination event.

Write-off of a loan

14. The Ministry of Social Development may remit all or any part of the loan balance that exceeds the value of the client's ownership in the former home less the value of the client's protected equity, if (in the opinion of the Director-General of Health) the circumstances of the client or any person resident in the former home are exceptional.
15. The Ministry of Social Development may allow any of the following amounts to be deducted from the sale proceeds before the loan is repaid:
- (a) reasonable and necessary legal fees and disbursements on the sale of the former home (other than the cost of registration of the withdrawal of the caveat lodged in respect of the loan);
 - (b) real estate agent's fees payable on the sale of the former home, up to a maximum of 5% of the value of the sale proceeds;
 - (c) if the client has died and had not previously purchased a pre-paid funeral, funeral expenses up to a maximum of \$10,000.00;
 - (d) if the client has not died and has not previously purchased a pre-paid funeral, funds used for this purpose up to a maximum of \$10,000.00;
 - (e) the value of any gift in recognition of care within the meaning and that meets the criteria specified in regulations made under section 155 of the Act.
16. After the client's protected equity and any amounts allowed under paragraph 15 have been deducted from the sale proceeds, the Ministry of Social Development may accept the remainder of the sale proceeds in full and final settlement of the amounts due and owing under the loan.

Deferment of loan repayment

17. The Ministry of Social Development may from time to time defer repayment of a loan balance for a specified period if any person living in the client's former home meets all of the following criteria:
- (a) he or she was living in the former home immediately before the client entered long-term residential care, and had lived there on a continuous full-time basis for at least 5 years before the client entered long-term residential care; and
 - (b) he or she continued to live in the former home while the client was in long-term residential care and remained living there after the client's death; and
 - (c) he or she has inherited the former home from the client or taken it by survivorship, or inherited from the client an estate or interest in the former home jointly or in common with some other person, or has been left a life interest in the former home by the client, and has a legal right to live there.
18. Deferment of the loan repayment is only available in respect of the first person who meets the above criteria, and only applies while that person remains living in the client's former home. If the former home is sold or otherwise disposed of or the person moves out (other than temporarily), the loan balance becomes immediately repayable.
19. There is no obligation on the Ministry of Social Development or the Ministry of Health to agree to defer repayment of a loan or to agree to continue any deferment previously agreed.
20. A deferment under paragraph 17 may be given on conditions, including conditions relating to review and cancellation if for a period longer than 2 years.

Changes to loan scheme

21. The loan scheme policy will be reviewed and updated periodically. Any changes to the eligibility criteria will be gazetted.

Copies of notice

22. Copies of this notice can be found on the Ministry of Health website at
<http://www.moh.govt.nz/assettesting>

Dated at Wellington this 10th day of August 2009.

STEPHEN MCKERNAN, Director-General of Health.

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