

## Supplemental Nutrition Assistance Program

Blaine P. Brockman, J.D.

April 2014

### I. History<sup>1</sup>

What we now know as the Supplemental Nutrition Assistance Program (SNAP) got its start in 1939 as the Food Stamp Program (FSP). The original FSP responded to two problems; widespread unemployment and unmarketable food surpluses. The FSP allowed eligible people to buy one food stamp (Orange stamp) and receive a stamp (Blue stamp) for free. For every dollar in Orange stamps purchased, one received fifty cents in Blue stamps. With Orange stamps, any food could be purchased. Blue stamps could only be used to buy surplus food designated by the Department of Agriculture. This program ended in 1943.

There was no food stamp program again until 1959, when Congress authorized the president to operate a program. In 1962, the Kennedy administration began a new food stamp pilot program. The program still required purchase of a food stamp but did not include an additional stamp for surplus food.

In 1964, Congress enacted the Food Stamp Act. The program was designed to bolster the agriculture economy and aid low-income people. It also brought the program into the regulatory scope and control of Congress. The act created the existing federal-state partnership in operating the FSP. Eligible individuals were required to purchase the stamps and the stamps could be used to buy anything fit for human consumption (except alcohol.) The program expanded rapidly in the 1960's and 1970's.

In the early 1970's Congress, responding to the tension between access to the program and accountability, created uniform eligibility standards, work requirements, and limited program expenditures to the amount necessary to a nutritionally adequate diet. The law also increased federal support of state programs.

The Food Stamp Act of 1977 made major changes to income and resource requirements of the program. It also eliminated the purchase requirement. The program participation grew substantially in the month following that action.

Over the years, a variety of legislation has altered the administrative parameters of the program, but the basic framework remained in place. In the early 1980's saw major cutbacks to the program. This was followed, in the late 1980's and 90's, by improvement in program's substantive and operational rules. Welfare reform laws of the mid-1990's again changed the landscape of the FSP but left the program in tact. Congress mandated the use of the Electronic Benefits Transfer (EBT) system (first authorized in 1988). By 2004, all states were using the EBT. The 2008 Farm Bill renamed the program to the

---

<sup>1</sup> See, <http://www.fns.usda.gov/snap/short-history-snap>.

Supplemental Nutrition Assistance Program (SNAP) and removed references to “stamps” from the law.

The SNAP regulations are not as voluminous as the Medicaid regulations. But, the many nuances to almost every part of each regulation make careful reading a must. The regulations for SNAP are found at 7 C.F.R. §§271-295.

## II. Eligibility

### Definition of Household<sup>2</sup>

The SNAP agency will look to the “household” when determining eligibility. Initially, a household is any combination of people living together who purchase food and prepare meals together for consumption. The following people are presumed to be apart of a household.

1. A spouse.
2. A child under age 22.
3. A child of another who is under 18.

Special needs planners should pay attention to favorable provisions of the law for people who are **elderly and disabled**. The following people are considered a separate household from others with whom they reside.

1. People age 60 and older who are unable to purchase and prepare meals because of a disability. (This is not available if the other people residing there have income that exceeds 165% of the poverty level.)
2. Live in attendants are considered a separate household.
3. People who live in federally subsidized housing for the elderly (where meals are prepared and served) are a separate household. (This is not available if the other people residing there have income that exceeds 165% of the poverty level.)
4. People with disabilities living a nonprofit group home (16 people or less) are each considered a separate household. (This is not available if the other people residing there have income that exceeds 165% of the poverty level.)

### SNAP Eligibility Criteria

There are three criteria for SNAP eligibility. While some have nationwide application, they can vary in application from state to state. Advocates are warned to check local criteria. SNAP has categorical, resource and income eligibility criteria. (However, many states have eliminated resource eligibility requirements for elderly and disabled people.)

#### A. **Categorical eligibility**

Some people are eligible for SNAP without regard to their resources or income limits. This “categorical” eligibility includes the following.

---

<sup>2</sup> 7 C.F.R. §273.1

1. Recipients of Supplemental Security Income (SSI)
  - i However, states like California ("CalFresh") have programs that "cash-out" state SSI supplements for food assistance. These cash-out recipients are not eligible for SNAP.
2. General Assistance recipients.
3. Temporary Aid to Needy Families (TANF) recipients

**B. Resources requirements<sup>3</sup>**

As a means tested program, SNAP places limits on the resources that households may have. Many states have eliminated resource restrictions entirely, or entirely just for people over 60 or disabled households in other states the restrictions have been modified.<sup>4</sup>

*Federal Resource Limitations*

The maximum allowable resources of the household shall not exceed \$2,000. For households including one or more person with a disability member or a members age 60 or over, such resources shall not exceed \$3,250. As mentioned previously many states have either eliminated resource limits for people with disabilities and the elderly, or the have expanded them (in some cases, very significantly.)

*Resources defined*

The following resources are counted against SNAP eligibility. Jointly owned resources by separate "households" (see households above) are counted against the each household entirely unless the household applying for SNAP can demonstrate that the joint resource is unavailable. Resources include the following.

1. Liquid resources
  - i Cash
  - ii Checking or savings accounts
  - iii Savings certificates
  - iv Stocks or bonds
  - v Nonrecurring lump sum payments
  - vi IRA's
  - vii Keogh plans (which do not involve the household member in a contractual relationship with individuals who are not household members).
2. Non-liquid resources,
  - i Personal property
  - ii Motor vehicles: This is an area of great variation between the states. Most exempt the value of all motor vehicles. Some exclude only one. A few use SNAP's motor vehicle exemption (currently

---

<sup>3</sup> §273.8

<sup>4</sup> These states are AL, AZ, CA, CO, CT, DE, FL, GA, HI, IA, IL, KY, LA, MA, MD, ME, MN, MS, MT, NC, ND, NH, NJ, NM, NV, NY, OH, OK, OR, RI, SC, VT, WA, WI, and WV, D.C., Guam and, the U.S. Virgin Islands. Source: SNAP (Supplemental Nutrition Assistance Program), National Center for Benefits Outreach and Enrollment, <http://www.ncoa.org/assets/files/pdf/center-for-benefits/SNAP-details.pdf> (October, 2013)

- iii Buildings
- iv Land
- v Recreational properties

*Important Excluded Resources*<sup>6</sup>

The law provides an extensive list of resources that are excluded from consideration with complex conditions. Many of those are beyond the scope of this paper. The entire list is included as an appendix to this paper. As a practical matter, special needs planners should know about the following exclusions.

1. The home and contiguous property
2. Household goods and personal effects
3. The cash value of life insurance policies
4. One burial plot per household member
5. One bona fide funeral agreement per household member of less than \$1,500 in equity value
6. The cash value of pension plans or funds shall be excluded, (except Keogh and IRA's)
7. Income producing property
8. Resources with inaccessible value
  - i Security deposits on rental property or utilities
  - ii Property in probate
  - iii Real property which the household is making a good faith effort to sell
9. Irrevocable trusts. These rules are more restrictive than special needs planners are used to seeing in Medicaid rules. But, remember: this rule (as with all resource rules) will not apply where the beneficiary household is categorically eligible (e.g. receiving SSI) or where the state has waived resource requirements for people with disabilities and the elderly. (It is critical to know your state laws.) The trust is excluded as follows.
  - i The trust will not terminate during the benefit period.
  - ii The trustee is either,
    - a a court, or institution not acting under the direction of any household member (sole discretion)
    - b In person appointed by a court with limited discretion.
  - iii Trust is not benefiting a business under the control of a household member
  - iv The trust funds are either
    - a The household's funds, if the trustee is using them to make investments on behalf of the trust, or to pay the educational or medical expenses of the beneficiary.
    - b Are funds from a non-household member (e.g. some third party trusts)

---

<sup>5</sup> If interested in this calculation see, §273.8(e)

<sup>6</sup> §273.8(e)

*Transfer of resource rules*

At the point of an application for benefits the agency will look back 3 months for transfers of non-exempt resources. If the transfer was improper, a penalty will be imposed. The following transfers of non-exempt are not improper.

1. Transfer for fair market value
2. Transfers for reasons other than qualifying for benefits
3. Transfers to members of the same benefit household.

Transfers that were made knowingly for the purpose of qualifying for SNAP will result in a disqualification for benefits for up to one year. The one-year period begins from the point of discovery. The period of disqualification is based on the amount the improper transfer exceeds there resource limit as follows.

Amount in excess of the resource limit	Period of disqualification (months)
\$0 to 249.99	1
250 to 999.99	3
1,000 to 2999.99	6
3,000 to 4,999.99	9
5,000 or more	12

**C. Income Requirements**

Typical households that are not categorically eligible must meet a gross and net income test. But, households including one or more **person with a disability, or a members age 60 must only meet a net income limit.**

- The net income limit is 100% of the federal poverty level and is based on household size. Alaska and Hawaii have are based on state poverty levels.
- The gross incomes limit is 130% of the federal poverty level. Alaska and Hawaii have are based on state poverty levels.

**2013**

Household Size	Gross monthly income (130% FPL)	Net monthly income (100 %FPL )
1	\$1,245	\$ 958
2	1,681	1,293
3	2,116	1,628
4	2,552	1,963
5	2,987	2,298
6	3,423	2,633
7	3,858	2,968
8	4,294	3,303
Each additional member	+436	+335

*Gross and Net Income*<sup>7</sup>

Gross income is all income from any source, earned and unearned. Net income is gross income minus the allowed income exclusions and income deductions.

*Income exclusions*<sup>8</sup>

There are a number of statutory exclusions from gross income. The exclusions come off of the gross income. Below listed are ones significant to this paper. The entire list is included in the appendix to this paper.

1. In-kind income and money not paid directly to a household
2. Public assistance payments to vendor for medical assistance, child care assistance, energy assistance, emergency assistance, and housing assistance payments made through a State or local housing authority.
3. Other third party payments (e.g. a friend making a repair payment) are excludable as long as the payment did not come from money diverted from income.<sup>9</sup>
4. Irregular payments if less than \$30 per quarter.
5. Educational assistance payments.
6. Loans.
7. Reimbursement for past household expenses.
8. Money received and used for the care of a third-party beneficiary (of the funding source) who is not a household member.
9. Income of household members under 18.
10. Lump sum payments.

---

<sup>7</sup> §273.9(b)

<sup>8</sup> §273.9(c)

<sup>9</sup> §273.9(c)(1)(viii)

11. Self income expenses.
12. Energy assistance.
13. Need's based charitable cash donations of less than \$300 per year.

*Income deductions.*<sup>10</sup>

Once the exclusions are applied, applicants are allowed certain deductions from net income. These include the following.

1. A standard deduction for household sizes from 1 to 6, of 8.31% of the monthly net income for each household member (the deductions cap at 6 household members). The minimum deduction is allowed in \$134 (for the lower 48 states).<sup>11</sup>
2. An earned income deduction of 20% of gross income.
3. A deduction of for medical expenses in excess of \$35 per month paid for by household **members who are elderly or disabled**.
4. A dependent care deduction for the costs of child care when it is necessary for employment or training. The maximum amount allowed for this deduction is \$200 per child per month for each child under age 2, and \$175 per child per month for children 2 and older.
5. A deduction for child support payments. (It's the state's option to provide this or an income exclusion.)
6. A deduction for excess shelter costs in excess of 50% of the household expenses after all other deductions have been applied. These costs include
  - Rent or mortgage
  - Property taxes
  - Utilities (States may apply a standard utility allowance.)
  - Repairs costs from catastrophic damage

This deduction is capped but has an annual cost of living adjustment. However, the **cap does not apply to households with members who are elderly or disabled**.

### III. Benefits Calculation

The calculation of benefits begins with the assumption the average household will spend 30% of its monthly net income on food. In theory, SNAP makes up the difference in income and the cost of food for a household.

A. *The Thrifty Food Plan (TFP)*

The TFP is a hypothetical diet necessary to feed a family of four (a man, a woman and two children). The diet is established by the Department of Agriculture.

B. *The Maximum Monthly Allotment (MMA)*<sup>12</sup>

The MMA is the cost of the TFP diet is the basis for the MMA. Thus, the MMA is the cost necessary to feed a family of four each month.

---

<sup>10</sup> §273(d)

<sup>11</sup> §273(d)(1)(iii)

<sup>12</sup> §273.10(e)(4)

For 2013-14 the Maximum Monthly Allotment is as follows.

<b>People in Household</b>	<b>MMA</b>
1	\$189
2	\$347
3	\$497
4	\$632
5	\$750
6	\$900
7	\$995
8	\$1,137
Each additional person	\$142

C. *The Actual Monthly Allotment*<sup>13</sup>

The actual SNAP allotment a household receives is determined by multiplying the household's net income by .30 (30%). That number is then deducted from the MMA to determine the amount of SNAP benefit the household receives.

For example:

- Family of 4 with a net income of \$1,139.00
- 30% of net income is \$342.00 (rounded up)
- The MMA is \$632.00
- The actual allotment is \$290.00 (\$632 - \$342).

---

<sup>13</sup> §273.10(e)



**APPENDIX**  
**ALL RESOURCE AND INCOME EXCLUSIONS**

**7 C.F.R. §273.8**

...

(e) *Exclusions from resources.* In determining the resources of a household, only the following shall be excluded:

(1) The home and surrounding property which is not separated from the home by intervening property owned by others. Public rights of way, such as roads which run through the surrounding property and separate it from the home, will not affect the exemption of the property. The home and surrounding property shall remain exempt when temporarily unoccupied for reasons of employment, training for future employment, illness, or uninhabitability caused by casualty or natural disaster, if the household intends to return. Households that currently do not own a home, but own or are purchasing a lot on which they intend to build or are building a permanent home, shall receive an exclusion for the value of the lot and, if it is partially completed, for the home.

(2) Household goods, personal effects, the cash value of life insurance policies, one burial plot per household member, and the value of one bona fide funeral agreement per household member, provided that the agreement does not exceed \$1,500 in equity value, in which event the value above \$1,500 is counted. The cash value of pension plans or funds shall be excluded, except that Keogh plans which involve no contractual relationship with individuals who are not household members and individual retirement accounts (IRA's) shall not be excluded under this paragraph.

(3)(i) Licensed vehicles that meet the following conditions:

(A) Used for income-producing purposes such as, but not limited to, a taxi, truck, or fishing boat, or a vehicle used for deliveries, to call on clients or customers, or required by the terms of employment. Licensed vehicles that have previously been used by a self-employed household member engaged in farming but are no longer used in farming because the household member has terminated his/her self-employment from farming must continue to be excluded as a resource for one year from the date the household member terminated his/her self-employment farming;

(B) Annually producing income consistent with its fair market value, even if used only on a seasonal basis;

(C) Necessary for long-distance travel, other than daily commuting, that is essential to the employment of a household member (or ineligible alien or disqualified person whose resources are being considered available to the household)—for example, the vehicle of a traveling sales person or a migrant farm worker following the work stream;

(D) Used as the household's home and, therefore, excluded under paragraph (e)(1) of this section;

(E) Necessary to transport a physically disabled household member (or physically disabled ineligible alien or physically disabled disqualified person whose resources are being considered available to the household) regardless of the purpose of such transportation (limited to one vehicle per physically disabled household member). The vehicle need not have special equipment or be used primarily by or for the transportation of the physically disabled household member; or

(F) Necessary to carry fuel for heating or water for home use when the transported fuel or water is anticipated to be the primary source of fuel or water for the household during the certification period. Households must receive this resource exclusion without having to meet any additional tests concerning the nature, capabilities, or other uses of the vehicle. Households must not be required to furnish documentation, as mandated by §273.2(f)(4), unless the exclusion of the vehicle is questionable. If the basis for exclusion of the vehicle is questionable, the State agency may require documentation from the household, in accordance with §273.2(f)(4).

(G) The value of the vehicle is inaccessible, in accordance with paragraph (e)(18) of this section, because its sale would produce an estimated return of not more than \$1,500.

(ii) On those Indian reservations that do not require vehicles driven by tribal members to be licensed, such vehicles must be treated as licensed vehicles for the purpose of this exclusion.

(iii) The exclusions in paragraphs (e)(3)(i)(A) through (e)(3)(i)(C) of this section will apply when the vehicle is not in use because of temporary unemployment, such as when a taxi driver is ill and cannot work, or when a fishing boat is frozen in and cannot be used.

(4) Property which annually produces income consistent with its fair market value, even if only used on a seasonal basis. Such property shall include rental homes and vacation homes.

(5) Property, such as farm land or work related equipment, such as the tools of a tradesman or the machinery of a farmer, which is essential to the employment or self-employment of a household member. Property essential to the self-employment of a household member engaged in farming shall continue to be excluded for one year from the date the household member terminates his/her self-employment from farming.

(6) Installment contracts for the sale of land or buildings if the contract or agreement is producing income consistent with its fair market value. The exclusion shall also apply to the value of the property sold under the installment contract, or held as security in exchange for a purchase price consistent with the fair market value of that property.

(7) Any governmental payments which are designated for the restoration of a home damaged in a disaster, if the household is subject to a legal sanction if the funds are not used as intended; for example, payments made by the Department of Housing and Urban Development through the individual and family grant program or disaster loans or grants made by the Small Business Administration.

(8) Resources having a cash value which is not accessible to the household, such as but not limited to, irrevocable trust funds, security deposits on rental property or utilities, property in probate, and real property which the household is making a good faith effort to sell at a reasonable price and which has not been sold. The State agency may verify that the property is for sale and that the household has not declined a reasonable offer. Verification may be obtained through a collateral contact or documentation, such as an advertisement for public sale in a newspaper of general circulation or a listing with a real estate broker. Any funds in a trust or transferred to a trust, and the income produced by that trust to the extent it is not available to the household, shall be considered inaccessible to the household if:

(i) The trust arrangement is not likely to cease during the certification period and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period;

(ii) The trustee administering the funds is either:

(A) A court, or an institution, corporation, or organization which is not under the direction or ownership of any household member, or (B) an individual appointed by the court who has court imposed limitations placed on his/her use of the funds which meet the requirements of this paragraph;

(iii) Trust investments made on behalf of the trust do not directly involve or assist any business or corporation under the control, direction, or influence of a household member; and

(iv) The funds held in irrevocable trust are either:

(A) Established from the household's own funds, if the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of any person named by the household creating the trust, or (B) established from non-household funds by a nonhousehold member.

(9) Resources, such as those of students or self-employed persons, which have been prorated as income. The treatment of student income is explained in §273.10(c) and the treatment of self-employment income is explained in §273.11(a).

(10) Indian lands held jointly with the Tribe, or land that can be sold only with the approval of the Department of the Interior's Bureau of Indian Affairs; and

(11) Resources which are excluded for food stamp purposes by express provision of Federal statute.

(12) Earned income tax credits shall be excluded as follows:

(i) A Federal earned income tax credit received either as a lump sum or as payments under section 3507 of the Internal Revenue Code for the month of receipt and the following month for the individual and that individual's spouse.

(ii) Any Federal, State or local earned income tax credit received by any household member shall be excluded for 12 months, provided the household was participating in the Food Stamp Program at the time of receipt of the earned income tax credit and provided the household participates continuously during that 12-month period. Breaks in participation of one month or less due to administrative reasons, such as delayed recertification or missing or late monthly reports, shall not be considered as nonparticipation in determining the 12-month exclusion.

(13) Where an exclusion applies because of use of a resource by or for a household member, the exclusion shall also apply when the resource is being used by or for an ineligible alien or disqualified person whose resources are being counted as part of the household's resources. For example, work related equipment essential to the employment of an ineligible alien or disqualified person shall be excluded (in accordance with paragraph (e)(5) of this section), as shall one burial plot per ineligible alien or disqualified household member (in accordance with paragraph (e)(2) of this section).

(14) Energy assistance payments or allowances excluded as income under §273.9(c)(11).

(15) Non-liquid asset(s) against which a lien has been placed as a result of taking out a business loan and the household is prohibited by the security or lien agreement with the lien holder (creditor) from selling the asset(s).

(16) Property, real or personal, to the extent that it is directly related to the maintenance or use of a vehicle excluded under paragraphs (e)(3)(i)(A), (e)(3)(i)(B) or (e)(3)(i)(C) of this section. Only that portion of real property determined necessary for maintenance or use is excludable under this provision. For example, a household which owns a produce truck to earn its livelihood may be prohibited from parking the truck in a residential area. The household may own a 100-acre field and use a quarter-acre of the field to park and/or service the truck. Only the value of the quarter-acre would be excludable under this provision, not the entire 100-acre field.

(17) The resources of a household member who receives SSI or PA benefits. A household member is considered a recipient of these benefits if the benefits have been authorized but not received, if the benefits are suspended or recouped, or if the benefits are not paid because they are less than a minimum amount. For purposes of this paragraph (e)(17), if an individual receives non-cash or in-kind services from a program specified in §§273.2(j)(2)(i)(B), 273.2(j)(2)(i)(C), 273.2(j)(2)(ii)(A), or 273.2(j)(2)(ii)(B), the State agency must determine whether the individual or the household benefits from the assistance provided, in accordance with §273.2(j)(2)(iii). Individuals entitled to Medicaid benefits only are not considered recipients of SSI or PA.

(18) The State agency must develop clear and uniform standards for identifying kinds of resources that, as a practical matter, the household is unable to sell for any significant return because the household's interest is relatively slight or the costs of selling the household's interest would be relatively great. The State agency must so identify a resource if its sale or other disposition is unlikely to produce any significant amount of funds for the support of the household or the cost of selling the resource would be relatively great. This provision does not apply to financial instruments such as stocks, bonds, and negotiable financial instruments. The determination of whether any part of the value of a vehicle is included as a resource must be made in accordance with the provisions of paragraphs (e)(3) and (f) of this section. The State agency may require verification of the value of a resource to be excluded if the information provided by the household is questionable. The State agencies must use the following definitions in developing these standards:

(i) "Significant return" means any return, after estimating costs of sale or disposition, and taking into account the ownership interest of the household, that the State agency determines are more than \$1,500; and

(ii) "Any significant amount of funds" means funds amounting to more than \$1,500.

(19) At State agency option, any resources that the State agency excludes when determining eligibility or benefits for TANF cash assistance, as defined by 45 CFR 260.31 (a)(1) and (a)(2), or medical assistance under Section 1931 of the SSA. Resource exclusions under TANF and Section 1931 programs that do not evaluate the financial circumstances of adults in the household and programs grandfathered under Section 404(a)(2) of the SSA shall not be excluded under this paragraph (e)(19). Additionally, licensed vehicles not excluded under Section 5(g)(2)(C) or (D) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2014(g)(2)(C) or (D)), cash on hand, amounts in any account in a financial institution that are readily available to the household including money in checking or savings accounts, savings certificates, stocks, or bonds shall also not be excluded. The term "readily available" applies to resources that the owner can simply withdraw from a financial institution. State agencies may exclude deposits in individual development accounts (IDAs). A State agency that chooses to exclude resources

under this paragraph (e)(19) must specify in its State plan of operation that it has selected this option and provide a description of the resources that are being excluded.

## 7 C.F.R. §273.9 Income Exclusions

...

(c) *Income exclusions.* Only the following items shall be excluded from household income and no other income shall be excluded:

(1) Any gain or benefit which is not in the form of money payable directly to the household, including in-kind benefits and certain vendor payments. In-kind benefits are those for which no monetary payment is made on behalf of the household and include meals, clothing, housing, or produce from a garden. A vendor payment is a money payment made on behalf of a household by a person or organization outside of the household directly to either the household's creditors or to a person or organization providing a service to the household. Payments made to a third party on behalf of the household are included or excluded as income as follows:

(i) *Public assistance (PA) vendor payments.* PA vendor payments are counted as income unless they are made for:

(A) Medical assistance;

(B) Child care assistance;

(C) Energy assistance as defined in paragraph (c)(11) of this section;

(D) Emergency assistance (including, but not limited to housing and transportation payments) for migrant or seasonal farmworker households while they are in the job stream;

(E) Housing assistance payments made through a State or local housing authority;

(F) *Emergency and special assistance.* PA provided to a third party on behalf of a household which is not specifically excluded from consideration as income under the provisions of paragraphs (c)(1)(i)(A) through (c)(1)(i)(E) of this section shall be considered for exclusion under this provision. To be considered emergency or special assistance and excluded under this provision, the assistance must be provided over and above the normal PA grant or payment, or cannot normally be provided as part of such grant or payment. If the PA program is composed of various standards or components, the assistance would be considered over and above the normal grant or not part of the grant if the assistance is not included as a regular component of the PA grant or benefit or the amount of assistance exceeds the maximum rate of payment for the relevant component. If the PA program is not composed of various standards or components but is designed to provide a basic monthly grant or payment for all eligible households and provides a larger basic grant amount for all households in a particular category, e.g., all households with infants, the larger amount is still part of the normal grant or benefit for such households and not an "extra" payment excluded under this provision. On the other hand, if a fire destroyed a household item and a PA program provides an emergency amount paid directly to a store to purchase a replacement, such a payment is excluded under this provision. If the PA program is not composed of

various standards, allowances, or components but is simply designed to provide assistance on an as-needed basis rather than to provide routine, regular monthly benefits to a client, no exclusion would be granted under this provision because the assistance is not provided over and above the normal grant, it is the normal grant. If it is not clear whether a certain type of PA vendor payment is covered under this provision, the State agency shall apply to the appropriate FNS Regional Office for a determination of whether the PA vendor payments should be excluded. The application for this exclusion determination must explain the emergency or special nature of the vendor payment, the exact type of assistance it is intended to provide, who is eligible for the assistance, how the assistance is paid, and how the vendor payment fits into the overall PA benefit standard. A copy of the rules, ordinances, or statutes which create and authorize the program shall accompany the application request.

(ii) *General assistance (GA) vendor payments.* Vendor payments made under a State or local GA program or a comparable basic assistance program are excluded from income except for some vendor payments for housing. A housing vendor payment is counted as income unless the payment is for:

(A) Energy assistance (as defined in paragraph (c)(11) of this section);

(B) Housing assistance from a State or local housing authority;

(C) Emergency assistance for migrant or seasonal farmworker households while they are in the job stream;

(D) Emergency or special payments (as defined in paragraph (c)(1)(i)(F) of this section; or

(E) Assistance provided under a program in a State in which no GA payments may be made directly to the household in the form of cash.

(iii) *Department of Housing and Urban Development (HUD) vendor payments.* Rent or mortgage payments made to landlords or mortgagees by HUD are excluded.

(iv) *Educational assistance vendor payments.* Educational assistance provided to a third party on behalf of the household for living expenses shall be treated the same as educational assistance payable directly to the household.

(v) *Vendor payments that are reimbursements.* Reimbursements made in the form of vendor payments are excluded on the same basis as reimbursements paid directly to the household in accordance with paragraph (c)(5) of this section.

(vi) *Demonstration project vendor payments.* In-kind or vendor payments which would normally be excluded as income but are converted in whole or in part to a direct cash payment under a federally authorized demonstration project or waiver of provisions of Federal law shall be excluded from income.

(vii) *Other third-party payments.* Other third-party payments shall be handled as follows: moneys legally obligated and otherwise payable to the household which are diverted by the provider of the payment to a third party for a household expense shall be counted as income and not excluded. If a person or organization makes a payment to a third party on behalf of a household using funds that are not owed to the household, the payment shall be excluded from income. This distinction is illustrated by the following examples:

(A) A friend or relative uses his or her own money to pay the household's rent directly to the landlord. This vendor payment shall be excluded.

(B) A household member earns wages. However, the wages are garnished or diverted by the employer and paid to a third party for a household expense, such as rent. This vendor payment is counted as income. However, if the employer pays a household's rent directly to the landlord in addition to paying the household its regular wages, the rent payment shall be excluded from income. Similarly, if the employer provides housing to an employee in addition to wages, the value of the housing shall not be counted as income.

(C) A household receives court-ordered monthly support payments in the amount of \$400. Later, \$200 is diverted by the provider and paid directly to a creditor for a household expense. The payment is counted as income. Money deducted or diverted from a court-ordered support or alimony payment (or other binding written support or alimony agreement) to a third party for a household's expense shall be included as income because the payment is taken from money that is owed to the household. However, payments specified by a court order or other legally binding agreement to go directly to a third party rather than the household are excluded from income because they are not otherwise payable to the household. For example, a court awards support payments in the amount of \$400 a month and in addition orders \$200 to be paid directly to a bank for repayment of a loan. The \$400 payment is counted as income and the \$200 payment is excluded from income. Support payments not required by a court order or other legally binding agreement (including payments in excess of the amount specified in a court order or written agreement) which are paid to a third party on the household's behalf shall be excluded from income.

(2) Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of \$30 in a quarter.

(3)(i) Educational assistance, including grants, scholarships, fellowships, work study, educational loans on which payment is deferred, veterans' educational benefits and the like.

(ii) To be excluded, educational assistance referred to in paragraph (c)(3)(i) must be:

(A) Received under 20 CFR 1087uu. This exemption includes student assistance received under part E of subchapter IV of Chapter 28 of title 20 and part C of subchapter I of chapter 34 of title 42, or under Bureau of Indian Affairs student assistance programs.

(B) Awarded to a household member enrolled at a:

(1) Recognized institution of post-secondary education (meaning any public or private educational institution which normally requires a high school diploma or equivalency certificate for enrollment or admits persons who are beyond the age of compulsory school attendance in the State in which the institution is located, provided that the institution is legally authorized or recognized by the State to provide an educational program beyond secondary education in the State or provides a program of training to prepare students for gainful employment, including correspondence schools at that level),

(2) School for the handicapped,

(3) Vocational education program,

(4) Vocational or technical school,

(5) Program that provides for obtaining a secondary school diploma or the equivalent;

(C) Used for or identified (earmarked) by the institution, school, program, or other grantor for the following allowable expenses:

(1) Tuition,

(2) Mandatory school fees, including the rental or purchase of any equipment, material, and supplies related to the pursuit of the course of study involved,

(3) Books,

(4) Supplies,

(5) Transportation,

(6) Miscellaneous personal expenses, other than normal living expenses, of the student incidental to attending a school, institution or program,

(7) Dependent care,

(8) Origination fees and insurance premiums on educational loans,

(9) Normal living expenses which are room and board are not excludable.

(10) Amounts excluded for dependent care costs shall not also be excluded under the general exclusion provisions of paragraph §273.9(c)(5)(i)(C). Dependent care costs which exceed the amount excludable from income shall be deducted from income in accordance with paragraph §273.9(d)(4) and be subject to a cap.

(iii) Exclusions based on use pursuant to paragraph (c)(3)(ii)(C) must be incurred or anticipated for the period the educational income is intended to cover regardless of when the educational income is actually received. If a student uses other income sources to pay for allowable educational expenses in months before the educational income is received, the exclusions to cover the expenses shall be allowed when the educational income is received. When the amounts used for allowable expense are more than amounts earmarked by the institution, school, program or other grantor, an exclusion shall be allowed for amounts used over the earmarked amounts. Exclusions based on use shall be subtracted from unearned educational income to the extent possible. If the unearned educational income is not enough to cover the expense, the remainder of the allowable expense shall be excluded from earned educational income.

(iv) An individual's total educational income exclusions granted under the provisions of paragraph (c)(3)(i) through (c)(3)(iii) of this section cannot exceed that individual's total educational income which was subject to the provisions of paragraph (c)(3)(i) through (c)(3)(iii) of this section.

(v) At its option, the State agency may exclude any educational assistance that must be excluded under its State Medicaid rules that would not already be excluded under this section. A State agency that chooses to exclude educational assistance under this paragraph (c)(3)(v) must specify in its State plan of operation that it has selected this option and provide a description of the educational assistance that is



being excluded. The provisions of paragraphs (c)(3)(ii), (c)(3)(iii) and (c)(3)(iv) of this section do not apply to income excluded under this paragraph (c)(3)(v).

(4) All loans, including loans from private individuals as well as commercial institutions, other than educational loans on which repayment is deferred. Educational loans on which repayment is deferred shall be excluded pursuant to the provisions of §273.9(c)(3)(i). A loan on which repayment must begin within 60 days after receipt of the loan shall not be considered a deferred repayment loan.

(5) Reimbursements for past or future expenses, to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the household. Reimbursements for normal household living expenses such as rent or mortgage, personal clothing, or food eaten at home are a gain or benefit and, therefore, are not excluded. To be excluded, these payments must be provided specifically for an identified expense, other than normal living expenses, and used for the purpose intended. When a reimbursement, including a flat allowance, covers multiple expenses, each expense does not have to be separately identified as long as none of the reimbursement covers normal living expenses. The amount by which a reimbursement exceeds the actual incurred expense shall be counted as income. However, reimbursements shall not be considered to exceed actual expenses, unless the provider or the household indicates the amount is excessive.

(i) Examples of excludable reimbursements which are not considered to be a gain or benefit to the household are:

(A) Reimbursements or flat allowances, including reimbursements made to the household under §273.7(d)(3), for job- or training-related expenses such as travel, per diem, uniforms, and transportation to and from the job or training site. Reimbursements which are provided over and above the basic wages for these expenses are excluded; however, these expenses, if not reimbursed, are not otherwise deductible. Reimbursements for the travel expenses incurred by migrant workers are also excluded.

(B) Reimbursements for out-of-pocket expenses of volunteers incurred in the course of their work.

(C) Medical or dependent care reimbursements.

(D) Reimbursements received by households to pay for services provided by Title XX of the Social Security Act.

(E) Any allowance a State agency provides no more frequently than annually for children's clothes when the children enter or return to school or daycare, provided the State agency does not reduce the monthly TANF payment for the month in which the school clothes allowance is provided. State agencies are not required to verify attendance at school or daycare.

(F) Reimbursements made to the household under §273.7(d)(3) for expenses necessary for participation in an education component under the E&T program.

(ii) The following shall not be considered a reimbursement excludable under this provision:

(A) No portion of benefits provided under title IV-A of the Social Security Act, to the extent such benefits are attributed to an adjustment for work-related or child care expenses (except for payments or reimbursements for such expenses made under an employment, education or training program initiated under such title after September 19, 1988), shall be considered excludable under this provision.

(B) No portion of any educational assistance that is provided for normal living expenses (room and board) shall be considered a reimbursement excludable under this provision.

(6) Moneys received and used for the care and maintenance of a third-party beneficiary who is not a household member. If the intended beneficiaries of a single payment are both household and nonhousehold members, any identifiable portion of the payment intended and used for the care and maintenance of the nonhousehold member shall be excluded. If the nonhousehold member's portion cannot be readily identified, the payment shall be evenly prorated among intended beneficiaries and the exclusion applied to the nonhousehold member's pro rata share or the amount actually used for the nonhousehold member's care and maintenance, whichever is less.

(7) The earned income (as defined in paragraph (b)(1) of this section) of any household member who is under age 18, who is an elementary or secondary school student, and who lives with a natural, adoptive, or stepparent or under the parental control of a household member other than a parent. For purposes of this provision, an elementary or secondary school student is someone who attends elementary or secondary school, or who attends classes to obtain a General Equivalency Diploma that are recognized, operated, or supervised by the student's state or local school district, or who attends elementary or secondary classes through a home-school program recognized or supervised by the student's state or local school district. The exclusion shall continue to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment will resume following the break. If the child's earnings or amount of work performed cannot be differentiated from that of other household members, the total earnings shall be prorated equally among the working members and the child's pro rata share excluded.

(8) Money received in the form of a nonrecurring lump-sum payment, including, but not limited to, income tax refunds, rebates, or credits; retroactive lump-sum social security, SSI, public assistance, railroad retirement benefits, or other payments; lump-sum insurance settlements; or refunds of security deposits on rental property or utilities. TANF payments made to divert a family from becoming dependent on welfare may be excluded as a nonrecurring lump-sum payment if the payment is not defined as assistance because of the exception for non-recurrent, short-term benefits in 45 CFR 261.31(b)(1). These payments shall be counted as resources in the month received, in accordance with §273.8(c) unless specifically excluded from consideration as a resource by other Federal laws.

(9) The cost of producing self-employment income. The procedures for computing the cost of producing self-employment income are described in §273.11.

(10) Any income that is specifically excluded by any other Federal statute from consideration as income for the purpose of determining eligibility for the food stamp program. The following laws provide such an exclusion:

(i) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Pub. L. 91-646, section 216).

(ii) Payments received under the Alaska Native Claims Settlement Act (Pub. L. 92-203, section 21(a));

(iii) Any payment to volunteers under Title II (RSVP, Foster Grandparents and others) of the Domestic Volunteer Services Act of 1973 (Pub. L. 93-113) as amended. Payments under title I of that Act (including payments from such title I programs as VISTA, University Year for Action, and Urban Crime Prevention Program) to volunteers shall be excluded for those individuals receiving food stamps or public

assistance at the time they joined the title I program, except that households which were receiving an income exclusion for a Vista or other title I Subsistence allowance at the time of conversion to the Food Stamp Act of 1977 shall continue to receive an income exclusion for VISTA for the length of their volunteer contract in effect at the time of conversion. Temporary interruptions in food stamp participation shall not alter the exclusion once an initial determination has been made. New applicants who were not receiving public assistance or food stamps at the time they joined VISTA shall have these volunteer payments included as earned income. The FNS National Office shall keep FNS Regional Offices informed of any new programs created under title I and II or changes in programs mentioned above so that they may alert State agencies.

(iv) Income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes (Pub. L. 94-114, section 6).

(v) Allowances, earnings, or payments (including reimbursements) to individuals participating in programs under the Job Training Partnership Act (Pub. L. 90-300), except as provided for under paragraph (b)(1)(v) of this section.

(vi) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540).

(vii) Earned income tax credits received as a result of Pub. L. 95-600, the Revenue Act of 1978 which are received before January 1, 1980.

(viii) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation (Pub. L. 95-433).

(ix) Payments to the Passamaquoddy Tribe and the Penobscot Nation or any of their members received pursuant to the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96-420, section 5).

(x) Payments of relocation assistance to members of the Navajo and Hopi Tribes under Pub. L. 93-531.

(11) Energy assistance as follows:

(i) Any payments or allowances made for the purpose of providing energy assistance under any Federal law other than part A of Title IV of the Social Security Act (42 U.S.C. 601 *et seq.*), including utility reimbursements made by the Department of Housing and Urban Development and the Rural Housing Service, or

(ii) A one-time payment or allowance applied for on an as-needed basis and made under a Federal or State law for the costs of weatherization or emergency repair or replacement of an unsafe or inoperative furnace or other heating or cooling device. A down-payment followed by a final payment upon completion of the work will be considered a one-time payment for purposes of this provision.

(12) Cash donations based on need received on or after February 1, 1988 from one or more private nonprofit charitable organizations, but not to exceed \$300 in a Federal fiscal year quarter.

(13) Earned income tax credit payments received either as a lump sum or payments under section 3507 of the Internal Revenue Code of 1986 (relating to advance payment of earned income tax credits

received as part of the paycheck or as a reduction in taxes that otherwise would have been paid at the end of the year).

(14) Any payment made to an E&T participant under §273.7(d)(3) for costs that are reasonably necessary and directly related to participation in the E&T program. These costs include, but are not limited to, dependent care costs, transportation, other expenses related to work, training or education, such as uniforms, personal safety items or other necessary equipment, and books or training manuals. These costs shall not include the cost of meals away from home. Also, the value of any dependent care services provided for or arranged under §273.7(d)(3)(i) would be excluded.

(15) Governmental foster care payments received by households with foster care individuals who are considered to be boarders in accordance with §273.1(c).

(16) Income of an SSI recipient necessary for the fulfillment of a plan for achieving self-support (PASS) which has been approved under section 1612(b)(4)(A)(iii) or 1612(b)(4)(B)(iv) of the Social Security Act. This income may be spent in accordance with an approved PASS or deposited into a PASS savings account for future use.

(17) Legally obligated child support payments paid by a household member to or for a nonhousehold member, including payments made to a third party on behalf of the nonhousehold member (vendor payments) and amounts paid toward child support arrearages. However, at its option, the State agency may allow households a deduction for such child support payments in accordance with paragraph (d)(5) of this section rather than an income exclusion.

(18) At the State agency's option, any State complementary assistance program payments excluded for the purpose of determining eligibility under section 1931 of the SSA for a program funded under Title XIX of the SSA. A State agency that chooses to exclude complementary assistance program payments under this paragraph (c)(18) must specify in its State plan of operation that it has selected this option and provide a description of the types of payments that are being excluded.

(19) At the State agency's option, any types of income that the State agency excludes when determining eligibility or benefits for TANF cash assistance as defined by 45 CFR 260.31(a)(1) and (a)(2), or medical assistance under Section 1931 of the SSA, (but not for programs that do not evaluate the financial circumstances of adults in the household and programs grandfathered under Section 404(a)(2) of the SSA). The State agency must exclude for food stamp purposes the same amount of income it excludes for TANF or Medicaid purposes. A State agency that chooses to exclude income under this paragraph (c)(19) must specify in its State plan of operation that it has selected this option and provide a description of the resources that are being excluded. The State agency shall not exclude:

(i) Wages or salaries;

(ii) Gross income from a self-employment enterprise, including the types of income referenced in paragraph (b)(1)(ii) of this section. Determining monthly income from self-employment must be calculated in accordance with §273.11(a)(2);

(iii) Benefits under Title I, II, IV, X, XIV or XVI of the SSA, including supplemental security income (SSI) benefits, TANF benefits, and foster care and adoption payments from a government source;.

(iv) Regular payments from a government source. Payments or allowances a household receives from an intermediary that are funded from a government source are considered payments from a government source;

(v) Worker's compensation;

(vi) Child support payments, support or alimony payments made to the household from a nonhousehold member;

(vii) Annuities, pensions, retirement benefits;

(viii) Disability benefits or old age or survivor benefits; and

(ix) Monies withdrawn or dividends received by a household from trust funds considered to be excludable resources under §273.8(e)(8).