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## Title 7 - Agriculture

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CHAPTER II - FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE. SUBCHAPTER C - FOOD STAMP AND FOOD DISTRIBUTION PROGRAM. PART 273 - CERTIFICATION OF ELIGIBLE HOUSEHOLDS.

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### Subpart D—Eligibility and Benefit Levels

#### § 273.8 Resource eligibility standards.

(a) *Uniform standards.* The State agency shall apply the uniform national resource standards of eligibility to all applicant households, including those households in which members are recipients of federally aided public assistance, general assistance, or supplemental security income. Households which are categorically eligible as defined in § 273.2(j)(2) or 273.2(j)(4) do not have to meet the resource limits or definitions in this section.

(b) *Maximum allowable resources.* The maximum allowable resources, including both liquid and nonliquid assets, of all members of the household shall not exceed \$2,000 for the household, except that, for households including one or more disabled members or a member or members age 60 or over, such resources shall not exceed \$3,000.

(c) *Definition of resources.* In determining the resources of a household, the following shall be included and documented by the State agency in sufficient detail to permit verification:

(1) Liquid resources, such as cash on hand, money in checking or savings accounts, savings certificates, stocks or bonds, lump sum payments as specified in § 273.9(c)(8), funds held in individual retirement accounts (IRA's), and funds held in Keogh plans which do not involve the household member in a contractual relationship with individuals who are not household members. In counting resources of households with IRA's or includable Keogh plans, the State agency shall include the total cash value of the account or plan minus the amount of the penalty (if any) that would be exacted for the early withdrawal of the entire amount in the account or plan; and

(2) Nonliquid resources, personal property, licensed and unlicensed vehicles, buildings, land, recreational properties, and any other property, provided that these resources are not specifically excluded under paragraph (e) of this section. The value of nonexempt resources, except for licensed vehicles as specified in paragraph (f) of this section, shall be its equity value. The equity value is the fair market value less encumbrances.

(3) For a household containing a sponsored alien, the State agency must deem the resources of the sponsor and the sponsor's spouse in accordance with § 273.4(c)(2).

(d) *Jointly owned resources.* Resources owned jointly by separate households shall be considered available in their entirety to each household, unless it can be demonstrated by the applicant household that such resources are inaccessible to that household. If the household can demonstrate that it has access to only a portion of the resource, the value of that portion of the resource shall be counted toward the household's resource level. The resource shall be considered totally inaccessible to the household if the resource cannot practically be subdivided and the household's access to the value of the resource is dependent on the agreement of a joint owner who refuses to comply. For the purpose of this provision, ineligible aliens or disqualified individuals residing with the household shall be considered household members. Resources shall be considered inaccessible to persons residing in shelters for battered women and children, as defined in § 271.2, if

- (1) The resources are jointly owned by such persons and by members of their former household; and
- (2) The shelter resident's access to the value of the resources is dependent on the agreement of a joint owner who still resides in the former household.

(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.

(f) *Determining the value of non-excluded vehicles.* (1) The State agency must:

(i) Individually evaluate the fair market value of each licensed vehicle that is not excluded under paragraph (e)(3) of this section;

(ii) Count in full toward the household's resource level, regardless of any encumbrances on the vehicle, that portion of the fair market value that exceeds \$4,650 beginning October 1, 1996;

(iii) Evaluate such licensed vehicles as well as all unlicensed vehicles for their equity value (fair market value less encumbrances), unless specifically exempt from the equity value test; and

(iv) Count as a resource only the greater of the two amounts if the vehicle has a countable fair market value of more than \$4,650 after October 1, 1996, and also has a countable equity value.

(2) Only the following vehicles are exempt from the equity value test outlined in paragraph (f)(1)(iii) of this section:

(i) Vehicles excluded under paragraph (e)(3)(i) of this section;

(ii) One licensed vehicle per adult household member (or an ineligible alien or disqualified household member whose resources are being considered available to household), regardless of the use of the vehicle; and

(iii) Any other vehicle a household member under age 18 (or an ineligible alien or disqualified household member under age 18 whose resources are being considered available to household) drives to commute to and from employment, or to and from training or education which is preparatory to employment, or to seek employment. This equity exclusion applies during temporary periods of unemployment to a vehicle which a household member under age 18 customarily drives to commute to and from employment.

(3) State agencies will be responsible for establishing methodologies for determining the fair market value of vehicles. In establishing such methodologies, the State agency must not increase the basic value of a vehicle by adding the value of low mileage or other factors such as optional equipment or special apparatus for the handicapped. Any household that claims that the State agency's determination of the value of its vehicle(s) is not accurate must be given the opportunity to acquire verification of the true value of the vehicle from a reliable source.

(4) A State agency may substitute for the vehicle evaluation provisions in paragraphs (f)(1) through (f)(3) of this section the vehicle evaluation provisions of a program in that State that uses TANF or State or local funds to meet TANF maintenance of effort requirements and provides benefits that meet the definition of “assistance” according to TANF regulations at 45 CFR 260.31, where doing so results in a lower attribution of resources to the household. States electing this option must:

(i) Apply the substituted TANF vehicle rules to all food stamp households in the State, whether or not they receive or are eligible to receive TANF assistance of any kind;

(ii) Exclude from household resources any vehicles excluded by either the substituted TANF vehicle rules or the food stamp vehicle rules at paragraphs (e)(3), (e)(5), (e)(11) and (f) of this section;

(iii) Apply either the substituted TANF rules or the food stamp vehicle rules to each of a household's vehicles in turn, using whichever set of rules produces the lower attribution of resources to the household;

(iv) Apply any vehicle exclusions allowed by their TANF vehicle rules to the vehicles with the highest values; and

(v) Exclude any vehicle owned by any household in the State if it selects TANF vehicle rules that exclude all vehicles completely or contain no resource provisions at all.

(g) *Handling of excluded funds.* Excluded funds that are kept in a separate account, and that are not commingled in an account with nonexcluded funds, shall retain their resource exclusion for an unlimited period of time. The resources of students and self-employment households which are excluded as provided in paragraph (e)(9) of this section and are commingled in an account with nonexcluded funds shall retain their exclusion for the period of time over which they have been prorated as income. All other excluded moneys which are commingled in an account with nonexcluded funds shall retain their exemption for six months from the date they are commingled. After six months from the date of commingling, all funds in the commingled account shall be counted as a resource.

(h) *Transfer of resources.* (1) At the time of application, households shall be asked to provide information regarding any resources which any household member (or ineligible alien or disqualified person whose resources are being considered available to the household) had transferred within the 3-month period immediately preceding the date of application. Households which have transferred resources knowingly for the purpose of qualifying or attempting to qualify for food stamp benefits shall be disqualified from participation in the program for up to 1 year from the date of the discovery of the transfer. This disqualification period shall be applied if the resources are transferred knowingly in the 3-month period prior to application or if they are transferred knowingly after the household is determined eligible for benefits. An example of the latter would be assets which the household acquires after being certified and which are then transferred to prevent the household from exceeding the maximum resource limit.

(2) Eligibility for the program will not be affected by the following transfers:

(i) Resources which would not otherwise affect eligibility, for example, resources consisting of excluded personal property such as furniture or of money that, when added to other nonexempt household resources, totaled less at the time of the transfer than the allowable resource limits;

(ii) Resources which are sold or traded at, or near, fair market value;

(iii) Resources which are transferred between members of the same household (including ineligible aliens or disqualified persons whose resources are being considered available to the household); and

(iv) Resources which are transferred for reasons other than qualifying or attempting to qualify for food stamp benefits, for example, a parent placing funds into an educational trust fund described in paragraph (e)(9) of this section.

(3) In the event the State agency establishes that an applicant household knowingly transferred resources for the purpose of qualifying or attempting to qualify for food stamp benefits, the household shall be sent a notice of denial explaining the reason for and length of the disqualification. The period of disqualification shall begin in the month of application. If the household is participating at the time of the discovery of the transfer, a notice of adverse action explaining the reason for and length of the disqualification shall be sent. The period of disqualification shall be made effective with the first allotment to be issued after the notice of adverse action period has expired, unless the household has requested a fair hearing and continued benefits.

(4) The length of the disqualification period shall be based on the amount by which nonexempt transferred resources, when added to other countable resources, exceeds the allowable resource limits. The following chart will be used to determine the period of disqualification.

<b>Amount in excess of the resource limit</b>	<b>Period of disqualification (months)</b>
\$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

(i) *Resources of non-household members.* (1) The resources of non-household members, as defined in § 273.1(b)(7)(i) and (ii), must be handled as outlined in § 273.11(d).

(2) The resources of non-household members, as defined in § 273.1(b)(7)(iii) through (vi), must be handled as outlined in § 273.11(c) and (d), as appropriate.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

**Editorial Note:** For **Federal Register** citations affecting § 273.8, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

### **§ 273.9**      **Income and deductions.**

(a) *Income eligibility standards.* Participation in the Program shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. Households which contain an elderly or disabled member shall meet the net income eligibility standards for the Food Stamp Program. Households which do not contain an elderly or disabled member shall meet both the net income eligibility standards and the gross income eligibility standards for the Food Stamp Program. Households which are categorically eligible as defined in § 273.2(j)(2) or 273.2(j)(4) do not have to meet either the gross or net income eligibility standards. The net and gross income eligibility standards shall be based on the Federal income poverty levels established as provided in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

(1) The gross income eligibility standards for the Food Stamp Program shall be as follows:

(i) The income eligibility standards for the 48 contiguous States and the District of Columbia, Guam and the Virgin Islands shall be 130 percent of the Federal income poverty levels for the 48 contiguous States and the District of Columbia.

(ii) The income eligibility standards for Alaska shall be 130 percent of the Federal income poverty levels for Alaska.

(iii) The income eligibility standards for Hawaii shall be 130 percent of the Federal income poverty levels for Hawaii.

(2) The net income eligibility standards for the Food Stamp Program shall be as follows:

(i) The income eligibility standards for the 48 contiguous States and the District of Columbia, Guam and the Virgin Islands shall be the Federal income poverty levels for the 48 contiguous States and the District of Columbia.

(ii) The income eligibility standards for Alaska shall be the Federal income poverty levels for Alaska.

(iii) The income eligibility standard for Hawaii shall be the Federal income poverty levels for Hawaii.

(3) The income eligibility limits, as described in this paragraph, are revised each October 1 to reflect the annual adjustment to the Federal income poverty guidelines for the 48 States and the District of Columbia, for Alaska, and for Hawaii.

(i) 130 percent of the annual income poverty guidelines shall be divided by 12 to determine the monthly gross income standards, rounding the results upwards as necessary. For households greater than eight persons, the increment in the Federal income poverty guidelines is multiplied by 130 percent, divided by 12, and the results rounded upward if necessary.

(ii) The annual income poverty guidelines shall be divided by 12 to determine the monthly net income eligibility standards, rounding the results upward as necessary. For households greater than eight persons, the increment in the Federal income poverty guidelines is divided by 12, and the results rounded upward if necessary.

(4) The monthly gross and net income eligibility standards for all areas will be prescribed in tables posted on the FNS web site, at [www.fns.usda.gov/fsp](http://www.fns.usda.gov/fsp).

(b) *Definition of income.* Household income shall mean all income from whatever source excluding only items specified in paragraph (c) of this section.

(1) Earned income shall include: (i) All wages and salaries of an employee.

(ii) The gross income from a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, excluding the costs of doing business as provided in paragraph (c) of this section. Ownership of rental property shall be considered a self-employment enterprise; however, income derived from the rental property shall be considered earned income only if a member of the household is actively engaged in the management of the property at least an average of 20 hours a week. Payments from a roomer or boarder, except foster care boarders, shall also be considered self-employment income.

(iii) Training allowances from vocational and rehabilitative programs recognized by Federal, State, or local governments, such as the work incentive program, to the extent they are not a reimbursement. Training allowances under Job Training Partnership Act, other than earnings as specified in paragraph (b)(1)(v) of this section, are excluded from consideration as income.

(iv) Payments under Title I (VISTA, University Year for Action, etc.) of the Domestic Volunteer Service Act of 1973 (Pub. L. 93-113 Stat., as amended) shall be considered earned income and subject to the earned income deduction prescribed in § 273.10(e)(1)(i)(B), excluding payments made to those households specified in paragraph (c)(10)(iii) of this section.

(v) Earnings to individuals who are participating in on-the-job training programs under section 204(b)(1)(C) or section 264(c)(1)(A) of the Workforce Investment Act. This provision does not apply to household members under 19 years of age who are under the parental control of another adult member, regardless of school attendance and/or enrollment as discussed in paragraph (c)(7) of this section. For the purpose of this provision, earnings include monies paid under the Workforce Investment Act and monies paid by the employer.

(vi) Educational assistance which has a work requirement (such as work study, an assistantship or fellowship with a work requirement) in excess of the amount excluded under § 273.9(c)(3). Earned income from work study programs that are funded under section 20 U.S.C. 1087uu of the Higher Education Act is excluded.

(2) Unearned income shall include, but not be limited to:

(i) Assistance payments from Federal or federally aided public assistance programs, such as supplemental security income (SSI) or Temporary Assistance for Needy Families (TANF); general assistance (GA) programs (as defined in § 271.2); or other assistance programs based on need. Such assistance is considered to be unearned income even if provided in the form of a vendor payment (provided to a third party on behalf of the household), unless the vendor payment is specifically exempt from consideration as countable income under the provisions of paragraph (c)(1) of this section. Assistance payments from programs which require, as a condition of eligibility, the actual performance of work without compensation other than the assistance payments themselves, shall be considered unearned income.

(ii) Annuities; pensions; retirement, veteran's, or disability benefits; worker's or unemployment compensation including any amounts deducted to repay claims for intentional program violations as provided in § 272.12; old-age, survivors, or social security benefits; strike benefits; foster care payments for children or adults who are considered members of the household; gross income minus the cost of doing business derived from rental property in which a household member is not actively engaged in the management of the property at least 20 hours a week.

(iii) Support or alimony payments made directly to the household from nonhousehold members.

(iv) Scholarships, educational grants, deferred payment loans for education, veteran's educational benefits and the like, other than educational assistance with a work requirement, in excess of amounts excluded under § 273.9(c).

(v) Payments from Government-sponsored programs, dividends, interest, royalties, and all other direct money payments from any source which can be construed to be a gain or benefit.



(vi) Monies which are withdrawn or dividends which are or could be received by a household from trust funds considered to be excludable resources under § 273.8(e)(8). Such trust withdrawals shall be considered income in the month received, unless otherwise exempt under the provisions of paragraph (c) of this section. Dividends which the household has the option of either receiving as income or reinvesting in the trust are to be considered as income in the month they become available to the household unless otherwise exempt under the provisions of paragraph (c) of this section.

(3) The earned or unearned income of an individual disqualified from the household for intentional Program violation, in accordance with § 273.16, or as a result of a sanction imposed while he/she was participating in a household disqualified for failure to comply with workfare requirements, in accordance with § 273.22, shall continue to be attributed in their entirety to the remaining household members. However, the earned or unearned income of individuals disqualified from households for failing to comply with the requirement to provide an SSN, in accordance with § 273.6, or for being an ineligible alien, in accordance with § 273.4, shall continue to be counted as income, less a pro rata share for the individual. Procedures for calculating this pro rata share are described in § 273.11(c).

(4) For a household containing a sponsored alien, the income of the sponsor and the sponsor's spouse must be deemed in accordance with § 273.4(c)(2).

(5) Income shall not include the following:

(i) Moneys withheld from an assistance payment, earned income, or other income source, or moneys received from any income source which are voluntarily or involuntarily returned, to repay a prior overpayment received from that income source, provided that the overpayment was not excludable under paragraph (c) of this section. However, moneys withheld from assistance from another program, as specified in § 273.11(k), shall be included as income.

(ii) Child support payments received by TANF recipients which must be transferred to the agency administering title IV-D of the Social Security Act, as amended, to maintain TANF eligibility.

(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).

(d) *Income deductions.* Deductions shall be allowed only for the following household expenses:

(1) *Standard deduction*—(i) *48 States, District of Columbia, Alaska, Hawaii, and the Virgin Islands.* Effective October 1, 2002, in the 48 States and the District of Columbia, Alaska, Hawaii, and the Virgin Islands, the standard deduction for household sizes one through six shall be equal to 8.31 percent of the monthly net income eligibility standard for each household size established under paragraph (a)(2) of this section rounded up to the nearest whole dollar. For household sizes greater than six, the standard deduction shall be equal to the standard deduction for a six-person household.

(ii) *Guam.* Effective October 1, 2002, in Guam, the standard deduction for household sizes one through six shall be equal to 8.31 percent of double the monthly net income eligibility standard for each household size for the 48 States and the District of Columbia established under paragraph (a)(2) of this section rounded up to the nearest whole dollar. For household sizes greater than six, the standard deduction shall be equal to the standard deduction for a six-person household.

(iii) *Minimum deduction levels.* Notwithstanding paragraphs (d)(1)(i) and (d)(1)(ii) of this section, the standard deduction in any year for each household in the 48 States and the District of Columbia, Alaska, Hawaii, Guam, and the Virgin Islands shall not be less than \$134, \$229, \$189, \$269, and \$118, respectively.

(2) *Earned income deduction.* Twenty percent of gross earned income as defined in paragraph (b)(1) of this section. Earnings excluded in paragraph (c) of this section shall not be included in gross earned income for purposes of computing the earned income deduction, except that the State agency must count any earnings used to pay child support that were excluded from the household's income in accordance with the child support exclusion in paragraph (c)(17) of this section.

(3) *Excess medical deduction.* That portion of medical expenses in excess of \$35 per month, excluding special diets, incurred by any household member who is elderly or disabled as defined in § 271.2. Spouses or other persons receiving benefits as a dependent of the SSI or disability and blindness recipient are not eligible to receive this deduction but persons receiving emergency SSI benefits based on presumptive eligibility are eligible for this deduction. Allowable medical costs are:

(i) Medical and dental care including psychotherapy and rehabilitation services provided by a licensed practitioner authorized by State law or other qualified health professional.

(ii) Hospitalization or outpatient treatment, nursing care, and nursing home care including payments by the household for an individual who was a household member immediately prior to entering a hospital or nursing home provided by a facility recognized by the State.

(iii) Prescription drugs when prescribed by a licensed practitioner authorized under State law and other over-the-counter medication (including insulin) when approved by a licensed practitioner or other qualified health professional; in addition, costs of medical supplies, sick-room equipment (including rental) or other prescribed equipment are deductible;

(iv) Health and hospitalization insurance policy premiums. The costs of health and accident policies such as those payable in lump sum settlements for death or dismemberment or income maintenance policies such as those that continue mortgage or loan payments while the beneficiary is disabled are not deductible;

(v) Medicare premiums related to coverage under Title XVIII of the Social Security Act; any cost-sharing or spend down expenses incurred by Medicaid recipients;

(vi) Dentures, hearing aids, and prosthetics;

(vii) Securing and maintaining a seeing eye or hearing dog including the cost of dog food and veterinarian bills;

(viii) Eye glasses prescribed by a physician skilled in eye disease or by an optometrist;

(ix) Reasonable cost of transportation and lodging to obtain medical treatment or services;

(x) Maintaining an attendant, homemaker, home health aide, or child care services, housekeeper, necessary due to age, infirmity, or illness. In addition, an amount equal to the one person coupon allotment shall be deducted if the household furnishes the majority of the attendant's meals. The allotment for this meal related deduction shall be that in effect at the time of initial certification. The State agency is only required to update the allotment amount at the next scheduled recertification; however, at their option, the State agency may do so earlier. If a household incurs attendant care costs that could qualify under both the medical deduction and dependent care deduction, the State agency shall treat the cost as a medical expense.

(4) *Dependent care.* Payments for the actual costs for the care of children or other dependents when necessary for a household member to accept or continue employment, comply with the employment and training requirements as specified under § 273.7(e), or attend training or pursue education which is preparatory to employment, except as provided in § 273.10(d)(1)(i). The maximum monthly dependent care deduction amount households shall be granted under this provision is \$200 a month for each dependent child under two (2) years of age and \$175 a month for each other dependent.

(5) *Optional child support deduction.* At its option, the State agency may provide a deduction, rather than



the income exclusion provided under paragraph (c)(17) of this section, for 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. Alimony payments made to or for a nonhousehold member shall not be included in the child support deduction. A State agency that chooses to provide a child support deduction rather than an exclusion in accordance with this paragraph (d)(5) must specify in its State plan of operation that it has chosen to provide the deduction rather than the exclusion.

(6) *Shelter costs*—(i) *Homeless shelter deduction*. A State agency may provide a standard homeless shelter deduction of \$143 a month to households in which all members are homeless individuals but are not receiving free shelter throughout the month. The deduction must be subtracted from net income in determining eligibility and allotments for the households. The State agency may make a household with extremely low shelter costs ineligible for the deduction. A household receiving the homeless shelter deduction cannot have its shelter expenses considered under paragraphs (d)(6)(ii) or (d)(6)(iii) of this section. However, a homeless household may choose to claim actual costs under paragraph (d)(6)(ii) of this section instead of the homeless shelter deduction if actual costs are higher and verified. A State agency that chooses to provide a homeless household shelter deduction must specify in its State plan of operation that it has selected this option.

(ii) *Excess shelter deduction*. Monthly shelter expenses in excess of 50 percent of the household's income after all other deductions in paragraphs (d)(1) through (d)(5) of this section have been allowed. If the household does not contain an elderly or disabled member, as defined in § 271.2 of this chapter, the shelter deduction cannot exceed the maximum shelter deduction limit established for the area. For fiscal year 2001, effective March 1, 2001, the maximum monthly excess shelter expense deduction limits are \$340 for the 48 contiguous States and the District of Columbia, \$543 for Alaska, \$458 for Hawaii, \$399 for Guam, and \$268 for the Virgin Islands. FNS will set the maximum monthly excess shelter expense deduction limits for fiscal year 2002 and future years by adjusting the previous year's limits to reflect changes in the shelter component and the fuels and utilities component of the Consumer Price Index for All Urban Consumers for the 12 month period ending the previous November 30. FNS will notify State agencies of the amount of the limit. Only the following expenses are allowable shelter expenses:

(A) Continuing charges for the shelter occupied by the household, including rent, mortgage, condo and association fees, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments.

(B) Property taxes, State and local assessments, and insurance on the structure itself, but not separate costs for insuring furniture or personal belongings.

(C) The cost of fuel for heating; cooling (i.e., the operation of air conditioning systems or room air conditioners); electricity or fuel used for purposes other than heating or cooling; water; sewerage; well installation and maintenance; septic tank system installation and maintenance; garbage and trash collection; all service fees required to provide service for one telephone, including, but not limited to, basic service fees, wire maintenance fees, subscriber line charges, relay center surcharges, 911 fees, and taxes; and fees charged by the utility provider for initial installation of the utility. One-time deposits cannot be included.

(D) The shelter costs for the home if temporarily not occupied by the household because of employment or training away from home, illness, or abandonment caused by a natural disaster or casualty loss. For costs of a home vacated by the household to be included in the household's shelter costs, the household must intend to return to the home; the current occupants of the home, if any, must not be claiming the shelter costs for food stamp purposes; and the home must not be leased or rented during the absence of the household.

(E) Charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster such as a fire or flood. Shelter costs shall not include charges for repair of the home that have been or will be reimbursed by private or public relief agencies, insurance companies, or from any other source.

(iii) *Standard utility allowances*. (A) With FNS approval, a State agency may develop the following standard utility allowances (standards) to be used in place of actual costs in determining a household's excess shelter deduction: an individual standard for each type of utility expense; a standard utility

allowance for all utilities that includes heating or cooling costs (HCSUA); and, a limited utility allowance (LUA) that includes electricity and fuel for purposes other than heating or cooling, water, sewerage, well and septic tank installation and maintenance, telephone, and garbage or trash collection. The LUA must include expenses for at least two utilities. However, at its option, the State agency may include the excess heating and cooling costs of public housing residents in the LUA if it wishes to offer the lower standard to such households. The State agency may use different types of standards but cannot allow households the use of two standards that include the same expense. In States in which the cooling expense is minimal, the State agency may include the cooling expense in the electricity component. The State agency may vary the allowance by factors such as household size, geographical area, or season. Only utility costs identified in paragraph (d)(6)(ii)(C) of this section must be used in developing standards.

(B) The State agency must review the standards annually and make adjustments to reflect changes in costs, rounded to the nearest whole dollar. State agencies must provide the amounts of standards to FNS when they are changed and submit methodologies used in developing and updating standards to FNS for approval when the methodologies are developed or changed.

(C) A standard with a heating or cooling component must be made available to households that incur heating or cooling expenses separately from their rent or mortgage and to households that receive direct or indirect assistance under the Low Income Home Energy Assistance Act of 1981 (LIHEAA). A heating or cooling standard is available to households in private rental housing who are billed by their landlords on the basis of individual usage or who are charged a flat rate separately from their rent. However, households in public housing units which have central utility meters and which charge households only for excess heating or cooling costs are not entitled to a standard that includes heating or cooling costs based only on the charge for excess usage unless the State agency mandates the use of standard utility allowances in accordance with paragraph (d)(6)(iii)(E) of this section. Households that receive direct or indirect energy assistance that is excluded from income consideration (other than that provided under the LIHEAA) are entitled to a standard that includes heating or cooling only if the amount of the expense exceeds the amount of the assistance. Households that receive direct or indirect energy assistance that is counted as income and incur a heating or cooling expense are entitled to use a standard that includes heating or cooling costs. A household that has both an occupied home and an unoccupied home is only entitled to one standard.

(D) At initial certification, recertification, and when a household moves, the household may choose between a standard or verified actual utility costs for any allowable expense identified in paragraph (d)(6)(ii)(C) of this section (except the telephone standard), unless the State agency has opted, with FNS approval, to mandate use of a standard. The State agency may require use of the telephone standard for the cost of basic telephone service even if actual costs are higher. Households certified for 24 months may also choose to switch between a standard and actual costs at the time of the mandatory interim contact required by § 273.10(f)(1)(i), if the State agency has not mandated use of the standard.

(E) A State agency may mandate use of standard utility allowances for all households with qualifying expenses if the State has developed one or more standards that include the costs of heating and cooling and one or more standards that do not include the costs of heating and cooling, the standards will not result in increased program costs, and FNS approves the standard. The prohibition on increasing Program costs does not apply to necessary increases to standards resulting from utility cost increases. If the State agency chooses to mandate use of standard utility allowances, it must provide a standard utility allowance that includes heating or cooling costs to residents of public housing units which have central utility meters and which charge the households only for excess heating or cooling costs. The State agency also must not prorate a standard utility allowance that includes heating or cooling costs provided to a household that lives and shares heating or cooling expenses with others. In determining whether the standard utility allowances increase program costs, the State agency shall not consider any increase in costs that results from providing a standard utility allowance that includes heating or cooling costs to residents of public housing units which have central utility meters and which charge the households only for excess heating or cooling costs. The State agency shall also not consider any increase in costs that results from providing a full (*i.e.*, not prorated) standard utility allowance that includes heating or cooling costs to a household that lives and shares heating or cooling expenses with others. Under this option households entitled to the standard may not claim actual expenses, even if the expenses are higher than the standard. Households not entitled to the standard may claim actual allowable expenses. Requests to use an LUA should include the approximate number of food stamp households that would be entitled to

the nonheating and noncooling standard, the average utility costs prior to use of the mandatory standard, the proposed standards, and an explanation of how the standards were computed.

(F) If a household lives with and shares heating or cooling expenses with another individual, another household, or both, the State agency shall not prorate the standard for such households if the State agency mandates use of standard utility allowances in accordance with paragraph (d)(6)(iii)(E) of this section. The State agency may not prorate the SUA if all the individuals who share utility expenses but are not in the food stamp household are excluded from the household only because they are ineligible.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

**Editorial Note:** For **Federal Register** citations affecting § 273.9, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

### **§ 273.10 Determining household eligibility and benefit levels.**

(a) *Month of application*—(1) *Determination of eligibility and benefit levels.* (i) A household's eligibility shall be determined for the month of application by considering the household's circumstances for the entire month of application. Most households will have the eligibility determination based on circumstances for the entire calendar month in which the household filed its application. However, State agencies may, with the prior approval of FNS, use a fiscal month if the State agency determines that it is more efficient and satisfies FNS that the accounting procedures fully comply with certification and issuance requirements contained in these regulations. A State agency may elect to use either a standard fiscal month for all households, such as from the 15th of one calendar month to the 15th of the next calendar month, or a fiscal month that will vary for each household depending on the date an individual files an application for the Program. Applicant households consisting of residents of a public institution who apply jointly for SSI and food stamps prior to release from the public institution in accordance with § 273.1(e)(2) will have their eligibility determined for the month in which the applicant household was released from the institution.

(ii) A household's benefit level for the initial months of certification shall be based on the day of the month it applies for benefits and the household shall receive benefits from the date of application to the end of the month unless the applicant household consists of residents of a public institution. For households which apply for SSI prior to their release from a public institution in accordance with § 273.1(e)(2), the benefit level for the initial month of certification shall be based on the date of the month the household is released from the institution and the household shall receive benefits from the date of the household's release from the institution to the end of the month. As used in this section, the term "initial month" means the first month for which the household is certified for participation in the Food Stamp Program following any period during which the household was not certified for participation, except for migrant and seasonal farmworker households. In the case of migrant and seasonal farmworker households, the term "initial month" means the first month for which the household is certified for participation in the Food Stamp Program following any period of more than 1 month during which the household was not certified for participation. Recertification shall be processed in accordance with § 273.10(a)(2). The State agency shall prorate a household's benefits according to one of the two following options:

(A) The State agency shall use a standard 30-day calendar or fiscal month. A household applying on the 31st of a month will be treated as though it applied on the 30th of the month.

(B) The State agency shall prorate benefits over the exact length of a particular calendar or fiscal month.

(iii) To determine the amount of the prorated allotment, the State agency shall use either the appropriate Food Stamp Allotment Proration Table provided by FNS or whichever of the following formulae is appropriate:

(A) For State agencies which use a standard 30-day calendar or fiscal month the formula is as follows, keeping in mind that the date of application for someone applying on the 31st of a month is the 30th:

[Please see PDF for Formula: ER07OC94.022]

[Please see PDF for Formula: ER25SE06.014]

(B) For State agencies which use the exact number of days in a month, the formula is:

[Please see PDF for Formula: ER07OC94.022]

[Please see PDF for Formula: ER25SE06.015]

(C) If after using the appropriate formula the result ends in 1 through 99 cents, the State agency shall round the product down to the nearest lower whole dollar. If the computation results in an allotment of less than \$10, then no issuance shall be made for the initial month.

(2) *Application for recertification.* Eligibility for recertification shall be determined based on circumstances anticipated for the certification period starting the month following the expiration of the current certification period. The level of benefits for recertifications shall be based on the same anticipated circumstances, except for retrospectively budgeted households which shall be recertified in accordance with § 273.21(f)(2). If a household, other than a migrant or seasonal farmworker household, submits an application after the household's certification period has expired, that application shall be considered an initial application and benefits for that month shall be prorated in accordance with paragraph (a)(1)(ii) of this section. If a household's failure to timely apply for recertification was due to an error of the State agency and therefore there was a break in participation, the State agency shall follow the procedures in § 273.14(e). In addition, if the household submits an application for recertification prior to the end of its certification period but is found ineligible for the first month following the end of the certification period, then the first month of any subsequent participation shall be considered an initial month. Conversely, if the household submits an application for recertification prior to the end of its certification period and is found eligible for the first month following the end of the certification period, then that month shall not be an initial month.

(3) *Anticipated changes.* Because of anticipated changes, a household may be eligible for the month of application, but ineligible in the subsequent month. The household shall be entitled to benefits for the month of application even if the processing of its application results in the benefits being issued in the subsequent month. Similarly, a household may be ineligible for the month of application, but eligible in the subsequent month due to anticipated changes in circumstances. Even though denied for the month of application, the household does not have to reapply in the subsequent month. The same application shall be used for the denial for the month of application and the determination of eligibility for subsequent months, within the timeliness standards in § 273.2.

(4) *Changes in allotment levels.* As a result of anticipating changes, the household's allotment for the month of application may differ from its allotment in subsequent months. The State agency shall establish a certification period for the longest possible period over which changes in the household's circumstances can be reasonably anticipated. The household's allotment shall vary month to month within the certification period to reflect changes anticipated at the time of certification, unless the household elects the averaging techniques in paragraphs (c)(3) and (d)(3) of this section.

(b) *Determining resources.* Available resources at the time the household is interviewed shall be used to determine the household's eligibility.

(c) *Determining income—(1) Anticipating income.* (i) For the purpose of determining the household's eligibility and level of benefits, the State agency shall take into account the income already received by the household during the certification period and any anticipated income the household and the State agency are reasonably certain will be received during the remainder of the certification period. If the amount of income that will be received, or when it will be received, is uncertain, that portion of the household's income that is uncertain shall not be counted by the State agency. For example, a household anticipating income from a new source, such as a new job or recently applied for public assistance benefits, may be uncertain as to the timing and amount of the initial payment. These moneys shall not be anticipated by the State agency unless there is reasonable certainty concerning the month in which the payment will be received and in what amount. If the exact amount of the income is not known, that portion of it which can be anticipated with reasonable certainty shall be considered as income. In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate, the household may elect to income average. Households shall be advised to report all changes in gross monthly income as required by § 273.12.

(ii) Income received during the past 30 days shall be used as an indicator of the income that is and will be available to the household during the certification period. However, the State agency shall not use past

income as an indicator of income anticipated for the certification period if changes in income have occurred or can be anticipated. If income fluctuates to the extent that a 30-day period alone cannot provide an accurate indication of anticipated income, the State agency and the household may use a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income. Similarly, if the household's income fluctuates seasonally, it may be appropriate to use the most recent season comparable to the certification period, rather than the last 30 days, as one indicator of anticipated income. The State agency shall exercise particular caution in using income from a past season as an indicator of income for the certification period. In many cases of seasonally fluctuating income, the income also fluctuates from one season in one year to the same season in the next year. However, in no event shall the State agency automatically attribute to the household the amounts of any past income. The State agency shall not use past income as an indicator of anticipated income when changes in income have occurred or can be anticipated during the certification period.

(2) *Income only in month received.* (i) Income anticipated during the certification period shall be counted as income only in the month it is expected to be received, unless the income is averaged. Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the State agency shall convert the income to a monthly amount by multiplying weekly amounts by 4.3 and biweekly amounts by 2.15, use the State Agency's PA conversion standard, or use the exact monthly figure if it can be anticipated for each month of the certification period. Nonrecurring lump-sum payments shall be counted as a resource starting in the month received and shall not be counted as income.

(ii) Wages held at the request of the employee shall be considered income to the household in the month the wages would otherwise have been paid by the employer. However, wages held by the employer as a general practice, even if in violation of law, shall not be counted as income to the household, unless the household anticipates that it will ask for and receive an advance, or that it will receive income from wages that were previously held by the employer as a general practice and that were, therefore, not previously counted as income by the State agency. Advances on wages shall count as income in the month received only if reasonably anticipated as defined in paragraph (c)(1) of this section.

(iii) Households receiving income on a recurring monthly or semimonthly basis shall not have their monthly income varied merely because of changes in mailing cycles or pay dates or because weekends or holidays cause additional payments to be received in a month.

(3) *Income averaging.* (i) Income may be averaged in accordance with methods established by the State agency to be applied Statewide for categories of households. When averaging income, the State agency shall use the household's anticipation of monthly income fluctuations over the certification period. An average must be recalculated at recertification and in response to changes in income, in accordance with § 273.12(c), and the State agency shall inform the household of the amount of income used to calculate the allotment. Conversion of income received weekly or biweekly in accordance with paragraph (c)(2) of this section does not constitute averaging.

(ii) Households which, by contract or self-employment, derive their annual income in a period of time shorter than 1 year shall have that income averaged over a 12-month period, provided the income from the contract is not received on an hourly or piecework basis. These households may include school employees, sharecroppers, farmers, and other self-employed households. However, these provisions do not apply to migrant or seasonal farmworkers. The procedures for averaging self-employed income are described in § 273.11. Contract income which is not the household's annual income and is not paid on an hourly or piecework basis shall be prorated over the period the income is intended to cover.

(iii) Earned and unearned educational income, after allowable exclusions, shall be averaged over the period which it is intended to cover. Income shall be counted either in the month it is received, or in the month the household anticipates receiving it or receiving the first installment payment, although it is still prorated over the period it is intended to cover.

(d) *Determining deductions.* Deductible expenses include only certain dependent care, shelter, medical and, at State agency option, child support costs as described in § 273.9.

(1) *Disallowed expenses.* (i) Any expense, in whole or part, covered by educational income which has been excluded pursuant to the provisions of § 273.9(c)(3) shall not be deductible. For example, the portion of rent covered by excluded vendor payments shall not be calculated as part of the household's shelter cost. In addition, an expense which is covered by an excluded vendor payment that has been

converted to a direct cash payment under the approval of a federally authorized demonstration project as specified under § 273.9(c)(1) shall not be deductible. However, that portion of an allowable medical expense which is not reimbursable shall be included as part of the household's medical expenses. If the household reports an allowable medical expense at the time of certification but cannot provide verification at that time, and if the amount of the expense cannot be reasonably anticipated based upon available information about the recipient's medical condition and public or private medical insurance coverage, the household shall have the nonreimbursable portion of the medical expense considered at the time the amount of the expense or reimbursement is reported and verified. A dependent care expense which is reimbursed or paid for by the Job Opportunities and Basic Skills Training (JOBS) program under title IV-F of the Social Security Act (42 U.S.C. 681) or the Transitional Child Care (TCC) program shall not be deductible. A utility expense which is reimbursed or paid by an excluded payment, including HUD or FmHA utility reimbursements, shall not be deductible.

(ii) Expenses shall only be deductible if the service is provided by someone outside of the household and the household makes a money payment for the service. For example, a dependent care deduction shall not be allowed if another household member provides the care, or compensation for the care is provided in the form of an in-kind benefit, such as food.

(2) *Billed expenses.* Except as provided in paragraph (d)(3) of this section a deduction shall be allowed only in the month the expense is billed or otherwise becomes due, regardless of when the household intends to pay the expense. For example, rent which is due each month shall be included in the household's shelter costs, even if the household has not yet paid the expense. Amounts carried forward from past billing periods are not deductible, even if included with the most recent billing and actually paid by the household. In any event, a particular expense may only be deducted once.

(3) *Averaging expenses.* Households may elect to have fluctuating expenses averaged. Households may also elect to have expenses which are billed less often than monthly averaged forward over the interval between scheduled billings, or, if there is no scheduled interval, averaged forward over the period the expense is intended to cover. For example, if a household receives a single bill in February which covers a 3-month supply of fuel oil, the bill may be averaged over February, March, and April. The household may elect to have one-time only expenses averaged over the entire certification period in which they are billed. Households reporting one-time only medical expenses during their certification period may elect to have a one-time deduction or to have the expense averaged over the remaining months of their certification period. Averaging would begin the month the change would become effective. For households certified for 24 months that have one-time medical expenses, the State agency must use the following procedure. In averaging any one-time medical expense incurred by a household during the first 12 months, the State agency must give the household the option of deducting the expense for one month, averaging the expense over the remainder of the first 12 months of the certification period, or averaging the expense over the remaining months in the certification period. One-time expenses reported after the 12th month of the certification period will be deducted in one month or averaged over the remaining months in the certification period, at the household's option.

(4) *Anticipating expenses.* The State agency shall calculate a household's expenses based on the expenses the household expects to be billed for during the certification period. Anticipation of the expense shall be based on the most recent month's bills, unless the household is reasonably certain a change will occur. When the household is not claiming the utility standard, the State agency may anticipate changes during the certification period based on last year's bills from the same period updated by overall price increases; or, if only the most recent bill is available, utility cost increases or decreases over the months of the certification period may be based on utility company estimates for the type of dwelling and utilities used by the household. The State agency shall not average past expenses, such as utility bills for the last several months, as a method of anticipating utility costs for the certification period. At certification and recertification, the household shall report and verify all medical expenses. The household's monthly medical deduction for the certification period shall be based on the information reported and verified by the household, and any anticipated changes in the household's medical expenses that can be reasonably expected to occur during the certification period based on available information about the recipient's medical condition, public or private insurance coverage, and current verified medical expenses. The household shall not be required to file reports about its medical expenses during the certification period. If the household voluntarily reports a change in its medical expenses, the State agency shall verify the change in accordance with § 273.2(f)(8)(ii) if the change would increase the

household's allotment. The State agency has the option of either requiring verification prior to acting on the change, or requiring the verification prior to the second normal monthly allotment after the change is reported. In the case of a reported change that would decrease the household's allotment, or make the household ineligible, the State agency shall act on the change without requiring verification, though verification which is required by § 273.2(f)(8) shall be obtained prior to the household's recertification. If a child in the household reaches his or her second birthday during the certification period, the \$200 maximum dependent care deduction defined in § 273.9(d)(4) shall be adjusted in accordance with this section not later than the household's next regularly scheduled recertification.

(5) *Conversion of deductions.* The income conversion procedures in paragraph (c)(2) of this section shall also apply to expenses billed on a weekly or biweekly basis.

(6) *Energy Assistance Payments.* Except for payments made under the Low Income Energy Assistance Act of 1981, the State agency shall prorate energy assistance payments as provided for in § 273.9(d) over the entire heating or cooling season the payment is intended to cover.

(7) Households which contain a member who is a disabled SSI recipient in accordance with paragraphs (2), (3), (4) or (5) of the definition of a disabled member in § 271.2 or households which contain a member who is a recipient of SSI benefits and the household is determined within the 30-day processing standard to be categorically eligible (as discussed in § 273.2(j)) or determined to be eligible as an NPA household and later becomes a categorically eligible household, shall be entitled to the excess medical deduction of § 273.9(d)(3) and the uncapped excess shelter expense deduction of § 273.9(d)(5) for the period for which the SSI recipient is authorized to receive SSI benefits or the date of the food stamp application, whichever is later, if the household incurs such expenses. Households, which contain an SSI recipient as discussed in this paragraph, which are determined ineligible as an NPA household and later become categorically eligible and entitled to restored benefits in accordance with § 273.2(j)(1)(iv), shall receive restored benefits using the medical and excess shelter expense deductions from the beginning of the period for which SSI benefits are paid, the original food stamp application date or December 23, 1985, whichever is later, if the household incurs such expenses.

(8) *Optional child support deduction.* If the State agency opts to provide households with an income deduction rather than an income exclusion for legally obligated child support payments in accordance with § 273.9(d)(5), the State agency may budget such payments in accordance with paragraphs (d)(2) through (d)(5) of this section, or retrospectively, in accordance with § 273.21(b) and § 273.21(f)(2), regardless of the budgeting system used for the household's other circumstances.

(e) *Calculating net income and benefit levels—(1) Net monthly income.* (i) To determine a household's net monthly income, the State agency shall:

(A) Add the gross monthly income earned by all household members and the total monthly unearned income of all household members, minus income exclusions, to determine the household's total gross income. Net losses from the self-employment income of a farmer shall be offset in accordance with § 273.11(a)(2)(iii).

(B) Multiply the total gross monthly earned income by 20 percent and subtract that amount from the total gross income; or multiply the total gross monthly earned income by 80 percent and add that to the total monthly unearned income, minus income exclusions. If the State agency has chosen to treat legally obligated child support payments as an income exclusion in accordance with § 273.9(c)(17), multiply the excluded earnings used to pay child support by 20 percent and subtract that amount from the total gross monthly income.

(C) Subtract the standard deduction.

(D) If the household is entitled to an excess medical deduction as provided in § 273.9(d)(3), determine if total medical expenses exceed \$35. If so, subtract that portion which exceeds \$35.

(E) Subtract allowable monthly dependent care expenses, if any, up to a maximum amount as specified under § 273.9(d)(4) for each dependent.

(F) If the State agency has chosen to treat legally obligated child support payments as a deduction rather than an exclusion in accordance with § 273.9(d)(5), subtract allowable monthly child support payments in accordance with § 273.9(d)(5).

(G) Subtract the homeless shelter deduction, if any, up to the maximum of \$143.

(H) Total the allowable shelter expenses to determine shelter costs, unless a deduction has been subtracted in accordance with paragraph (e)(1)(i)(G) of this section. Subtract from total shelter costs 50 percent of the household's monthly income after all the above deductions have been subtracted. The remaining amount, if any, is the excess shelter cost. If there is no excess shelter cost, the net monthly income has been determined. If there is excess shelter cost, compute the shelter deduction according to paragraph (e)(1)(i)(I) of this section.

(I) Subtract the excess shelter cost up to the maximum amount allowed for the area (unless the household is entitled to the full amount of its excess shelter expenses) from the household's monthly income after all other applicable deductions. Households not subject to a capped shelter expense shall have the full amount exceeding 50 percent of their net income subtracted. The household's net monthly income has been determined.

(ii) In calculating net monthly income, the State agency shall use one of the following two procedures:

(A) Round down each income and allotment calculation that ends in 1 through 49 cents and round up each calculation that ends in 50 through 99 cents; or

(B) Apply the rounding procedure that is currently in effect for the State's Temporary Assistance for Needy Families (TANF) program. If the State TANF program includes the cents in income calculations, the State agency may use the same procedures for food stamp income calculations. Whichever procedure is used, the State agency may elect to include the cents associated with each individual shelter cost in the computation of the shelter deduction and round the final shelter deduction amount. Likewise, the State agency may elect to include the cents associated with each individual medical cost in the computation of the medical deduction and round the final medical deduction amount.

(2) *Eligibility and benefits.* (i)(A) Households which contain an elderly or disabled member as defined in § 271.2, shall have their net income, as calculated in paragraph (e)(1) of this section (except for households considered destitute in accordance with paragraph (e)(3) of this section), compared to the monthly income eligibility standards defined in § 273.9(a)(2) for the appropriate household size to determine eligibility for the month.

(B) In addition to meeting the net income eligibility standards, households which do not contain an elderly or disabled member shall have their gross income, as calculated in accordance with paragraph (e)(1)(i)(A) of this section, compared to the gross monthly income standards defined in § 273.9(a)(1) for the appropriate household size to determine eligibility for the month.

(C) For households considered destitute in accordance with paragraph (e)(3) of this section, the State agency shall determine a household's eligibility by computing its gross and net income according to paragraph (e)(3) of this section, and comparing, as appropriate, the gross and/or net income to the corresponding income eligibility standard in accordance with § 273.9(a)(1) or (2).

(D) If a household contains a member who is fifty-nine years old on the date of application, but who will become sixty before the end of the month of application, the State agency shall determine the household's eligibility in accordance with paragraph (e)(2)(i)(A) of this section.

(E) If a household contains a student whose income is excluded in accordance with § 273.9(c)(7) and the student becomes 18 during the month of application, the State agency shall exclude the student's earnings in the month of application and count the student's earnings in the following month. If the student becomes 18 during the certification period, the student's income shall be excluded until the month following the month in which the student turns 18.

(ii)(A) Except as provided in paragraphs (a)(1), (e)(2)(iii) and (e)(2)(vi) of this section, the household's monthly allotment shall be equal to the maximum food stamp allotment for the household's size reduced by 30 percent of the household's net monthly income as calculated in paragraph (e)(1) of this section. If 30 percent of the household's net income ends in cents, the State agency shall round in one of the following ways:

(1) The State agency shall round the 30 percent of net income up to the nearest higher dollar; or

(2) The State agency shall not round the 30 percent of net income at all. Instead, after subtracting the 30



percent of net income from the appropriate Thrifty Food Plan, the State agency shall round the allotment down to the nearest lower dollar.

(B) If the calculation of benefits in accordance with paragraph (e)(2)(ii)(A) of this section for an initial month would yield an allotment of less than \$10 for the household, no benefits shall be issued to the household for the initial month.

(C) Except during an initial month, all eligible one- and two-person households shall receive minimum monthly allotments equal to the minimum benefit and all eligible households with three or more members which are entitled to \$1, \$3, and \$5 allotments shall receive allotments, of \$2, \$4, and \$6, respectively, to correspond with current coupon book determinations.

(iii) For an eligible household with three or more members which is entitled to no benefits (except because of the proration requirements of paragraph (a)(1) and the provision precluding issuances of less than \$10 in an initial month of paragraph (e)(2)(ii)(B)) of this section:

(A) The State agency shall deny the household's application on the grounds that its net income exceeds the level at which benefits are issued; or

(B) The State agency shall certify the household but suspend its participation, subject to the following conditions:

(1) The State agency shall inform the suspended household, in writing, of its suspended status, and of its rights and responsibilities while it is in that status.

(2) The State agency shall set the household's change reporting requirements and the manner in which those changes will be reported and processed.

(3) The State agency shall specify which changes shall entitle the household to have its status converted from suspension to issuance, and which changes shall require the household to reapply for participation.

(4) The household shall retain the right to submit a new application while it is suspended.

(5) The State agency shall convert a household from suspension to issuance status, without requiring an additional certification interview, and issue its initial allotment, within ten days of the date the household reports the change.

(6) The State agency shall prorate the household's benefits, in the first month after the suspension period, from the date the household reports a change, in accordance with paragraph (a)(1) of this section.

(7) The State agency may delay the work registration of the household's members until the household is determined to be entitled to benefits.

(iv) For those eligible households which are entitled to no benefits in their initial month of application, in accordance with paragraph (a)(1) or (e)(2)(ii)(B) of this section, but are entitled to benefits in subsequent months, the State agency shall certify the households beginning with the month of application.

(v) When a household's circumstances change and it becomes entitled to a different income eligibility standard, the State agency shall apply the different standard at the next recertification or whenever the State agency changes the household's eligibility, benefit level or certification period, whichever occurs first.

(vi) During a month when a reduction, suspension or cancellation of allotments has been ordered pursuant to the provisions of § 271.7, eligible households shall have their benefits calculated as follows:

(A) If a benefit reduction is ordered, State agencies shall reduce the maximum food stamp allotment amounts for each household size by the percentage ordered in the Department's notice on benefit reductions. State agencies shall multiply the maximum food stamp allotment amounts by the percentage specified in the FNS notice; if the result ends in 1 through 99 cents, round the result up to the nearest higher dollar; and subtract the result from the normal maximum food stamp allotment amount. In calculating benefit levels for eligible households, State agencies would follow the procedures detailed in paragraph (e)(2)(ii) of this section and substitute the reduced maximum food stamp allotment amounts for the normal maximum food stamp allotment amounts.

(B) Except as provided in paragraphs (a)(1), (e)(2)(ii)(B), and (e)(2)(vi)(C) of this section, one- and two-person households shall be provided with at least the minimum benefit.

(C) In the event that the national reduction in benefits is 90 percent or more of the benefits projected to be issued for the affected month, the provision for a minimum benefit for households with one or two members only may be disregarded and all households may have their benefits lowered by reducing maximum food stamp allotment amounts by the percentage specified by the Department. The benefit reduction notice issued by the Department to effectuate a benefit reduction will specify whether minimum benefits for households with one or two members only are to be provided to households.

(D) If the action in effect is a suspension or cancellation, eligible households shall have their allotment levels calculated according to the procedures in paragraph (e)(2)(ii) of this section. However, the allotments shall not be issued for the month the suspension or cancellation is in effect. The provision for the minimum benefit for households with one or two members only shall be disregarded and all households shall have their benefits suspended or cancelled for the designated month.

(E) In the event of a suspension or cancellation, or a reduction exceeding 90 percent of the affected month's projected issuance, all households, including one and two-person households, shall have their benefits suspended, cancelled or reduced by the percentage specified by FNS.

(3) *Destitute households.* Migrant or seasonal farmworker households may have little or no income at the time of application and may be in need of immediate food assistance, even though they receive income at some other time during the month of application. The following procedures shall be used to determine when migrant or seasonal farmworker households in these circumstances may be considered destitute and, therefore, entitled to expedited service and special income calculation procedures. Households other than migrant or seasonal farmworker households shall not be classified as destitute.

(i) Households whose only income for the month of application was received prior to the date of application, and was from a terminated source, shall be considered destitute households and shall be provided expedited service.

(A) If income is received on a monthly or more frequent basis, it shall be considered as coming from a terminated source if it will not be received again from the same source during the balance of the month of application or during the following month.

(B) If income is normally received less often than monthly, the nonreceipt of income from the same source in the balance of the month of application or in the following month is inappropriate to determine whether or not the income is terminated. For example, if income is received on a quarterly basis (e.g., on January 1, April 1, July 1, and October 1), and the household applies in mid-January, the income should not be considered as coming from a terminated source merely because no further payments will be received in the balance of January or in February. The test for whether or not this household's income is terminated is whether the income is anticipated to be received in April. Therefore, for households that normally receive income less often than monthly, the income shall be considered as coming from a terminated source if it will not be received in the month in which the next payment would normally be received.

(ii) Households whose only income for the month of application is from a new source shall be considered destitute and shall be provided expedited service if income of more than \$25 from the new source will not be received by the 10th calendar day after the date of application.

(A) Income which is normally received on a monthly or more frequent basis shall be considered to be from a new source if income of more than \$25 has not been received from that source within 30 days prior to the date the application was filed.

(B) If income is normally received less often than monthly, it shall be considered to be from a new source if income of more than \$25 was not received within the last normal interval between payments. For example, if a household applies in early January and is expecting to be paid every 3 months, starting in late January, the income shall be considered to be from a new source if no income of more than \$25 was received from the source during October or since that time.

(iii) Households may receive both income from a terminated source prior to the date of application, and income from a new source after the date of application, and still be considered destitute if they receive no other income in the month of application and income of more than \$25 from the new source will not be

received by the 10th day after the date of application.

(iv) Destitute households shall have their eligibility and level of benefits calculated for the month of application by considering only income which is received between the first of the month and the date of application. Any income from a new source that is anticipated after the day of application shall be disregarded.

(v) Some employers provide travel advances to cover the travel costs of new employees who must journey to the location of their new employment. To the extent that these payments are excluded as reimbursements, receipt of travel advances will not affect the determination of when a household is destitute. However, if the travel advance is by written contract an advance of wages that will be subtracted from wages later earned by the employee, rather than a reimbursement, the wage advance shall count as income. In addition, the receipt of a wage advance for travel costs of a new employee shall not affect the determination of whether subsequent payments from the employer are from a new source of income, nor whether a household shall be considered destitute. For example, if a household applies on May 10, has received a \$50 advance for travel from its new employer on May 1 which by written contract is an advance on wages, but will not receive any other wages from the employer until May 30, the household shall be considered destitute. The May 30 payment shall be disregarded, but the wage advance received prior to the date of application shall be counted as income.

(vi) A household member who changes jobs but continues to work for the same employer shall be considered as still receiving income from the same source. A migrant farmworker's source of income shall be considered to be the grower for whom the migrant is working at a particular point in time, and not the crew chief. A migrant who travels with the same crew chief but moves from one grower to another shall be considered to have moved from a terminated income source to a new source.

(vii) The above procedures shall apply at initial application and at recertification, but only for the first month of each certification period. At recertification, income from a new source shall be disregarded in the first month of the new certification period if income of more than \$25 will not be received from this new source by the 10th calendar day after the date of the household's normal issuance cycle.

#### (4) Thrifty Food Plan (TFP) and Maximum Food Stamp Allotments.

(i) Maximum food stamp allotment level. Maximum food stamp allotments shall be based on the TFP as defined in § 271.2, and they shall be uniform by household size throughout the 48 contiguous States and the District of Columbia. The TFP for Hawaii shall be the TFP for the 48 States and DC adjusted for the price of food in Honolulu. The TFPs for urban, rural I, and rural II parts of Alaska shall be the TFP for the 48 States and DC adjusted by the price of food in Anchorage and further adjusted for urban, rural I, and rural II Alaska as defined in § 272.7(c). The TFPs for Guam and the Virgin Islands shall be adjusted for changes in the cost of food in the 48 States and DC, provided that the cost of these TFPs may not exceed the cost of the highest TFP for the 50 States. The TFP amounts and maximum allotments in each area are adjusted annually and will be prescribed in a table posted on the FNS web site, at [www.fns.usda.gov/fsp](http://www.fns.usda.gov/fsp).

(ii) *Adjustment.* Effective October 1, 1996, the maximum food stamp allotments must be based on 100% of the cost of the TFP as defined in § 271.2 of this chapter for the preceding June, rounded to the nearest lower dollar increment, except that on October 1, 1996, the allotments may not fall below those in effect on September 30, 1996.

(f) *Certification periods.* The State agency must certify each eligible household for a definite period of time. State agencies must assign the longest certification period possible based on the predictability of the household's circumstances. The first month of the certification period will be the first month for which the household is eligible to participate. The certification period cannot exceed 12 months except to accommodate a household's transitional benefit period and as specified in paragraphs (f)(1) and (f)(2) of this section.

(1) *Households in which all adult members are elderly or disabled.* The State agency may certify for up to 24 months households in which all adult members are elderly or disabled. The State agency must have at least one contact with each household every 12 months. The State agency may use any method it chooses for this contact.

(2) *Households residing on a reservation.* The State agency must certify for 24 months those households residing on a reservation which it requires to submit monthly reports in accordance with § 273.21, unless the State agency obtains a waiver from FNS. In the waiver request the State agency must include justification for a shorter period and input from the affected Indian tribal organization(s). When households move off the reservation, the State agency must either continue their certification periods until they would normally expire or shorten the certification periods in accordance with paragraph (f)(4) of this section.

(3) *Certification period length.* The State agency should assign each household the longest certification period possible, consistent with its circumstances.

(i) Households should be assigned certification periods of at least 6 months, unless the household's circumstances are unstable or the household contains an ABAWD.

(ii) Households with unstable circumstances, such as households with zero net income, and households with an ABAWD member should be assigned certification periods consistent with their circumstances, but generally no less than 3 months.

(iii) Households may be assigned 1- or 2-month certification periods when it appears likely that the household will become ineligible for food stamps in the near future.

(4) *Shortening certification periods.* The State agency may not end a household's certification period earlier than its assigned termination date, unless the State agency receives information that the household has become ineligible, the household has not complied with the requirements of § 273.12(c)(3), or the State agency must shorten the household's certification period to comply with the requirements of § 273.12(a)(5). Loss of public assistance or a change in employment status is not sufficient in and of itself to meet the criteria necessary for shortening the certification period. The State agency must close the household's case or adjust the household's benefit amount in accordance with § 273.12(c)(1) or (c)(2) in response to reported changes. The State agency must issue a notice of adverse action as provided in § 273.13 to shorten a participating household's certification period in connection with imposing the simplified reporting requirement. The State agency may not use the Notice of Expiration to shorten a certification period, except that the State agency must use the Notice of Expiration to shorten a household's certification period when the household is receiving transitional benefits under Subpart H, has not reached the maximum allowable number of months in its certification period during the transitional period, and the State agency has chosen to recertify the household in accordance with § 273.28(b). If the transition period results in a shortening of the household's certification period, the State agency shall not issue a household a notice of adverse action but shall specify in the transitional notice required under § 273.29 that the household must be recertified when it reaches the end of the transitional benefit period or if it returns to TANF during the transitional period.

(5) *Lengthening certification periods.* State agencies may lengthen a household's current certification period once it is established, as long as the total months of the certification period do not exceed 24 months for households in which all adult members are elderly or disabled, or 12 months for other households. If the State agency extends a household's certification period, it must advise the household of the new certification ending date with a notice containing the same information as the notice of eligibility set forth in paragraph (g)(1)(i)(A) of this section.

(g) *Certification notices to households—(1) Initial applications.* State agencies shall provide applicants with one of the following written notices as soon as a determination is made, but no later than 30 days after the date of the initial application:

(i) *Notice of eligibility.* (A) If an application is approved, the State agency shall provide the household with written notice of the amount of the allotment and the beginning and ending dates of the certification period. The household shall also be advised of variations in the benefit level based on changes anticipated at the time of certification. If the initial allotment contains benefits for both the month of application and the current month's benefits, the notice shall explain that the initial allotment includes more than 1 month's benefits, and shall indicate the monthly allotment amount for the remainder of the certification period. The notice shall also advise the household of its right to a fair hearing, the telephone number of the food stamp office (a toll-free number or a number where collect calls will be accepted for households outside the local calling area), and, if possible, the name of the person to contact for additional information. If there is an individual or organization available that provides free legal representation, the notice shall also advise the household of the availability of the services. The State

agency may also include in the notice a reminder of the household's obligation to report changes in circumstance and of the need to reapply for continued participation at the end of the certification period. Other information which would be useful to the household may also be included.

(B) In cases where a household's application is approved on an expedited basis without verification, as provided in § 273.2(i), the notice shall explain that the household must provide the verification which was waived. If the State agency has elected to assign a longer certification period to some households certified on an expedited basis, the notice shall also explain the special conditions of the longer certification period, as specified in § 273.2(i), and the consequences of failure to provide the postponed verification.

(C) For households provided a notice of expiration at the time of certification, as required in § 273.14(b), the notice of eligibility may be combined with the notice of expiration or separate notices may be sent.

(ii) *Notice of denial.* If the application is denied, the State agency shall provide the household with written notice explaining the basis for the denial, the household's right to request a fair hearing, the telephone number of the food stamp office (a toll-free number or a number where collect calls will be accepted for households outside the local calling area), and, if possible, the name of the person to contact for additional information. If there is an individual or organization available that provides free legal representation, the notice shall also advise the household of the availability of the service. A household which is potentially categorically eligible but whose food stamp application is denied shall be asked to inform the State agency if it is approved to receive PA and/or SSI benefits or benefits from a State or local GA program. In cases where the State agency has elected to use a notice of denial when a delay was caused by the household's failure to take action to complete the application process, as provided in § 273.2(h)(2), the notice of denial shall also explain: The action that the household must take to reactivate the application; that the case will be reopened without a new application if action is taken within 30 days of the date the notice of denial was mailed; and that the household must submit a new application if, at the end of the 30-day period, the household has not taken the needed action and wishes to participate in the program. If the State agency chooses the option specified in § 273.2(h)(2) of reopening the application in cases where verification is lacking only if household provides verification within 30 days of the date of the initial request for verification, the State agency shall include on the notice of denial the date by which the household must provide the missing verification.

(iii) *Notice of pending status.* If the application is to be held pending because some action by the State is necessary to complete the application process, as specified in § 273.2(h)(2), or the State agency has elected to pend all cases regardless of the reason for delay, the State agency shall provide the household with a written notice which informs the household that its application has not been completed and is being processed. If some action by the household is also needed to complete the application process, the notice shall also explain what action the household must take and that its application will be denied if the household fails to take the required action within 60 days of the date the application was filed. If the State agency chooses the option specified in § 273.2(h) (2) and (3) of holding the application pending in cases where verification is lacking only until 30 days following the date verification was initially requested, the State agency shall include on the notice of pending status the date by which the household must provide the missing verification.

(2) *Applications for recertification.* The State agency shall provide households that have filed an application by the 15th of the last month of their certification period with either a notice of eligibility or a notice of denial by the end of the current certification period if the household has complied with all recertification requirements. The State agency shall provide households that have received a notice of expiration at the time of certification, and have timely reapplied, with either a notice of eligibility or a notice of denial not later than 30 days after the date of the household's initial opportunity to obtain its last allotment.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

**Editorial Note:** For **Federal Register** citations affecting § 273.10, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

**§ 273.11 Action on households with special circumstances.**

(a) *Self-employment income.* The State agency must calculate a household's self-employment income as follows:

(1) *Averaging self-employment income.* (i) Self-employment income must be averaged over the period the income is intended to cover, even if the household receives income from other sources. If the averaged amount does not accurately reflect the household's actual circumstances because the household has experienced a substantial increase or decrease in business, the State agency must calculate the self-employment income on the basis of anticipated, not prior, earnings.

(ii) If a household's self-employment enterprise has been in existence for less than a year, the income from that self-employment enterprise must be averaged over the period of time the business has been in operation and the monthly amount projected for the coming year.

(iii) Notwithstanding the provisions of paragraphs (a)(1)(i) and (a)(1)(ii) of this section, households subject to monthly reporting and retrospective budgeting who derive their self-employment income from a farming operation and who incur irregular expenses to produce such income have the option to annualize the allowable costs of producing self-employment income from farming when the self-employment farm income is annualized.

(2) *Determining monthly income from self-employment.* (i) For the period of time over which self-employment income is determined, the State agency must add all gross self-employment income (either actual or anticipated, as provided in paragraph (a)(1)(i) of this section) and capital gains (according to paragraph (a)(3) of this section), exclude the costs of producing the self-employment income (as determined in paragraph (a)(4) of this section), and divide the remaining amount of self-employment income by the number of months over which the income will be averaged. This amount is the monthly net self-employment income. The monthly net self-employment income must be added to any other earned income received by the household to determine total monthly earned income.

(ii) If the cost of producing self-employment income exceeds the income derived from self-employment as a farmer (defined for the purposes of this paragraph (a)(2)(ii) as a self-employed farmer who receives or anticipates receiving annual gross proceeds of \$1,000 or more from the farming enterprise), such losses must be prorated in accordance with paragraph (a)(1) of this section, and then offset against countable income to the household as follows:

(A) Offset farm self-employment losses first against other self-employment income.

(B) Offset any remaining farm self-employment losses against the total amount of earned and unearned income *after* the earned income deduction has been applied.

(iii) If a State agency determines that a household is eligible based on its monthly net income, the State may elect to offer the household an option to determine the benefit level by using either the same net income which was used to determine eligibility, or by unevenly prorating the household's total net income over the period for which the household's self-employment income was averaged to more closely approximate the time when the income is actually received. If income is prorated, the net income assigned in any month cannot exceed the maximum monthly income eligibility standards for the household's size.

(3) *Capital gains.* The proceeds from the sale of capital goods or equipment must be calculated in the same manner as a capital gain for Federal income tax purposes. Even if only 50 percent of the proceeds from the sale of capital goods or equipment is taxed for Federal income tax purposes, the State agency must count the full amount of the capital gain as income for SNAP purposes. For households whose self-employment income is calculated on an anticipated (rather than averaged) basis in accordance with paragraph (a)(1) of this section, the State agency must count the amount of capital gains the household anticipates receiving during the months over which the income is being averaged.

(b) *Allowable costs of producing self-employment income.* (1) Allowable costs of producing self-employment income include, but are not limited to, the identifiable costs of labor; stock; raw material; seed and fertilizer; payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods; interest paid to purchase income-producing property; insurance premiums; and taxes paid on income-producing property.

(2) In determining net self-employment income, the following items are not allowable costs of doing business:

- (i) Net losses from previous periods;
- (ii) Federal, State, and local income taxes, money set aside for retirement purposes, and other work-related personal expenses (such as transportation to and from work), as these expenses are accounted for by the 20 percent earned income deduction specified in § 273.9(d)(2);
- (iii) Depreciation; and
- (iv) Any amount that exceeds the payment a household receives from a boarder for lodging and meals.

(3) When calculating the costs of producing self-employment income, State agencies may elect to use actual costs for allowable expenses in accordance with paragraphs (b)(1) and (b)(2) of this section or determine self-employment expenses as follows:

- (i) For income from day care, use the current reimbursement amounts used in the Child and Adult Care Food Program or a standard amount based on estimated per-meal costs.
- (ii) For income from boarders, other than those in commercial boarding houses or from foster care boarders, use:
  - (A) The maximum SNAP allotment for a household size that is equal to the number of boarders; or
  - (B) A flat amount or fixed percentage of the gross income, provided that the method used to determine the flat amount or fixed percentage is objective and justifiable and is stated in the State's SNAP manual.
- (iii) For income from foster care boarders, refer to § 273.1(c)(6).
- (iv) Use the standard amount the State uses for its TANF program.

(v) Use an amount approved by FNS. State agencies may submit a proposal to FNS for approval to use a simplified self-employment expense calculation method that does not result in increased Program costs. Different methods may be proposed for different types of self-employment. The proposal must include a description of the proposed method, the number and type of households and percent of the caseload affected, and documentation indicating that the proposed procedure will not increase Program costs.

(c) *Treatment of income and resources of certain nonhousehold members.* During the period of time that a household member cannot participate for the reasons addressed in this section, the eligibility and benefit level of any remaining household members shall be determined in accordance with the procedures outlined in this section.

(1) *Intentional Program violation, felony drug conviction, or fleeing felon disqualifications, and workfare or work requirement sanctions.* The eligibility and benefit level of any remaining household members of a household containing individuals determined ineligible because of a disqualification for an intentional Program violation, a felony drug conviction, their fleeing felon status, noncompliance with a work requirement of § 273.7, or imposition of a sanction while they were participating in a household disqualified because of failure to comply with workfare requirements shall be determined as follows:

(i) *Income, resources, and deductible expenses.* The income and resources of the ineligible household member(s) shall continue to count in their entirety, and the entire household's allowable earned income, standard, medical, dependent care, child support, and excess shelter deductions shall continue to apply to the remaining household members.

(ii) *Eligibility and benefit level.* The ineligible member shall not be included when determining the household's size for the purposes of:

- (A) Assigning a benefit level to the household;
- (B) Assigning a standard deduction to the household;
- (C) Comparing the household's monthly income with the income eligibility standards; or
- (D) Comparing the household's resources with the resource eligibility limits. The State agency shall

ensure that no household's coupon allotment is increased as a result of the exclusion of one or more household members.

(2) *SSN disqualifications, comparable disqualifications, child support disqualifications, and ineligible ABAWDs.* The eligibility and benefit level of any remaining household members of a household containing individuals determined to be ineligible for refusal to obtain or provide an SSN, for meeting the time limit for able-bodied adults without dependents or for being disqualified under paragraphs (k), (o), (p), or (q) of this section shall be determined as follows:

(i) *Resources.* The resources of such ineligible members shall continue to count in their entirety to the remaining household members.

(ii) *Income.* A pro rata share of the income of such ineligible members shall be counted as income to the remaining members. This pro rata share is calculated by first subtracting the allowable exclusions from the ineligible member's income and dividing the income evenly among the household members, including the ineligible members. All but the ineligible members' share is counted as income for the remaining household members.

(iii) *Deductible expenses.* The 20 percent earned income deduction shall apply to the prorated income earned by such ineligible members which is attributed to their households. That portion of the households' allowable child support payment, shelter and dependent care expenses which are either paid by or billed to the ineligible members shall be divided evenly among the households' members including the ineligible members. All but the ineligible members' share is counted as a deductible child support payment, shelter or dependent care expense for the remaining household members.

(iv) *Eligibility and benefit level.* Such ineligible members shall not be included when determining their households' sizes for the purposes of:

- (A) Assigning a benefit level to the household;
- (B) Assigning a standard deduction to the household;
- (C) Comparing the household's monthly income with the income eligibility standards; or
- (D) Comparing the household's resources with the resource eligibility limits.

(3) *Ineligible alien.* The State agency must determine the eligibility and benefit level of any remaining household members of a household containing an ineligible alien as follows:

(i) The State agency must count all or, at the discretion of the State agency, all but a pro rata share, of the ineligible alien's income and deductible expenses and all of the ineligible alien's resources in accordance with paragraphs (c)(1) or (c)(2) of this section. In exercising its discretion under this paragraph (c)(3)(i), the State agency may count all of the alien's income for purposes of applying the gross income test for eligibility purposes while only counting all but a pro rata share to apply the net income test and determine level of benefits. This paragraph (c)(3)(i) does not apply to an alien:

- (A) Who is lawfully admitted for permanent residence under the INA;
- (B) Who is granted asylum under section 208 of the INA;
- (C) Who is admitted as a refugee under section 207 of the INA;
- (D) Who is paroled in accordance with section 212(d)(5) of the INA;
- (E) Whose deportation or removal has been withheld in accordance with section 243 of the INA;
- (F) Who is aged, blind, or disabled in accordance with section 1614(a)(1) of the Social Security Act and is admitted for temporary or permanent residence under section 245A(b)(1) of the INA; or
- (G) Who is a special agricultural worker admitted for temporary residence under section 210(a) of the INA.

(ii) For an ineligible alien within a category described in paragraphs (c)(3)(i)(A) through (c)(3)(i)(G) of this section, State agencies may either:



(A) Count all of the ineligible alien's resources and all but a pro rata share of the ineligible alien's income and deductible expenses; or

(B) Count all of the ineligible alien's resources, count none of the ineligible alien's income and deductible expenses, count any money payment (including payments in currency, by check, or electronic transfer) made by the ineligible alien to at least one eligible household member, not deduct as a household expense any otherwise deductible expenses paid by the ineligible alien, but cap the resulting benefit amount for the eligible members at the allotment amount the household would receive if the household member within the one of the categories described in paragraphs (c)(3)(i)(A) through (c)(3)(i)(G) of this section were still an eligible alien. The State agency must elect one State-wide option for determining the eligibility and benefit level of households with members who are aliens within the categories described paragraphs (c)(3)(i)(A) through (c)(3)(i)(G) of this section.

(iii) For an alien who is ineligible under § 273.4(a) because the alien's household indicates inability or unwillingness to provide documentation of the alien's immigration status, the State agency must count all or, at the discretion of the State agency, all but a pro rata share of the ineligible alien's income and deductible expenses and all of the ineligible alien's resources in accordance with paragraphs (c)(1) or (c)(2) of this section. In exercising its discretion under this paragraph (c)(3)(iii), the State agency may count all of the alien's income for purposes of applying the gross income test for eligibility purposes while only counting all but a pro rata to apply the net income test and determine level of benefits.

(iv) The State agency must compute the income of the ineligible aliens using the income definition in § 273.9(b) and the income exclusions in § 273.9(c).

(v) For purposes of this paragraph (c)(3), the State agency must not include the resources and income of the sponsor and the sponsor's spouse in determining the resources and income of an ineligible sponsored alien.

(4) *Reduction or termination of benefits within the certification period.* Whenever an individual is determined ineligible within the household's certification period, the State agency shall determine the eligibility or ineligibility of the remaining household members based, as much as possible, on information in the case file.

(i) *Excluded for intentional Program violation disqualification.* If a household's benefits are reduced or terminated within the certification period because one of its members was excluded because of disqualification for intentional Program violation, the State agency shall notify the remaining members of their eligibility and benefit level at the same time the excluded member is notified of his or her disqualification. The household is not entitled to a notice of adverse action but may request a fair hearing to contest the reduction or termination of benefits, unless the household has already had a fair hearing on the amount of the claim as a result of consolidation of the administrative disqualification hearing with the fair hearing. However, a participating household is entitled to a notice of adverse action prior to any action to reduce, suspend or terminate its benefits, if a State agency determines that it contains an individual who was disqualified in another State and is still within the period of disqualification.

(ii) *Disqualified or determined ineligible for reasons other than intentional Program violation.* If a household's benefits are reduced or terminated within the certification period for reasons other than an Intentional Program Violation disqualification, the State agency shall issue a notice of adverse action in accordance with § 273.13(a)(2) which informs the household of the ineligibility, the reason for the ineligibility, the eligibility and benefit level of the remaining members, and the action the household must take to end the ineligibility.

(d) *Treatment of income and resources of other nonhousehold members.* (1) For all other nonhousehold members defined in § 273.1 (b)(1) and (b)(2) who are not specifically mentioned in paragraph (c) of this section, the income and resources of such individuals shall not be considered available to the household with whom the individual resides. Cash payments from the nonhousehold member to the household will be considered income under the normal income standards set in § 273.9(b). Vendor payments, as defined in § 273.9(c)(1), shall be excluded as income. If the household shares deductible expenses with the nonhousehold member, only the amount actually paid or contributed by the household shall be deducted as a household expense. If the payments or contributions cannot be differentiated, the expenses shall be prorated evenly among persons actually paying or contributing to the expense and only the household's pro rata share deducted.

(2) When the earned income of one or more household members and the earned income of a nonhousehold member are combined into one wage, the income of the household members shall be determined as follows:

(i) If the household's share can be identified, the State agency shall count that portion due to the household as earned income.

(ii) If the household's share cannot be identified the State agency shall prorate the earned income among all those whom it was intended to cover and count that prorated portion to the household.

(3) Such nonhousehold members shall not be included when determining the size of the household for the purposes of:

(i) Assigning a benefit level to the household;

(ii) Comparing the household's monthly income with the income eligibility standards; or

(iii) Comparing the household's resources with the resource eligibility limits.

(e) *Residents of drug and alcohol treatment and rehabilitation programs.* (1) Narcotic addicts or alcoholics who regularly participate in publicly operated or private non-profit drug addict or alcoholic (DAA) treatment and rehabilitation programs on a resident basis may voluntarily apply for SNAP. Applications must be made through an authorized representative who is employed by the DAA center and designated by the center for that purpose. The State agency may require the household to designate the DAA center as its authorized representative for the purpose of receiving and using an allotment on behalf of the household. Residents must be certified as one-person households unless their children are living with them, in which case their children must be included in the household with the parent.

(2)(i) Prior to certifying any residents for SNAP, the State agency must verify that the DAA center is authorized by FNS as a retailer in accordance with § 278.1(e) of this chapter or that it comes under part B of title XIX of the Public Health Service Act, 42 U.S.C. 300x *et seq.*, (as defined in "Drug addiction or alcoholic treatment and rehabilitation program" in § 271.2 of this chapter).

(ii) Except as otherwise provided in this paragraph (e)(2), the State agency must certify residents of DAA centers by using the same provisions that apply to all other households, including, but not limited to, the same rights to notices of adverse action and fair hearings.

(iii) DAA centers in areas without EBT systems may redeem the households' paper coupons through authorized food stores. DAA centers in areas with EBT systems may redeem benefits in various ways depending on the State's EBT system design. The designs may include DAA use of individual household EBT cards at authorized stores, authorization of DAA centers as retailers with EBT access via POS at the center, DAA use of a center EBT card that is an aggregate of individual household benefits, and other designs. Guidelines for approval of EBT systems are contained in § 274.12 of this chapter.

(iv) The treatment center must notify the State agency of changes in the household's circumstances as provided in § 273.12(a).

(3) The DAA center must provide the State agency a list of currently participating residents that includes a statement signed by a responsible center official attesting to the validity of the list. The State agency must require submission of the list on either a monthly or semimonthly basis. In addition, the State agency must conduct periodic random on-site visits to the center to assure the accuracy of the list and that the State agency's records are consistent and up to date.

(4) The State agency may issue allotments on a semimonthly basis to households in DAA centers.

(5) When a household leaves the center, the center must notify the State agency and the center must provide the household with its ID card. If possible, the center must provide the household with a change report form to report to the State agency the household's new address and other circumstances after leaving the center and must advise the household to return the form to the appropriate office of the State agency within 10 days. After the household leaves the center, the center can no longer act as the household's authorized representative for certification purposes or for obtaining or using benefits.

(i) The center must provide the household with its EBT card if it was in the possession of the center, any

untransacted ATP, or the household's full allotment if already issued and if no coupons have been spent on behalf of that individual household. If the household has already left the center, the center must return them to the State agency. These procedures are applicable at any time during the month.

(ii) If the coupons have already been issued and any portion spent on behalf of the household, the following procedures must be followed.

(A) If the household leaves prior to the 16th of the month and benefits are not issued under an EBT system, the center must provide the household with one-half of its monthly coupon allotment unless the State agency issues semi-monthly allotments and the second half has not been turned over to the center. If benefits are issued under an EBT system, the State must ensure that the EBT design or procedures for DAAs prohibit the DAA from obtaining more than one-half of the household's allotment prior to the 16th of the month or permit the return of one-half of the allotment to the household's EBT account through a refund, transfer, or other means if the household leaves prior to the 16th of the month.

(B) If the household leaves on or after the 16th day of the month, the State agency, at its option, may require the center to give the household a portion of its allotment. Under an EBT system where the center has an aggregate EBT card, the State agency may, but is not required to transfer a portion of the household's monthly allotment from a center's EBT account back to the household's EBT account. However, the household, not the center, must be allowed to receive any remaining benefits authorized by the household's HIR or ATP or posted to the EBT account at the time the household leaves the center.

(iii) The center must return to the State agency any EBT card or coupons not provided to departing residents by the end of each month. These coupons include those not provided to departing residents because they left either prior to the 16th and the center was unable to provide the household with the coupons or the household left on or after the 16th of the month and the coupons were not returned to the household.

(6) The organization or institution shall be responsible for any misrepresentation or intentional Program violation which it knowingly commits in the certification of center residents. As an authorized representative, the organization or institution must be knowledgeable about household circumstances and should carefully review those circumstances with residents prior to applying on their behalf. The organization or institution shall be strictly liable for all losses or misuse of food coupons held on behalf of resident households and for all overissuances which occur while the households are residents of the treatment center.

(7) The organization or institution authorized by FNS as a retail food store may be penalized or disqualified, as described in § 278.6, if it is determined administratively or judicially that coupons were misappropriated or used for purchases that did not contribute to a certified household's meals. The State agency shall promptly notify FNS when it has reason to believe that an organization or institution is misusing coupons in its possession. However, the State agency shall take no action prior to FNS action against the organization or institution. The State agency shall establish a claim for overissuances of food coupons held on behalf of resident clients as stipulated in paragraph (e)(6) of this section if any overissuances are discovered during an investigation or hearing procedure for redemption violations. If FNS disqualifies an organization or institution as an authorized retail food store, the State agency shall suspend its authorized representative status for the same period.

(f) *Residents of a group living arrangement.* (1) Disabled or blind residents of a group living arrangement (GLA) (as defined in § 271.2 of this chapter) may apply either through use of an authorized representative employed and designated by the group living arrangement or on their own behalf or through an authorized representative of their choice. The GLA must determine if a resident may apply on his or her own behalf based on the resident's physical and mental ability to handle his or her own affairs. Some residents of the GLA may apply on their own behalf while other residents of the same GLA may apply through the GLA's representative. Prior to certifying any residents, the State agency must verify that the GLA is authorized by FNS or is certified by the appropriate agency of the State (as defined in § 271.2 of this chapter) including the agency's determination that the center is a nonprofit organization.

(i) If the residents apply on their own behalf, the household size must be in accordance with the definition in § 273.1. The State agency must certify these residents using the same provisions that apply to all other households. If FNS disqualifies the GLA as an authorized retail food store, the State agency must suspend its authorized representative status for the same time; but residents applying on their own behalf

will still be able to participate if otherwise eligible.

(ii) If the residents apply through the use of the GLA's authorized representative, their eligibility must be determined as a one-person household.

(2) Each group living arrangement shall provide the State agency with a list of currently participating residents. This list shall include a statement signed by a responsible center official attesting to the validity of the list. The State shall require the list on a periodic basis. In addition, the State agency shall conduct periodic random onsite visits to assure the accuracy of the list and that the State agency's records are consistent and up to date.

(3) The same provisions applicable in § 273.11(e)(3) to residents of treatment centers also apply to blind or disabled residents of group living arrangements when the facility acts as the resident's authorized representative.

(4) If the resident has made application on his/her own behalf, the household is responsible for reporting changes to the State agency as provided in § 273.12(a). If the group living arrangement is acting in the capacity of an authorized representative, the group living arrangement shall notify the State agency, as provided in § 273.12(a), of changes in the household's income or other household circumstances and when the individual leaves the group living arrangement. The group living arrangement shall return any household's ATP card or coupons to the State agency if they are received after the household has left the group living arrangement.

(5)(i) When the household leaves the facility, the group living arrangement, either acting as an authorized representative or retaining use of the coupons on behalf of the residents (regardless of the method of application), shall provide residents with their ID cards (if applicable) and any untransacted ATP cards. The household, not the group living arrangement, shall be allowed to sign for and receive any remaining authorized benefits reflected on HIR cards. Also, the departing household shall receive its full allotment if issued and if no coupons have been spent on behalf of that individual household. These procedures are applicable at any time during the month. However, if the coupons have already been issued and any portion spent on behalf of the individual, and the household leaves the group living arrangement prior to the 16th day of the month, the facility shall provide the household with its ID card (if applicable) and one half of its monthly coupon allotment. If the household leaves on or after the 16th day of the month and the coupons have already been issued and used, the household does not receive any coupons. If a group of residents have been certified as one household and have returned the coupons to the facility to use, the departing residents shall be given a pro rata share of one-half of the coupon allotment if leaving prior to the 16th day of the month and shall be instructed to obtain ID cards or written authorizations to use the coupons from the local office.

(ii) Once the resident leaves, the group living arrangement no longer acts as his/her authorized representative. The group living arrangement, if possible, shall provide the household with a change report form to report to the State agency the individual's new address and other circumstances after leaving the group living arrangement and shall advise the household to return the form to the appropriate office of the State agency within 10 days.

(iii) The group living arrangement shall return to the State agency any coupons not provided to departing residents at the end of each month. These returned coupons shall include those not provided to departing residents because they left on or after the 16th of the month or they left prior to the 16th and the facility was unable to provide them with the coupons.

(6) The same provisions applicable to drug and alcoholic treatment center in paragraphs (e) (6) and (7) of this section also apply to group living arrangements when acting as an authorized representative. These provisions, however, are not applicable if a resident has applied on his/her own behalf. The resident applying on his/her own behalf shall be responsible for overissuances as would any other household as discussed in § 273.18.

(7) If the residents are certified on their own behalf, the SNAP benefits may either be returned to the GLA to be used to purchase meals served either communally or individually to eligible residents or retained and used to purchase and prepare food for their own consumption. The GLA may purchase and prepare food to be consumed by eligible residents on a group basis if residents normally obtain their meals at a central location as part of the GLA's service or if meals are prepared at a central location for delivery to

the individual residents. If personalized meals are prepared and paid for with SNAP, the GLA must ensure that the resident's SNAP benefits are used for meals intended for that resident.

(g) *Shelters for battered women and children.* (1) Prior to certifying its residents under this paragraph, the State agency shall determine that the shelter for battered women and children meets the definition in § 271.2 and document the basis of this determination. Shelters having FNS authorization to redeem at wholesalers shall be considered as meeting the definition and the State agency is not required to make any further determination. The State agency may choose to require local project area offices to maintain a list of shelters meeting the definition to facilitate prompt certification of eligible residents following the special procedures outlined below.

(2) Many shelter residents have recently left a household containing the person who has abused them. Their former household may be certified for participation in the Program, and its certification may be based on a household size that includes the women and children who have just left. Shelter residents who are included in such certified households may nevertheless apply for and (if otherwise eligible) participate in the Program as separate households if such certified household which includes them is the household containing the person who subjected them to abuse. Shelter residents who are included in such certified households may receive an additional allotment as a separate household only once a month.

(3) Shelter residents who apply as separate households shall be certified solely on the basis of their income and resources and the expenses for which they are responsible. They shall be certified without regard to the income, resources, and expenses of their former household. Jointly held resources shall be considered inaccessible in accordance with § 273.8. Room payments to the shelter shall be considered as shelter expenses.

(4) Any shelter residents eligible for expedited service shall be handled in accordance with § 273.2(i).

(5) State agencies must take prompt action to ensure that the former household's eligibility or allotment reflects the change in the household's composition. Such action must include acting on the reported change in accordance with § 273.12 or § 273.21, as appropriate, by issuing a notice of adverse action in accordance with § 273.13.

(h) *Homeless SNAP households.* Homeless SNAP households shall be permitted to use their SNAP benefits to purchase prepared meals from homeless meal providers authorized by FNS under § 278.1(h).

(i) *Prerelease applicants.* A household which consists of a resident or residents of a public institution(s) which applies for SSI under SSA's Prerelease Program for the Institutionalized shall be allowed to apply for SNAP benefits jointly with their application for SSI prior to their release from the institution. Such households shall be certified in accordance with the provisions of § 273.1(e), § 273.2(c), (g), (i), (j) and (k), and § 273.10(a), as appropriate.

(j) *Reduction of public assistance benefits.* If the benefits of a household that is receiving public assistance are reduced under a Federal, State, or local means-tested public assistance program because of the failure of a SNAP household member to perform an action required under the assistance program or for fraud, the State agency shall not increase the household's SNAP allotment as the result of the decrease in income. In addition to prohibiting an increase in SNAP benefits, the State agency may impose a penalty on the household that represents a percentage of the SNAP allotment that does not exceed 25 percent. The 25 percent reduction in SNAP benefits must be based on the amount of SNAP benefits the household should have received under the regular SNAP benefit formula, taking into account its actual (reduced) income. However, under no circumstances can the SNAP benefits be allowed to rise. Reaching a time limit for time-limited benefits, having a child that is not eligible because of a family cap, failing to reapply or complete the application process for continued assistance under the other program, failing to perform an action that the individual is unable to perform as opposed to refusing to perform, or failing to comply with a purely procedural requirement, shall not be considered a failure to perform an action required by an assistance program for purposes of this provision. A procedural requirement, which would not trigger a SNAP sanction, is a step that an individual must take to continue receiving benefits in the assistance program such as submitting a monthly report form or providing verification of circumstances. A substantive requirement, which would trigger a SNAP sanction, is a behavioral requirement in the assistance program designed to improve the well being of the recipient family, such as participating in job search activities. The State agency shall not apply this provision to individuals who fail

to perform a required action at the time the individual initially applies for assistance. The State agency shall not increase SNAP benefits, and may reduce SNAP benefits only if the person is receiving such assistance at the time the reduction in assistance is imposed or the reduction in assistance is imposed at the time of application for continued assistance benefits if there is no break in participation. The individual must be certified for SNAP benefits at the time of the failure to perform a required action for this provision to apply. Assistance benefits shall be considered reduced if they are decreased, suspended, or terminated.

(1) For purposes of this provision a Federal, State or local “means-tested public assistance program” shall mean public or general assistance as defined in § 271.2 of this chapter, and is referred to as “assistance”. This provision must be applied to all applicable cases. If a State agency is not successful in obtaining the necessary cooperation from another Federal, State or local means-tested welfare or public assistance program to enable it to comply with the requirements of this provision, the State agency shall not be held responsible for noncompliance as long as the State agency has made a good faith effort to obtain the information. The State agency, rather than the household, shall be responsible for obtaining information about sanctions from other programs and changes in those sanctions.

(2) The prohibition on increasing SNAP benefits applies for the duration of the reduction in the assistance program. If at any time the State agency can no longer ascertain the amount of the reduction, then the State agency may terminate the SNAP sanction. However, the sanction may not exceed the sanction in the other program. If the sanction is still in effect at the end of one year, the State agency shall review the case to determine if the sanction continues to be appropriate. If, for example, the household is not receiving assistance, it would not be appropriate to continue the sanction. Sanctions extended beyond one year must be reviewed at least annually but may be ended by the State agency at any time. It shall be concurrent with the reduction in the other assistance program to the extent allowed by normal SNAP change processing and notice procedures.

(3) The State agency shall determine how to prevent an increase in SNAP benefits. Among other options, the State agency may increase the assistance grant by a flat percent, not to exceed 25 percent, for all households that fail to perform a required action in lieu of computing an individual amount or percentage for each affected household.

(4) If the allotment of a household is reduced under Title IV-A of the Social Security Act, the State agency may use the same procedures that apply under Title IV-A to prevent an increase in SNAP benefits as the result of the decrease in Title IV-A benefits. For example, the same budgeting procedures and combined notices and hearings may be used, but the SNAP allotment may not be reduced by more than 25 percent.

(5) The State agency must lift the ban on increasing SNAP benefits if it becomes aware that the person has become ineligible for the assistance program during the disqualification period for some other reason, or the person's assistance case is closed.

(6) If an individual moves within the State, the prohibition on increasing SNAP benefits shall be applied to the gaining household unless that person is ineligible for the assistance program for some other reason. If such individual moves to a new State the prohibition on increasing benefits shall not be applied.

(7) The State agency must restore lost benefits when necessary in accordance with § 273.17 if it is later determined that the reduction in the public assistance grant was not appropriate.

(8) The State agency must act on changes which are not related to the assistance violation and that would affect the household's benefits.

(9) The State agency must include in its State Plan of Operations any options it has selected in this paragraph (j).

(k) *Comparable disqualifications.* If a disqualification is imposed on a member of a household for failure to perform an action required under a Federal, State or local means-tested public assistance program, the State agency may impose the same disqualification on the member of the household under SNAP. The program must be authorized by a Federal, State, or local law, but the provision itself does not have to be specified in the law. A State agency may choose to apply this provision to one or more of these programs, and it may select the types of disqualifications within a program that it wants to impose on SNAP recipients. The State agency shall be responsible for obtaining information about sanctions from other

programs and changes in those sanctions. In the case of disqualification from the Food Distribution Program on Indian Reservations (FDPIR) for an intentional program violation as described under § 253.8 of this chapter, the State agency shall impose the same disqualification on the member of the household under SNAP. The State agency must, in cooperation with the appropriate FDPIR agency, develop a procedure that ensures that these household members are identified.

(1) For purposes of this section Federal, State or local “means-tested public assistance program” shall mean public and general assistance as defined in § 271.2 of this chapter.

(2) The State agency shall not apply this provision to individuals who are disqualified at the time the individual initially applies for assistance benefits. It may apply the provision if the person was receiving such assistance at the time the disqualification in the assistance program was imposed and to disqualifications imposed at the time of application for continued assistance benefits if there is no break in participation with the following exceptions: Reaching a time limit for time-limited benefits, having a child that is not eligible because of a family cap, failing to reapply or complete the application process for continued assistance, failing to perform an action that the individual is unable to perform as opposed to refusing to perform, and failing to perform purely procedural requirements, shall not be considered failures to perform an action required by an assistance program. A procedural requirement, which would not trigger a SNAP sanction, is a step that an individual must take to continue receiving benefits in the assistance program such as submitting a monthly report form or providing verification of circumstances. A substantive requirement, which would trigger a SNAP sanction, is a behavioral requirement in the assistance program designed to improve the well being of the recipient family, such as participating in job search activities. The individual must be receiving SNAP at the time of the disqualification in the assistance program to be disqualified from SNAP under this provision.

(3) The State agency must stop the SNAP disqualification when it becomes aware that the person has become ineligible for assistance for some other reason, or the assistance case is closed.

(4) If a disqualification is imposed for a failure of an individual to perform an action required under a program under Title IV-A of the Social Security Act, the State may use the rules and procedures that apply under the Title IV-A program to impose the same disqualification under SNAP.

(5) Only the individual who committed the violation in the assistance program may be disqualified for SNAP purposes even if the entire assistance unit is disqualified for Title IV-A purposes.

(6) A comparable disqualification for SNAP purposes shall be imposed concurrently with the disqualification in the assistance program to the extent allowed by normal SNAP processing times and notice requirements. The State agency may determine the length of the disqualification, providing that the disqualification does not exceed the disqualification in the other program. If the sanction is still in effect at the end of one year, the State agency shall review the case to determine if the sanction continues to be appropriate. If, for example, the household is not receiving assistance, it would not be appropriate to continue the sanction. Sanctions extended beyond one year must be reviewed at least annually but may be ended by the State agency at any time. In instances where the disqualification is a reciprocal action based on disqualification from the Food Distribution Program on Indian Reservations, the length of disqualification shall mirror the period prescribed by the Food Distribution Program on Indian Reservations.

(7) If there is a pending disqualification for a SNAP violation and a pending comparable disqualification, they shall be imposed concurrently to the extent appropriate. For example, if the household is disqualified for June for a SNAP violation and an individual is disqualified for June and July for an assistance program violation, the whole household shall be disqualified for June and the individual shall be disqualified for July for SNAP purposes.

(8) The State agency must treat the income and resources of the disqualified individual in accordance with § 273.11(c)(2).

(9) After a disqualification period has expired, the person may apply for SNAP benefits and shall be treated as a new applicant or a new household member, except that a current disqualification based on a SNAP work requirement shall be considered in determining eligibility.

(10) A comparable SNAP disqualification may be imposed in addition to any coupon allotment reductions

made in accordance with paragraph (j) of this section.

(11) State agencies shall state in their Plan of Operation if they have elected to apply comparable disqualifications, identify which sanctions in the other programs this provision applies to, and indicate the options and procedures allowed in paragraphs (k)(1), (k)(2), (k)(3), (k)(4), and (k)(10) of this section which they have selected.

(12) The State agency must act on changes which are not related to the assistance violation and that would affect the household's benefits.

(13) The State agency must restore lost benefits when necessary in accordance with 7 CFR 273.17 if it is later determined that the reduction in the public assistance grant was not appropriate.

(l) *School Attendance.* Section 404(i) of Part A of the Social Security Act, 42 U.S.C. 601, *et seq.*, provides that any state receiving a TANF block grant cannot be prohibited from sanctioning a family that includes an adult who has received assistance financed with federal TANF dollars or provided from SNAP if such adult fails to ensure that the minor dependent children of such adult attend school as required by the law of the State in which the minor children reside. Section 404(j) of Part A of the Social Security Act, 42 U.S.C. 601, *et seq.*, provides that States shall not be prohibited from sanctioning a family that includes an adult who is older than 20 and younger than 51 and who has received assistance that is either financed with federal TANF funds or provided through SNAP if such adult does not have, or is not working toward attaining, a secondary school diploma or recognized equivalent. These provisions do not provide independent authority for SNAP sanctions beyond any that may apply through paragraphs (j) and (k) of this section.

(m) *Individuals convicted of drug-related felonies.* An individual convicted (under Federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance (as defined in section 102(6) of the Controlled Substance Act, 21 U.S.C. 802(6)) shall not be considered an eligible household member unless the State legislature of the State where the individual is domiciled has enacted legislation exempting individuals domiciled in the State from the above exclusion. If the State legislature has enacted legislation limiting the period of disqualification, the period of ineligibility shall be equal to the length of the period provided under such legislation. Ineligibility under this provision is only limited to convictions based on behavior which occurred after August 22, 1996. The income and resources of individuals subject to disqualification under this paragraph (m) shall be treated in accordance with the procedures at paragraph (c)(1) of this section.

(n) *Fleeing felons and probation or parole violators.* Individuals who are fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony (or in the State of New Jersey, a high misdemeanor) or who are violating a condition of probation or parole under a Federal or State law shall not be considered eligible household members. The income and resources of the ineligible member shall be handled in accordance with (c)(1) of this section.

(o) *Custodial parent's cooperation with the State Child Support Agency.* For purposes of this provision, a custodial parent is a natural or adoptive parent who lives with his or her child, or other individual who is living with and exercises parental control over a child under the age of 18.

(1) *Option to disqualify custodial parent for failure to cooperate.* At the option of a State agency, subject to paragraphs (o)(2) and (o)(4) of this section, no natural or adoptive parent or, at State agency option, other individual (collectively referred to in this paragraph (o) as "the individual") who is living with and exercising parental control over a child under the age of 18 who has an absent parent shall be eligible to participate in SNAP unless the individual cooperates with the agency administering a State Child Support Enforcement Program established under Part D of Title IV of the Social Security Act (42 U.S.C. 651, *et seq.*), hereafter referred to as the State Child Support Agency.

(i) If the State agency chooses to implement paragraph (o)(1) of this section, it must notify all individuals of this requirement in writing at the time of application and reapplication for continued benefits.

(ii) If the State agency chooses to implement paragraph (o)(1) of this section, it must refer all appropriate individuals to the State Child Support Agency.

(iii) If the individual is receiving TANF or Medicaid, or assistance from the State Child Support Agency,



and has already been determined to be cooperating, or has been determined to have good cause for not cooperating, then the State agency shall consider the individual to be cooperating for SNAP purposes.

(iv) The individual must cooperate with the State Child Support Agency in establishing paternity of the child, and in establishing, modifying, or enforcing a support order with respect to the child and the individual in accordance with section 454(29) of the Social Security Act (42 U.S.C. 654(29)).

(v) Pursuant to Section 454(29)(E) of the Social Security Act (42 U.S.C. 654(29)(E)) the State Child Support Agency will notify the individual and the State agency whether or not it has determined that the individual is cooperating in good faith.

(2) *Claiming good cause for non-cooperation.* Prior to requiring cooperation under paragraph (o)(1) of this section, the State agency will notify the household in writing at initial application and at application for continued benefits of the right to good cause as an exception to the cooperation requirement and of all the requirements applicable to a good cause determination. Paragraph (o)(1) of this section shall not apply to the individual if good cause is found for refusing to cooperate, as determined by the State agency:

(i) *Circumstances under which cooperation may be “against the best interests of the child.”* The individual's failure to cooperate is deemed to be for “good cause” if:

(A) The individual meets the good cause criteria established under the State program funded under Part A of Title IV or Part D of Title IV of the Social Security Act (42 U.S.C. 601, *et seq.*, or 42 U.S.C. 651, *et seq.*) (whichever agency is authorized to define and determine good cause) for failing to cooperate with the State Child Support Agency; or

(B) Cooperating with the State Child Support Agency would make it more difficult for the individual to escape domestic violence or unfairly penalize the individual who is or has been victimized by such violence, or the individual who is at risk of further domestic violence. For purposes of this provision, the term “domestic violence” means the individual or child would be subject to physical acts that result in, or are threatened to result in, physical injury to the individual; sexual abuse; sexual activity involving a dependent child; being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities; threats of, or attempts at physical or sexual abuse; mental abuse; or neglect or deprivation of medical care.

(C) The individual meets any other good cause criteria identified by the State agency. These criteria will be defined in consultation with the Child Support Agency or TANF program, whichever is appropriate, and identified in the State plan according to § 272.2(d) (xiii).

(ii) *Proof of good cause claim.* (A) The State agency will accept as corroborative evidence the same evidence required by Part A of Title IV or Part D of Title IV of the Social Security Act (42 U.S.C. 601, *et seq.* or 42 U.S.C. 651, *et seq.*) to corroborate a claim of good cause.

(B) The State agency will make a good cause determination based on the corroborative evidence supplied by the individual only after it has examined the evidence and found that it actually verifies the good cause claim.

(iii) *Review by the State Child Support or TANF Agency.* Prior to making a final determination of good cause for refusing to cooperate, the State agency will afford the State Child Support Agency or the agency which administers the program funded under Part A of the Social Security Act the opportunity to review and comment on the findings and the basis for the proposed determination and consider any recommendation from the State Child Support or TANF Agency.

(iv) *Delayed finding of good cause.* The State agency will not deny, delay, or discontinue assistance pending a determination of good cause for refusal to cooperate if the applicant or recipient has complied with the requirements to furnish corroborative evidence and information. In such cases, the State agency must abide by the normal processing standards according to § 273.2(g).

(3) *Individual disqualification.* If the State agency has elected to implement this provision and determines that the individual has not cooperated without good cause, then that individual shall be ineligible to participate in SNAP. The disqualification shall not apply to the entire household. The income and resources of the disqualified individual shall be handled in accordance with paragraph (c)(2) of this

section.

(4) *Fees.* A State electing to implement this provision shall not require the payment of a fee or other cost for services provided under Part D of Title IV of the Social Security Act (42 U.S.C. 651, *et seq.*)

(5) *Terminating the disqualification.* The period of disqualification ends once it has been determined that the individual is cooperating with the State Child Support Agency. The State agency must have procedures in place for re-qualifying such an individual.

(p) *Non-custodial parent's cooperation with child support agencies.* For purposes of this provision, a "non-custodial parent" is a putative or identified parent who does not live with his or her child who is under the age of 18.

(1) *Option to disqualify non-custodial parent for refusal to cooperate.* At the option of a State agency, subject to paragraphs (p)(2) and (p)(4) of this section, a putative or identified non-custodial parent of a child under the age of 18 (referred to in this subsection as "the individual") shall not be eligible to participate in SNAP if the individual refuses to cooperate with the State agency administering the program established under Part D of Title IV of the Social Security Act (42 U.S.C. 651, *et seq.*), hereafter referred to as the State Child Support Agency, in establishing the paternity of the child (if the child is born out of wedlock); and in providing support for the child.

(i) If the State agency chooses to implement paragraph (p)(1) of this section, it must notify all individuals in writing of this requirement at the time of application and reapplication for continued benefits.

(ii) If the individual is receiving TANF, Medicaid, or assistance from the State Child Support Agency, and has already been determined to be cooperating, or has been determined to have good cause for not cooperating, then the State agency shall consider the individual is cooperating for SNAP purposes.

(iii) If the State agency chooses to implement paragraph (p)(1) of this section, it must refer all appropriate individuals to the State Child Support Agency established under Part D of Title IV of the Social Security Act (42 U.S.C. 651, *et seq.*).

(iv) The individual must cooperate with the State Child Support Agency in establishing the paternity of the child (if the child is born out of wedlock), and in providing support for the child.

(v) Pursuant to Section 454(29)(E) of the Social Security Act (42 U.S.C. 654(29)(E)), the State Child Support Agency will notify the individual and the State agency whether or not it has determined that the individual is cooperating in good faith.

(2) *Determining refusal to cooperate.* If the State Child Support Agency determines that the individual is not cooperating in good faith, then the State agency will determine whether the non-cooperation constitutes a refusal to cooperate. Refusal to cooperate is when an individual has demonstrated an unwillingness to cooperate as opposed to an inability to cooperate.

(3) *Individual disqualification.* If the State agency determines that the non-custodial parent has refused to cooperate, then that individual shall be ineligible to participate in SNAP. The disqualification shall not apply to the entire household. The income and resources of the disqualified individual shall be handled according to paragraph (c)(2) of this section.

(4) *Fees.* A State electing to implement this provision shall not require the payment of a fee or other cost for services provided under Part D of Title IV of the Social Security Act (42 U.S.C. 651, *et seq.*)

(5) *Privacy.* The State agency shall provide safeguards to restrict the use of information collected by a State agency administering the program established under Part D of Title IV of the Social Security Act (42 U.S.C. 651, *et seq.*) to purposes for which the information is collected.

(6) *Termination of disqualification.* The period of disqualification ends once it has been determined that the individual is cooperating with the child support agency. The State agency must have procedures in place for re-qualifying such an individual.

(q) *Disqualification for child support arrears—(1) Option to disqualify.* At the option of a State agency, no individual shall be eligible to participate in SNAP as a member of any household during any month that the individual is delinquent in any payment due under a court order for the support of a child of the

individual. The State agency may opt to apply this provision to only non-custodial parents.

(2) *Exceptions.* A disqualification under paragraph (q)(1) of this section shall not apply if:

(i) A court is allowing the individual to delay payment;

(ii) The individual is complying with a payment plan approved by a court or the State agency designated under Part D of Title IV of the Social Security Act (42 U.S.C., 651 *et seq.*) to provide support of a child of the individual; or

(iii) The State agency determines the individual has good cause for non-support.

(3) *Individual disqualification.* If the State agency has elected to implement this provision and determines that the individual should be disqualified for child support arrears, then that individual shall be ineligible to participate in SNAP. The disqualification shall not apply to the entire household. The income and resources of the disqualified individual shall be handled according to paragraph (c)(2) of this section.

(4) *Collecting claims.* State agencies shall initiate collection action as provided for in § 273.18 for any month a household member is disqualified for child support arrears by sending the household a written demand letter which informs the household of the amount owed, the reason for the claim and how the household may pay the claim. The household should also be informed as to the adjusted amount of income, resources, and deductible expenses of the remaining members of the household for the month(s) a member is disqualified for child support arrears.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

**Editorial Note:** For **Federal Register** citations affecting § 273.11, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).