

# DEPARTMENT OF HEALTH AND SOCIAL SERVICES

## DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

### FINAL

### ORDER

#### DSSM: Food Supplement Program - Decennial Census 2010

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Food Supplement Program policies in the Division of Social Services Manual (DSSM) related to the 2010 Decennial Census. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the November 2009 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by November 30, 2009 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### SUMMARY OF PROPOSAL

The proposal amends the Division of Social Services Manual (DSSM) regarding the income disregards utilized in the income eligibility determination process. Currently, individuals eligible for the Food Supplement Program (FSP) are allowed disregards for certain types of income in the determination of their eligibility. The proposed change will add a disregard for income earned from temporary employment with the United States Census Bureau in completing the 2010 Decennial Census. In the past, the Census Bureau has successfully recruited program participants to help fill these vacancies, and wishes to do the same for the upcoming 2010 Census.

#### Statutory Authority

Section 17(b)(1) of the Food and Nutrition Act of 2008, *Research, Demonstration and Evaluation*

#### Background

The Food and Nutrition Service (FNS) has offered States the opportunity to participate in a demonstration project to exclude earned income from temporary employment in the 2010 Decennial Census. These demonstration projects are intended to help ease program administration by aligning the Supplemental Nutritional Assistance Program (SNAP) policy with Medicaid policies.

Excluding the earned income of temporary census employees assists the Census Bureau with staff recruitment and retention while allowing individuals with limited or no employment history to gain valuable work experience without a reduction in SNAP benefits. Similar demonstration projects were conducted for the 1990 and 2000 Census.

#### Summary of Proposal

DSSM 9059, *Income Exclusions*: Food and Nutrition Service (FNS) has agreed to allow the exclusion of temporary income from the United States Census Bureau for Delaware's Food Supplement Program. The rule excludes the earnings of temporary census employees from the U. S. Census Bureau for the 2010 Census Demonstration Project. The project expires September 30, 2010.

The amendments are also proposed to update the list of reservations under Part B, item #17; and, delete repetitive text under item K. *Energy Assistance*.

#### Summary of Comments Received with Agency Response and Explanation Of Change

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Social Services (DSS) has considered each comment and responds as follows.

As background, in March 2009, DMMA proposed to adopt a regulation disregarding income attributable to census employment in the Medicaid and CHIP programs. DMMA noted that CMS was encouraging states to adopt such an exemption [12 DE Reg. 1153 (March 1, 2009)]. The SCPD endorsed that regulation which was adopted in May. [12 DE Reg. 1416 (May 1, 2009)]. The Division of Social Services ("DSS") now proposes to adopt a similar income exemption applicable to the Food Supplement Program. This is consistent with historical practice. The existing regulation contains an exemption for income derived from census employment in the year 2000. The proposed regulation also effects some minor revisions to the disregard for home weatherization payments.

SCPD and GACEC endorse the proposed regulation subject to one suggestion. The DMMA regulation notes that "Local Census Offices will require some staff from the fall of 2008 through the end of 2010." At 12 DE Reg 1416. [emphasis supplied] The current regulation included an exemption for census income until December 31, 2000. At 13 DE Reg. 583. The DSS regulation proposes a September 30, 2010 cut-off. It may be preferable to adopt a December 31, 2010 cut-off for the following reasons: 1) if there is any short extension of the census project, DSS would not have to issue another regulation; 2) it would obviate any ambiguity in application of the disregard if paychecks were received in October or November of 2010; and 3) it would apply the disregard to work done in October, November, or December, i.e., "through the end of 2010".

If DSS were disinclined to adopt such an amendment, it could at least consider the following alternative standard to obviate the prospect of issuing another regulation if the Census 2010 Project is extended:

The earnings of temporary census workers from the Bureau of Census are excluded for the Census 2010 Demonstration Project. This exclusion will apply through the scheduled conclusion of the project on September 30, 2010 and any Project extensions.

**Agency Response:** DSS reviewed your comments regarding the proposed language on disregarding census income for the Census 2010 Demonstration Project. The period for the demonstration project, March through July 2010, was already extended by Food and Nutrition Service to September 30, 2010 in case some census operations extended beyond the projected date of July 2010. However, the Division of Social Services has no objection to revising the text to allow for further extensions of the demonstration project. Therefore, the revised language will read as follows:

***S. The earnings of temporary census workers from the Bureau of Census is excluded for the Census 2010 Demonstration Project. The disregard expires September 30, 2010, unless extended by Food and Nutrition Service.***

### Findings of Fact

The Department finds that the proposed changes as set forth in the November 2009 Register of Regulations should be adopted.

**THEREFORE, IT IS ORDERED,** that the proposed regulation to amend the Food Supplement Program policies in the Division of Social Services Manual (DSSM) regarding the exclusion of temporary income for the 2010 Decennial Census is adopted and shall be final effective January 10, 2010.

Rita M. Landgraf, Secretary, DHSS

### 9059 Income Exclusions

[7 CFR 273.9(c)]

Only the following items will be excluded from household income and no other income will be excluded:

A. Any gain or benefit which is not in the form of money payable directly to the household.

This includes 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 includes 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:

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

2. 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 as described in DSSM 9059 (E).

3. 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 the 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. The following are examples of third party payments:

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 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.

Examples of court-ordered payments:

a) 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.

b) A civil service retiree is entitled to a retirement payment of \$800 a month. However, \$400 is diverted to his ex-wife by court order for child support. This is similar to a wage garnishment. Since the retirement benefits are legally obligated and otherwise payable to the retiree's household, the \$800 is budgeted for food stamp purposes.

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.

4. Payments made by the Division or by another government agency to a child care institution to provide day care for a household member are also excluded as vendor payments.

5. All or part of a public assistance grant which would normally be provided in a money payment but which is diverted to a protective payee will be considered income to the household.

6. Emergency Assistance payments will be excluded if they are made directly to a third party for a household expense. This rule applies even if the household has the option of receiving a direct cash payment.

7. Under some pay/benefit plans, an employee may choose to have the employer withhold from the employee's earnings money to pay certain expenses such as child care and medical expenses as a vendor payment to a third party when the expenses are incurred. The amount is counted as earned income when withheld because the money is legally obligated and otherwise payable to the employee at that time.

8. Some companies make credits available to employees to use to buy health insurance, annual leave, sick leave or life insurance. The employee cannot elect to receive a cash payment and loses the credits if not used. The amount shows up on the pay stub when used. These flexible benefits are not counted as income because they are not legally obligated and otherwise payable to the employee as earnings.

Some companies give employees "points" as incentive to arrive to work on time, work so many weeks without taking leave, etc. These points have a monetary value that appears on the pay stub and the points are subject to taxes. The employee can only redeem the points for commodities or goods from a catalog provided by the employer; they cannot convert the points to cash. These points are excluded from income because the funds are not otherwise payable to the household.

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

C. Grants, Loans and Scholarships - Do not count educational financial assistance received from school grants, scholarships, vocational rehabilitation payments, Job Training Partnership Act payments, educational loans, and other loans that are expected to be repaid as income. Exclude any other financial assistance received that is intended for books, tuition, or other self-sufficiency expenses.

D. All loans, including loans from private individuals as well as commercial institutions.

E. Reimbursements for past or future expenses, to the extent that 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 will be counted as income. However, reimbursements will not be considered to exceed actual expenses, unless the provider or the household indicates that the amount is excessive.

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

- Reimbursements or flat allowances 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, as are maintenance funds provided to VR clients for uniforms, supplies, etc.
- Reimbursement for out-of-pocket expenses of volunteers incurred in the course of their work.
- Medical or dependent care reimbursements.
- Reimbursements received by households to pay for a service provided under Title XX of the Social Security Act.
- Do not consider the following as excludable reimbursements:
- No portion of benefits provided under Title IV-A of the Social Security Act, (TANF) to the extent such benefit is attributed to an adjustment for work related or child care expenses, will be considered excludable under this provision.
- No portion of any educational assistance that is provided for normal living expenses (room and board) shall be considered a reimbursement excludable under this section.

F. Monies 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 non-household members, any identifiable portion of the payment intended and used for the care and maintenance of the non-household member will be excluded. If the non-household member's portion cannot be readily identified, the payment must be evenly prorated among intended beneficiaries and the exclusion applied to the non-household member's prorata share or the amount actually used for the non-household member's care and maintenance, whichever is less.

G. The earned income of a student under age 18 who attends elementary or secondary school or classes to obtain a GED at least half-time and lives with a natural, adoptive or step parent, is under the control of a household member other than a parent, or is certified in a separate food stamp household but lives with a natural, adoptive or step parent.

This exclusion continues 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, prorate the total earnings equally

among the working members. The child's prorata share is excluded.

H. Money received in the form of a non-recurring lump sum payment.

These include, but are not limited to: income tax refunds, rebates or credits; retroactive lump sum Social Security, SSI, cash assistance, railroad retirement benefits, or other payments; lump sum insurance settlement; 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 non-recurring lump-sum payment if the payment is not defined as assistance. (All TANF diversion payments are excluded.) These payments will be counted as resources in the month received unless specifically excluded from consideration as a resource by other federal laws.

Payments of large retroactive SSI benefit amounts are required to be made in installments for SSI recipients. These SSI retroactive lump sum installments are excluded from income.

Earned Income Tax Credit (EITC) payments, whether paid in advance or made as tax refunds, are considered to be non-recurring lump sum payments.

I. The cost of producing self-employment income (See DSSM 9074.4).

J. Any income that is specifically excluded by any other Federal law from consideration as income for the purpose of determining eligibility for the Food Stamp Program.

The following laws provide such an exclusion:

PART A -- GENERAL

1. P. L. 79-396, Section 12(e) of the National School Lunch Act, as amended by Section 9(d) of P. L. 94-105, provides that,

The value of assistance to children under this Act shall not be considered to be income or resources for any purposes under any Federal or State laws, including laws relating to taxation and welfare and public assistance programs.

This law authorizes the School Lunch Program, the Summer Food Service Program for Children, the Commodity Distribution Program, and the Child and Adult Care Food Program. Note that the exclusion applies to assistance provided to children rather than that paid to providers.

2. P. L. 89-642, the Child Nutrition Act of 1966, Section 11(b), provides in part that,

The value of assistance to children under this Act shall not be considered to be income or resources for any purpose under any Federal or State laws including, but not limited to, laws relating to taxation, welfare, and public assistance programs.

This law authorizes the Special Milk Program, the School Breakfast Program, and the Special Supplemental Food Program for women, infants, and children (WIC).

3. P. L. 91-646, Section 216, the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970. Reimbursements are excluded from income and resources.

4. P. L. 93-113, the Domestic Volunteer Services Act of 1973, Titles I and II, 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 contraction 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.

Payments to volunteers under Title II, including the Retired Senior Volunteer Program (RSVP), Foster Grandparents Program and Senior Companion Program, are excluded from income.

5. P. L. 93-288, Section 312(d), the Disaster Relief Act of 1974, as amended by P. L. 100-707, Section 105(i), the Disaster Relief and Emergency Assistance Amendments of 1988, 11/23/88. Payments precipitated by an emergency or major disaster as defined in this Act, as amended, are not counted as income or resources for food stamp purposes. This exclusion applies to Federal assistance provided to persons directly affected and to comparable disaster assistance provided by States, local governments, and disaster assistance organizations.

A major disaster is any natural catastrophe such as a hurricane or drought, or, regardless of cause, any fire, flood, or explosion, which the President determines causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts and available resources of States, local governments,

and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

An emergency is any occasion or instance for which the President determines that Federal assistance is needed to supplant State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe.

Most, but not all, Federal Emergency Management Assistance (FEMA) funds are excluded. For example, some payments made to homeless people to pay for rent, mortgage, food, and utility assistance when there is no major disaster or emergency is not excluded under this provision.

6. P. L. 97-300, the Job Training Partnership Act (JTPA), 10/13/82. Section 142(b) provides that allowances, earnings and payments to individuals participating in programs under JTPA shall not be considered as income. Subsequently P. L. 99-198, the Food Security Act of 1985, 12/85, amended section 5(1) of the Food Stamp Act to require counting as income on-the-job training payments provided under section 204(5) of Title II of the JTPA except for dependents less than 19 years old. Section 702(b) of P.L. 102-367, the Job Training Reform Amendments of 1992, further amended the Food Stamp Act (by changing the reference) to exclude on-the-job training payments received under the Summer Youth Employment and Training Program. This means that currently only on-the-job training payments to (1) youths, other than dependents under 19, in year-round programs and (2) adults can be counted. All other JTPA income is excluded.

7. P. L. 99-425, Section (e), the Low-Income Home Energy Assistance Act, 9/30/86. The amount of any home energy assistance payments or allowances provided directly to, or indirectly on behalf of, a household is excluded from income and resources. In determining any excess shelter expense deduction, the full amount of such payments or allowances shall be deemed to be expended by such household for heating or cooling expenses.

8. P. L. 99-498, the Higher Education Act Amendments of 1986, Section 479B, as amended by P. L. 100-50, June 3, 1987. Amounts made available for tuition and fees and, for students attending an institution at least half-time, books, supplies, transportation and miscellaneous personal expenses (other than room, board and dependent care) provided under Title IV of the Act and by the Bureau of Indian Affairs were excluded from income and resources.

P. L. 102-325, the Higher Education Amendments of 1992, dated 7/23/92, contain two separate provisions that affect the treatment of payments made under the Higher Education Act. In regard to Title IV-- Student Assistance, Part F, Section 479B provides that:

Notwithstanding any other provision of law, student financial assistance received under this title, or under Bureau of Indian Affairs student assistance programs, shall not be taken into account in determining the need or eligibility of any person for benefits or assistance, or the amount of such benefits or assistance, under any Federal, State, or local program financed in whole or in part with Federal funds.

Student assistance authorized under Title IV includes the following: (State and local agencies select students for some of these programs. In addition, some State and local agencies have separate programs of their own with similar names.)

- Basic Educational Opportunity Grants (BEOG or Federal Pell Grants)
- Presidential Access Scholarships (PAS-Super Pell Grants)
- Federal Supplemental Educational Opportunity Grants (FSEOG)
- State Student Incentives Grants (SSIG)
- Federal Direct Student Loan Programs (FDSLP) (Formerly GSL and FFELP):
- Federal Direct Supplemental Loan Program (provides loans to students)
- Federal Direct PLUS Program (provides loans to parents)
- Federal Direct Stafford Loan Program
- Federal Direct Unsubsidized Stafford Loan Program, and
- Federal Consolidated Loan Program
- Federal Perkins Loan Program - Direct loans to students in institutions of higher education (Perkins Loans, formerly NDSL)
- Federal Work Study Funds (Note: Not all Federal work study funds come under Title IV of the Higher Education Act.)
- TRIO Grants (Go to organizations or institutions for students from disadvantaged backgrounds):
- Upward Bound (Some stipends go to students)
- Student Support Services
- Robert E. McNair Post-Baccalaureate Achievement

- Robert C. Byrd Honors Scholarship Program
- College Assistance Migrant Program (CAMP) for students whose families are engaged in migrant and seasonal farm work
- High School Equivalency Program (HEP)
- National Early Intervention Scholarship and Partnership Program (NEISP).

There is only one BIA student assistance program per se. It is the Higher Education Grant Program, which is sometimes called the Scholarship Grant Program. However, education or training assistance received under any BIA program must be excluded. There is an Adult Education Program that provides money to adults to get a GED, attend technical schools, and for job training. There is also an employment assistance program. In addition, education and training may be made available under separate programs like the Indian Child and Family Programs. Each tribe has a BIA agency that may be contacted for more information about education and training assistance.

Section 480(b) provides that:

The changes made in part F of title IV of the Act by the amendment made by this section shall apply with respect to determinations of need under such part F for award years beginning on or after July 1, 1993.

Title XIII, Indian Higher Education Programs, Part E--Tribal Development Student Assistance Revolving Loan Program (Tribal Development Student Assistance Act), Section 1343(c) provides in part that:

. . . for purposes of determining eligibility, loans provided under this program may not be considered in needs analysis under any other Federal law, and may not penalize students in determining eligibility for other funds.

The Part E exclusion was effective October 1, 1992.

P. L. 98-524, the Carl D. Perkins Vocational Education Act, Section 507, as amended by P. L. 101-392, 9/25/90, Sections 501 and 701 of the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990. Amounts made available for tuition and fees and, for students attending an institution at least half-time, books, supplies, transportation, dependent care, and miscellaneous personal expenses (other than room and board). This provision was effective July 1, 1991. The programs under this Act include the following:

- Indian Vocational Education Program
- Native Hawaiian Vocational Education Program
- State Vocational and Applied Technology Education Program which contains the:
  - State Program and State Leadership Activities
  - Program for Single Parents, Displaced Homemakers, and Single Pregnant Women
  - Sex Equity Program
  - Programs for Criminal Offenders
- Secondary School Vocational Education Program
- Postsecondary and Adult Vocational Education Program
- State Assistance for Vocational Education Support Programs by Community-Based Organizations
- Consumer and Homemaking Education Program
- Comprehensive Career Guidance and Counseling Program
- Business-Labor-Education Partnership for Training Program
- National Tech-Prep Education Program
- State-administered Tech-Prep Education Program
- Supplementary State Grants for Facilities and Equipment and Other Program Improvement Activities
- Community Education Employment Centers Program
- Vocational Education Lighthouse Schools Program
- Tribally Controlled Postsecondary Vocational Institutions Program
- Vocational Education Research Program
- National Network for Curriculum Coordination in Vocational and Technical Education
- National Center or Centers for Research in Vocational Education
- Materials Development in Telecommunications Program
- Demonstration Centers for the Training of Dislocated Workers Program
- Vocational Education Training and Study Grants Program
- Vocational Education Leadership Development Awards Program
- Vocational Educator Training Fellowships Program

- Internships for Gifted and Talented Vocational Education Students Program
- Business and Education Standards Program
- Blue Ribbon Vocational Education Program
- Educational Programs for Federal Correctional Institutions
- Vocational Education Dropout Prevention Program
- Model Programs of Regional Training for Skilled Trades
- Demonstration Projects for the Integration of Vocational and Academic Learning Program
- Cooperative Demonstration Programs
- Bilingual Vocational Training Program
- Bilingual Vocational Instructor Training Program
- Bilingual Materials, Methods, and Techniques Program

(Federal Perkins Loans authorized under Part E of Title IV of the Higher Education Act must be handled in accordance with other Title IV income.)

Section 5(d)(3) of the Food Stamp Act, as amended by P. L. 101-624, Food, Agriculture, Conservation and Trade Act of 1990, Title XVIII, Mickey Leland Memorial Domestic Hunger Relief Act, 11/28/90, and P. L. 102-237, Food, Agriculture, Conservation, and Trade Act Amendments of 1991, Section 903, provides that educational monies are excluded from income:

- when they are awarded to a person enrolled at a recognized institution of post-secondary education, at a school for the handicapped, in a vocational education program, or in a program that provides for completion of a secondary school diploma or obtaining the equivalent thereof,
- to the extent that they do not exceed the amount used for or made available as an allowance determined by such school, institution, program, or other grantor, for tuition, mandatory fees (including the rental or purchase of any equipment, materials, and supplies related to the pursuit of the course of study involved), books, supplies, transportation, and other miscellaneous personal expenses (other than living expenses), of the student incidental to attending such school, institution, or program, and
- to the extent loans include any origination fees and insurance premiums.)

9. P. L. 99-576, Veterans' Benefits Improvement and Healthcare Authorization Act of 1986, Section 303(a)(1), 8/7/86, which amended Section 1411(b) and 1412(c) of the Veterans' Educational Act of 1984 (GI Bill) provides that any amount by which the basic pay of an individual is reduced under this subsection shall revert to the Treasury and shall not, for purposes of any Federal law, be considered to have been received by or to be within the control of such individual. Title 38 of the USC, Chapter 30, Section 1411 refers to basic educational assistance entitlement for service on active duty and Section 1412 refers to basic educational assistance entitlement for service in the Selected Reserve. (Section 216 of P. L. 99-576 authorized stipends for participation in study of Vietnam-era veterans' psychological problems. These payments are not excluded by law.)

10. P. L. 100-175, Section 166, Older Americans Act, 11/29/87. Funds received by persons 55 and older under the Senior Community Service Employment Program under Title V of the Older Americans Act are excluded from income. Each State and eight organizations receive Title V funds. The organizations that receive some Title V funds are as follows:

Green Thumb  
 National Council on Aging  
 National Council of Senior Citizens  
 American Association of Retired Persons  
 U.S. Forest Service  
 National Association for Spanish Speaking Elderly  
 National Urban League  
 National Council on Black Aging

11. P. L. 100-242, Section 126(c)(5)(A), 11-6-87, The Housing and Community Development Act of 1987, excludes most increases in the earned income of a family residing in certain housing while participating in HUD demonstration projects authorized by section 126. Demonstration projects are authorized by this law for Charlotte, North Carolina, and 10 additional locations. The affected regional offices will be contacted individually regarding these projects.



12. P. L. 100-383, section 105(f)(2), Wartime Relocation of Civilians, 8/10/88 (the Civil Liberties Act of 1988). Payments to U.S. citizens of Japanese ancestry and permanent resident Japanese aliens or their survivors and Aleut residents of the Pribilof Islands and the Aleutian Islands West of Unimak Island are excluded from income and resources.

13. P. L. 100-435, Section 501, 9/19/88, which amended Section 17(m)(7) of the Child Nutrition Act of 1966. Under WIC demonstration project, food stamp benefits that may be exchanged for food at farmers' markets are excluded from income and resources.

14. P. L. 101-201, Agent Orange Compensation Exclusion Act, 12/6/89. All payments from the Agent Orange Settlement fund or any other fund established pursuant to the settlement in the Agent Orange product liability litigation are excluded from income and resources retroactive to January 1, 1989. The disabled veteran will receive yearly payments. Survivors of deceased disabled veterans will receive a lump-sum payment. These payments were disbursed by the AETNA insurance company.

P. L. 101-239, 12/19/89, the Omnibus Budget Reconciliation Act of 1989, Section 10405, also excluded payments made from the Agent Orange settlement fund or any other fund established pursuant to the settlement in the Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.) from income and resources in determining eligibility for the amount of benefits under the Food Stamp Program.

(Note: P. L. 102-4, Agent Orange Act of 1991, 2/6/91, authorized veterans' benefits to some veterans with service connected disabilities resulting from exposure to agent orange. Most of the eligible veterans received a lump sum payment for retroactive benefits due them, followed by regular monthly payments. The lump sum payment is excluded as income but the subsequent monthly payments are counted as unearned income. These payments from the Department of Veterans Affairs are issued by the U.S. Treasury. These VA payments are not excluded by law.)

15. P. L. 101-426, Section 6(h)(2), the Radiation Exposure Compensation Act, dated October 15, 1990, excludes payments made under this public law from food stamp income and resources.

16. P. L. 101-508, 11/5/90, the Omnibus Budget Reconciliation Act of 1990, Title XI Revenue Provisions, Section 11111, Modifications of Earned Income Tax Credit, subsection (b) provides that any Federal earned income tax credit shall not be treated as income and shall not be taken into account in determining resources for the month of its receipt and the following month. This provision was effective with taxable years beginning after December 31, 1990.

The September 1988 amendments to the Food Stamp Act require the exclusion from income of any payment made to the household under section 3507 of the Internal Revenue Code of 1986 (relating to advance payment of earned income credit). The August 1993 amendments to the Food Stamp Act require the exclusion from resources of any earned income tax credits received by any member of the household for a period of 12 months from receipt if such member was participating in the food stamp program at the time the credits were received and participated in such program continuously during the 12-month period.

17. P. L. 101-610, Section 177(d), 11/16/90, National and Community Service Act (NCSA) of 1990, provides that Section 142(b) of the JTPA applies to projects conducted under Title I of the NCSA as if such projects were conducted under the JTPA. See item 6 above for the JTPA income exclusion. Title I includes three Acts: (1) Serve-America: The Community Service, Schools and Service-Learning Act of 1990, (2) the American Conservation and Youth Service Corps Act of 1990, and (3) the National and Community Service Act. There are about 47 different NCSA programs, and they vary by State. Most of the payments are made as a weekly stipend or for educational assistance. The Higher Education Service-Learning program and the AmeriCorps umbrella program come under this Title. The National Civilian Community Corps (NCCC) is a federally managed AmeriCorps program. The Summer for Safety program is an AmeriCorps program under which participants earn a stipend and a \$1000 post-service educational award. The National and Community Service Trust Act of 1993, P.L. 103-82, 9/23/93, amended the National and Community Services Act of 1990 but it did not change the exclusion.

18. P.S. 101-625, section 22(i), Cranston-Gonzales National Affordable Housing Act, dated 11/28/90 (42 USCS 1437t(i)) provides that,

(i) Treatment of Income - No service provided to a public housing resident under this section [Family Investment Centers] may be treated as income for purposes of any other program or provision of State or Federal law.

This exclusion applies to services such as child care, employment training and counseling, literacy training, computer skills training, assistance in the attainment of certificates of high school equivalency and other services. It does not apply to wages or stipends.

This same public law, Section 522(i)(4), excludes most increases in the earned income of a family residing in certain housing while participating in HUD demonstration projects authorized by this public law. Demonstration projects are authorized by this law for Chicago, Illinois, and 3 other locations. The affected regional offices will be contacted individually regarding these projects.

19. P. L. 102-550, Housing and Community Development Act of 1992, Section 456(e) provides that payments made under the Youthbuild Program are to be treated like JTPA payments. Therefore they should be excluded from income in accordance with item 6 above.

20. P. L. 102-586, signed 11/4/92, Section 8, amended the Child Care and Development Block Grant Act Amendments of 1992 by adding a new Section 658S to exclude the value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under this subchapter from income for purposes of any other Federal or Federally-assisted program that bases eligibility, or the amount of benefits, on need. (These payments are made under the Social Security Act, as amended.)

21. P. L. 103-286, dated 8/1/94, Section 1 (a) provides in part that:

Payments made to individuals because of their status as victims of Nazi persecution shall be disregarded in determining eligibility for and the amount of benefits or services to be provided under any Federal or federally assisted program which provides benefits or services based, in whole or in part, on need.

22. P. L. 103-322, section 230202, dated 9/13/94, amended Section 1403 of the Crime Act of 1984 (42 U.S.C. 10602) to provide in part that:

(e) Notwithstanding any other law, if the compensation paid by an eligible crime victim compensation program would cover costs that a Federal program, or a federally financed State or local program, would otherwise pay,

(1) such crime victim compensation program shall not pay that compensation; and

(2) the other program shall make its payments without regard to the existence of the crime victim compensation program.

Based on this language, payments received under this program must be excluded from income and resources for food stamp purposes.

23. P. L. 104-193, section 103(a), dated 8/22/96, amended Section 404(h) of Part A of Title IV of the Social Security Act to provide that for the purpose of determining eligibility to receive, or the amount of, any benefit authorized by the Food Stamp Act, funds (including interest accruing) in an individual development account under the TANF block grant program shall be disregarded with respect to any period during which such individual maintains or makes contributions into such an account.

24. P.L. 104-204, section 1804(d), dated 9/26/96 provides that:

Notwithstanding any other provision of law, the allowance paid to a child under this section shall not be considered income or resources in determining eligibility for or the amount of benefits under any Federal or federally assisted program.

A monthly allowance (from \$200 - \$1200) is paid to a child of a Vietnam veteran for any disability resulting from spina bifida suffered by such child.

25. Public Law 100-707 authorizes the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act to pay Disaster Unemployment Assistance to any individual unemployed as a result of a major disaster. Individuals cannot be eligible for any other unemployment compensation and also receive disaster unemployment benefits. Benefits are limited to 26 weeks.

Disaster unemployment assistance is considered Federal major disaster and emergency assistance under the Stafford Act. It cannot be considered as income or as a resource when determining Food Stamp Program benefits.

Staff needs to verify the source of the unemployment income only if the client suffered a job loss or was unemployed due to a recent disaster.

**9 DE Reg. 426 (9/1/05)**

## PART B - AMERICAN INDIAN OR ALASKA NATIVE

Usually a law will authorize payments to members of a tribe or band, and the law will apply to the members enrolled in the tribe or band wherever they live. However, items 2, 3, and 4 are general laws, and they apply to all tribes. The individuals should have documentation showing the type of payment and where it originated.

1. P. L. 92-203, section 29, dated 1/2/76, the Alaska native Claims Settlement Act, and Section 15 of P. L.

100-241, 2/3/88, the Alaska Native Claims Settlement Act Amendments of 1987 - All compensation (including cash, stock, partnership interest, land, interest in land, and other benefits) received under this Act are excluded from income and resources.

2. 25 USCA 640-d-22 (P.L. 93-531, section 22, dated 12/22/74) provides in part that the availability of financial assistance to any Navajo or Hopi Indian pursuant to 25 USCS § 460d-460d-31 may not be considered as income or resources or otherwise used as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled to under the Social Security Act or any other Federal or federally assisted program.

25 USCS 1407 Judgment Funds (as amended by P. L. 93-134 and P. L. 97-458) provides that:

None of the funds [appropriated in satisfaction of judgements of the Indian Claims and Commission or Claims Court in favor of any Indian tribe, band, etc.] which--

(1) are distributed per capita or held in trust pursuant to a plan approved under the provisions of this Act [25 USCS §§ 1401 et seq.], or

(2) on the date of enactment of this Act [enacted Jan. 12, 1983], are to be distributed per capita or are held in trust pursuant to a plan approved by Congress prior to the date of enactment of this Act [enacted Jan. 12, 1983], or

(3) were distributed pursuant to a plan approved by Congress after December 31, 1981 but prior to the date of enactment of this Act [enacted Jan. 12, 1983], and any purchases made with such funds, including all interest and investment income accrued thereon while such funds are so held in trust, shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act [42 USCS § 301 et seq.] or, except for per capita shares in excess of \$2,000, any Federal or federally assisted program.

The \$2,000 amount applies to each payment made to each person. Initial purchases made with exempt payments distributed between January 1, 1982 and January 12, 1983, are excluded from resources to the extent that excluded funds were used.

3. P. L. 98-64, 8/2/83, applied the exclusion in 25 USCS 1407 to per capita payments from funds which are held in trust by the Secretary of Interior (trust fund distributions) for an Indian tribe. (Per capita payments may be authorized for specific tribes under other public laws.)

4. 25 USCS 1408 (as amended by P. L. 93-134, P. L. 97-458, and P. L. 103-66, Section 13736, 10/7/93) provides that interests of individual Indians in trust or restricted lands shall not be considered a resource and up to \$2,000 per year of income received by individual Indians that is derived from such interests shall not be considered income in determining eligibility for assistance under the Social Security Act or any other Federal or federally assisted program. Interests include the Indian's right to or legal share of the trust or restricted land and any income accrued from the funds in trust or the restricted lands. The exclusion applies to each individual Indian than has an interest. The income exclusion applies for both eligibility and benefit level purposes for food stamp purposes. The income exclusion applies to calendar years.

5. P. L. 93-531, section 22 - Relocation assistance payments to members of the Navajo and Hopi Tribes are excluded from income and resources.

6. P. L. 94-114, section 6, 10/17/75 - Income derived from certain submarginal land held in trust for certain Indian tribes is excluded from income and resources. The tribes that may benefit are:

- Bad River Band of the Lake Superior Tribe of Chippewa Indians of Wisconsin
- Blackfeet Tribe
- Cherokee Nation of Oklahoma
- Cheyenne River Sioux Tribe
- Crow Creek Sioux Tribe
- Lower Brule Sioux Tribe
- Devils Lake Sioux Tribe
- Fort Belknap Indian Community
- Assiniboine and Sioux Tribes
- Lac Courte Oreilles Band of Lake Superior
- Chippewa Indians
- Keweenaw Bay Indian Community

- Minnesota Chippewa Tribe
- Navajo Tribe
- Oglala Sioux Tribe
- Rosebud Sioux Tribe
- Shoshone-Bannock Tribes
- Standing Rock Sioux Tribe

7. P. L. 94-189, Section 6, 12/31/75 - Funds distributed per capita to the Sac and Fox Indians or held in trust are excluded from income and resources. The funds are divided between members of the Sac and Fox Tribe of Oklahoma and the Sac and Fox Tribe of the Mississippi in Iowa. The judgments were awarded in Indian Claims Commission dockets numbered 219, 153, 135, 158, 231, 83, and 95.

8. P. L. 94-540 - Payments from the disposition of funds to the Grand River Band of Ottawa Indians are excluded from income and resources.

9. P. L. 95-433, section 2 - Indian Claims Commission payments made pursuant to this Public Law to the Confederated Tribes and Bands of the Yakima Indian Nation and the Apache Tribe of the Mescalero Reservation are excluded from income and resources.

10. 25 USCS 1931 Indian Child Welfare (P. L. 95-608, 11/8/78), subparagraph (a) provides for child and family service grant programs on or near reservations in the preparation and implementation of child welfare codes. Such programs may include, but are not limited to, family assistance, including homemaker and home counselors, day care, after school care, and employment, recreational activities, and respite care; home improvement; the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters; and education and training of Indians; including tribal court judges and staff, in skills relating to child and family assistance and service programs. Subparagraph (b) provides that assistance under 25 USCS 1901 et seq. shall not be a basis for the denial or reduction of any assistance otherwise authorized under any federally assisted programs. (Similar off-reservation programs are authorized by 25 USCS 1932. We have asked the Office of General Counsel if the exclusion applies to these programs.)

11. P. L. 96-420, section 9(c), 10/10/80, Maine Indian Claims Settlement Act of 1980 - Payments made to the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet are excluded from income and resources.

12. P. L. 97-403 - Payments to the Turtle Mountain Band of Chippewas, Arizona are excluded from income and resources.

13. P. L. 97-408 - Payments to the Blackfeet, Grosventre, and Assiniboine tribes, Montana, and the Papago, Arizona, are excluded from income and resources.

14. P. L. 98-123, Section 3, 10/13/83 - Funds distributed under this Act to members of the Red Lake Band of Chippewa Indians are excluded from income and resources. Funds were awarded in docket number 15-72 of the United States Court of Claims.

15. P. L. 98-124, Section 5 - Per capita and interest payments made to members of the Assiniboine Tribe of the Fort Balknap Indian Community, Montana, and the Assiniboine Tribe of the Fort Peck Indian Reservation, Montana, under this Act are excluded from income and resources. Funds were awarded in docket 10-81L.

16. P. L. 98-500, Section 8, 10/17/84, Old Age Assistance Claims Settlement Act, provides that funds made to heirs of deceased Indians under this Act shall not be considered as income or resources nor otherwise used to reduce or deny food stamp benefits except for per capita shares in excess of \$2,000.

17. P. L. 99-146, Section 6(b), 11/11/85 - Funds distributed per capita or held in trust for members of the Chippewas of Lake Superior are excluded from income and resources. Judgements were awarded in Dockets Numbered 18-S, 18-U, 18-C, and 18-T.

Dockets 18-S and 18-U are divided among the following reservations.

Michigan:

~~Keweenaw Bay Indian Community (L'Anse, Lac Vieux Desert, and Ontonagon Bands)~~ Wisconsin:

~~Bad River Reservation~~

~~Lac du Flambeau Reservation~~

~~Lac Courte Oreilles Reservation~~

~~Sokaogon Chippewa Community~~

~~Red Cliff Reservation~~

~~St. Croix Reservation~~

Minnesota:

~~Fond du Lac Reservation~~

~~Grand Portage Reservation~~

~~Nett Lake Reservation (including Vermillion Lake and Deer Creek)~~

~~White Earth Reservation~~

Wisconsin:

- Bad River Reservation
- Lac du Flambeau Reservation
- Lac Courte Oreilles Reservation
- Sokaogon Chippewa Community
- Red Cliff Reservation
- St. Croix Reservation

Michigan:

- Keweenaw Bay Indian Community (L'Anse, Lac Vieux Desert, and Ontonagon Bands)

Minnesota:

- Fond du Lac Reservation
- Grand Portage Reservation
- Nett Lake Reservation (including Vermillion Lake and Deer Creek)
- White Earth Reservation

Under dockets 18-C and 18-T funds are given to the Lac Courte Oreilles Band of the Lake Superior Bands of Chippewa Indians of the Lac Courte Oreilles Reservation of Wisconsin, the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, the Sokaogon Chippewa Community of the Mole Lake Band of Chippewa Indians, and the St. Croix Chippewa Indians of Wisconsin.

18. P. L. 99-264, White Earth Reservation Land Settlement Act of 1985, 3/24/86, Section 16 excludes moneys paid under this Act from income and resources. This Act involves members of the White Earth Band of Chippewa Indians in Minnesota.

19. P. L. 99-346, Section 6(b)(2) - Payments to the Saginaw Chippewa Indian Tribe of Michigan are excluded from income and resources.

20. P. L. 99-377 - Section 4(b), 8/8/86, - Funds distributed per capita to the Chippewas of the Mississippi or held in trust under this Act are excluded from income and resources. The judgements were awarded in Docket Number 18-S. The funds are divided by reservation affiliation for the Mille Lac Reservation, Minnesota; White Earth Reservation, Minnesota; and Leech Lake Reservation, Minnesota.

21. P. L. 101-41, 6/21/89, the Puyallup Tribe of Indians Settlement Act of 1989, Section 10(b) provides that nothing in this Act shall affect the eligibility of the Tribe or any of its members for any Federal program. Section 10(c) provides that none of the funds, assets, or income from the trust fund established in Section 6(b) shall at any time be used as a basis for denying or reducing funds to the Tribe or its members under any Federal, State, or local program. (The Puyallup Tribe is located in the State of Washington.)

22. P. L. 101-277, 4/30/90, funds appropriated in satisfaction of judgements awarded to the Seminole Indians in dockets 73, 151, and 73-A of the Indian Claims Commission are excluded from income and resources except for per capita payments in excess of \$2,000. Payments were allocated to the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and the independent Seminole Indians of Florida.

23. P. L. 101-503, Section 8(b), Seneca Nation Settlement Act of 1990, dated November 3, 1990, provides that none of the payments, funds or distributions authorized, established, or directed from this Act, and none of the income derived therefrom, shall affect the eligibility of the Seneca Nation or its members for, or be used as a basis for denying or reducing funds under, any Federal program.

24. P.L. 103-436, 11/2/94, Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act, Section 7(b), provides that payments made pursuant to that Act are totally excluded from income and resources for food stamps purposes.

K. Energy Assistance as follows:

(a) 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, including utility reimbursements made by the Department of Housing and Urban Development and the rural Housing Service, or

(b) A one-time payment or allowance applied on an as needed basis and made under a Federal or State law for the costs of weatherizing 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 the purposes of this provision.

~~Federal or State one-time assistance for weatherization or emergency repair or replacement of heating or cooling devices are also excluded as income.~~

L. 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.

M. 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).

N. Any payment made to an E & T participant 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.

O. Governmental foster care payments received by households with foster care individuals who are considered to be boarders in accordance with DSSM 9013.3.

P. Income of an SSI recipient necessary for the fulfillment of a plan for achieving self-support (PASS). The income set aside for this special PASS account is excluded for income purposes.

Q. Marines living on base in adequate quarters are not entitled to receive a Basic Allowance for Quarters (BAQ) even though the amount is listed under entitlements and a deduction is shown for the same amount under deductions on the Leave and Earnings Statement (LES). For these cases the BAQ is disregarded under the entitlement and deduction sections when verified. Staff must advise applicants to get a letter from their commanding officer stating that the LES is incorrect, the applicant is not entitled to the BAQ and does not receive it.

R. In HUD's Family Self-Sufficiency (FSS) Program, participants sign a contract to achieve economic independence within five years. As the participant's employment income rises, a portion of the rent increases they would normally be charged would be waived. The amount waived will be credited to an escrow account to be given to the family at the end of the program.

The participating household must fulfill its employment obligation under the contract or HUD may terminate the FSS supportive services. The family will then forfeit any escrow account funds.

While the funds are in the FSS Escrow Account, they are totally unavailable to the household and excluded as a resource. When the household achieves economic independence and is given the escrow account, the money will be excluded as income as a nonrecurring lump-sum payment.

S. The earnings of temporary census workers from the Bureau of Census is ~~not counted as income for food stamp purposes effective April 1, 2000 through December 31, 2000~~ excluded for the Census 2010 Demonstration Project. The [project disregard] expires September 30, 2010 [unless extended by Food and Nutrition Service].

**13 DE Reg. 937 (01/01/10) (Final)**