

5101:4-4-13

**Food assistance: types of excluded income.**

In the Food and Nutrition Act of 2008 congress specified the types of income that are excluded for program purposes. The following payments shall be excluded as income:

(A) Any gain or benefit that is not in the form of money payable directly to the assistance group including in-kind benefits. In-kind benefits are those for which no monetary payment is made on behalf of the assistance group and include meals, clothing, public housing, or produce from a garden.

(B) Payments made to a third party on behalf of the assistance group are included or excluded as income as follows:

(1) Public assistance, including disability financial assistance (DFA), vendor payments are counted as income unless they are made for medical assistance, child care assistance, energy assistance as defined in paragraph (I)(4) of this rule, emergency assistance (including, but not limited to housing and transportation payments) for migrant or seasonal farm worker assistance groups while they are in the job stream, or housing assistance payments made through a state or local housing authority.

(2) Public assistance provided to a third party on behalf of an assistance group that is not specifically excluded from consideration as income under paragraph (B)(1) of this rule shall be considered for exclusion under the emergency and special assistance category. To be considered emergency or special assistance and excluded, the assistance must be provided over and above the normal public assistance payment or cannot normally be provided as part of such payment.

(3) Reimbursements made in the form of vendor payments, monetary payments made on behalf of an assistance group by a person or organization outside of the assistance group directly to either the assistance group's creditors or to a person or organization providing a service to the assistance group, are excluded on the same basis as reimbursements paid directly to the assistance group in accordance with paragraph (E) of this rule.

(4) In-kind or vendor payments that 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 shall be excluded from income.

(5) Rent or mortgage payments made to landlords or mortgagees by the department of housing and urban development (HUD) are excluded.

(6) Monies that are legally obligated and otherwise payable to the assistance group, but 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 an assistance group using funds that are not owed to the assistance group, the payment shall

be excluded from income.

(C) The county agency shall exclude any income that is specifically excluded by any other federal statute from consideration as income for the purpose of determining eligibility for the food assistance program. The following is a listing of some of the incomes excluded by federal statute. The listing is divided into general income exclusions and exclusions applicable to incomes of American Indians or Alaska Natives.

(1) General exclusions

(a) Income of a supplemental security income (SSI) recipient determined 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 of 1935. This income may be spent in accordance with an approved PASS or deposited into a PASS savings account for future use.

(b) Federal emergency management assistance housing subsidies to pay for temporary housing required as a result of a disaster and individual and family grant assistance payments made under the Disaster Relief Act section 312(d) of the Disaster Relief Act of 1974, as amended in 1988 by Pub. L. No. 100-707, (11/1988).

(c) Assistance provided to children under the school lunch program, the summer food service program for children, the commodity distribution program and child and adult care food program (CACFP), Pub. L. No. 79-396, (06/1946), section 12(e) of the National School Lunch Act of 1946, as amended by section 9(d) of Pub. L. No. 94-105, (10/1975).

(d) Assistance provided to children under the special milk program, special supplemental food program for women, infants, and children (WIC) and the school breakfast program, Pub. L. No. 89-642, (10/1966), the Child Nutrition Act of 1966, section 11(b).

(e) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, Pub. L. No. 91-646, section 216 (02/1971).

(f) Pub. L. No. 93-113, (10/1973), the Domestic Volunteer Services Act of 1973, Titles I and II. Payments under Title I of the act (including such Title I programs as volunteers in service to americorps (VISTA), university year for action, and urban crime prevention program) to volunteers shall be excluded for those individuals receiving food assistance or public assistance at the time they joined the Title I program, except that assistance groups which were receiving an income exclusion for a VISTA or other Title I subsistence allowance at the time

of conversion to the Food and Nutrition Act 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 assistance participation shall not alter the exclusion once an initial determination has been made. New applicants who were not receiving public assistance or food assistance at the time they joined VISTA shall have these volunteer payments included as earned income. Any payment to volunteers under Title II (retired senior volunteer program, foster grandparents, senior companion program and others) are excluded from income.

(g) Payments received under section 312(d), the Disaster Relief Act of 1974, Pub. L. No. 93-288, (05/1974), as amended by section 105(i), the Disaster Relief and Emergency Assistance Amendments of 1988, Pub. L. No. 100-707, (11/1988). Payments precipitated by an emergency or major disaster as defined in this act, as amended, are not counted as income for food assistance 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 of the United States 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 of the United States 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 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.

(h) 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, Pub. L. No. 100-383, (08/1988), section 105(f)(2), wartime relocation of civilians, the Civil Liberties Act of 1988.

(i) Income received (including reimbursements) by individuals participating in programs under the Workforce Investment Act (WIA) of 1998, section 181 (a)(2), except as provided in rule 5101:4-4-19 of the

Administrative Code. This includes disaster relief employment income received from national emergency grants under the WIA, Pub. L. No. 105-220, (08/1998) section 181(a)(2).

- (j) Any amount by which the basic pay of an individual is reduced and reverted to the treasury shall not be considered to have been received by or to be within the control of such individual, Pub. L. No. 99-576, (08/1986) section 303(a)(1), Veteran's Benefits Improvement and Health Care Authorization Act of 1986, which amends section 1411(b) and 1412(c) of the Veteran's Educational Act of 1984 - GI bill.
- (k) Funds received by persons fifty-five and older under the senior community service employment program under Title V of the Older Americans Act of 1987 are excluded from income, Pub. L. No. 109-365, (10/2006). The organizations that receive some Title V funds are as follows: experience works; national council on aging; national council of senior citizens; American association of retired persons; United States forest service; national association for Spanish speaking elderly; national urban league; and the national council on black aging.
- (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 three hundred dollars in a federal fiscal year quarter. Charitable Assistance and Food Bank Act of 1987, Pub. L. No. 100-232, (01/1988).
- (m) Food assistance benefits that may be exchanged for food at farmers' markets under WIC demonstration projects, Pub. L. No. 100-435, (09/1988) section 501, which amended section 17(m)(7) of the Child Nutrition Act of 1966.
- (n) Payments made from the Agent Orange settlement fund, Pub. L. No. 101-201, (12/1989), 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.)(01/1989) which are received on or after 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 aetna insurance company. The Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, (12/1989), also excludes these payments. Pub. L. No. 102-4, (02/1991), Agent Orange Act of 1991, authorized veterans' benefits to some veterans with service-connected disabilities resulting from exposure to Agent Orange. These VA payments are not excluded by law.
- (o) Payments made under the Radiation Exposure Compensation Act, Pub. L. No. 101-426, (10/1990) section 6(h)(2), as amended by Pub. L. No.

106-245 (07/2000).

(p) 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 effective with taxable years beginning after December 31, 1990, Pub. L. No. 101-508, (11/1990).

(q) Pub. L. No. 101-610, (11/1990), National and Community Service Act (NCSA) of 1990, section 177(d), applies to projects conducted under Title I of the NCSA. Title I includes three acts: (i) Serve-America: the Community Service, Schools and Service-Learning Act of 1990, (ii) the American Conservation and Youth Service Corps Act of 1990, and (iii) the National and Community Service Act.

There are about forty-seven 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 one thousand-dollar postservice educational award. The Serve America Act, Pub. L. No. 111-13, (04/2009), amended the National and Community Services Act of 1990 but it did not change the exclusion. All americorps payments shall be excluded.

(r) All student financial assistance, including grants, scholarships, fellowships, educational loans on which payment is deferred, work study, veterans' educational benefits, and the like, which are awarded to an assistance group member enrolled at a recognized institution of post-secondary education, at a school for the handicapped, in a vocational education program, in a vocational or technical school, or in a program that provides for obtaining a secondary school diploma or the equivalent of a secondary school diploma shall be excluded from consideration as income for food assistance purposes.

Educational income excluded for dependent care costs shall not be deducted from income under the provisions of rule 5101:4-4-23 of the Administrative Code. Dependent care costs incurred which exceed the amount excluded under the provisions of this paragraph shall be deducted from income in accordance with rule 5101:4-4-23 of the Administrative Code.

(s) Payments made under the youthbuild program under the Housing and Community Development Act of 1992, Pub. L. No. 102-550, (10/1992).

The youthbuild program transferred from the United States department of housing and urban development to the department of labor with the passage of the Youthbuild Transfer Act of 2006, Pub. L. No. 109-281, (09/2006), which amended the Workforce Investment Act (WIA) of 1998. These payments are to be treated like WIA payments in accordance with paragraph (C)(1)(i) of this rule, except as provided in rule 5101:4-4-19 of the Administrative Code.

- (t) Payments from any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care), Pub. L. No. 102-586, (11/1992) section 8, which amended the Child Care and Development Block Grant Act Amendments of 1992 by adding section 658S.
- (u) Payments made to individuals because of their status as victims of Nazi persecution, Pub. L. No. 103-286, (08/1994).
- (v) Pub. L. No. 103-322, (09/1994) section 230202, 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, (i) such crime victim compensation program shall not pay that compensation; and (ii) 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 for food assistance purposes.
- (w) Notwithstanding any other provision of law, the allowance paid under Pub. L. No.104-204, (09/1996) section 1805(d), as amended by Pub. L. No. 106-419, (11/2000), to a child of a Vietnam veteran for any disability resulting from spina bifida and certain other birth defects suffered by such child. A monthly allowance from two hundred to one thousand two hundred dollars is paid to a child under this public law.
- (x) Additional pay received by military personnel as a result of deployment to a combat zone (under the Consolidated Appropriations Bill, 2008, Pub. L. No. 110-161, (12/2007). The additional combat pay shall be determined as follows:

  - (i) Establish what amount for food assistance purposes of the military person's pay that was actually available to the assistance group prior to the deployment of the military person to a designated combat zone.

- (a) If the military person was part of the assistance group for food assistance purposes prior to the deployment, this amount would be his or her net military pay.
- (b) If the military person was not part of the assistance group for food assistance purposes prior to the military person's deployment to a designated combat zone, this amount is the amount the absent military person actually made available to the assistance group prior to deployment to the designated combat zone.
- (ii) Determine the amount of military pay that the absent member deployed in a designated combat zone is making available to his or her family.
- (iii) If the amount of military pay that the absent member deployed in a designated combat zone is making available is equal to or less than the amount the assistance group was receiving from the military person prior to deployment to a designated combat zone, all of the military pay would be counted as income to the assistance group for food assistance purposes. Any portion of the amount that exceeds the amount the assistance group was receiving prior to deployment of the military person to a designated combat zone shall be excluded when determining the assistance group's income for food assistance purposes.
- (y) Disaster unemployment assistance provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 100-707, (11/1988), to individuals unemployed as a result of a major disaster.
- (z) Filipino veterans equity compensation funds payments under the American Recovery and Reinvestment Act of 2009 (02/2009, Pub. L. No. 111-5) made to certain veterans, or surviving spouses of veterans, who served in the military of the government of the commonwealth of the Philippines during World War II.
- (aa) Any aid, services, or incentives provided to an eligible beneficiary participating in programs funded by the health profession opportunity grants (HPOG) under the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, (03/2010).
- (2) Payments made to American Indians or Alaska Natives that are excluded by law. A list of funds provided to American Indians or Alaska Natives that are excluded by law can be found at:

<http://www.fns.usda.gov/fdd/programs/fdpi/Excluded Native American Funds 2011.pdf>

- (D) All loans, including loans from private individuals as well as commercial institutions, are excluded as income. Educational loans on which repayment is deferred shall be excluded pursuant to the provisions in paragraph (C)(1)(r) of this rule.
- (E) Reimbursements for past or future expenses are excluded to the extent they do not exceed actual expenses and do not represent a gain or benefit to the assistance group. No portion of benefits provided under Title IV-A of the Social Security Act of 1935, to the extent such benefits are attributed to adjustment for work-related or child care expenses shall be considered excludable under this paragraph.
- (1) 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. Reimbursements for normal living expenses of the assistance group, 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.
- (2) The amount by which a reimbursement exceeds the actual incurred expense shall be counted as income. However, reimbursements shall not be considered to exceed the actual expenses, unless the provider or the assistance group indicates the amount is excessive.
- (F) Monies received and used for the care and maintenance of a third-party beneficiary who is not an assistance group member. If the intended beneficiaries of a single payment are both assistance group and non-assistance group members, any identifiable portion of the payment intended and used for the care and maintenance of the non-assistance group member shall be excluded. If the non-assistance group member's portion cannot be readily identified, the payment shall be evenly prorated among intended beneficiaries and the exclusion applied to the non-assistance group member's pro rata share or the amount actually used for the non-assistance group member's care and maintenance, whichever is less.
- (G) The earned income of any assistance group members who live with a natural, adoptive, or stepparent, or under the parental control of an assistance group member other than a parent, who are elementary or secondary school students, and who are seventeen years of age or younger. For purposes of this provision, an "elementary or secondary school student" is someone who attends classes to obtain a general equivalency diploma (GED) that are recognized, operated, or supervised by the student's state or local school district. The provision also applies to a student who attends elementary or secondary classes through a home-school program recognized or supervised by the student's state or local school district. This income is excluded even 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 the amount of work performed cannot be differentiated from that of other assistance group members, the total earnings shall be prorated equally among the working members and the child's pro rata share excluded. Individuals are considered children for this exclusion if they are under the parental control of another assistance group member. If an assistance group contains a student whose income is excluded and the student turns eighteen during the month of application, the student's earnings shall be excluded in the month of application and counted in the following month(s). If the student turns eighteen during the certification period, the student's income shall be excluded until the month following the month in which the student turns eighteen.

(H) 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 pension, the learning, earning and parenting (LEAP) program enrollment bonus payment, or other payment; retroactive lump-sum insurance settlements; refunds of security deposits on rental property or utilities; medical loss ratio rebates afforded under the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148 (03/2010); or prevention, retention and contingency (PRC) payments made to divert an assistance group from becoming dependent on cash assistance if the payment is not defined as assistance. Temporary assistance for needy families (TANF) non-recurrent, short term benefits are defined in 45 CFR 260.31(b)(1) (revised October 1, 2001). These payments shall be counted as resources in the month received, unless specifically excluded from consideration as a resource by other federal laws.

(I) Miscellaneous income exclusions.

(1) Irregular income

Any income in the certification period that is acquired too infrequently or irregularly to be reasonably anticipated, but not in excess of thirty dollars in a quarter.

(2) Costs of self-employment

The cost of producing self-employment income. See rule 5101:4-6-11 of the Administrative Code for the procedures on computing the cost of producing self-employment income.

(3) Income from ineligible assistance group members

The prorated share of earned or unearned income of an ineligible assistance group member in accordance with rule 5101:4-6-13 of the Administrative Code.

(4) 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 of 1935 (42 U.S.C. 601), including utility reimbursements made by HUD and the rural housing service, or

(b) 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.

(5) Blood and blood plasma sales

Any income which is acquired from the sale of blood or blood plasma.

(6) Garage sales

Any income which is acquired from garage sales.

(7) Interest income

Any interest income from savings or other financial accounts.

(8) Bingo winnings

Any income from bingo winnings.

(J) Certain payments from the child and adult care food program

That portion of payments from the child and adult care food program to assistance groups providing child care services intended for the provider's own children's meals. See paragraph (B)(2) of rule 5101:4-4-19 of the Administrative Code for treatment of that portion of child and adult care food program payments intended for providing services to children other than the provider's own.

(K) Payments which are not considered income.

(1) Monies withheld from an assistance payment, earned income, or other income source, or monies received from any income source which are voluntarily or involuntarily returned to repay a prior overpayment received from the income source, provided that the overpayment is not otherwise excluded. However, monies withheld from assistance from a federal, state, or local means-tested program (for example, Ohio works first (OWF) or DFA) due to the assistance group's failure to perform an action required under these programs, shall be included as income in accordance with rule 5101:4-6-16 of the

Administrative Code.

- (2) Child support payments received by OWF recipients which must be transferred to the agency administering Title IV-D of the Social Security Act of 1935 to maintain OWF eligibility.
- (3) Governmental or court-ordered foster care payments received by assistance groups with foster care individuals who are considered to be boarders.

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