

## § 253.6

## 7 CFR Ch. II (1-1-05 Edition)

what additional information is required. The processing time for the capability determination shall start from the date the additional information is received by FNS.

(B) Upon FNS' determination that the ITO will administer the Food Distribution Program on Indian Reservations, FNS shall expeditiously plan for and provide needed training and technical assistance to facilitate timely commencement of tribal administrative responsibilities. The ITO shall have 120 days from FNS' determination in paragraph (m)(1)(i)(A) of this section to submit and have approved a plan of operation, operating manuals, and to commence program operations under the regulations as specified in this part. Extensions may be granted by FNS to ITOs if good cause is shown.

(C) If FNS determines that an ITO is not capable of administering the Food Distribution Program on Indian Reservations, FNS shall direct the State to continue program operations and submit a new plan of operation and to commence program operations under the regulations as specified in this part within 120 days from FNS' determination in paragraph (m)(1)(i)(A) of this section.

(ii) If an ITO currently administers the Food Distribution Program on Indian Reservations, the timeframes specified in paragraph (m)(1)(i) of this section apply except that:

(A) FNS shall determine tribal eligibility and capability to administer the Food Distribution Program on Indian Reservations within 30 days of receipt of a completed application.

(B) If FNS determines that the ITO will not administer the Food Distribution Program on Indian Reservations, FNS shall direct the ITO to continue program operations until the State government can commence program operations. The State government shall have 120 days from FNS' determination in paragraph (m)(1)(i)(A) of this section to submit and have approved a plan of operation and to commence program operations under the regulations as specified in this part.

(iii) If an ITO does not currently participate in a Food Distribution Program on Indian Reservations, the timeframes in paragraph (m)(1)(i) of this

section apply except that if FNS determines that an ITO cannot administer the program, FNS shall direct the State to submit a plan of operation and to commence program operations under the regulations as specified in this part within 180 days from the determination.

(iv) Extensions to the above implementation timeframe (except for those timeframes set forth in paragraphs (m)(1)(i)(A) and (ii)(A) of this section) may be granted by FNS to ITOs or State government agencies if there is compelling justification involving circumstances which were not reasonably foreseeable and which are not the fault of the ITO or the State agency and which circumstances present extraordinary problems that would render earlier implementation impossible.

(Approved by the Office of Management and Budget under control number 0584-0071)

(44 U.S.C. 3506; E.O. 12372, July 14, 1982, 47 FR 30959, sec. 401(b) of the Intergovernmental Cooperation Act of 1968, 31 U.S.C. 6506(c))

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### § 253.6 Eligibility of households.

(a) *Household concept.* (1) The State agency shall determine eligibility for the Food Distribution Program on a household basis. Household means any of the following individuals or groups of individuals, provided that such individuals or groups are not boarders or residents of an institution and provided that separate household or boarder status shall not be granted to a spouse of a member of the household, or to children under 18 years of age under the parental control of a member of the household.

(i) An individual living alone.

(ii) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others.

(iii) A group of individuals living together for whom food is customarily purchased in common and for whom meals are prepared together for home consumption.

(2) *Nonhousehold members.* The following individuals residing with a household shall not be considered household members in determining the household's eligibility. Nonhousehold members specified in paragraphs (a)(2)(i) and (v) who are otherwise eligible may participate in the Program as separate households.

(i) *Roomers.* Individuals to whom a household furnishes lodging, but not meals, for compensation.

(ii) *SSI recipients in "cash-out" States.* Recipients of SSI benefits who reside in a State designated by the Secretary of Health, Education, and Welfare to have specifically included the value of the coupon allotment in its State supplemental payments. These persons are not eligible for Food Distribution Program benefits.

(iii) *Disqualified individuals.* Individuals disqualified from the Food Stamp Program for fraud, as set forth in § 273.16.

(iv) *Illegal residents.* Individuals who are not legal residents of the United States. While U.S. citizenship is not required for participation in the Food Distribution Program, persons receiving food distribution benefits must be lawfully living in the United States.

(v) *Others.* Other individuals who share living quarters with the household but who do not customarily purchase food and prepare meals with the household. For example, if the applicant household shares living quarters with another family to save on rent, but does not purchase and prepare food together with that family, the members of the other family are not members of the applicant household.

(3) *Authorized representatives.* The head of the household, spouse, or any other responsible member of the household may designate an authorized representative to act on behalf of the household in making application for commodities and/or obtaining commodities as provided in § 253.7(a)(10)(i) and § 253.7(a)(10)(ii) respectively.

(b) *Residency or citizenship.* (1) All households residing on a reservation on which the FDPIR operates shall be eligible to apply for program benefits on that reservation regardless of whether they include an Indian member. All Indian tribal households as defined in

§ 253.2(c) of this part which reside in near areas established under § 253.4(d) of this part shall be eligible to apply for program benefits. The ITO or State agency shall serve all income-eligible applicant households residing on reservations who apply for benefits, and all income-eligible applicant Indian tribal households residing in near areas. The ITO or State agency administering the program in a near area shall, for purposes of determining program eligibility, accept documentation from a household member's tribe of origin as proof of tribal membership. Residency shall not mean domicile nor shall the State agency impose any durational residency requirement. However, persons on the reservation solely for vacations shall not be considered residents. No household may participate in the Food Stamp Program or in the Food Distribution Program in more than one geographical area at the same time.

(2) No person shall participate in the Food Distribution Program on an Indian reservation unless the person is legally a resident of the United States. A further discussion of "legal residency" is provided in paragraph (a)(2)(iv) of this section.

(c) *Income and resource eligibility standards of public assistance, supplemental security income, and certain general assistance households.* (1) Households in which all members are included in a federally aided public assistance or supplemental security income grant, except as provided for in paragraph (a)(2)(ii) of this section, shall, if otherwise eligible under this part, be determined to be eligible to participate in the Food Distribution Program while receiving such grants without regard to the income and resources of the household members.

(2) If FNS determines that a State or local general assistance program applies criteria of need the same as or similar to, those applied under any of the federally aided public assistance programs, households in which all members are included in such a general assistance grant, shall, if otherwise eligible under this part, be determined to be eligible to participate in the Food Distribution Program while receiving

## § 253.6

## 7 CFR Ch. II (1-1-05 Edition)

such grants without regard to the income and resources of household members.

(d) *Resource eligibility standards*—(1) *Uniform household standards for non-assistance households.* The State agency shall apply uniform national resource standards of eligibility to all applicant households, except those in which all members are recipients of federally aided public assistance, supplemental security income, or certain general assistance program benefits as provided in paragraph (c)(2) of this section. The maximum allowable resources shall not exceed \$1,750 for the household; except that, for households of two or more members which include a member or members age 60 or over, such resources shall not exceed \$3,000.

(2) *Resources.* In determining the resources of a household, only cash on hand, money in checking or savings accounts, savings certificates, stocks, or bonds, or other readily negotiable and accessible certificates or instruments shall be counted; except that the following resources shall be entirely excluded:

(i) The cash value of life insurance policies and pension funds, including funds in pension plans with interest penalties for early withdrawals, such as a Keogh plan or an Individual Retirement Account (IRA), as long as the funds remain in the pension plans.

(ii) 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 of disaster loans or grants made by the Small Business Administration.

(iii) Resources, such as those of students or self-employed persons, which have been prorated as income. The treatment of self-employment income is explained in § 253.7(b)(1)(iii).

(iv) Resources which are excluded by express provision of Federal statute. The following is the current listing of resources excluded by Federal statute:

(A) Payment received under the Alaska Native Claims Settlement Act (Pub. L. 92-203, section 21(a) or the Sac and

Fox Indian claims agreement Pub. L. 94-189);

(B) Payments received by certain Indian tribal members under Pub. L. 94-114, section 6, regarding submarginal land held in trust by the United States;

(C) Payments received by certain Indian tribal members under Pub. L. 94-540 regarding the Grand River Bank of Ottawa Indians;

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

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

(3) *Jointly owned resources.* Resources owned jointly by separate households shall be prorated between or among those households unless the applicant can demonstrate that such resources are inaccessible to it because access to the value of the resource is dependent upon the agreement of a joint owner who refuses to comply.

(4) *Resources of disqualified members.* Resources of individuals disqualified from participation in the Food Stamp Program for fraud shall continue to count in their entirety to the remaining household members when determining the household's eligibility for the Food Distribution Program.

(e) *Income*—(1) *Income eligibility standards for nonassistance households.* (i) The State agency shall apply uniform national income eligibility standards for the Food Distribution Program except for households in which all members are recipients of public assistance, supplemental security income except as provided for in paragraph (a)(2)(ii) of this section, paragraph (c) of this section, or certain general assistance program payments as provided in § 283.6(c). The income eligibility standards shall be the monthly income eligibility standards for the Food Stamp Program in the State, increased by the amount of the standard deduction for that State, as published in the appendix to § 273.9.

(ii) The income eligibility standards for the Food Distribution Program shall be adjusted each October 1, as necessary, to reflect changes in the

## Food and Nutrition Service, USDA

## § 253.6

Food Stamp Program income eligibility limits and standard deductions.

(2) *Definition of income.* Household income shall mean all income from whatever source, excluding only items specified in paragraph (e)(3) of this section.

(i) Earned income shall include:

(A) All wages and salaries of an employee.

(B) The total gross income from a self-employment enterprise, including the net profit from the sale of any capital goods or equipment related to the business. Ownership of rental property shall be considered a self-employment enterprise. Payments from a roomer and returns on rental property shall be considered self-employment income.

(C) Training allowances from vocational and rehabilitative programs recognized by Federal, State or local governments, such as the Work Incentive Program, and programs authorized by the Job Training Partnership Act, to the extent they are not a reimbursement.

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

(A) 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, or other assistance programs based on need.

(B) Annuities; pensions; retirement; veteran's or disability benefits; worker's or unemployment compensation; old-age, survivors, or social security benefits; strike benefits; foster care payments for children or adults.

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

(D) Scholarships, education grants, fellowships, deferred payment loans for education, veteran's education benefit and the like in excess of amounts excluded under paragraph (e)(3)(iii) of this section.

(E) 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.

(F) The earned or unearned income of an individual disqualified from partici-

pation in the Food Stamp Program for fraud shall continue to be counted as income, less the pro rata share for the disqualified member. Procedures for calculating this pro rata share are described in §253.7.

(iii) Income shall not include the following:

(A) 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 that income source.

(B) Child support payments received by TANF recipients which must be transferred to the agency administering title IV-D of the Social Security Act of 1935, as amended, to maintain TANF eligibility.

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

(i) Any gain or benefit which is not in the form of money payable directly to the household, including:

(A) *In-kind income.* Nonmonetary or in-kind benefits, such as meals, clothing, public housing, or produce from a garden.

(B) *Vendor payments.* A payment made in money on behalf of a household shall be considered a vendor payment whenever a person or organization outside of the household uses its own funds to make a direct payment to either the household's creditors or a person or organization providing a service to the household. For example, if a relative, who is not a household member, pays out of its own resources the household's rent directly to the landlord, the payment is considered a vendor payment and is not counted as income to the household. Also, payments specified by a court order or other written support or alimony agreement to go directly to a third party rather than the household and support payments which are paid to a third party are excluded as vendor payments. Wages garnished or diverted by employers, or money deducted or otherwise diverted from a household's public assistance grant by a State for purposes such as managing the household's expenses, shall not be considered

**§ 253.6**

**7 CFR Ch. II (1-1-05 Edition)**

a vendor payment, since the person or organization making the payment is using money payable to the household rather than its own funds.

(ii) 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.

(iii) Education loans on which payment is deferred, grants scholarships, fellowships, veterans' educational benefits, and the like to the extent that they are used for tuition and mandatory school fees. Mandatory fees are those charged to all students or those charged to all students within a certain curriculum. For example, uniforms, lab fees, or equipment charged to all students to enroll in a chemistry course would be excluded. However, transportation, supplies, and textbook expenses are not uniformly charged to all students and, therefore, would not be excluded as mandatory fees.

(iv) All loans, including loans from private individuals as well as commercial institutions, other than education loans on which repayment is deferred.

(v) Reimbursements for past or future expenses to the extent they do not exceed actual expenses. For example, reimbursements of flat allowances for job or training related expenses such as travel per diem, uniforms, and transportation to and from the job or training site are excluded as income.

(vi) Monies received and used for care and maintenance of a third party beneficiary who is not a household member.

(vii) The earned income (as defined in paragraph (e)(2)(i) of this section) of children who are members of the household, who are students at least half time and who have not attained their eighteenth birthday. 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. Individuals are considered children for purposes of this provision if they are under the parental control of another household member.

(viii) 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, or retroactive lump-sum insurance settlements; refunds of security deposits on rental properties or utilities or lump-sum payments arising from land interests held in trust for, or by, a tribe. These payments shall be counted as resources in the month received unless specifically excluded from consideration as a resource by other Federal law.

(ix) The cost of producing self-employment income. The procedures for computing the cost of producing self-employment income are described in § 253.7(b)(1)(iii).

(x) Any income that is specifically excluded by any other Federal statute from consideration as income. The following Federal statutes provide such an exclusion.

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

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

(C) Any payment to volunteers under Title II (RSVP, foster grandparents, and others) and title III (SCORE and ACE) of the Domestic Volunteer Services Act of 1973 (Pub. L. 93-113), as amended. Payments under title I (VISTA) to volunteers shall be excluded for those individuals receiving federally donated commodities, food stamps, or public assistance at the time they joined the title I program, except that households which are receiving an income exclusion for a VISTA or other title I subsistence allowance at the time of implementation of these rules shall continue to receive an income exclusion for VISTA for the length of their volunteer contract in effect at the time of implementation of these rules. Temporary interruptions in food distribution shall not alter the exclusion once an initial determination has been made. New applicants who are not receiving federally donated commodities, food stamps or public assistance at the time they joined VISTA shall have these volunteer payments included as earned income.

(D) 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).

(E) Payments received by certain Indian tribal members under Pub. L. 94-540 regarding the Grand River Band of Ottawa Indians.

(f) *Income deductions.* (1) Households with earned income, as defined in paragraph (e)(2)(i) of this section, shall be allowed a deduction of twenty percent of their earned income. Earned income excluded under paragraph (e)(3) of this section shall not be considered earned income for the purpose of computing this deduction.

(2) Households shall also receive a deduction for the actual costs for the care of a child or other dependent when necessary for a household member to accept or continue employment or attend training or pursue education which is preparatory to employment. This deduction shall not exceed the maximum allowable deduction for dependent care costs allowable under the Food Stamp Program in the 48 States and the District of Columbia.

(3) Households will receive a deduction for legally required 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). The State agency must allow a deduction for amounts paid towards overdue child support (arrearages). Alimony payments made to or for a nonhousehold member cannot be included in the child support deduction.

(4) Households will receive a deduction for the full amount of the Medicare Part B medical insurance premium that is withheld from the Federal retirement or disability payment of a household member or is paid by a household member directly to Medicare. This income deduction is not allowed in situations where the premium is paid by the State on behalf of the Medicare beneficiary or where household members are not Medicare beneficiaries because they receive their health care through the Indian Health Service.

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#### § 253.7 Certification of households.

(a) *Application processing*—(1) *General purpose.* The application process includes filing and completing an application form, being interviewed, and having certain information verified. The State agency shall act promptly on all applications. Expedited service shall be available to household in immediate need. When the State agency is other than the ITO, the ITO, when appropriate, may receive copies of certification and/or termination notices to the extent requested or agreed upon by the household. State agencies and ITOs may develop formalized mechanisms to ensure ITO receipt of notices.

(2) *Food Distribution Program application form.* The State agency shall use an application form acceptable to FNS. The State agency shall consult with the ITO in developing the application form. The State agency shall make application forms readily accessible to potentially eligible households and those groups or organizations involved in outreach efforts. The State agency shall also provide an application form to anyone who requests the form. State agencies which elect joint PA or GA/Food Distribution Program procedures shall follow the requirements of paragraph (g) of this section for the application form. State agencies may also use an abbreviated recertification form.

(3) *Filing an application.* Households must file an application for the Food Distribution Program by submitting the form to a certification office in person, through an authorized representative or by mail. The State agency shall document the date the application was received. Each household has the right to file an application form the same day it contacts the certification office during office hours on the reservation where the household resides. The household shall be advised that it does not have to be interviewed before filing the application and may file an incomplete application form as long as the application contains the applicant's name and address and is signed by a responsible member of the household or the household's authorized representative.

(4) *Household cooperation.* To determine eligibility, the application form