

§ 418.3345

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has been reduced to recover an overpayment. In such a situation, you are repaying a legal obligation through the withholding of portions of your benefit amount, and the amount of this withholding is part of your unearned income.

(2) We also include more than you actually receive if amounts are withheld from unearned income because of a garnishment, or to pay a debt or other legal obligation, or to make any other payment such as payment of your Medicare premiums.

(3) We include less than you actually receive if part of the payment is for an expense you had in getting the payment. For example, if you are paid for damages you receive in an accident, we subtract from the amount of the payment your medical, legal, or other expenses connected with the accident. If you receive a retroactive check from a benefit program, we subtract legal fees connected with the claim. We do not subtract from any taxable unearned income the part you have to use to pay personal income taxes. The payment of taxes is not an expense you have in getting income.

(d) *Retroactive benefits.* We count retroactive monthly benefits such as social security benefits as unearned income in the year you receive the retroactive benefits.

(e) *Certain veterans benefits.* If you receive a veterans benefit that includes an amount paid to you because of a dependent, we do not count as your unearned income the amount paid to you because of the dependent. If you are a dependent of an individual who receives a veterans benefit and a portion of the benefit is attributable to you as a dependent, we count the amount attributable to you as your unearned income if you reside with the veteran or you receive your own separate payment from the Department of Veterans Affairs.

(f) *Social Security cost-of-living adjustment.* We will not count as income the amount of the cost-of-living adjustment for social security benefits for any month through the month following the month in which the annual revision of the Federal poverty guidelines is published.

§ 418.3345 How do we determine the value of in-kind support and maintenance?

(a) You can receive in-kind support and maintenance, such as food and shelter, if you live alone, with others, or in a facility, or in an institution. The amount of income you derive from in-kind support and maintenance is the current market value of the food and shelter provided to you and your living-with spouse by someone other than you or your living-with spouse. Shelter includes room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services.

(b) The maximum amount of income we count from in-kind support and maintenance during a month is limited to one-third of the monthly SSI Federal benefit rate for an eligible individual (as described in § 416.410 of this chapter) that is in effect for the period for which you are applying or are eligible for a subsidy. If you are married and living with your spouse, the maximum amount of income you and your spouse receive from in-kind support and maintenance during a month is limited to one-third of the monthly SSI Federal benefit rate for an eligible couple (as described in § 416.412 of this chapter). If the current market value of the in-kind support and maintenance you receive is less than one-third of the applicable monthly SSI Federal benefit rate, we count only the current market value as income.

§ 418.3350 What types of unearned income do we not count?

(a) While we must know the source and amount of all of your unearned income, we do not count all of it to determine your eligibility for the subsidy. We apply to your unearned income the exclusions in § 418.3350(b) in the order listed. However, we never reduce your unearned income below zero and we never apply any unused unearned income exclusion to earned income except for the \$20 per month exclusion described in § 416.1124(c)(12) of this chapter. For purposes of determining eligibility for a subsidy, and whether you should receive a full or partial subsidy, we treat the \$20 per