CHAPTER IV
ELIGIBILITY CRITERIA

SECTION 1 - DETERMINING HOUSEHOLD ELIGIBILITY

4100 DETERMINING HOUSEHOLD ELIGIBILITY

The following steps will lead to the final eligibility determination of a household.

A. Establish household composition (membership).

B. Establish the household's residency on the reservation or status as an Indian Tribal Household if living in a near area.

C. Determine if the household automatically meets the financial eligibility criteria requirements without testing income (PA, GA, and SSI households).

D. Determine if the nonassistance household meets financial eligibility criteria requirements by testing the household's net food distribution income against the food distribution income standards (see Exhibit M for the contiguous United States and Alaska, attached) for the appropriate household size.

4101 Determining Eligibility and Benefit Level for Households with a Disqualified Member(s)

The disqualified member is not included when determining the household's size for purposes of assigning the level of USDA foods to be received by the household or for purposes of comparing the household's net monthly income with the income eligibility standards. See paragraph 4730 for instructions on the handling of the income of a disqualified household member.

SECTION 2 - NONFINANCIAL ELIGIBILITY CRITERIA

4200 NONFINANCIAL ELIGIBILITY STANDARDS

This section provides a description of the nonfinancial criteria (i.e., residency and household composition) that all households must meet.

4210 RESIDENCY

A household must be living on the reservation in which it files an application for participation. Households living in approved near areas or in FNS service areas in Oklahoma (see paragraph 4212) must qualifying as an Indian Tribal Household to participate in the program.

For the purposes of determining residency, a household's place of residence does **not** have to be a permanent structure at a fixed address, such as a house, apartment, mobile home or trailer, hogan, or pueblo. Also, an ITOs/State agency cannot impose any durational residency requirements. However, persons must be living on the respective reservation, near area, or FNS service area the majority of the time as their primary residence. Persons on the reservation solely for vacation, including weekend and holiday stays, cannot be considered residents. No household may participate in SNAP or in the Food Distribution Program in more than one geographical area at the same time.

4211 Citizenship

ITOs/State agencies may choose to either provide or deny program benefits and services to persons who are not U.S. citizens or do not meet the definition of qualified alien at 8 U.S.C. 1641(b). If a State agency chooses to expand participation to unqualified aliens, it should consult with State or tribal legal counsel in the development of any new procedures.

ITOs/State agencies that choose to continue to limit participation to qualified aliens should be aware that section 289 of the Immigration and Nationality Act (INA) provides permanent resident status to persons born in Canada who have at least 50 percent Native American blood. Therefore Canadian Indians who fulfill the requirements of section 289 of the INA are considered to have legal resident status and must be treated the same as qualified aliens for Food Distribution Program purposes. To demonstrate qualification under section 289 of the INA, individuals must show proof of birth in Canada and certification of at least 50 per centum Native American blood. The following documents issued by the Immigration and Naturalization Service (INS) identify the holder as qualifying for permanent resident status under section 289 of the INA: INS Form I-551 with the code S13 or unexpired temporary I-551 stamp in Canadian passport or on INS Form 1-94 with the code S13.

4212 Near Area or FNS Service Area

The Food Distribution Program may operate in areas near a reservation and in FNS service areas in Oklahoma as specified in the ITO's/State agency's Plan of Operation and approved by FNS. Households living in these approved areas may participate in the program as an Indian Tribal Household if at least one household member is recognized as a tribal member of any Indian tribe (see definition of "Indian Tribal Household" in paragraph 1110). The Bureau of Indian Affairs of the U.S. Department of Interior periodically publishes a notice in the Federal Register listing the federally recognized Indian tribes in the United States.

4213 Urban Places

Households living in urban places within a reservation may, if otherwise eligible, participate in the Food Distribution Program. However, participation is prohibited in urban places outside a reservation (in accordance with 7 CFR 253.4(d)) and in FNS service areas in Oklahoma (in accordance with 7 CFR 254.5(b)). ITOs/State agencies may request a waiver of these requirements. Waiver requests, with appropriate justification, must be submitted to the appropriate FNS Regional Office.

4220 HOUSEHOLD COMPOSITION

Households must list on their applications the various members to be considered for food distribution benefits. The ITO/State agency must examine each application to determine if there are members who may not be eligible to participate in the household (see paragraph 3410 for a listing of nonhousehold members and ineligible persons).

The ITO/State agency must verify any questionable information provided by the household about the composition of the household, such as the household's size. However, as it is difficult to verify if a group of individuals customarily purchases and prepares meals together and, therefore, constitutes a household, the ITO/State agency will generally accept the household's statement regarding food preparation and purchasing (see paragraph 3400).

SECTION 3 - FINANCIAL ELIGIBILITY CRITERIA
CATEGORICALLY ELIGIBLE HOUSEHOLDS

4300 CATEGORICALLY ELIGIBLE HOUSEHOLDS

4310 PA AND SSI HOUSEHOLDS

Households in which all members are included in a federal public assistance or SSI grant, except those SSI participants discussed in paragraph 3412, automatically meet income eligibility requirements for the Food Distribution Program. Therefore, the ITO/State agency will not test any of the incomes of the households against the Food Distribution income standards.

4320 GA HOUSEHOLDS

Households in which all members are included in an FNS approved general assistance grant (see paragraph 3220) or a combination of GA, PA, and SSI grants, automatically meet income eligibility requirements for the Food Distribution Program. The ITO/State agency will not test any of the incomes of these households against the Food Distribution income standards.

4330 NONASSISTANCE HOUSEHOLDS

The ITO/State agency must test the incomes of all households in which one or more members do not participate in PA, SSI, and/or GA grants against the Food Distribution Program income standards. Nonassistance households must meet the financial as well as the nonfinancial eligibility criteria in order to receive USDA foods.

SECTION 4 - RESOURCES

4400 RESOURCES

Household resources (e.g., cash on-hand, money in checking or saving accounts, stocks, bonds, saving certificates) are excluded when determining household eligibility.

SECTION 5 - INCOME

4500 INCOME

This section defines nonexcluded and excluded income and allowable deductions.

Household income includes all income from whatever source except for the exclusions listed in paragraph 4540. Income is categorized as earned or unearned. The ITO/State agency must count nonexcluded income that is reasonably anticipated to be received over the proposed certification period.

4510 BASIS OF NATIONAL INCOME ELIGIBILITY STANDARDS

In accordance with 7 CFR 253.6(e), the income eligibility standards for the Food Distribution Program are the net monthly eligibility standards for SNAP increased by the amount of the applicable standard deduction. The income eligibility standards are adjusted each October 1, as necessary, to reflect changes in SNAP income eligibility limits and standard deductions. The income eligibility standards are listed in Exhibit M of this handbook. Revised exhibits will be provided annually by the appropriate FNS Regional Office.

4511 Income Eligibility Standards for Nonassistance Households

The ITO/State agency must apply the uniform national income eligibility standards for the Food Distribution Program to nonassistance households. Households that are categorically eligible are treated in accordance with the provisions in paragraphs 4310 and 4320.

4520 EARNED INCOME

The following types of income are considered earned:

A. Wages. All wages and salaries of an applicant household. The portion of wages that is garnished for court-ordered support or alimony is considered income (see paragraph 4542.1).

B. Self-employment. The gross income from a self-employment enterprise, including the net profit from the sale of any capital goods or equipment related to the business. Payments from roomers and returns on rental property are considered self-employment income (see paragraph 4720).

C. Training Allowances. Training allowances from vocational and rehabilitative programs sponsored by Federal, State, or local governments to the extent they are not a reimbursement.

D. Work Study Earnings. College work study earnings are considered earned income unless excluded by law. Work study programs authorized by Title IV of the Higher Educational Act (20 U.S.C. 1087uu) are excluded; however, some Federal work study programs are not Title IV programs.

4530 UNEARNED INCOME

The following types of income are considered unearned. (This list is not inclusive.)

A. Assistance Payments. 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. Pensions, Disability Payments, and Social Security. Annuities; pensions; retirement accounts; veteran's or disability benefits; workman's or unemployment compensation; old-age, survivors' or social security benefits; and strike benefits. The gross amount of these payments is always used, even if taxes and/or other amounts are withheld.

C. Foster Care, Support, and Alimony. Foster care payments for children or adults counted as members of the household in which they reside. However, foster care payments for individuals that are categorized as boarders would not be counted as unearned income (see paragraph 3415). Support such as child support or alimony payments made directly to the household from nonhousehold members.

D. Student Financial Assistance. Scholarships, educational grants, fellowships, deferred payment loans for education, veteran's educational benefits, and the like unless excluded by law. Student financial assistance provided under Title IV of the Higher Educational Act (20 U.S.C. 1087uu) is excluded (see paragraph 4543D).

E. Grants, Interest Payments. Payments from government-sponsored programs, dividends, interest, royalties, and all other direct money payments from any source that can be construed to be a gain or benefit.

F. Income from Disqualified Members. The earned income (less the 20 percent earned income deduction) and unearned income of a disqualified household member less the pro rata share for the disqualified individual. If, for example, there are six members of a household and one of those persons is disqualified, the pro rata share is one-sixth of the income. The household receives five-sixths of the disqualified member’s income for Food Distribution Program eligibility purposes.

G. Federal Housing Administration's "Family Living Plan". Payments received on a monthly basis for household expenses.

H. Per Capita Payments from Gaming and Other Tribal Enterprises. Profits from gaming and other tribal enterprises paid to tribal members on a regular monthly basis. Per capita payments received less frequently than monthly (e.g., quarterly, semiannually, annually) are excluded from consideration as income.

I. Land-Lease and Treaty Income. Land lease and treaty income payments if payments are received more frequently than annually. See paragraph 4549E for treatment of land-lease and treaty income distributed on an annual basis.

J. Adoption Subsidies. Adoption subsidies if they are received on a recurring basis.

4540 EXCLUDED INCOME

The following types of income are excluded when computing a household's total income for testing against the Food Distribution Program income standards. No other income will be excluded.

4541 In-Kind Income

Any gain or benefit, not in the form of money, that is payable directly to the household, such as in-kind benefits. For example, meals, clothing, public housing, or produce from a garden are not considered income for eligibility purposes.

4542 Vendor Payments

A payment made in money on behalf of a household must 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 or friend who is not a household member pays the household's rent directly to the landlord, the payment is considered a vendor payment and is not counted as income to the household.

4542.1 Exception to Vendor Payment Rule - Legally Obligated Payments

Monies that are legally obligated and otherwise payable to the household that are diverted by the provider of the payment to a third party for a household expense must be counted as income and not considered as a vendor payment. The distinction is whether the person or organization making the payment on behalf of a household is using funds that would otherwise have been paid to the household. Such funds include wages earned by a household member and, therefore, are owed to the household, a public assistance grant to which a household is legally entitled, and support or alimony payments that legally must be paid to a household member.

If an employer, agency, or former spouse who owes these funds to a household diverts them instead to a third party to pay for a household expense, these payments are counted as income to the household. However, if an employer, agency, former spouse, or other person makes payments for household expenses to a third party from funds that are not owed to the household, these payments are considered vendor payments.

A. Example 1.

1. Income. Wages earned by a household member that are garnished or diverted by an employer and paid to a third party for a household's expenses, such as rent.

2. Vendor Payment. The employer pays a household's rent directly to the landlord in addition to paying the household its regular wages or the employer provides housing to an employee. The value of the housing is not counted as income.

B. Example 2.

1. Income. All or part of a public assistance grant that would normally be provided to the household is diverted to a third party or to a protective payee for purposes such as managing a household's expenses.

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2. Vendor Payment. A payment by the State agency that would not normally be provided to the household, that is over and above normal public assistance grant, and that is made directly to a third party for a household expenses. This rule applies even if the household has the option of receiving a direct cash payment.

C. Example 3.

1. Income. Money deducted or diverted from a court-ordered support or alimony payment (or other binding written support or alimony agreement) to a third party for a household expense.

2. Vendor Payment. 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) that are paid to a third party rather than the household, even if the household agrees to the arrangement.

4543 Income Excluded by Law

The ITO/State agency will not count any income that is specifically excluded by any other Federal statute from consideration as income. The following laws provide exclusion. (This list is not inclusive.):

A. See http://www.fns.usda.gov/fdd/programs/fdpir/fdpir_guidance.htm for a listing of Federal payments to American Indians and Alaska Natives that are excluded by law from consideration as income under a federal or federally-assisted means tested program.

B. Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Public Law 91-646, Section 216). The following payments are included under Title II of this Act:

1. Payments to persons displaced as a result of the acquisition of real property;

2. Relocation payments to a displaced homeowner toward the purchase of a replacement dwelling. Such payment may only be made to a displaced owner who purchases and occupies a dwelling within one year following displacement; and

3. Replacement housing payments to displaced persons not eligible for a homeowner's payments.

C. Payments to volunteers under the Domestic Volunteer Services Act of 1973 (Public Law 93-113, as amended), including the Retired and Senior Volunteer Program (RSVP), Foster Grandparent Program, Senior Companion Program, and Americorps*VISTA are excluded as income. Also, payments received by individuals participating in the Senior Community Service Employment Program authorized under the Older American Act of 1965 (Public Law 89-73) are excluded as income. Under these programs participants may receive an hourly tax-free wage, a reimbursement for transportation expenses, an end-of-service stipend, or an education award.

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D. Student financial assistance received from a program under Title IV of the Higher Education Act and/or funds received under a Bureau of Indian Affairs student assistance program (20 U.S.C.1087uu).

E. Payments made as a result of an emergency or major disaster (e.g., payments to farmers during natural disasters) in accordance with Section 312(d) of the Disaster Relief Act of 1974, as amended by the Disaster Relief and Emergency Assistance Amendments of 1988 (Public Law 100-707).

F. Allowances, earnings, and payments received by individuals participating in programs under the Workforce Investment Act of 1998.

G. Stipends paid to Indian vocational training students under the Carl D. Perkins Vocational and Applied Technology Education Act (Public Law 101-392). Stipends are defined as a subsistence allowance to cover attendance costs. Attendance costs are tuition and mandatory fees, rental or purchase of any equipment required of all students in the same course of study, books, materials, supplies, transportation, dependent care, and miscellaneous personal expenses for a student attending the institution on at least a halftime basis, as determined by the institution.

H. Payments provided under Public Law 104-204 to cover the health care of children with spina bifida who were born to Vietnam veterans.

L. Additional pay received by military personnel as a result of being deployed to a combat zone (i.e., combat pay) that is made available to the applicant or participating household via a direct deposit, military allotment, or other means. Only combat pay is excluded; other types of incentive, bonus, or special military pay are not excluded.

The source and amount of the payments received under any of the authorities identified above must be verified before they are excluded.

4544 Allowable Educational Expenses Paid From Nonexcluded Student Financial Assistance

Student financial assistance includes deferred educational loans, grants, scholarships, fellowships, and veterans' educational benefits. The portion of student financial assistance not excluded in paragraph 4543D which is used to pay allowable educational expenses is excluded from income. Allowable educational expenses include tuition and mandatory fees, books, supplies, transportation, and miscellaneous personal expenses other than normal living expenses. Mandatory fees are those charged to all students or charged to all students within a certain curriculum. For example, uniforms, lab fees, or equipment charged to all students in order to enroll in a chemistry course would be excluded. (See paragraph 4710.)

Student financial assistance used for or earmarked by the provider for normal living expenses is counted as income. Also, the exclusion in this paragraph does not apply to allowable education expenses paid from sources other than student financial assistance, such as student earnings or public assistance.

4545 Loans

All loans, including loans from private individuals as well as commercial institutions, other than deferred educational loans.

4546 Reimbursement for Expenses

Reimbursements for past or future expenses are excluded to the extent that they do not exceed actual expenses. For example, household members may receive reimbursements or flat allowances for travel expenses they incur (e.g., mileage, lodging, and meals) while attending training or working a temporary duty assignment. Household members may also be reimbursed for books, uniforms, equipment, tools, and other job or training related expenses.

4547 Third Party Payments

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

4548 Earnings of Children

The earned income of members of the household who are students at least halftime and who are not yet 18 years old. Their 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. Individuals are considered children for this exclusion if they are under the parental control of another household member. Emancipated minors are not considered children for the purposes of this provision.

4549 Miscellaneous Exclusions

A. Irregular Income. Any income in the certification period that is received too infrequently or irregularly to be reasonably anticipated but not in excess of $30 in a quarter.

B. Costs of Self-Employment. The cost of producing self-employment income. See paragraphs 4723 and 4724 for the procedures on computing the cost of producing self-employment income.

C. Recoupments. Monies withheld from an assistance payment, earned income, or other income source that are voluntarily or involuntarily returned to repay a prior overpayment received from that income source.

D. Lump-Sum Payments. Money received in the form of a non-recurring lump-sum payment, including but not limited to income tax refunds, Tribal per capita payments received less frequently than monthly, rebates, or credits; retroactive lump-sum social security, SSI, PA, and railroad retirement pension or other payment; retroactive lump-sum insurance settlements; or refunds of security deposits on rental property or utilities.

E. Land-Lease or Treaty Income. If annual payments are distributed to tribal members, such payments are considered nonrecurring lump-sum payments. If received more frequently than annually, the payments must be counted as income (see paragraph 4530I).

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F. Title IV-D Payments. Child support payments received by TANF recipients that must be transferred to the agency administering Title IV-D of the Social Security Act of 1935, as amended, to maintain TANF eligibility.

4550 DEDUCTIONS FROM INCOME

The deductions allowed for the Food Distribution Program are listed below. See paragraph 4630 on determining deductions.

Under paragraphs 4552, 4553, 4554 and 4555, expenses covered by excluded reimbursements or vendor payments are not deductible.

4551 Earned Income Deduction

A 20 percent deduction is applied to gross earned income, including self-employment income.

A. Self-Employment Income. The 20 percent earned income deduction is applied after the costs of doing business are subtracted from the gross self-employment income (see paragraph 4640).

B. Unearned Income Subject to Withholdings. The 20 percent earned income deduction is **not** applied to unearned income that is subject to withholdings (e.g., unemployment compensation).

C. Disqualified Household Member. The 20 percent earned income deduction is applied to the earned income of a disqualified household member (see paragraph 4731B).

4552 Dependent Care

Households may deduct the actual cost of care for a child or other dependent when necessary for a household member to search for, accept, or continue employment or to attend training or pursue education that is preparatory to employment. Dependent care expenses are only deductible if the care is provided by a non-household member and the household makes a money payment for the service. For example, a deduction is not allowed if another household member provides the care or compensation for the care is provided in the form of an in-kind benefit such as food. If dependent care expenses are incurred on a weekly or bi-weekly basis, the expense shall be converted to a monthly amount in accordance with paragraph 4621.

4553 Child Support

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 ITO/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. See paragraph 3539A on verification requirements for the child support deduction.

4554 Medical Expenses

Households receive an income deduction for medical expenses in excess of $35 per month, excluding special diets, incurred by any household member who is elderly or disabled as defined in paragraph 1110. Spouses or other persons receiving benefits as a dependent of a Supplemental Security Income (SSI) or disability and blindness recipient are not eligible to receive this deduction. However, persons receiving emergency SSI benefits based on presumptive eligibility are eligible for this deduction. The allowable medical costs are those permitted by SNAP under 7 CFR 273.9(d)(3) and are as follows:

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

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

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

D. Health and hospitalization insurance policy premiums. Costs that are not deductible include health and accident policies such as those payable in lump sum settlements for death or dismemberment or income maintenance policies such as those that continue mortgage or loan payments while the beneficiary is disabled.

E. Medicare premiums related to coverage under Title XVIII of the Social Security Act; any cost-sharing or spend down expenses incurred by Medicaid recipients. Note: An income deduction for Medicare premiums is not allowed in situations where the household member is not required to pay a premium. In some instances, the premiums are paid on behalf of the Medicare beneficiary. Also, a household member may not be a Medicare beneficiary because they receive their healthcare through the Indian Health Service.

F. Dentures, hearing aids, and prosthetics.

G. Securing and maintaining a seeing eye or hearing dog including the cost of dog food and veterinarian bills.

H. Eye glasses prescribed by a physician skilled in eye disease or by an optometrist.

I. Reasonable cost of transportation and lodging to obtain medical treatment or services.

J. Maintaining an attendant, homemaker, home health aide, child care services, or housekeeper necessary due to age, infirmity, or illness. If the household furnishes the majority of the attendant’s meals, then a meal-related deduction is allowed for the attendant. The amount of the meal-related deduction is based on the maximum SNAP allotment for a one-person household (see Exhibit M). If a household incurs attendant care costs that could qualify under both the medical deduction and the dependent care deduction, the ITO/State agency must treat the cost as a medical expense.

K. See paragraph 3539B on verification requirements for medical expenses.

4555 Shelter and Utility Expenses

Households that incur monthly shelter and/or utility expenses will receive a shelter/utility standard deduction, subject to the provisions below.

A. The household must incur, on a monthly basis, at least one allowable shelter or utility expense. The allowable shelter/utility expenses are those permitted for SNAP under 7 CFR 273.9(d)(6)(ii) and include:

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

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

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

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

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

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B. The shelter/utility standard deduction amounts are set and adjusted annually by FNS on a regional basis (See Exhibit M). FNS will advise the ITO/State agencies of the updates prior to October 1 of each year.

C. If eligible to receive a shelter/utility standard deduction, the applicant household may opt to receive the appropriate deduction amount for the State in which the household resides or the State in which the ITO/State agency's central administrative office is located.

SECTION 6 - DETERMINING HOUSEHOLD INCOME

4600 GENERAL STANDARDS FOR DETERMINING INCOME

For the purpose of determining the household's eligibility for the Food Distribution Program the ITO/State agency must take into account the income the household is currently receiving and any anticipated income the household and the ITO/State agency are reasonably certain will be received during the certification period.

A. If the amount of or the timing of income that will be received is uncertain, the ITO/State agency must not count that portion of the household's income that is uncertain. For example, a household anticipating income from a new source, such as a new job or recently applied for PA benefits, may be uncertain as to the timing and amount of the initial payment. These monies would not be counted by the ITO/State agency unless there is reasonable certainty concerning the month in which the payment will be received and the amount.

B. If the exact amount of the income is not known, that portion of it that is anticipated with reasonable certainty is counted as income.

C. In cases where the receipt is reasonably certain, but the monthly amount may fluctuate, the household may elect to average the income as described in paragraph 4622.

4610 DETERMINING INCOME

4611 Income in the Past 30 Days.

Income received during the past 30 days must be used as an indicator of the income that is available to the household during the certification period, unless changes in income have occurred or can be anticipated.

A. Steady Employment. In cases where the head of the household is steadily employed, income from the previous month is usually a good indicator of the amount of income that can be anticipated in the month of application and subsequent months. If information supplied by the household or a collateral contact indicates that future income will differ from the previous month's income, the ITO/State must use such information to make a reasonable estimate of anticipated income. The method used to determine income must be fully documented in the case file.

B. Hourly and Piece-Work Wages. When income is received on an hourly wage or piece-work basis, weekly income may fluctuate if the wage earner works less than eight hours some days or is required to work overtime on others. In this case the ITO/State agency should consult with the household to determine the "normal" amount of income expected as a result of one-week's work and if this is reasonably certain to be available on a regular basis during the certification period. This amount should be used to determine monthly income.

4612 Seasonal Income

If the household's income fluctuates seasonally, it may be appropriate to use the most recent season comparable to the certification period, rather than the last 30 days, as one indicator of anticipated income. The ITO/State agency must exercise particular caution in using income from a past season as an indicator of income for the certification period. The income may fluctuate

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from one season in one year to the same season in the next year. In no event will the ITO/State agency automatically attribute to the household the amounts of any past income.

4613 Withheld Wages

Wages held by the employer at the request of the employee must be considered income to the household in the month the wages would otherwise have been paid by the employer. However, wages held by the employer as a general practice, even if in violation of law, are not counted as income to the household unless the household anticipates that it will receive an advance or income from wages that were previously held by the employer.

4614 Self-Employment Income

Monies received from a self-employment enterprise less the allowable costs of doing business are to be considered when determining eligibility for the Food Distribution Program. Procedures for establishing countable self-employment earnings are discussed in more detail in paragraphs 4720 through 4727.

4615 Anticipated Income

Income anticipated during the certification period must be counted as income only in the month it is expected to be received unless the income is averaged.

4620 ASSIGNING INCOME FOR THE CERTIFICATION PERIOD

The following paragraphs describe the rules and procedures to be used for assigning monthly income levels.

4621 Actual Versus Converted Income

The ITO/State agency must choose from among the following options to determine monthly income when a full month's income is anticipated and income is received on a weekly or biweekly basis:

A. Convert the income to a monthly amount by multiplying weekly amounts by 4.3 and biweekly amounts by 2.15;

B. Convert the income to a monthly amount by multiplying weekly and biweekly amounts by the ITO’s/State agency’s conversion standard; or

C. Use the exact figure if it can be anticipated for each month of the certification period.

4622 Averaging Income -- Optional

In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate and the household’s income is close to the income eligibility limit, the ITO/State agency may elect to average income provided that such averaging does not disadvantage the household. The averaging must be based on income that is anticipated to be available to the household during the certification period.

4623 Averaging Income -- Mandatory

A. Contract or Self-Employment Annual Income. Contract employees or households whose self-employment income represents the household's annual support, including the net profit from the sale of any capital goods or equipment related to the business, must be annualized over a 12-month period. These households may include school employees, share croppers, farmers, and other self-employed households. The procedures for averaging self-employed income are described in paragraph 4725.

B. Non-Annual Contract or Self-Employment Income. Households whose contract or self-employment income represents only a part of the household's annual support, must have their income averaged over the period of time it is intended to cover. For example, self-employed vendors who work only in the summer and supplement their income from other sources during the balance of the year must have their self-employment income averaged over the summer months rather than a 12-month period.

C. Educational Grants, etc. Households receiving scholarships, deferred education loans, or other educational grants must have such income, after exclusions, averaged over the period for which it was provided. See paragraph 4710 for instructions on handling student income.

4630 DETERMINING DEDUCTIONS

4631 Limitation on Allowable Deductions

The income deductions allowed under the Food Distribution Program are limited to those listed in paragraph 4550.

4632 Billed Expenses Deducted in Month Due

Deductions are allowed in the month the expense is billed or otherwise becomes due, regardless of when the household intends to pay the expense. Amounts carried forward from past billing periods are not deductible even if included with the most recent billing and actually paid by the household. Expenses can only be deducted once.

4633 Fluctuating Expenses and Converting to a Monthly Amount

If the expense fluctuates, the household may elect to have the expenses averaged.

If the household is billed on a weekly or biweekly basis, the ITO/State agency must use the applicable conversion procedure in paragraph 4621.

4640 CALCULATION OF NET MONTHLY INCOME

The following steps lead to the determination of a household's net monthly income. See paragraphs 4710 and 4720 for more details on determining monthly income for households with student financial assistance or self-employment income.

A. Total Gross Earned Income. Add together the gross monthly income earned by all household members to determine the household's total gross earned income. Do not round at this point.

(4640)

B. Total Self-Employment Income. If applicable, add together the self-employment income (as calculated at paragraph 4727) from the various enterprises engaged in by all household members to determine the household's total self-employment income. Do not round at this point.

C. Total Gross Earned and Self-Employment Income. Add together the total gross earned income from 4640A and the total self employment income from 4640B. Do not round at this point.

D. Net Monthly Earned Income. Subtract 20 percent from the total amount from 4640C to determine the net monthly earned income. Do not round at this point.

E. Unearned Income. Add to net monthly earned income (4640D), the total monthly unearned income of all household members, minus income exclusions allowed under paragraph 4540. Do not round at this point.

F. Student Financial Assistance. If applicable, add the average monthly student financial assistance (as calculated at paragraph 4711). Do not round at this point.

G. Other Allowable Deductions. Subtract allowable monthly expenses for dependent care, child support, medical expenses, and region-specific standard amounts for shelter/utility expenses, if applicable. Do not round at this point.

H. Round the total amount from 4640G. Use one of the following two rounding procedures: 1) Round down an amount that ends in 1 through 49 cents and round up an amount that ends in 50 through 99 cents; or 2) Apply the rounding procedure that is currently in effect for the Tribe's/State's Temporary Assistance for Needy Families (TANF) program.

I. Compare the rounded amount from 4640H to the income standards at Exhibit M, attached.

SECTION 7 - DETERMINING INCOME OF SPECIAL HOUSEHOLDS

4700 GENERAL STANDARDS

This section addresses the eligibility of households with difficult determinations and/or for which there are special policies or procedures:

A. Households receiving student financial assistance;

B. Household with self-employment income;

C. Households with disqualified members; and

D. Households with nonhousehold members, such as persons receiving SSI in cash-out States.

4710 HOUSEHOLDS RECEIVING STUDENT FINANCIAL ASSISTANCE

Households with students may have unusual sources of income. Income peculiar to student households includes scholarships, fellowships, educational grants, deferred payment loans, veteran's educational benefits, cash gifts or awards for educational expenses, and cash from parents. Such sources of income result in an uneven cash flow. Student financial assistance payments may be received in one payment but are intended to cover a specific period of time--a semester, school year, etc. Likewise, the major expenses of education--tuition and mandatory fees--are also paid at one time, again emphasizing the uneven cash flow. Students under 18 years of age are granted an exemption for any income earned through employment or self-employment, except for emancipated minors that are no longer under parental control of another household member (see paragraph 4548).

4711 Determining Average Monthly Amount of Student Financial Assistance

The following method is used to determine the average monthly amount of student financial assistance received by a household member. This calculation must be done separately for each household member that has student financial assistance:

A. Total the household member’s student financial assistance not excluded by law (see paragraph 4543F), e.g., educational loans on which repayment is deferred, grants, scholarships, fellowships, veterans' educational benefits, and work study earnings. **Do not include in this step** funds received by the student from other sources, such as earnings or public assistance. Earned income and unearned income are included in the calculation of the household’s monthly income at paragraph 4640.

B. Subtract the portion of the student financial assistance used for or earmarked by the provider for allowable educational expenses (see paragraph 4544). Allowable educational expenses include tuition and mandatory school fees, books, supplies, transportation, and miscellaneous personal expenses other than normal living expenses. Mandatory school fees include the rental or purchase of equipment, material, and/or supplies related to the pursuit of the course of study involved. **Do not subtract in this step** student financial assistance used for or earmarked by the provider for normal living expenses.

C. Average the remaining funds over the period the student financial assistance is intended to cover (e.g., divide by 9 for a 9-month school year).

(4711)

D. This amount is household member's average monthly student financial assistance. Apply this amount to the calculation of the household's monthly income at paragraph 4640F.

4720 HOUSEHOLDS WITH INCOME FROM SELF-EMPLOYMENT

A household may engage in one or more type of self-employment enterprise. For example, a husband may be a self-employed landscaper while his wife may make and sell crafts. The costs of doing business are subtracted from the income produced by a self-employment enterprise in determining the monthly self-employment income amount. However, the income and costs of doing business for each enterprise must remain separate. For example, the costs of making and selling crafts can only be subtracted from the income produced by the crafts enterprise. Therefore, a separate calculation for each self-employment enterprise must be done, as described in paragraph 4727.

4721 Income from Rental Property

Income derived from rental property is considered self-employment income. The cost of doing business, such as advertising fees and repairs, may be deducted from the rental income (see paragraph 4727D).

4722 Income from Capital Gains

The term "capital gains" refers to the profit from the sale or transfer of capital assets used in a self-employment enterprise or securities, real estate, or other real property held as an investment for a set period of time. For Food Distribution Program purposes only the net profit from the sale or transfer is considered income.

Net income is determined by subtracting allowable costs related to that sale or transfer (see paragraph 4727D). The following rules apply to allowable (excludable) costs of doing business related to capital gains:

A. Proceeds from the sale of farm products that are reinvested in the farm are excludable;

B. Sale proceeds that are used to buy food for livestock are excludable;

C. Sale proceeds used to purchase land or make payments on the mortgage principal are **not** excludable.

4723 Costs of Producing Self-Employment Income -- Allowable Exclusions

Allowable costs of producing self-employment income include, but are not limited to:

A. Labor;

B. Stock, raw materials, seed, and fertilizer;

C. Interest paid to purchase income producing property;

D. Insurance premiums;

(4723)

E. Taxes paid on income producing property;

F. Proceeds from the sale of farm products that are reinvested in the farm. The proceeds from the sale must be counted as income, but the proceeds that are reinvested are excluded as an allowable cost of doing business;

G. The separate and identifiable costs related to the portion of a home used for a self-employment enterprise (except for payments on the mortgage principal).

4724 Costs of Producing Self-Employment Income - Unallowable Exclusions

The following items are not excludable costs of producing self-employment income:

A. Payments on the principal of the purchase price of income producing real estate and capital assets, equipment, machinery and other durable goods;

B. Net losses from previous periods;

C. Depreciation; and

D. The Federal, State, and local income taxes and retirement plan of the self-employed individual. Also, work-related expenses for that individual, such as transportation to and from work. These expenses are accounted for by the 20 percent earned income deduction (see paragraph 4551).

4725 Prorating Self-Employment Income

A. When Self-Employment Income Represents Annual Income. Self-employment income that represents a household's annual income must be prorated over a 12-month period even if the income is received at one time. For example, the self-employment income received by a farmer is prorated over a 12-month period if the income is intended to support the farmer on an annual basis. This self-employment income must be annualized even if the household receives income from other sources in addition to self-employment (see 4725C).

B. When Self-Employment Income is Received Monthly. Self-employment income that is received on a monthly basis, but represents a household's annual support, is normally prorated over a 12-month period. For example, a self-employed landscaper may receive income each month from the various jobs he does throughout the year. However, if the averaged amount from past months does not accurately reflect the household's actual or anticipated circumstances because the household has recently experienced or expects a substantial increase or decrease in business, the ITO/State agency must calculate the self-employment income based on anticipated earnings.

C. When Self-Employment Income is Part of Total Annual Household Income. Self-employment income that is intended to meet the household's needs for only part of the year must be prorated over the period of time the income is intended to cover. For example, self-employed vendors that work only in the summer and supplement their income with other types of employment during the balance of the year must have their self-employment income prorated over the summer months rather than a 12-month period.

(4725)

D. When Self-Employment Enterprise is a New Business. If a household's self-employment enterprise has been in existence for less than a year, the income from that self-employment enterprise must be prorated over the period of time the business has been in operation and the monthly amount projected for the coming year. However, if the business has been in operation for such a short time that there is insufficient information to make a reasonable projection, the household may be certified for less than a year until the business has been in operation long enough to be able to base a longer projection.

4726 Stable and Unstable Self-Employment Income

A. Stable Self-Employment Income. Self-employment income and expenses may be fairly consistent on a monthly or annual basis. If the household anticipates that its self-employment income and expenses will not change significantly, then the ITO/State agency may choose to use the household's Internal Revenue Service (IRS) filings as a guide in determining the household's anticipated self-employment income for the proration period (see paragraph 3532).

B. Unstable Self-Employment Income. Self-employment income and expenses may vary from month to month, or year to year, and the previous year's tax return may not reflect the household's anticipate circumstances for the proration period. The ITO/State agency should review the household's most recent income and expense receipts and attempt to determine, with the household, what its anticipated income and expenses will be for the proration period. When determining anticipated self-employment income, the ITO/State agency must include any capital gains the household anticipates it will receive during the proration period (see paragraph 4722).

4727 Determining Monthly Self-Employment Income

The following steps should be followed in determining the monthly income for each self-employment enterprise engaged in by the household:

A. Determine the period over which the self-employment income will be prorated (see paragraph 4725). For example, a landscaper works 10 months out of the year but this income represents his annual income, so his self-employment income will be prorated over a 12-month period.

B. Total the gross self-employment income (including capital gains) for the period of proration. For example, the landscaper received payments totaling of $20,965.34 over the 10 months that he worked.

C. Subtract the total costs of doing business from the total gross self-employment income. For example, the landscaper had receipts totaling $9,784.85 for allowable costs of doing business (e.g., lawnmowers and other equipment, gas and oil for the equipment, business advertisements, business cards, etc.). This leaves self-employment income of $11,180.49 ($20,965.34 – $9,784.85 = $11,180.49).

Reminder**:** Only allowable business expenses associated with this enterprise can be subtracted from the income of this enterprise. Business expenses from another self-employment enterprise cannot be subtracted from the landscaping business income.

(4727)

D. Divide the result from 4727C by the number of months determined in 4727A. For example, the landscaper's monthly self-employment amount would be $931.71 ($11,180.49 ÷ 12 months = $931.71).

E. This amount is the monthly self-employment amount. Apply this amount (and the monthly self-employment amount from any other self-employment enterprise) to the calculation of the household's monthly income at paragraph 4640B.

NOTE: When using the household's most recent tax return as a guide, certain business deductions that are allowed for income tax purposes are not considered allowable costs of doing business for Food Distribution Program purposes. For example, depreciation is an allowable business deduction for IRS purposes, but **<u>is not</u>** an excludable cost of doing business under the Food Distribution Program.

Also, certain items are counted as income for income tax purposes that are not counted as income for Food Distribution Program purposes. The following are items listed as income for income tax purposes that are not considered income for Food Distribution Program purposes:

Schedule C: Line 6 – Federal and State gas or fuel tax credit or refund

Schedule F: Line 7 - Loans
Line 8 - Crop insurance proceeds/disaster payments
Line 10 - Federal and State gas or fuel tax credit or refund

4730 <u>HOUSEHOLDS WITH DISQUALIFIED MEMBERS</u>

Individual household members may be disqualified from the Food Distribution Program for several reasons (see paragraph 3413). During the period of time a household member is disqualified, the following procedures must be used to determine the eligibility of any remaining household members for participation in the Food Distribution Program.

4731 Applying Financial Eligibility Standards

A pro rata share of the nonexcludable income of the disqualified member is counted as income to the remaining members. This pro rata share is calculated by first subtracting the 20 percent earned income deduction from the disqualified member's earned income, if applicable, and dividing the total income evenly among the household members, including the disqualified member. All but the disqualified member's share is counted as income to the remaining household members. For example, if the disqualified individual was a member of a four-person household, 3/4 of the income of the disqualified member (after the earned income deduction is subtracted, if applicable) would be counted as income to the household.

4740 <u>HOUSEHOLDS WITH NONHOUSEHOLD MEMBERS</u>

See paragraph 3410 for a description of nonhousehold members.

A. <u>Income</u>. The income of the nonhousehold member is <u>not</u> considered available to the household. Cash payments from the nonhousehold member to the household are considered income unless the nonhousehold member is making vendor payments. Vendor payments are excluded as income (see paragraph 4542).

(4740)

B. Income Deductions. If the household shares deductible expenses with the nonhousehold member, only the amount actually paid or contributed by the household is deducted as a household expense. If the payments or contributions cannot be differentiated, the expenses must be prorated evenly among persons actually paying or contributing to the expense and only the household's pro rata share is deducted.