CONFORMANCE ISSUE: INCOME: EARNINGS OF STUDENTS UNDER 18

FOOD STAMP PROGRAM PROVISIONS

Section 5(d)(7) of the Food Stamp Act excludes from income consideration the earnings of children who are members of the household if they are under 18 and attending school at least half-time.

Section 273.9(c)(7) of the regulations implements this exclusion. It provides that the income exclusion continues to apply during temporary breaks in school attendance if enrollment will resume after the break. If the child's earnings cannot be separated from that of other household members, the total earnings are prorated equally among the working members, and the child's pro rata share is excluded.

Individuals are generally considered children if they are under the parental control of another household member. However, this policy was challenged in the case of Dion v. Maine v. HHS and USDA. The case concerned a 17-year-old high school student with a child. The student was the head of her own household even though she was living with her parents. On July 12, 1990, the District Court ruled against USDA, finding that the exclusion of income of students under 18 cannot be limited to persons under parental control. An appeal has been filed.

AFDC PROVISIONS

The AFDC program has several statutory disregards that apply to the earned income of dependent children. The Social Security Act defines a dependent child as a child who is under the age of 18, or at State option, under the age of 19, if the child is a full-time student and is expected to complete high school before reaching age 19.

Section 402(a)(8)(A)(i) of Title IV-A and 45 CFR 233.20(a)(11)(i) and (ii) provide that in determining need and benefits, the State agency shall disregard all the earned income of each dependent child receiving AFDC who is a full-time student or a part-time student who is not employed full-time and is attending a school, college, university or a vocational training course.

For 185 percent of gross income eligibility purposes, State agencies may disregard any earned income of a dependent child who is a full-time student, as provided in section 402(a)(18) of Title IV-A and 45 CFR 233.20(a)(3)(xix). The amount of the disregard and the time period, not to exceed 6 months, may be determined by the State. Section 402(a)(8)(A)(vii) of Title IV-A and 45 CFR 233.20(a)(3)(xx) provide that if the State chooses this disregard, it may also disregard the earned income of applicant full-time students in determining need.

SUMMARY

The programs differ in that the Food Stamp Program excludes the income of children under 18 who are in school at least half-time in determining both eligibility and benefits while the AFDC exclusions differ for gross income eligibility and benefit determination. The provisions also differ for recipients and applicants and for full-time and part-time students. For the needs test and benefit amount, State agencies are required to disregard the income of dependent children under 18 who are either full-time students or part-time students who are not employed full-time. State agencies may disregard the earned income of applicant dependent children who are full-time students in performing the 185 percent gross income test. If the income is disregarded for that test, it may also be excluded for the needs test. The disregard period for both tests cannot exceed 6 months per calendar year.

CONFORMANCE ISSUE: INCOME - ENERGY ASSISTANCE

FOOD STAMP PROGRAM PROVISIONS

Section 5(d)(11) of the Food Stamp Act excludes from income any payments or allowances provided for energy assistance under any Federal law. This exclusion is based on an extensive legislative history dating back to the Department of Interior and Related Agencies Appropriations Act of 1979 (P.L. 96-126, November 27, 1979), which established an energy assistance allowance to be provided through the Community Services Administration. Title III of the Crude Oil and Windfall Profit Tax law (P.L. 96-223, dated April 20, 1980), entitled the Home Energy Assistance Act of 1980, created the Low-Income Energy Assistance Program. The Low-Income Home Energy Assistance Act of 1981, as amended by section 504(e) of P.L. 99-425, required that all home energy assistance payments or allowances be excluded from income or resources for purposes of the Food Stamp Program.

In the Food Stamp Act Amendments of 1980 (P.L. 96-249, May 26, 1980), Congress provided that "any payments or allowances made under any Federal State, or local laws for the purposes of providing energy assistance" were to be excluded. In P.L. 97-98, the 1981 food stamp amendments, Congress clarified this exclusion as it applies to assistance combined with public assistance (PA) or general assistance (GA) payments. In order to ensure that energy assistance combined with PA or GA grants would be excluded only if it were actually provided for energy needs, Congress established specific criteria for the exclusion. The assistance must be designated as energy assistance by the State or local legislative body authorizing the payments or allowances. It must be calculated (as determined by the Secretary) as if provided by the State or local government on a seasonal basis for an aggregate period not to exceed six months in any year. If the payments or allowances (including tax credits) are not provided on a seasonal basis, the State must provide information demonstrating that it would be not be administratively feasible or practicable to do so. In the Hunger Prevention Act of 1988 (P.L. 100-435, September 19, 1988), Congress made a technical change to the Food Stamp Act to specify that energy assistance payments or allowances that are excluded from income do not have to be part of a Federal, State, or local law enacted specifically for the purpose of providing energy assistance. Energy assistance can be excluded under the regulations if it is authorized in an energy assistance component of a law enacted for some other purpose.

Section 273.9(c)(11) of the food stamp regulations implements the exclusions for Federal and State or local energy assistance. Payments or allowances made for the purpose of providing energy assistance under any Federal law are excluded. In addition, State or local payments or allowances, including tax credits, may be excluded with FNS approval. To obtain approval for the exclusion of assistance combined with a PA or GA grant, the State agency must submit documentation to FNS showing that the energy assistance meets specified requirements based on the criteria contained in the Food Stamp Act.

PA or GA energy assistance made in the form of a payment to a third party on behalf of the household (vendor payment) is excluded under Section 273.9(c)(1)(ii)(C) of the food stamp regulations if the assistance meets the requirements of Section 273.9(c)(11). Energy assistance from private individuals or organizations provided as third-party payments is excluded as provided in sections 273.9(c)(1)(i) and (iv). Nonmonetary or in-kind assistance is excluded in accordance with section 273.9(c)(1).

AFDC PROVISIONS

Section 9101 of Public Law 100-203, Omnibus Reconciliation Act of 1987, amended section 402(a)(36) of Title IV-A of the Social Security Act to permanently extend the State option to disregard certain support and maintenance assistance, including home energy assistance for both heating and cooling. The assistance may be disregarded if it is based on need and is provided in cash or in kind by (1) a supplier of home heating oil or gas, (2) an entity whose revenues are primarily derived on a rate of return basis regulated by a State or Federal government entity, or (3) a municipal utility providing home energy. In addition, needs-based support and maintenance assistance may be disregarded if it is provided by a private nonprofit organization, but only if the assistance is in kind. P.L. 98-369 limited the exclusion to the period October 1, 1984 through September 30, 1987. This disregard is contained in 45 CFR 233.53. Proposed rulemaking has been issued to remove the time limitation in section 233.53(c)(4) of the AFDC regulations.

Section 233.53(b) defines terms used in the regulations covering the disregard for energy assistance. "In-kind assistance" means assistance in any form except direct cash payments to an applicant or recipient or direct payments through other financial instruments which are convertible to cash. "Support and maintenance assistance" includes any assistance related to meeting the cost of heating or cooling a home, including payments for utility service or bulk fuels, and assistance in kind such as portable heaters, fans, blankets, storm doors, and conservation or weatherization materials and services.

Section 233.20(a)(4)(ii)(l) requires that assistance to eligible households under the Low Income Home Energy Assistance Act of 1981 be disregarded in determining AFDC eligibility and benefits.

Section 233.20(a)(3)(vii) also permits energy assistance provided by other agencies to be disregarded when the State agency determines that the assistance does not duplicate AFDC.

SUMMARY

Both food stamps and AFDC disregard energy assistance provided under the Low Income Home Energy Assistance Act. Energy assistance provided under any Federal program and under certain State and local programs is also excluded in food stamps. In AFDC, energy assistance in addition to that provided under the Low-Income Home Energy Assistance Act may be excluded as income and resources if it is based on need and is furnished in specified forms by specified types of providers.

CONFORMANCE ISSUE: INCOME - DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) PAYMENTS

FOOD STAMP PROGRAM PROVISIONS

Section 5(d) of the Food Stamp Act requires that household income for purposes of the Food Stamp Program shall include all income from whatever source except for the exclusions specified in the Act. Section 5(d)(1) excludes benefits not in the form of money payable directly to a household. Section 5(d)(5) excludes reimbursements. Section 5(d)(10) excludes any income that any other federal law excludes from consideration in determining eligibility for the FSP. Section 5(d)(11) excludes any payments or allowances made for the purpose of providing energy assistance under any federal law.

FSP regulations at 7 CFR 273.9(c)(1) implement the provision of Section 5(d)(1) of the Food Stamp Act. Under these regulations, HUD rent or mortgage payments made directly to a landlord or mortgage holder are excluded from income. Section 273.9(c)(1)(i) provides that a payment made in money on behalf of a household shall be considered a vendor payment and be excluded from income 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. The regulations include rent or mortgage payments made to landlords or mortgagees by HUD as examples of excluded vendor payments. Section 273.9(c)(1)(iii) provides that payments in money that are not made to a third party but are made directly to the household are counted as income and are not excluded as a vendor payment, except for subsidies paid to a landlord by HUD under specific experimental housing allowance programs. Section 273.9(c)(1)(iv) provides that moneys that are legally obligated and otherwise payable to the household 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 be excluded as vendor payments. A payment made by HUD to a utility company for a household expense cannot be excluded as a vendor payment.

Section 273.9(c)(5) implements the reimbursement exclusion in the Food Stamp Act. Reimbursements that do not exceed actual costs and that are not a gain or benefit to the household are excluded from income. Reimbursements for normal living expenses are not excludable; therefore, HUD utility payments cannot be excluded under the reimbursement provision.

Section 273.9(c)(10) implements the provision of the Food Stamp Act excluding from income payments specifically excluded by other legislation. There is no legislation that specifically exempts HUD payments from consideration as income in the FSP.

Section 273.9(c)(11) implements the exclusion in the Act for energy assistance payments. It is FNS' policy that HUD utility payments, whether made directly to the household or indirectly to the provider, are not excludable as energy assistance since expenses other than energy expenses may be included in the utility payment. In lawsuits in South Carolina (Mitchell) and Arkansas (Larry), courts upheld the FNS position that HUD utility payments are not excludable as energy assistance. The Department has lost on this issue in separate cases in Pennsylvania (West) and in Ohio (Baum).

Prior to passage of the Hunger Prevention Act (P.L. 100-435), Section 273.9(c)(11) exempted payments under Federal laws enacted specifically for the purpose of providing energy assistance. A technical amendment to Section 5(d)(11) of the Food Stamp Act contained in Section 343 of P.L. 100-435 clarified the wording of the energy assistance exclusion to provide that energy assistance payments or allowances do not have to be part of a Federal, State or local law enacted specifically for the purpose of providing energy assistance in order to be excluded. The law may be for some other purpose but include an energy assistance component. According to the legislative history (Senate Report 100-397 dated June 23, 1988, p. 29), this revision was not intended to change current policy. The agency has issued a Policy Memo (90-6) providing the following policy on HUD payments:

1. Any amount paid by HUD directly to a landlord for ongoing shelter costs must be excluded from income. All amounts paid to the landlord on behalf of a household should be considered rent. Any amount paid directly to the household must be counted.

2. Any amount paid by HUD to the utility provider must be counted as income to the household.

3. Only the amount the household actually owes to the landlord after the HUD payments can be considered a rent expense in the household's shelter computation.

4. This policy applies in all States except those in the third circuit (Pennsylvania, Delaware, New Jersey and the Virgin Islands), where there is a court order that HUD utility payments be excluded as energy assistance payments.

HUD Payments

AFDC PROVISIONS

Under Section 402(a)(7)(C)(ii) of Title IV-A of the Social Security Act and 45 CFR 233.20(a)(3)(xii), States have the option of counting housing or rent subsidies as income. The amount counted cannot exceed the amount for shelter established in the State's payment standard for assistance units of the same size and composition. In 1989, only South Dakota, Oregon, and Nevada counted the payments as income.

SUMMARY

In the Food Stamp Program, only HUD payments made directly to a landlord or mortgage holder are excluded from income. If these payments include an amount for utilities included in the rent, the full amount is excluded. All other payments, whether paid directly to the household or to the utility provider, are counted as income. One circuit court has ruled that the utility payments made to the household or to the provider should be excluded as energy assistance. In AFDC, exclusion of HUD payments is a State option, and only three States count the payments. AFDC does not distinguish between rent and utility payments.

CONFORMANCE ISSUE: INCOME - IN-KIND AND VENDOR PAYMENTS

FOOD STAMP PROGRAM PROVISIONS

Legislation

Section 5(d)(1) of the Food Stamp Act of 1977 excludes from income any gain or benefit which is not in the form of money payable directly to the household. According to the legislative history of the Act (House Report 95-464, pages 31-34), Congress believed that counting in-kind benefits (such as meals, clothing or shelter) as income would be administratively difficult and that the most desirable approach would be to disregard from income all payments made to third parties on behalf of a household (vendor payments). Congress intended that the exclusions then in place for medical and housing third-party payments should continue and that vendor payments made from State grants to day care centers should be excluded. Congress also intended that money payable to a household but diverted from it to a third party, either of the household's own free will or involuntarily, would be counted as income. The Food Stamp Act of 1977 did not specifically require that vendored public assistance (PA) or general assistance (GA) payments be counted as income.

In the Food Security Act of 1985, Congress specifically addressed the issue of vendored GA and PA assistance. According to Senate Report 99-145, page 234, the language of the Food Stamp Act of 1977 was interpreted by the Department to mean that AFDC protective payments and certain GA vendor payments should be counted as income. The Report indicates that "The Committee agrees with the Department's position that such an interpretation is the logical one, particularly so when the same assistance is provided to other recipients in cash and must be included as income." Since there had been several lawsuits challenging this position, the Committee decided to amend the Food Stamp Act to make Congressional intent clear. The Committee said, "This provision will reinforce Congress' historical intent that payments from government assistance programs be included as income regardless of their form and ensure equity between groups of individuals who receive assistance in varying forms."

To implement this position, Congress added section 5(k) to the Food Stamp Act. This section requires that assistance provided to a third party on behalf of the household by a State or local government shall be considered money payable directly to the household if it is in lieu of either a regular benefit payable to the household for living expenses made under Title IV-A of the Social Security Act or a benefit payable to a household for living expenses under State or local general assistance or a similar program. The provision does not apply to medical, child care or energy assistance; assistance provided by a State or local housing authority; or emergency and special assistance as specified in regulations. Public Law 100-77 amended section 5(k) by adding paragraph 5(k)(2)(F) to exclude assistance payments to a third party for a household in temporary housing if the housing lacks facilities for cooking or refrigerating food. Public Law 101-624, the Mickey Leland Memorial Domestic Hunger Relief Act, enacted November 28, 1990, revised section 5(k)(2)(F) to exclude (effective October 1, 1990) housing assistance payments made to a third party on behalf of a household residing in transitional housing for the homeless in an amount equal to 50 percent of the maximum shelter allowance provided to families not residing in such transitional housing under the State's AFDC plan. This exclusion is in addition to the exclusion for vendored amounts over and above the normal grant amount. (A provision of Public Law 102-237 clarifies that the provision applies only in States that have a separate shelter component in the AFDC needs standard.) The Leland Act also added a paragraph to section 5(k) to exclude from income assistance provided to a third party on behalf of a household under a State or local general assistance program, or another local basic assistance program comparable to general assistance if, under State law, no assistance under the program may be provided directly to the household in the form of a cash payment. Public Law 100-387 added an exclusion for emergency housing assistance for migrant or seasonal farmworker households. Section 5(k)(3) provides that education assistance provided to a third party on behalf of a household for living expenses must be treated as money payable directly to the household.

Regulations

Section 273.9(b)(2) of the Food Stamp Program regulations provides that unearned income includes assistance payments from Federal or Federally aided public assistance programs, such as supplemental security income, AFDC, or GA. GA is defined in section 271.2 as assistance, excluding that provided in kind, financed by State or local funds as part of a program which provides assistance to cover living expenses or other basic needs intended to promote the health or well-being of recipients. All of these payments are considered income even if they are provided in the form of a vendor payment, unless the vendor payment is specifically exempt under section 273.9(c)(1).

Section 273.9(c)(1) excludes from income as vendor payments the following money payments that are paid to a third party for a household expense and are not paid directly to the household:

1. Rent or mortgage payments made to landlords or mortgagees by the Department of Housing and Urban Development (HUD) or by State or local housing authorities. (HUD payments for rent and utilities are discussed in a separate paper.)

2. Payments by a government agency to a child care institution to provide day care for a household member.

3. PA or GA payments to a third party for medical, child care, or energy assistance.

4. Vendored PA or GA housing assistance to a household residing in temporary housing if the temporary housing lacks facilities for cooking or refrigerating food. (Regulations will be issued to incorporate the provisions of P.L. 101-624 and P.L. 102-237.)

5. Vendored emergency or special PA or GA assistance that is over and above the normal grant or not normally provided as part of such a grant. According to Policy Memo 90-1, if the payment is not based on various standards or components but simply provides assistance on an as-needed basis, no exclusion is granted because the payment is not over and above the normal grant: it is the grant. In a policy interpretation dated August 31, 1990, FNS indicated that emergency assistance provided to a third party on behalf of the household under the Emergency Assistance Program of Title IV-A would be excluded from income for food stamp purposes if it is provided over and above the normal PA or GA grant or is not normally provided as part of a regular grant or payment.

6. Vendored emergency assistance for a migrant or seasonal farmworker household during the period the household is in the job stream.

7. Rent or housing subsidies paid to a landlord by HUD or its agents under the experimental housing allowance program in Green Bay, Wisconsin, or South Bend, Indiana.

8. Payments by a employer directly to an employee's landlord for rent if the payments are in addition to regular wages. The value of housing provided to an employee by an employer is not counted.

9. Payments specified by a court order or other legally binding agreement to go directly to the third party rather than to the household.

10. 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 other written agreement, which are paid to a third party rather than the household.

11. Other payments for household expenses to a third party from funds that are not owed to the household by an employer, agency, former spouse or other person.

Section 273.9(c)(1) also excludes from income the value of non-monetary or in-kind benefits such as meals, clothing, public housing, or produce from a garden.

Moneys that are legally obligated and otherwise payable to the household but which are diverted by the provider of the payment to a third party for a household expense are counted as income. The following are examples of countable payments:

a. Wages earned by a household member that are garnisheed or diverted by an employer and paid to a third party for a household's expense, such as rent or child support.

b. PA or GA grants to which a household is legally entitled which are diverted by the provider to a third party or protective payee, unless specifically excluded by regulation.

c. Money deducted or diverted to a third party for a household expense from a support or alimony payment that is court-ordered or required by another binding written agreement, unless the court order or agreement requires that the money go directly to the third party.

d. Educational assistance provided to a third party for living expenses such as rent or mortgage, personal clothing or food eaten at home.

AFDC PROVISIONS

Section 402(a)(7) of Title IV-A of the Social Security Act provides that in determining need, the State shall take into consideration any income and resources not specifically disregarded. The statute does not distinguish between money given or paid to the assistance unit, in-kind income, or vendor payments.

Section 233.20(a)(6) of the AFDC regulations includes earned in-kind income under the definition of earned income. Section 233.20(a)(3)(iv)(D) excludes from income and resources the home produce of applicants or recipients used for home consumption.

Although the AFDC regulations require that all income not otherwise disregarded must be counted, AFDC policy permits State agencies to count or not count as income the value of unearned in-kind income, but limits the value to the amount included in the payment standard for those items.

SUMMARY

Earned in-kind income is excluded for food stamps and counted for AFDC. Unearned in-kind income is excluded in the FSP, but may be counted in AFDC at State option. In food stamps, amounts legally obligated to be paid to a household member and diverted to a third party for a household expense are counted as income unless specifically excluded.

CONFORMANCE ISSUE: INCOME EXCLUDED BY LAWS OTHER THAN THE FOOD STAMP ACT AND TITLE IV-A OF THE SOCIAL SECURITY ACT

FOOD STAMP PROGRAM PROVISIONS

Section 5(d)(10) of the Food Stamp Act and 7 CFR 273.9(c)(10) require the exclusion from income consideration of any payments specifically excluded by any other Federal statute. Certain payments under the following laws are among those excluded:

1. P.L. 89-642, the Child Nutrition Act of 1966, section 11(b). The value of assistance to children under the Act is excluded.

2. P.L. 91-646, section 216, the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970. Reimbursements are excluded.

3. P.L. 93-113, the Domestic Volunteer Services Act of 1973, Titles I and II, as amended. Payments to volunteers under Title I of the Act, including payments from VISTA, University Year for Action, and the Urban Crime Prevention Program, are excluded for individuals who were receiving food stamps or public assistance at the time they joined the Title I program. Payments to volunteers under Title II, including payments from the Retired Senior Volunteer Program, Foster Grandparents Program, and Senior Companion Program, are excluded.

4. P.L. 93-288, Section 312(d), the Disaster Relief Act of 1974, as amended by P.L. 100-707, section 105(i), the Disaster Relief and Emergency Assistance Amendments of 1988, enacted November 23, 1988. Federal assistance provided to persons directly affected by an emergency or major disaster, as defined in the Act and determined by the President, as well as comparable disaster assistance provided by States, local governments, and disaster assistance organizations, are excluded from income. Most, but not all, Federal Emergency Management Assistance (FEMA) funds are excluded. Some payments made to homeless people to pay for rent, mortgage, food, and utility assistance when there is no major disaster or emergency are not excluded under this provision.

5. P.L. 97-300, the Job Training Partnership Act (JTPA), enacted October 13, 1982. This Act excluded all JTPA payments from income under any Federal or federally assisted program based on need, other than programs under the Social Security Act. The exclusion for the Food Stamp Program was superseded by later food stamp legislation. P.L. 99-198, the Food Security Act of 1985, enacted December 23, 1985, requires counting as income the on-the-job training payments provided under section 204(5) of Title II of the JTPA, except payments to dependents less than 19 years old.

6. P.L. 98-524, the Carl D. Perkins Vocational Education Act, section 507, as amended by P.L. 101-392, September 25, 1990, the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990, sections 501 and 701. This law applied the Title IV exclusions of P.L. 99-498 and 100-50 (see below) to payments provided under the Act and also required the exclusion of amounts provided for dependent care, effective July 1, 1991.

7. P.L. 99-498, the Higher Education Act Amendments of 1986, enacted October 17, 1986, as amended by P.L. 100-50, June 3, 1987. Amounts made available for tuition and fees and, for students attending an institution at least half-time, books, supplies, transportation and miscellaneous personal expenses (other than room, board and dependent care) provided under Title IV of the Act and by the Bureau of Indian Affairs are excluded from income. (Regulations are being written to reconcile the provisions of the Higher Education Act and the Mickey Leland Memorial Domestic Hunger Relief Act.)

8. P.L. 99-576, section 303(a)(1), August 7, 1986, which amended section 1411(b) of the Veteran's Education Act of 1984. The amount of the mandatory salary reduction for military service personnel that is used to fund the GI Bill is excluded from income.

9. P.L. 100-175, section 166, Older Americans Act, November 29, 1987. Funds received by persons 55 and older under the Senior Community Service Employment Program under Title V are excluded from income. The organizations that receive some Title V funds are: Green Thumb, National Council on Aging, National Council of Senior Citizens, American Association of Retired Persons, U.S. Forest Service, National Association for Spanish Speaking Elderly, National Urban League, and the National Council on Black Aging.

10. P.L. 100-242, the Housing and Community Development Act of 1987, November 6, 1987, section 126(c)(5)(A). Most increases in the earned income of a family residing in certain housing while participating in HUD demonstration projects authorized by section 126 of the Act are excluded. Demonstration projects are authorized by this law for Charlotte, North Carolina, and 10 other locations.

11. P.L. 100-383, Wartime Relocation of Civilians, which implements section 105(f)(2) of P.L. 89-02, the Civil Liberties Act of 1988, August 10, 1988. Payments to U.S. citizens of Japanese ancestry, permanent resident Japanese aliens or their survivors, and certain Aleuts are excluded from income.

12. P.L. 100-435, the Hunger Prevention Act of 1988, September 19, 1988, section 501, which amended section 17 of the Child Nutrition Act. Under demonstration projects conducted by the Special Supplemental Food Program for Women, Infants and Children (WIC), coupons that may be exchanged for food at farmers' markets are excluded from income.

13. P.L. 100-485, the Family Support Act, October 31, 1988, section 301, which amended section 402(g)(1)(E) of the Social Security Act. The value of any child care provided or paid under Title IV-A of the Social Security Act, including transitional child care payments, is excluded.

14. P.L. 100-625, the Cranston-Gonzales National Affordable Housing Act, November 28, 1990, section 522(i)(4). Most increases in the earned income of a family residing in certain housing while participating in HUD demonstration projects authorized by the Act are excluded. Demonstration projects are authorized for Chicago and three other locations.

15. P.L. 101-426, the Radiation Exposure Compensation Act, October 15, 1990, Section 6(h)(2). Amounts paid to individuals under this section shall not be included as income or resources for purposes of determining food stamp eligibility of the amount of benefits.

16. P.L. 101-201, Agent Orange Compensation Exclusion Act, December 6, 1989. All payments from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the Agent Orange product liability litigation are excluded, retroactive to January 1, 1989. Payments authorized by P.L. 102-4, the Agent Orange Act of 1991, February 6, 1991, are not excluded.

17. P.L. 101-508, the Omnibus Reconciliation Act of 1990, November 5, 1990, Section 5801, which amended section 402(i) of the Social Security Act. "At-risk" block grant child care payments made under section 5801 are excluded from income for food stamp purposes and no deduction may be allowed for any expense covered by the payments. There is no similar provision for other block grant child care payments made under section 5802.

18. P.L. 101-508, the Omnnibus Reconciliation Act of 1990, November 5, 1990, Title XI Revenue Provisions, Section 11111, Modifications of Earned Income Tax Credit, subsection (b). Any earned income tax credit shall not be treated as income and shall not be taken into account in determining resources for the month of its receipt and the following month, effective with taxable years beginning after December 31, 1990.

In addition, payments to Native Americans are excluded from income under the following laws:

1. P.L. 92-203, the Alaska Native Claims Settlement Act, section 29, January 2, 1976 and section 15 of P.L. 100-241, February 3, 1988, the Alaska Native Claims Settlement Act Amendments of 1987. All compensation made to households are excluded.

2. P.L. 93-134, the Judgment Award Authorization Act, as amended by P.L. 97-458, section 1407, and P.L. 98-64, the Per Capita Distribution Act. P.L. 97-458 required the exclusion of per capita payments under the Indian Judgment Fund Act (judgment awards) of $2,000 or less from income. The exclusion applies to each payment made to each individual. P.L. 98-64 extended the exclusion to cover per capita payments from funds held in trust by the Secretary of Interior (trust fund distributions).

3. P.L. 93-531, section 22. Relocation assistance to members of the Navajo and Hopi Tribes is excluded.

4. P.L. 94-114, section 6. Income derived from certain submarginal land held in trust for certain Indian tribes is excluded.

5. P.L. 94-540. Income derived from the disposition of funds to the Grand River Band of Ottawa Indians is excluded.

6. P.L. 95-433. Indian Claims Commission payments to the Confederated Tribes and Bands of the Yakima Indian Nation and the Apache Tribe of the Mescalero Reservation are excluded.

7. P.L. 96-420, section 9(c), October 10, 1980, Maine Indian Claims Settlement Act of 1980. Payments to the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet are excluded.

8. P.L. 97-403. Payments to the Turtle Mountain Band of Chippewas, Arizona, are excluded.

9. P.L. 97-408. Payments to the Blackfeet, Grosventre, and Assiniboine tribes of Montana and the Papago of Arizona are excluded.

10. P.L. 98-123, section 3, October 13, 1983. Per capita and interest payments to the Red Lake Band of Chippewas are totally excluded.

11. P.L. 98-124, section 5. Per capita and interest payments made to the Assiniboine Tribe of the Fort Belknapp Indian Community and the Assiniboine Tribe of the Fort Peck Indian Reservation, Montana, under this Act are excluded.

12. P.L. 98-500, the Old Age Assistance Claims Settlement Act, October 17, 1984, section 8. Funds distributed under the Act to heirs of deceased Indians shall not be considered as income nor otherwise used to reduce or deny food stamp benefits except for per capita shares in excess of $2,000.

13. P.L. 99-346, section 6(b)(2). Payments to the Saginaw Chippewa Indian Tribe of Michigan are excluded.

14. P.L. 99-377, section 4(b), August 8, 1986. Per capita payments to the Chippewas of Mississippi are excluded.

AFDC PROVISIONS

Section 233.20(a)(4)(ii) of the AFDC regulations provides that in determining eligibility for public assistance and the amount of the assistance payment, the following will be disregarded as income and resources:

1. Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

2. Any grant or loan to any undergraduate student for educational purposes made or insured under any programs administered by the Secretary of Education (except programs under Title IV of the Higher Education Act).

3. Any funds distributed per capita to or held in trust for members of any Indian tribe under P.L. 92-254, 93-134, or 94-540.

4. Any benefits received under Title VII, Nutrition Programs for the Elderly, of the Older Americans Act of 1965, as amended.

5. Payments for supportive services or reimbursement of out-of-pocket expenses to volunteers in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and any other programs under titles II and III of the Domestic Volunteer Service Act of 1973, P.L. 93-113.

6. Certain payments to applicants or recipients participating in the Volunteers in Service to American (VISTA) Program under section 404(g) of P.L. 93-113, the Domestic Volunteer Service Act of 1973, as amended by section 9 of P.L. 96-143.

7. Certain distributions from a Native Corporation established pursuant to the Alaska Native Claims Settlement Act under P.L. 92-203, as amended by section 15 of P.L. 100-241.

8. Benefits paid to eligible households under the Low Income Home Energy Assistance Act of 1981 pursuant to section 2605(f) of P.L. 97-35.

9. Receipts distributed to members of certain Indian tribes referred to in section 5 of P.L. 94-114.

10. The value of USDA donated foods (surplus commodities) under P.L. 83-480, section 416.

11. The value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food service program for children under the National School Lunch Act, as amended. (P.L. 89-642, section 11(b), as amended by P.L. 92-433 and 93-150.)

12. Any amounts paid by a State IV-A agency from State-only funds to meet needs of children receiving AFDC, if the payments are made under a statutorily-established State program which has been continuously in effect since before January 1, 1979. (P.L. 97-248, section 159.)

13. Indian judgment funds that are held in trust by the Secretary of the Interior (including interest and investment income accrued while such funds are so held in trust), or distributed per capita to a household or member of an Indian tribe pursuant to a plan prepared by the Secretary of the Interior and not disapproved by a joint resolution of the Congress, and initial purchases made with such funds. (P.L. 93-134, section 7, as amended by section 4 of P.L. 97-458.)

14. All funds held in trust by the Secretary of the Interior for an Indian tribe (including interest and investment income accrued while such funds are so held in trust) and distributed per capita to a household or member of an Indian tribe, and initial purchases made with such funds, are excluded. (P.L. 98-64, section 2.)

15. Student financial assistance made available for attendance costs under programs in title IV of the Higher Education Act of 1965, as amended, and under Bureau of Indian Affairs educational assistance programs. (P.L. 100-50, section 14(27).)

16. Any payments made as restitution to an individual under Title I of P.L. 100-383 (the Civil Liberties Act of 1988) or under title II of P.L. 100-383 (the Aleutian and Pribilof Islands Restitution Act).

17. Any Federal major disaster and emergency assistance provided under the Disaster Relief Act of 1974, as amended by P.L. 100-707 (the Disaster Relief and Emergency Assistance Amendments of 1988) and comparable disaster assistance provided by States, local governments and disaster assistance organizations.

18. Effective January 1, 1989, any payments made pursuant to the settlement in the In Re Agent Orange Product Liability Litigation, M.D. L. No. 381 (E.D.N.Y). (P.L. 101-201, section I and P.L. 101-239, section 10405.)

19. Payments pursuant to the Radiation Exposure Compensation Act. (P.L. 101-426, section 6(h)(2).)

20. P.L. 97-248, section 157. Any amounts determined to have been paid by a State from State-only funds to supplement or otherwise increase the amount of aid paid to an assistance unit as computed under 45 CFR 233.35 for a month in recognition of current or anticipated needs of the assistance unit for the same month--to the extent that the total of the State supplemental payments, the AFDC payment and actual income received in the month do not exceed the amount to an assistance unit of the same size and composition with no income--in computing the assistance payment under 55 CFR 233.25 for the corresponding payment month.

SUMMARY

Federal laws frequently exclude payments from income consideration in all Federal or Federally assisted programs, including food stamps and AFDC. However, some laws require that the payments be treated differently in the two programs. Examples are the requirements for treatment of Indian per capita payments under P.L. 98-64 and JTPA income under P.L. 97-300.

CONFORMANCE ISSUE: INCOME - TREATMENT OF INCOME OF INELIGIBLE MEMBERS

FOOD STAMP PROGRAM PROVISIONS

In the Food Stamp Program, there are a number of situations in which an individual lives with the household but is not considered a household member. Section 273.1(b)(1) of the regulations lists individuals who are considered nonhousehold members. The income and resources of these individuals are not considered available to the household. Section 273.1(b)(2) lists the types of household members who are ineligible to receive food stamps. The amount of the ineligible member's income that is counted in determining the eligibility and benefits of the rest of the household depends on the cause of the ineligibility. Section 273.11(c) contains instructions for treatment of the income and resources of these ineligible members.

A. In the following situations, the entire amount of the ineligible member's income is considered available to the household:

1. Disqualification for intentional program violation (IPV): Section 6(b)(1) of the Food Stamp Act provides that during the period of ineligibility of a household member who has been found to have intentionally violated program rules no household shall receive increased benefits as a result of the member's disqualification. Before this provision was added to the Act by P.L. 97-35, the Omnibus Reconciliation Act of 1981, regulations required counting the income of the disqualified member minus a pro rata share for the member. In P.L. 97-35, Congress specifically prohibited any increase in benefits to the household of a person disqualified for IPV. In Senate Report 97-128, the Senate Committee recommended that FNS "seriously consider attributing all of the income of the disqualified member to the household (with no pro rata share reduction)..." The preamble to regulations issued February 15, 1983 provides additional reasons for the current requirement in 7 CFR 273.11(c)(1) to count all of the disqualified member's income.

2. Disqualification for failure to comply with a workfare requirement: Section 20 of the Food Stamp Act and 7 CFR 273.22 contain requirements for an optional workfare program. If a participant in this workfare program fails to comply with its requirements, the entire household is disqualified for two consecutive months. Section 273.22(f)(6) and 273.11(c)(1) provide that if a member of the sanctioned household joins another household during the two-month sanction period, the income of that member is counted in its entirety to the household. The State agency must ensure that no household's benefits increase as a result of the disqualification.

3. Disqualification of a household member other than the head of household for failure to comply with a work requirement of 7 CFR 273.7.

In these situations in which all of the disqualified member's income is counted, all of the household's earned income, standard, medical, dependent care and excess shelter deductions are allowed. The disqualified member's resources also count in their entirety and the disqualified individual is not included when determining the household's size for the purpose of assigning a benefit level to the household, for comparing the household's monthly income with the income eligibility standards, or comparing the household's resources with the resource eligibility limits.

B. In the following cases, all but a pro rata share of the income of the ineligible member is counted as income to the remaining members.

1. Disqualification for failure or refusal to provide or apply for a social security number.

2. Ineligible alien status. (The requirement that all but a pro rata share of an ineligible alien's income be considered available to the household is mandated by section 6(f) of the Food Stamp Act.)

In these situations, the resources of the ineligible members count in their entirety to the remaining household members. The 20 percent earned income deduction applies to the prorated portion of the ineligible person's income considered available to the household. A deduction is allowed for all but the ineligible member's pro rata share of the household's deductible shelter or dependent care expenses paid by or billed to the ineligible member. The ineligible member is not included when determining the household's size for benefits or the income or resource limits.

C. The income of the following other individuals not included in the household is not considered available to the household:

1. Ineligible students;

2. Recipients of Supplemental Security Income in States that include the value of food stamp allotments in the State's supplemental payments;

3. Roomers and live-in attendants; and

4. Other individuals who share living quarters with the household but who do not customarily purchase food and prepare meals with the household.

The resources of these nonhousehold members are not considered available to the household. Cash payments from the nonhousehold member to the household are considered income, but vendor payments are excluded. If the household shares deductible expenses with the nonhousehold member, only the amount actually paid or contributed by the household is allowed as an expense. If the payments cannot be differentiated, the expenses are prorated and only the household's pro rata share is deducted. If the earnings of a household member and a nonhousehold member are combined, only the household's share is counted if it can be identified. If it cannot be identified, the income is prorated and only the household's pro rata share is counted. These nonhousehold members are not included in the household size when determining benefits or comparing income or resources to the eligibility limits.

AFDC PROVISIONS

In the AFDC program, there are a number of situations in which the income of persons not in the assistance unit is counted in determining eligibility and the amount of the payment.

1. Stepparents: Under section 402(a)(31) of title IV-A of the Social Security Act (Act) as specified at 45 CFR 233.20(a)(3)(xiv), in States that do not have laws of general applicability holding the stepparent legally responsible to the same extent as the natural or adoptive parent, the State agency shall count as income to the assistance unit the income of the stepparent of an AFDC child who is living in the household with the child but is not included in the assistance payment. The following disregards are applied: (1) the first $75 of the gross earned income of the stepparent if he or she is employed, (2) an additional amount equal to the State's need standard for a family of the same size as the stepparent and those dependents who are living in the home but whose needs are not included in the grant, and (3) support and alimony payments to others not living in the home.

2. Disqualified alien parents: Under section 402(f)(2) of the Act as specified at 45 CFR 233.20(a)(3)(vi)(B), the income of a disqualified alien parent shall be treated the same as that of a stepparent under section 402(a)(31) of the Act. A disqualified sibling's income is <u>not</u> counted toward siblings who are in the AFDC assistance unit.

3. Sponsored aliens: Under section 415 of the Act as specified at 45 CFR 233.51, for sponsored aliens, the income and resources of individuals and public or private agencies or organizations sponsoring the alien are taken into consideration in determining eligibility and amount of payment of the sponsored alien.

4. Spouse to spouse and parent to minor child deeming: Under 45 CFR 233.20(a)(3)(vi)(A), in family groups living together, income of a spouse is considered available for his spouse and income of a parent is considered available for minor children. An example of applicability of this provision would be the income of an illegal alien parent living in the home with the eligible AFDC children. Another example would be the situation of a non-legally responsible caretaker relative, i.e., an aunt receiving AFDC for herself and nephews. Her spouse's income is countable to her.

5. Minor parent deeming: Under section 402(a)(39) of the Act as specified at 45 CFR 233.20(a)(3)(xviii), the income of the parents of a minor parent when living in the same home are deemed available to the assistance unit using the stepparent deeming formula at section 233.20(a)(3)(xiv).

6. Filing unit provision: Under section 402(a)(38) of the Act as specified at 45 CFR 206.10(a)(1)(vii), for AFDC, in order for the family to be eligible, an application with respect to a dependent child must also include, if living in the home and otherwise eligible, any parent of such child. If such parent is not in the unit because of failure to cooperate in meeting a condition of eligibility or a sanction, the income of such parent is counted in determining the amount of the payment.

7. Individuals disqualified for intentional program violation: The income and resources of an individual disqualified for intentional program violation are considered available to the assistance unit.

Under section 402(a)(24) of the Act as specified at 45 CFR 233.20(a)(3)(x), the income and resources of individuals who are receiving SSI shall not be counted as income and resources of an assistance unit.

Income of Ineligible Members

SUMMARY

The income of ineligible household members (or individuals not in the AFDC unit) are treated differently, depending on the reason for ineligibility or not being in the unit, in both AFDC and food stamps.

CONFORMANCE ISSUE: INCOME - IRREGULAR INCOME

FOOD STAMP PROGRAM PROVISIONS

Section 5(d)(2) of the Food Stamp Act requires the exclusion of income of $30 or less in a quarter received too infrequently or irregularly to be reasonably anticipated. Section 273.9(c)(2) of the food stamp regulations contains an identical provision. The phrase "reasonably anticipated" means the exclusion does not apply under retrospective budgeting. It applies to both earned and unearned income and to total household income. If the irregular income exceeds $30 in a quarter, the full amount is counted.

House Report 95-464, page 34, discusses the FSP exclusion, which was in place prior to the 1977 Act. The exclusion applied to "income which is received too infrequently or irregularly to be reasonably anticipated as available during a three-month period, provided such infrequent or irregular income of all household members will not exceed $30 in a three-month period. Such income may be from odd jobs when the household cannot predict the frequency of work or receipt of payments except to anticipate it as under $30 in a three-month period. Also prizes, gifts, awards or vendor payments..., which are not anticipated and unlikely to be repeated and are under $30 for the quarter, may be excluded under this provision." The Committee continued the previous policy and commented that this exclusion "is reasonable because counting and documenting such income (which can come from sources such as baby sitting or odd jobs) would present administrative difficulties and because the amounts of money involved are too small for administrators to spend time checking."

AFDC PROVISIONS

Section 233.20(a)(3)(iv)(F) gives States the option to disregard from income all nonrecurring gifts, such as those for Christmas, birthdays, and graduations, not to exceed $30 per individual in any quarter.

The preamble to a final rule published March 18, 1986, provides background information concerning this disregard. Until 1975, AFDC regulations provided that "only such net income as is actually available for current use on a regular basis will be considered..." Although the regulations were changed in 1975 to require that income available for current use be counted, States were permitted to exclude income considered "casual and inconsequential." This was to help States avoid administrative complexities associated with budgeting unpredictable income under prospective budgeting. Monthly reporting and retrospective budgeting required the reporting of all income and reduced the need for prospectively anticipating income. Another reason for the "casual and inconsequential" policy was to allow latitude in disregarding small gifts that do not reasonably represent income available to meet household needs and which are difficult to track. However, State policy concerning these gifts varied and large amounts were being disregarded. Therefore, the March 18, 1986 regulations amended section 233.20(a)(3)(iv) to give States the option to disregard small gifts not to exceed $30 in a quarter.

The figure of $30 was selected because it falls within the average range of the dollar amount which States were excluding and was consistent with the food stamp exclusion. Several commenters suggested that the disregard be applied monthly rather than on a quarterly basis. The response was that the quarterly maximum allows recipients to receive a larger disregard for one month than would be allowed under a monthly maximum, but States have the flexibility to establish monthly amounts that do not exceed the maximum.

SUMMARY

AFDC and FSP policy differ in the following respects:

1. The AFDC disregard applies to each individual's income; the FSP exclusion applies to the household.

2. The AFDC disregard applies only to unearned income, and gifts are specified. The FSP provision applies to both earned and unearned income. Gifts are not specified.

3. The AFDC provision is optional for States; it is mandatory in the FSP.

4. The AFDC disregard is not required by legislation; the Food Stamp Act mandates the FSP provision.

5. The AFDC disregard applies under both prospective and retrospective budgeting. The food stamp exclusion applies under prospective budgeting only.

CONFORMANCE ISSUE: INCOME - JTPA EARNINGS FROM STATE TRAINING PROGRAMS

FOOD STAMP PROGRAM PROVISIONS

Section 5(d)(10) of the Food Stamp Act excludes income specifically excluded by other Federal law. Section 142(b) of the Job Training Partnership Act (JTPA) requires the exclusion of JTPA income in determining eligibility and benefits for other Federal assistance programs. Section 5(1) of the Food Stamp Act provides that notwithstanding provisions of the JTPA, earnings to individuals participating in on-the-job training programs under Section 204(5) of the JTPA shall be considered earned income, except for dependents under 19. (Section 204(5) governs State-administered programs.)

Section 273.9(b)(1)(iii) of the food stamp regulations provides that training allowances received through programs authorized by JTPA (other than earnings received under Section 204(5)) are excluded from income. Section 273.9(b)(1)(v) implements the requirement to count earnings received under Section 204(5) of the JTPA, including monies paid by JTPA and monies paid by the employer. The provision does not apply to household members under 19 who are under the parental control of another adult member, regardless of school enrollment or attendance. Section 273.9(c)(10)(v) provides an income exclusion for allowances, earnings, or payments (including reimbursements) to individuals participating in programs under the JTPA, except as provided in 7 CFR 273.9(b)(1)(v).

AFDC PROVISIONS

Section 402(a)(8)(A)(v) of Title IV-A provides that in determining need, States may disregard the income of any dependent child applying for or receiving AFDC that is derived from a program carried out under the JTPA. Earned income may be excluded for up to six months per calendar year.

Section 233.20(a)(3)(xvii) of the regulations implements this provision. States that take this option must identify the JTPA programs from which income will be disregarded and specify how much earned and unearned income will be disregarded and for how long. The earned income disregard is limited to six months. It is not based on student status.

SUMMARY

The programs differ as follows in treatment of earnings from JTPA State training programs:

1. The disregard of JTPA income of a dependent child is a State option in AFDC; it is mandatory for children under 19 in the FSP.

2. The income disregard in AFDC is limited to six months; there is no time limit on the FSP exclusion.

CONFORMANCE ISSUE: INCOME: NONRECURRING LUMP SUM PAYMENTS

FOOD STAMP PROGRAM PROVISIONS

Section 5(d)(8) of the Food Stamp Act requires that moneys received in the form of nonrecurring lump sum payments be excluded from income. The payments must be counted as resources, unless specifically excluded by law. The payments include, but are not limited to, income tax refunds, rebates or credits, retroactive lump sum Social Security or Railroad Retirement payments and retroactive lump sum insurance settlements. Also excluded are cash donations based on need received from private nonprofit charities, not to exceed $300 in a quarter.

Section 273.9(c)(8) implements the lump sum provision and adds retroactive lump sum SSI and public assistance payments and refunds of security deposits on rental property or utilities to the examples in the law. The provision of the law regarding charitable donations is contained in section 273.9(c)(13).

Although it is not specified in the regulations, food stamp policy is that the lump sum provision applies to both earned and unearned income.

AFDC PROVISIONS

Section 402(a)(17) of Title IV provides that lump sum payments which cause the family's countable income to exceed the need standard shall be counted as follows: the payment is considered income in the month received and the family is ineligible for a period of months equal to the sum of the payment and other household income divided by the need standard for the family size. At State option, the period of ineligibility may be shortened under specified circumstances.

Section 233.20(a)(3)(ii)(F) of the AFDC regulations provides that the lump sum provision applies to the assistance unit's income remaining after allowable disregards and that it applies to both earned and unearned income. Retroactive monthly payments from Title II and other sources, windfalls such as inheritances or lottery winnings, and personal injury and workmen's compensation awards are given as examples of lump sum payments. However, the lump sum provision does not apply to income that is earmarked and used for the purpose for which it is paid, such as moneys for back medical bills resulting from accidents, and replacement or repair of resources. The period of ineligibility begins with the month of receipt of the lump sum or, at State option, with the payment month. The period of ineligibility may be shortened when the standard of need increases and the amount the family would have received also changes, the lump sum becomes unavailable for a reason beyond the family's control, or the family incurs and pays for medical expenses during the period of ineligibility.

SUMMARY

Lump sum payments are treated in a totally different manner in the two programs. Under food stamp rules, they are excluded from income and counted as a resource; under AFDC provisions, they are treated as income, with a formula applied to determine a period of ineligibility relating to the payment.

CONFORMANCE ISSUE: INCOME - CALCULATING BOARDER INCOME

FOOD STAMP PROGRAM PROVISIONS

Section 5(d)(7) of the Food Stamp Act, which allows an income exclusion for the cost of producing self-employment income, does not contain specific procedures for determining the income of households with self-employment income from boarders. However, the House Report which accompanied the Food Stamp Act of 1977 (H.R. 95-464, page 38) indicates Congressional intent that the cost of doing business for boarder income be calculated "for purposes of administrative ease, at a fixed rate or the value of a monthly coupon allotment for a one-person household" for each boarder. The report also indicates Congressional intent that actual costs be allowed, but the cost exclusions from income cannot exceed the income received.

Section 273.11(b)(1) of the Food Stamp Program regulations provides procedures for calculating the income received from boarders other than those in a commercial boarding house and recipients of foster care payments. Income from boarders includes all direct payments to the household for room and meals, including contributions to the household's shelter expenses. The cost of doing business is either (1) the maximum allotment amount for a household size equal to the number of boarders or (2) the actual documented cost of providing room and meals, if that cost exceeds the maximum allotment amount. If actual costs are used, only separate and identifiable costs of providing room and meals to boarders can be excluded. The excluded costs cannot exceed the amount of income received.

AFDC PROVISIONS

Section 233.20(a)(6)(v)(B) of the AFDC regulations, which discusses business expenses, does not address allowable costs of business for income received from boarders. However, the program permits States to designate a flat percentage or a flat amount as the cost of doing business provided there is an objective and justifiable basis. If it can be shown that the actual expenses are higher than those resulting from application of the State's method, the State must use the higher amount.

SUMMARY

For food stamps, the allowable cost of producing self-employment income from boarders is either the maximum allotment for a household of the same size as the number of boarders or the actual documented cost, if it is higher than the allotment. In AFDC, State agencies must exclude costs based on a flat percentage of the income or actual expenses if they are higher.

CONFORMANCE ISSUE: INCOME - SELF-EMPLOYMENT EXPENSES

FOOD STAMP PROGRAM PROVISIONS

Section 5(d)(9) of the Food Stamp Act excludes from income the cost of producing self-employment income. The Act does not list the specific costs that should be excluded. The legislative history (House Report 95-464, page 25) of the 1977 Food Stamp Act indicated that the Department should allow depreciation as a cost of doing business, and depreciation was allowed in the regulations published October 17, 1978. However, the Conference Report accompanying the 1980 amendments to the Food Stamp Act (House Report 96-957, page 29) suggested that depreciation be deleted as a cost of doing business.

Section 273.11(a)(4)(ii) of the food stamp regulations provides that the following may not be costs of doing business: net losses from prior periods; depreciation; and the purchase price or payments on the principal of loans for equipment, real estate, capital assets, and other durable goods. In additional, personal income taxes, transportation to and from work, retirement, and other work-related expenses are not allowed because they are taken into account in the 20 percent earned income deduction in Section 273.9(d)(2).

AFDC PROVISIONS

Title IV-A of the Social Security Act contains no requirements concerning allowable costs of doing business. Section 233.20(a)(6)(v)(B) of the AFDC regulations provides that earned income from self-employment is the total profit resulting from a comparison of the gross receipts with the business expenses. Allowable expenses are those directly related to producing the goods or services and without which the goods or services could not be produced. The following expenses are not allowed: depreciation, purchases of capital equipment, payments on the principal of loans for capital assets or durable goods, personal transportation, and personal business or entertainment expenses. However, the earned income disregards are allowed on earned income from self-employment.

SUMMARY

The FSP rules contain the following disallowed expenses that are not included in the AFDC regulations: net losses from prior periods; money set aside for retirement purposes; and Federal, State or local personal income taxes. Neither program considers as an excludable expense payments on the principal of the purchase price of income-producing capital assets, but the wording of the regulations is not the same.

CONFORMANCE ISSUE: INCOME: STUDENT ASSISTANCE

FOOD STAMP PROGRAM PROVISIONS

Educational assistance provided to students is counted as income under the Food Stamp Act, unless specifically excluded. Public Law 101-624, the Mickey Leland Memorial Domestic Hunger Relief Act, enacted November 28, 1990, and Public Law 102-237, enacted December 13, 1991, amended section 5(d)(3) of the Act to exclude the following education assistance from income: all educational loans on which payment is deferred, grants, scholarships, fellowships, veterans' educational benefits, and the like (A) awarded to a household member enrolled at a recognized institution of post-secondary education, a school for the handicapped, in a vocational education program, or in a program that provides for completion of a secondary school diploma or equivalent (B) to the extent that they do not exceed the amount used for or made available as an allowance determined by the school, institution, program or other grantor for tuition and mandatory fees (including the rental or purchase of any equipment, materials, and supplies related to the pursuit of the course of study involved; books; supplies; transportation; and other miscellaneous personal expenses (other than living expenses) of the student incidental to attendance. Reimbursements for these expenses (but not living expenses) are also excluded. In addition, section 5(d)(3)(C) excludes the origination fees and insurance premiums on educational loans.

The changes contained in Public Laws 101-624 and 102-237 simplify current procedures for determining excludable student income by making the Food Stamp Act more consistent with the income exclusion provisions of the Higher Education Technical Amendments Act of 1987 (Public Law 100-50) and the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (Public Law 101-392). Public Law 102-237 expands the income exclusion for educational income by excluding educational income awarded to a household members which is either used for or made available (earmarked) by the grantor for the specified expenses. It also provides the authority to exclude all educational assistance in the same manner, regardless of the source of the assistance. If the grantor does not earmark amounts made available for the allowable costs or if the amount earmarked is less than the amount used for the expense, students shall receive an exclusion for the amounts verified by the student as used for the allowable costs.

AFDC PROVISIONS

There is no provision in Title IV-A of the Social Security Act specifically excluding all educational assistance. However, two statutory disregards apply: Section 507 of the Higher Education Act Amendments of 1968 requires that any grant or loan to an undergraduate student for educational purposes made or insured under any programs administered by the Department of Education will be disregarded as income and resources in programs under the Social Security Act. In addition, the provisions of the Higher Education Act amendments in Public Law 100-50 also apply. The amendments provide that the portion of student financial assistance under Title IV of the Higher Education Act that is made available for attendance costs shall not be considered as income and resources under Federal or Federally assisted programs.

States may totally disregard education assistance from any source for all students under the complementary programs provision of section 233.20(a)(3)(vii). If a State does not elect this option, Section 233.20(a)(3)(iv) of the AFDC regulations requires State agencies to disregard from income and resources grants and loans received under conditions that preclude use for current living expenses. In addition, Section 233.20(a)(4)(ii)(D) requires the disregard of assistance for education purposes received by undergraduates under programs administered by the Department of Education.

Since enactment of the Higher Education Act amendments, State agencies have been required to disregard assistance provided under Title IV and by BIA for the costs of attendance (tuition, fees, books, supplies, transportation and miscellaneous personal expenses). States still have the option to apply the complementary programs provision to Title IV assistance. States also have a new option that has emerged as a result of some lawsuits. FSA-IM-89-1, issued January 3, 1989, allows States to totally disregard any bona fide loan. Under this policy, which is optional now, States can disregard all student loans, as well as other loans, as long as they are "bona fide" loans. This applies to loans under Title IV and BIA. The policy will be mandatory when regulations are written.

SUMMARY

There is a basic difference in emphasis in treatment of student assistance by the two programs. In the Food Stamp Program, student assistance is counted as income unless specifically excluded by law or regulations. In AFDC, regulations require the exclusion of student aid unless it is for living expenses. State agencies also have the option of excluding amounts provided for living expenses.

CONFORMANCE ISSUE: INCOME: $50 CHILD SUPPORT PASS-THROUGH PAYMENT

FOOD STAMP PROGRAM PROVISIONS

Section 5(d)(13) of the Food Stamp Act provides State agencies the option to exclude from income the $50 in child support which is passed on to families participating in the Title IV-D child support collection program, as provided in Section 402(a)(8)(A)(vi) of the Social Security Act. However, the exclusion is subject to the provisions of Section 5(m) of the Food Stamp Act, which requires State agencies to reimburse FNS for the additional coupons issued if they exclude the payment.

Section 273.9(c)(12) of the Food Stamp Program regulations implements this provision. The child support payments are counted as income unless the State agency selects the reimbursement option. Retroactive payments are excluded. Section 276.2(e) provides instructions for State agencies that opt to reimburse FNS for the additional costs of disregarding the child support payments. Only Tennessee has chosen this option.

AFDC PROVISIONS

Section 402(a)(8)(vi) of Title IV-A of the Social Security Act, as amended by the Family Support Act, requires State agencies to disregard the first $50 of any child support payments received in a month for that month and the first $50 of payments for each prior month received in that month if such payments were made by the absent parent in the month when due.

SUMMARY

In AFDC, the first $50 of child support collected by the IV-D agency is disregarded from income. There is no comparable income exclusion for food stamps.

CONFORMANCE ISSUE: RECERTIFICATION/REDETERMINATION - CERTIFICATION PERIODS

FOOD STAMP PROGRAM PROVISIONS

The Food Stamp Act mandates that food stamp households be certified for specific periods of time, depending on their circumstances. Under the definition of "certification period" in Section 3(c) of the Act, households required to submit periodic reports must have certification periods of at least six months but no longer than twelve months. These limits may be waived by the Secretary, however, for certain categories of households if the waiver would improve the administration of the program. Section 3(c)(1) requires that the certification periods of households in which all members are included in a federally aided public assistance (PA) or general assistance (GA) grant, coincide with the period of the grant.

The law provides that other households may be certified for as short a period as circumstances require at the initial certification of any household or if there is a substantial likelihood of frequent changes in household income or status. For other households, the certification period may not be less than three months and may be up to twelve months for any household consisting entirely of unemployable, elderly or primarily self-employed persons. The maximum limit of twelve months may be waived by the Secretary.

The requirements for nonmonthly reporting households are implemented in section 273.10(f) of the food stamp regulations. The introductory paragraph of section 273.10(f) requires State agencies to establish a definite period of time within which a household is eligible to receive benefits. At the expiration of each certification period, entitlement to food stamp benefits ends. Further eligibility can be established only after recertification based on a completed application, an interview, and required verification. Section 273.10(f)(1) requires that certification periods conform to calendar months unless FNS has approved the use of fiscal months.

Section 273.10(f)(2) implements a provision of P.L. 100-77, the Hunger Prevention Act, which required certification periods not to exceed six months for households granted separate household status because they consist of an individual and his/her minor children living with his/her parent or sibling and purchasing and preparing meals separately.

Section 273.10(f)(3) contains the requirement in section 3(c)(1) of the law regarding certification periods for pure PA or GA households. The regulations require, to the extent possible, that households in which all members are contained in a single PA grant or in a single GA grant where GA and food stamp applications are processed jointly be recertified for food stamps at the same time they are redetermined for PA/GA. However, food stamp recertifications must be completed within the required time frames, and benefits may not be continued beyond the end of the household's certification period.

Sections 273.10(f)(4) through (7) contain the other requirements of the law concerning nonmonthly reporting households. Sections 273.10(f)(8) and 273.21(a)(3) require that monthly reporting households be certified for at least six months and not more than 12 months. The 12-month limit may be waived if program administration would be improved. The six-month minimum may be waived for households that report less often than monthly.

AFDC PROVISIONS

Section 206.10(a)(9) of the AFDC regulations allows State agencies to redetermine eligibility when necessary. However, eligibility must be redetermined at least once every six months unless the unit reports monthly or is covered by an approved error-prone profiling system. The agency must conduct a face-to-face redetermination at least once in 12 months.

SUMMARY

In food stamps, participation is established for a limited and definite period and cannot be continued beyond the end of the period. In AFDC, eligibility is for an indefinite period and ends when the unit becomes ineligible. If a redetermination is not completed when scheduled, the unit may continue to receive benefits as long as it is eligible.

CONFORMANCE ISSUE: RECERTIFICATION/REDETERMINATION PROCESS

FOOD STAMP PROGRAM PROVISIONS

Section 11(e)(4) of the Food Stamp Act requires the State agency to insure that each participating household receives a notice of expiration of its certification period prior to the start of the last month of its certification advising the household that it must reapply and be recertified. If the household applies no later than 15 days prior to the end of the certification period, it must receive uninterrupted benefits. However, benefits cannot be continued for a household that does not complete the recertification process. The provision also allows modification of the requirements for the purposes of monthly reporting or retrospective budgeting.

Section 273.14 of the regulations contains detailed requirements concerning the notice of expiration, the recertification process and time frames for providing benefits when the household does and does not reapply by the 15th of the last month of the certification period. Section 273.14(d) provides that the State agency shall act to provide uninterrupted benefits to any household determined eligible after the household timely filed an application, attended an interview in accordance with the regulatory requirements and submitted all necessary verification. Time frames for submitting a timely application for recertification differ for monthly reporters and non-monthly reporters.

Section 273.21(q) provides requirements for recertification of monthly reporting households. States may select one of three ways of recertifying these households: (1) provide a recertification form and send a notice of expiration in place of the monthly report; (2) provide the household a notice of expiration, a monthly report form, and an addendum; or (3) recertify based on a monthly report, the interview and a statement signed by the household requesting recertification. An interview is required under all three options.

AFDC PROVISIONS

Section 206.10(a)(9) of the AFDC regulations requires that eligibility be determined whenever required because of changes in the individual's circumstances or periodically, according to time frames established by the agency. For AFDC, all factors of eligibility must be redetermined at least every 6 months except in the case of monthly reporting cases or cases covered by an approved error-prone profiling system. In AFDC, one face-to-face redetermination must be conducted once in every 12 months.

SUMMARY

The Food Stamp Act and regulations contain specific details regarding the recertification process. In AFDC, State agencies have more flexibility.

CONFORMANCE ISSUE: RESOURCES - ACCESSIBILITY

FOOD STAMP PROGRAM PROVISIONS

Section 5(g)(2) of the Food Stamp Act gives FNS authority to regulate in the area of resource accessibility. The Mickey Leland Memorial Domestic Hunger Relief Act (Public Law 101-624, enacted November 28, 1990), added paragraph 5(g)(5) to the Food Stamp Act to provide that a resource shall be excluded as an inaccessible resource if the household is unlikely to be able to sell the asset for any significant return because the household's interest is relatively slight or because the cost of selling the household's interest would be relatively great. The Food, Agriculture, Conservation and Trade Act Amendments of 1991 (Public Law 102-237, enacted December 13, 1991) clarified that a resource would qualify for this exclusion if its sale or other disposition is unlikely to produce any significant amount of funds for the support of the household. In addition, the law specified that FNS shall not mandate that State agencies require verification of the value of a resource to be excluded under the provision unless the information provided by the household is questionable. Prior to enactment of Public Law 102-237, a proposed rule implementing the provision of Public Law 101-624 was published on August 13, 1991 at 56 FR 40164. Because of comments received and passage of Public Law 102-237, the Department is preparing to repropose the rule. The provision is effective February 1, 1992.

Two sections of current food stamp regulations address accessible resources. Section 273.8(d) discusses jointly owned resources. Section 273.8(e)(8) contains requirements concerning resources having a cash value that is not accessible to the household, such as irrevocable trust funds, security deposits on rental property or utilities, property in probate and real property which the household is making a good faith effort to sell. Real property for sale is addressed in a separate fact sheet.

Jointly Owned Resources
Section 273.8(d) provides that jointly owned resources are considered available in their entirety to each household unless the applicant household can demonstrate that the resource or a portion of it is inaccessible. If the household can show that it has access to only a portion of the resource, only that portion is counted toward the household's resource level. The resource is considered totally inaccessible if it cannot practically be subdivided and the household's access to the value of the resource is dependent on the agreement of a joint owner who refuses to comply. The preamble to regulations dated October 17, 1978 (43 FR 47863) indicates that "A resource cannot be practically subdivided if the financial value of the proportionate share would be significantly reduced by sale of only the subdivision." Any resources jointly owned by individuals who enter a shelter for battered women and children and members of their former households are to be considered

jointly held if access is dependent on the agreement of a person who still resides in the former household. Section 273.11(c) provides that the total resources of a person living with the household shall be considered available to the household if the individual is ineligible because of intentional program violation, imposition of a workfare sanction, refusal to obtain or provide a social security number, or ineligible alien status.

Policy Memo 86-24 dated September 23, 1986 provides that if a member of a household and another person have put their names together on a resource, it is up to the State agency in consultation with legal advisors to determine the ownership and extent of accessibility of the resource to the food stamp household. If, under State law, the household member is precluded from withdrawing funds or liquidating other jointly held property for his or her own benefit, the funds are not accessible. If under State law, the household member may withdraw all or a part of the funds, the funds are accessible to the extent withdrawals are permitted and must be counted. Regarding establishment of ownership of a resource, FNS policy is that the title or other legal document is the best indicator of ownership, but State law on ownership prevails. In the case of dispute, the burden of proof is on the title holder to present evidence to overcome the presumption of ownership.

<u>Trust Funds</u>
In the rule proposed on May 2, 1978 to implement the Food Stamp Act of 1977, the Department indicated its intent to continue the exemption which existed under previous law for resources having a cash value that is inaccessible to the household, and a paragraph was included in the regulation to explain when a trust fund would be considered inaccessible. Final regulations dated October 17, 1978 defined an inaccessible trust and provided examples of other inaccessible resources.

On August 1, 1980, a proposed rule was issued as a result of the Whye v. Bergland lawsuit in New Jersey. The issue was the counting of trust funds as accessible resources when the funds were administered by a court but were not limited to payment of educational expenses, as was then required by the regulations in order to be considered inaccessible. A consent order in the case required New Jersey to stop counting as a resource court-administered trust funds established for a minor or incompetent pending promulgation of a rule. The final rule published November 28, 1980 allowed exclusion of trust funds established with the household's own money to pay for the medical as well as educational expenses of any person named by the household creating the trust. The preamble to the rule discussed the issue of accessibility of trust funds at length. In answer to a comment regarding treatment of a trust fund if one household member is appointed as guardian of another household member and has access to the fund, the preamble indicated that "It is the

Department's intention that the trust funds not be counted if they cannot be used by the household, except for the person named in the trust for the purposes specified. If the guardian has unlimited access to a trust fund established for another household member, the fund should be counted as a resource. However, if the guardian must petition the court or has court imposed limitations placed on withdrawal and use of funds and those limitations meet the requirements of these regulations, the rest of the household cannot benefit from the resources and the fund should be excluded from consideration."

The rule also added the requirement that income from excluded trust funds be counted as income in the month received. If a household has the option of receiving dividends or reinvesting them, the income is counted when it is available, whether or not the household actually collects the money.

Current regulations allow the exclusion of trust funds if the trust meets the following four criteria:

1. The trust will not cease during the certification period and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period;

2. The trustee is either (a) a court, institution, corporation or organization not under the direction or ownership of a household member or (b) an individual appointed by the court who has court imposed limitations placed on use of the funds which meet the requirements of the trust provisions of the regulations;

3. Trust investments do not involve or assist any business or corporation under the control, direction or influence of a household member; and

4. The funds in the trust are either (a) established from the household's own funds if the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of any person named or (b) established from nonhousehold funds by a nonhousehold member.

Comments received in response to the proposed rule on trust funds issued August 1, 1980 indicated that trust funds are extremely rare among food stamp households. However, a number of questions have arisen subsequently concerning conservatorships. These situations frequently arise from insurance settlements in wrongful death claims. Funds are placed in an account for the survivors, and frequently a relative is named as trustee. The beneficiary of the trust may be a member of a household receiving or applying for food stamps. The question then becomes whether or not the funds in the trust for the beneficiary are accessible to the rest of the household.

Examples of conservatorships have been referred to the Office of General Counsel for consideration. One is the case of Melody A. Becker vs. Iowa Department of Human Services. In this case, two children were the beneficiaries of an insurance settlement following the death of their father. Funds valued at over $200,000 for the two children were held in a conservatorship administered by the children's uncle. The mother had remarried and had other children. Funds could be withdrawn from the account for living expenses, but both the conservator and an attorney had to sign for any expenditures. Ms. Becker's food stamp case was closed because of excess resources in 1986, and she appealed.

The State district court found that the funds were available to the household. The court order concerning the funds limited how they could be invested, but it did not limit how the funds were to be expended. Under the State statutes concerning conservatorships, the only limits on expenditures are the best interest of the ward and the approval of the court. The court indicated that where a family would otherwise be in poverty, courts have held that money conserved for a child can be used to support the child's parents and siblings, on the theory that such use of the child's money is in the child's best interest.

In the Becker decision, the court cited the case of <u>Arkansas Department of Human Services v. Donis</u>. In this case the court held that the requirement that the conservator obtain prior court approval to withdraw the funds from the bank was not sufficient to make the funds unavailable. The court ruled that the funds were available to the ward and that the conservator is to be governed by the best interests of the ward.

<u>Other resources</u>
Questions have also arisen concerning the accessibility of other types of resources. The policy on these resources is as follows:

1. Life estates: Life estates must be counted as a resource if they are accessible. A case-by-case determination of accessibility must be made.

2. "Cafeteria" benefit plans: Money in these plans set up by employers to allow employees to select their own types of benefits is considered inaccessible if it cannot be withdrawn by the household.

3. Funds under court control: The fact that a person may have to go to court to get access to a resource does not automatically make the resource inaccessible.

4. Resources unknown to the household: Policy Memo 90-7 dated February 20, 1990 provides that a resource shall be considered

inaccessible to the household as long as it was truly unknown to the household. Once the household discovers a resource that is legally available to it, the resource must be counted in determining the household's eligibility.

AFDC PROVISIONS

Section 233.20(a)(3)(ii)(D) of the AFDC regulations provides that resources are considered available when actually available and when the client has a legal interest in a liquidated sum and has the legal ability to make it available for support and maintenance. According to Action Transmittal 82-27 dated November 1, 1982, this means that whether or not a jointly owned resource is considered available in its entirety to an applicant or recipient owner must be determined in accordance with applicable State law. An exception is made for resources jointly held by recipients of Supplemental Security Income and AFDC recipients. In that case, the value of the jointly held resource is prorated among the owners.

SUMMARY

The food stamp regulations contain specific requirements for considering jointly owned and other resources inaccessible to the food stamp household. In making a determination of accessibility in situations not covered by the regulations, FNS has instructed States to follow State law. Cases involving trusts are frequently resolved through court action. AFDC regulations are less specific, and determination of accessibility through State law is the practice.

CONFORMANCE ISSUE: RESOURCES - BURIAL PLANS

FOOD STAMP PROGRAM PROVISIONS

Section 5(g) of the Food Stamp Act and section 273.8(e)(2) of the food stamp regulations exclude from resource consideration the value of a burial plot for each member of a household. There is no specific exclusion for burial plans. However, inaccessible funds in burial agreements are excludable under the inaccessible resource provision of section 273.8(e)(8). Policy Memo 82-3 dated October 8, 1981 provides that any amount that can be withdrawn from a funeral contract without an obligation to repay is counted as a resource.

AFDC PROVISIONS

Section 402(a)(7)(B) of Title IV-A excludes from resource consideration under regulations prescribed by the Secretary one burial plot for each child, relative and other individual and any funeral agreements. Section 233.20(a)(3)(i)(B) of the AFDC regulations implements this provision. Section 233.20(a)(3)(i)(B)(3) requires the exclusion of one burial plot (as defined in the State plan) for each member of the assistance unit. Section 233.20(a)(3)(i)(B)(4) requires the exclusion of bona fide funeral agreements (as defined and within limits specified in the State plan) up to a total of $1,500 of equity value or a lower limit at State option for each member of the assistance unit.

SUMMARY

Both programs exclude one burial plot per person. Additionally, AFDC excludes bona fide funeral agreements not to exceed $1,500 of equity value (or such lower limit set by the State) regardless of accessibility of the funds. Food stamps excludes only inaccessible funds in a burial plan and sets no dollar limit.

CONFORMANCE ISSUE: RESOURCES - INCOME PRODUCING REAL PROPERTY

FOOD STAMP PROGRAM PROVISIONS

Section 5(g) of the Food Stamp Act provides that the Secretary shall prescribe the types and allowable amounts of financial resources an eligible household may own and shall in determining the resources to be included and excluded follow the regulations in force as of June 1, 1982. Current rules based on the 1982 regulations contain several provisions relating to the exclusion of real property from resource consideration.

Section 273.8(e)(1) excludes from resources the home and surrounding property, including a lot on which a home is being built. Section 273.8(e)(4) excludes property which annually produces income consistent with its fair market value, even if used only on a seasonal basis. This property includes rental homes and vacation homes. Section 273.8(e)(5) excludes property essential to employment or self-employment, such as farm land. Property essential to the self-employment of a household member engaged in farming is excluded for one year from the date the household member terminates his or her self-employment from farming. Section 273.8(e)(6) excludes installment contracts for the sale of land or buildings if the contract or agreement is producing income consistent with its fair market value. The exclusion also applies to the value of the property sold under the installment contract or held as security in exchange for a purchase price consistent with the fair market value of that property. Section 273.8(e)(8) excludes real property which the household is making a good faith effort to sell at a reasonable price and which has not been sold. This issue is discussed in a separate fact sheet.

Several issues have arisen in the Food Stamp Program relating to the determination of fair market value that is required for the property exclusions in sections 273.8(e)(4), (5) and (6). The regulations provide that the property or contract must be producing income consistent with its fair market value. However, the regulations do not provide a definitive standard on what should be considered fair market value or "producing income consistent with fair market value." Because there are many variations and financial arrangements that exist within areas of a county or State and because of the different profit margins on different types of property, FNS believes that such determinations are best left to the individual eligibility worker based on knowledge of the area and commonly used financial arrangements.

Questions have also arisen regarding the exclusion of property during periods it is not producing income consistent with its fair market value. For example, a rental property may be vacant while repairs are made or property which is essential for self-employment might not consistently show a profit. Current procedures allowing income to be annualized usually eliminate the impact of a temporary loss of income. The exclusion for rental property does not apply if the home is producing only nominal income unless the household is making a good faith effort to rent the property to a paying client at the fair market rental value. FNS policy is that property that has been producing income consistent with its fair market value will remain exempt while the household is making a good faith effort to rent the property or while some exigency prevents the household from doing so. Rental property that is essential for self-employment must be producing income consistent with its fair market value in order to be excluded.

Policy Memo 79-149 provides that although the installment contract provision of section 273.8(e)(6) is intended to apply to contracts for the sale of land and buildings, other property such as equipment or farm machinery that is an integral part of the land and building sale might be indistinguishable, thus allowing the installment contract provision to cover all items.

AFDC PROVISIONS

There is no provision in Title IV-A or the AFDC regulations containing specific real property exclusions similar to those in the Food Stamp Program, except the exclusions for a home and for property the household is attempting to sell. However, farm land may be excluded under the exclusion in section 233.20(a)(3) for the home which is the usual residence of the assistance unit. Real property is not excluded under provisions related to self-employment.

SUMMARY

Income-producing real property may be excluded from resource consideration under several provisions in food stamps. In AFDC, the only exclusion for real property is for farm land excluded along with the home.

CONFORMANCE ISSUE: RESOURCES - CASH SURRENDER VALUE OF LIFE INSURANCE

FOOD STAMP PROGRAM PROVISIONS

Section 5(g) of the Food Stamp Act requires the Secretary to follow the regulations in force as of June 1, 1982 for assets (other than licensed vehicles and inaccessible resources) in prescribing the types and allowable amounts of financial resources an eligible household may own. Among the resources excluded in the regulations as of June 1, 1982 are "Household goods, personal effects, including one burial plot per household member, and the cash value of life insurance policies."

AFDC PROVISIONS

Section 402(a)(7)(B) of Title IV and section 233.20(a)(3) of the AFDC regulations allow specific resource exclusions. All other available resources, including the cash surrender value of life insurance policies, are counted.

SUMMARY

In AFDC, but not in food stamps, the cash surrender value of life insurance is considered a resource.

CONFORMANCE ISSUE: RESOURCES - REAL PROPERTY FOR SALE

FOOD STAMP PROGRAM PROVISIONS

Section 5(g) of the Food Stamp Act requires the Secretary to apply the resource inclusions and exclusions in force as of July 1, 1982, except for licensed vehicles and inaccessible resources. The discussion of real property the household is attempting to sell comes under "inaccessible resources" in Section 273.8(e)(8) of the FSP Regulations. This provision was included in Regulations issued October 17, 1978, implementing the Food Stamp Act of 1977, and it has not been revised since then.

The Regulations exclude "real property which the household is making a good faith effort to sell at a reasonable price and which has not been sold." The Regulations describe verification the State Agency may obtain to support the household's claim that the property is for sale, including real estate listings, newspaper ads or collateral contacts.

AFDC PROVISIONS

Section 402(a)(7)(B) of Title IV-A of the Social Security Act excludes from resource consideration "for such period or periods of time as the Secretary may prescribe, real property which the family is making a good faith effort to dispose of..." However, the law adds that "any aid payable to the family for any such period shall be conditioned upon such disposal; and any payments of such aid for that period shall (at the time of disposal) be considered overpayments to the extent that they would not have been made had the disposal occurred at the beginning of the period for which the payments of such aid were made." Section 233.20(a)(3)(i)(A)(5) of the AFDC Regulations provides that the real property may be excluded for 6 months, or 9 months at the State's option. In order to receive the exclusion, the household must agree in writing to make a good faith effort to dispose of the property and to repay the assistance received when the property is sold. If it is not sold, the recipient is not eligible for continued AFDC payments at the end of the 6 or 9-month period. As long as a continuing good faith effort to dispose of the property is made, the overpayment calculation and recovery will be delayed until the property is sold.

SUMMARY

The provisions of the two programs differ in that the FSP regulations exclude indefinitely from resource consideration property the household is making a good faith effort to sell. AFDC limits the period for which the property may be conditionally excluded and require repayment of benefits issued during the exclusion period when the property is sold.

CONFORMANCE ISSUE: RESOURCES - RESOURCE LIMIT

FOOD STAMP PROGRAM PROVISIONS

Section 5(g) of the Food Stamp Act provides that a household may not participate in the Program if its resources exceed $2,000 (or $3,000 for a household consisting of or containing a member 60 or over.) The Act does not specify how the value of the resources is to be determined. Section 5(b) provides for uniform national eligibility standards for income and resources. The Act specifically prohibits State agencies from imposing any other standards of eligibility. Under the categorical eligibility provisions of Section 5(a), households in which each member receives AFDC, SSI, or general assistance from certain programs do not have to pass the food stamp resource eligibility test. Section 5(j) of the Act, as amended by Public Law 102-237, the Food, Agriculture, Conservation and Trade Act Amendments of 1991, provides that the resources of a household member who receives SSI or public assistance are excluded from resource consideration.

Section 273.8 of the food stamp regulations implements these provisions.

AFDC PROVISIONS

Section 402(a)(7)(B) of Title IV-A of the Social Security Act limits eligibility to families having resources with a maximum equity value of $1,000. The law allows State agencies to set a lower limit.

Section 233.20(a)(3)(i)(B) of the AFDC regulations implements these provisions.

SUMMARY

The provisions differ in the following areas:

1. Amount: The food stamp figure is higher and distinguishes between households with an elderly member and non-elderly households.

2. Equity value of resources: Title IV-A specifies use of the equity value of resources; the Food Stamp Act does not. However, section 273.8(c)(2) of the food stamp regulations requires use of the equity value except for some licensed vehicles.

3. National standard: Title IV-A includes a standard, but allows State agencies the option of setting a lower amount. The Food Stamp Act mandates use of the national standard.

CONFORMANCE ISSUE: RESOURCES - TRANSFER OF RESOURCES

FOOD STAMP PROGRAM PROVISIONS

Section 6(h) of the Food Stamp Act provides that no household that knowingly transfers assets for the purpose of qualifying or attempting to qualify for food stamp participation shall be eligible to participate in the program for a period of up to one year from the date of discovery of the transfer.

Section 273.8(i) of the food stamp regulations implements the provision. It provides that the State agency must ask households at the time of application to provide information regarding any resources which were transferred within the 3-month period prior to application. Households that have transferred resources in an attempt to qualify for food stamps must be disqualified for a period related to the amount by which the value of the nonexempt transferred resources, when added to the household's other resources, exceeds the resource limit. If the amount in excess of the resource limit is less than $250, the household is disqualified for a month. If the amount is $250 or more but less than $1,000, the period is three months. If the amount is $1,000 or more but less than $3,000, the penalty is six months. If the amount is $3,000 or more but less than $5,000, the household is disqualified for nine months. If the amount is $5,000 or more, the household is disqualified for one year.

The regulations provide that eligibility for the program will not be affected by transfer of resources that would not otherwise affect eligibility, resources that are sold or traded at or near fair market value, resources that are transferred between household members and resources that are transferred for reasons other than qualifying for food stamps.

AFDC PROVISIONS

There is no similar provision in Title IV-A or the AFDC regulations. However, section 233.10(a)(1)(ii)(B) of the regulations provides that a State agency may impose conditions upon applicants for and recipients of public assistance which, if not satisfied, result in the denial or termination of public assistance. Such conditions must assist the State in the effective administration of its public assistance programs or further an independent State welfare policy. They must be consistent with the provisions and purposes of the Social Security Act. According to data included in the 1989 Characteristics of State Plans, 35 States have provisions regarding transfer or other disposition of property prior to application. The prohibition against participation is limited to a specified period of time prior to receipt of assistance in 26 States. The time period ranges from five years to three months.

SUMMARY

Food Stamp Program regulations contain specific requirements concerning transfer of property in the three months prior to application. The AFDC regulations contain no specific requirements, and provisions vary from State to State.

CONFORMANCE ISSUE: RESOURCES - VEHICLES

FOOD STAMP PROGRAM PROVISIONS

Section 5(g) of the Food Stamp Act specifically requires counting as a resource any licensed vehicle except licensed vehicles used to produce earned income or needed to transport a physically disabled household member. The Act also requires counting the fair market value over $4,500 of a vehicle used for household transportation or to obtain or continue employment. The Act requires the Secretary to follow the Food Stamp Program regulations in place on June 1, 1982 for resource inclusions and exclusions, except for licensed vehicles and inaccessible resources.

The countable value of most licensed vehicles is the fair market value over $4,500. Section 273.8(g) describes how the fair market value is to be determined using the wholesale value listed in "blue books" or other publications. The basic value of a vehicle is not increased by low mileage or optional equipment, including special apparatus for a handicapped person.

Section 273.8(h) of the food stamp regulations governs the treatment of licensed vehicles. Each licensed vehicle is evaluated to determine if it is totally excluded from equity or fair market value consideration because it is used more than 50 percent of the time for income producing purposes, is annually producing income consistent with its fair market value, is necessary for long-distance travel essential to employment, is the household's home, or is needed to transport a handicapped person. (Licensed vehicles that were used in a farm operation retain the exclusion for one year after the termination of the member's farm self-employment.) For vehicles that are not totally excluded, the value over $4,500 of one vehicle per household regardless of use and any vehicles used for employment, training or education preparatory to employment, or to seek employment in compliance with employment and training requirements is counted toward the household's resource limit. For all other vehicles that are not totally excluded, the fair market value over $4,500 or the equity value, whichever is greater, is counted as a resource.

Section 273.8(h)(4) provides that the equity value of unlicensed vehicles (except on Indian reservations where licensing is not required) is counted toward the resource limit unless the vehicle is used to produce income or is essential for self-employment. Section 273.8(e)(3) provides that the exclusions for licensed vehicles also apply to unlicensed vehicles on Indian reservations that do not require licensing.

AFDC PROVISIONS

Section 402(a)(7)(B) of Title IV-A of the Social Security Act excludes the equity value of one automobile, not to exceed an amount prescribed by the Secretary. That amount is currently $1,500. States have the option of setting a lower limit.

Section 233.20(a)(3)(i)(B)(2) of the AFDC Regulations excludes up to $1,500 (or less at State option) of the equity value of one automobile. Any excess is counted toward the general resource limit. Section 233.20(a)(3)(ii)(F) defines "automobile" as a passenger car or other motor vehicle used to provide transportation of persons or goods. In appropriate geographic areas, one alternate primary mode of transportation may be substituted for the automobile; e.g., snowmobiles in Alaska. Equity value means fair market value minus encumbrances. Fair market value means the price an automobile of a particular make, model, size, or condition will sell for on the open market in the geographic area involved. Special equipment for a handicapped person does not add to the value.

SUMMARY

Treatment of vehicles differs in the two programs as follows:

1. Vehicles used to transport handicapped members are totally excluded from resource consideration in food stamps. There is no similar exclusion in AFDC.

2. AFDC uses only equity value in evaluating vehicles. The FSP uses both equity and fair market value.

3. In AFDC, optional equipment (except for the handicapped) and condition can affect the value of a vehicle. In the FSP, optional equipment and condition are not considered in determining the fair market value of a vehicle.

CONFORMANCE ISSUE: RESTORED BENEFITS/UNDERPAYMENTS - POLICY

FOOD STAMP PROGRAM PROVISIONS

Section 11(e)(11) of the Food Stamp Act provides that benefits are to be restored to a household requesting them if the benefits have been "wrongfully denied or terminated."

Section 273.17 of the Food Stamp Program regulations provides that the State agency shall restore benefits under the following circumstances: (1) the loss was caused by a State agency error; (2) an administrative disqualification for intentional program violation was subsequently reversed; or (3) there is a statement elsewhere in the regulations stating that the household is entitled to restoration of benefits.

AFDC PROVISIONS

Section 402(a)(22) of Title IV-A of the Social Security Act requires State agencies to promptly take all necessary steps to correct any underpayment.

Section 233.20(a)(13)(ii) of the AFDC regulations requires that underpayments be corrected to current recipients and former recipients who would be current recipients if the underpayment error had not occurred. FSA-IM-89-4 <u>permits</u> corrective payments to all other former recipients.

In cases which have both an underpayment and an overpayment, one may be offset against the other in correcting the payment pursuant to AFDC regulations at 233.20(a)(13)(i)(D).

SUMMARY

In food stamps, benefits are usually restored only if the Agency made a mistake. In AFDC, benefits are restored whenever there is an underpayment to a current recipient or a former recipient who would be receiving aid except for the underpayment error. Corrective payments to all other former recipients are permitted but not required. When there is both an underpayment and an overpayment, one may be offset against the other.

CONFORMANCE ISSUE: RESTORED BENEFITS/UNDERPAYMENTS - TIME LIMIT FOR RESTORING BENEFITS

FOOD STAMP PROGRAM PROVISIONS

Section 11(e)(11) of the Food Stamp Act limits the period for which benefits may be restored to one year prior to the date the State agency either receives a request for restoration from a household or otherwise learns that a loss to a household occurred.

Section 273.17 of the Food Stamp Program regulations implements this provision. It prohibits the State agency from restoring benefits for a period longer than 12 months unless there is a statement elsewhere in the regulations that a household is entitled to lost benefits for a longer period. Benefits cannot be restored if they were lost more than 12 months prior to the month the loss was discovered by the State agency in the normal course of business or were lost more than 12 months prior to the month the agency was notified in writing or orally of a possible loss to a specific household. The 12-month period begins with either the date the State agency receives a request for restoration or the date the State agency is notified or otherwise discovers that a loss has occurred, whichever is earlier. If the benefits are being restored as a result of judicial action which is the first action the recipient has taken to obtain the benefits, the benefits are restored for a period of not more than 12 months from the date the court action was initiated. If the judicial action is a review of a State agency action, the benefits are restored for a period of not more than 12 months from the first of either the date the State agency received a request for restoration or the date the fair hearing action was initiated.

AFDC PROVISIONS

There is no 12-month limit on restoration of benefits in AFDC.

SUMMARY

In food stamps, benefits cannot be restored for more than 12 months unless there is a specific regulatory provision requiring a longer period. AFDC has no similar limit.