

change report form shall, at a minimum, include the following:

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(2) A quarterly report form for reporting changes in the child support obligation and payments shall be written in clear, simple language and meet the bilingual requirements described in § 272.4(b) of this chapter. The report shall meet the requirements of § 273.21(h)(2)(iii) through (h)(2)(vii).

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8. In § 273.21:

a. Paragraph (f)(2)(iv) is amended by adding a sentence at the end.

b. Paragraph (j)(3)(iii) is amended by removing the semicolon at the end of paragraphs (j)(3)(iii)(A) and (j)(3)(iii)(B) and adding a period in its place and by adding a new paragraph (j)(3)(iii)(E).

The additions read as follows:

§ 273.21 Monthly reporting and retrospective budgeting (MRRB).

* * * * *

(f) *Calculating allotments for households following the beginning months.* * * *

(2) *Income and deductions.* * * *

(iv) * * * The State agency may average the child support expense and budget it prospectively or retrospectively.

* * * * *

(j) *State agency action on reports.*

* * *

(3) *Incomplete filing.* * * *

(iii) * * *

(E) If the household does not report or verify changes in child support, the State agency shall not allow a child support deduction.

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Part 275—PERFORMANCE REPORTING SYSTEM

9. In § 275.12, a new paragraph (d)(2)(ix) is added to read as follows:

§ 275.12 Review of active cases.

* * * * *

(d) *Variance identification.* * * *

(2) *Variances excluded from error analysis.* * * *

(ix) Any variance in a child support deduction which was the result of an unreported change subsequent to the most recent certification action shall be excluded from the error determination.

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Dated: September 27, 1996.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 96-26068 Filed 10-16-96; 8:45 am]

BILLING CODE 3410-30-U

7 CFR Parts 272 and 273

[Amendment No. 374]

RIN 0584-AB93

Food Stamp Program: Treatment of Educational and Training Assistance

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: On November 1, 1993, the Department published a proposed rule regarding the eligibility of students for the Food Stamp Program and the treatment of educational and training assistance for food stamp purposes. Public comments were solicited and considered. This rule finalizes the provisions regarding educational and training assistance. The provisions regarding student eligibility were published final in a separate rule.

EFFECTIVE DATE: This rule is effective December 16, 1996.

FOR FURTHER INFORMATION CONTACT: Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302; telephone: (703) 305-2520.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR Part 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612). The Under Secretary for Food, Nutrition, and Consumer Services has certified that this action does not have a significant economic impact on a substantial number of small entities. State welfare agencies are affected to the extent that they must implement the provisions described in this action. Potentially eligible and currently participating households are affected to the extent that they contain members who are eligible students and

who receive assistance excluded from income and resources under this action. Some currently participating student households could realize an increase in benefits as a result of this action.

Executive Order 12778

This proposed rulemaking has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effective dates unless so specified in the "Dates" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) for program benefit recipients—state administrative procedures issued pursuant to 7 U.S.C. 2020(e)(1) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or Part 283 (for rules related to QC liabilities); (3) for program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

The Department received one comment concerning Executive Order 12778. One commenter said that administrative procedures do not have to be exhausted before judicial challenge and that the Department should correct this misstatement and avoid making such statements in future rulemakings. While we believe that it would have been fully within the Secretary's discretionary authority, as granted in section 4(c) of the Food Stamp Act (7 U.S.C. § 2013(c)), to establish an exhaustion requirement, this matter has now been specifically addressed by statute. Section 212(e) of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, P. L. 103-354, requires persons to exhaust all administrative appeal procedures established by the Secretary or required by law before the person may bring an action in a court of competent jurisdiction against the Secretary, the Department or an agency, office, officer, or employee of the Department.

Paperwork Reduction Act

This rule does not contain reporting or recordkeeping requirements subject

to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (P.L. 104-13).

This rule removes 7 CFR 273.9(c)(10)(xi) which contains verification requirements for educational assistance, and instructs State agencies to follow the verification requirements already outlined in 273.2(f).

This rule refers to but does not affect the current information collection requirements for 7 CFR 273.2(f). State welfare agencies must verify certain information which affects household eligibility and benefits. Applicant households are required to provide the necessary information to the State agency. The reporting and recordkeeping burden associated with the application, certification, and continued eligibility of food stamp applicants has been approved by the Office of Management and Budget (OMB) under OMB No. 0584-0064. OMB approval includes the burden associated with verification of information provided on the food stamp application.

Background

On November 1, 1993, the Department proposed procedures to implement amendments to the Food Stamp Act of 1977, as amended, (7 U.S.C. 2011 *et seq.*) (Food Stamp Act), as set forth in Sections 1715 and 1727 of Pub. L. 101-624, the Mickey Leland Memorial Domestic Hunger Relief Act of 1990 (Mickey Leland Act), enacted November 28, 1990, and Section 903 of Title IX of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (1991 Technical Amendments), enacted December 13, 1991. Section 1715 of the Mickey Leland Act, as amended by Section 903 of the 1991 Technical Amendments, establishes procedures for determining an income exclusion for certain educational assistance received by eligible student households. Section 1727 of the Mickey Leland Act amended the Food Stamp Act to grant eligibility for participation in the Food Stamp Program (Program) to certain college students currently considered ineligible to participate.

Procedures were also proposed for implementing amendments to the Higher Education Act of 1965 as set forth in Sections 471 and 1345 of Pub. L. 102-325, the Higher Education Amendments of 1992, enacted July 23, 1992. Those sections prohibit certain Federal educational assistance from being considered as income and resources for food stamp purposes.

Lastly, procedures were proposed for implementing a provision of Pub. L.

101-392, the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (Perkins Act), enacted September 25, 1990, which prohibits counting certain educational assistance received by students from a program funded by the Perkins Act as income or resources when determining the eligibility and benefits of student households.

The Department accepted comments on this rulemaking through January 2, 1994. Comments were received from eight State agencies, one public interest group, and one advocate. The comments concerning educational income are discussed below. Comments not related to the proposed changes are not addressed.

The proposed rule contained provisions on student eligibility and the treatment of educational and training assistance. This rule finalizes only the provisions concerning educational and training assistance. The provisions regarding student eligibility have been finalized in a separate rule.

A full explanation of the provisions in this final rule was contained in the preamble of the proposed rule (58 FR 58463). The reader should refer to the preamble of that rule for a full understanding of the provisions of this final rule.

Since the proposed rule was published, the Department has undertaken a complete review of all the Food Stamp regulations in response to the President's Regulatory Reform Initiative. The Department has considered ways to reform the Program regulations in order to remove overly prescriptive provisions, eliminate outdated and redundant regulatory requirements and increase State flexibility. Several of the decisions the Department has made on this final rule have been made with the Regulatory Reform Initiative in mind and are noted as such in the preamble.

Resources

Resource Exclusions

The November 1, 1993, regulation proposed to revise 7 CFR 273.8(e)(11)(xi) to conform to provisions in the Higher Education Act and the Perkins Act. In the interim, 7 CFR 273.8(e)(11)(xi) has been redesignated as 273.8(e)(11)(x). These two laws exclude resources for student assistance funded in whole or in part under Title IV and Part E of Title XIII of the Higher Education Act and the Perkins Act.

The Department received three comments concerning this provision. Two supported it. One suggested that a definition of Part E of Title XIII of the

Higher Education Act be included in the preamble. Part E of Title XIII of the Higher Education Act refers to the Tribal Development Student Assistance Revolving Loan Program.

During the Regulatory Reform Initiative, the Department concluded that it is not necessary to list all Federal statutes that exclude resources as the list is constantly changing and is quickly outdated. The Department routinely sends out policy memos updating the list of Federal statutes which provide for such exclusions. The Department believes that the regulations at 7 CFR 273.8(e)(11), which exclude resources that are excluded for food stamp purposes by express provision of Federal statute, provide adequate guidance. Therefore, the Department is not adopting the proposed revisions. Instead, the Department is removing 7 CFR 273.8(e)(11)(x), since it is obsolete, and is instructing State agencies to abide by 7 CFR 273.8(e)(11) and policy memos listing the Federal statutes which exclude resources for food stamp purposes.

Earned Income

Work Study and Fellowships as Earned Income

The November 1, 1993, regulation proposed to add a new paragraph, 7 CFR 273.9(b)(1)(vi) and to make a conforming amendment to 7 CFR 273.9(b)(2)(iv) which would define income from work study or a fellowship with a work requirement as earned income. As such, it would be subject to the provisions of 7 CFR 273.9(d)(2), which provide for a 20 percent earned income deduction. The Department received three comments, all in support of the provision.

It has come to the Department's attention that there are also assistantships which have a work requirement, such as working as a lab assistant or teacher's aide. To be consistent with the treatment of income from work study and fellowships with a work requirement, the Department is adopting the proposed change at 7 CFR 273.9(b)(1)(vi) with a modification. It will now state that earned income includes educational assistance which has a work requirement (such as work study, an assistantship or fellowship with a work requirement) in excess of the amount excluded under 7 CFR 273.9(c)(3). The Department is making a conforming amendment at 7 CFR 273.9(b)(2)(iv), the definition of unearned income, adding a more general phrase, "other than educational assistance with a work requirement," in order to capture work study, fellowships

and assistantships with a work requirement.

The November 1, 1993, rule proposed to include at 7 CFR 273.9(c)(3) a provision that the 20 percent earned income deduction required by paragraph (d)(2) of this section shall be applied to income from work study and income from a fellowship with a work requirement after allowable exclusions are made pursuant to paragraph (c)(3) of this section. This is already covered by 7 CFR 273.9(b)(1)(vi), as amended by this rule, and 7 CFR 273.9(d)(2). To include a similar provision at 7 CFR 273.9(c)(3) would be redundant. Therefore, the Department is not adopting the proposed addition to 7 CFR 273.9(c)(3).

Allowable Expenses

Mandatory School Fees

The November 1, 1993, rule proposed to expand the definition of mandatory school fees to include the costs of rental or purchase of equipment, materials, and supplies related to the pursuit of the course of study involved. Two commenters supported this change. This provision is specifically provided for in the Mickey Leland Act. The provision is being adopted as final at 7 CFR 273.9(c)(3).

Miscellaneous Personal and Normal Living Expenses

The November 1, 1993, rule proposed at 7 CFR 273.9(c)(3) to allow an educational income exclusion based on earmarking or use for miscellaneous personal expenses.

The proposed rule used the definition of miscellaneous personal expenses as set forth in Section 5(d) of the Food Stamp Act: expenses (other than normal living expenses) of the student incidental to attending such school, institution or program. The Department interpreted this definition of miscellaneous personal expenses as meaning things such as subscriptions to educational publications or dues for a professional association. The Department defined normal living expenses as food, rent, board, clothes, laundry, haircuts and personal hygiene items.

The Department received three comments regarding this proposal. In general, the commenters were opposed to the revised definitions of miscellaneous personal and normal living expenses. One commenter suggested that all items other than room and board should be considered miscellaneous personal expenses. Another commenter suggested that since the Perkins Act defines miscellaneous

personal expenses as "other than room and board", at least for assistance provided under the Perkins Act, miscellaneous personal expenses should be defined as such.

The Department believes that using the same definitions for educational income received from various sources will simplify the treatment of educational assistance. The Food Stamp Act offers the Department some discretion in this area. Therefore, the Department has decided to adopt one of the commenter's suggestions and revise its definition of miscellaneous personal expenses and normal living expenses. In this final rule at 7 CFR 273.9(c)(3), miscellaneous personal expenses will include all personal expenses other than room and board. Normal living expenses will include only room and board.

Handling of Normal Living Expenses

As mentioned above, normal living expenses, defined as room and board, are not excludable. The November 1, 1993, rule proposed at 7 CFR 273.9(c)(3) that amounts earmarked as miscellaneous personal expenses which were obviously intended for normal living expenses shall not be excluded. It has come to the Department's attention that the grantor often cannot delineate any further sums earmarked for miscellaneous personal expenses. If delineation is not possible, the entire amount earmarked for miscellaneous personal expenses is excludable. Therefore, the Department is not adopting the proposed change. Instead the Department is instructing States to refer to 273.9(c)(3), as revised by this rule, and exclude all amounts earmarked for miscellaneous personal expenses.

Dependent Care

The November 1, 1993, rule proposed at 7 CFR 273.9(c)(3) to allow an exclusion from educational assistance for amounts earmarked or used for dependent care. The Department received two comments in support of this provision. It is being adopted final at 7 CFR 273.9(c)(3).

The rule also proposed to amend 7 CFR 273.10(d)(1)(i) to prohibit amounts excluded from educational income for dependent care costs pursuant to 7 CFR 273.9(c)(3) from also being deducted from income under the current provision at 7 CFR 273.9(d)(4). Two commenters supported this provision. It has come to the Department's attention that there are expenses other than dependent care which should be subject to the same restrictions. Therefore, this final rule amends 7 CFR 273.10(d)(1)(i), adding a more general phrase providing

that any expense, in whole or part, covered by educational income which has been excluded pursuant to the provisions of 7 CFR 273.9(c)(3) shall not be deductible.

One commenter suggested that the Department clarify that there is no maximum amount of dependent care that can be excluded. The Department intended that there should be no limit as to the amount of dependent care expenses that may be excluded from educational assistance based on earmarking. However, if a student pays more for dependent care than is earmarked, the additional amount may be deducted in accordance with 7 CFR 273.9(d)(4). This additional amount is then subject to 7 CFR 273.9(d)(4) which provides for a maximum limit per dependent. The final rule, at 7 CFR 273.9(c)(3), provides that dependent care costs which exceed the amount excludable from income shall be deducted from income in accordance with paragraph 7 CFR 273.9(d)(4) and be subject to a cap.

In the preamble of the proposed rule, the Department stated its intention to include a provision that would prohibit amounts excluded from educational assistance for dependent care from also being excluded under the general reimbursement provision at 7 CFR 273.9(c)(5)(i)(C). No comments opposed this provision. However, this provision was inadvertently left out of the proposed regulation itself. Therefore, this rule, at 7 CFR 273.9(c)(3) includes a provision stating that amounts excluded for dependent care costs under the provisions of 7 CFR 273.9(c)(3) shall not be excluded under the general exclusion provisions of paragraph 7 CFR 273.9(c)(5)(i)(C).

Exclusions From Income

Types of Schools

The November 1, 1993, rule proposed at 7 CFR 273.9(c)(3) two additional types of educational programs which qualify a student for income exclusions based on allowable educational expenses: (1) vocational and technical schools, and (2) any program in which students would receive a high school diploma or its equivalent.

The Department received three comments supporting the proposed revision. Accordingly, the language is being adopted as final without change at 7 CFR 273.9(c)(3).

In the preamble of the proposed rule, the Department stated its intention to retain the definition of an institution of post-secondary education. However, this definition was inadvertently left out of the the proposed regulations itself.

Therefore, this final rule, at 7 CFR 273.9(c)(3), retains the definition of post-secondary education currently in the regulations.

Order of Income Exclusions

The November 1, 1993, rule proposed to totally revise 7 CFR 273.9(c)(3) to include a three-part procedure for excluding educational assistance. The first step was to totally exclude all educational income excluded by other Federal laws. The second step was to exclude allowable educational expenses based on earmarking. The third step was to exclude allowable educational expenses the student could verify were used for excludable expenses. If earned educational income such as work study were involved, the expenses would be excluded from unearned educational income first and the remainder of the expenses would be excluded from earned educational income.

The Department received nine comments on this proposal. Three supported the income exclusion process as written. Six opposed the process for various reasons. For example, they found the process unnecessarily complex, unjustifiably error-prone, and difficult to automate. All six suggested alternative ways of determining the amount of countable student assistance.

In light of the alternative processes suggested by the commenters and within the context of the Regulatory Reform Initiative, the Department has decided to give States the flexibility to design procedures for excluding student assistance that are more appropriate to their specific circumstances. Therefore, the Department is not adopting the proposed provision on the *process* that States must follow to exclude income, but is amending 7 CFR 273.9(c)(3) to include provisions on what shall be excluded, as explained in further detail below.

Amounts Excluded by Other Federal Laws

The November 1, 1993, rule proposed to amend 7 CFR 273.9(c)(3) to include a provision that States shall first exclude all educational income specifically excluded from consideration as income by other Federal statutes. The regulations at 7 CFR 273.9(c)(10) already provide for this. The Department has decided that to include a similar provision in 7 CFR 273.9(c)(3) would be redundant. Therefore, the Department is not adopting the proposed provision and is instead instructing States to abide by 7 CFR 273.9(c)(10).

Amounts Earmarked for Allowable Expenses

The November 1, 1993, rule proposed to amend 7 CFR 273.9(c)(3) to include a provision that after excluding amounts excluded by other Federal law, States shall then exclude educational assistance identified (earmarked) by the institution, program or other grantor for the specific costs of tuition, mandatory school fees (including the rental or purchase of any equipment, materials, and supplies related to the pursuit of the course of study involved), books, supplies, dependent care, transportation, and miscellaneous personal expenses (other than normal living expenses).

The Department received two comments regarding earmarking, each suggesting different ways States could determine what constitutes earmarking. The comments illustrate that each institution, program or grantor earmarks student assistance differently. Since the Food Stamp Act does not specify how this assistance is to be earmarked, the Department has decided to give States the flexibility to decide what constitutes earmarking.

One commenter wanted to verify that the institution, school, program, or grantor is able to earmark allowable expenses. It was always the Department's intention that this be the case as it is clearly stated in the Food Stamp Act that amounts identified by the school, institution, program, or other grantor as allowable expenses shall be excluded.

The Department received four comments disagreeing with the proposal to allow multiple exclusions based on earmarking. For example, when a student receives two grants earmarked for tuition costs, both amounts earmarked for tuition shall be excluded, even though the total may be greater than the amount of the tuition. However, Section 5(d) of the Food Stamp Act, as amended, states that amounts made available as an allowance (earmarked) for tuition, mandatory fees, books, supplies, transportation and other miscellaneous personal expenses, must be excluded regardless of whether or not the grants were actually used to pay all or part of these expenses. The Department does not have the discretion to adopt these comments.

The proposed provision to exclude earmarked amounts is being adopted as final at 7 CFR 273.9(c)(3) with a modification. The Department is not adopting the provision that states shall exclude these amounts first.

Exclusions Based on Use

The November 1, 1993, rule proposed to allow an exclusion of educational assistance if the student could show it was used for allowable expenses, or if the amount used was in excess of earmarked amounts. The Department received one comment disagreeing with the proposal to allow an exclusion based on use if a grant has already been earmarked for the same expense. However, the Food Stamp Act of 1977, as amended, specifically states that an exclusion shall be granted for allowable expenses to the extent that they do not exceed the amount used for or made available for allowable expenses.

This final rule at 7 CFR 273.9(c)(3) states that amounts used for the allowable expenses of tuition, 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, dependent care, transportation, or miscellaneous personal expenses (other than normal living expenses which are room and board) of the student incidental to attending a school, institution or program shall be excluded.

Additional Educational Assistance Issues

Income Averaging

The November 1, 1993, rule proposed in 7 CFR 273.9(c)(3) to include a provision on income averaging. However, 7 CFR 273.10(c)(3)(iii) already addresses income averaging. The Department has decided that it is redundant to address income averaging in two places. Therefore, in this final rule, this provision is incorporated into the educational proration provision at 7 CFR 273.10(c)(3)(iii).

The November 1, 1993, rule proposed that the first month educational income would be counted is the month in which it is received, although it would still be prorated over the period it is intended to cover. One State agency supported prorating the income over the period it is intended to cover, but said that not counting it until the student receives it would require additional reporting by the student. The State agency suggested budgeting student income when it has been approved rather than when it is received.

The Department disagrees with the recommendation of the commenter because it would result in students having income counted before it is received. However, the Department would like to avoid imposing burdensome requirements on households or eligibility workers.

Therefore, the Department has decided to amend 7 CFR 273.10(c)(3)(iii) to give States the option of counting the income either in the month it is received, or in the month the household anticipates receiving it or receiving the first installment payment, although it would still be prorated over the period it is intended to cover.

The November 1, 1993, rule also proposed at 7 CFR 273.9(c)(3) that when work study income (earned educational income) is received monthly and costs of attendance are incurred on a less frequent basis, the State agency would anticipate the work study income for the appropriate quarter, semester, or year; exclude the allowable costs; and prorate the remainder over the quarter, semester, or year. One commenter supported treating work study income the same way as unearned educational assistance and prorating it over the period it is intended to cover.

One commenter objected to this proposal because eligibility workers are not in the position to anticipate anything beyond the amount verified by the institution. This same commenter suggested that the regulations should mandate the use of the verified amount.

The Department believes that, in the interest of consistency, work study income should be treated the same way as unearned educational income. States may count it in the month it is received, or count it the month the household anticipates receiving it or receiving the first installment payment, although it is still prorated over the period it is intended to cover.

The final rule amends 7 CFR 273.10(c)(3)(iii) to provide that earned and unearned educational income, after allowable exclusions, shall be averaged over the period it is intended to cover. The first month that educational income shall be counted is either the month in which the income or the first installment payment is received, or the month in which the income or first installment payment is anticipated to be received, although it is still prorated over the period it is intended to cover.

Loans

The November 1, 1993, rule proposed to revise 7 CFR 273.9(c)(4) so that educational loans on which repayment is deferred shall be excluded pursuant to the provisions of 7 CFR 273.9(c)(3) and that a loan on which repayment must begin within 60 days after receipt would not be considered a deferred repayment loan.

One commenter pointed out that this provision was not discussed in the preamble. This provision was included in the proposed rule for comment

because it had previously come up as a policy inquiry. Repayment for most types of Federal loans for education is deferred until after the student graduates or until the student drops out of school. On most non-deferred repayment loans, repayment must begin within 60 days of receipt and is therefore, not excludable. The Department is adopting the proposed provision with a modification at 7 CFR 273.9(c)(4). Reference to 7 CFR 273.9(c)(10)(xi) will no longer be included because this final rule deletes this section.

Reimbursements

The November 1, 1993, rule proposed at 7 CFR 273.9(c)(5) that educational assistance provided for normal living expenses could not be excluded under the reimbursement provision and that all other reimbursements or allowances for educational assistance would be handled under the educational income exclusion section.

The Department realizes that it is not necessary to list each type of educational assistance. Therefore, in this rule at 7 CFR 273.9(c)(5)(ii)(B), the list of educational income sources in the first sentence has been removed and a general reference to educational assistance has been added. Also, for the purpose of clarity, the definition of normal living expenses (room and board) has been added.

Retrospective Budgeting

One commenter requested that the regulations allow State agencies to retrospectively budget work study and fellowships as well as other educational assistance. A rule titled "Miscellaneous Provisions of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 and Earned Income Tax Credit Amendment" published August 29, 1994, changed the regulations to allow educational income (nonexcluded scholarships, deferred educational loans, and other educational grants) to be budgeted either prospectively or retrospectively. However, the Department agrees that, in the interest of consistency, earned educational income should be treated the same as unearned educational income. Accordingly, this rule revises 7 CFR 273.21(f)(2)(iii) so that earned and unearned educational income is required to be prorated over the period it is intended to cover in accordance with 7 CFR 273.10(c)(3)(iii) and it shall be budgeted either prospectively or retrospectively.

Verification

The November 1, 1993, rule proposed to include verification requirements for student income at 7 CFR 273.9(c)(3). The Department received six comments concerning this proposal. Two supported these provisions. Three suggested different procedures for verifying student income. One suggested the verification requirements be placed in one section of the regulations. The Department agrees with this commenter. Verification requirements are already outlined in 7 CFR 273.2(f). To include separate verification requirements for student income would be redundant. Therefore, the Department has decided not to adopt the verification procedures as proposed. Instead, it is instructing States to follow the verification requirements already outlined in 7 CFR 273.2(f).

Technical Changes

The reference to Section 1345(c) at 7 CFR 273.8 should have been 1343(c). The Department is correcting the reference in this rule.

Implementation

State welfare agencies have been instructed through agency directive to implement the provisions of the following laws as of the statutory effective dates without waiting for formal regulations: the Higher Education Act Amendments of 1986, as amended in 1987, for the 1988-89 school year; the Perkins Act on July 1, 1991; the Mickey Leland Act (as amended by the 1991 Technical Amendments to the Food Stamp Act) on February 1, 1992, and the exclusions contained in the Higher Education Act Amendments of 1992 for the Tribal Development Student Assistance Revolving Loan Program on October 1, 1992, and for Title IV and BIA student assistance on July 1, 1993.

One commenter asked if the Title IV and BIA exclusion applies to school periods beginning after July 1, 1993, or to income received after that date. It applies to income received for school periods beginning on or after July 1, 1993. The law specifically provides that the exclusion shall apply to award years beginning after July 1, 1993.

Pursuant to Public Law 104-121, the Contract with America Advancement Act of 1996, this final rule is effective December 16, 1996; State agencies must implement it no later than March 1, 1997.

State agencies will be required to adjust the cases of ongoing households at the next recertification, at household request, or when the case is next

reviewed, whichever comes first. If implementation of the above Acts or this rule is delayed, benefits shall be restored, as appropriate, in accordance with the Food Stamp Act.

The preamble to the proposed rule provided that any variance resulting from implementation of the provision of the subsequent final rule would be excluded from error analysis for 90 days from the specified implementation dates of such final rule.

One commenter pointed out that the grace period should be 120 days. Section 13951 of the Mickey Leland Childhood Hunger Relief Act, P.L. 102-66, enacted August 10, 1993, excludes from the payment error rate any errors resulting in the application of new procedures for 120 days from date of publication. Accordingly, variances resulting from implementation of the provisions of the final rule are excluded from error analysis for 120 days from March 1, 1997.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

Accordingly, 7 CFR Parts 272 and 273 are amended as follows:

1. The authority citation for Parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(149) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(149) *Amendment No. 374.* The Higher Education Act Amendments of 1986, as amended in 1987, were effective and required to be implemented for the 1988–89 school year; the Perkins Act was effective and required to be implemented on July 1, 1991; the Mickey Leland Act (as amended by the 1991 Technical Amendments to the Food Stamp Act) was effective and required to be implemented on February 1, 1992, and the exclusions contained in the Higher Education Act Amendments of 1992 for

the Tribal Development Student Assistance Revolving Loan Program were effective and required to be implemented on October 1, 1992, and for Title IV and BIA student assistance on July 1, 1993. The provisions of Amendment No. 374 are effective December 16, 1996 and must be implemented by March 1, 1997. The current caseload shall be converted to these provisions at the household's request, at the time of recertification, or when the case is next reviewed, whichever occurs first. If implementation of the acts referenced in this paragraph or this amendment is delayed, benefits shall be restored, as appropriate, in accordance with the Food Stamp Act. Any variance resulting from implementation of this amendment shall be excluded from error analysis for 120 days from March 1, 1997.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.8, paragraph (e)(11)(x) is removed.

4. In § 273.9:

a. A new paragraph (b)(1)(vi) is added;

b. paragraph (b)(2)(iv) is amended by removing “fellowships” and adding the phrase “, other than educational assistance with a work requirement,” after the word “like”;

c. paragraph (c)(3) is revised;

d. paragraph (c)(4) is amended by removing all text appearing after the first sentence and adding two new sentences to the end of the paragraph.

e. paragraph (c)(5)(i) is amended by removing paragraph (c)(5)(i)(D) and redesignating paragraphs (c)(5)(i)(E), (c)(5)(i)(F) and (c)(5)(i)(G) as paragraphs (c)(5)(i)(D), (c)(5)(i)(E) and (c)(5)(i)(F), respectively;

f. paragraph (c)(5)(ii) is amended by revising paragraph (c)(5)(ii)(B) and by removing paragraph (c)(5)(ii)(C);

g. paragraph (c)(10)(xi) is removed.

The revisions and additions read as follows:

§ 273.9 Income and deductions.

* * * * *

(b) *Definition of income.* * * *

(1) * * *

(vi) Educational assistance which has a work requirement (such as work study, an assistantship or fellowship with a work requirement) in excess of the amount excluded under § 273.9(c)(3).

* * * * *

(c) *Income exclusions.* * * *

(3)(i) Educational assistance, including grants, scholarships, fellowships, work study, educational loans on which payment is deferred,

veterans' educational benefits and the like.

(ii) To be excluded, educational assistance referred to in paragraph (c)(3)(i) must be:

(A) Awarded to a household member enrolled at a:

(1) Recognized institution of post-secondary education (meaning any public or private educational institution which normally requires a high school diploma or equivalency certificate for enrollment or admits persons who are beyond the age of compulsory school attendance in the State in which the institution is located, provided that the institution is legally authorized or recognized by the State to provide an educational program beyond secondary education in the State or provides a program of training to prepare students for gainful employment, including correspondence schools at that level),

(2) School for the handicapped,

(3) Vocational education program,

(4) Vocational or technical school,

(5) Program that provides for obtaining a secondary school diploma or the equivalent;

(B) Used for or identified (earmarked) by the institution, school, program, or other grantor for the following allowable expenses:

(1) Tuition,

(2) Mandatory school fees, including the rental or purchase of any equipment, material, and supplies related to the pursuit of the course of study involved,

(3) Books,

(4) Supplies,

(5) Transportation,

(6) Miscellaneous personal expenses, other than normal living expenses, of the student incidental to attending a school, institution or program,

(7) Dependent care,

(8) Origination fees and insurance premiums on educational loans,

(9) Normal living expenses which are room and board are not excludable.

(10) Amounts excluded for dependent care costs shall not also be excluded under the general exclusion provisions of paragraph § 273.9(c)(5)(i)(C).

Dependent care costs which exceed the amount excludable from income shall be deducted from income in accordance with paragraph § 273.9(d)(4) and be subject to a cap.

(iii) Exclusions based on use pursuant to paragraph (c)(3)(ii)(B) must be incurred or anticipated for the period the educational income is intended to cover regardless of when the educational income is actually received. If a student uses other income sources to pay for allowable educational expenses in months before the educational income is received, the

exclusions to cover the expenses shall be allowed when the educational income is received. When the amounts used for allowable expense are more than amounts earmarked by the institution, school, program or other grantor, an exclusion shall be allowed for amounts used over the earmarked amounts. Exclusions based on use shall be subtracted from unearned educational income to the extent possible. If the unearned educational income is not enough to cover the expense, the remainder of the allowable expense shall be excluded from earned educational income.

(iv) An individual's total educational income exclusions granted under the provisions of paragraph (c)(3)(i) through (c)(3)(iii) of this section cannot exceed that individual's total educational income which was subject to the provisions of paragraph (c)(3)(i) through (c)(3)(iii) of this section.

(4) * * * Educational loans on which repayment is deferred shall be excluded pursuant to the provisions of § 273.9(c)(3)(i). A loan on which repayment must begin within 60 days after receipt of the loan shall not be considered a deferred repayment loan.

(5) * * *

(ii) * * *

(B) No portion of any educational assistance that is provided for normal living expenses (room and board) shall be considered a reimbursement excludable under this provision.

* * * * *

5. In § 273.10, paragraph (c)(3)(iii) is revised and a new sentence is added to the beginning of paragraph (d)(1)(i). The addition and revision read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(c) *Determining income.* * * *

(3) *Income averaging.* * * *

(iii) Earned and unearned educational income, after allowable exclusions, shall be averaged over the period which it is intended to cover. Income shall be counted either in the month it is received, or in the month the household anticipates receiving it or receiving the first installment payment, although it is still prorated over the period it is intended to cover.

(d) *Determining deductions.* * * *

(1) *Disallowed expenses.*

(i) Any expense, in whole or part, covered by educational income which has been excluded pursuant to the provisions of § 273.9(c)(3) shall not be deductible. * * *

* * * * *

6. In § 273.21, the first sentence in paragraph (f)(2)(iii) is revised to read as follows:

§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB).

* * * * *

(f) *Calculating allotments for households following the beginning months.* * * *

(2) *Income and deductions.* * * *

(iii) Earned and unearned educational income shall be prorated over the period it is intended to cover in accordance with § 273.10(c)(3)(iii), and it shall be budgeted either prospectively or retrospectively. * * *

* * * * *

Dated: September 26, 1996.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

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BILLING CODE 3410-30-U

7 CFR Parts 272 and 273

[Amendment No. 365]

RIN 0584-AB98

Food Stamp Program: Monthly Reporting on Reservations Provision of the Food Stamp Program Improvements Act of 1994

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: This final rulemaking amends Food Stamp Program regulations to establish procedures for implementing the restrictions concerning use of monthly reporting for households residing on reservations contained in the Food Stamp Program Improvements Act of 1994. It finalizes provisions of a proposed rule published in the Federal Register on June 6, 1995.

DATES: This rule is effective December 16, 1996 and must be implemented no later than the first day of the first month after February 18, 1997.

FOR FURTHER INFORMATION CONTACT: Margaret Werts Batko, Assistant Branch Chief, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, or by telephone at (703) 305-2520, or over the internet at margaret_batko@FCS.USDA.GOV.

SUPPLEMENTARY INFORMATION

Executive Order 12866

This final rule has been determined to be not significant for purposes of

Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rulemaking and related Notice(s) to 7 CFR 3105, Subpart V (Cite 48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983, as appropriate, and any subsequent notices that apply), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This final rulemaking has also been reviewed with respect to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, September 19, 1980). The Administrator of the Food and Consumer Service (FCS), has certified that this rulemaking would not have a significant economic impact on substantial number of small entities. The primary impact of the procedures in this rulemaking would be on FCS Regional Offices, State governments, and individuals who might apply for benefits in State agencies that use monthly reporting procedures. To the extent that county or other local governments assist in the administration of the Food Stamp Program, they would also be affected.

Executive Order 12778

This final rulemaking has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) for Program benefit recipients—state administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to nonquality control (QC) liabilities) or Part 283 (for rules related to QC