



October 27, 2021

FOOD ASSISTANCE TRANSMITTAL LETTER NO. 425

TO: All Food Assistance Manual Holders

FROM: Matt Damschroder, Director

SUBJECT: Food assistance: resources excluded by law and transfer of resources.

In accordance with section 106.03 of the Ohio Revised Code (ORC), each state agency is required to review each of its rules in the Ohio Administrative Code a minimum of once every five years. The intent of the review is to ensure that Administrative Code rules are clearly written and that program requirements are accurate, up-to-date based on regulations from the United States Department of Agriculture (USDA) Federal and Nutrition Services (FNS) and clearly expressed. To the extent possible, unnecessary paperwork will be eliminated, local agencies will be given increased flexibility, and any adverse impact on businesses will be eliminated or reduced. As a result of the review, the agency may amend the rule; rescind the rule; or continue the rule without amendment.

These rules have been subject to a review by the Joint Committee on Agency Rule Review (JCARR). The changes will become effective on 12/01/2021.

Chapter 4000

5101:4-4-03.3 " Food Assistance: Resources Excluded by Law."

The rule describes resources that are exempt by federal law from being included as a resource to food assistance applicants and recipients. OFA amended this rule. This rule has been revised with the following changes:

- Effective dates for various Public Law Numbers were corrected; and
- Minor grammatical changes for clarity.

5101:4-4-09 "Food Assistance: Transfer of Resources."

The rule describes the guidelines for transferring resources for the food assistance program. OFA amended this rule. This rule has been revised with the following changes:

- (A)(2) was amended for clarity;
- (A)(3) was added to include those violating a condition of probation or parole, fleeing to avoid prosecution, custody or confinement, or for being out of compliance with their sentence as defined in rule 5101:4-2-03 of the Administrative Code; and

- (A)(3) was moved to (A)(4).

5101:4-4-03.3

Food assistance: resources excluded by law.

Resources are exempt ~~if~~ when excluded for ~~food assistance~~ supplemental nutrition assistance program (SNAP) purposes by express provision of federal statute or court decision. Where an exclusion applies because of use of a resource by or for an assistance group member, the exclusion shall also apply when the resource is being used by or for an ineligible ~~alien~~ or disqualified person whose resources are being counted as part of the assistance group's resources. The following is a listing of some of the resources excluded by federal statute. The listing is divided into general resource exclusions and exclusions applicable to resources of American Indians or Alaska Natives.

(A) What are the general exclusions?

- (1) Assistance provided to children under the school lunch program, the summer food service program for children, the commodity distribution program and child and adult care food program, Pub. L. No. 79-396, (6/1946) section 12(e) of the National School Lunch Act of 1946.
- (2) Assistance provided to children under the special milk program, special supplemental food program for women, infants, and children (WIC) and the school breakfast program, Pub. L. No. 89-642, (10/1966) of the Child Nutrition Act of 1966, section 11(b).
- (3) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, Pub. L. No. 91-646, (~~2/1971~~)(1/1971) section 216.
- (4) Benefits received from the special supplemental food program for women, infants and children (WIC), Pub. L. No. 92- 433, (~~2010~~)(1/1972) section 9.
- (5) Payments received under section 321(d), the Disaster Relief Act of 1974, Pub. L. No. 93-288, (5/1974), as amended by section 105(i), the Disaster Relief and Emergency Assistance Amendments of 1988, Pub. L. No. 110-246 (~~5/2008~~)(6/2008). Payments precipitated by an emergency or major disaster as defined in this act, as amended, are not counted as a resource for ~~food assistance~~ SNAP purposes. This exclusion applies to federal assistance provided to persons directly affected and to comparable disaster assistance provided by states, local governments, and disaster assistance organizations. A "major disaster" is any natural catastrophe such as a hurricane or drought, or, regardless of cause, any fire, flood, or explosion, ~~which that~~ the president of the United States determines causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts and available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby. An

"emergency" is any occasion or instance for which the president of the United States determines that federal assistance is needed to supplant state and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe. Most, but not all, federal emergency management assistance funds are excluded. For example, 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.

- (6) Payments received under the Low-Income Home Energy Assistance Act, Pub. L. No. 99-425, (9/1986) section 504 (e).
- (7) Payments to U.S. citizens of Japanese ancestry and permanent resident Japanese aliens or their survivors and Aleut residents of the Pribilof islands and the Aleutian islands west of Unimak island, Pub. L. No. 100-383, (8/1988) section 105 (f)(2), wartime relocation of civilians, the Civil Liberties Act of 1988.
- (8) Coupons that may be exchanged for food at farmers' markets under WIC demonstration projects, Pub. L. No. 100-435, (9/1988) section 501, which amended section 17(m)(1) of the Child Nutrition Act of 1966.
- (9) Payments made from the Agent Orange settlement fund, Pub. L. No. 101-201, (12/1989), or any other fund established pursuant to the settlement in the Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.) ~~which that~~ are received on or after January 1, 1989. The disabled veteran will receive yearly payments. Survivors of deceased disabled veterans will receive a lump-sum payment. These payments were disbursed by Aetna insurance company. The Omnibus Budget Reconciliation Act of 1989 excludes these payments. Pub. L. No. 102-4, (2/1991), Agent Orange Act of 1991, authorized veterans' benefits to some veterans with service-connected disabilities resulting from exposure to Agent Orange. These payments are not excluded by law.
- (10) Payments made under the Radiation Exposure Compensation Act, Pub. L. No. 101-426, (10/1990) section 6(h)(2).
- (11) Federal tax refunds received after December 1, 2009 are excluded for twelve months following the receipt of the refund under ~~the~~ The American Taxpayer Relief Act, of 2012 Pub.L. No.112-240 (1/2013).
- (12) Any federal, state and local earned income tax credits received either as a lump sum or as payments under section 3507 of the Internal Revenue Code (12/1994) shall be excluded for twelve months following receipt.

- (13) The resources of an assistance group member who receives supplemental security income (SSI) benefits or public assistance benefits. An assistance group member is considered a recipient of these benefits ~~if~~ when the benefits have been authorized but not received, when the benefits are suspended or recouped, or when the benefits are not paid because they are less than a minimum amount. For purposes of this paragraph, when an individual receives or is authorized to receive prevention, retention, and contingency (PRC) benefits or services as specified in paragraph (C)(2) of rule 5101:4-2-02 of the Administrative Code, the county agency shall consider the PRC assistance to benefit all members of the assistance group and therefore, the resources of all of the members of the assistance group shall be excluded. Individuals entitled to medicaid benefits only are not considered recipients of SSI or public assistance, Pub. L. No. 102-237, (12/1991), effective February 1, 1992.
- (14) All student financial assistance received under Title IV (including assistance funded in part under Title IV) or part E of Title XIII of the Higher Education Act of 1965, or under bureau of Indian affairs student assistance programs pursuant to section 479(b) and section 1343(c) of Pub. L. No. 102-325, (7/1992) and educational assistance received by a student under section 507 of the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990, Pub. L. No. 101-392, (~~3/1990~~)(9/1990) that is made available for tuition, mandatory fees, books, supplies, transportation, dependent care, and miscellaneous personal expenses. All educational accounts described in section 529, (qualified tuition programs) and section 530 (coverdell education savings accounts) of the Internal Revenue Code of 1986, Pub. L. No. 110-246, (6/2008).
- (15) Payments made to individuals because of their status as victims of Nazi persecution, Pub. L. No. 103-286, (8/1994).
- (16) Pub. L. No. 103-322, (9/1994) section 230202, amended section 1403 of the Crime Act of 1984 (42 U.S.C. 10602) to provide in part that, "(e) Notwithstanding any other law, if the compensation paid by an eligible crime victim compensation program would cover costs that a federal program, or a federally financed state or local program, would otherwise pay, (a) such crime victim compensation program shall not pay that compensation; and (b) the other program shall make its payments without regard to the existence of the crime victim compensation program." Based on this language, payments received under this program shall be excluded from resources for ~~food assistance~~ SNAP purposes.
- (17) Notwithstanding any other provision of law, the allowance paid under Pub. L. No. 104-204, (9/1996) section 1805(d), to a child of a Vietnam veteran for any disability resulting from spina bifida suffered by such child. A monthly

allowance from two hundred to one thousand two hundred dollars is paid to a child under this public law.

- (18) Housing and urban development (HUD) retroactive tax and utility costs subsidy payments issued pursuant to the settlement of Underwood v. Harris (Civil no. 76-0469, D.D.C.) (1/1978) against HUD, for the month in which payment was received and for the following month.
- (19) Federal emergency management assistance housing subsidies to pay for temporary housing required as a result of a disaster and individual and family grant assistance payments made under section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (~~4/2013~~)(5/2019).
- (20) Disaster relief employment income received from national emergency grants under the Workforce Innovation and Opportunity Act, Pub. L. No. 113-128, (7/2014) section 181(a)(2).
- (21) Disaster unemployment assistance provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 100-707, (11/1988), to individuals unemployed as a result of a major disaster.
- (22) All pensions, tax-preferred retirement plans, contracts or accounts, including but not limited to, those described in sections 401(a), 403(a), 403(b), 408, 408A, 457(b) and 501(c)(18) of the Internal Revenue Code of 1986 and the value of funds in a "Federal Thrift Savings Plan" account as provided for in 5 U.S.C. 8439 (12/2014). Pub. L. No. 113-255, also provides for the exclusion of any successor retirement accounts that are exempt from federal taxes.
- (23) Filipino veterans equity compensation fund payments under the American Recovery and Reinvestment Act of 2009 (February 17, 2009, Pub. L. No. 111-5) made to certain veterans, or surviving spouses of veterans, who served in the military of the government of the commonwealth of the Philippines during World War II.

(B) What payments made to American Indians or Alaska Natives are excluded by law?

A list of funds provided to American Indians or Alaska Natives that are excluded by law can be found at:

~~http://www.fns.usda.gov/sites/default/files/Excluded_Native_American_Funds_2011.pdf~~ https://fns-prod.azureedge.net/sites/default/files/resource-files/ExcludedNativeAmericanFunds_2018.pdf

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Certification

10/25/2021

Date

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5101:4-4-09

Food assistance: transfer of resources.

(A) When does the county agency ask the assistance group about resources?

This rule applies to assistance groups with a member who:

- (1) Is disqualified for an intentional program violation in accordance with division 5101:6 of the Administrative Code;
- (2) ~~A member of the assistance group is~~ Is ineligible because of a failure to comply with ~~an employment and training requirement requirements of rules 5101:4-3-11.1, and 5101:4-3-19 of the Administrative Code and the requirements of rule and~~ rule and 5101:4-3-09 of the Administrative Code; ~~or~~
- (3) In accordance with rule 5101:4-2-03 of the Administrative Code, is ineligible because of the following:
 - (a) Violating a condition of probation or parole:
 - (b) Fleeing to avoid prosecution, custody, or confinement; or
 - (c) Having a conviction of certain crimes and are out of compliance with their sentence.
- ~~(3)~~(4) Has previously been disqualified due to substantial lottery or gambling winnings and has not regained eligibility as described in rule 5101:4-6-32 of the Administrative Code.

When one of these circumstances exist, the county agency shall ask the assistance group to provide information regarding resources any assistance group member (or ineligible alien or disqualified person whose resources are being considered available to the assistance group) has transferred within the three-month period immediately preceding the date of application or recertification. The county agency must determine if the transfer of resources was appropriate. When it is determined it was an inappropriate transfer of resources, the assistance group may be disqualified for supplemental nutrition assistance program (SNAP) benefits.

(B) How does the county agency determine an inappropriate transfer?

- (1) Assistance groups that have transferred resources for the purpose of qualifying or attempting to qualify for SNAP benefits shall be disqualified from participation in the program for up to one year from the date of the discovery of the transfer.
- (2) The appropriate disqualification period, as described in paragraph (D) of this rule, shall be applied when the resources are transferred knowingly in the three-

month period prior to application or when they are transferred knowingly after the assistance group is determined eligible for benefits. Example: assets the assistance group acquires after being certified for benefits that are transferred to prevent the assistance group from exceeding the maximum resource limit.

(C) When is a resource transferred and considered an appropriate transfer?

- (1) Resources consisting of excluded personal property such as furniture or money that, when added to other nonexempt assistance group resources, totaled less than the allowable resource limit at the time of the transfer;
- (2) Resources sold or traded at or near fair market value;
- (3) Resources that are transferred between members of the same assistance group (including ineligible aliens or disqualified persons whose resources are being considered available to the assistance group); and
- (4) Resources that are transferred for reasons other than qualifying or attempting to qualify for SNAP benefits. Example: a parent placing funds into an educational trust fund for a dependent child.

(D) How is the disqualification period determined?

To calculate the total resources for the assistance group, start with the amount of the nonexempt transferred resources added to the other countable resources. The amount that exceeds the resource limit is the amount used to determine the length of the disqualification period:

- (1) \$0.01 - \$249.99 disqualified for one month;
- (2) \$250.00 - \$999.99 disqualified for three months;
- (3) \$1000.00 - \$2999.99 disqualified for six months;
- (4) \$3000.00 - \$4999.99 disqualified for nine months; and
- (5) \$5000.00 and up disqualified for twelve months.

(E) How is the assistance group notified of the disqualification?

- (1) After the county agency has explored, verified and determined that the assistance group has knowingly transferred resources for the purpose of qualifying or attempting to qualify for SNAP benefits during the application processing period, the county agency shall send the assistance group a notice of denial

explaining the reason for and the length of the disqualification. The period of disqualification shall begin in the month of application.

- (2) When the assistance group has been participating at the time of the discovery of the transfer, a notice of adverse action explaining the reason for and length of the disqualification shall be sent. The period of disqualification shall be sent effective with the first allotment issued after the adverse notice period has expired, unless the assistance group requested a fair hearing and continued benefits.

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