

FNS 265 Variable Income

Change 2-2012

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265.01 VARIABLE INCOME

Use this section to determine how to count special types of income. If the income must be counted, refer to Section 268, Budgeting Stable Income, or Section 270, Budgeting Fluctuating Income.

265.02 AID TO FAMILIES WITH DEPENDENT CHILDREN (AFDC), WORK FIRST FAMILY ASSISTANCE (WFFA), TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF)

- A. If assistance payments are made under any of these programs for retroactive months, do not count that portion as income for the current month.
- B. If a payment is received that includes retroactive payments and the current month amount, count only the current month's portion as unearned income.
- C. If the WFFA assistance is reduced due to a sanction and the sanction is imposed during the certification period, continue to count the gross payment amount for the full sanction period. If a sanction is in place at reapplication/recertification, determine if it is the same sanction or a new sanction. Continue to count the gross payment amount if it is the same sanction. If it is a new sanction, determine when the sanction was imposed and budget either the net payment amount or gross payment amount depending upon when the new sanction was imposed.
- D. If the WFFA assistance is reduced due to a sanction imposed effective the month of application/reapplication or in a non-certified month, count the net payment amount of the assistance check in determining benefits. Count the net amount for the full sanction period. If a sanction is in place at reapplication/recertification, determine if it is the same sanction or a new sanction. Continue to count the net payment amount if it is the same sanction. If it is a new sanction, determine when the sanction was imposed. If it is a new sanction, determine when the sanction was imposed and budget either the net payment amount or gross payment amount depending upon when the new sanction was imposed.
- E. If a WFFA or TANF payment is reduced due to an overpayment, other than a client responsible overpayment, subtract the recoupment amount from the gross, and count the net payment amount as unearned income. Refer to Section 450.05.
- F. If the WFFA benefits **terminate** due to non-compliance or failure to meet an eligibility requirement, remove the payment from the FNS budget effective the month after the payment terminates. **The WFFA case must terminate for this rule to apply.**

NOTE: This does not include Benefit Diversion, since BD is not countable income.

NOTE: Refer to Section 273.14, Non-Compliance With Work First Family Assistance (WFFA).

265.03 ATTENDANT CARE PAYMENTS

- A. Determine if the attendant care payment is received as wages by a FNS unit member for care provided to a non-FNS unit member. Count these payments as earned income.
- B. Determine if the attendant care payment is received as wages paid by one FNS unit member to another FNS unit member.
 - 1. The attendant care payments provided by an outside source, such as a state or federal agency, is to be treated as **earned income** to the person providing the attendant care.
 - 2. If the attendant care payment is provided by a FNS unit member to another FNS unit member from his/her own pocket, do not count payments to the member

providing the care as income. Such attendant care payments are not counted as earned income because the money is moving between FNS unit members.

- C. Determine if the attendant care payment is received as wages by a FNS unit member for care provided to a FNS unit member and paid by a non-FNS unit member. Count these payments as earned income.

EXAMPLE: Household size of two includes adult niece and elderly aunt. They have chosen to receive FNS benefits together. The elderly aunt requires attendant care and niece provides the care. Elderly aunt's son pays the niece for this care. Count payment to niece as earned income.

- D. Do not count vendor payments paid to a provider for care of a FNS unit member.

265.04 BONUS/VACATION PAY

- A. Bonus/vacation pay is money given by the employer to an employee in addition to the employee's regular pay.
 - 1. Count bonus/vacation pay in the month of receipt when the amount and date of receipt can be reasonably anticipated.
 - 2. If bonus/vacation pay was received in the base period, determine if is representative. (This means that the next payment will be about the same amount, and there is some certainty of expected receipt, and the pay will be received during the certification period.)
 - 3. If this pay will be received monthly, anticipate for each month of the certification period.
 - 4. If this pay is received less frequently than monthly and anticipated during the next certification period, review payment history to determine anticipated dates of receipt and payment amounts. Prorate the anticipated gross amount over the certification period.

265.05 CAFETERIA PLANS AND FLEXIBLE BENEFITS

Some companies make monetary credits available to employees. The credits may be used for a variety of things, e.g, to buy health insurance, life insurance, annual leave, or sick leave, but the employee cannot elect to receive a cash payment. The credit shows up on the pay stub. If the employee does not use the credits, the employee loses them. These credits are not counted as income as they are not legally obligated and otherwise payable to the employee as earnings.

Under some pay plans an employee can choose to have the employer withhold money to pay certain expenses such as child care and medical expenses when they are incurred. If any amount is left at the end of the year, the employee loses the money. The amount withheld is counted as earned income as the money is legally obligated and otherwise payable to the employee.

265.06 CASH RECEIVED INFREQUENTLY OR IRREGULAR

Determine if this income is received infrequently or irregularly. This means that the income is not expected to exceed \$30 per calendar quarter and cannot be reasonably anticipated to recur.

- A. Do not count infrequent/irregular income.
- B. If the income does not meet the definition of infrequent/irregular, these payments will be counted as unearned income when they can be reasonably anticipated during the certification period.

265.07 CHILD SUPPORT

This is money paid to the household as support for a child from a non-household member. Child support income is considered income to the custodial parent unless otherwise specified in the

court order. Therefore, if received by an ineligible member, count only the applicable portion to the eligible members as indicated in Section 260.01, Whose Income is Counted?

A non-recurring lump-sum arrearage payment is counted as a resource. See Section 250.14, Non-recurring Lump-Sum Payments. If the absent parent makes up past due amounts on a monthly basis, count these payments along with regular monthly payments as income.

NOTE: Refer to Note in Section 265.26, Representative Payments.

265.08 COLLEGE WORK-STUDY

Do not count College Work Study as a source of income **when administered under Title IV of the Higher Education Act or the Bureau of Indian Affairs. Count other College Work Study benefits as earned income.**

265.09 CONTRACT WAGES

This is money paid to an individual, such as teachers and other school employees, based on a written or verbal agreement (contract). Verify contract information with the employer. Budget contract income using the following instructions.

- A. Prorate contract income that represents the FNS unit's annual support over 12 months unless the income is paid hourly or on a piecework basis. If the income has been averaged over 12 months and the employment ends after he or she has been paid the full contract amount, the average monthly amount must continue to be counted as income for the remainder of the 12-month period.
- B. Prorate contract income that is not the FNS unit's annual income over the period it is intended to cover unless it is paid on an hourly or piecework basis.
- C. Count hourly or piecework income derived by contract that can be anticipated in the month received using base period as an indicator. See Section 268, Budgeting Stable Income, and Section 270, Budgeting Fluctuating Income.

265.10 CONTRIBUTIONS

- A. Determine if the contribution received by a FNS unit member is infrequent/irregular income as defined in 265.06, Cash Received Infrequently or Irregularly. Do not count irregular/infrequent income.
- B. Determine if the contribution is received from a non-profit organization.
 - 1. Charitable contributions of \$300 or less during a calendar quarter from a non-profit organization are excluded from income.
 - 2. If the contribution from a non-profit organization exceeds \$300, count the amount over \$300 that can be anticipated during the certification period as unearned income. Prorate the countable amount over the entire certification period.
- C. All other cash contributions received by a FNS unit member are counted as unearned income when they can be reasonably anticipated during the certification period. See Section 268, Budgeting Stable Income, and Section 270, Budgeting Fluctuating Income, for budgeting this income.

265.11 COURT-ORDERED RESTITUTION

- A. Determine if the court-ordered restitution anticipated to be received by the FNS unit member is a reimbursement for a loss or damages incurred. Do not count reimbursements for losses or damages incurred.
- B. If the court-ordered restitution anticipated to be received by the FNS unit member is a lump sum for pain and suffering:

1. Do not count as income.
 2. Count as a resource in the month of receipt.
- C. All ongoing court-ordered payments are counted as unearned income unless excluded in Section 263, Sources of Income.

265.12 DEPENDENT CARE PAYMENTS

- A. Determine if the dependent care payment is received as wages by a FNS unit member for care provided to a non-FNS unit member. Count these payments as earned income.
- B. Determine if the dependent care payment is received as wages paid by one FNS unit member to another member within the same FNS unit.
1. The dependent care payments provided by an outside source, such as a state or federal Child Care and Development Fund (CCDF), is to be treated as **earned income** to the person providing the dependent care.

EXAMPLE: Household size of three includes mother and child and the child's grandmother. The mother works. She receives a child care reimbursement from a State's CCDF. The grandmother watches the child and the mother pays her with the CCDF child care reimbursement. The money paid to the grandmother is to be counted as earned income.

2. If the dependent care payment is provided by a FNS unit member to another FNS unit member from his/her own pocket, do not count payments to the member providing the care as income. Such child care payments are not counted as earned income because the money is moving between FNS unit members. A deduction for child care would not be allowed in this situation.
- C. Determine if the dependent care payment is received as wages by a FNS unit member for care provided to a dependent FNS unit member by a non-FNS unit member. Count these payments as earned income.
- D. Do not count vendor payments paid to a provider for care of a FNS unit member.

265.13 DOMESTIC EMPLOYMENT

Determine if there is an employee/employer relationship such as when the employer pays taxes or FICA. If such as relationship exists, count the income as wages. If no such relationship exists, treat as self-employment.

265.14 EDUCATIONAL ASSISTANCE

Exclude educational assistance with the exception of assistance which is designated for normal living expenses. Normal living expenses, which are Room and Board, are counted as unearned income. Verify assistance only if client indicates that they receive educational assistance for Room and Board.

265.15 FOSTER CARE PAYMENTS

Foster care payments are counted as unearned income only when the FNS unit chooses to include the foster child in the FNS unit.

265.16 GAMING PROCEEDS OF THE EASTERN BAND OF CHEROKEE INDIANS

This is the distribution of profits from gaming operations on the reservation to the Eastern Band of Cherokee Indians. This income is received semi-annually (in December and June) and is prorated over the six-month period covered. Tribal members may refuse to accept the per capita distribution by signing a waiver. If this occurs, obtain a copy of the waiver, and do not count the payment as income. Some payments made directly into a trust fund administered by the tribe for

minors and incompetent adults are also excluded from income. Verify that the trust fund is only accessible upon petition to the tribe and withdrawals are only allowed for medical and educational purposes. See 265.30, Trust Funds and Dividends From Trust Funds, for further details.

265.17 GI Bill

Do not count income from the GI Bill with the **exception** of the monthly housing allowance (MHA) issued through the Post 9/11 GI bill which is effective August 1, 2009. The MHA is countable unearned income.

265.18 GIFTS/PRIZES

See 265.06, Cash Received Infrequently or Irregularly.

265.19 INHERITANCE/INSURANCE SETTLEMENTS

If an inheritance or insurance settlement is paid to the FNS unit member in the form of a lump sum, do not count as income. Treat as a resource.

265.20 INSTALLMENT PAYMENTS RECEIVED FOR THE SALE OF A RESOURCE

This is money paid to an individual based on a written or verbal agreement (contract) involving the sale of a resource. Budget the payments as unearned income using the terms of the agreement (contract) and the following instructions. Subtract the cost of doing business (interest on a mortgage, property taxes, etc.) from the gross payment amount.

- A. Prorate the contract income over 12 months if the FNS unit receives an annual payment.
- B. Count the income for the month it is intended to cover if payment is made monthly.
- C. Convert income to a monthly amount if income is received more frequently than monthly.

NOTE: Prorate the contract income over the period it is intended to cover if received less than annually but not in monthly installments or converted to a monthly amount. For example, if the contract specifies quarterly payments, average the payment over a three-month period to determine the monthly amount to budget.

265.21 LEGALLY OBLIGATED MONEY

- A. Money that is otherwise payable to a member of the FNS unit, but is diverted by the provider of the payment to a third party for a household expense, shall be counted as income and not excluded. For example, the court orders child support payable to the client, but the absent parent chooses to pay the mortgage directly instead of paying the FNS unit. Count the payment as income and allow the mortgage payment as a shelter deduction.
- B. Payments specified by a court order or other legally binding agreement to go directly to a third party rather than the FNS unit are excluded as income because the payment is not otherwise payable to the FNS unit. For example, a divorce decree orders an individual to pay the monthly mortgage payment directly to the mortgage company and not to the FNS unit. Do not count the payment as income to the FNS unit and do not allow the mortgage payment as a shelter deduction.

265.22 MILITARY PAY

- A. Count military pay as earned income in the month intended, not received. Refer to Section 260, Whose Income is Counted, to determine if the military member should be included in the FNS unit. Count the following income for a FNS unit member in the military.

1. Base Pay;
2. Basic Allowance for Housing (BAH) and/or Basic Allowance of Quarters (BAQ) included on the Leave and Earnings Statement (LES) statement;

Note: For those who live off base, allow shelter and utility deductions based on the amount the household is responsible for. For those who live on base, allow the shelter deduction for the amount of housing that is subtracted on the LES. Determine if the household is eligible for the SUA, BUA or TUA based on the utility expenses the household is responsible for.

3. Basic Allowance for Subsistence (BAS);
4. Family Subsistence Supplemental Allowance (FSSA);
5. Variable Housing Allowance (VHA);
6. Leave Rations;
7. Separate Rations; **and**
8. Sea Duty Pay, Career Sea Pay, Jump Pay, and Flight Pay.

B. Do not count the following as income.

1. Clothing Maintenance Allowance (CMA);
2. Any in-kind benefit **not** in the form of money, such as housing and meals;
3. Mandatory salary reduction which is used to fund the Veterans Education Act of 1984 (GI Bill); **and**
4. Combat pay. Exclude for the duration of the deployment.

C. If military pay is received from someone stationed away from the FNS unit, determine the length of absence. If absent less than 30 days, continue to include the member in the FNS unit and count his income. If absent 30 days or more, do not include the individual or his income in the FNS unit. Count any contributions made to the FNS unit as unearned income. Also, consider any deposits made to a joint account as unearned income to the FNS unit.

265.23 PASS THROUGH PAYMENTS

When a FNS unit member receives payment for shared expenses such as rent and utilities, and it was received from and used on behalf of a third party, it is not considered income to the FNS unit member as it passes through to the landlord or utility company.

EXCEPTION: The exception to this rule is a residence that is owned or being purchased by the FNS unit. In this situation, count payments as earned income, roomer income to the landlord's FNS unit.

EXAMPLE: When separate households share rent and one receives a rent payment from the other and pays the landlord, the household that pays the landlord would not have the rent payment received counted as income. Therefore, a rent payment which a household receives from and uses on behalf of a third-party, i.e., a rent payment that passes through, should be excluded.

265.24 REIMBURSEMENTS

A reimbursement is considered to be payment that does not represent a gain or benefit to the FNS unit. Do not count money received as a reimbursement for out-of-pocket expenses other than for normal living expenses such as rent, mortgage, personal clothing, or food eaten at home. Reimbursements include, but are not limited to:

- A. Reimbursements or flat allowances for job-related or training-related expenses such as travel, per diem, uniforms, and transportation to and from the job training site.
- B. Reimbursements for travel expenses incurred by migrant and seasonal farm workers.
- C. Reimbursements for out-of-pocket expenses incurred by volunteers in the course of their work.
- D. Reimbursements for medical or dependent care.
- E. Reimbursements to pay for services provided by Title XX of the Social Security Act.
- F. Reimbursement to students for allowable educational expenses such as tuition and mandatory fees.
- G. Reimbursements received by FNS unit members complying with Employment and Training Requirements, Workfare, or Employment Services.
- H. Reimbursements received by FNS unit members participating in the Comprehensive Improvement Assistance Program (CIAP). This is a training program for public housing residents administered by the local housing authority.

265.25 REPAYMENT OF OVERPAYMENTS

See 265.02 for AFDC, WFFA and TANF. See 265.28 for SSI.

265.26 REPRESENTATIVE PAYMENTS

Representative Payments are monies received by a protective payee and legally intended to be used for the care and maintenance of a beneficiary.

- A. Moneys received by a protective payee, that is **given and/or used** for the care and maintenance of the beneficiary, must be counted as income to the household of the beneficiary.
- B. Moneys received by a protective payee, that is **not given and/or not used** for the care and maintenance of the beneficiary who is not a household member of the protective payee, must be counted as income to the household of the protective payee.
- C. If a single payment is intended for both FNS unit and non-FNS unit members, any identifiable portion of the payment intended and used for the care and maintenance of the non-FNS unit household member must be excluded as income for the FNS unit.
- D. If the non-FNS unit member's portion cannot be readily identified, evenly prorate the payment among the intended FNS unit and non-FNS unit members and count the prorata share for all FNS unit members.
- E. Any payments intended for a beneficiary but used by a FNS unit member will be counted as unearned income to the FNS unit.

NOTE: Child support income is considered income to the custodial parent unless otherwise specified in the court order. Therefore, if received by an ineligible member, count only the applicable portion to the eligible members as indicated in Section 260.01, Whose Income is Counted?

265.27 SPECIAL ASSISTANCE

The Special Assistance (SA) In-Home Program allows individuals living at home to receive a Special Assistance payment. Count the SA payments as unearned income for the FNS unit. If the client is responsible for payment of medical bills including payment for a nursing attendant, give a medical deduction. See FNS Section 280.14, Medical Deductions.

265.28 SSI PAYMENTS

- A. If a SSI check is reduced due to a client responsible overpayment, do not increase the FNS unit's allotment as a result of the decrease in the SSI payment. Count the gross amount of the SSI payment as unearned income.
- B. If DSS is not successful in obtaining the necessary cooperation from the Social Security Administration to verify the status of an overpayment, count the net SSI payment. The DSS will not be held responsible for non compliance as long as the agency has made a good faith effort to obtain the information. Document attempts made to verify information with Social Security Administration.

265.29 STRIKERS

- A. Households with striking members are not eligible to participate in FNS unless the striker is exempt from work registration or the FNS unit would have been eligible for benefits the day prior to the strike and is otherwise eligible at the time of application.
- B. These FNS units shall not receive an increased allotment as the result of a decrease in the income of the striking member(s).
- C. Eligibility is determined by comparing the striking member's income before the strike (calculated by considering the day prior to the strike as the day of application and assuming the strike did not occur) to the striker's current income (including picket pay) and counting the higher of the two. Add this amount to the current income of non-striking members.

265.30 TRUST FUNDS AND DIVIDENDS FROM TRUST FUNDS

Count as unearned income periodic disbursements or dividends received by the FNS unit member from the trust fund when these amounts can be anticipated with reasonable certainty.

265.31 TANF

See AFDC, WFFA, TANF, 265.02.

265.32 VENDOR PAYMENTS

- A. A vendor payment is a payment made in money on behalf of a household/individual by an outside party. Vendor payments are not considered countable income.

EXAMPLE: A non-FNS unit member pays the FNS unit members' rent directly to the landlord.

- B. Payments made with money that is legally obligated to the FNS unit are not considered vendor payments. Refer to Section 265.21, Legally Obligated Money.

EXAMPLE: FNS unit members' wages are garnished to pay the rent. Gross wages are counted and the rent deduction is given.

265.33 VOLUNTEERS IN SERVICE TRAINING ACT (VISTA)

If the FNS unit member was receiving Public Assistance (AFDC, Work First Family Assistance, or TANF) or FNS at the time he joined VISTA, do not count as income. If he was not a recipient, count as earned income.

265.34 WORK FIRST FAMILY ASSISTANCE (WFFA)

See AFDC, WFFA, TANF, 265.02.

265.35 WORK FORCE INVESTMENT ACT (WIA)

Earnings to recipient participating in WIA on-the-job training are counted as earned income except for youths, under age 19, who are under the parental control of an adult FNS unit member participating in the Summer Youth Employment Opportunities Program. **Exclude other allowances, earnings, or payments (including reimbursements) to all individuals participating in other programs under WIA.**

265.36 WORK STUDY

See College Work Study – 265.08.