

Module **3** PART B

Understanding Other Federal Benefits and Associated Work Incentives

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Module **3** PART B

Understanding Other Federal Benefits and Associated Work Incentives

INTRODUCTION

Many Social Security disability beneficiaries receive additional benefits such as HUD housing subsidies, food stamps, VA benefits, or other federal, state, or local benefits. Most of these additional benefits are means-tested and may be affected by attainment of paid employment or self-employment. Work incentives counselors are required by Social Security to gain competency in understanding how paid employment affects a variety of other federal programs and this module covers the most common forms of benefits individuals receive in addition to Social Security disability benefits. It is essential that work incentives counselors recognize that these are considered to be core competency areas – not optional areas of study.

This module consists of six distinct units with each unit covering a different type of benefit. These benefit programs are: Temporary Assistance to Needy Families (TANF), the Supplemental Nutrition Assistance Program or SNAP (formerly referred to as the Food Stamp Program), federal housing assistance provided by the US Department of Housing and Urban Development (HUD), the Unemployment Insurance Program, Workers' Compensation benefits, and benefits provided to Veterans by the US Department of Veterans Affairs (the VA) and the US Department of Defense (DoD). Work incentives counselors must understand that the material presented in the module reflects only the federal rules governing each program or benefit. For some programs, state variance is permitted and even encouraged. This means that the development of competency in these areas does not stop with this manual, but merely begins here. Work incentives counselors are required to conduct independent research into each of the six programs presented in this module to gain a functional knowledge of the state-specific variations that may apply.

COMMUNITY PARTNER WORK INCENTIVES COUNSELOR CORE COMPETENCIES ADDRESSED

1. Demonstrates understanding of other federal benefit programs and associated work incentives, including TANF, Food Stamps (SNAP), HUD housing subsidies, Worker's Compensation and Unemployment Insurance benefits, Veterans Benefits, and other benefit programs.
2. Identifies local IDA programs and demonstrates an understanding of how these programs can be used to achieve employment outcomes, how IDAs interact with Social Security disability benefits, and how work incentives such as PASS may be used in conjunction with participation in an IDA program.

Competency Unit 1

Temporary Assistance for Needy Families (TANF) Program

INTRODUCTION

The Temporary Assistance for Needy Families (TANF) Program was created in 1996 under the Personal Responsibility and Work Opportunity Reconciliation Act. TANF has a two-fold mission. It is designed to (1) assist families with dependent children to meet transitional financial needs; and (2) to help these families become self-sufficient. This program replaced the Aid to Families with Dependent Children (AFDC) program, the Job Opportunities and Basic Skills (JOBS) program, and the Emergency Assistance (EA) program. The primary program objective is to promote work, responsibility and self-sufficiency.

The program was reauthorized by the Budget Reconciliation Act of 2005. There were no changes at this time in terms of eligibility, but there were some administrative changes in the work participation rules and an increased focus on the importance of healthy marriages and responsible fatherhood.

A FEDERAL PROGRAM THAT IS STATE ADMINISTERED

The TANF programs and SNAPs (now known as “Supplemental Nutrition Assistance Program” or SNAP) are available in every state in the nation for people who meet certain income and eligibility tests, and need cash assistance and/or nutritional support. Many people who are receiving SSI and/or Social Security disability benefits may also be eligible for these programs. For this reason it is important for the work incentives counselor to include these program services in the Benefits Summary & Analysis (BS&A) and to carefully plan the impact earned income will have on these services to the beneficiaries.

When TANF was created in 1996, AFDC, JOBS, and EA programs were rolled together under this one federal program, designed to assist families with dependent children to meet transitional financial needs. The word “transitional” is important. One of the key differences in the TANF program and the older AFDC program is that this financial aid or welfare payment is for a limited time only. The TANF program is designed to help families to become self-sufficient, so there is a strong work component and work philosophy within the regulations associated with TANF.

CORE FEDERAL REQUIREMENTS OF TANF PROGRAMS

TANF is a federal program that is state administered. Instead of having detailed federal guidelines for TANF, which was true of AFDC, the TANF program is designed to allow states to receive block grants that have a few core federal requirements.

The core federal requirements for TANF funds are:

- Recipients are limited to 60 months of TANF funds in a lifetime per family; and
- A parent or caretaker in the household must pursue work in order to continue receiving benefits.

Given these basic parameters, states write their own regulations and submit those regulations for approval to the federal TANF office. The program varies greatly from state to state, since many of the requirements that are part of the TANF program are state-specific. In some states there are even county-specific rules. The name of the TANF program can also vary from state to state. As an example, in Florida the TANF program is called Work and Gain Economic Self-Sufficiency (WAGES).

The TANF program has a limit of 60 months of TANF participation in a lifetime per family, though the law does allow a few specific exceptions. These 60 months do not have to be consecutive. A state can choose to provide benefits for longer than 60 months, but they cannot do this with federal TANF funds. The state would have to use state funds for any period of time beyond the 60-month time frame. An individual state has the discretion to identify a shorter time frame. In Virginia, for example, there is a limit of 24 consecutive months of benefits.

INDIVIDUAL RESPONSIBILITY PLANS

Another federal requirement is that the parent or caretaker in the household must pursue work in order to continue receiving benefits. The federal requirement states that within 24 months of receiving TANF, work activity should begin. That work activity could be job training, volunteer work or actual paid employment. Again, states have some latitude in this. They can make that 24-month period shorter. In at least 35 states, shorter time frames have been established for when an individual must be pursuing work. Most states use something called an Individual Responsibility Plan to help track the work activities associated with this requirement of TANF. The Individual Responsibility Plan is an individual plan written with the recipient that outlines the strategies and timelines associated with going to work. If the recipient refuses to put together an Individual Responsibility Plan or does not pursue the strategies listed, they can receive a sanction which means a withholding of a portion or all of their benefit.

CHARACTERISTICS OF STATE PROGRAM FUNDING

State Exemptions

A state can exempt 20% of its TANF recipients from the federal participation requirements. The state cannot exempt more than the 20% with federal funds. Who they choose to exempt is up to the state, except for a couple of groups that are required by federal law to be exempt. One of those groups includes families with no adult. For a TANF family that does not have an adult caretaker as part of that unit, there is no work requirement and the 60-month limit may be different. The second exempt group is people who are Native Americans. Any months in which a Native American is living on an Indian Reservation that has more than 50% unemployment rate are not counted toward the 60-month lifetime limit of benefits.

Although it is not a federal requirement, most states include individuals with disabilities in their 20% exemption. In addition, it is important to realize that states struggle to stay within that 20% exemption guideline. If a person with a disability applies for TANF, he/she will also be assisted in filing applications for the SSI or SSDI programs. Once the disability program award is made, the individual would no longer be eligible for the 20% exemption group.

Some states have emergency TANF payments they can make available under certain circumstances. Some individuals on SSI or Social Security disability benefits who have temporary unemployment may be able to take advantage of this feature. Some states have a core set of basic requirements but leave it up to each county to decide on income eligibility and other benefit issues. This is true in California.

Financial Eligibility for TANF

TANF recipients must meet a financial eligibility test in order to receive benefits. In this eligibility test, both income and resources are considered. Different states exempt different amounts and types of income as well as different resources. For instance, portions of earned income are exempted from the incoming resources test in all states, but how much is exempted changes significantly from state to state. Some states exempt all earned income up to the federal poverty level. Others exempt some portion of it that may change over time.

In addition, different resources are exempted and that, too, changes from state to state. One important exemption is a vehicle. Many states exempt one vehicle in the household as part of the effort to help people to be able to go to work. This is not true in all states, however. Many states use an Individual Development Account (IDA) in place of a resource exemption. This is a special account that allows an individual to deposit money that will be totally excluded from the resources test. That money is deposited into the account and it can only be pulled out and used for specified items that include education, first-home purchase, or business start-up capitalization. Individual Development Accounts vary greatly from state to state, and some states do not have them. In states where they do exist, there may be a cap on how much is exempted, ranging from \$1,000 to no cap at all. For more information on IDA programs, see Unit 2 of Module 1.

How SOCIAL SECURITY DISABILITY BENEFITS AND TANF INTERACT

TANF and SSI

For individuals who receive SSI, it is important to understand how SSI and TANF interrelate. Remember that eligibility for SSI is based on that person's individual circumstance whereas TANF is a benefit to a family. These two programs are not based on the same types of income tests. States vary greatly on how they treat SSI benefits when calculating a family's eligibility for TANF. If an individual who is a household of one were to go in and apply for TANF and apply for SSI, he/she would not receive both benefits. If an individual qualifies for SSI, he/she will receive SSI rather than TANF. However, it is important to know that there may be one member of a family who is receiving SSI while the rest of the family is receiving TANF. This is often the case when a child receives SSI under the children's eligibility test, and a TANF check comes to the household based on the entire family's income.

If an individual applies for TANF and the caseworker suspects the individual may be eligible for Social Security benefits, they will refer the individual to the Social Security Administration and will probably provide some case management services to assist the individual in applying for Social Security. There are a couple of reasons for that. First, the TANF benefits are limited to 60 months and there is a work requirement. Social Security benefits may be a better fit, if the applicant has a disability and may or may not be able to work at the level required to live without benefits. Second, state workers will try to help an individual apply for and receive Social Security benefits, if possible, to save space on the 20% exemption mentioned earlier.

TANF and Title II Disability Benefits

A Title II Social Security disability benefit, on the other hand, has no income eligibility requirement but it is based on the individual's work history and credits earned under the disability insurance program. We do know that if Title II disability beneficiaries have dependents, in addition to the Social Security disability check coming into the household, there may also be a child's (or a child's and young spouse's) benefit. Therefore, if a family applies for TANF and there are several members of that family receiving Social Security benefits, many times the amount of the Social Security checks coming into the household will disqualify the family from TANF because the income is too high. Basically, TANF counts every penny of unearned income, so it does not take a great amount of Social Security benefits to make a person financially ineligible for TANF benefits.

However, there are cases in which an individual is receiving a lower Social Security benefit amount, and for whatever reason, the person may not be eligible for SSI (e.g., they have excess resources). If that particular state's TANF office has a more lenient resource requirement, then the family may be eligible for TANF while, at the same time, one or more of the family members may be receiving rather low amounts of Social Security benefits.

CONCLUSION

It is critically important for work incentives counselors to remember to ASK beneficiaries about whether or not they or any member of their household receives TANF benefits before offering advisement. Secondly, it is important that work incentives counselors verify a TANF payment with the local welfare agency to make certain all relevant information has been captured. Third, it is essential that work incentives counselors carefully research TANF implementation in their home state, as well as the counties in their catchment area to insure that there is a solid understanding of the state and local rules. Finally, work incentives counselors must remember that it is not their job to determine eligibility for the TANF program, but rather to offer information and resources for the person and help them understand what role TANF plays in their overall benefits plan.

CONDUCTING INDEPENDENT RESEARCH

Administration for Children and Families main TANF webpage: <http://www.acf.hhs.gov/programs/ofa/programs/tanf>

Additional TANF subjects which can be researched at the ACF website include:

- Sanctions for Not Complying with Work Requirements
- States' Cash Benefit Levels
- States' Resource Limits
- States' Time Frame for Work
- States' Time Limiting Assistance
- States' Treatment of Earnings

Competency

Unit

2

Supplemental Nutrition Assistance Program (SNAP)

WHAT HAPPENED TO THE FOOD STAMP PROGRAM?

New legislation was passed by Congress that changed several rules related to the Food Stamp Program. Public Law 110-246, the Food Conservation and Energy Act of 2008, was enacted on June 18, 2008. Two of the changes that went into effect on October 1, 2008 have to do with the name of the program. The Food Stamp Program has been renamed the “Supplemental Nutrition Assistance Program” or SNAP. The Food Stamp Act of 1977 has also been renamed the Food and Nutrition Act of 2008. State agencies may continue to use state-specific program names.

INTRODUCTION TO THE FOOD STAMP PROGRAM (NOW KNOWN AS THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM OR SNAP)

The Food Stamp Program (SNAP) is a federal program housed within the US Department of Agriculture. This program helps low-income people purchase food. Those who may be eligible to receive SNAP are those who work for low wages, are unemployed or work part-time, receive welfare or other public assistance payments, are elderly or disabled and live on a small income, or are homeless.

The original Food Stamp Program was created in 1939 to assist families during the Great Depression. The Food Stamp program was modernized through a pilot project in 1961, and it became a permanent program in 1964. In 1974, Congress required all states to offer food stamps to low-income households. The Food Stamp Act of 1977 made significant changes to the program regulations by creating more stringent eligibility requirements and administration, as well as removing the requirement that food stamps be purchased by participants.

In most states, SNAP is administered by the state public assistance agency through a network of local city or county offices. These public assistance agencies sometimes referred to as “welfare agencies,” also administer TANF and often Medicaid.

SNAP provides a type of credit card for food purchases. Many are familiar with the old version of food stamps, where booklets were used that had different dollar values of food stamps that people received on a monthly basis. The booklet was replaced in 2002 with the card system, where a certain dollar amount is electronically deposited onto the card, identifying the amount of food value that an individual has available for food purchases. The amount of food stamps depends on the number of people in your household and the amount of monthly income remaining after certain deductions.

Some basic federal SNAP rules apply in almost every state, but states have authority to establish their own rules beyond those that are federally required. Therefore, just as with TANF, it is important for you to become familiar with your state’s specific rules in order to fully understand how food stamps work and who is eligible for them. Some states, such as California, have very unique SNAP rules. It is important not to assume that because SNAP works in a particular way in one state that it will work the same way in another state. There is a list of contact numbers in your participant’s manual that can get you started on learning how to reach those local SNAP agencies.

The Department of Agriculture has something called the Thrifty Food Plan. The Thrifty Food Plan is a program in which the Department of Agriculture establishes what amount of monthly income is necessary to meet basic food needs for families of different sizes. The maximum food stamp amounts that people can get for different household sizes are established through this Thrifty Food Plan.

The American Recovery and Reinvestment Act of 2009 (ARRA) increased SNAP benefits by raising maximum allotments by 13.6% of the Thrifty Food Plan. These adjustments will NOT be reduced in future fiscal years.

For the purposes of receiving food stamps, a household is a person or a group of people living together, not necessarily related, who purchase and prepare food together. In some situations it is even possible to have more than one food stamp household per dwelling.

BASIC ELIGIBILITY REQUIREMENTS FOR SNAP

All members of the household, including children, must have a Social Security Number. With some exceptions, adults between the ages of 16 and 60 must register to work. In most states, individuals between 18 and 50 who have no children and are signed up for food stamps cannot receive food stamps for more than three months unless they are working. An individual's countable resource level cannot exceed \$2,000 (\$3,000 for elderly and disabled persons).

IMPORTANT CHANGE! Passage of the Food and Nutrition Act of 2008 has created an important change in the resource limits for the new SNAP. Per the new regulations, these limits will be adjusted annually in accordance with changes in the Consumer Price Index.

SNAP Allotments, Deductions and Income Eligibility Standards

The USDA adjusts SNAP maximum allotments, deductions, and income eligibility standards at the beginning of each federal fiscal year. The changes are based on changes in the cost of living. COLAs take effect on October 1 each year.

Maximum allotments are calculated from the cost of a market basket based on the Thrifty Food Plan for a family of four, priced in June that year. The maximum allotments for households larger and smaller than four persons are determined using formulas that account for economies of scale. Smaller households get slightly more per person than the four-person household. Larger households get slightly less.

Income eligibility standards are set by law. Gross monthly income limits are set at 130 percent of the poverty level for the household size. Net monthly income limits are set at 100 percent of the poverty level.

If a household applies after the first day of the month, benefits will be provided from the day the household applies. SNAP is available to all eligible households regardless of race, sex, religious creed, national origin or political beliefs. For further information, contact your local or state food stamp office. It may be listed in the state or local government pages of the telephone book, under food stamps, social services, human services or a similar name. You can also find the nearest local office by calling your state's hotline.

When determining income for the purposes of food stamp benefits, all households are entitled to a "standard deduction" from gross income. This standard deduction is meant to cover the basic, essential expenses that are not medical, child care or work related. The Food Stamp Reauthorization Act, effective 10/1/2002, created a standard deduction that varies according to household size and is adjusted annually for inflation. While this change helps families, it also helps persons with disabilities living with others to get a higher standard deduction, and ultimately an increase in food stamp benefits.

In addition to the standard deduction, there are other deductions that states are required to apply when determining income eligibility for SNAP. These deductions are described below in the order in which they are deducted:

1. After the standard deduction, the SNAP discounts 20% of the household's earned income.
2. For the next deduction, the reasonable cost of dependent care when the care is needed for work, training, or education is excluded.
3. Third, if the individual or someone in that household receives legally owed child support, the amount of that legally owed child support is excluded when calculating net income.
4. Next, if a household is paying more than half of their net income for shelter expenses, some of the shelter expense may also be deducted.
5. Finally, medical expenses for elderly or disabled members that are more than \$35 for the month may be deducted if they are not paid by insurance or someone else.
6. Some states allow homeless households an additional deduction for shelter costs.

To find the exact amount of each type of deduction allowable for each calendar year, work incentives counselors should refer to the USDA website at: <http://www.fns.usda.gov/snap/government/cola.htm> This website also lists the maximum monthly allotments and the various income eligibility standards for the various sizes or types of households.

It is essential to understand the deductions described here are only the most common deductions – there are many other income exclusions and some income that does not count at all. The food stamp income rules are quite complex and may vary significantly by state.

IMPORTANT! All funds set aside in an approved Plan for Achieving Self-Support (PASS) are required by federal law to be disregarded when eligibility for SNAP is determined.

Remember, work incentives counselors are not authorized, nor qualified, to make SNAP eligibility determinations, nor to provide individuals with estimates of how much may be due in allocation. This is the job of the public assistance agency that administers SNAP. While it is important for work incentives counselors to have a general understanding of how earned income affects eligibility for SNAP, work incentives counselors should not attempt to make these determinations independently.

BASIC REQUIREMENTS TO APPLY FOR FOOD STAMPS

There are some basic SNAP eligibility requirements that apply in all states. The first requirement is that all household members, including children, have a Social Security number. As noted previously, the SNAP identifies a household as a group of people who live together and who buy and prepare meals together.

Secondly, with some exceptions, adults between the ages of 16 and 60 must register to work in order to get food stamps. In most states, individuals between 18 and 50 who are receiving food stamps and have no children cannot get benefits for longer than three months unless they are working or disabled.

In addition, the SNAP is generally restricted to households with low assets; a family with countable assets or resources of more than \$2,000 would typically not be eligible. However, effective October 1, 2002 under the Food Stamp Reauthorization Act, households with disabled family members may have up to \$3,000.

IMPORTANT CHANGE: Beginning on October 1, 2008, and each October 1 thereafter, the SNAP resource limits will be adjusted and rounded down to the nearest \$250 increment to reflect changes for the 12-month period ending the preceding June in the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor.

The Food Stamp Reauthorization Act also gave states the option of applying the more generous resource tests for the TANF program to the SNAP. The purpose of this change was to bring the food stamp rules in alignment with the TANF and Medicaid rules. In practice, this change could allow states to exclude a variety of different assets from the food stamp resource limits, including Individual Development Accounts, some retirement accounts and trusts.

Lastly, the net monthly income of the household must be under certain federally established income limits. "Net" income amounts for food stamps are similar to the "net countable income" concept used in SSI calculations. Because of this, one of the things to review is how net income is calculated under SNAP rules.

MAKING APPLICATION

Individuals apply for SNAP at the local food stamp or welfare office and, more frequently now, online. If the applicant or a member of the applicant's household is applying for or receiving Supplemental Security Income (SSI) benefits, then they can apply for SNAP at the Social Security district office. Please note this does not apply in California, where people who receive SSI benefits receive cash instead of food stamps.

After the application is submitted, the Food Stamp office will contact the applicant to set up an interview to go over the application. If eligible, the applicant will receive the food stamps no later than 30 days from the date the office received the application. In the event the household needs immediate assistance, the office is able to release the food stamps within 7 days. During the interview, the food stamp worker will explain the program rules. They can also assist in completing the application.

The applicant will be required to show proof of certain information such as US citizenship, including certain non-citizens and legal immigrants. Non-citizens that are in the US temporarily, such as students, are not eligible. Other areas where proof is required are Social Security Numbers, unearned and earned income as well as resources. Resources of those individuals who get public assistance, SSI, and in some locations, general assistance, are not counted toward this limit. A few of the resources that will not be counted include one home and the lot it sits on, household personal belongings, and life insurance policies. Resources that will be counted include cash, stocks and bonds, as well as any land and buildings other than your home and lot it sits on that do not produce income. A vehicle can be excluded as a resource if it meets certain criteria, which vary by state and can be clarified by the local food stamp office.

Most types of income are counted when determining if a household is eligible. Income charts are used to determine eligibility and these charts are annually indexed. Households in which all members are getting public assistance or SSI (or, in some locations, general assistance) do not have to meet the income eligibility tests.

In most cases, there is a work requirement attached to the program. Able-bodied adults between 16 and 60 must register for work, accept suitable employment, and take part in an employment and training program. If the person does not comply with these requirements they can be taken off the program. Also, able-bodied adults between 18 and 50 who do not have any dependent children can only receive food stamps for three months during a 36-month period if they do not work or participate in a workfare or employment and training program other than job search. Some states waive this requirement.

RIGHTS AND RESPONSIBILITIES UNDER SNAP

It is important to help participants understand their rights through the food stamp process.

They have the right to:

- Receive an application and have the application accepted on the same day.
- Designate another adult to make the request on the applicant's behalf.
- Receive food stamps within seven days if there is an immediate need for food.
- Receive service without regard to age, gender, race, color, disability, religious creed, national origin or political beliefs.
- Be told in advance if the food stamp office would reduce or end benefits during the certification period because of a change in the recipient's circumstances that was not reported in writing.
- Access their case file and be provided a copy of SNAP rules.
- Appeal any decision.

Along with these rights come responsibilities. It is important that the person understand his/her responsibilities to SNAP. Applicants are required to answer all questions completely and honestly, provide proof they are eligible, and promptly report changes to the food stamp office. Applicants must not put money or possessions in someone else's name, must not make changes on any food stamp cards or documents, or sell, trade, or give away the food stamps, nor can they use food stamps to buy ineligible items. People who break food stamp rules may lose their right to participate in the program, be fined or face legal consequences.

It is also the recipients' responsibility to report changes in a timely manner to avoid needing to pay SNAP back for erroneously issued food stamps. As a work incentives counselor, you should learn how the local food stamp office expects the participants to report changes to their household circumstances. Some households are required to report changes in circumstances every month, others are required to report changes when they occur, and still other households report changes once a quarter.

SPECIAL RULES FOR PEOPLE WHO ARE ELDERLY OR HAVE DISABILITIES

SNAP includes a number of special rules for people who are disabled or elderly. To be eligible for these special rules, the person must meet the definition of "elderly or disabled household member." According to the Food Stamp Act, an elderly person is one who is 60 years of age or older. Someone is considered "disabled" if they receive disability benefits paid by the Social Security Administration, a state supplement based upon disability, interim assistance pending SSI, Medicaid coverage based upon disability, disability-based state or federal general assistance, or certain other benefits based upon disability. The food stamp office determines if a person meets the disability criteria.

One of the rules that apply only to people with a disability has to do with living arrangement. Generally, people living in institutional settings in which the food is provided are not eligible for food stamps. However, under certain circumstances, people living in non-profit residential settings of 16 or fewer individuals can qualify for food stamps even if they need someone within that setting to help them prepare the food.

In addition, individuals who are already receiving SSI or TANF are considered "categorically eligible" – they are not subject to the food stamp resource test. This makes sense because they have already met the resource tests to qualify for SSI or TANF. Basically, if any member of the household receives either SSI or TANF, the food stamp income test is considered to have already been met. For more information about how the SSI program interacts with SNAP, see the following Social Security publications online at: <http://www.ssa.gov/pubs/10100.html>, and <http://www.ssa.gov/pubs/10101.html>

People who receive disability benefits paid by the Social Security Administration are also exempt from the work requirements of the food stamps provisions. This means people with disabilities do not need to be working to receive food stamps for more than three months, nor are they required to seek employment, including registering for work, in order to receive food stamps.

Finally, families with elderly or disabled members are provided an extra deduction when figuring net income. They can deduct any medical costs that are paid and not reimbursed in excess of \$35 a month.

Households with elderly and disabled food stamp recipients are now permitted the higher resource limit of \$3,000, instead of the standard \$2,000.

There are just a few more things you should know about food stamps as they relate to people with disabilities. First, individuals who apply for, or are awarded, SSI may apply for food stamps at the local Social Security office, unless the applicant is a resident of California. States are also permitted to waive the requirement of a face-to-face interview for certain elderly or disabled persons who may be “homebound.” There may be several alternatives to a personal interview in your state, including submitting an application online. Finally, because the SNAP is means-tested, regular reporting of income and resources is required. States vary in how often they review cases and require information to be reported, so check into the rules for your home state. Be sure to remind the beneficiary or recipient of their reporting responsibilities.

CONCLUSION

In this section, we have reviewed the basic federal parameters for the SNAP. Work incentives counselors must remember that discretion is afforded to states in terms of eligibility requirements, income and resources tests. Within broad federal parameters, states vary significantly in how they design and operate their SNAP programs. It is very important that work incentives counselors stay abreast of their state’s requirements as they may change periodically. Ask for literature, policies and procedures in order to be specific with beneficiaries and recipients who come to you for information. Resources for conducting research into the federal rules are provided below with one website providing links to individual state SNAP plans.

CONDUCTING INDEPENDENT RESEARCH

The Food and Nutrition Act of 2008. This is an excellent reference for the deductions states are required to make in income when determining SNAP eligibility: http://www.fns.usda.gov/snap/rules/legislation/pdfs/pl_110-246.pdf

SNAP Website homepage: <http://www.fns.usda.gov/snap/>

- Planning Checklist – Food Stamps
- Frequently Asked Questions – SNAP
- Policy and Regulations
- State Nutrition Action Plans Map (SNAP Map)
- Work World Overview of the SNAP
- Social Security Electronic Leaflet – Food Stamps
- State Programs – Benefits Details and Eligibility Determination
- *Select Food/Nutrition under the Benefits Quick Search section for information on all state programs.
- State Benefit Program Information
- Online Screening Tool for federal, state, local and private programs

The American Recovery and Reinvestment Act of 2009 and food stamps: <http://www.fns.usda.gov/fns/recovery/recovery-snap.htm>

Competency

Unit **3**

Federal Housing Assistance Program

INTRODUCTION

The three main types of federal housing assistance programs sponsored by the Department of Housing and Urban Development (HUD) are public housing, tenant-based Section 8 and project-based housing subsidy programs.

Public housing is owned and operated by local public housing authorities (PHAs) according to state legislation. Housing units take many forms from high-rise apartment buildings to detached single-family dwellings, and may be located at one site or scattered over several sites.

The Section 8 program was established in 1974 as the government's primary rental housing assistance program. It is generally administered by a state or local public housing agency (PHA). HUD pays rental subsidies so that eligible families can afford safe, decent and sanitary housing. These Section 8 subsidies take the form of tenant-based or project-based assistance.

SECTION 8 SUBSIDIES

Tenant-Based Subsidies

Tenant-based subsidies allow recipients to rent housing in the private market and the subsidy moves with the tenant. The tenant-based subsidies were merged into the Housing Choice Voucher Program.

Project-Based Subsidies

Project-based subsidies are attached to specific units in privately owned and operated buildings. Because the subsidy is attached to the unit, rental assistance generally ends for the tenant when the tenant moves except in the Section 8 Project-Based Voucher program. A single building may receive housing assistance under several federal housing subsidy programs. However, current project owners receiving Section 8 Project-Based assistance may not participate in the Project-Based Voucher Program.

QUALITY HOUSING AND WORK RESPONSIBILITY ACT OF 1998

HUD's programs are continually affected by the passage of federal legislation. The Quality Housing and Work Responsibility Act of 1998 created rent-based work incentives for public housing tenants with new or increased employment income. In April 2000, new regulations expanded these benefits to people with disabilities receiving housing benefits through the HOME Investment Partnerships Program, the Housing Opportunities for People with AIDS program (HOPWA), the Supportive Housing program (24 CFR part 583) and the Housing Choice Voucher program. Effective advocacy may require you to closely examine rent increases linked to increased earned income to confirm that the earned income disregards are being properly implemented in your area.

This unit contains an overview of the provisions of the federal regulations as they apply to public housing, the Housing Choice Voucher Program, Section 8 Project-Based Assistance, Section 8 Project-Based Vouchers, the HOPWA program, the Supportive Housing program and the Homeown-

ership program. It will also provide comprehensive guidelines for assisting individuals with disabilities to determine how increased earned income impacts housing costs.

ELIGIBILITY FOR FEDERAL SUBSIDIZED HOUSING

Eligibility for public and subsidized housing is based upon citizenship, income and a family's prior tenant and criminal history if any. Non-citizens with eligible immigration status may qualify for a housing subsidy, if they are otherwise eligible.

HUD uses three terms to describe income eligibility: "extremely low-income," "very low-income" and "low-income."

- An extremely low-income family is a family whose income does not exceed 30 percent of the median income of an area as determined by HUD.
- A very low-income family is a family whose income does not exceed 50 percent of the area's median income.
- Low-income families have an income that is no greater than 80 percent of the area's median income.

Public housing applicants must be low-income families. However, extremely low-income households must occupy 40 percent of public housing units newly rented each year. Housing Choice Voucher applicants must be very low-income families. In addition, 75 percent of new admissions in the Housing Choice Voucher program and the Project-Based Voucher Program must be extremely low-income families. Other Section 8 Project-Based programs must target 40 percent of all annual project admissions to extremely low-income families. Median income and the various corresponding income limits vary significantly from area to area. Annual income does include net income from family assets. Income, such as interest, may be included if the asset is not in an income bearing account.

The local PHA can provide information about median income and income limits for a given area. This information is also available from the HUD website at www.huduser.org.

CALCULATING RENT PAYMENTS IN FEDERALLY SUBSIDIZED HOUSING

Total Tenant Payment

Federal housing subsidy program rents are income-based. Eligibility and assistance levels are calculated according to a family's income. In general, families who receive federal housing assistance pay the higher of the following amounts as rent:

- Thirty percent of the family's monthly adjusted income, or
- Ten percent of the family's monthly income, or
- If the family is receiving welfare assistance payments, the amount of that assistance specifically designated for housing.

The amount the tenant family is required to pay, based upon the above criteria, is called the total tenant payment.

If the cost of utilities (except telephone) is not included in the family rent, a utility allowance equal to a PHA or HUD estimate of the monthly cost of a reasonable consumption of such utilities is established.

For Section 8 programs other than the Section 8 Housing Choice Voucher Program, tenant rent is the total tenant payment minus any utility allowance. Participants in the Section 8 Housing Choice Voucher Program may pay up to 40% of their gross adjusted income for rent.

Minimum Rent

PHAs and housing authorities are required to establish minimum rents for tenants with little or no income. Public housing, Section 8 moderate rehabilitation programs and Section 8 tenant-based and project-based voucher programs may set the minimum rent at an amount between zero and \$50. Other Section 8 programs must set a minimum rent of \$25.

Housing providers are required to adopt hardship exemptions if a family is unable to pay the minimum rent because of financial hardship. The financial hardship exemption includes situations where:

- A family has lost eligibility or is waiting for an eligibility determination for a federal, state, or local assistance program;
- A family would be evicted because it is unable to pay the minimum rent (this exemption does not apply to any other form of rent);
- Family income has decreased due to changed circumstances (e.g., serious medical problem, family member with income leaving the household);
- A death has occurred in the family.

If a family requests a financial hardship exemption, the minimum rent requirement must be suspended beginning the month after the family's request. Housing providers may not evict the family during the 90-day period beginning the month following the family's request for a hardship exemption. The PHA or housing authority must determine whether there is a qualifying financial hardship and whether the hardship is temporary or long-term.

- If there is no qualifying hardship, the minimum rent will be reinstated and the tenant must pay the minimum rent due for the suspended period.
- In public housing, if the qualifying hardship is determined to be temporary, the housing authority must reinstate the minimum rent from the beginning of the suspension period and enter into a reasonable repayment agreement with the family for the amount of back minimum rent owed.
- In all Section 8 programs, if the qualifying hardship is determined to be temporary, the PHA may not impose the minimum rent for the 90-day period following the date of the family's request for the exemption. At the end of 90 days, the minimum rent will be reinstated from the beginning of the suspension period and the PHA will enter into reasonable repayment agreement with the family for the amount of back minimum rent owed.
- If the qualifying hardship is determined to be long term, the family will be exempted from minimum rent requirements for as long as the hardship continues.

DEFINITION OF FAMILY IN FEDERALLY SUBSIDIZED HOUSING

Each applicant for assistance must meet the housing authority's or the PHA's definition of family. Within guidelines provided by HUD, PHAs and housing authorities have discretion in defining what constitutes a family. Programs serving a specific population may have additional requirements.

Generally speaking, a family is either a single person or a group of persons and includes:

- A household with or without children. A child who is temporarily away from home due to placement in foster care should be considered a member of the family.
- A disabled family means a family whose head, co-head, spouse or sole member is a person with a disability; two or more persons with disabilities; or one or more persons with disabilities with one or more live-in aides.

A person with a disability is a person who:

- Has a disability as defined in Section 223 of the Social Security Act; or
- Is determined by HUD regulations to have a physical, mental or emotional impairment that:
 - a. Is expected to be of long, continued, and indefinite duration;
 - b. Substantially impedes his or her ability to live independently; and
 - c. Is of such a nature that such ability could be improved by more suitable housing conditions; or

- Has a developmental disability as defined in Section 102 of the Developmental Disabilities Assistance and Bill of Rights Act.

The definition of a person with a disability does not exclude people who have diseases arising from the etiologic agent for acquired immunodeficiency syndrome (HIV). For the purpose of qualifying for low-income housing, the definition does not include a person whose disability is based solely on any drug or alcohol dependence.

For purposes of reasonable accommodations and program accessibility for a person with disabilities, the definition of “individual with handicaps” found in Title 24 of Code of Federal Regulations Section 8.3 is used:

- An elderly family, which is defined as a family whose head, co-head, spouse, or sole member is at least 62 years of age; or two or more persons, each of whom are at least 62, living together; or one or more persons who are at least 62 living with one or more live-in aides.
- A displaced family, which is a family in which each member or the sole member is a person displaced by governmental action, or whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized by federal disaster relief laws.
- A remaining member of a tenant family is a family member of an assisted tenant family who remains in the unit when other members of the family have left the unit.
- A single person who is not an elderly or displaced person, a person with a disability, or the remaining member of a tenant family.

SECTION 504 REQUIREMENTS

Section 504 of the Rehabilitation Act of 1973 (as amended) prohibits discrimination solely on the basis of disability in any program or activity receiving financial assistance. The rule requires recipients of federal funds to ensure that individuals with disabilities receive equal opportunity to participate in programs and services. Public housing authorities and public housing agencies are considered recipients under the act (private owners are not, but must comply with other fair housing requirements). To ensure that individuals with disabilities have an opportunity to participate in subsidized programs, housing authorities and PHAs must make their admission process accessible. TDD, TTY or other equally effective communication systems must be provided. The cost of an interpreter for a person with hearing impairments, copies of legal documents, and informational materials in Braille or recorded must be available upon request.

FEDERAL PREFERENCE RULES

The Quality Housing and Work Responsibility Act permanently repealed federal preference requirements. Under the prior rule, preferences were granted to those applicants who were involuntarily displaced, paid more than 50 percent of household income for rent or were residing in substandard housing. These preferences allowed qualified applicants to move up on the waiting list, thereby reducing their wait for financially assisted housing. Under the new law, public housing authorities and PHAs are required to give a certain percentage of available units to extremely low-income families. In addition, PHAs and housing authorities are required to give families with a member who has a disability a preference for any available accessible units. To minimize displacement of in-place families, new Section 8 Project-Based Voucher regulations give such families an absolute selection preference for the project-based voucher program. Admission is based upon program eligibility. PHAs also have substantial discretion to adopt local preferences. This would allow subsidized housing providers to give individuals with disabilities broader access to affordable housing through a disability-related preference. It also gives housing providers the opportunity to reward tenants who are currently working or who are transitioning into the workforce.

PUBLIC HOUSING PROGRAM COMPONENTS

The United States Housing Act of 1937 established the federal Public Housing program, which is owned and operated by local public housing authorities according to state legislation. Housing units take many forms from high-rise apartment buildings to detached single-family dwellings, and may be located at one site or scattered over several sites.

Federal law requires public housing to be accessible to individuals with disabilities, making it an attractive option for low-income families that include a member with a disability. Local public housing authorities may make policies that provide single individuals with a disability preference over other single individuals, or that provide families that include a member with a disability with an admission preference. Housing authorities may not base such a preference on a specific type of disability.

Public housing may also be attractive to families who have a poor rent payment history due to financial circumstances and who plan to return to work. While such a rental history might otherwise preclude admission to public housing, a family member's willingness to increase family income by entering the workforce, or by enrolling in a training or employment program, may be considered by the housing authority.

Eligibility Requirements

Public housing developments are specifically designated for low-income individuals and families. An applicant's family income may not exceed 80 percent of the median income of the county or metropolitan area where the housing development is located. Your local housing authority can provide income limits for your community. Income limits are also available at www.huduser.org.

Computing Income for Public Housing Tenants

Rent in public housing is income-based. Traditionally, an increase in a public housing family's income caused by the transition from disability benefits to work was offset in part by an increase in the family's monthly rental obligation. The Quality Housing and Work Responsibility Act changed this in 1998 by mandating income disregards for new or increased income. Local housing authorities have some latitude in drafting income computation and income reporting requirements that can significantly affect the amount of rent owed by individuals as they move into the workforce. Because public housing authorities can exercise discretion in setting local requirements, it is important to check with your housing authority to verify its policies. You may also ask for the Public Housing Authority's Plan, which must be made available to the public.

Annual Income and Income Exclusions

Because rent is based upon income, the way in which income is calculated and defined greatly impacts a family's monthly rental payment. Under federal regulations governing housing authorities, annual income is broadly defined as all amounts, monetary or not, which go to any family member (including temporarily absent family head or spouse), unless an amount is excluded by law. HUD has clarified that "welfare assistance," for purposes of income calculation, includes TANF payments but only to the extent that such payments qualify as "assistance" under 45 CFR 260.31 and are not excluded under 24 CFR 5.609(c). Annual income also includes amounts derived during the year from assets belonging to any family member.

Many mandatory income exclusions are specifically designed to encourage individuals to seek further education and job training by eliminating increased rents associated with a move into the labor market.

The mandatory income

exclusions include:

- Income from employment of children (including foster children) under the age of 18 years
- Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone)
- Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses
- Amounts received specifically for or in reimbursement of the cost of medical expenses for any family member

- Income of a live-in aide
- The full amount of student financial assistance paid directly to the student or to the educational institution
- Special payments to a family member serving in the Armed Forces who is exposed to hostile fire
- Amounts received under training programs funded by HUD
- Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income (SSI) eligibility and benefits because they are set aside for use under a Plan for Achieving Self-Support (PASS)
- Amounts received by a participant in other publicly assisted programs that are specifically for or in reimbursement of out-of-pocket expenses incurred (i.e., special equipment, clothing, transportation, child care, etc.) and that are made solely to allow participation in a specific program
- Amounts received under a resident service stipend (not to exceed \$200 per month)
- Incremental earnings and benefits received by any family member from participation in qualifying state or local employment training programs
- Earnings in excess of \$480 for each full-time student 18 years or older (excluding the head of household and spouse)
- Deferred periodic amounts from SSI and Social Security benefits that are received in a lump-sum amount or in prospective monthly amounts

EXAMPLE: Joan is a single individual who was recently awarded retroactive SSI benefits totaling \$20,000. Joan's total monthly benefit will be \$674 and her first retroactive check is for \$7,644 (monthly benefit rate of \$603 x 12 months). Six months after receiving her first retroactive check, Joan receives a second check for \$7,644. Joan continues to receive retroactive lump sums until the \$20,000 is paid in full. Joan's monthly \$674 SSI payment is counted as income. The retroactive payments she receives are not.

- Amounts received by participants in publicly assisted training programs for job-related expenses (such as personal equipment, clothing, transportation, child care, etc.)
- Temporary, non-recurring or sporadic income (including gifts)
- Adoption assistance payments in excess of \$480 per adopted child
- Refunds or rebates for property taxes on the dwelling unit

Public housing programs (but not Section 8 programs) may exercise broad discretion in adopting additional exclusions for earned income. These income exclusions may include amounts necessary to replace benefits lost due to employment (e.g., medical insurance or other medical costs), amounts paid to individuals outside the family (e.g., child support or alimony) or costs incurred in order to go to work (e.g., the cost of special tools, equipment or clothing).

Annual Income Adjustments

The annual income of public housing tenant families is further adjusted by the following mandatory income deductions:

- \$480 for each dependent
- \$400 for elderly families
- \$400 for disabled families [defined as families whose head, spouse or sole member is a person with a disability, or a family with two or more people with disabilities living together, or one or more persons with disabilities living with a live-in aide(s)]

- Unreimbursed medical expenses of elderly or disabled families
- Unreimbursed reasonable attendant care and auxiliary apparatus expenses for a family member with a disability to the extent necessary to enable any family member to be employed; however, this deduction may not exceed the earned income received by family members 18 years of age and older, who are able to work because of such attendant care or auxiliary apparatus (including wheelchairs, ramps, adaptations to vehicles or special equipment to allow a blind person to read or type, but only if these items are directly related to enabling the individual with a disability or other family member to work)

EXAMPLE: Gary uses a specially equipped van to get to work each day. The annual payments on the van (in excess of what the payments on a car without special equipment would be) total \$500. Gary and his family also have \$1,000 in medical expenses. The family's annual income is \$20,000. Gary earns \$4,000 at his job. Three percent of the family's annual income is \$600. The family's combined disability and medical expenses exceed three percent of income and may be deducted. Gary's family is entitled to a \$900 deduction for their combined medical expenses that represents the amount by which the sum of both the disability and medical expenses ($\$500 + \$1,000 = \$1,500$) exceeds three percent of annual income [$\$1,500$ (expenses) - $\$600$ (three percent of income) = $\$900$ deduction].

Public housing authorities may authorize additional deductions from annual income. Other HUD programs must calculate additional deductions only as permitted by applicable program regulations.

Self-Sufficiency Incentives: Earned Income Disallowance (Disregards)

Under the Quality Housing and Work Responsibility Act, specific families are entitled to a disregard or disallowance of incremental earnings as an incentive to economic self-sufficiency. The purpose of this disregard is to limit a family's rental liability when household income increases due to a return to the workforce or an increase in work hours.

Public housing authorities are required to disregard 100 percent of any increased employment income for a period of 12 months from the date that a member of an eligible family is first employed or from the date that the family's income increases. In addition, for the second period of 12 months following employment or increased income, the PHA is required to exclude 50 percent of any increase in employment-related income. The disallowance of increased income is limited to a lifetime 48-month period.

EXAMPLE: Roberta receives SSI payments totaling \$674 per month. Pursuant to her lease agreement, Roberta is not obligated to report increased income until her annual re-certification in December. In July 2010, Roberta begins to work earning \$1,085 per month and her SSI check is reduced to \$174 per month. Without the earned income disregard, Roberta's rent would have increased in January 2011. However, because in January Roberta benefited from not having to report her increased income for six months, she is entitled only to six more months of the 100 percent disregard. Beginning in July 2011 and for 12 months thereafter, Roberta's rent will be calculated based upon a 50 percent disregard.

The following tenant families are eligible for the earned income disregard:

- Families whose income increases as a result of employment of a family member who was previously unemployed (defined as earning no more than would be received for working 10 hours per week for 50 weeks at the established minimum wage in the 12 months previous to employment) for one or more years.

For example, this provision may apply to the income of minors who turn 18.

EXAMPLE: Jose lives with his wife Rosa and their 17-year-old son Michael who is no longer in school. Jose works 20 hours each week as a janitor, Rosa receives SSI and Michael works bussing tables. When Michael turns 18, his earnings will no longer qualify for an income exclusion. His family will, however, be entitled to an earned income disregard for the increase in household income attributable to Michael's earnings.

- Families whose annual income increases due to increased earnings by a family member during participation in a self-sufficiency or other job-training program.

Substance abuse or mental health treatment programs may be considered self-sufficiency or job training programs. Similarly, enrollment in a community college (despite the fact that the tenant is not enrolled in a special vocational program) may be considered job training as long as the studies pursued are designed to ready the tenant for work.

EXAMPLE: Robert receives \$674 each month in SSI. He transfers from a day treatment program to a supported employment program sponsored by a mental health rehabilitation program, where he begins to earn \$685 each month. Robert's SSI benefits are reduced to \$374. However, his total monthly income increases to \$1,059 (\$374 + \$685). Because Robert's monthly income increased by \$385 (\$1,059 current income minus \$674 prior SSI income), he is entitled to an earned income disregard for the additional \$385 he receives each month.

- Families with an annual income increase due to new employment or increased earnings during or within six months after the receipt of TANF funded assistance (including one-time payments, wage subsidies and transportation assistance totaling at least \$500 over a six-month period).

EXAMPLE: Joan works 15 hours per week and earns \$450 each month. She also receives \$491.50 each month in SSI benefits. When Joan's car breaks down, TANF pays a \$600 repair bill on her behalf so she can continue to travel to work. Three months later, when Joan's hours double, Joan is entitled to an earned income disregard for the increase in her monthly income.

Individual Savings Accounts

As an alternative to earned income disregards, housing authorities may also offer Individual Savings Accounts for those tenant families who pay an income-based rent. At the option of the tenant family, the housing authority will deposit the total amount that would have been calculated as increased tenant rent resulting from the increased employment income into an interest-bearing savings account. The tenant family may only withdraw the monies deposited in the account for:

- Purchasing a home;
- Paying the education costs of a family member;
- Moving from public or assisted housing; or
- Paying other expenses approved by the housing authority that promote economic self-sufficiency.

If the family moves from public housing, the housing authority must pay the family any balance in the account, minus any amounts owed to the housing authority.

INCOME EXAMINATION REQUIREMENTS

Federally subsidized housing programs generally use one of two models of income reporting. The first requires the tenant family to report mid-year increases in income as they occur. This reporting model may act as a disincentive to employment for tenants who are faced with immediate rental increases upon entry into the job market. The second model eliminates the family's obligation to report mid-year income increases, giving newly employed individuals the opportunity to become more financially stable before facing a rent increase.

Since public housing authorities have the option of not requiring tenants to report increases in income between regular annual income re-certifications, tenants should check with their local public housing authority to determine whether an interim reporting requirement exists.

Rent Computation Options

Once a year, the public housing authority must offer tenant families a choice of paying either a flat rent or an income-based rent. Families have an opportunity to choose the rent option they consider to be most financially beneficial. The flat rent for a rental unit is based on its actual market value in the private market. The purpose of the flat rent option is to eliminate the disincentive of constantly increasing income-based rent for those families experiencing success in the job market. For families who choose the flat rent option, housing authorities may require income re-certification as infrequently as every three years (rather than annually). Annual re-certification of family composition remains mandatory.

To assist the family in making an informed choice regarding its rent calculation options, the housing authority must tell the family the actual amount of income-based rent and the amount of the flat rent associated with the family's rental unit each year when the opportunity to elect arises. The housing authority must also advise the family of its policy for changing from flat rent to income-based rent due to hardship.

A family that is paying a flat rent may request a change to payment of income-based rent if the family is unable to pay the flat rent because of financial hardship. The request may be made at any time; the family is not required to wait until such time as the annual option is presented. If the housing authority determines that the tenant family is unable to pay the flat rent, it must immediately allow the requested change to the income-based rent. This requirement is designed to assist families who experience either a reduction in income associated with loss of employment or earnings, or an increase in expenses for reasons including greater medical, child care or transportation costs.

Restriction on Eviction of Families Based on Income

As of November 26, 2004, HUD issued a final rule giving public housing agencies the authority to evict over-income tenants in order to make their units available for income-eligible applicants. This authority is discretionary. Formerly, PHAs were prohibited from evicting tenants based on income unless the PHA determined that there was decent, safe and sanitary housing of a suitable size available at a rent less than or equal to the tenant's current rent. See 24 CFR 960.261.

ADDITIONAL PUBLIC HOUSING PROGRAMS

The Family Self-Sufficiency Program

The Family Self-Sufficiency (FSS) program is a special work incentive program designed to promote employment and to increase savings for families receiving Section 8 tenant-based assistance or living in public housing. PHAs and housing authorities that received HUD funds for additional units between 1993 and 1998 are required to maintain FSS programs.

FSS program participants enter into a service plan and a contract that measure the family's progress in achieving self-sufficiency. Self-sufficiency is defined as independence from public housing subsidies and welfare assistance. The head of the family is required to agree

to seek and maintain suitable employment through the term of the FSS contract. Successful completion of the FSS program occurs when all the family's agreed upon self-sufficiency objectives are met or when 30 percent of the family's adjusted monthly income equals or exceeds the fair market rent for the family's unit.

The two main components of an FSS program are case management and the FSS escrow account. Each family in the FSS program is provided with a case manager. Participating families are provided with opportunities for education, job training, and counseling, together with services such as child care and transportation assistance.

As an additional incentive to FSS program participation, housing authorities and PHAs deposit funds into an FSS escrow account for each participating family. This provides a participating family with reimbursement for some or all of the rental increases associated with increased income as long as the family complies with program rules. The amount of the contribution depends on the family's original income level. FSS account contributions must be made at least annually.

- Very low-income families receive the lesser of: (1) Thirty percent of monthly adjusted income minus the family rent at the time of the effective date of the contract of FSS participation, or (2) the current family rent minus the family rent at the time of the effective date of the contract of FSS participation.

EXAMPLE: The Smith family's monthly-adjusted income at the time of the effective date of their FSS contract was \$750 and their rent was \$225. Through participation in the FSS program, the family's monthly-adjusted income increases to \$850. The housing authority deposits \$30 (30 percent of \$850 = \$255 - \$225 rent) into the family's FSS account each month.

- Low-income families receive the contribution as calculated for very low-income families (see above), but may not exceed the amount computed for 50 percent of median income.
- Families who are not low-income are not entitled to an FSS account contribution.

When a family successfully completes the FSS program, it will be given the full amount in its escrow account. The family will receive no funds if the program is not successfully completed. There is no limit to the amount that a family may accumulate in its FSS account. The housing authority stops contributing to the account once the FSS contract of participation is completed or terminated.

A housing authority or PHA may elect to disburse funds from the FSS account if a participating family has fulfilled its interim goals and needs a portion of the FSS account funds to pay for education, work-related expenses, or for other purposes related to the goals of the family's FSS contract.

Further information on the FSS may be found on the Center on Budget and Policy Priorities website at www.cbpp.org.

Section 8 – Housing Choice Voucher Program

Tenant-based Section 8 rental assistance has been merged into one program called the Housing Choice Voucher Program. The Housing Choice Voucher Program helps very low-income, elderly and disabled families afford safe and sanitary housing in the private market.

Housing Choice Vouchers are administered by public housing agencies generally referred to as PHAs. Sometimes the PHA is also the local Public Housing Authority. The PHA pays a housing subsidy directly to the private landlord on the participating family's behalf. The family is responsible for paying the difference between the actual rent charged by the landlord

and the housing subsidy paid by the PHA. The PHA inspects the unit initially and at least once a year thereafter to ensure that it meets housing quality standards. Some PHAs allow voucher payments to be applied to a mortgage rather than rent payments, giving participating families the opportunity to become homeowners.

Eligibility Requirements

As in public housing, eligibility for the Housing Choice Voucher Program is based upon total annual gross income and family size. In general, a family's income may not exceed 50 percent of the median income of the county or metropolitan area where the family lives.

However, because PHAs are required to use at least 75 percent of their newly available vouchers for extremely low-income households with income at or below 30 percent of the median income, as a practical matter many higher income applicants are not assisted. Your local PHA can provide you with income limits for your area. Because demand for Section 8 assistance exceeds available resources, PHAs often maintain waiting lists. A PHA may establish local preferences to determine how applicants are selected from its list. These may include preferences for working families and for families with a member who has a disability.

After the PHA has selected an applicant family from the waiting list and has determined its eligibility, the family will receive a Housing Choice Voucher. This voucher authorizes the family to search for suitable housing; it also requires the family to find a rental unit and submit a request for tenancy approval within a specified period of time. The voucher must provide the family with an initial period of at least 60 days to find housing.

The PHA may grant extensions of search time and may determine the length of an extension as well as the circumstances under which it may be granted. The PHA has no limit on the number of extensions that it can approve. PHAs must approve an additional search term if needed as a reasonable accommodation to make the program accessible to and usable by a person with disabilities. The extension period must be reasonable for the purpose requested.

Computing Income in the Housing Choice Voucher Program

Annual Income and Income Exclusions -- The federal regulations that establish the criteria for calculating annual income and income exclusions in public housing apply to Section 8 housing as well. See "Annual Income and Income Exclusions" in the Public Housing section above.

Income Adjustments -- The federal regulations regarding mandatory income adjustments in public housing apply to Section 8 tenant-based subsidies as well. See "Income Adjustments" in the Public Housing section above.

Earned Income Disallowance (Disregard)

The Self-Sufficiency Incentives or Earned Income Disregard mandate was expanded from public housing tenants to individuals with disabilities in the Housing Choice Voucher Program in April 2001. The HUD regulations provide for a specific earned income disallowance for individuals with disabilities. These incentives mirror the provisions for the mandatory earned income disallowance in public housing. HUD's current regulations make the income disregard available to any household member with a disability instead of only to the head of household as previously provided. Also, the disregard is available only to program participants, not to applicants.

The self-sufficiency incentives, i.e., the income disallowance for individuals with disabilities in the Housing Choice Voucher Program include:

- An initial 12-month exclusion of all increased income;
- A second cumulative 12-month exclusion of 50 percent of increased income;
- A lifetime limit of 48 months for such exclusions.

See “Self-Sufficiency Incentives” or “Earned Income Disallowance” in the Public Housing section above for further explanation of these disregards.

Individual Savings Accounts

Individual Savings Accounts, as an alternate to earned income disregards, are not available to Section 8 tenants.

The Family Self-Sufficiency Program

See “The Family Self-Sufficiency Program” in the Public Housing section above.

Income Examination Requirements

As in public housing, PHAs have the option not to require that increases in family income be reported between annual income re-examinations (see “Income Examination Requirements” in the Public Housing section above for further discussion). Your local PHA can provide more information on its income reporting requirements. A family may, at any time, request a redetermination of their rental obligation based on changes in income.

PHAs must conduct income re-examinations on at least an annual basis. In the event that a tenant family’s income increases to the point where the tenant’s share of the rent equals the amount of rent due to the owner, the PHA will cease payments to the owner. This does not affect the tenant family’s right to continued occupancy. The owner and tenant may decide to negotiate a new lease agreement when Section 8 subsidies terminate. If not, the existing lease remains in effect. To recommence Section 8 subsidy payments, the tenant family must advise the PHA of any decrease in income or increase in rent. The PHA will reinstate subsidy payments on the tenant family’s behalf as long as less than 180 days have elapsed since the date of the last subsidy payment. If more than 180 days have elapsed, the family must reapply to receive further assistance, and may even be placed on a waiting list if the PHA’s administrative plan so provides.

Rent Computation

The amount of housing assistance a family will receive in the Housing Choice Voucher Program is based both upon the family’s size and income, and also upon a PHA determined payment standard. The payment standard is the amount generally needed to rent a moderately priced dwelling unit in the local housing market. The payment standard is the maximum monthly subsidy payment a PHA may make on a tenant’s behalf. PHAs have some leeway in setting the payment standard. Once set, the standard generally applies to all program participants with one exception. The PHA must provide a higher payment standard to a family with a member with a disability to enable that family to find housing suitable to its needs.

Program recipients may select housing with a rent above the payment standard. The PHA will pay a monthly housing assistance payment to the landlord that is the lower of either:

- The payment standard for the family minus the total tenant payment; or

- The gross rent minus the total tenant payment (See the section on “Calculating Rent Payments in Federally Subsidized Housing” for an explanation of “total tenant payment.”).

If the unit rent is greater than the payment standard, the family is required to pay the excess amount in addition to their calculated share of the rent. However, when a family initially moves into a unit where the rent exceeds the payment standard, the family may not pay more than 40 percent of its adjusted monthly income for rent. In addition, Housing Choice Voucher recipients may not pay an amount for rent that exceeds the payment standard, except as described above. Advocates for individuals with disabilities should be sure that because a family is able to afford to pay more than 30 percent of income for rent, they are not required to do so by the PHA. The increased payment standard should be provided to the family who needs such a payment as a reasonable accommodation in order to rent suitable housing.

EXAMPLE: In Jonesville, the payment standard for a three-bedroom unit is \$500. When the Maxwell family initially rents their apartment the rent is \$400. The Maxwell’s adjusted monthly income is \$900. Their share of the rent is \$300 (30 percent of \$900). The PHA pays \$100. After two years, a new owner takes over the property, makes substantial improvements and increases the rent to \$550. The PHA pays \$200 and the Maxwell’s pay \$350 (representing 30 percent of their adjusted income plus the additional amount in excess of the payment standard). Two years later the rent is again increased, this time to \$650. The Maxwell’s’ adjusted monthly income has also increased and is now \$2,000. However, because their share of the rent would exceed the payment standard (30 percent of \$2,000 is \$600), the Maxwell’s’ are advised by their PHA that they must relocate to continue to take advantage of their Section 8 subsidy.

Payment standards vary significantly from area to area. Market rents for areas are available at www.huduser.org. A PHA may be required to establish a higher payment standard when necessary to rent an accessible unit for a family that includes an individual with a disability.

Section 8 – Project-Based Assistance (Other than the Project-Based Voucher Program)

Section 8 project-based subsidies provide housing assistance to low-income families while they are residing in subsidized units. Because the housing subsidy is connected to the unit, Section 8 assistance generally ends when the family moves. See exception below for Section 8 Project-Based Vouchers (PBV).

Just as in the Housing Choice Voucher (Section 8) tenant-based program, very low-income or low-income families are eligible for Section 8 project-based subsidies, provided that they are citizens or non-citizens with eligible immigration status. In any fiscal year, 40 percent of all new project admissions vouchers must go to very low-income families.

Project Owners’ Preferences

Subject to income-eligibility criteria, owners participating in Section 8 project-based assistance (other than moderate rehabilitation and the project-based certificate or voucher programs) may adopt particular preferences for selecting applicants for admission. However, these owners must adopt a written tenant selection plan, must inform all applicants about available preferences, and must give applicants an opportunity to show that they qualify for an available preference.

Such preferences may include: ○ Residency preference (admission of persons residing in a specific geographic region) which must be in accordance with non-discrimination and equal opportunity requirements;

- Preference for working families where the head, spouse, or sole member is employed; however, an applicant shall be given the benefit of this preference if the head and spouse, or sole member, is age 62 or older, or is a person with disabilities; no preference may be based on the amount of earned income;
- Preference for families that include a person with disabilities, but no preference may be given to persons with a specific disability;
- Preference for families that include victims of domestic violence;
- Preference for single persons who are elderly, displaced, homeless and persons with disabilities over other single persons.

Computing Income for Section 8 Project-Based Tenants

- **Annual Income and Income Exclusions** -- The federal regulations that establish the criteria for calculating annual income and income exclusions in public housing apply to Section 8 project-based subsidies as well.
- **Income Adjustments** -- The federal regulations that establish the criteria for mandatory income adjustments apply to Section 8 project-based subsidies as well. See the section on "Income Adjustments in the Public Housing" above. Note that Public Housing Authorities may adopt deductions in addition to the mandatory deductions listed, but housing providers in the Section 8 voucher programs may not do so.
- **Earned Income Disregards** -- The earned income disregards for persons with disabilities extended to the Section 8 Housing Choice Voucher program do not apply to Section 8 project-based housing
- **Individual Savings Accounts** -- Individual Savings Accounts as described in the "Public Housing" section are not available to project-based Section 8 tenants.

Income Examination Requirements

The Section 8 project-based housing providers must conduct an annual re-examination of family income and composition. Additionally, the housing provider may adopt policies prescribing when and where a family should report changes in income or family composition. At any time, the housing provider may conduct an interim re-examination, or a family may request an interim determination of income.

If the tenant's income increases to such an extent that the tenant's share of the rent is equal to, or exceeds, the total rent owed to the owner, the tenant may remain in the unit but will be required to pay fair market rent for the unit.

Effective November 14, 2005, the final regulations for the PBV program allows a PHA the option of using a portion of its available tenant-based voucher funds for project-based vouchers. These Section 8 Project-Based Vouchers provide housing assistance to low-income families while they are residing in subsidized units. Because the housing subsidy is connected to the unit, Section 8 Project-Based Voucher assistance will end if the family moves before the first year of occupancy is complete. After one year, a family may opt to move with tenant-based assistance.

Eligibility Requirements

Just as with the Housing Choice Voucher (Section 8) tenant-based program, very low-income or low-income families are eligible for assistance under the Section 8 Project-Based

Section 8 – Project-Based Voucher (PBV) Program

Voucher program, provided that they are citizens or non-citizens with eligible immigration status. In any fiscal year, 75 percent of all new project-based vouchers must go to very low-income families. Generally, only 25 percent of the units in a building may be designed for Project-Based voucher assistance. However, buildings with units designed for families who are defined as elderly, disabled, or receiving supportive services may be exempted from this limit; these buildings may have more than 25 percent of the available units subsidized by project-based vouchers.

Annual Income and Income Exclusions

The federal regulations that establish the criteria for calculating annual income and income exclusions in public housing apply to the Section 8 Project-Based Voucher program as well.

See “Annual Income and Income Exclusions” in the Public Housing section above.

Income Adjustments

The federal regulations that establish the criteria for mandatory income adjustments in public housing apply to the Section 8 Project-Based Voucher program as well. See the section on “Income Adjustments” in the Public Housing section above. Note that Public Housing Authorities may adopt deductions in addition to the mandatory deductions listed but housing providers in the Section 8 program may not do so.

Earned Income Disregards

The earned income disregards for persons with disabilities extended to the Section 8 Housing Choice Voucher program do not apply to Section 8 project-based voucher program.

Individual Saving Accounts as described in the Public Housing section are not available to tenants with project-based vouchers.

Income Examination Requirements

The Section 8 project-based housing providers must conduct an annual re-examination of family income and composition. Additionally, the housing provider may adopt policies prescribing when and where a family should report changes in income or family composition. At any time, the housing provider may conduct an interim re-examination, or a family may request an interim determination of income.

If the tenant’s income increases to such an extent that the tenant’s share of the rent is equal to, or exceeds, the total rent owed to the owner, the tenant may remain in the unit but will be required to pay fair market rent for the unit. See Section 8 Housing Choice Voucher Program “Income Examination Requirements.”

Preferences

Any “in-place family” must be added to the waiting list for a voucher and given an absolute selection preference by the project owner. Such families shall be given priority for admission to the Project-Based Voucher Program.

Preference may also be given to disabled families, who need services offered at a particular project and who meet the following requirements:

- The families (or individuals) have disabilities, which significantly interfere with their ability to obtain and maintain themselves in housing;

Section 8 – Supportive Housing for the Elderly and Persons with Disabilities

- The families will not be able to obtain or maintain themselves in housing without appropriate supportive services; and
- Such services cannot be provided for these families in a non-segregated setting.

However, disabled families shall not be required to accept the particular services offered at the project. Also, the prohibition on granting preferences to persons with a specific disability still applies to the selection of tenants for the Project-Based Voucher subsidized units.

Section 202 and Section 811 Supportive Housing for the Elderly and for Persons with Disabilities offers rental assistance for housing projects serving these specific populations. Projects designed for elderly households often provide a range of services tailored to the needs of their residents, whereas projects for persons with disabilities ensure that residents are provided with necessary supportive services appropriate to their individual needs.

Eligibility Requirements

The Section 811 Supportive Housing program assists very low-income disabled households. Disabled households are defined as those composed of:

- One or more persons, at least one of whom is 18 years or older and has a disability (See detailed definition of person with a disability in HUD Occupancy Handbook 4350.3 p. 3-41 at www.hud.gov/hudclips)
- Two or more persons with disabilities living together
- One or more persons with a disability living with a professionally certified aide
- The surviving member(s) of an eligible household

Section 811 Capital Advances help non-profit owners finance the development of rental housing with supportive services for people with disabilities. Services may vary, depending upon the target population, but could include items such as 24-hour staffing, in-unit call buttons or planned activities. Tenant acceptance of supportive services is not a condition of program eligibility.

Computing Income for Section 811 Tenants

The federal regulations that establish the criteria for annual income and income exclusions in public housing apply to Section 811 housing as well. See the “Annual Income and Income Exclusions” in the Public Housing section.

Income Adjustments

The federal regulations regarding mandatory income adjustments in public housing apply to Section 811 housing as well. See “Income Adjustments” in the Public Housing section above. Note that public housing authorities may adopt deductions in addition to mandatory deductions listed while PHAs administering Section 811 housing may not do so.

Housing Opportunities for People with AIDS (HOPWA)

Earned Income Disallowance

The Earned Income Disallowance or Self-Sufficiency Incentives is not available in the Section 811 Supportive Housing for the Elderly and Persons with Disabilities.

Individual Savings Accounts

Individual Savings Accounts as an alternate to Earned Income Disregards are not available in the Supportive Housing for the Elderly and Persons with Disabilities.

Income Examination Requirements

The owners of housing funded under this program must re-examine the income and composition of tenant households at least every 12 months. Appropriate adjustments in rent must be made in accordance with federal regulation. In addition, tenant households must comply with lease requirements regarding interim reporting of changes in income. In the event the owner receives information regarding a change in household income, the owner must consult with the household and make appropriate adjustments.

If a tenant's household income increases, the household remains eligible for project rental subsidy assistance until such time as the household's share of the rent equals or exceeds the total rent. At that time, the rental subsidy will be terminated. The termination of subsidy eligibility does not affect the tenant household's other rights under the lease agreement. Project rental assistance payments may be resumed if, as a result of further changes in income, rent or other circumstances, the household again meets the income eligibility requirements for rental assistance, provided that the project rent assistance contract between the owner and HUD remains in effect.

Since 1992, the HOPWA program housing authorities funded a broad range of housing assistance and supportive services for low-income persons with AIDS/HIV and their families. Housing assistance includes emergency shelter, and project or tenant-based rental assistance. Supportive services include housing information, education and short-term rent, mortgage, and utility payment assistance to prevent homelessness. Except for short-term supported housing, each HOPWA recipient must pay rent based on his or her family's adjusted or monthly gross income. All housing assisted with HOPWA funds must meet regulatory housing quality standards.

Eligibility Requirements

Any low-income individual with acquired immunodeficiency syndrome (AIDS) or related diseases, including infection with the human immunodeficiency virus (HIV), and that individual's family are eligible for housing assistance under this federal law.

"Family" pursuant to the HOPWA regulations is defined as a household composed of two or more related persons, and includes one or more eligible persons living with another person or persons who are determined to be important to their care or well being.

Regardless of income, a person with AIDS or related diseases or the person's family members is eligible for other programs funded under HOPWA, including housing information services. Any person living near a community residence is eligible to participate in that residence's outreach and educational programs regarding AIDS or related diseases.

Annual Income and Income Exclusions

The federal regulations that establish the criteria for annual income and income exclusions in public housing apply to HOPWA housing as well. See "Annual Income and Income Exclusions" in the Public Housing section above.

Income Adjustments

The federal regulations regarding mandatory income adjustments in public housing apply to HOPWA housing as well. See “Income Adjustments” in the Public Housing section above.

Mandatory Earned Income Disallowance (Disregards)

The Earned Income Disregard mandate was expanded from public housing tenants to persons in the HOPWA program in 2001. The HUD regulations provide for specific self-sufficiency incentives for individuals with disabilities. These incentives mirror the provisions for the mandatory earned income disregard in public housing.

The self-sufficiency incentives for individuals in the HOPWA program include:

- An initial 12-month exclusion of increased income;
- A second 12-month cumulative exclusion of 50 percent of increased income; and
- A lifetime limit of 48 months for such exclusions.

See “Earned Income Disregards” in the Public Housing section above for further explanation of these disregards.

Individual Savings Accounts

Individual Savings Accounts as an alternative to Earned Income Disregards are not available in the Supportive Housing Program.

Income Examination Requirements

Although HOPWA assistance takes many different forms, the general rule at this time requires reporting of increased income only at the annual re-certification.

Rent Computation

Rent for all programs except short-term assistance is calculated as the amount, whichever is the higher of:

- Thirty percent of the family’s monthly adjusted income; or
- Ten percent of the family’s monthly gross income; or
- A shelter allowance paid by a public agency as welfare assistance.

If grants are used to provide rental assistance, additional requirements must be met regarding fair market value and reasonable rent.

Notice and Effective Date of Rent Increases

In the event that a HOPWA tenant’s income exceeds 80 percent of the area’s median income, the tenant’s options under the current regulations are limited and depend on the form of subsidy received. People having a project-based subsidy may continue to live in their apartment and pay the fair market rent. They may re-apply for the subsidy if their income decreases in the future. However, people having a tenant-based voucher will lose the voucher and, should they have a future need for housing, they will be placed on a waiting list for an available voucher.

OTHER PROJECT-BASED SUBSIDY PROGRAMS

A number of federal housing programs provide an indirect subsidy to tenants by reducing rental costs for all who reside in a particular housing development. Many tenants benefit from the indirect project subsidy and from a direct subsidy, such as Section 8. Tenants who receive only the project subsidy pay rent according to a rent schedule approved by HUD or a state supervising authority.

Three such programs are described below:

Section 236

Section 236 projects vary as to their income eligibility requirements but most projects have an additional subsidy (e.g., Section 8, Rent Supplement, and Rental Assistance Payment) for some or all tenants to offset operating expenses and to assist lower income families. HUD establishes a basic rent (minimum or contract) rent for each unit as well as a market rent (maximum) rent. The tenant rent is the greater of the basic rent or 30 percent of the tenant's adjusted monthly income but not more than the market rent. Re-certification is done annually, but regular excess income of \$40 or more per month must be reported immediately. If the tenant's income increases to such an extent that the tenant rent exceeds the market rent, the tenant may remain in the unit but will be required to pay a surcharge or fair market rent for the unit, depending on the amount of increased income.

Rent Supplement Program

The Rent Supplement Program provides an additional subsidy for some Section 236 project residents. The number of these subsidies for each project is limited to a certain percentage of the residents. An individual or family is eligible for this assistance if the applicant's annual income does not exceed 80 percent of the median income for the area as determined by HUD, unless HUD establishes a higher or lower percentage due to unusually high or low-incomes or other local factors. Annual re-certification is required and regular increased income of \$40 or more must be reported in order to adjust the total tenant payment. If the total tenant payment exceeds the gross rent, the rent supplement subsidy terminates. The tenant may remain in the unit under the current lease provided that the tenant pays the market rent approved by HUD. Should the tenant's income decrease, the prior termination does not preclude resumption of the subsidy.

Rental Assistance Program

The Rental Assistance Program (RAP) offers subsidies to low-income families. The tenant's share of the rent is income-dependent as in other Section 8 programs, and the minimum rent for project-based assistance is \$25.

More information about project-based subsidy programs can be found by reviewing the recently revised HUD Handbook 4350.3 Occupancy Requirements of Subsidized Multifamily Housing Programs available at www.hud.gov/hudclips.

OTHER HOUSING PROGRAM CONSIDERATIONS

Helping People with Disabilities Determine the Impact of Employment on Housing Costs – Questions to Ask and Information to Gather

- Is the individual receiving housing assistance under a HUD administered program?
- If so, under which program are they receiving assistance?
- Which local housing authority, local PHA or other entity administers the program?
- What is the family composition and income?
- What is the family composition and income? What is the current rent payment?
- What is the family composition and income? Is the rent payment income based?
- What is the family composition and income? If the individual is residing in public housing, are they paying a flat rent? (If so, then increased earnings will not impact rent payment.)
- What is the family composition and income? Is the individual receiving assistance from an employment-training program?

- What is the family composition and income? What is the PHA's (or other administering entity's) policy on frequency of income re-determinations, and tenant responsibility for reporting of increases in income?
- If the individual is receiving assistance under a section 8 voucher, what is the payment standard?
- Does the PHA allow any additional income adjustments beyond the standard ones?
- Consider obtaining a copy of the PHA's annual plan (which is a public document).
- What work incentives can be used to defer counting of income?
- Is the individual receiving assistance from any of the following programs: Public Housing; Housing Choice Voucher; Housing Opportunities for People with AIDS; HOME Investment Partnerships; Supportive Housing (for homeless persons)?
- If so, were members of the household previously unemployed, or have they been participating in an employment training program or self-sufficiency program?
- If so, the earned income disallowance applies and the Public Housing Authority or PHA cannot count 100 percent of increased earnings for the next 12 months, and 50 percent for the subsequent 12 months.

Making the Calculations for New Income Based Rent if Counting of Income Cannot be Deferred

- What is the family's new projected annual gross income? (Be sure to account for changes in SSI and SSDI payments and other benefits.)
- Review the Annual Income Exclusions and deduct all that apply.
- Review the Annual Income Deductions and deduct all that apply.
- Calculate the new rent payment based upon the higher of:
 - The family's monthly adjusted income; or
 - The family's monthly income; or
 - If the family is receiving payments for welfare assistance from a public agency, the amount of assistance designated for housing.
- Income based rent payments cannot exceed the actual rent for the unit.
- Determine the impact of employment on the individual's or family's disposable income - new income minus new housing costs vs. old income minus old housing costs.
 - If the individual is in public housing, should that individual switch to flat rent at the next election period?

Setting Aside Increased Rent

- Does the PHA or housing authority participate in the Family Self-Sufficiency (FSS) Program? Can the family enroll in the FSS program and have the increased rent payment be deposited in a FSS escrow account?
- If the individual is living in public housing, does the housing authority have the Individual Savings Account program? Could the increased rental payment be placed in an Individual Savings Account to benefit the individual or family?

- Make sure individuals are aware of:
- All available income exclusions.
 - All available income adjustments.
 - All available income disregards.
 - All available rent increases set-asides.
 - The right to request re-examination of income at any time, and the importance of immediately reporting any decreases in income.
 - The right to switch from flat rent to income-based rent at any time.
 - The need to notify the PHA or other administering entity when the period of income disallowance (the 100 percent disallowance for 12 months, and the 50 percent disallowance for an additional 12 months) has been interrupted.

Income Exclusion and Allowances

The following are methods available to people with disabilities to exclude or disallow earnings so that they will not impact rent payments.

Income Excluded/Disallowed: Total earnings from HUD training program
Type of Housing Assistance – All

Income Excluded/Disallowed: Increased earnings while in non-HUD training program
Type of Housing Assistance – See criteria below.

- 100% of increased earnings for 12 months
- 50% of increased earnings for subsequent 12 months (months 13 - 24)

Criteria to qualify:

- Previously unemployed for one or more years; or
- Increased income due to participation in self-sufficiency program or other job training program; or
- Increased earnings during or within six months of receiving TANF.

NOTE: 48-month life time limit on period of exclusion from the first month of increased earnings. Type of Housing Assistance Applies to: (A) Families in public housing; (B) Individuals with disabilities whose earnings increased, receiving assistance from:

- Housing Choice Voucher Program;
- Housing Opportunities for People with AIDS;
- Supportive Housing (for homeless persons); or
- HOME Investment Partnerships.

Setting Aside Rent Increase for Family Use

The following are methods of setting aside rent increases due to increased income, for for future use by the family. Every Public Housing Authority (PHA) does not offer these methods, Individual Savings Accounts or the Family Self-Sufficiency Program. Individuals should check with their PHA to see if either option is available.

PROGRAM-INDIVIDUAL SAVINGS ACCOUNT (ISA)

Applicable to individuals assisted through public housing.

Amount Set Aside

At the option of the tenant family, the PHA will deposit the total amount that would have been calculated as increased tenant rent resulting from increased income into an interest-bearing savings account.

Program Details

The tenant family may only withdraw with moneys deposited in the account for:

- Purchasing a home;
- Paying the education costs of a family member;
- Moving from public or assisted housing; or
- Paying other expenses approved by the PHA that promote self-sufficiency.

If the family moves from public or assisted housing, the PHA must pay the family any balance in the account, minus any amounts owed to the PHA.

PROGRAM-FAMILY SELF-SUFFICIENCY PROGRAM

- Applicable to Individuals Assisted through Public Housing
- Section 8 Housing Choice Voucher (Section 8 tenant based assistance)

Amount Set Aside

- The PHA will deposit the lesser of 30% of monthly adjusted income minus the family rent at the time of initial program participation, or the current family rent minus the family rent at the time of the initial program participation, into an interest-bearing escrow account.
- For low-income families, contribution cannot exceed the amount calculated for 50% of the median income.

Program Details

The tenant family must comply with a plan to increase their self-sufficiency. Upon successful completion of the plan, the family receives the entire amount in their escrow account, which they can use for any purpose.

Community Partner Work Incentives Counselor Role in Assisting Beneficiaries with Housing Programs

Federal housing programs are very complex to understand and negotiate. The work incentives counselor cannot possibly know all of the programs in existence nationwide. It is strongly recommended that you research these programs in the areas you serve. It is suggested that the work incentives counselor make contact with the housing programs in their area and introduce themselves and their project, ask questions, and obtain information about the local housing programs and resources. Building relationships is a very important key to coordinating the various aspects of the beneficiaries' benefits plans, and housing is no exception. The work incentives counselor may be able to locate the local subsidies by visiting the county housing authority, but remember to also look for the rural housing authorities, local housing authorities, specific projects that have their own local area requirements, projects for individuals with HIV, projects for Native Americans, and/or projects for other specified groups. If this information seems a little overwhelming, imagine being an individual who wants to return to work, who fears losing the apartment or home in which he or she has been living. If work incentives counselors neglect this essential part of the complete analysis, individuals may be surprised by rent increases, or could miss out on applying for specific work incentives.

Find the resources in the area that is being served. Does the Work Incentives Counseling program have a referral list for homeless shelters and subsidized housing? Go to the county housing office and find out what programs they have. Build a list of the programs in your catchment areas. As part of your list, keep referral numbers, notes on when housing offices require income reporting, and which offices or projects are familiar with which work incentives offered under these programs.

EXAMPLE: Mary, an SSI recipient is in the office. She states she has subsidized housing. The work incentives counselor covers 30 counties, and does not know much about her area. Mary does not know which program she is enrolled in, and the work incentives counselor does not recognize her address as belonging to a project on the work incentives counselor's list. How would the work incentives counselor find out about her housing situation?

First, ask Mary:

- Where do you pay your rent?
- Do you ever go to a housing office to make sure you are still eligible for the reduced rent?
- Do you have contact information for that office?
- Do you have any letters around the house that talk about your rent subsidy?

Using that information, assist Mary to track down the information she needs to know about how her housing will be affected by her prospective employment.

There are also some general rules covered in this chapter that will apply to Mary. For example, if her income goes up, it is likely that her rent will increase. It would be valuable for the work incentives counselor to be able to explain to Mary the point she loses her subsidy,

or when she might have to move if the housing project she lives in requires people to leave if they no longer need a subsidy. Understanding how the housing program work incentives operate in Mary's area may also protect Mary, and offer her another piece of what she needs to make an informed decision about work.

CONDUCTING INDEPENDENT RESEARCH

- HUD Income Rules – 24 CFR 5.609, 24 CFR Part 982
- Federal Regulations – EID
Expansion of EID: Federal Register: January 19, 2001 (Volume 66, Number 13)
- US Department of Housing and Urban Development
 - www.hud.gov
 - <http://www.hud.gov/offices/ftheo/disabilities/pwd.cfm>
 - www.hud.gov/hudclips
- Center on Budget and Policy Priorities: 820 First St. NE, Suite 510
Washington, DC 20002
202-408-1080 -- www.cbpp.org
- National Housing Law Project: 703 Market St., Suite 2000
San Francisco, CA 94103
Phone: (415) 546-7000 -- www.nhlp.org
- Office of HIV/AIDS Housing: US Dept of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410
202-708-1112; TTY 202-708-1455;
1-800-877-8339
http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/aidshousing
- VCU Work Support website -- <http://www.worksupport.com/resources/viewcontent.cfm/337>
- HUD information on Indian Housing -- http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/ih
- VA Loans for Housing to Native Americans -- <http://www.valoans.com/geninfo-05a.cfm>
- Cornell University, ILR School, Employment and Disability Institute. Supporting the Employment Outcomes of SSI and SSDI Beneficiaries in Section 8 or Subsidized Housing: A Model of Policy Supporting Effective Employment Practice. Thomas Golden -- http://www.ilr.cornell.edu/edi/publications/PPBriefs/PP_8.pdf

Unemployment Insurance Program

INTRODUCTION

Unemployment Insurance (UI) is a very important benefit to individuals with disabilities who are just beginning or restarting their work lives as it provides some financial protection against the loss of employment. It is unfortunate, but layoffs and unemployment typically hit individuals with disabilities first.

The Department of Labor definition states that Unemployment Insurance is the “provision of unemployment benefits to eligible workers who are unemployed through no fault of their own.”

The terms “eligible” and “through no fault of their own” are very important terms in understanding Unemployment Insurance and how the system works. It is indeed an insurance system. Eligible individuals have to meet certain requirements to receive benefits, and they must have lost employment through no fault of their own. It is important to remember employer taxes fund this system and employers do not want to pay unemployment benefits to a person who lost their job for a “cause.” The focus of these benefits is a temporary job loss due to a layoff.

In this section, we will talk about how this system is structured, how it works, how it is changing, and how you can find out more about the system and its benefits in your state.

PURPOSES OF UI

As we discussed, the purpose of the Unemployment Insurance (UI) Program is to provide temporary and partial replacement of income to individuals who lose their jobs due to no fault of their own.

The Unemployment Insurance Program is a national program established under the Social Security Act of 1935. The program was intended to help people who had been laid off or whose jobs had ended. It was designed during the Great Depression when a great number of people were out of work through no fault of their own.

The goals of today’s Unemployment Insurance Program are (1) to prevent individuals from experiencing severe financial hardships, and (2) to provide time for individuals to find work again. Another key to understanding unemployment benefits rests on two important words: temporary and partial. These benefits are intended to be a stopgap protection for individuals who are temporarily out of work and are meant to supplement other forms of financial support the individual has, such as a personal savings.

Unemployment Insurance also has the economic side benefits of maintaining consumer spending during periods of economic adjustment and providing a more stable workforce for employers. In short, laid-off workers have money to spend and will be able to stay in their communities, thus being available to the employer when he or she has additional work.

FEDERAL – STATE COOPERATIVE PROGRAM

Federal – State Relationship

On the federal side of this relationship, the federal government provides the basic framework for the national Unemployment Insurance system.

This is mandated through the Federal Unemployment Tax Act (FUTA). FUTA taxes are collected through the IRS on Form 940. Taxes collected under this act fund the State Workforce agencies and the One-stop System. During periods of economic downturn, the federal government also pays half of the cost of extended benefits, with the states picking up the other half of those costs.

On the state side of this relationship, employers are taxed and the taxes are paid to the State Workforce Development Agency, usually a division or an office of Unemployment Compensation.

The states are required to use this money solely for the provision of benefits to unemployed workers. Each state must follow the framework of the federal law, but is able to design its own in state statute and to design operational rules and policy within the broad federal-state framework. The Secretary of Labor must approve each state's program based on federal standards.

According to the Legal Information Institute, each state with the federal-state framework defines "which employees are eligible for compensation, the amount they receive, and the period of time benefits are paid are determined by a mix of Federal and State law." This manual will provide resources for you to check the specific rules in your state.

Just because individuals have been employed does not mean that they are guaranteed to be eligible for unemployment insurance benefits when they lose their job and become unemployed. There are a number of different requirements that we are going to be talking about.

These requirements will include: "Covered Employment," general eligibility rules regarding the number of weeks of employment and other factors; and the hot topics of "able to work" and part-time employment eligibility.

COVERAGE CATEGORIES

A primary requirement is that the individual must have worked in a type of employment that is covered under their state's law. Several federal laws have significantly added to the number and the types of workers protected under State UI programs.

The following is a list of federally mandated covered employment categories and includes: private employers in industry and commerce, certain agricultural employment, certain domestic employment, state and local government, most non-profit organizations, and federal civilian employees and ex-service members of the armed forces. These are federally mandated covered employment groups. In addition to the mandated covered employment categories, many states have opted to cover additional types of employment. Since there is variation from state to state in terms of the types of employment covered, it is critical for work incentives counselors to take the time to become familiar with their own state's laws and provisions regarding the types of employment that are covered.

Now that some of the types of employment that are mandated to be covered under federal legislation have been covered, some of the types of employment that are not mandated to be covered will be discussed. These include self-employed individuals, workers who are employed by their own families, elected officials and legislators, members of the judiciary, the State National Guard and non-profit organizations employing fewer than four workers in 20 weeks in the current or preceding calendar year.

Once again, keep in mind that these lists of covered and non-covered employment represent the federally mandated categories. States have a great deal of discretion to expand this list, and state-by-state variance is going to be evident. It is recommended that work incentives counselors take the time to contact their local workforce development agency or One-stop for more specific information on how the UI programs apply to your state. We will talk more about locating state specific information later in this section.

In particular, be sure to check UI coverage for agencies that provide sheltered and supported employment and where people with disabilities in these programs are considered to be employees of the agency. This is not covered employment in many states, and it is something that counselors certainly need to be clear on within their own state.

COVERAGE

UI has four basic questions that must be answered when being considered for UI benefits. USDOL says that “when examining coverage, there is one overarching issue: are the services performed by a worker covered?” To make that determination, the following questions must be answered:

- Were the services performed in an employer-employee relationship?
- Were the services performed for an employer?
- Were the services performed in employment?
- Were wages paid for the services?

If the answer to all of the above is “yes,” then the services are covered by UI law.

As the nature of the employer-employee relationship changes and staffing companies, piecework, commissions, and other payment forms become more prevalent, these questions become increasingly more important and more difficult to answer. An example of this is a cab driver who, at one time, may have been an “employee” but is now an independent subcontractor and leases his or her own cabs.

Eligibility

Once the coverage has been established by class and by individual work using the basic four questions, UI looks to eligibility.

The first eligibility test is: “When did you do this work?” A worker must meet the state requirements for wages earned or time worked during an established period (one year) of time. This is referred to as the “base period.”

While each state has the right to define the specifics of this eligibility, most states define the “base period” as the first four out of the last five completed calendar quarters prior to the time that the claim is filed. This concept of “base period” is critical to understanding how eligibility is determined. It is not only a question of did the individual work in a covered class and did an employer-employee relationship exist, but also when did the individual do this work.

Another critical eligibility issue is one we have talked about before. A worker who is applying for UI benefits must have lost his/her job “through no fault of their own.” If this test is not met, UI claims will be denied. This eligibility criterion is probably one area that produces the largest number of challenges in the appeal process for both employer and employee alike. Remember that each time an employee makes a claim against the employer, there is the likelihood that the employer’s tax rate will go up because of the “experience rating.”

UI CLAIMS

It is important to remember that UI is not a “means” tested program like Temporary Assistance for Needy Families (TANF) or Medicaid where the primary eligibility criteria are income and need.

Unemployment Insurance is an insurance program, as the name implies. To receive UI benefits, one must file a claim and have earned the right to the benefits.

UI claims are filed with the state Unemployment Insurance agency. In most states, individuals file the claim through the One-stop system. In some states, individuals may need to go to a One-stop Center to file a claim, but many states now have systems where claims may be phoned in. In some states one can file a claim on the Internet. By using the links in

this section, one can see how claims can be filed in his/her state. The first UI check is usually issued within two to three weeks. Some states require a one-week waiting period.

General Requirements

Once basic coverage by class and individual work has been established and it has been determined that the individual lost their job through no fault of his/her own, the UI Claims Representative begins to ask a series of questions that are focused on the individual's ability and willingness to return to work.

Once again, remember that this program is paid for by employers and the system is focused on ensuring that individual claimants are using this program's benefits as a stop gap and a temporary support while they look for work. If the system finds that they are not looking for work or are not able or available to work, the claim will be denied. Similarly, if a claimant is found to not be meeting these requirements after the initial claim has been approved, the benefits will be ceased.

The individual making a UI claim must:

- Be actively seeking employment;
- Be available for work;
- Be able to work;
- Be willing to accept a suitable position when one is offered;
- Meet the state specific eligibility requirements; and
- Have no disqualifying factors.

Return to work is the focus of this portion of the process. Individuals are encouraged to register with the One-stop for work search, and must make and document a designated number of work search attempts during each reporting period.

Hot Topic #1: "Able to Work"

It is important to understand the "Hot Topics" in the field of Unemployment Compensation.

The first hot issue that directly affects individual workers with disabilities is the important test of "able to work." In some cases, UI personnel will state that if an individual is receiving Social Security benefits, they had "proved" that they were unable to work and that UI benefits would be denied based on the disability, thereby making the "assumption" that they were not eligible. A review of state statutes and codes does not substantiate this position, but this is the attitude that individuals on Social Security disability benefits may face when they file a claim.

It is important to focus on the fact that the individual with the disability has been working and has established the fact that he/she "is able" to work. He/She may still be receiving Social Security benefits but Social Security wants him/her to work and wants him/her to move towards independence of benefits over time. The main point is that the person is able to work. The person's work history shows the required quarters in the base period to prove this.

If an individual is denied UI benefits on the basis he/she is not "able to work" because of his/her disability, he/she should file an appeal. In many states there is a separate appellate board or appeals commission that can be engaged if the first level appeal is not favorable.

This is an area where systems are changing but they are not "in synch." Social Security wants people to work, but agencies like UI and Medicaid have not always adjusted their rules and training of field staff to support the efforts of their sister federal agency.

Hot Topic #2: Part Time Work

Part-time work is another hot topic within the Unemployment Insurance community.

It is possible in 27 states to establish a strong history of working part-time and having a person's employer pay UI taxes on his/her wages, and yet that person is still not be eligible to collect UI benefits if he/she becomes unemployed. In fact, nationally, only 12% of unemployed part-time workers receive unemployment benefits.

This is particularly challenging for individual workers with disabilities who may only be able to work part-time.

According to the National Employment Law Project, "Part-time workers most commonly run afoul of the 'able and available' rule or rules disqualifying those not seeking or accepting 'suitable work.'" A majority of states explicitly require full-time work to satisfy these rules.

This issue has been debated for a number of years, and the US Department of Labor encourages states to review their rules in this area and seek legislative changes to state laws that would allow unemployed part-time workers to receive benefits when otherwise eligible.

UI BENEFIT PAYMENTS

Remember that benefits are based on earnings not on need. In general, UI benefits replace about half of an individual's after-tax earnings per week, but each state sets up their maximum and minimum benefits. Some states have also developed additional allowances for dependents.

Individuals may receive up to 26 weeks of unemployment benefits in most states. Additional weeks of benefits may be available during periods of high unemployment. These are called "extended benefits."

It is important to know that Unemployment benefits are subject to federal income taxes and must be reported on your federal income tax form.

IMPACT OF UI ON OTHER FEDERAL PROGRAM BENEFITS

Impact of UI on Social Security Disability Benefits (SSDI, CDB, DWB)

The impact of receiving an unemployment insurance benefit on an individual's Social Security Disability benefits paid under Title II and Supplemental Security Income (SSI) Cash Benefit will be now discussed. For work incentive counselors working with beneficiaries of Social Security disability programs, this is the most important piece of this whole discussion.

What is the most important question one always asks about income when it comes to counseling a beneficiary? Whether or not the beneficiary has "earned or unearned income" is the first thing to know.

Social Security defines Unemployment Insurance benefits as unearned income. That is the key to understanding the impact of UI benefits on Title II disability benefits, SSI and Medicaid benefits. First, the Title II disability program will be reviewed. Individuals who receive Title II disability benefits are going to experience no impact on their cash benefit eligibility or payment amount as a result of receiving UI benefits. This is because UI benefits are considered unearned income, and thus, do not have an impact on the Title II disability benefits or Medicare.

It is important to keep in mind that a person applying for UI benefits has lost employment. The loss of these earnings should be reported to Social Security. This will allow Social Security to make any adjustments that may be required in the amount of the cash benefit. This is especially important during the extended period of eligibility. Notifying Social Security of the loss of earnings will enable the individual to have his/her cash benefit reinstated during the EPE.

UI Impact on SSI

Now the effect of unemployment benefit insurance on the Supplemental Security Income or SSI Program will be reviewed. First, it is important to understand that SSI beneficiaries are required by federal law to apply for any other benefit to which they are entitled. This goes back to the SSI principle of being the “payer of last resort.” If an SSI beneficiary is entitled to receive unemployment benefits, he/she must apply.

Individuals who are receiving SSI will, in fact, experience an impact on the cash benefit payment status as a result of receiving an unemployment insurance benefit. Any month in which that benefit is received, there will be an impact on the individual’s SSI benefit. Remember, unemployment benefits for purposes of the SSI Program are considered unearned income. As a result, while the individual will receive a partial replacement of their wages through the unemployment insurance benefit, they will simultaneously experience a reduction in their monthly SSI cash benefit. The SSI cash benefit will be reduced by the amount of the unemployment insurance benefit minus the \$20 general exclusion. This is assuming that the general exclusion has not already been applied to some other type of unearned income the person may be receiving.

Receipt of unemployment benefits also impacts the person’s cash benefit in a situation where deeming is taking place. If an SSI recipient is subject to deeming and the ineligible parent or spouse whose income is deemed becomes eligible for unemployment benefits, a portion of these unemployment benefits are consequently going to be deemed as being available to the SSI recipient. Again, because the person will be considered to have income from this source, it may result in a reduction in the SSI cash benefit.

UI Impact on Medicaid

It is also important to keep in mind that the potential exists for the beneficiary to lose their eligibility for Medicaid coverage if he/she receives the unemployment insurance benefit. This will not happen in every single case, but it may happen when the amount of the unemployment benefit in a given month is sufficient to exceed the Federal Benefit Rate (FBR) + \$20 general exclusion.

The critical issue here is one of continued eligibility. The focus needs to be on “countable unearned income.” Income and resources are the key factors, and it needs to be determined whether this new source of “unearned” income will cause the beneficiary to cease being eligible for Medicaid for a reason other than income from earnings. If the unearned income exceeds the Federal Benefit Rate because of unearned income, then the individual will not be eligible for continued Medicaid eligibility under 1619 (b) provisions.

The likelihood that the Medicaid eligibility will be affected is greater for individuals who are already receiving other types of unearned income such as SSDI. When the unemployment insurance is added to the SSDI, there is a greater likelihood that it will make them ineligible for SSI benefits and cause them to lose their eligibility for Medicaid under 1619(b).

CONCLUSION

Work incentives counselors need to be aware of Unemployment Insurance as a valuable financial protection for individuals who suddenly lose their jobs. It is a benefit that offers significant protection to individuals who may have no other source of income and can help fill the gap until disability benefits are reinstated, or until a new application can be

processed. It is important to remember that Title II disability beneficiaries will experience no negative impact on their benefits from accessing UI. However, SSI recipients who are receiving UI payments will have a source of unearned income counting against them. This unearned income may cause a reduction in SSI cash payments, or may result in ineligibility for SSI or 1619(b).

CONDUCTING INDEPENDENT RESEARCH

Just as the POMS is used to clarify issues regarding Social Security benefits, it is good to go directly to the source for information regarding details on the Unemployment Insurance program.

At the federal level, US Code outlines the statutes that create the Federal Unemployment Insurance Program. The enabling legislation is the Federal Unemployment Tax Act (FUTA). The specific reference is 26 U.S.C. 3301 et seq. This can be found at: http://www.law.cornell.edu/uscode/26/usc_sup_01_26_10_C_20_23.html

Federal statutes create the rules and policy. The specific reference here is Title 26 C.F.R. – Part 31. This can be found at: http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title26/26cfr31_main_02.tpl

State rules are also identified in statute and code that creates the program and outline the rules of the program.

These national and state resources are available online. Quick access to these documents and many other primary sources can be found at the Legal Information Institute's site: http://topics.law.cornell.edu/wex/unemployment_compensation

Department of Labor – Unemployment Insurance Program: <http://www.ows.doleta.gov/unemploy/aboutui.asp> or <http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp>

State Unemployment Insurance Tax Agencies Contact Information: <http://www.ows.doleta.gov/unemploy/agencies.asp>

USDOL/Benefits by State: <http://www.servicelocator.org/OWSLinks.asp>

USDOL State-by-State Chart of Significant UI Laws: <http://workforcesecurity.doleta.gov/unemploy/comparison2011.asp>

INTRODUCTION TO THE WORKERS' COMPENSATION PROGRAM

The purpose of this section is to provide information on the Workers' Compensation Program, and in particular, the impact of Workers' Compensation benefits, as well as other public disability benefits (PDB), on the Social Security disability benefits and SSI benefits programs that are administered by the Social Security Administration.

It is important to identify general provisions of the Workers' Compensation Program that are common across states. First, under the Workers' Compensation Program, benefits are provided for accidental, job-related injury. Employees are entitled to Workers' Compensation benefits from the business only when they suffer a personal injury that arises out of an accident incurred on the job. The injury or illness must not be self-inflicted or caused by intoxication or substance abuse. If it is self-inflicted or caused by intoxication or substance abuse, the individual will not be eligible for a Workers' Compensation benefit. Secondly, the types of Workers' Compensation benefits provided include partial replacement of the individual's lost wages as well as payment for medical costs and death benefits. Third, each state defines the covered businesses as well as the types of jobs that are covered under the Workers' Compensation Program.

In other words, for businesses, the Workers' Compensation Program essentially limits their liability for on-the-job injury or illness to the remedies and benefits that are available to the individual under the workers' compensation statutes in their particular state. It is important to keep in mind, however, that while employees generally give up their right to sue their employer, they still retain the right to sue negligent third parties. If the third party is found liable for the illness or injury, the proceeds from those lawsuits are used to reimburse the business for benefits that are paid to the injured worker.

A Note about Public Disability Benefits (PDB) Other than Workers' Compensation

Social Security defines a Public Disability Benefit (PDB) as a periodic public disability benefit required by a law or plan of the United States, a state, a political subdivision thereof, or an instrumentality of two or more states. There are, potentially, thousands of separate benefits to be considered as a PDB. PDBs will cause offset of Social Security disability insurance benefits so it is imperative that work incentives counselors know which benefits available in their areas count as PDBs and which do not. These determinations may only be made by Social Security personnel. When in doubt, seek a formal determination from the local field office.

Of the benefits typically provided under the Workers' Compensation Program, the most important is income replacement. Income replacement benefits are essentially wage-loss benefits that are provided to an individual. These wage-loss benefits can usually cover about one-third to two-thirds of the individual's average weekly wage. Almost all of the states' statutes place lower and upper limits on the amount of the weekly payments.

In addition to wage replacement, other benefits that are provided include medical costs, rehabilitation costs, coverage for certain occupational diseases established by state laws, and survivor benefits in the case of

death. It is critical to keep in mind this is a program that varies a great deal from state to state. As a result, it is absolutely necessary for work incentives counselors to take the time to investigate state-specific Workers' Compensation statutes, paying close attention to the details such as the amount of payments made, coverage, and limits, along with other details.

Only by investigating a particular state's laws will one be able to discern which businesses must participate, how much Workers' Compensation insurance must be purchased, the types of employment covered in that state as well as the percentage of wage replacement. These standards in Workers' Compensation state laws provide for consistency in the program between employers within a given state. In most states, Workers' Compensation laws apply to employers with at least one employee. Some states, however, exempt small businesses. How a small business is defined varies from state to state. Generally, small businesses are defined as those who employ fewer than three, four or five individuals.

FEDERAL EMPLOYEES COMPENSATION ACT (FECA)

To be eligible for Workers' Compensation benefits, an individual must work for a business that is covered in his/her state's Workers' Compensation law. In addition to working for a covered business, the type of work or position must also be covered. Individuals who are working in the following types of positions are frequently excluded or not covered by Workers' Compensation programs. They include business owners, independent contractors, domestic employees in private homes, farm workers, maritime workers, railroad employees and unpaid volunteers.

The types of coverage that are available for individuals who are federal employees vary. For federal civilian employees who are injured on the job, Workers' Compensation benefits are not provided under their state's Workers' Compensation program. Instead, for individuals who meet all of the necessary eligibility standards, Workers' Compensation is provided under the Federal Employees Compensation Act. The Federal Employees Compensation Act is administered by the Office of Workers' Compensation Programs that is located in the United States Department of Labor. Like the states' Workers' Compensation Programs, there are specific regulations that apply to the Federal Employee Compensation Act coverage in terms of eligibility, benefits and payment periods. Of particular interest is that wage loss compensation under the Federal Employees Compensation Act is paid at two-thirds of the workers' pay rate if he or she has no dependents or three-fourths of the pay rate if he or she is married and has one or more dependents. The maximum payment amount cannot exceed three-fourths of the highest rate of basic pay provided for grade GS15. This basic pay excludes the locality pay.

Benefits

Under FECA, injured workers are provided partial wage replacement, vocational rehabilitation and medical benefits. This is similar to the common types of benefits provided injured workers under state Workers' Compensation laws. Wage-loss compensation is paid at two-thirds of the employee's pay rate if he or she has no dependents or three-fourths of the pay rate if he or she is married or has one or more dependents. The maximum payment per month cannot exceed three-fourths of the highest rate of basic pay provided for Grade GS-15. Basic pay excludes locality pay.

Conditions that result in a reduction of the wage replacement benefit include the following:

- The employee returns to work and has actual earnings from employment, either with the original employer, or with a new employer, or from self-employment, and those earnings do not equal the wages of the job held at the time of injury, as adjusted for inflation.
- The employee can earn wages in a particular job which is both medically and vocationally suitable, and which is reasonably available in the employee's commuting area. Compensation can be reduced even if the employee does not actually work in the job identified. When compensation is reduced on this basis, OWCP issues a formal decision describing the job, its physical requirements and the vocational preparation needed for it.

Benefit Payment Period

Compensation payments can be made after wage loss begins and the medical evidence shows the employee cannot perform the duties of his or her regular job. No waiting period is required when permanent disability exists, or when the disability causing wage loss exceeds 14 days.

Short-term compensation payments are issued each week. The period covered may include compensation for several days to several weeks. Long-term compensation payments are issued every four weeks.

An employee may receive compensation payments for as long as the medical evidence shows that total or partial disability exists and is related to the accepted injury or condition. OWCP requires most employees receiving compensation for disability to undergo medical examinations at least once a year. This evaluation is usually obtained from the employee's treating physician. OWCP may, however, require the employee to be examined by another physician.

- Compensation ends when:
- The employee returns to full duty in the job held when injured, or is otherwise re-employed in a job, which results in no loss of wages.
 - The employee refuses an offer of a suitable job, and the cause for refusal is not reasonable. OWCP will decide whether the job offer was suitable and whether the refusal was reasonable. Acceptable reasons for refusal include, but are not limited to: withdrawal of the offered position by the employer; acceptance of other work by the employee which fairly and reasonably represents his or her earning capacity; and a worsening of the employee's medical condition, as documented by the medical evidence, to the point the employee is disabled for the job in question. Unacceptable reasons for refusal include, but are not limited to: the employee's preference for the area in which he or she currently resides; personal dislike of the position offered or the work hours scheduled; lack of potential for promotion; lack of job security; retirement; and previously-issued rating for loss of wage-earning capacity based on a constructed position where the employee is not already working at a job which fairly and reasonably represents his or her wage-earning capacity.
 - The employee abandons a suitable job. OWCP will decide whether the job was suitable and whether the reason for abandonment was reasonable and apply its finding retroactively.
 - OWCP receives medical evidence showing that the employee no longer has limitations from the work-related injury which affected the performance of his or her duties when the injury occurred, or that the employee's disability is not usually related to the work-related injury;
 - A beneficiary is convicted of defrauding the federal government with respect to a claim for benefits.

Impact of Receiving Workers' Compensation Benefit or Public Disability Benefit (PDB) on Title II Disability Benefits

Receiving a Workers' Compensation benefit or public disability benefit does impact the Social Security Disability benefits the person may be receiving. Depending on the dollar amount of an individual's Workers' Compensation or public disability benefit, receipt of these types of benefits may, in fact, result in a reduction of his/her or his/her family's Social Security cash benefit. Generally speaking, about 10% of Title II disability beneficiaries are impacted by receipt of Workers' Compensation or public disability benefits. See the formula below that is used to determine how the SSDI cash benefit is affected.

Step One:

It is necessary to first establish the exact amount of the following figures. First, the dollar amount of the monthly Social Security disability benefit is received by the individual. In cases where there are spouses' and/or children's insurance benefits paid on the wage-earners record, then it will be necessary to determine the Social Security total family benefit paid.

The second figure that needs to be established is the dollar amount of the Workers' Compensation or public disability insurance benefit received. And finally, the dollar amount that represents 80% of the beneficiary's average current earnings. So, how exactly is what an individual's average current earning amount determined?

Social Security defines the average current earning as the highest of the following:

1. The average earnings used by the Social Security Administration to figure the Title II disability benefit;
2. The person's average monthly earnings from any work they performed that was covered by Social Security during the five highest years in a row after 1950; or
3. The person's average monthly earnings for work during the five-year period immediately prior to becoming disabled.

Again, the average current earnings figure is the highest of these three amounts. Once the average current earnings figure is determined, 80% of this figure is used as the benchmark in determining the impact on the Social Security disability cash benefit. In summary, for step one we have established the amount of Social Security disability benefit received, the amount of the workers' compensation or public disability benefit received, and finally the 80% of the average current earnings benchmark.

Step Two:

In step two of this process, ask the question: "Which is higher, the Title II disability benefit or the 80% of the average current earnings figure?" Using whichever of the two figures is higher, subtract the dollar amount of the Workers' Compensation or the public disability benefit. The remaining amount represents the new adjusted Social Security disability monthly benefit.

Step Three:

Finally, in step three, add the adjusted Social Security disability benefit to the Workers' Compensation or public disability benefit to arrive at the total monthly income received by the individual from these two sources.

Step One	Social Security Disability Benefit	\$507.90
	Workers' Compensation Benefit	\$410.00
	80% of average current earnings	\$800.00
Step Two	Determine if the Social Security Disability Benefit or 80% of average current earnings is higher	
	80% of average current earnings	\$800.00
	Workers' Compensation Benefit	- \$410.00
	Adjusted DI Monthly Benefit	\$390.00
Step Three	Add adjusted Social Security Disability Benefit to Workers' Compensation Benefit	
	Adjusted DI	\$390.00
	Workers' Compensation Benefit	+ \$410.00
	Total Monthly Income	\$800.00

Look at a couple of examples of this formula being applied. In example one, Harold, who is receiving a monthly SSDI benefit, becomes eligible for a Workers' Compensation benefit in September 2000. In step one, we establish the following factors for Harold: His monthly SSDI benefit is \$507.90; his Workers' Compensation benefit each month is \$410; and 80% percent of his average current earnings is \$800.

Now in step two, take the greater of his SSDI cash benefit and 80% of his average current earnings figure. In Harold's case, 80% of his average current earnings is higher than \$800. From the \$800 amount, we then subtract the \$410 Workers' Compensation benefit. This leaves Harold with the revised SSDI cash benefit of \$390.

In the final step, we add the adjusted SSDI benefit of \$390 to the Workers' Compensation benefit of \$410. This provides Harold with a total monthly income from these two sources of \$800.

Tom's example:

Step One	Total Family SSDI Benefit	\$838.90
	Workers' Compensation Benefit	\$500.00
	80% of average current earnings	\$820.10
Step Two	SSDI total family benefit	\$838.00
	Workers' Compensation Benefit	- \$500.00
	Adjusted amount	\$338.90
Step Three	Adjusted SSDI amount	\$338.90
		+ \$500.00
	Total Monthly Benefit	\$838.90

The second example involves both the beneficiary, Tom, as well as his family members receiving an SSDI benefit on his wage record. In this situation, Tom is entitled to a monthly SSDI cash benefit of \$559.30. His wife and two children are also entitled to monthly benefits of \$93.20 each. The total family benefit under SSDI is \$838.90. Tom also begins to receive a monthly Workers' Compensation benefit of \$500.

In step one, the SSDI total family benefit is \$838.90. The Workers' Compensation monthly benefit is \$500, and Tom's 80% of average current earnings figure is \$820.10. In step two, take the SSDI total family benefit, which is the higher of the two figures when compared to the 80% of the average current earnings figure. Again, the SSDI total family benefit figure is \$838.90. From this figure, subtract the \$500 Workers' Compensation benefit. This results in an adjusted SSDI amount of \$338.90.

Tom's wife and two children will lose their benefits altogether as the reduction is always taken from the dependents' benefits first. The remaining amount of the reduction is then subtracted from Tom's benefit to arrive at the \$338.90 figure. In the final step, add Tom's revised SSDI of \$338.90 to his \$500 Workers' Compensation benefit. This gives him a total monthly benefit of \$838.90. This is the exact amount of the SSDI total family benefit previously received by Tom and his family members.

OFFSETS: IMPACT OF WORKERS' COMPENSATION ON OTHER BENEFITS

There are a couple of key points that work incentives counselors should keep in mind with regard to the impact of the Workers' Compensation or public disability benefit on Social Security Title II disability benefits. First, if a lump sum Workers' Compensation benefit is received, then the monthly Workers' Compensation benefit amount is calculated by prorating the Workers' Compensation payment over the number of months the payments would otherwise have been made. Second, other public disability payments may affect the Title II disability check in the same manner as we just described for the Workers' Compensation benefit. These payments would include those made under federal, state or local government law that pays for injuries or illnesses that are not job related. Examples of these programs would include civil service disability benefits, military disability benefits and state and local retirement benefits based upon disability.

A third factor to keep in mind is that, while the beneficiary may experience a reduction in his or her Social Security disability benefit, the total amount of the combined Social Security disability benefit and Workers' Compensation will never be less than the total amount of Social Security disability benefit received by the individual and his/her family prior to reduction. Finally, changes in factors such as family composition and the amount of the Workers' Compensation or public disability benefit received will result in a recalculation of the reduction. This may potentially mean an adjustment in the Social Security disability benefit. The beneficiary must report all changes to the Social Security Administration.

Reverse Offsets

Now that how the Workers' Compensation offset is calculated has been discussed, it is important to note that it does not apply to all Workers' Compensation or public disability benefits paid. In some states, the Workers' Compensation or public disability benefit is reduced instead of the Social Security disability benefit payment. These are called "reverse offset" states. In each of the following states, some types of Workers' Compensation might be affected, and thus the Title II disability benefit is not reduced. The state rules are different, and the only way to know for sure if a given plan is offset is by looking it up in the Social Security's Program Operations Manual Systems (POMS). One can check on a specific state using the link to a reverse offset handout. It is important to know about offsets and reverse offsets, but remember this is Social Security's job. If a beneficiary reports receiving Workers' Compensation or a public disability benefit, check to see if the benefit was reported to Social Security. If not, encourage the individual to make the report so that the Social Security can calculate the offset, or determine if an offset is appropriate.

Here are the reverse-offset states:

- California
- Colorado
- Florida
- Louisiana
- New York
- North Dakota
- Oregon
- Minnesota
- Montana
- Nevada
- New Jersey
- Washington
- Wisconsin

Unless one lives in one of these states, or the consumer is receiving a Workers' Compensation or public disability benefit from one of these states, offset will clearly apply.

Impact of Workers' Compensation Benefits on SSI

Now the impact of Workers' Compensation benefits on the SSI program will be discussed.

Supplemental Security Income (SSI) is a program based on economic need. The more a person has in income, both earned and unearned, the less he/she receives in SSI cash benefit. For purposes of the SSI program, a Workers' Compensation benefit is considered one type of unearned income. Therefore, a person who receives a Workers' Compensation benefit or other public disability benefit will experience a reduction in his/her SSI cash benefits. Specifically, the SSI cash benefit will be reduced by the amount of the monthly Workers' Compensation payment or public disability benefit less the \$20 general exclusion. This is assuming this exclusion has not already been applied to some other form of unearned income the person receives.

So, for instance, if an individual had no other earned or unearned income and received a monthly Workers' Compensation benefit of \$400, their SSI cash benefit would be calculated as follows. Subtracting the \$20 general exclusion from the \$400 Workers' Compensation benefit leaves the person with a total countable income of \$380. This \$380 total countable income figure would then be subtracted from the current Federal Benefit Rate (FBR) to arrive at the amount of the monthly SSI cash benefit.

It is important to keep in mind Workers' Compensation benefits or other public disability benefits will also impact SSI when deeming is involved. This includes both situations of spouse to spouse deeming as well as parent to child deeming. If the spouse or parent begins to receive a Workers' Compensation benefit, a portion of this benefit will be deemed available to the SSI recipient, and will consequently result in a reduction in their SSI cash benefit.

Of potentially greater concern than the impact on the SSI cash benefit is the potential loss of Medicaid eligibility if someone receives the Workers' Compensation or public disability benefit. Because health insurance coverage is so important, it is absolutely critical SSI recipients be made aware of this potential impact. The receipt of a Workers' Compensation or other public disability benefit will only result in a loss of Medicaid coverage in situations where the amount of the Workers' Compensation or public disability benefit, in a given month, is sufficient to place the person over their break-even point.

The break-even point is the point at which the individual is no longer eligible to receive a SSI cash benefit. This is the point in time when an individual reaches a break-even point that their eligibility is determined for 1619(b). Just as a reminder, 1619(b) is a provision that enables individuals who qualify to continue their Medicaid coverage in spite of the fact they are no longer eligible for a SSI cash benefit. To be eligible for 1619(b), there are a number of requirements that need to be met. One of these requirements is the sole reason the person lost their eligibility for SSI cash benefit must be due to the fact that they have earnings over the allowable limits. In other words, individuals will not meet the criteria for 1619(b) if the reason for their SSI cash benefit cessation is due to unearned income such as a Workers' Compensation benefit placing them over their break-even point. Also, keep in mind that the likelihood a person's Medicaid eligibility will be affected is even greater for individuals who already receive some other type of unearned income such as Social Security disability benefits.

CONCLUSION

In summary, the receipt of a Workers' Compensation or public disability benefit will have a significant impact on a person's Social Security disability benefits. In some cases, his/her health care coverage will be impacted as well. Work

incentives counselors should commit the time and resources necessary to become familiar with their own states' Workers' Compensation statutes as well as the implications for beneficiaries and recipients who receive these benefits. Also, if you need clarification in regards to the potential impact on Medicaid eligibility, the 1619(b) provision and the related eligibility requirements, spend some time reviewing the information on this particular provision in the manual.

CONDUCTING INDEPENDENT RESEARCH

POMS DI 52101.000 Workers Compensation/Public Disability Benefits (WC/PDB) Offset – Subchapter Table of Contents. Begin here to find numerous POMS citations on how PDB impacts title II disability benefits.
<https://secure.ssa.gov/apps10/poms.nsf/lnx/0452101000!opendocument>

Social Security Publication No. 05-10018: How Worker's Compensation and Other Disability Payments May Affect Your Benefits -- <http://www.ssa.gov/pubs/10018.html>

Questions and Answers about the Federal Employee' Compensation Act (FECA) – <http://www.dol.gov/owcp/dfec/fec-faq.htm>

Reverse Offset -- <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452105001!opendocument>

Workers Compensation SSR 70-45c: SECTION 224 – DISABILITY INSURANCE BENEFITS Table of Contents:
http://www.ssa.gov/OP_Home/rulings/di/05/SSR-DI05toc.html

INTRODUCTION

A wide range of special cash benefits, medical services and other programs are available for veterans of the US Armed Forces who experience disabilities. The programs covered in this unit only include those administered by the US Department of Veterans Affairs (VA) under its two main organizational branches: the Veterans Health Administration (VHA) and the Veterans Benefits Administration (VBA).

- The Veterans Health Administration (VHA) operates the healthcare system serving the needs of America's veterans by providing primary care, specialized care, and related medical and social support services. The VHA system includes the VA hospitals, the community-based counseling system known as the Vets Centers, and all of the special healthcare services available to veterans.
- The Veterans Benefits Administration (VBA) oversees all of the federal benefit programs available to veterans and their family members. The programs include monetary benefits such as Disability Compensation and Disability Pension as well as vocational rehabilitation services, educational assistance, life insurance, home loans programs, and other special services.

This unit describes the cash payments provided to veterans with disabilities and offers detailed explanations about how these benefits interact with Social Security disability benefits. For a complete discussion of employment services and supports offered to veterans with disabilities, refer to Module 1, Unit 3. For information about healthcare benefits afforded veterans with disabilities, refer to Module 4, Unit 3.

Work incentives counselors must remember that a myriad of additional benefits are available to ALL veterans (not just those with disabilities) including life insurance, home loan programs and educational assistance. None of these generic benefits for veterans will be covered in this document, but information on these programs may be accessed at the VA website at: <http://www.vba.va.gov/VBA/>

CASH BENEFITS FOR VETERANS WITH DISABILITIES

The VA administers two separate programs that provide monthly cash payments to veterans with disabilities: Disability Compensation and Disability Pension. This section describes each of these programs in detail and provides an overview of the disability evaluation system used by the VA.

A Word about Military Retirement Based on Disability

In addition to the VA benefits described in this document (Disability Compensation and Disability Pension), military members with 20 or more years of active service (service retirement eligible) can retire from the Armed Forces as disabled, regardless of the percentage level of disability, if they are found to be unfit for service by reason of physical disability. People with less than 20 years of active service at the time they are removed from the military by reason of physical disability may be either separated or retired, based on a variety of factors. Veterans who retire from the military due to disability or who are separated due to disability

Disability Evaluation under the VA System

may receive either monthly cash benefits or lump sum severance pay depending on their circumstances. These disability payments are part of the military retirement system administered by the Department of Defense (DoD) and are completely separate and distinct from the VA benefits described in this section. It is also possible in some cases for a veteran to collect BOTH Department of Defense military disability retirement payments and VA disability compensation.

Taking military retirement by reason of disability has several advantages for those who are eligible for this option. Individuals who receive military disability retirement are never subject to a review of their disability rating, and they receive all benefits due to regular military retirees, including the use of commissaries, military hospitals, as well as TRICARE insurance for themselves and family members.

When working with veterans, work incentives counselors must first determine which type of benefit is being received (DoD military disability retirement or VA disability benefits) BEFORE referring to any of the information in this section, as these two benefits differ in several critical ways, including the monthly payment and how disabilities are assessed for ratings.

Unlike the Social Security system of determining disability using an “all or nothing” criteria, the VA system uses a disability rating structure in which degree of disability is assessed using percentages. Individuals may be determined to be disabled anywhere along a continuum ranging from 0% to 100% disabled. The US Department of Veterans Affairs uses the “Schedule for Rating Disabilities” for evaluating the degree of disability in claims for veterans disability compensation, disability and death pension, and in eligibility determinations. The provisions contained in the VA rating schedule represent (as far as can practicably be determined) the average impairment in earning capacity in civil occupations resulting from disability. In other words, a veteran who is assessed at the 30% rating level would be expected to have a 30% reduction in earnings capacity due to disability. The Schedule for Rating Disabilities is published in Title 38 of the Code of Federal Regulations and can be accessed online at <http://www.warms.vba.va.gov/bookc.html>

Total Disability

In addition to the percentage rating system, the VA also designates certain veterans as having “total disability” and “permanent total disability.” Total disability is considered to exist when any impairment of mind or body is present which is sufficient to render it impossible for the average person to pursue a substantially gainful occupation. Total disability may or may not be permanent. Total disability ratings are generally not assigned for temporary exacerbations or acute infectious diseases except where specifically prescribed by the ratings schedule. Total ratings are authorized for any disability or combination of disabilities for which the Schedule for Rating Disabilities prescribes a 100% evaluation. In certain prescribed circumstances, a disability rating of less than 100% may result in a total disability rating.

Total Disability Ratings Based on Individual Unemployability

Total disability ratings for Disability Compensation may be assigned in certain cases in which the schedule rating is less actually less than 100%, the usual standard for total disability. If the individual with the disability is, in the judgment of the rating agency, unable to secure or follow a “substantially gainful occupation” as a result of service-connected disabilities, that individual may be deemed to have total disability for the purposes of VA compensation. VA refers to this designation as “individual unemployability” and it may occur under the following circumstances:

- If there is only one disability, this disability is rated at 60% or more; or
- If there are two or more disabilities, there must be at least one disability ratable at 40% or more and sufficient additional disability to bring the combined rating to 70% or more.

Specific instruction is provided to VA disability rating adjudicators about how to determine when a veteran is individually unemployable. The regulations read in the following manner:

“It is provided further that the existence or degree of nonservice-connected disabilities or previous unemployability status will be disregarded where the percentages referred to in this paragraph for the service-connected disability or disabilities are met and in the judgment of the rating agency such service-connected disabilities render the veteran unemployable. Marginal employment shall not be considered substantially gainful employment. For purposes of this section, marginal employment generally shall be deemed to exist when a veteran’s earned annual income does not exceed the amount established by the U.S. Department of Commerce, Bureau of the Census, as the poverty threshold for one person. Marginal employment may also be held to exist, on a facts found basis (includes but is not limited to employment in a protected environment such as a family business or sheltered workshop), when earned annual income exceeds the poverty threshold. Consideration shall be given in all claims to the nature of the employment and the reason for termination.”

“It is the established policy of the Department of Veterans Affairs that all veterans who are unable to secure and follow a substantially gainful occupation by reason of service-connected disabilities shall be rated totally disabled.” (emphasis added)

[40 FR 42535, Sept. 15, 1975, as amended at 54 FR 4281, Jan. 30, 1989; 55 FR 31580, Aug. 3, 1990; 58 FR 39664, July 26, 1993; 61 FR 52700, Oct. 8, 1996]

The determination of whether or not a veteran is able to follow a substantially gainful occupation is essentially left up to the Ratings Adjudicator’s discretion with very broad guidelines. The term “unemployability” is not synonymous with the terms unemployed and unemployable for the purpose of determining entitlement to increased compensation. A veteran may be unemployed or unemployable for a variety of reasons yet still not be “unemployable” for the purposes of establishing a total disability rating.

Permanent Total Disability

A veteran may be classified as having permanent total disability when the impairment is reasonably certain to continue throughout the individual’s life. The federal regulations governing permanent total disability describes the impairments that would qualify for this designation in the following manner:

“The permanent loss or loss of use of both hands, or of both feet, or of one hand and one foot, or of the sight of both eyes, or becoming permanently helpless or bedridden constitutes permanent total disability. Diseases and injuries of long standing which are actually totally incapacitating will be regarded as permanently and totally disabling when the probability of permanent improvement under treatment is remote.

Permanent total disability ratings may not be granted as a result of any incapacity from acute infectious disease, accident, or injury, unless there is present one of the recognized combinations or permanent loss of use of extremities or sight, or the person is in the strict sense permanently helpless or bedridden, or when it is reasonably certain that a subsidence of the acute or temporary symptoms will be followed by irreducible totality of disability by way of residuals. The age of the disabled person may be considered in determining permanence.”

(From 38 CFR §3.340 Total and Permanent Total Ratings and Unemployability)

The designation of total disability or permanent total disability is important because certain benefits are only afforded to individuals with these classifications. In addition, designations of total or permanent total disability may increase the amount of monetary benefits a veteran is entitled to receive.

Disability Re-Examinations

After the initial disability rating has been made, veterans may be subject to periodic re-examinations. This is similar to the medical Continuing Disability Review (CDR) process utilized in the Social Security disability benefit system. Reexaminations will be requested whenever the VA determines there is a need to verify either the continued existence or the current severity of a disability. Generally, reexaminations will be required if it is likely that a disability has improved, or if evidence indicates there has been a material change in a disability or that the current rating may be incorrect. Individuals for whom reexaminations have been authorized and scheduled are required to report for such reexaminations.

The schedule of reexaminations will vary depending on whether an individual receives Disability Compensation or Disability Pension. For veterans receiving Disability Compensation, assignment of a pre-stabilization rating requires reexamination within the second six month period following separation from military service. Following initial VA examination or any scheduled future or other examination, reexamination, if in order, will be scheduled within not less than two years or more than five years within the judgment of the rating board, unless another time period is elsewhere specified.

In Disability Compensation cases, reexaminations are not deemed to be necessary under the following circumstances:

1. When the disability is established as static;
2. When the findings and symptoms are shown by examinations and hospital reports to have persisted without material improvement for a period of five years or more;
3. Where the disability from disease is permanent in character and of such nature that there is no likelihood of improvement;
4. In cases of veterans over 55 years of age, except under unusual circumstances;
5. When the rating is a prescribed scheduled minimum rating;
or
6. Where a combined disability evaluation would not be affected if the future examination should result in reduced evaluation for one or more conditions.

For veterans receiving Disability Pension benefits in which the permanent total disability has been confirmed by reexamination or by the history of the case, or with obviously static disabilities, further reexaminations will generally not be requested by the VA. In other cases, further examination will not be requested routinely and will be accomplished only if considered necessary based upon the particular facts of the individual case. In the cases of veterans over 55 years of age, reexamination will be requested only under unusual circumstances.

Applying for VA Disability Benefits

Veterans can apply for both Disability Compensation and Disability Pension benefits by filling out VA Form 21-526, Veterans Application for Compensation or Pension.

Individuals should attach the following material to their application if it is available:

- Dependency records (marriage & children's birth certificates)
- Medical evidence (doctor & hospital reports)

Veterans can also apply for benefits online through the VONAPP website. For more information about applying for VA benefits for individuals with disabilities, call toll-free 1-800-827-1000.

VA Disability Compensation

Disability compensation is a monetary benefit paid to veterans who are disabled by an injury or disease that was incurred or aggravated during active military service. These disabilities are considered to be service-connected. The amount of disability compensation varies with the degree of disability and the number of veteran's dependents, and is paid monthly. Veterans with certain severe disabilities may be eligible for additional special monthly compensation. The veteran's disability compensation benefits are not subject to federal or state income tax. To be eligible for disability compensation, the service of the veteran must have been terminated through separation or discharge under conditions other than dishonorable. To find the current as well as past VA benefit rates, go to the VA website at: <http://www.va.gov/bln/21/rates/>

Veterans with disability ratings of at least 30% are eligible for additional allowances for dependents. This includes spouses, minor children, children between the ages of 18 and 23 who are attending school, children who are permanently incapable of self-support because of a disability arising before age 18, and dependent parents. The additional amount depends on the disability rating. Disability Compensation benefits are considered to be an entitlement program and are not means-tested. Veterans who have other types of income or who own resources will not lose their entitlement to Disability Compensation benefits. However, the payment of military retirement pay, disability severance pay and separation incentive payments known as SSB (Special Separation Benefits) and VSI (Voluntary Separation Incentives) does affect the amount of VA compensation paid to disabled veterans.

Special Monthly Compensation

VA can pay an added compensation known as "Special Monthly Compensation" or SMC in addition to the regular Disability Compensation under certain circumstances. For example, SMC may be paid to a veteran who, as a result of military service, incurred the loss or loss of use of specific organs or extremities. Loss, or loss of use, is described as either an amputation or, having no effective remaining function of an extremity or organ. The disabilities VA can consider for SMC include:

- Loss, or loss of use, of a hand or foot;
- Immobility of a joint or paralysis;
- Loss of sight of an eye (having only light perception);
- Loss, or loss of use, of a reproductive organ;
- Complete loss, or loss of use, of both buttocks;
- Deafness of both ears (having absence of air and bone conduction);
- Inability to communicate by speech (complete organic aphonia); or
- Loss of a percentage of tissue from a single breast, or both breasts, from mastectomy or radiation treatment.

The Veterans Administration will also pay higher rates for combinations of these identified disabilities (such as loss or loss of use of the feet, legs, hands, and arms) in specific monetary increments, based on the particular combination of the disabilities. There are also higher payments for various combinations of severe deafness with bilateral blindness. Additional SMC is available if a veteran is service connected for paraplegia, with complete loss of bowel and bladder control. In addition, for veterans who have other service-connected disabilities that, in combination with the above special monthly compensation, meet certain criteria, a higher amount of SMC can also be considered.

Finally, if a veteran has a service connected disability at the 100% rate and is "housebound, bedridden, or is so helpless to need the aid and attendance of another person," payment of

additional SMC can be considered. This additional monthly payment is referred to as “Aid and Attendance and Housebound Allowance.” The amount of this extra monthly payment will vary depending on the level of aid and attendance needed. VA also considers unusual medical expenses when determining some needs-based pension and compensation payments. Medical expenses which exceed five percent of the maximum annual VA payment rate are considered to be “unusual.” As a result, the veteran will have a higher monthly VA payment, an extra payment, or an increase in an extra payment.

VA Disability Pension

A pension is a needs-based benefit paid to a veteran because of permanent and total nonservice-connected (NSC) disability, or a surviving spouse or child because of a wartime veteran's nonservice-connected death. The Department of Veterans Affairs (VA) currently pays the following three types of pensions:

- Improved Pension, per Public Law (PL) 95-588,
- Section 306 Pension, per PL 86-211, and
- Old Law Pension.

Because the Old Law and Section 306 Pension programs have been phased out, a veteran filing a new claim for pension benefits must qualify under the Improved Pension program. Pension beneficiaries who were receiving a VA pension on Dec. 31, 1978, and do not wish to elect the Improved Pension will continue to receive the pension rate they were receiving on that date. This rate generally continues as long as the beneficiary's income remains within established limits, his or her net worth does not bar payment, and the beneficiary does not lose any dependents. These beneficiaries must continue to meet basic eligibility factors, such as permanent and total disability for veterans, or status as a surviving spouse or child. VA must adjust rates for other reasons, such as a veteran's hospitalization in a VA facility.

NOTE: From this point forward, we will refer only to the pensions provided directly to veterans based upon disability (as opposed to death pensions provided to surviving spouses and children) and will focus on the Improved Disability Pension since this is the program currently available to veterans making claims. Since there are some differences in the way income and assets are counted in the pension programs that have been discontinued, it is important to know exactly WHICH pension benefit an individual is receiving. Work incentives counselors are cautioned to confirm which type of VA pension an individual is receiving before offering case-specific advice!

Improved Disability Pension

Veterans with low incomes who are permanently and totally disabled, or are age 65 and older, may be eligible for a type of monetary support known as “Disability Pension.” To qualify for this benefit, veterans must have 90 days or more of active military service, at least one day of which was during a period of war. Veterans who entered active duty on or after September 8, 1980, or officers who entered active duty on or after October 16, 1981, may have to meet a longer minimum period of active duty. In addition, the veteran's discharge must have been under conditions other than dishonorable and the disability must be for reasons other than the veteran's own willful misconduct.

Disability Pension payments are made to bring the veteran's total income, including other retirement or Social Security income, up to a level set by Congress. Unlike the Disability Compensation program, the Pension program is means-tested, eligibility is based upon meeting certain income and asset tests. In addition, Disability Pension payments are reduced by the amount of countable income of the veteran, spouse or dependent children. Just as in the SSI program, there are numerous types of income and assets that are disregarded by the VA. Pension payments may also be reduced by other factors. For example, when a veteran without a spouse or a child is furnished nursing home or domiciliary care by the VA, the pension

is reduced to an amount not to exceed \$90 per month after three calendar months of care. The reduction may be delayed if nursing-home care is being continued to provide the veteran with rehabilitation services. The current and past pension rates are available online at: <http://www.vba.va.gov/bln/21/rates/>

The VA also evaluates a veteran's net worth when determining eligibility for the Pension program. The regulations state that "Pension shall be denied or discontinued when the corpus of the estate of the veteran, and of the veteran's spouse, are such that under all the circumstances, including consideration of the annual income of the veteran, the veteran's spouse, and the veteran's children, it is reasonable that some part of the corpus of such estates be consumed for the veteran's maintenance" (Authority: 38 U.S.C. 1522(a)).

"Corpus of estate" and "net worth" mean the market value, less mortgages or other encumbrances, of all real and personal property owned by the claimant except the claimant's dwelling (single-family unit) including a reasonable lot area, and personal effects suitable to and consistent with the claimant's reasonable mode of life.

In determining whether some part of the veteran's estate should be consumed for his or her maintenance, VA will consider the amount of the individual's income and the following factors:

- Whether the property can be readily converted into cash at no substantial sacrifice;
- Ability to dispose of property as limited by community property laws;
- Life expectancy of the veteran;
- Number of dependents;
- Potential rate at which the estate would be depleted if used for maintenance; and
- Unusual medical expenses for the veteran and his/her dependents.

With regard to the transfer of property, the VA rules state: "A gift of property made by an individual to a relative residing in the same household shall not be recognized as reducing the corpus of the grantor's estate. A sale of property to such a relative shall not be recognized as reducing the corpus of the seller's estate if the purchase price, or other consideration for the sale, is so low as to be tantamount to a gift. A gift of property to someone other than a relative residing in the grantor's household will not be recognized as reducing the corpus of the grantor's estate unless it is clear that the grantor has relinquished all rights of ownership, including the right of control of the property" (Authority: 38 U.S.C. 501(a)).

Concurrent Retirement and Disability Payments (CRDP) for Disabled Veterans

Concurrent Retirement and Disability Payments (CRDP) restore retired pay on a graduated 10-year schedule for retirees with a 50 to 90% VA-rated disability. Concurrent retirement payments increase 10% percent per year through 2013. Veterans rated 100% disabled by VA are entitled to full CRDP without being phased in. Veterans receiving benefits at the 100% rate due to individual unemployability are entitled to full CRDP in 2009. To qualify for concurrent retirement and disability payments, veterans must also meet all three of the following criteria:

- a. Have 20 or more years on active duty, or a reservist age 60 or older with 20 or more creditable years;
- b. Be in a retired status; and
- c. Be receiving retired pay (must be offset by VA payments).

Retirees do not need to apply for this benefit. Payment is coordinated between the VA and the Department of Defense (DOD).

Disability Benefit Payment Options

VA offers three payment options to veterans eligible to receive disability benefit payments whether it is Disability Compensation or Disability Pension. Most veterans receive their payments by direct deposit to a bank, savings and loan or credit union account. In some areas, veterans who do not have a bank account can open a federally insured Electronic Transfer Account, which costs about \$3 a month, provides a monthly statement and allows cash withdrawals. Other veterans may choose to receive benefits by check.

The VA Appeals Process

An appeal is a request for a review of a VA determination on a claim for benefits issued by a local VA office. Anyone who has filed a claim for benefits with VA and has received a determination from a local VA office is eligible to appeal to the Board of Veterans' Appeals.

The Board of Veterans' Appeals (also known as "BVA" or "the Board") is a part of the Department of Veterans Affairs (VA), located in Washington, DC. "Members of the Board" review benefit claims determinations made by local VA offices and issue decisions on appeals. These board members, attorneys experienced in veterans' law and in reviewing benefit claims, are the only ones who can issue board decisions. Staff attorneys, referred to as Counsel or Associate Counsel, are also trained in veterans' law. They review the facts of each appeal and assist board members.

Individuals may file an appeal up to one year from the date the local VA office mails its initial determination on the claim. After that, the determination is considered final and cannot be appealed unless it involved clear and unmistakable error by VA. Veterans may appeal any determination issued by a VA regional office (RO) on a claim for benefits. Some determinations by VA medical facilities, such as eligibility for medical treatment, may also be appealed to the board. Veterans may appeal a complete or partial denial of a claim or may appeal the level of benefit granted.

No special form is required to begin the appeal process. All that is needed is a written statement that the individual disagrees with the local VA office's claim determination and wants to appeal this decision. This statement is known as the Notice of Disagreement, or NOD. Normally, a veteran files the appeal with the same local VA office that issued the original decision since this is where the individual's claims file (also called a claims folder) is kept.

Veterans who are appealing a determination made by the VA should submit any evidence that supports their argument that the original determination was wrong. This evidence could include records from recent medical treatments or evaluations or anything else that the veteran feels supports their contentions. If the individual wants the board to consider the new evidence without sending the case back to the local VA office, a written statement to this effect should be included in the letter requesting the appeal. If this statement is neglected, a considerable delay may occur as the information will be sent back to the local VA office to consider.

Help preparing and submitting an appeal can be obtained from a veterans' service organization (VSO) representative, an attorney-at-law, or an "agent." Representatives who work for accredited veterans' service organizations know how to prepare and present claims and will represent veterans. A listing of these organizations is available on the Internet at: <http://www.va.gov/ogc/apps/accreditation/index.asp> Veterans may also hire private attorneys or "agents" to represent them in the appeals process. The local bar association may be able to provide a list of attorneys with experience in veterans' law. VA only recognizes attorneys who are licensed to practice in the United States or in one of its territories or possessions. An agent is a person who is not a lawyer, but who VA recognizes as being knowledgeable about veterans' law.

For more information about appeal rights, how to submit and appeal and a user-friendly guide to the VA Appeals Process, go to <http://www.va.gov/vaforms/va/pdf/VA4107c.pdf>

OTHER SPECIAL PROGRAMS FOR VETERANS WITH DISABILITIES

In addition to cash benefits, healthcare coverage and vocational rehabilitation services, the VA offers several special benefits to certain veterans with disabilities. These programs can help a veteran pay for adaptations needed for a home or vehicle, pay for attendant care or purchase needed clothing.

Specially Adapted Housing (SAH) Grants from VA

Certain veterans and service members with service-connected disabilities may be entitled to a Specially Adapted Housing (SAH) grant from VA to help build a new specially adapted house or buy a house and modify it to meet their disability-related requirements. Eligible veterans or service members may now receive up to three grants, with the total dollar amount of the grants not to exceed the maximum allowable. Previous grant recipients who had received assistance of less than the current maximum allowable may be eligible for an additional SAH grant.

Eligible veterans who are temporarily residing in a home owned by a family member may also receive assistance in the form of a grant to assist the veteran in adapting the family member's home to meet his or her special needs. Those eligible for a \$50,000 total grant would be permitted to use up to \$14,000 and those eligible for a \$10,000 total grant would be permitted to use up to \$2,000 (See eligibility requirements for different grant amounts). However, VA is not authorized to make such grants available to assist active duty personnel.

Eligibility for up to \$50,000

VA may approve a grant of not more than 50% of the cost of building, buying, or adapting existing homes or paying to reduce indebtedness on a previously owned home that is being adapted, up to a maximum of \$50,000. In certain instances, the full grant amount may be applied toward remodeling costs. Veterans and service members must be determined eligible to receive compensation for permanent and total service-connected disability due to one of the following:

1. Loss or loss of use of both lower extremities, such as to preclude locomotion without the aid of braces, crutches, canes or a wheelchair.
2. Loss or loss of use of both upper extremities at or above the elbow.
3. Blindness in both eyes, having only light perception, plus loss or loss of use of one lower extremity.
4. Loss or loss of use of one lower extremity together with (a) residuals of organic disease or injury, or (b) the loss or loss of use of one upper extremity which so affects the functions of balance or propulsion as to preclude locomotion without the use of braces, canes, crutches or a wheelchair.

Eligibility for up to \$10,000

VA may approve a grant for the cost, up to a maximum of \$10,000, for necessary adaptations to a veteran's or service member's residence or to help veterans and service members acquire a residence already adapted with special features for their disability. To be eligible for this grant, veterans and service members must be entitled to compensation for permanent and total service-connected disability due to either blindness in both eyes with 5/200 visual acuity or less, or anatomical loss or loss of use of both hands.

Supplemental Financing

Veterans and service members with available loan guaranty entitlement may also obtain a guaranteed loan or a direct loan from VA to supplement the grant to acquire a specially adapted home. Amounts with a guaranteed loan from a private lender will vary, but the maximum direct loan from VA is \$33,000.

Service-Disabled Veterans Insurance (S-DVI)

Service-Disabled Veterans Insurance (S-DVI) is life insurance for veterans who have received a service-connected disability rating by the Department of Veterans Affairs. The basic S-DVI program, commonly referred to as "RH Insurance," insures eligible veterans for up to \$10,000 of coverage. Veterans who have the basic S-DVI coverage and are totally disabled are eligible to have their premiums waived. If a waiver is granted, totally disabled veterans may apply for additional coverage of up to \$20,000 under the Supplemental S-DVI program.

Premiums for Supplemental S-DVI coverage, however, cannot be waived. To be found eligible for S-DVI, an individual must:

- Have been released from service under other than dishonorable conditions on or after April 25, 1951;
- Have been notified by VA that they have a service-connected disability;
- Be healthy except for the service-related disability; and
- Apply within two years of being notified of your service-connected disability.

To be eligible for Supplemental S-DVI, an individual must:

- Have an S-DVI policy;
- Have the premiums on the basic coverage waived due to total disability;
- Apply within one year of being notified of the waiver; and
- Be under 65 years of age.

Veterans may be eligible for a waiver if they become totally disabled before the 65th birthday and remain disabled for at least six consecutive months. Premiums for Supplemental S-DVI cannot be waived. The cost of the premiums varies depending upon age, type of plan (term or permanent), and the amount of coverage.

Assistance with Adapting an Automobile to Meet Disability Needs

Veterans and service members with disabilities may be eligible for a one-time payment of not more than \$11,000 toward the purchase of an automobile or other conveyance if they have service-connected loss or permanent loss of use of one or both hands or feet, permanent impairment of vision of both eyes to a certain degree, or ankylosis (immobility) of one or both knees or one or both hips.

They may also be eligible for adaptive equipment, and for repair, replacement, or reinstallation required because of disability or for the safe operation of a vehicle purchased with VA assistance. To apply, contact a VA regional office at 1-800-827-1000 or the nearest VA medical center.

Annual Clothing Allowance for Veterans with Service-Connected Disabilities

Any veteran who is service-connected for a disability for which he or she uses prosthetic or orthopedic appliances may receive an annual clothing allowance. The clothing allowance also is available to any veteran whose service-connected skin condition requires prescribed medication that irreparably damages his or her outer garments. To apply, contact the prosthetic representative at the nearest VA Medical Center.

Veterans Requiring Aid and Attendance or Housebound Veterans

A veteran who is determined by VA to be in need of the regular aid and attendance of another person, or a veteran who is permanently housebound, may be entitled to additional disability compensation or pension payments. A veteran evaluated at 30% or more disabled is entitled to receive an additional payment for a spouse who is in need of the aid and attendance of another person.

Subsistence Allowance for Work-study Participants

In addition to receiving the monthly Disability Compensation payment, some veterans who are participating in training or education programs may also qualify for a monthly subsistence allowance. This is paid each month during training and is based on the rate of attendance (full-time or part-time), the number of dependents, and the type of training. Veterans training at the three-quarter or full-time rate may also participate in VA's work-study program. Work-study participants may provide VA outreach services, prepare and process VA paperwork, and work at a VA medical facility or perform other VA-approved activities. A portion of the work-study allowance equal to 40% of the total may be paid in advance. View the current VR&E subsistence allowance rates at: <http://www.vba.va.gov/bln/vre/sa.htm>

State Veterans Benefits

Many states offer special benefits to veterans in addition to the benefits available from the federal government. These benefits may include educational grants and scholarships, special exemptions or discounts on fees and taxes, home loans, veteran's homes, free hunting and fishing privileges, and more. Each state manages its own benefit programs through the State's Veterans Affairs Office. A directory of these offices can be found at: <http://www.va.gov/statedva.htm> The VA also maintains a comprehensive searchable online directory of Veteran's Service Organizations at: <http://www.va.gov/ogc/apps/accreditation/index.asp>

HOW EMPLOYMENT AFFECTS VA DISABILITY BENEFITS

The Disability Pension program is means-tested and earned income from employment would definitely impact a veteran's eligibility for this program as well as the amount of payment due each month. In the Disability Pension program, the VA will consider all income from sources such as wages, salaries, earnings, bonuses from employers, income from a business or profession or from investments or rents as well as the fair value of personal services, goods or room and board received in lieu thereof will be included. Furthermore, salary is not determined by "take-home" pay, but is based on "gross pay" before any deductions made under a retirement act or plan and amounts withheld by virtue of income tax laws.

In the case of self-employment, the gross income from a business or profession may be reduced by the necessary operating expenses, such as cost of goods sold, or expenditures for rent, taxes, and upkeep. Depreciation is not a deductible expense. The cost of repairs or replacement may be deducted. The value of an increase in stock inventory of a business is not considered income. A loss sustained in operating a business, profession, or farm or from investments may not be deducted from income derived from any other source.

Disability Pension is reduced dollar for dollar by any income that is deemed countable under the VA rules. For example, if a veteran was entitled to a Disability Pension in the amount of \$400 per month and went to work earnings \$300 in gross wages per month, the Disability Pension would be reduced one dollar for each of the 300 dollars received in wages. The reduced Disability Pension payment would be \$100. Veterans receiving Disability Pension are required to report all income to the VA.

Disability Compensation benefits are not means-tested so they are not affected by income or resources. Neither wages nor net income from self-employment affects Disability Compensation payments in the sense that in and of themselves they would cause a reduction or "offset" in the VA payment amount. Other forms of income (not related to employment) and assets are also not taken into consideration by the Disability Compensation program and have no impact on benefit eligibility or amount of monthly payment.

Impact of Employment on Disability Rating

While wages do not cause a reduction in Disability Compensation payments per se, it is critically important to understand that a veteran's disability rating is related to his/her ability to work and earn a living. As the reader will recall from the section describing the VA disability evaluation system, the percentage "rating" assigned to an individual is directly related to the impact which the disability is expected to have on that individual's earnings capacity. The lower the rating, the less the disability is expected to diminish the earnings capacity of the individual; the higher the rating, the more the disability is expected to diminish earnings capacity. It is reasonable to expect, therefore, that individuals who go to work after the VA establishes their disability rating evaluation may need to be re-examined or re-evaluated - especially if the individual engages in "substantially gainful employment." This level of employment is defined in rather vague terms in the VA disability benefit manual in the following manner:

"Substantially gainful employment is defined as employment at which non-disabled individuals earn their livelihood with earnings comparable to the particular occupation in the community where the veteran resides" (M21-1MR Part IV, Subpart ii, Chapter 2, Section f).

The question then becomes one of how often the VA checks to see if veterans receiving disability benefits are working and how they determine when an individual is engaging in "sub-

stantially gainful employment.” First of all, there are some veterans who are NOT monitored at all for changes in employability status, including those who:

- Are 69 years of age or older;
- Have been rated totally disabled due to individual unemployability for a period of 20 continuous years, or
- Are assigned a 100% schedular evaluation.

This means that employment even at a substantial level would not cause a reduction of disability rating for veterans who are elderly (defined by VA as 69 or older), those who have been determined to have total disability due to individual unemployability (IU) for an extended period of time (20 or more years), or who have a designation of total disability due to a 100% disability rating. Obviously this would also include those individuals who have been determined to have a permanent and total disability. These individuals are in effect “protected” from having their disability rating reduced and thus are not at risk of losing monetary benefits due to employment. It seems that veterans who are possibly at risk of experiencing a disability rating reduction caused by employment are those who have less than 100% disability rating and those who have had a total disability rating on the basis of individual unemployability (IU) for less than 20 years. It is possible that these individuals would have their disability rating reevaluated by the VA if they engage in substantial employment on an ongoing basis.

When the VA conducts an evaluation of employment, they are looking to see whether or not the veteran is working in a substantially gainful occupation as defined above. Low levels of employment, which the VA describes as “marginal employment,” would not be sufficient to reduce the disability rating. Marginal employment exists when a veteran’s earned annual income does not exceed the amount established by the US Department of Commerce, US Census Bureau, as the poverty threshold for one person. Even when earned annual income does exceed the poverty threshold, it may still not represent substantially gainful employment if the employment occurred in a protected environment, such as a family business, or a sheltered workshop, or when supported employment services are being provided.

Furthermore, effective January 1, 1985, a veteran’s total disability rating based on IU may not be reduced solely on the basis of having secured a substantially gainful occupation unless the veteran maintains that occupation for a period of 12 consecutive months. Temporary interruptions in employment that are of short duration are not considered breaks in otherwise continuous employment.

Finally, the fact that a veteran is either participating in a program of rehabilitation or has completed such a program and is “rehabilitated” would not automatically preclude a finding of IU. The federal regulations state that caution must be exercised in determining that actual employability is established by clear and convincing evidence. When the veteran is undergoing vocational rehabilitation, education or training, the disability rating will not be reduced unless there is evidence of marked improvement or recovery in physical or mental conditions or evidence of employment progress, income earned, and prospects of economic rehabilitation, which demonstrates affirmatively the veteran’s capacity to pursue the occupation for which the training is intended, or unless the physical or mental demands of the course are obviously incompatible with total disability. Neither participation in, nor the receipt of remuneration as a result of participation in a therapeutic or rehabilitation activity, shall be considered evidence of employability (Authority: 38 U.S.C. 1718(f)).

The federal regulations go on to state that if a veteran secures employment within the scope of a vocational goal identified in the individualized written VR plan (or in a related field), the

VA may not reduce the disability rating by reason of the veteran's capacity to engage in such employment until the veteran has maintained that employment for a period of not less than 12 consecutive months. (Authority: 38 U.S.C. 1524(c))

If a reexamination of disability or employability status is conducted by the VA and the lower evaluation would result in a reduction or discontinuance of disability payments currently being made, a rating proposing the reduction or discontinuance is prepared which sets forth all material facts and reasons. The veteran is notified in writing of the VA's planned action and all of the reasons and details are furnished in this correspondence. The individual will be given 60 days for the presentation of additional evidence to show that compensation payments should be continued at their present level. If the individual does not provide additional evidence to the VA within the 60-day period, final rating action will be taken and the award will be reduced or discontinued effective the last day of the month in which a 60-day period from the date of notice to the beneficiary of the final rating action expires. This process is the same regardless of whether the individual receives VA Disability Compensation or Pension.

Determinations of substantially gainful employment are intended to be highly individualized and will depend greatly on the unique circumstances of the veteran. VA Ratings Specialists are directed to consider a wide variety of factors and have clear and convincing evidence before pursuing a reduction in disability rating. Due to the somewhat subjective nature of these determinations, it may be impossible to predict exactly when an individual will be considered to be in a substantially gainful occupation. Veterans and the work incentives counselors serving them are encouraged to seek a formal determination from the local VA in these cases.

INTERACTIONS BETWEEN SOCIAL SECURITY DISABILITY BENEFITS AND VETERANS DISABILITY BENEFITS

It is possible for certain veterans to receive both a form of disability benefit payment from VA as well as from the Social Security Administration. Since certain benefits within both of these systems are means-tested (SSI and Disability Pension), it is possible for receipt of one form of benefit to affect eligibility for or payment amount due from the other system. The rules governing how each of the two systems view benefits from the other can be very complex. A general summary is provided below but when in doubt, a formal determination should be sought from the VA or Social Security accordingly.

NOTE: Military service members can receive expedited processing of disability claims from the Social Security Administration. The expedited process is used for military service members who become disabled while on active military service on or after October 1, 2001, regardless of where the disability occurs. For information about Social Security benefits developed specifically to meet the needs of veterans go to: <http://www.ssa.gov/woundedwarriors/>. Social Security also has produced several publications on Social Security benefits for wounded warriors. These may be found online at: <http://www.ssa.gov/pubs/10030.html>, and <http://www.ssa.gov/pubs/10131.html>

How Social Security Disability Benefits are Affected by VA Disability Benefits

Social Security disability benefits paid under title II (SSDI, CDB, DWB): These benefits are generally offset by other forms of public disability benefits (PDB) which means that Social Security reduces the monthly payment when other forms of disability benefits are received from a public (i.e.: governmental) source. While some forms of military disability benefit or a military retirement pension based on disability may be subject to this offset, Social Security does not count Veterans Administration (VA) benefits (including Agent Orange payments) paid under Title 38 U.S.C. This exclusion covers payments received under both the Disability Compensation and Disability Pension programs described in this unit. These VA disability benefits are specifically excluded from offset by law.

NOTE: Social Security does count military disability benefits including military retirement pensions based on disability as a form of public disability benefit (PDB) which would be subject to offset. These are benefits paid by the Department of Defense, not the VA. It is only disability benefits paid by the VA which are exempt from the PDB offset. For more information, see POMS DI 52130.001 - Types of Federal Public Disability Benefit (PDB) Payments and DI 52130.015 - Military Disability Benefits.

Supplemental Security Income (SSI): The SSI program is means-tested and in most cases, eligibility for SSI and/or the SSI payment amount would be affected by receipt of VA disability benefits. In general, VA disability payments would be counted as a form of unearned income for SSI purposes. VA Disability Compensation benefits would count as unearned income with only the \$20 general income exclusion available to reduce the amount of this benefit that SSI would count. However, the SSI program specifically disregards any portion of a VA Disability Compensation payment that is a VA Aid and Attendance Allowance or Housebound Allowance as well as Compensation payments resulting from unusual medical expenses. In addition, there are certain special Disability Compensation benefits paid on the basis of a Medal of Honor or a special act of Congress that are also NOT counted as income at all by the SSI program.

VA Disability Pension payments are considered federally-funded income based on need. As such, SSI treats these payments as unearned income to which the \$20 general income exclusion does NOT apply. Again, SSI disregards VA pension payments resulting from Aid and Attendance or Housebound Allowances and VA pension payments resulting from unusual medical expenses. All or part of a VA pension payment may be subject to this rule.

The VA often considers the existence of dependents when determining a veteran's or a veteran's surviving spouse's eligibility for pension, compensation, and educational benefits. If dependents are involved, the amount of the benefit payable may be larger than it otherwise would be. Social Security refers to this as "augmented VA benefits." An "augmented benefit" is an increase in benefit payment to a veteran or a veteran's surviving spouse or higher VA income eligibility limits because of a dependent. An augmented VA benefit usually is issued as a single payment to the veteran or the veteran's surviving spouse. Only the SSI beneficiary's portion is considered to be VA income attributable to the beneficiary. The portion of a VA benefit paid by apportionment to a dependent spouse or child is considered to be income attributable to the dependent spouse or child. It is not a support payment from the designated beneficiary. For more information on how SSI treat augmented VA benefits, see POMS SI 00830.314 Augmented VA Benefits.

The SSI program has numerous rules governing the treatment of other VA benefits provided on the basis of disability. The following items are specifically excluded as income by the SSI program in addition to the aid and attendance or housebound allowances and VA pension payments resulting from unusual medical expenses:

- Vocational Rehabilitation - Payments made as part of a VA program of vocational rehabilitation are not income (VR&E). This includes any augmentation for dependents.
- VA clothing allowance

For more information about how SSI treats specific forms of VA benefit, refer to POMS SI 00830.300 - Department of Veterans Affairs Payments.

Finally, the VA provides numerous educational assistance programs including the Active Duty Educational Assistance Program ("Montgomery" GI Bill), the Veterans Educational Assis-

tance Program (VEAP), and the Post-9/11 GI Bill Program. Payments made by the VA to pay for tuition, books, fees, tutorial services, or any other necessary educational expenses are excluded from income by the SSI program. Any portion of a VA educational payment designated as a stipend for shelter is countable income. For more information on how educational assistance provided by the VA is treated for SSI recipients, go to POMS SI 00830.306 Department of Veterans Affairs (VA) Educational Benefits.

How VA Disability Benefits are Affected by Social Security Disability Benefits

The VA Disability Compensation program is not means-tested so it would not be affected in any way by receipt of a Social Security benefit of any type. Military service members with disabilities are actively encouraged to apply for disability benefits available from the Social Security in addition the VA benefits.

The VA Disability Pension program is based on need and eligibility for these benefits as well as the amount of the monthly payment may be affected by receipt of Social Security disability benefits. Retirement, survivors and disability insurance under title II of the Social Security Act will be considered income for the purposes of VA Disability pension. Remember that VA reduces pension payments using a dollar-for-dollar approach. Every dollar of Social Security Title II benefit received will result in a dollar being taken away from the VA Pension payment. However, the VA Pension program does NOT count SSI payments as income. SSI is considered to be a benefit received under a "noncontributory program" (i.e.: a form of welfare) that is subject to the rules applicable to charitable donations.

How Social Security Treats Income from Compensated Work Therapy Program

Compensated Work Therapy (CWT) is a Department of Veterans Affairs (VA) vocational rehabilitation program that endeavors to match and support work ready veterans in **the** competitive jobs, and to consult with business and industry regarding their specific employment needs. The CWT program provides a range of vocational rehabilitation services to support veterans interested in competitive jobs. There are five basic programs offered under CWT:

1. Incentive Therapy Program
2. Sheltered Workshop Program
3. Transitional Work Program
4. Supported Employment Program
5. Transitional Residence Program

For Social Security purposes, most payments from CWT programs are excluded from income entirely since they are received in conjunction with medical services. Participants in the CWT Supported Employment (SE) phase of the program are paid directly from local community employers. Income from CWT SE is considered earned income for SSI and title II disability benefit purposes.

CONCLUSION

The benefits available to veterans who experience disability are numerous and complex. The DoD and VA benefit systems are fully as complicated as the Social Security disability system and in many instances, veterans receive benefits from both of these enormous systems. Work incentives counselors must investigate eligibility for the various types of benefits and encourage veterans to apply for all programs for which they are potentially eligible. In addition, work incentives counselors must carefully verify which benefits are received from both the DoD/VA and the Social Security systems before offering any specific advice about how employment might affect these benefits.

CONDUCTING INDEPENDENT RESEARCH

"Federal Benefits for Veterans and Dependents" – a VA publication: http://www.va.gov/opa/publications/benefits_book.asp

A Handbook for Injured Service Members and Their Families: <http://www.fallenheroesfund.org/family-resources.aspx>

Veterans Benefits Administration Website: <http://www.vba.va.gov/>

Veterans Benefits Explained – Military.com Website: <http://www.military.com/benefits/veteran-benefits/veterans-benefits>

Competency

Unit 7

Asset Building and Individual Development Accounts (IDAs)

INTRODUCTION

In the past, our best efforts to help American families living in poverty focused almost exclusively on providing income supports, such as TANF and SSI monthly cash payments. In recent years, there has been a growing emphasis on moving beyond these methods. While monthly cash payments provide much needed assistance to meet basic living needs, they do very little to help poor families save for their future and become more self-sufficient. Some of the most current thinking in poverty reduction focuses on the accumulation of “wealth,” not just on cash flow. This approach encourages people to save money and invest in assets that increase in value over time based on the theory that asset development has the capability to both move people out of poverty and keep them out over time. Unfortunately, this population has historically been left out of asset building programs for a variety of reasons, including lack of information. This is beginning to change, and the new way of thinking about asset development is gaining a foothold in the disability services community.

Examples of long-term assets include a home, higher education and training, or a business. By owning a home, an individual is somewhat protected from the adverse effect of rental property being sold, or rental hikes forcing a move. Better training or higher education generally results in better-paying jobs and more options for job replacement if and when needed.

According to recent research, a quarter of American households are “asset poor,” meaning that should they experience income suspension, the individuals and families have insufficient financial resources to support themselves at the poverty level for three months. Even more troubling, asset poverty affects children at a disproportionately greater rate.

Research conducted throughout the last decade on the effects of asset building on low-income, low-asset families indicates that positive results extend beyond tangible assets accumulated. Families with assets demonstrate an orientation toward the future, a decrease in marriage dissolution, and improved housing stability. Families engaging in asset building also tend to experience improved health and well-being, increased civic and community involvement, and decreased rates of transfer of poverty to the next generation. <http://www.acf.hhs.gov/programs/ocs/programs/afi>

TOOLS FOR ASSET BUILDING

Asset-building strategies incorporate many different approaches and use a variety of tools to help achieve the goal of creating asset wealth for low-income people. Government, private philanthropy, research institutions, financial institutions, and community-based groups are all involved in asset building.

Some of the most common tools

for asset building include the following:

- Individual Development Accounts (IDAs) – Matched savings accounts designed to help low-income and low-wealth families accumulate savings for high return investments in long-term assets such as a home, higher education and training or a business.

- Earned Income Tax Credit (EITC) – Refundable federal income tax credit for low-income workers. EITCs enable many low-income tax filers to receive a refund from their payroll taxes on their annual income. To claim the credit, it is necessary for individuals to file their income taxes and apply for federal and / or state EITCs.
- Financial Literacy – Skills and knowledge that successfully enable low and moderate income individuals to become part of the mainstream financial system by learning to effectively manage their finances, participate in banking services, and save for assets and other financial goals.
- College Savings Accounts – Special savings accounts that enable families to save for the costs of college at an accelerated rate.

ASSET BUILDING FOR INDIVIDUALS WITH DISABILITIES

An important piece of benefits counseling is focusing on economic self-sufficiency. Employment alone is often not enough. Beneficiaries will benefit by understanding both the importance of saving and investing for the long-term, as well as the steps to take to effectively manage their income, save, and acquire assets in the future.

There is a continuum that begins with benefits counseling, and continues through planning to save and invest to reach financial goals. It is described below:

Benefits Literacy and Management	Financial Literacy ¹	Asset Development	Planning for Financial Independence
Understanding federal and state benefit programs and how the work incentives will help in reaching employment goals	Understanding personal finance and make decisions about managing money, banking, savings, sound lending practices	Using programs to acquire assets and improve net worth, including Individual Development Accounts, home ownership programs, Earned Income Tax Credit, savings for retirement, and other federal programs	Planning and supporting long-term goals leading to financial independence and self-sufficiency.
Questions to consider:	Questions to consider:	Questions to Consider:	Questions to Consider:
<ol style="list-style-type: none"> 1. What are the federal and state benefits that apply to me? 2. How do I report earnings from employment to the federal and state benefit programs for which I receive assistance? 3. How do I access and use work incentives? 4. How can I work to my fullest potential and pay for the services and items I need in order to work? 5. What are ways I may plan to offset what I receive in benefits through my earnings? 	<ol style="list-style-type: none"> 1. What supports do I need to manage my earned and unearned income? 2. What things do I need to know about budgeting and paying for expenses? 3. What things do I need to learn about my credit, how to get a loan, to use bank programs, purchasing insurance, saving for retirement, and other things that I may need? 	<ol style="list-style-type: none"> 1. What are assets? 2. What are my dreams about saving for retirement, purchasing a home, starting a business, or furthering my education? 3. Are there programs that can help me? How do I access these programs? 	<ol style="list-style-type: none"> 1. How do I continue to achieve my financial goals? 2. What safety nets are available to me if I need these in the future? 3. How do access additional support if needed?

Incorporating Asset Building in Employment and Benefits Planning Services for Individuals with Disabilities

To incorporate asset building in employment and benefits planning services for individuals with disabilities you should plan to engage the individual in a series of conversations regarding their finances, and you should expect to provide financial support services. These are described in the following sections.

¹The United States Financial Literacy and Education Commission provides educational resources on how to save, invest and manage money. Tool kits and resources are available at www.mymoney.gov

Engage in a Series of Different Conversations

- Conversations about the status of the finances of the individuals and their families
- Realistic planning on current earnings potential and future earnings potential (not just at start of job and case closure)
- Discussions to determine the individual's willingness and commitment to save for tomorrow's investments, as well as the monthly amount they are willing and able to save

Provide Different Supports

- Approach and provide benefits planning with self-sufficiency in mind.
- Provide Financial Literacy training resources:
 - Money-Smart Curriculum: <http://www.fdic.gov/consumers/consumer/moneysmart/overview.html>
 - Making your Money Work Curriculum: http://www.cfs.purdue.edu/extension/home_money/index.html
- Help individuals to develop a budget and refer / support participation in programs that offer IDAs, EITC returns, or other asset building strategies.

THE IMPORTANCE OF FINANCIAL LITERACY TRAINING

As the national financial system becomes increasingly complex, it places even more responsibility on individuals to manage the details of their own finances. There is mounting evidence that the burden is too much for many Americans, especially low-income and disadvantaged individuals. Savings and investment rates are down. The level of personal bankruptcies is up. Research shows that a large percentage of people of all ages, incomes, and education levels lack the basic financial knowledge and skills to ensure long-term stability for themselves and their families. This is where a structured program of financial literacy comes in. One of the main goals of financial literacy programs is to teach individuals and families the skills needed to manage income and resources responsibly.

IDA programs address this need by providing basic financial management training and very often, an array of other supportive services. The training and supportive services typically provided include financial education on household budgeting, owning and managing a bank account or a credit card; credit counseling; guidance in accessing refundable tax credits, including the Earned Income Tax Credit and the Child Tax Credit; the basics of saving and investing, and specialized training in owning and maintaining particular assets for the long term. Examples of specific asset training includes such things as credit counseling for home ownership, career counseling for education, and business support and training focusing on business plan development, financing, etc. Together, all of the education and support services provided help participants develop skills and improve their financial habits for the long-term.

INDIVIDUAL DEVELOPMENT ACCOUNTS

IDAs are a great example of public policy that supports asset development. As noted above, IDAs are special accounts that allow members of low-income groups (including persons with disabilities) to save for specific goals such as home ownership, small business ownership, or post-secondary education, while also receiving matching funds and financial counseling. An IDA participant identifies a specific asset that he or she would like to acquire and works with the IDA program to develop a savings plan that will make it feasible to reach the goal and ultimately purchase the asset. The individual then begins to deposit a certain amount of earned income on a regular basis, typically monthly, into an IDA account based on his or her plan.

What defines the IDA savings account is that participants are eligible to receive matching funds if they use their savings to purchase an eligible asset. The match rate is the amount that the IDA program contributes for each dollar that a participant saves. The rate varies greatly across IDA programs and can range anywhere from \$1 to \$8 of match for every \$1 of earnings saved. For example, if a program has a \$2 match rate for every \$1 saved, each time a participant deposits \$25 in their IDA account, an additional \$50 in matching funds would be allocated for their savings. Match dollars for IDAs come from many different places, such as government agencies, private companies, churches, or local charities. In most cases, donors can receive a tax deduction for contributions to IDAs. Depending on the program, the matching funds may not actually be placed into the individual's IDA account during the savings period, but could be held in a separate account by the IDA program until the person is ready to purchase their asset. When the account holder is

ready, both the savings and the match are used to purchase the asset. By leveraging saved dollars against matched dollars, individuals are able to grow their savings more quickly and be successful in purchasing an asset with long-term return potential.

IDAs are usually offered through programs that involve partnerships between local non-profit organizations and financial institutions. The IDA program recruits participants, and provides or arranges with community partner organizations to provide financial education classes for participants. They may also provide or arrange for IDA participants to receive one-on-one counseling and training. After signing up for an IDA program, each participant opens up an account with the partnering bank or credit union. The bank or credit union handles all transactions to and from the IDA, just as they do with other types of savings accounts. Each month, IDA participants receive a report telling them how much money (individual savings + match + interest) is accumulating in their IDA. An IDA program can be as short as one year or as long as five years. IDA participants may have the money dispersed as soon as they have reached their savings goal as long as they have approval from the IDA program sponsor. Some IDA participants choose one big savings goal, such as a home, but others save for a number of related goals, such as textbooks and college tuition.

ELIGIBILITY FOR PARTICIPATING IN AN IDA PROGRAM

In general, IDA program eligibility is based on all or some of the following criteria:

- **Income:** Most IDA programs specify a maximum household income level for applicants. Maximum income levels are most often a percentage of the federal poverty guidelines (usually between 100% and 200%) or the area median income (usually between 65% and 85%).
- **Earnings:** Many IDA programs also require that all or part of savings come from earned income. A paycheck or the EITC refund is the most common source of earned income. Unemployment checks are also an allowable source in some IDA programs. Money given as a gift is not considered earnings.
- **Net Worth:** Some IDA programs also look at the household assets in addition to household income when determining IDA eligibility.

While not an eligibility requirement for most IDA programs, poor credit history is typically a barrier to enrollment that applicants must address before they are able to establish an IDA. IDA programs will frequently assist individuals to address credit issues, or refer them to a credit counseling center for this assistance prior to enrollment in the IDA program.

TYPES OF IDA PROGRAMS

IDA programs can be federally-funded or supported by state and/or private funds. While all of the IDA programs use the same basic mechanism of matched savings accounts to promote asset building, they can differ greatly in terms of who is eligible to participate, the amount or rate of matching funds provided, the types of income that may be contributed to the account, and asset goals that individuals are permitted to save for and purchase. Another key difference is the manner in which IDA contributions and assets are treated or counted by other federal means-tested programs, including the SSI program and Medicaid. Participation in a federal IDA program is treated differently and more favorably by other federal means-tested programs than is participation in a state or privately-funded IDA.

IDA programs are currently most widely available through the federal Assets for Independence (AFI) Act or the state-administered TANF programs. However, IDA programs do not have to be part of these federal initiatives and there are many IDA programs supported by state funds, other local governmental sources, private funds, or combinations thereof. For the purposes of this chapter, there will be heavy emphasis on information about AFI IDAs, since they will be most relevant to the work incentives counselor's work with beneficiaries.

UNDERSTANDING AFI IDAs

One federally-supported IDA program is the Assets for Independence (AFI) program. The AFI IDA program is a discretionary grant program authorized under the Assets for Independence Act of 1998. The grant program is administered at the federal level by the Office of Community Services (OCS), within the Administration for Children and Families, US Department of Health and Human Services. Through this grant program, OCS supports more than 250 agencies and community-based groups across the nation that run AFI Projects and other programs to help low-income families build their economic assets. These AFI grantees include an array of community-based nonprofits and state, local, and tribal government agencies and others, such as community development financial institutions and credit unions. Additionally, there are a growing number of disability agencies and community-based organizations securing AFI funding to establish IDA programs.

The AFI grants provide up to \$1,000,000 in federal funds to grantees for five-year awards to support their IDA programs. As a condition of their federal AFI award, grantees must provide non-federal funds in an amount at least equal to the federal AFI grant. So, in other words, to secure the federal dollars, at a minimum, AFI grantees must match every AFI grant dollar with a non-federal dollar. An additional requirement of the AFI program is that the funds must be allocated and used in the following manner: At least 85% of gross funding must go directly to match individual contributions to IDAs; no more than 13% can be used for financial education and project administration; and no more than 2% for data collection and evaluation activities.

Each AFI Project establishes a Project Reserve Account to hold the federal grant funds and non-federal funds that are committed to the AFI Project. Additionally, each project partners with one or more financial institutions to host the participant IDA accounts. These accounts are either custodial or trust accounts established by the AFI Project organization, requiring signatures from both the AFI project coordinator and IDA participant for any withdrawal of funds. As participants make regular savings deposits into these accounts, a portion of the Project Reserve Account is allocated for each participant deposit as match.

AFI IDA Program Basics

The whole idea behind the IDA program is to help participants save enough money to purchase assets that may increase their standard of living and help them become more independent. As with many IDA programs, AFI permits the savings and matching funds to be used for only three types of asset goals. These include buying a first home, accessing higher education or training, and starting or supporting a new or existing small business. There are, of course, rules related to how these asset goals are defined and what the IDA funds can be used to pay for in each instance. The goal of purchasing a home applies to first-time homebuyers only. In addition, the home must be the participant's main residence, and the sale price of the house must not exceed 120% of the average price for a home in that area. The IDA can be used to pay for a variety of costs including the down payment, settlement fees, loan fees, inspection fees, other closing costs, and reconstruction of the newly purchased home.

With regard to postsecondary education or training, this goal requires that expenses be paid to an eligible educational institution. The educational institution must either be a college/university or a vocational school as defined by the Higher Education Act or by the Carl D. Perkins Vocational and Applied Technology Education Act. The types of expenses that can be paid with IDA funds include course fees, books and supplies, test fees, the costs of preparation courses for professional licensing examinations, special equipment, including a computer and software, and tuition and fees associated with enrollment or attendance at the school.

The microenterprise or small business goal requires that the business be legally established and not in violation of any law or public policy. It is also a requirement that the owner have a

business plan that has been reviewed and approved by a financial institution, microenterprise development organization, or nonprofit loan fund. AFI grantees will in almost every instance have relationships with community partners who are able to provide technical support to IDA participants on business plan development and review. The types of expenses that the IDA can pay for under the business plan include capital, plant, equipment, working capital, inventory, and licenses.

It is important to keep in mind that not all AFI Grantees will offer all three of the allowable asset goals. Depending on the type of organization and area of expertise, a grantee may choose to focus on only one or two of the asset classes allowed. For instance, a housing authority with AFI funds may only offer IDAs for home ownership. Fortunately, there are many federal and non-federal IDA programs that beneficiaries can explore and consider to meet their interests and needs!

In addition to deciding which of the three asset goals they will offer, the AFI grant program also allows for each grantee to determine their own match rate. While many of the programs match at 2 to 1 rate, or \$2 in match for every \$1 saved, there are some AFI grantees that provide up to as much as an \$8 match for every \$1 saved. Within the parameters established by the AFI legislation and rules, grantees also have the ability to design the structure or rules around participant savings that are contributed to the account. As a result, there is much variation between AFI IDA programs related to the following:

The maximum amount of savings that an AFI Project will match. AFI limits the amount of federal funds from one AFI Project that may be allocated to each client's account: \$2,000 for an individual and \$4,000 per household (where multiple household members hold IDAs).

The required schedule of contributions to the account or, in other words, whether participants will be required to save monthly, quarterly, or over some other period.

- The minimum dollar amount that participants can deposit each period. The minimum savings target is set primarily to ensure that participants have the maximum opportunity to earn the full match allowed under the program so that they have the funds necessary to purchase their asset at the end of the savings period.
- The maximum amount of earnings that can be contributed each savings period.
- The time periods over which participants are allowed to save. Generally, this time period will range from one to no more than four years.

Allowable Emergency Withdrawals

In terms of withdrawals from the AFI account, the program rules require that participants must be enrolled in a project for at least six months before they may withdraw funds from their IDAs. Aside from withdrawing the funds from their account to purchase the particular asset they have saved for, participants are only permitted access to their account funds for certain emergency needs that arise while they are participating in the IDA. These emergency withdrawals are only permitted when the funds are needed for medical expenses, to pay rent or mortgage to prevent eviction or foreclosure, or to pay for vital living expenses (e.g., food, clothing, shelter, utilities, and heat) following a job loss. A participant may withdraw funds for these expenses if they are incurred for the participant, a spouse, or a dependent but they are only permitted to withdraw amounts they have deposited and cannot withdraw the matching funds. After an emergency withdrawal has been made, the participant must reimburse her or his account for the full amount of funds withdrawn within 12 months. If the participant does not replenish these funds as required, he/she may not continue in the project. In instances when this occurs, any remaining IDA savings are to be returned to the participant, and all matching IDA funds that were allocated for them are returned to the Reserve Account for use by another account holder.

EXAMPLE – Bill’s IDA Here is an example of an IDA saver. In this example, Bill is interested in starting a new landscaping business. Bill contacts the local AFI grantee, AAA Credit Union, for assistance. After meeting with the IDA case manager, the two decide that Bill will benefit from participating in both the general financial education classes provided by the credit union and debt management. Bill participates in these activities and the IDA program then refers him to a community partner that provides training in small business management and support in developing a business plan. Once Bill completes all of these steps, he is assisted with opening his IDA account. Bill’s IDA will allow him to save the \$5,000 in capital that he needs for his new business over the next two years. Bill signs his savings plan agreement and begins depositing \$42 a month in his IDA account. Each time Bill makes his \$42 deposit, the IDA program allocates \$168.00 of their Project Reserve Account as match to Bill’s savings. At the end of the two year savings period, Bill has saved \$1000 in his IDA account. His savings are matched by \$4000 of AFI matching funds for a total of \$5000. Bill has met his goal and is able to use the \$5000 from his IDA participation as capital for his landscaping business. This example illustrates how effective IDAs can be in assisting low-income individuals to access the supports they need and save successfully for their life goals.

AFI IDA Participant Eligibility

All IDA programs have income and net worth requirements that must be met for participation. Eligibility is tied to household income and net worth, meaning that the IDA program will consider the income of all individuals in the family. To be eligible to participate in an AFI IDA program, participants must qualify under one of the following two requirements: They must either be eligible for TANF at the time of application or, if they are not TANF eligible at the time of application, they must have annual household income that is either within the allowable limits for the Federal Earned Income Tax Credit or is less than twice the federal poverty level.

In addition to meeting the income requirements, individuals who qualify under the Earned Income Tax Credit or the 200% of federal poverty rules must also have household net worth that is less than \$10,000. Household net worth is the amount of assets owned by all household members minus their debts. In making this determination, the AFI grantee will consider the household net worth at the end of the calendar year that preceded the time of the individual’s application. The value of a household’s home and one car are both disregarded during the net worth determination.

It is important to recognize that within these broad federal parameters, IDA projects have some flexibility to establish rules for defining and counting income and resources. Income that is usually not counted in IDA eligibility determinations includes income from means-tested and other assistance programs, such as SSI, TANF, Social Security, unemployment insurance benefits, and worker’s compensation, to name a few. But, this may not be the case with all programs. The best approach, given this variation, is to connect directly with your local AFI grantee for information on how they define and handle eligibility determinations.

Impact of AFI IDA Participation on Social Security Disability Benefits (SSDI, CDB, DWB)

As was described in Part A of Module 3, the Title II disability benefits is an insurance program that an individual is entitled to based on past work in Social Security covered employment. A person may establish eligibility for benefits based on their own work record and insured status, or on the work record of a family member who has insured status and is disabled, retired or deceased. Title II beneficiaries may face fewer difficulties in accumulating assets than Title XVI beneficiaries.

Eligibility for Title II disability insurance benefits is not based on economic need and does not have any restrictions on savings, investment or asset accumulation. As a result, participating in an IDA will not adversely affect an individual's application or eligibility for Title II disability benefits. In addition to this, once a person has established eligibility for a Title II benefit, his/her earnings contributions to an IDA, matching funds, or interest earned will not have any impact on the cash benefit amount. Individuals receiving a Title II benefit are not penalized for having cash savings, IDAs, pension funds, retirement accounts, real property, or other investments to rely upon in addition to their Social Security disability payment and Medicare coverage. Given this, IDAs are a perfect asset-building vehicle for these beneficiaries.

There are additional incentives in the Title II Disability Program that support beneficiaries' efforts to work and earn money, thus making it possible for them to participate in an IDA. One example is an Impairment Related Work Expense (IRWE). These are services or items that are needed by a beneficiary to work, and are incurred by that person as a result of their disability. The purpose of the IRWE incentive is to enable beneficiaries to retain their cash payment until such time that their countable earnings exceed the SGA level. Once approved by Social Security, the dollar amount of the IRWE is deducted from the beneficiary's gross earnings in the process of determining whether earnings are substantial. By reducing the amount of earnings considered, an IRWE may make it possible for a beneficiary to continue to get their Title II disability benefit when it otherwise would stop. By allowing the beneficiary to retain the SSDI cash payment and work, it is more likely that he or she will be able to contribute earned income to the IDA.

Work incentives counselors should remember that Plans for Achieving Self-Support (PASS) are also available to Title II beneficiaries, even though this is generally considered to be an SSI work incentive. More information on the interaction between IDA and PASS is provided earlier in this unit. Other SSDI work incentives that allow for continuation of the cash payment would apply here as well, and are covered in more detail in Module 3A of this manual.

Since SSI is a means-tested program, many beneficiaries may be concerned that participating in an AFI IDA program will cause ineligibility for SSI and Medicaid. However, this is definitely not the case! While asset accumulation is severely limited in the SSI program, the good news is that funds set aside in a federally-funded IDA program, meaning the programs authorized by AFI, BFRIDA, and TANF, do NOT count toward the SSI resource limits, matching deposits do not count as income, and the account owner's deposits can actually cause the SSI benefit amount to go up. Since January 1, 2001, when Social Security expanded its exemptions for funds held in TANF and AFI IDAs, there is NO negative impact on an individual's SSI benefit for participating in a federally-funded IDA. See below for a description of each of these benefits.

1. How SSI Treats Contributions to an AFI IDA

The SSI program rules specify that income an individual contributes to an AFI or TANF Demonstration Project IDA are deducted from wages when determining countable earned income. The dollar amount of earnings contributed to the IDA each month is subtracted from their gross monthly wages or net earnings from self-employment, generally reducing their countable earnings by half the amount that they deposit. By reducing the amount of countable earnings and overall total countable income, the individual may be assisted to establish eligibility for SSI when he or she otherwise may have had income in excess of the allowable levels.

The IDA income deduction for beneficiaries is also applied to the parent's IDA contributions in the deeming process. Thus, if a parent establishes her own IDA, the earnings that she contributes to her IDA are deducted from her gross income in the deeming process. Because the parent is considered to have less countable income, it results in a smaller amount of in-

Impact of AFI IDA Participation on SSI Benefits

come being deemed to the child. This may result in the child being able to establish eligibility for SSI.

EXAMPLE – Sheva’s IDA Sheva is a concurrent beneficiary who has been approved for an AFI- IDA from her local non-profit agency, Helping Hands, in cooperation with the Community Credit Union. Her goal is to save enough to attend the state university and study for a Bachelor’s Degree in Elementary Education. She would like to be an art teacher. Sheva is working part-time at an art supply shop. Her gross monthly earnings are \$700.00 a month. Sheva decides to contribute \$100.00 a month into her IDA Account. Here is how the SSI formula works for Sheva:

Step 1:	220.00	Unearned income (SSDI)
	-20.00	General income exclusion
	200.00	Countable unearned income
Step 2:	700.00	Gross monthly earnings
	-100.00	IDA earnings contribution
	600.00	
	-65.00	Earned income exclusion
	515.00	
	/ 2	One-half remainder exclusion
	267.50	Countable earned income
Step 3:	200.00	Countable unearned income
	+267.50	Countable earned income
	467.50	Total Countable Income
Step 4:	710.00	Federal Benefit Rate (2013)
	-467.50	Total Countable Income
	242.50	SSI Payment Due

This example clearly illustrates how the SSI program rules promote and enhance the ability of beneficiaries to save for asset goals and their futures. Prior to beginning the IDA earnings contribution of \$100 a month, Sheva received \$220 in SSDI, had \$700 in gross earnings and was due an SSI payment of \$192.50. By continuing to earn \$700 a month and contributing \$100 of these earnings to an IDA, the SSI payment due increased to \$242.50. This is an increase in the monthly SSI payment of \$50!

2. How SSI Treats Matching Funds Contributed to an AFI IDA Account

In addition to IDA contributions being excluded, any matching funds that are deposited in a TANF or AFI Demonstration Project IDA are excluded from income. Any interest earned on the individual’s own contributions and on the matching funds that are deposited in a TANF or AFI Demonstration Project IDA is excluded from income. In addition, disbursements from an AFI or TANF Demonstration Project IDA used for a qualified purpose, meaning education, business capitalization or a first home purchase, are excluded from income. If a parent is participating in an IDA for home ownership, and gives or transfers ownership of the home to their child on SSI, it will only count as income in the month it is received. If it is the child’s principal place of residence, the income will be valued at the 1/3 in-kind support rate for the

first month, and then excluded as a resource at the beginning of the following month. Finally, emergency withdrawals made by a beneficiary from an AFI or TANF IDA are considered to be loans and are therefore not counted as income for SSI purposes.

3. How SSI Treats AFI IDA Funds During Resource Determinations

Both the AFI 2000 Amendments and TANF statute include a requirement that all federal means-tested programs disregard any assets that accumulate in an AFI or TANF IDA when determining eligibility or benefit levels. To this end, the Social Security Administration established SSI program rules that provide for several disregards. First, an individual's contributions that are deposited in an AFI or TANF Demonstration Project IDA are excluded from resources in determining both initial and ongoing eligibility for SSI. Second, any matching funds that are deposited in an AFI or TANF Demonstration Project IDA are excluded from resources. Lastly, any interest earned on the individual's own contributions and on the matching funds is also excluded.

The savings goals that AFI or TANF accounts fund including home ownership, self-employment, and postsecondary education are also excluded from the SSI resource tests. The primary residence of an SSI beneficiary is completely excluded from consideration as a resource, no matter what it is worth. It is important to note the phrase "primary residence" means that the applicant must live in the home for it to be excluded. The parcel of land on which a home is located is also excluded, regardless of its size or value. Homeownership is and always has been an excellent way for concurrent beneficiaries to build wealth; participating in an AFI IDA makes this goal all the more attainable.

SSI also permits ownership of a business through a specific resource exclusion known as "property essential for self-support" (PESS) under certain prescribed circumstances. This important self-employment incentive allows SSI beneficiaries to accumulate unlimited assets through small business ownership, another way to build wealth. Finally, the SSI program offers a variety of income and resource exclusions specifically designed to encourage saving for postsecondary education. Specifically, SSI program rules provide that any portion of a grant, scholarship, fellowship, or gift used or intended to be used to pay the cost of tuition, fees, or other necessary educational expenses at any educational institution, including vocational and technical education, is excluded from resources for 9 months beginning the month after the month it was received. Such funds are not income when received and are excluded from resources for the following nine months.

IMPORTANT NOTE: If there is unused cash reclaimed when an IDA ends that is disbursed as cash, it will be counted as income in the month that it is received. Any amount remaining at the beginning of the second month will count as a resource. There are, however, options available to prevent these funds from being counted as income and resources that could adversely affect SSI eligibility and payment amount. The funds may be rolled over by the IDA program into a new IDA account if appropriate. Beneficiaries may also consider setting the funds aside in a Plan for Achieving Self-Support, or using the funds for other items or services not considered as countable income or resources for the SSI program.

THE INTERACTION BETWEEN IDAs AND PASS PLANS

Using an IDA in combination with a Plan for Achieving Self-Support (PASS) may help a beneficiary more efficiently and effectively reach their goals. First, it's important to keep in mind that while IDAs focus on promoting self-sufficiency through acquiring assets that grow in value over time, PASS promotes the self-sufficiency of beneficiaries by providing

important employment supports. In some cases, this means helping beneficiaries save for and purchase assets they need for their job or self-employment. In other cases, it means helping people to use their income to pay for certain services or supports that they need to work.

PASS permits individuals to deduct countable income, or exclude resources that would otherwise reduce or eliminate the SSI payment. PASS is an agreement between the Social Security Administration and the beneficiary. The beneficiary agrees to take outlined incremental steps to achieve a specific employment goal. The plan allows the beneficiary to use “countable income” or resources to pay for goods or services needed in order to reach the goal. In turn, the Social Security replaces the PASS expenditures by increasing the individual’s SSI benefit payment. This program offers tremendous flexibility. Beneficiaries have used it to start small businesses, to pay for education and training, to purchase vehicles and necessary equipment, to pay for short-term job coaching services, to pay for child care, and for other goods or services too numerous to name here. Unlike an IDA, however, a PASS cannot be used to support homeownership.

PASS is intended to help beneficiaries acquire the services and items they need to initially start work. It is not intended to be a mechanism for making income or resources available to cover ongoing work costs. In addition, the intent of PASS is not only to help a beneficiary become employed, but to become employed in a job / business that will ultimately result in increased earnings and reduce reliance on government benefits. Consequently, for a PASS to be approved by Social Security, there must be a reasonable chance that an individual will be able to achieve their stated work goal, and there must be a clear connection between the work goal and increased earning capacity.

While PASS is generally described as an SSI work incentive, it actually can be used by beneficiaries of the Social Security Title II disability program to establish SSI eligibility. If an SSDI beneficiary receives a monthly cash benefit that is above the allowable unearned income limit, then SSI eligibility is precluded. However, if the SSDI payment is set aside under an approved PASS, and the individual meets all other SSI eligibility criteria, then eligibility for SSI may be established. The SSI payment is provided to support the basic costs of food and shelter while the SSDI payment funds the items / services the person is saving for and purchasing under the PASS. This is an important consideration when looking at the interaction between PASS and IDA for Title II beneficiaries as well.

While PASS and AFI IDAs differ slightly in their intended outcomes, both are valuable tools with the potential to assist people to acquire assets and enhance their ability to be more self-sufficient. When considering PASS opportunities for IDA participants, it is critical to keep in mind that acquiring assets through use of a PASS always needs to be tied to an employment outcome. If an IDA participant has no interest in pursuing an employment goal, then PASS is not a viable option to support their asset development goals. If, on the other hand, an IDA participant with a disability is interested in pursuing both employment and asset development goals, then a PASS may be just the ticket to help them move more strategically and efficiently forward with their plans. At the end of this unit, a table is provided that presents a side-by-side comparison of IDA and PASS characteristics, for use in assessing how useful a PASS might be for a particular AFI-IDA participant.

There are some specific situations where a PASS may complement IDA participation for select beneficiaries. One challenge to individuals participating in an IDA relates to having the earned income necessary for the contribution. In cases such as this, PASS may be a first step towards meeting their long-term asset development goals. An individual may opt to use a PASS alone or in combination with accessing other employment services available in the community to assist them in securing employment. The employment and earnings outcome supported by a PASS will make IDA participation a possibility.

In addition to using a PASS as a conduit to IDA participation, there are other circumstances when using a PASS and IDA together may be helpful to a beneficiary. The following are examples of how a PASS may complement IDA participation for select beneficiaries.

Scenario 1: A person is contributing earnings to an IDA, and has additional unearned income, such as an SSDI benefit. While the unearned income cannot be used as contribution to the IDA, it can be used in a PASS. If the IDA participant is saving for education or self-employment, their unearned income can be set aside in a PASS to help them save toward their employment outcome.

Without a PASS: After an exclusion of \$20, unearned income in the SSI program results in the SSI check being reduced dollar for dollar. For example, if an individual has SSDI of \$220 a month, this unearned income causes a reduction in their monthly SSI of \$200.

With a PASS: By using unearned income in a PASS to save / pay for post-secondary education or self-employment expenses, participants can leverage additional SSI dollars to be used towards their IDA savings goal, making it possible to reach their goal more quickly. For example, if a beneficiary, in addition to their monthly IDA earnings contribution of \$100, sets aside their \$200 in SSDI in a PASS for their self-employment goal, the \$200 SSDI PASS contribution will be excluded from countable income in determining their SSI payment. The IDA participant would essentially be saving \$300 a month toward their self-employment goal (\$100 earnings contribution to IDA and \$200 SSDI set aside in PASS), and would have the potential to recover up to \$250 of their savings in their SSI payment.

Scenario 2: A person has other items or services they need in order to meet their work goal that are not permissible AFI IDA savings goals (e.g. assistive technology, personal assistance services, transportation).

While a PASS could be established to set aside funds for these additional employment expenses, it would require that the IDA participant have additional income to use for these expenses beyond the earnings being contributed to the IDA. For example, an IDA participant has \$200 in earnings and is currently contributing \$50 a month to his or her IDA for post-secondary education. A PASS can be established to exclude an additional \$50 of earnings towards job development / job placement services that will be needed to secure employment once the education program is completed. In total, the beneficiary will be saving \$100 a month towards their goal, including the \$50 earnings contribution to the IDA and \$50 earnings set aside in the PASS.

Scenario 3: A person is participating in a non-federal IDA for post-secondary education or starting a business and has a need to set up a PASS to exclude their IDA funds (contributions, match, interest earned) as income and resources.

Establishing a PASS is most necessary and advantageous for persons participating in IDA programs that are not federally funded (i.e., AFI or TANF IDAs). This is due to the fact that current SSI program exclusions for IDAs do not extend to non-federal IDAs. Depending on how the state or local IDA is set up or structured, funds contributed to and accumulated in an IDA may count as income and / or resources for the SSI program. In these instances, a beneficiary may want to establish a PASS to exclude IDA self-employment or post-secondary education funds supporting an employment goal.

IMPORTANT – Social Security Policy Clarification:

In instances in which a person is contributing earnings to a federal AFI or TANF IDA, it is not permissible under SSI rules for the earnings contributions to the IDA to be simultaneously excluded under a PASS. Instead, if a person is contributing earnings to a federal IDA, their earnings contribution must be excluded from gross earned income first in the SSI calculation as required by POMS citation SI 00820.500A2 Earned Income Exclusions - General. The SSI program rules pertaining to earned income exclusions require that, first, income is excluded as authorized by other federal laws. Since both the AFI and TANF statutes include a requirement that IDA contributions be excluded by other federal means tested programs, the requirement to exclude earnings contributions first from earned income in the SSI formula applies, and it is, therefore, not possible to exclude the IDA earnings contributions in a PASS. Please note that this rule applies only to earnings contributions made to a federal IDA (AFI and TANF). It does not apply to contributions made to non-federal IDAs, and, as a result, it is still possible for individuals to simultaneously exclude earnings contributions to a non-federal IDA in a PASS.

Scenario 4: A participant's IDA account will be closed and there are unused earnings contributions that will be returned to them.

If there is unused cash reclaimed when an IDA ends that is disbursed as cash, it will be counted as income for the SSI program in the month that it is received. Any amount remaining at the beginning of the second month will count as a resource. There are, however, options available to prevent these funds from being counted as income and resources, and adversely affecting SSI eligibility and payment amount. The funds may be rolled over by the IDA program into a new IDA account if appropriate. Beneficiaries may also consider setting the funds aside in a PASS to be used in support of an employment goal, or may use the funds for other items or services not considered as countable income or resources for the SSI program.

PASS Considerations for IDA Participants

The flexibility and potential to assist individuals to plan for and secure the items and services they need to work clearly sets PASS apart as one of the most valuable Social Security work incentives. Given the obvious parallels between IDAs and PASS in supporting asset development and self-sufficiency, it is easy to understand the growing interest in this program on the part of AFI grantees. However, in spite of the potential PASS offers to assist IDA participants to more strategically and quickly meet their asset development and self-sufficiency goals, it is important to recognize that PASS is not for everyone.

The following are important questions that work incentives counselors should address in the discussion with IDA participants who are considering use of a PASS:

1. Does a PASS make sense given the person's employment goals and needs?

Regardless of the asset goal being pursued through an AFI IDA, PASS is not a good option if an individual is not interested in pursuing employment or self-employment and willing to reduce their reliance on benefits supports in the long-term. In addition, the person must have a need for additional items or services to be saved for and purchased under the PASS. If the employment goal is attainable without the benefit of additional supports, then there is no need for a PASS.

2. Does establishing a PASS make good financial sense? Are additional funds necessary and available for a PASS?

In instances in which a beneficiary is participating in a non-federal IDA, using an IDA and a PASS simultaneously will not necessarily require additional funds. This is the case if an individual is contributing earnings to the non-federal IDA for post-secondary education or self-employment, and is simply excluding their IDA contribution in a PASS.

In other cases, such as when a person is setting aside funds for items or services that are not permissible IDA asset goals, additional funds outside of the earnings being contributed to the IDA will be required. These PASS funds may be either earned or unearned income, or other resources that the person has.

3. Is the individual in a position to recover the funds set aside in a PASS through an increase in SSI payment?

PASS will not always result in a beneficiary recovering 100% of the funds used under the plan through an increase in SSI payment. How much of the PASS expense is actually recovered varies significantly across beneficiaries and is limited by the Federal Benefit Rate, which is the maximum monthly SSI payment. The current Federal Benefit Rate in 2012 is \$698. An individual currently receiving a \$500 SSI payment can only increase their monthly payment by \$198, in spite of the fact that they begin to contribute \$300 to a PASS. Given that the financial outcome of using a PASS will vary across individuals, it is essential that work incentives counselors, WICs and EWICs thoroughly explain this impact in a way that can be understood by the participant.

4. Does the individual have the ability to meet their daily living expenses (food and shelter)?

Social Security will look closely at the individual's living expenses to make sure they can afford to set aside the income in a PASS and live on the SSI payment. In most cases, Social Security will require the individual to submit a PASS Monthly Expense Form showing all the living expenses that have to be paid each month. If an individual is not able to prove that he/she can live off of the available income, the PASS is not likely to be approved.

5. Is the IDA participant willing to commit the time and effort to developing a feasible plan for employment and completing the PASS application and approval process?

Individuals interested in a PASS are required to submit their plan in writing using a standardized form, SSA-545-BK. Additionally, individuals submitting a PASS for approval who are not currently receiving SSI will need to simultaneously complete the initial eligibility and application process for SSI. For those individuals already receiving SSI, meeting initial eligibility for SSI has already been accomplished and this step is not necessary. The PASS form requests detailed information in multiple areas, including work goal, medical / vocational / educational background, employment plan activities and expenses, and funding for the work goal. Significant planning and effort are required of the individual to gather required information, develop a viable plan, complete the application and work with Social Security personnel throughout the review and approval process.

Need for Separate IDA and PASS Plans and Accounts

Both IDA and PASS require that funds be set aside in special accounts. AFI Project participants' Individual Development Accounts are either custodial or trust accounts established by the AFI Project organization. PASS Plans, on the other hand, must show how income/ resources set aside will be kept clearly and easily identifiable. Separate bank accounts for PASS savings are usually used to provide for verification of PASS savings and expenditures. A legitimate concern of individuals considering use of IDA and PASS simultaneously is the need to maintain separate accounts. If a PASS is being established strictly to exclude the beneficiary's earnings contributed to a non-federal IDA, then it is possible that the IDA account can also serve as the PASS account. However, if the PASS involves excluding funds in addition to the IDA contribution that will need to be accessed and used periodically for purposes other than the specific IDA savings goal, two separate accounts will need to be established and managed.

Need for Additional Case Management and Monitoring Supports

While one of the most valuable work incentives, PASS is also one of the more complex, time and effort intensive work incentives. PASS development and approval is just the first step in the process. Successful implementation of the plan requires on-going management and monitoring, including establishing and managing the PASS account, ensuring that savings / spending plans are implemented, maintaining records, tracking progress on key milestones identified in the employment plan, and communicating with Social Security personnel. While some individuals will be very effective in managing their PASS efforts on their own, others will require additional supports. Work incentives counselors and other disability agencies and organizations are key partners to consider for these types of supports.

THE COMMUNITY PARTNER WORK INCENTIVES COUNSELORS' ROLE IN SUPPORTING BENEFICIARY PARTICIPATION IN AFI IDAs

Working with members of the asset development community and IDAs may be new to many work incentives counselors, and it may be even a bit daunting as it is somewhat out of the realm of our normal, everyday dealings with agencies and organizations in the disability community. While these feelings are certainly understandable, work incentives counselors should not be discouraged or reluctant to move forward in establishing partnerships with these community

organizations. After all, it is important to keep in mind that work incentives counselors and AFI Grantees share very similar commitments and goals related to assisting and supporting individuals who are low-income and disadvantaged to move toward greater personal independence and self-sufficiency. Remember, two of three asset goals supported by AFI IDAs are all about supporting the employment of people through education and small business capitalization.

As work incentives counselors move forward with efforts to build relationships with AFI grantees, it is also important to know that the staff members of these programs are likely to share some of the same concerns about expanding into new territory! Most AFI grantees are not familiar with Work Incentives Counseling programs or the larger disability community and are concerned about the ability of those programs to support IDA participants with disabilities. Many have expressed being overwhelmed by the large number of agencies and organizations serving people with disabilities and readily admit to not knowing where to go for help or for answers to their questions.

Finally, it is also likely that the work incentives counselor will encounter AFI programs that have misconceptions about the impact of IDA participation on Social Security Disability benefits. The AFI grantees may have heard stories about the complexity of the Social Security Disability benefit programs, and may even have received guidance that IDA participation for SSDI and SSI beneficiaries is not possible or beneficial. Possible concerns or misconceptions may include that people with disabilities who receive these benefits are not able to work and thus cannot contribute earned income to an IDA, that they are prohibited by Social Security program rules from acquiring assets, and that they will lose their benefits if they participate in an IDA. In an effort to do no harm to beneficiaries, AFI providers may discourage participation in an IDA by people with disabilities.

The reality is that Social Security Disability beneficiaries are wonderful candidates for AFI IDAs. The Social Security Disability program rules actually favor AFI and TANF IDA participation and provide numerous opportunities for beneficiaries to build assets for their future without jeopardizing essential benefit supports.

Additionally, these disability benefit programs provide an array of incentives and supports to work. The SSI program, in particular, is very work friendly. Many beneficiaries of these programs can and do work, and thus can contribute to an IDA. Although the program rules are very IDA friendly, they are not well known or understood by the asset development community. Consequently, assisting AFI grantees to understand the basics of these Social Security rules pertaining to work, earnings, and IDAs is an important step towards encouraging and supporting the participation of Social Security beneficiaries.

As mentioned earlier, The Office of Community Services supports more than 250 agencies and community-based groups across the nation that run AFI Projects and other programs to help low-income families build their economic assets. There are AFI grantees in virtually all states, and new ones being funded each year. The first step in supporting beneficiaries to participate in IDAs is finding out who the AFI grantees are in your community and state. The Office of Community Services makes this a fairly simple task by providing a directory of the projects on their website. The link to the “AFI Project Locator” site can be found under “Conducting Independent Research” at the end of this unit. Some work incentives counselors may be surprised to see the large number of AFI grantees in operation in their state. California, for example, has 24 AFI projects and Massachusetts has six.

Work incentives counselors should be aware that the grantee organizations listed on the AFI website are likely to be working with a network of community partners to deliver IDAs and services to participants. Many AFI grantees have found that developing partnerships with other organizations to serve as IDA service sites makes it possible to offer IDAs across a wider geographic region. These partners function as a “store front” of sorts for the AFI grantee, offering individual development accounts as an additional service option to their current constituents and / or new referrals from the community.

Frequently, these partner organizations are referred to as IDA collaborative members or intermediaries. The partners are typically allocated a certain number of IDA slots by the AFI grantee, and manage the local recruitment, initial screening, assistance with eligibility, and case management support throughout an individual’s IDA participation. This is particularly helpful to the AFI grantees that are faced with limited resources for providing direct case management supports. So, when meeting or talking with the AFI grantee it is important to inquire about their AFI network partners. It will also be important to find out which agency or organizations interested beneficiaries should be referred to and the process for doing so. Other program requirements and characteristics that work incentives counselors will want to become familiar

with include eligibility definition and determination, the asset goals that the program offers, IDA match rate, and the requirements set by the program for participant contributions and savings period.

It is also important to learn about the IDA services and supports that participants can expect from the AFI grantee and their partner organizations. While all IDA programs are unique, there are some basic services and supports that can be expected:

To start with, participants can expect that once they are accepted into the program, an IDA case manager will meet with them to develop their individualized savings plan. Participant Savings Plans are required of participants in all IDA programs and these plans frequently serve as a contract between the individual and the program, spelling out expectations of both parties. The savings plans typically detail the asset to be purchased, the amount to be saved by the individual and the schedule of deposits, the match rate that will be provided by the AFI IDA project, the financial education classes and asset specific training that the individual agrees to participate in, and information on other counseling or supportive services that will be provided.

Once the savings plan has been established, the AFI grantee will assist the individual with opening their IDA account and provide them with assistance as needed throughout the period of time that they are saving. This includes support in assuring that the participant is saving as planned by monitoring his or her IDA deposits and being available to problem solve when issues arise. IDA participants can also expect that the AFI grantee will allocate matching funds as they make their regular earnings contributions, and also provide or arrange for the financial education and asset-specific training needed for the participant to be successful. Finally, once the savings goal has been met and all training and other requirements completed, the AFI grantee will assist with the actual asset purchase.

Work Incentives Counseling programs have an opportunity to play an important role in collaborating with AFI grantees to support asset development for Social Security Disability beneficiaries. There are several key activities that work incentives counselors may want to discuss and pursue when developing relationships with these organizations. To start with, work incentives counselors possess a wealth of information related to the disability benefit programs and the impacts of work, earnings and IDA participation. This is information that AFI IDA projects have a tremendous need for! It is very likely that local AFI grantees will be receptive to offers to conduct workshops for their staff and partners on this topic. While every Work Incentives Counseling program may not be in a position to offer formal training programs, it may be possible to serve as a source of information, answering questions related to disability benefits for AFI grantees as they arise. Just as a reminder, the VCU National Training Center can assist with presentation materials on disability benefits and IDAs to support these efforts.

A second collaborative activity is identifying and referring individuals between Work Incentives Counseling programs and AFI grantee organizations. As staff support beneficiaries who work or are actively pursuing work, it is likely that work incentives counselors will encounter individuals who can benefit from participation in an IDA. Similarly, it is very likely that AFI grantees will meet beneficiaries who are working and pursuing an IDA, but have not yet connected with a Work Incentives Counseling program for planning and assistance with their benefits and work incentives. It may be helpful to work out a formal process of referring beneficiaries between the two organizations to ensure that beneficiaries are afforded access to all of the supports they need to be successful.

A third collaborative activity involves providing ongoing benefit and work incentive support as needed to beneficiaries participating in IDAs. There are a number of instances when this might be needed; including the point in time that IDA participation begins. SSI Beneficiaries in particular are likely to need assistance in assessing the impacts of their IDA participation on cash payments and may also need support in ensuring that Social Security deducts their IDA contributions from earnings in calculating their payment amount. Ongoing assistance will also be needed by beneficiaries in planning and implementing Social Security and other work incentives in combination with their IDA. This is particularly true for beneficiaries using a PASS in combination with IDA. Finally, supports are likely to be needed when IDA emergency withdrawals are accessed or when a beneficiary doesn't successfully complete their IDA and earnings contributions are returned. And, finally, as an integral part of the employment support team, work incentives counselors are well positioned to link AFI grantees with other disability agencies and organizations in the community for other types of information and resources.

Benefits literacy includes education on a number of key factors including understanding of the eligibility requirements of the various programs, the impact of earned income upon the benefits, understanding what information needs to be

reported to the various governmental agencies, and training on common benefits problem areas and how to resolve benefits issues if and when they occur. Yet, in spite of its importance, most financial literacy programs provided by AFI grantees do not include a benefits literacy component. Work incentives counselors may want to explore opportunities and strategies with their IDA partners to address this need as they move forward in developing partnerships to support beneficiaries. IDAs provide a wonderful opportunity for beneficiaries to build wealth and financial independence. The support and involvement of work incentives counselors in helping beneficiaries to understand the IDA benefit impacts and work incentive opportunities are critical to their success!

IDAs present Social Security disability beneficiaries with a unique opportunity to accumulate wealth and save for long-term goals such as home ownership, education, and self-employment. Individuals with disabilities have historically been left out of asset building programs for a variety of reasons, including lack of information about asset development in the disability program. This is beginning to change, as this new way of thinking about asset development is gaining a foothold in the disability services community. Work incentives counselors are in an optimal position to assist beneficiaries to take advantage of IDAs by offering education about the impact of IDAs on Social Security disability benefits and other publicly-funded benefits, and the interaction between IDAs and Social Security work incentives, such as PASS. Work incentives counselors are also able to help with ongoing benefits advisement and coordination with other members of the beneficiary's support network.

Work incentives counselors have a role to play in connecting with IDA grantees. Collaborative efforts include such activities as educating grantees about Social Security work incentives and regulations that favor the use of IDAs for beneficiaries, and providing appropriate referrals for IDA applicants. IDA grantees can serve as an important source for beneficiaries in need of services as well. By developing partnerships with IDA grantees, work incentives counselors can promote asset building, financial literacy and, ultimately, greater financial independence for Social Security Disability beneficiaries and their families.

CONDUCTING INDEPENDENT RESEARCH

Office of Community Services – Assets for Independence: <http://www.acf.hhs.gov/programs/ocs/programs/afi>

Community Opportunities, Accountability, and Training Educational Services Act of 1998, Title IV – Assets for Independence Act: <http://www.acf.hhs.gov/programs/ocs/afi/afialaw2000.html>

AFI Project Locator: <http://www.acf.hhs.gov/programs/ocs/resource/afi-project-locator>

Corporation for Enterprise Development (CFED): <http://www.cfed.org>

Center for Social Development: <http://csd.wustl.edu/Pages/default.aspx>

National Disability Institute: <http://www.realeconomicimpact.org/>

Assets for Independence Resource Center: <http://www.idaresources.org>

Social Security POMS regulation Links: SI 00830.670 Exclusion from income and resources of Demonstration Project IDAs (AFI IDAs)
 SI 00830.665 Exclusion from income of TANF-funded IDAs
 SI 01130.678 Exclusion from resources of TANF-funded IDAs

Charts: Comparison of IDA and PASS Characteristics
 AFI Participant Disregard Letter
 AFI- IDAs Asset Goals Table

DEFINING THE ASSET GOAL

Asset Goal	How is this goal defined?	What costs can be paid by the IDA
Homeownership	<ul style="list-style-type: none"> • First-time homebuyer only (defined as having had no ownership in a home for three years before entering a sales contract on an AFI-qualified home). • The home being purchased must be the participant's main residence. • The sales price of the house should not exceed 120% of the average price for a home in that area. 	<ul style="list-style-type: none"> • Down payment • Settlement fees • Loan fees • Inspection fees • Other closing costs • Reconstruction of the newly purchased home
Microenterprise	<ul style="list-style-type: none"> • The business should be legally established and not in violation of any law or public policy. • The owner must have a business plan that has been reviewed and approved by a financial institution, microenterprise development organization, or nonprofit loan fund. 	Expenditures indicated in the Qualified Business Plan such as: <ul style="list-style-type: none"> • Capital • Plant • Equipment • Working capital • Inventory • Licenses
Postsecondary Education or Training	<ul style="list-style-type: none"> • Expenses are paid to an eligible educational institution. • The institution is either a college/university or a vocational school as defined by the Higher Education Act or by the Carl D. Perkins Vocational and Applied Technology Education Act. 	<ul style="list-style-type: none"> • Course fees • Books and supplies • Test fees • Costs of courses for preparations for professional licensing examinations • Special equipment, including a computer and software • Tuition and fees (associated with enrollment or attendance at the school)

Source: http://www.acf.hhs.gov/programs/ocs/afi/projectbuilder/pb_chap3d.htm
 AFI Office of Community Services Asset Building – AFI Project Builder

COMPARISON OF IDA AND PASS CHARACTERISTICS

	AFI IDA	PASS
Purpose	<p>Promote Self-Sufficiency through accumulating savings and acquiring long-term assets that grow in value over time.</p> <p>Means to Save for Specific Asset Purchase.</p>	<p>Promote Self-Sufficiency through Employment.</p> <p>Means to set aside income and / or resources to acquire items and services needed to reach work goal.</p>
How it Works	<p>Participants make regular savings deposits into IDA account and leverage match dollars.</p> <p>Every dollar in savings deposited into an AFI IDA by participants is matched (from \$1 to \$8 combined federal and nonfederal funds).</p>	<p>Exclusion of funds set aside for PASS expenses permits eligibility for SSI and Medicaid, or a higher SSI payment.</p> <p>SSI replaces part or all of the funds used for PASS expenses instead of living expenses.</p>
Eligibility Criteria	<p>TANF Eligible or EITC Eligible or Annual household income less than twice poverty (about \$44,000 for family of four) and Household net worth less than \$10,000 (excluding value of a residence and one car) at enrollment</p>	<p>Meet SSA's definition of disability or blindness; and Meet all non-medical criteria for SSI eligibility except for income and/or resources that can be set aside in a PASS or Meet all non-medical criteria for SSI eligibility and have income and/or resources that can be set aside in a PASS.</p>
Savings Goals	<p>AFI IDA Savings Goals:</p> <ul style="list-style-type: none"> • Capitalizing a small business (start or support a new or existing small business); • Enrolling in postsecondary education or training; • Tuition and fees required for the enrollment or attendance; • Fees, books, supplies, and equipment required for courses of instruction; and • Acquiring a first home. 	<p>Examples of common PASS expenditures include:</p> <ul style="list-style-type: none"> • Self-Employment: Equipment, supplies, operating capital, and inventory required to establish a business; • Education or Training: Tuition, books, supplies and all fees and costs imposed, by or in connection with, an educational or occupational training facility including tutoring, counseling, etc.; • Additional costs incurred for room and board away from principal residence which is required to attend educational, training, employment, trade or business activities; • Equipment or tools necessary to meet goal, either specific to individuals' conditions or designed for general use (i.e., for individuals without disabilities); • Supported employment services such as job development and job coach services; • Attendant care; and • Child care.

	AFI IDA	PASS
Written Plan Requirement	Participant Savings Plan Agreement Required Business Plan or Plan to Use a Business Asset Purchased	The PASS must be in writing and SSA has established form SSA-545 to assist in completing a comprehensive plan. Business Plan required for self-employment goal.
Contributions	Earned Income Requirement: <ul style="list-style-type: none"> • Individual's contributions must be earned income • Variance in IDA structure: • How much will participants save? • How long will they have to accumulate savings? • How much will the project match for each dollar participants save? 	Individual's contribution may include anything that would otherwise cause ineligibility for SSI or reduced SSI payments such as: <ul style="list-style-type: none"> • Earnings • SSDI, benefit supports and other types of unearned income (other than SSI) • Savings accounts • Stock dividends
Disbursements	Participant withdrawals allowed for two reasons: <ul style="list-style-type: none"> • Asset purchases • Emergency needs that arise while in the project <p>Must save for at least six months following the date of account opening before making a withdrawal.</p> <p>Disbursements must be approved in writing.</p>	The PASS must state how the money set aside will be spent to achieve the occupational objective. Monthly expenses for services/item: <ul style="list-style-type: none"> • List of items or services/supports to be purchased each month • List of items or services/supports for which savings will be set aside to purchase or put down payment on at later date
Case Management	Most AFI Projects also provide one-on-one counseling and on-going case management services. Examples: <ul style="list-style-type: none"> • Periodic contact with saver throughout IDA period • Maintain records/ Distribution of savings statements • Information & Referral for other support needs 	SSA monitors progress but does not provide case management. Individual responsible for setting up account, making contributions, record keeping, making withdrawals from account for planned purchases. See "Tips for Managing Your PASS." Assistance available through WIPAs, and other benefits planners.
Time Frame	Time frame for participant savings vary across AFI Projects. While project grants last 5 years, all funds must be drawn down and asset(s) purchased before the end of the 5-year period. Option exists to transition IDA savers across IDA grant periods.	Specific time frames must be established for the PASS. Schedules must be provided for meeting the vocational goals, which indicate the month and year that it is expected to begin and end. While PASS is a time limited work incentive, there are no longer set time limits or maximum time frames under which a PASS may operate.
Impact on SSI Benefit Eligibility and Payment	Funds set aside in AFI IDA do not count toward the SSI resources limit, matching deposits do not count as income, and the account owner's deposits can actually cause the SSI benefit amount to go up.	Income / Resources used for PASS disregarded in determining SSI eligibility and payment amount. Assists with establishing SSI and Medicaid eligibility or increases SSI payment amount.

	AFI IDA	PASS
Impact on Ability to Meet Savings Goal	Amount of federal funds from one AFI Project that may be allocated to each individual's account: \$2,000 for an individual and \$4,000 per household (where multiple household members hold IDAs).	SSI payment can increase up to current Federal Benefit Rate (maximum SSI monthly payment). Federal Benefit Rate in 2011 is \$698.
Financial Education	Participation in financial education required. Often required to complete training before opening IDA account. Education includes: <ul style="list-style-type: none"> • General financial & debt management education (banking, investing, money management) • Credit counseling and credit repair • Guidance in accessing refundable tax credits including the federal and state Earned Income Tax Credit (EITC), child tax credit, and others • Specialized training about owning a home, starting a business or attending post-secondary school 	No requirement to participate in financial education/financial support services.

To Whom It May Concern:

_____ [name] holds an Individual Development Account (IDA) administered by _____ [grantee name] with a grant from the federal Assets for Independence Program. An IDA is a matched savings account that allows a low-income individual or family to save for a specific purpose, such as attaining higher education, purchasing a home, or starting a business.

Under federal law, ANY and ALL resources in an Assets for Independence Program IDA must not be considered when determining eligibility or benefit levels for any federal benefit program that considers an applicant's financial circumstances. This mandatory disregard applies to the individual's savings, any matching contributions, and interest accruing on funds in the account.

The relevant provision in federal law states:

Section 415. **NO REDUCTION IN BENEFITS.** Notwithstanding any other provision of Federal law (other than the Internal Revenue Code of 1986) that requires consideration of one or more financial circumstances of an individual, for the purpose of determining eligibility to receive, or the amount of, any assistance or benefit authorized by such law to be provided to or for the benefit of such individual, funds (including interest accruing) in an individual development account under this Act shall be disregarded for such purpose with respect to any period during which such individual maintains or makes contributions into such an account.²

The full text of the Assets for Independence Act is available on the program website at <http://www.acf.hhs.gov/asset-building/afialaw2000.pdf>

If you have any questions about _____ [grantee name] AFI IDA program, please contact _____ [AFI IDA program manager name] at _____ [number]. If you have any questions about the Assets for Independence Act, please contact the Federal Assets for Independence Program on (202) 401-4626.

Sincerely,

²COMMUNITY OPPORTUNITIES, ACCOUNTABILITY, AND TRAINING AND EDUCATIONAL SERVICES ACT OF 1998. Public Law 105-285. 105th Congress TITLE IV-- ASSETS FOR INDEPENDENCE. Assets for Independence Act. 42 USC 604 note. Section 415.

