

**§ 233.52**

**45 CFR Ch. II (10–1–10 Edition)**

(ii) The amount described in paragraph (b)(1)(i) of this section reduced by:

(A) The cash needs standard under the plan in the alien's State of residence for a family of the same size and composition as the sponsor and those other people living in the same household as the sponsor who are or could be claimed by the sponsor as dependents to determine his or her Federal personal income tax liability but whose needs are not taken into account in making a determination under § 233.20 of this chapter;

(B) Any amounts actually paid by the sponsor or sponsor's spouse to people not living in the household who are or could be claimed by them as dependents to determine their Federal personal income tax liability; and

(C) Actual payments of alimony or child support, with respect to individuals not living in the household.

(2) Monthly resources deemed available to the alien from the sponsor and sponsor's spouse shall be the total amount of their resources determined as if they were applying for AFDC in the alien's State of residence, less \$1500.

(c) In any case where a person is the sponsor of two or more aliens, the income and resources of the sponsor and sponsor's spouse, to the extent they would be deemed the income and resources of any one of the aliens under the provisions of this section, shall be divided equally among the sponsored aliens.

(d) Income and resources which are deemed to a sponsored alien shall not be considered in determining the need of other unsponsored members of the alien's family except to the extent the income or resources are actually available.

(e) For a period of three years following entry for permanent residence into the United States, any alien who is not exempt under paragraph (g) of this section and has been sponsored by a public or private agency or organization, shall be ineligible for assistance unless the State agency determines (in accordance with paragraph (f)) that the sponsor no longer exists or has become unable to meet the alien's needs.

(f) The State plan shall set forth the criteria the State agency will use in determining whether an agency or organization no longer exists or is unable to meet the alien's needs and the documentation the agency will require of the alien in making such determination. The sponsored alien shall provide the State agency with any information and documentation necessary for such determination and obtain any cooperation necessary from the sponsor.

(g) The provisions of this section shall not apply to any alien who is:

(1) Admitted as a conditional entrant refugee to the United States as a result of the application, of the provisions of section 203(a)(7) (in effect prior to April 1, 1980) of the Immigration and Nationality Act;

(2) Admitted as a refugee to the United States as a result of the application of the provisions of section 207(c) (in effect after March 31, 1980) of the Immigration and Nationality Act;

(3) Paroled into the United States as a refugee under section 212(d)(5) of the Immigration and Nationality Act;

(4) Granted political asylum by the Attorney General under section 208 of the Immigration and Nationality Act;

(5) A Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422); or

(6) The dependent child of the sponsor or sponsor's spouse.

(h) The Secretary shall make information necessary to make a determination under this section and supplied under agreement with the Secretary of State and the Attorney General, available upon request to a concerned State Agency.

[47 FR 5680, Feb. 5, 1982; 47 FR 43383, Oct. 1, 1982; 47 FR 47828, Oct. 28, 1982; 49 FR 35602, Sept. 10, 1984; 57 FR 30160, July 8, 1992]

**§ 233.52 Overpayment to aliens.**

A State Plan under title IV-A of the Social Security Act, shall provide that:

(a) Any sponsor of an alien and the alien shall be jointly and severally liable for any overpayment of aid under the State plan made to the alien during the three years after the alien's entry into the United States due to the sponsor's failure to provide correct information under the provisions of § 233.51,

except as provided in paragraph (b) of this section.

(b) When a sponsor is found to have good cause or to be without fault (as defined in the State plan) for not providing information to the agency, the sponsor will not be held liable for the overpayment and recovery will not be made from this sponsor.

(c) An overpayment for which the alien or the sponsor and the alien are liable (as described in paragraphs (a) and (b) of this section) shall be repaid to the State or recovered in accordance with § 233.20(a)(13). If the agency is unable to recover the overpayment through this method, funds to reimburse the agency for the overpayment shall be withheld from future payments to which the alien or the alien and the individual sponsor are entitled under:

(1) Any State administered or supervised program established by the Social Security Act, or

(2) Any federally administered cash benefit program established by the Social Security Act.

[47 FR 5680, Feb. 5, 1982 as amended at 49 FR 35602, Sept. 10, 1984]

**§ 233.53 Support and maintenance assistance (including home energy assistance) in AFDC.**

(a) *General.* At State option, certain support and maintenance assistance (including home energy assistance) may be excluded from income and resources.

(b) *Definitions.* The following definitions are limited to the support and maintenance assistance provisions of this section.

*Appropriate State agency* means the agency designated by the chief executive officer of the State to handle the State's responsibilities with respect to support and maintenance assistance under paragraph (c) of this section.

*Based on need* means that the assistance is given to or on behalf of an applicant or recipient for the purpose of support and maintenance (including home energy) and meets the criteria established by the State for determining the need for such assistance.

*In kind assistance* means assistance furnished in any form except direct cash payments to an applicant or recipient or direct payments to an appli-

cant or recipient through other financial instruments which are convertible to cash.

*Private, nonprofit organization* means a religious, charitable, educational, or other organization such as described in section 501(c) of the Internal Revenue Code of 1954. (Actual tax exempt certification by IRS is not necessary).

*Rate-of-return entity* means an entity whose revenues are primarily received from the entity's charges to the public for goods or services, and such charges are based on rates regulated by a State or Federal governmental body.

*Support and maintenance assistance* means any assistance designed to meet the expenses of day to day living. Support and maintenance assistance includes home energy assistance. Home energy assistance means any assistance related to meeting the cost of heating or cooling a home. Home energy assistance includes such items as payments for utility service or bulk fuels; assistance in kind such as portable heaters, fans, blankets, storm doors, or other items which help reduce the costs of heating and cooling such as conservation or weatherization materials and services; etc.

(c) *Requirements for State Plans.* If a State elects to exclude from income and resources support and maintenance assistance, the State plan for AFDC must as specified below:

(1) Provide that an appropriate State agency will certify that support and maintenance assistance is based on need (as defined in paragraph (b) of this section), and that such certification will be accepted for purposes of determining eligibility for and the amount of payments under the AFDC program.

(2) Provide that in joint AFDC/SSI households, support and maintenance assistance furnished to the household which is not excluded under this paragraph will be prorated on a reasonable basis to determine the amount provided to the AFDC assistance unit. The State plan must describe the method that will be used to prorate the assistance in these circumstances.