
POLICY TRANSMITTAL NO. 06-04	DATE: MAY 30, 2006
FAMILY SUPPORT SERVICES DIVISION	DEPARTMENT OF HUMAN SERVICES OFFICE OF PLANNING, POLICY & RESEARCH

TO: ALL OFFICES

SUBJECT: MANUAL MATERIAL

OAC 340:50-5-45; 50-5-64; 50-7-2; and 50-7-22.

EXPLANATION: **Policy revisions were approved by the Commission and the Governor as required by the Administrative Procedures Act.**

340:50-5-45 is revised to change the requirement of students to work 20 hours per week to be an eligible student to work an average of 20 hours per week.

340:50-5-64 is revised to change language to help clarify the age for persons exempt from ABAWD provisions.

340:50-7-2 is revised to include additional types of excluded resources.

340:50-7-22 is revised to update language and include additional sources of excluded income.

Original signed on 3-30-06

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WF # 05-14 (NAP)

INSTRUCTIONS FOR FILING MANUAL MATERIAL

OAC is the acronym for Oklahoma Administrative Code. If OAC appears before a number on an Appendix or before a Section in text, it means the Appendix or text contains rules or administrative law. Lengthy internal policies and procedures have the same Chapter number as the OAC Chapter to which they pertain following a “DHS” number, such as personnel policy at DHS:2-1 and personnel rules at OAC 340:2-1. The “340” is the Title number that designates DHS as the rulemaking agency; the “2” specifies the Chapter number; and the “1” specifies the Subchapter number.

The chronological order for filing manual material is: (1) OAC 340 by designated Chapter and Subchapter number; (2) if applicable, DHS numbered text for the designated Chapter and Subchapter; and (3) all OAC Appendices with the designated Chapter number. For example, the order for filing personnel policy is OAC 340:2-1, DHS:2-1, and OAC 340:2 Appendices behind all Chapter 2 manual material. Any questions or assistance with filing manual material will be addressed by contacting Policy Management Unit staff at (405) 521-3611.

REMOVE

INSERT

340:50-5-45

340:50-5-45, pages 1-5, revised 6-1-06

340:50-5-64

340:50-5-64, pages 1-5, revised 6-1-06

340:50-7-2

340:50-7-2, pages 1-9, revised 6-1-06

340:50-7-22

340:50-7-22, pages 1-9, revised 6-1-06

340:50-5-45. Students

(a) **Student classification.** Persons enrolled at least half-time in an institution of higher education are considered students through vacation and breaks as well as normal periods of class attendance. Persons who graduate, are expelled or suspended, dropout, or do not intend to register for the next normal school term, excluding summer school, are no longer considered students. Student enrollment status begins on the first day of the school term of the institution of higher education.

■ 1

(1) A college or university which offers degree programs is considered an institution of higher education even when a high school diploma or equivalency certificate is not required to enroll. A college includes a junior, community, two-year, or four-year college, or university.

(A) Students enrolled at least half time in the **regular curriculum** are considered enrolled in higher education.

(B) Individuals enrolled at a college or university in special programs, such as courses for English as a second language, or other courses which are not part of the regular degree programs are not considered enrolled in higher education.

(2) Business, technical, trade, or vocational schools which normally require a high school diploma or equivalency certificate for enrollment in the curriculum are also considered higher education. ■ 2

(3) Courses in business, technical, trade, or vocational schools which do not require a high school diploma or equivalency certificate for enrollment are not considered higher education. ■ 3

(b) **Students not subject to eligibility restrictions.** The students described in this subsection may participate in the Food Stamp Program if all other eligibility criteria are met. Eligibility restrictions discussed in subsection (c) of this Section do not apply if the students are:

(1) under age 18 or age 50 or older;

(2) physically or mentally unfit.

(A) If mental or physical unfitness is claimed and the unfitness is not evident to the worker, verification may be required.

(B) Appropriate verification may consist of:

(i) receipt of temporary or permanent disability benefits issued by governmental or private sources;

(ii) participation in a state vocational rehabilitation (VR) program; or

(iii) a statement from a physician or licensed or certified psychologist;

(3) attending high school;

(4) participating in an on-the-job training program. Students are considered participating in on-the-job training programs only during the period of time the students are being trained by the employer;

(5) attending an institution of higher education less than half-time; or

(6) enrolled half-time or more in schools and training programs which are not institutions of higher education.

(c) Eligibility restrictions for students.

(1) Persons between the ages of 18 and 50 who are physically and mentally fit and are enrolled at least half-time in an institution of higher education may participate in the Food Stamp Program only if:

(A) employed for an average of 20 hours per week or 80 hours per month and paid for that employment. Earning wages equal to the federal minimum wage times 20 is not a substitute for this restriction;

(B) self-employed for an average of 20 hours per week or 80 hours per month and receives weekly earnings at least equal to the federal minimum wage times 20;

(C) participating in a state or federally financed work study program during the regular school year.

(i) To qualify under this provision, the students must be approved for work study at the time of application for food benefits.

(l) The work study must be approved for the school term and the students must anticipate actually working during the school term.

(II) The exemption begins with the month in which the school term begins or the month work study is approved, whichever is later.

(III) Once begun the exemption continues until the end of the month in which the school term ends, or it becomes known the students have refused an assignment.

(ii) The exemption does not continue between terms when there is a break of a full month or longer unless the student is participating in a work study program during the break;

(D) responsible for the care of a dependent household member under the age of six; ■ 4

(E) responsible for the care of a dependent household member six through 11 years of age when the worker determines that adequate child care is not available to enable the student to attend class and work an average of 20 hours per week or participate in a state or federally financed work study program. The reasons for lack of adequate child care include, but are not limited to, location of the nearest child care facility or availability of funds to pay child care expenses. Determination of availability of adequate child care is made on a case-by-case basis; ■ 5

(F) single parents enrolled in an institution of higher education on a full-time basis as determined by the institution and responsible for the care of a dependent child under age 12, regardless of the availability of child care.

(i) This provision applies in those situations where only one natural, adoptive, or stepparent regardless of marital status is in the same food benefit household as the child.

(ii) If no natural, adoptive, or stepparent is in the same food benefit household as the child, another full-time student in the same food benefit household as the child may qualify for eligible student status under this provision if he or she has parental control over the child and is not living with his or her spouse;

(G) Temporary Assistance for Needy Families (TANF) recipients; or

(H) assigned to or placed in an institution of higher education through:

(i) the Workforce Investment Act (WIA) Program;

- (ii) a food benefit employment and training program;
- (iii) the Job Opportunities and Basic Skills (JOBS) program under Title IV of the Social Security Act;
- (iv) a program under Section 236 of the Trade Act of 1974 currently known as The Trade Adjustment Assistance Program and administered by the Oklahoma Employment Security Commission; or
- (v) a state or local employment or training program, as determined appropriate by the United States Department of Agriculture, Food and Nutrition Service (FNS).

(2) Only one person may be considered as responsible for a dependent child. The caretaker need not be the person providing for the child's support.

INSTRUCTIONS TO STAFF

1. **Student status begins on the first day of the school term for students who have not attended an institution of higher education previously or there has been a break of more than a semester since they last attended.**
2. **"Normally Requires" means a student is required to have a high school diploma or equivalency certificate, but if the student does not have either, he or she may be enrolled by passing a special entrance examination. If a high school diploma or equivalency certificate is only required prior to completion of coursework, as opposed to required for enrollment, students are not considered to be attending an institution of higher education. In addition, programs designed to help a person pass the General Educational Development (GED) test do not qualify the person as attending an institution of higher education.**
3. **Students engaging in on-line courses or telecourses are considered attending an institution of higher education if the school requires the student to have a high school diploma or equivalency certificate for enrollment and the student is enrolled at least half time.**
4. **The dependent child must be included in the food benefit. A dependent child is defined as the biological, step, or adopted child of the student.**
5. **When both parents are students, only one parent can be exempt as caretaker of a child. In order for both parents to be exempt as caretaker, there must be**

at least two children under age six and each parent is caretaker for a different child at a different time of day. For example, the mother attends school at night and watches one of the children during the day, while the other child is in kindergarten and the father is in school. The father watches both children in the evening while the mother is in school.

PART 7. RELATED PROVISIONS

340:50-5-64. Work requirements

(a) **Able-bodied adults without dependents (ABAWDs).** ABAWDs who are members of eligible households receiving food benefits must be exempt from or comply with work requirements to be eligible to participate as a member of any food stamp household for longer than three months, consecutive or otherwise, during any 36-month period. It is the worker's responsibility to explain to the applicant the household member's work requirements and responsibility. At each application the worker must establish that each household member:

(1) is working continuously 20 hours or more per week averaged monthly; ■ 1

(2) participates in and complies with:

(A) Workforce Investment Act (WIA) Program assignment;

(B) Trade Adjustment Assistance Program assignment; or

(C) Employment and Training, not including Job Search; or

(3) is exempt from the work requirements listed in (b) of this Section.

(b) **Exemptions from the work requirements.** An individual is exempt from the work requirement provision of the Food Stamp Program if the individual is:

(1) younger than 18 or 50 years of age and older;

(2) medically certified as physically or mentally unfit for employment.

(A) Persons who are physically or mentally incapable of gainful employment either on a permanent or temporary basis or participating in federal or state programs based on disability are considered exempt. ■ 2

(B) Persons claiming exemption as unfit for employment must, in the absence of physical evidence, obtain documented evidence from medically qualified sources to substantiate the medical exemption. ■ 3

(C) Persons claiming temporary exemption are required to comply when they are released by their medically qualified source to return to work;

(3) a parent or other member of a household with responsibility for care of a dependent child younger than 18 years or an incapacitated person of any age; ■ 4

(4) pregnant;

(5) receiving or has applied for unemployment insurance benefits; ■ 5

(6) a regular participant receiving treatment for drug or alcohol addiction in a rehabilitative program on a resident or non-resident basis; ■ 6

(7) an eligible student enrolled at least half-time in any recognized school, training program, or institution of higher education; ■ 7

(8) a household member registered for or participating in the Temporary Assistance for Needy Families (TANF) Work;

(9) employed a minimum of 30 hours per week or receiving weekly earnings which equal the minimum hourly rate under the Fair Labor Standards Act of 1938, as amended, multiplied by 30 hours; or ■ 8

(10) a resident living in a county approved for exemption of the work requirements by the United States Department of Agriculture (USDA). ■ 9

(c) **Participation without time limits.** Food benefit participation without time limits applies to an individual who:

(1) is exempt;

(2) works continuously 20 hours or more per week, averaged monthly; or ■ 10

(3) participates in and complies with:

(A) WIA Program assignment;

(B) Trade Adjustment Assistance Program assignment; or

(C) Employment and Training, not including Job Search.

(d) **Participation with time limits.** Individuals who are not exempt or fail to comply with work participation requirements are eligible for only three months, consecutive or otherwise, during any 36-month period. Once the three-month eligibility limit has been

reached, eligibility can be regained for at least an additional three consecutive months if the individual: ■ 11

(1) works 80 hours or more in any 30-day period; or ■ 12

(2) participates for 80 hours or more in and complies with:

(A) WIA Program assignment;

(B) Trade Adjustment Assistance Program assignment; or

(C) Employment and Training, not including Job Search.

(e) **Individuals who regain eligibility.** An individual can regain eligibility only one time for an additional three consecutive months during the 36-month period by meeting the requirements of (1) or (2) of subsection (d). An individual who regains eligibility maintains eligibility by complying with the requirements of subsection (c). If eligibility is subsequently lost, the individual may receive food benefits only if one of the exemptions listed in subsection (b) is met or the 36-month period has expired. ■ 13

INSTRUCTIONS TO STAFF

1. Working an average of 20 hours per week or 80 hours per month, or more for some form of compensation is considered meeting the work requirement.

2. Examples of federal and state programs based on disability are:

(1) vocational rehabilitation;

(2) Veterans Benefits Administration disability compensation;

(3) Social Security disability benefits; and

(4) Supplemental Security Income (SSI).

3. A doctor's statement giving a diagnosis is best, but if the client is unable to obtain a doctor's statement, a statement from another qualified source is sufficient.

(1) Other medically qualified sources include, but are not limited to: therapists, counselors, and medical social workers.

- (2) The statement does not need to state the person cannot work, but does need to give information indicating a physical or mental problem that may limit the individual's ability to work.
4. More than one household member may be exempt as caretaker for the same person, as long as they share caretaker responsibility.
 5. This exemption includes individuals who are involved in the unemployment insurance benefits (UIB) appeals process.
 6. Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) meetings qualify if they are a part of the treatment plan.
 7. See OAC 340:50-5-45 to determine student eligibility.
 8. An individual working 30 or more hours per week automatically qualifies as exempt regardless of the amount earned or how the individual is paid, such as work performed in exchange for rent or other goods and services. How much an individual earns is relevant in determining exempt status only when the employed or self-employed person works less than 30 hours per week. An individual who works less than 30 hours per week must earn weekly wages at least equal to the federal minimum wage times 30 hours in order to qualify as exempt. Volunteer work or court-ordered community service is not considered.
 9. Effective April 1, 2006, the United States Department of Agriculture (USDA), has exempted these counties from the work requirement: Adair, Atoka, Choctaw, Cherokee, Coal, Haskell, Hughes, Johnston, Latimer, LeFlore, McCurtain, McIntosh, Muskogee, Okfuskee, Okmulgee, Pittsburg, Pushmataha, Seminole, Sequoyah, and Woods. In addition, residents of the city of Ponca City in Kay County are also exempt from the work requirement. The worker must verify residence in Ponca City for the exemption to apply. This exemption does not apply to other residents of Kay County. Documentation of residence is included in Family Assistance/Client Services (FACS) case notes.
 10. Working an average of 20 hours per week or 80 hours per month for compensation is considered meeting the work requirement. The individual may receive in-kind income or cash earnings for the work, but there must be actual work performed. Volunteer work or court-ordered community service is not considered.

- 11. The 36-month period begins with the first month benefits are received and the individual is not meeting the work requirement or not considered exempt.**
- 12. Eligibility can be regained only after the individual has received the initial three months of benefits without being exempt or meeting the work requirement.**
- 13. The additional three months must be consecutive. If the individual receives less than three months, they are not entitled to receive the additional month(s) at a later date.**

340:50-7-2. Excluded resources

In households applying for or receiving food benefits, resources listed in this Section are excluded for household members, for disqualified members whose resources are counted, or for ineligible aliens who would otherwise be a household member. When an exclusion applies because of use by or for a household member, the exclusion also applies when the resource is used by or for a disqualified person whose resources are counted or for an ineligible alien who would otherwise be a household member.

(1) **Home and surrounding property.** The home and surrounding property which is not separated from the home by intervening property owned by others is exempt. Public right-of-way, such as roads which run through the surrounding property and separate it from the home, does not affect exemption of the property.

(A) The home and surrounding property remain exempt when temporarily unoccupied by reasons of employment, training for future employment, illness, vacation, or uninhabitability caused by casualty or natural disaster so long as the household intends to return.

(B) Households that currently do not own a home, but own or are purchasing a lot on which they intend to build or are building a permanent home receive an exclusion for the value of the lot and, if it is partially completed, for the home.

(2) **Household personal goods, life insurance, and pension plans.** Household goods, personal belongings, including one burial lot per household member, the cash value of life insurance policies, and prepaid burial plans are exempt. The cash value of pension plans or funds is excluded, except for Individual Retirement Accounts (IRA) and Keogh Plans. ■ 1 A Keogh Plan may be excluded if it involves a contractual arrangement with individuals outside the household. ■ 2

(3) **Vehicles.**

(A) Exclude one licensed vehicle per adult household member, including an ineligible alien or disqualified household member whose resources are considered available to the household, regardless of the use of the vehicle. Exclude any other licensed vehicle a household member under age 18, including an ineligible alien or disqualified household member under age 18 whose resources are considered available to the household, drives to and from employment, or to and from training or education which is preparatory to employment, or to seek employment. This exclusion applies during temporary periods of unemployment to a vehicle which a household member under age 18 customarily drives to and from employment. Also exclude any licensed vehicle if:

(i) used for income-producing purposes such as, but not limited to, a taxi, truck, or fishing boat, or a vehicle used for deliveries, to call on clients or customers, or required by the terms of employment. Licensed vehicles that have previously been used by a self-employed household member engaged in farming but are no longer used in farming because the household member has terminated his or her self-employment from farming must continue to be excluded as a resource for one year from the date the household member terminated his or her self-employment farming;

(ii) annually producing income consistent with its fair market value, even if used only on a seasonal basis;

(iii) necessary for long distance travel, other than daily commuting, that is essential to the employment of a household member, ineligible alien, or disqualified person whose resources are considered available to the household, such as the vehicle of a traveling sales person or of a migrant farm worker following the work stream;

(iv) used as the household's home;

(v) necessary to transport a physically disabled household member, physically disabled ineligible alien, or physically disabled disqualified person whose resources are considered available to the household, regardless of the purpose of such transportation. The vehicle need not have special equipment or be used primarily by or for the transportation of the physically disabled household member. Only one vehicle per physically disabled household member may be excluded;

(vi) necessary to carry fuel for heating or water for home use when the transported fuel or water is anticipated to be the primary source of fuel or water for the household during the certification period. Households must receive this resource exclusion without having to meet any additional tests concerning the nature, capabilities, or other uses of the vehicle. Households must not be required to furnish documentation unless the exclusion of the vehicle is questionable;

(vii) the value of the vehicle is inaccessible because its sale would produce an estimated return of not more than \$1,500;

(viii) jointly owned by a food benefit household member and someone who does not live with the food benefit household. To be excluded, the vehicle must not be used by, nor in the possession, of anyone who lives in or with the

household. The member must also be unable to sell the vehicle because the signature of the co-owner is needed and that person will not sign; or

(ix) legally prohibited from being sold by the food benefit household. The determination of whether a food benefit household can legally sell a vehicle is governed by the law of Oklahoma.

(B) The exclusions in (i) through (iii) of this subsection continue to apply when the vehicle(s) is not in use because of temporary unemployment such as when a taxi driver is ill and cannot work or the vehicle is broken down and cannot be used.

(4) Real or personal property directly related to the maintenance of excluded vehicles. Property, real or personal, to the extent it is directly related to the maintenance or use of a vehicle described in paragraph (3) of this subsection is excluded. Only that portion of real property determined necessary for maintenance or use is excluded. ■ 3

(5) Income producing property. Income producing property which annually produces income consistent with the fair market value is excluded even if used on a seasonal basis. ■ 4

(6) Property essential to employment. Property, such as farm land or work related equipment including tools of a tradesman or the machinery of a farmer, which is essential to the employment or self-employment of a household member is excluded. Property of a household member engaged in farming continues to be excluded for one year from the date the household member terminates his or her self-employment from farming.

(7) Installment contracts. Installment contracts for the sale of land or buildings are excluded if the contract or agreement is producing income consistent with its fair market value. The exclusion applies to the value of the property sold under the installment contract or held as security in exchange for a purchase price consistent with the fair market value of that property.

(8) Inaccessible resources. Resources whose cash value is not accessible to the household are exempt, such as but not limited to, irrevocable trust funds, security deposits on rental property or utilities, property in probate, and real property which the household is making a good faith effort to sell at a reasonable price and which has not been sold. If questionable, the worker establishes that the property is for sale and that the household will accept a reasonable offer. A resource is considered inaccessible if its sale or other disposition is unlikely to produce funds

amounting to one half or more of the applicable resource limit for the household. The value of the inaccessible resource is the amount of the expected return to the household after subtracting estimated cost of sale or disposition, and consideration of the ownership interest to the household. A single resource may not be subdivided solely to obtain an exclusion as inaccessible. This inaccessible provision does not apply to vehicles or financial instruments such as stocks, bonds, or negotiable financial instruments. ■ 5 Any funds in a trust or transferred to a trust and the income produced by that trust to the extent it is not available to the household is considered inaccessible to the household if:

(A) the trust arrangement is not likely to cease during the certification period and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period;

(B) the trustee administering the funds is either a court, or an institution, corporation, or organization which is not under the direction or ownership of any household member, or an individual appointed by the court who has court imposed limitations placed on his or her use of the trust funds;

(C) trust investments made on behalf of the trust do not directly involve or assist any business or corporation under the control, direction, or influence of a household member; and

(D) the funds held in irrevocable trust are either established from the household's own funds, if the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of any person named by the household creating the trust, or established from non-household funds by a non-household member.

(9) **Education assistance.** All education grants, work study, scholarships, and student loans are exempt if receipt is contingent upon the student regularly attending school.

(10) **Resources excluded by law.** Resources currently excluded by law are:

(A) payments received:

(i) under the Alaska Native Claims Settlement Act [Public Law (P.L.) 92-203, § 21(a)];

(ii) under the Sac and Fox Indian Claims Agreement [P.L. 94-189];

- (iii) from the disposition of funds to the Grand River Band of Ottawa Indians [P.L. 94-540];
 - (iv) by members of the Confederated Tribes of the Mescalero Reservation [P.L. 95-433]; or
 - (v) under the Maine Indian Claims Settlement Act of 1980 to members of the Passamaquoddy and the Penobscot Nation [P.L. 96-420];
- (B) payments received by certain Indian tribal members under P.L. 94-114, Section 6 regarding submarginal land held in trust by the United States;
- (C) Indian per capita payments distributed from judgment awards and trust funds made pursuant to P.L. 98-64. Exclude any interest or investment income accrued on such funds while held in trust or any purchases made with judgment funds, trust funds, interest or investment income accrued on such funds. Exclude any per capita payments, headrights of Osage tribe, income from mineral leases, or other tribal business ventures, as long as the payments meet the distribution requirements as stated in this subparagraph.
- (i) Any interest or income derived from the funds after distribution is considered as any other income.
 - (ii) The per capita exclusion applies per person rather than per family.
 - (iii) When these excluded funds are deposited in a bank or other financial institution, the deposits are excluded as long as the funds are kept in a separate account and not commingled in an account with non-excluded funds.
 - (iv) When the excluded funds are commingled in an account with non-excluded funds, the excluded funds retain their exemption for six months from the date of commingling. After six months from the date of commingling, all funds are counted as a resource.
 - (v) Purchases made with excluded funds are considered a resource;
- (D) interests of individual Indians in trust or restricted lands;
- (E) benefits received from Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) [P.L. 92-443, § 6];

(F) reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 [P.L. 91-646, § 216];

(G) Earned Income Tax Credit (EITC) payments received by a participating food benefit household member as part of a federal tax refund or as advance payments received as part of a paycheck, excluded for 12 months during continuous participation. This does not mean that households lose the exclusion if they temporarily leave the program for administrative reasons;

(H) refunds of the state EITC as a result of filing a state income tax return in the month received and the following month;

(I) payments received from the Youth Incentive Entitlement Pilot Projects, the Youth Community Conservation and Improvement Projects, and the Youth Employment and Training Programs under Title IV of the Comprehensive Employment and Training Act of 1978 [P.L. 95-524];

(J) financial assistance provided by a program funded in whole or in part under Title IV of the Higher Education Act in accordance with P.L. 99-498;

(K) payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

(L) payments received under the Civil Liberties Act of 1988. These payments are made to individuals of Japanese ancestry who were detained in internment camps during World War II;

(M) payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from the exposure to radiation from nuclear testing and uranium mining;

(N) amounts held in an account for the fulfillment of a Plan for Achieving Self-Support (PASS) under Title XVI of the Social Security Act;

(O) the resources of any non-household member unless the individual is disqualified from the program by an administrative or court fraud hearing, by failing to obtain or refusing to provide a Social Security number, or is an ineligible alien who would otherwise be a household member;

(P) payments or allowances made under any federal law for the purpose of energy assistance such as the Low Income Home Energy Assistance Program

(LIHEAP);

(Q) earmarked resources, such as those governmental payments made by the Individual and Family Grant Program or the Small Business Administration which are designated for the restoration of homes damaged in a disaster and which are subject to a legal sanction if the funds are not used as intended. Resources such as those of self-employed persons, which have been prorated and counted as income, and Indian lands held jointly with the tribe or land that can be sold only with the approval of the Bureau of Indian Affairs are also exempt;

(R) the identified resources of all Temporary Assistance for Needy Families (TANF) and Supplemental Security Income (SSI) recipients when the household's total resources are calculated for food benefit eligibility purposes;

(S) excluded monies kept in a separate account, which are not commingled in an account with the non-excluded funds retain excluded status for an unlimited period of time.

(i) Monies of self-employed households that are excluded as a resource because they have been prorated over the period they are intended to cover and are commingled in an account with non-excluded funds retain their exclusion for the period of time over which they have been prorated as income.

(ii) All other excluded monies which are commingled in an account with other funds retain their exempt status for six months from the date they are commingled. When the household's total resources, including all funds in the commingled account, exceed the allowable limit after that time, all funds in the commingled account are considered as a resource;

(T) payments made to individuals because of their status as victims of Nazi persecution;

(U) any funds deposited in an Individual Development Account (IDA) operated under the Assets for Independence Act;

(V) monetary allowances as described in Section 1823(c) of Title 38 of the United States Code (U.S.C.) provided to certain individuals who are children of Vietnam War veterans; and

(W) Disaster Unemployment Assistance paid to individuals unemployed as the result of a major disaster.

(11) **Department of Housing and Urban Development (HUD) Family Self-sufficiency (FSS) Program escrow accounts.** Families participating in the HUD FSS program may withdraw money from their escrow accounts prior to completion of the program. This money is excluded both as income and as a resource.

INSTRUCTIONS TO STAFF

1. The list of countable retirement savings and pensions plans include:

(1) Individual Retirement Accounts (IRAs);

(2) Keogh plans that involve no contractual obligation with anyone who is not a household member; and

(3) Simplified Employer Pension (SEP) plans.

2. The list of excluded retirement savings and pension plans are:

(1) 457 plans, which are plans for state and local governments and other tax-exempt organizations;

(2) 401(k) plans, which are generally a cash or deferred arrangement and generally limited to profit-making firms;

(3) Federal Employee Thrift Savings plan;

(4) Section 403(b) plans, which are tax-sheltered annuities provided for employees of tax exempt organizations and state and local educational organizations;

(5) Section 501(c)(18) plans, which are retirement plans for union members consisting of employee contributions to certain trusts that must have been established before June 1959; and

(6) Keogh plans that involve a contractual obligation with someone who is not a household member.

3. For example, a household that owns a produce truck to earn its livelihood may be prohibited from parking the truck in a residential area. The household may own a 100-acre field and use a quarter-acre of the field to park or service the

truck. Only the value of the quarter-acre is excluded under this provision, not the entire 100-acre field.

- 4. Examples of income producing property are rental homes and mineral rights. When it is necessary to determine if property is producing income consistent with its fair market value, the worker contacts a local realtor, tax assessor, the Small Business Administration, Farmer's Home Administration, or other knowledgeable sources to determine the prevailing rate of return from similar property in the area.**
- 5. Refer to paragraph (3)(A)(i) through (ix) of this Section for information about unavailable vehicles.**

340:50-7-22. Income exclusions

Only the payments listed in this Section are excluded from the household's income, from income of disqualified members whose income is counted, or from the income of ineligible aliens who would otherwise be household members. No other income is excluded.

(1) **In-kind income.** In-kind income is any gain or benefit which is not in the form of money payable directly to the household, including non-monetary or in-kind benefits, such as meals, clothing, public housing, or produce from a garden.

(2) **Vendor payments.** Vendor payments are payments in money on behalf of a household when a person or organization outside the household uses its own funds to make a direct payment to either a household's creditors or a person or organization providing a service to the household. ■ 1

(3) **Education assistance.** All education grants, work-study, scholarships, and student loans are exempt if receipt is contingent upon the student regularly attending school.

(4) **Family Support Assistance Payment Program.** Family Support Assistance Payment Program payments provided by Developmental Disabilities Services Division (DDSD) are excluded.

(5) **Income excluded by law.** Income excluded by law is:

(A) reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. [Public Law (P.L.) 91-646, § 216] Such payments are:

(i) payments to persons displaced due to the acquisition of real property;

(ii) relocation payments to a displaced home owner toward the purchase of a replacement dwelling if the owner purchased and occupied the dwelling within one year following displacement; and

(iii) replacement housing payments to displaced persons not eligible for a home owner's payment;

(B) payments received:

(i) under the Alaska Native Claims Settlement Act [P.L. 92-203 § 21(a)];

- (ii) under the Sac and Fox Indian Claims Agreement [P.L. 94-189];
 - (iii) from the disposition of funds to the Grand River Band of Ottawa Indians [P.L. 94-540];
 - (iv) by members of the Confederated Tribes of the Mescalero Reservation [P.L. 95-433]; or
 - (v) under the Maine Indian Claims Settlement Act of 1980 to members of the Passamaquoddy and the Penobscot Nation [P.L. 96-420];
- (C) any payment to volunteers under Title II, Retired and Senior Volunteer Program (RSVP), foster grandparents and others, of the Domestic Volunteer Services Act of 1973 [P.L. 93-113] as amended;
- (D) income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes [P.L. 94-114, § 6];
- (E) Indian per capita payments distributed from judgment awards and trust funds made pursuant to P.L. 98-64. Also excluded is any interest or investment income accrued on such funds while held in trust or any purchases made with judgment funds, trust funds, interest, or investment income accrued on such funds. Any per capita payments, headrights of the Osage tribe, income from mineral leases or other tribal business ventures are excluded, as long as they meet the distribution requirements as stated in this paragraph. Any interest or income derived from the funds after distribution is considered as any other income. The per capita exclusion applies per person rather than per family.
- (i) Excluded funds deposited in a bank or other financial institution are excluded as long as they are kept in a separate account and not commingled in an account with non-excluded funds. When the excluded funds are commingled in an account with non-excluded funds they retain their exemption for six months from the date of commingling. After six months from the date of commingling, all funds are counted as a resource.
 - (ii) Purchases made with excluded funds are considered a resource;
- (F) income up to \$2,000 per year received by individual Indians, which is derived from leases or other uses of individually-owned trust or restricted lands. The income exclusion applies to calendar years beginning January 1, 1994. Any remaining disbursements from the trust or restricted lands are considered as income;

(G) allowances, earnings, and payments made for participation in the Workforce Investment Act (WIA) to individuals of all ages and student status. There are numerous programs for which payments are excluded. These programs include Summer Youth, Job Corps, paid classroom training, and others. The exception to the income exclusion is income to individuals for on-the-job training paid to participants 19 years old and older. This income is treated as any other earned income;

(H) payments, allowances, or earnings to individuals participating in programs under Title I of the National and Community Service Act, such as University Year for Action (UYA), Senior Companion Program, AmeriCorps Volunteers in Service to America (VISTA) and other AmeriCorps Programs, are not included as income for purposes of determining food benefit eligibility and benefit level;

(I) payments or allowances made under any federal law for the purpose of energy assistance, Low Income Home Energy Assistance Program (LIHEAP) and utility payments, and reimbursements made by the Department of Housing and Urban Development (HUD) and the Farmers Home Administration (FmHA);

(J) the amount of the mandatory salary reduction of military service personnel used to fund the G.I. Bill;

(K) all funds that are paid to individuals under the Community Service Employment Program under Title V, P.L. 100-175. This program is authorized by the Older Americans Act. Each state and various organizations receive some Title V funds. These organizations include:

- (i) Experience Works;
- (ii) National Council on Aging;
- (iii) National Council of Senior Citizens;
- (iv) American Association of Retired Persons (AARP);
- (v) U. S. Forest Service;
- (vi) National Association for Spanish Speaking Elderly;
- (vii) National Urban League;
- (viii) National Council on Black Aging; and

- (ix) National Council on Indian Aging;
- (L) Earned Income Tax Credit (EITC) payments received as part of a tax refund and also EITC advance payments received as part of a paycheck [P.L. 100-435];
- (M) refunds of the state EITC as result of filing a state income tax return;
- (N) payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);
- (O) payments received under the Civil Liberties Act of 1988. These payments are made to individuals of Japanese ancestry who were detained in interment camps during World War II;
- (P) payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from the exposure to radiation from nuclear testing and uranium mining;
- (Q) payments for the fulfillment of a Plan for Achieving Self-Support (PASS) under Title XVI of the Social Security Act;
- (R) payments made to individuals because of their status as victims of Nazi persecution;
- (S) funds distributed by Federal Emergency Management Assistance (FEMA) due to a disaster or emergency to individuals directly affected by the event. This exclusion also applies to comparable disaster assistance provided by states, local governments, and disaster assistance organizations. For payments to be excluded, the disaster or emergency must be declared by the President of the United States;
- (T) monetary allowances as described in Section 1823(c) of Title 38 of the United States Code (U.S.C.) provided to certain individuals who are children of Vietnam War veterans; and
- (U) Disaster Unemployment Assistance paid to individuals unemployed as a result of a major disaster.

(6) Payments which are not considered income.

- (A) The payments in (i) through (iii) are not considered as income.

- (i) Monies withheld from any income source to repay a prior overpayment from that same source.
 - (ii) Monies voluntarily or involuntarily returned to repay a prior overpayment received from that same income source.
 - (iii) Child support payments received by Temporary Assistance for Needy Families (TANF) recipients which must be sent to the Child Support Enforcement Division to maintain TANF eligibility.
- (B) Monies withheld or returned to repay overpayments in federal, state, or local means-tested assistance programs are counted when they are withheld or returned to repay overpayments resulting from intentional program violation as established by the agency administering the program.
- (i) In the Food Stamp Program, willful misrepresentation is considered as intentional program violation.
 - (ii) The State Supplemental Payment to the Aged, Blind, and Disabled and TANF programs define intentional program violation using the terms restitution, fraud, and willful misrepresentation.
 - (iii) The Social Security Administration (SSA) and Veterans Benefits Administration programs define intentional program violation as fraud. Supplemental Security Income (SSI) is a means-tested program within SSA.

(7) Reimbursements.

- (A) Reimbursements for past or future expenses to the extent they do not exceed actual expenses and do not represent a gain or benefit to the household are not considered. Examples are reimbursements for:
- (i) job or training related expenses such as travel, per diem, uniforms, and transportation to and from job or training site. However, if these expenses are not reimbursements, they are considered income;
 - (ii) out-of-pocket expenses incurred by volunteers in the course of their work;
 - (iii) medical or dependent care; and
 - (iv) services provided by Title XX of the Social Security Act.

(B) When a reimbursement, including a flat allowance, covers multiple expenses, each expense does not have to be separately identified as long as none of the reimbursement covers normal living expenses. The amount of the reimbursement that exceeds the actual incurred expenses is counted as income. A reimbursement is not considered to exceed actual expenses unless the provider or household indicates the amount is excessive.

(8) **Money received for third parties.** Money received and used for the care and maintenance of a third party beneficiary who is not a household member is not considered.

(A) If the intended beneficiaries of a single payment are both household and non-household members, any identifiable portion of the payment intended and used for the care and maintenance of the non-household member is excluded.

(B) If the non-household member's portion cannot be readily identified, as in TANF payments, the payment is evenly prorated among intended beneficiaries. The exclusion is applied to the non-household member's pro rata share or the amount actually used for the non-household member's care and maintenance, whichever is less.

(9) **Earnings of a child.** Earned income of a child who is head of his or her own household is counted. The earned income of an elementary or high school student 17 years of age or younger who is under parental control of an adult household member is excluded. This exclusion continues to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment will resume following the break. If the child's earnings cannot be differentiated from those of other household members, the total earnings are prorated equally among the working members, and the child's prorated share is excluded. ■ 2

(10) **Other types of excluded income.**

(A) **Loans.** All loans, including loans from private as well as commercial institutions, are excluded. Verification that the income is a loan is required.

(B) **Irregular Income.** Exclude any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated which is \$30 or less per quarter.

(C) **Non-recurring lump sum payments.** Exclude money received in the form of non-recurring lump sum payments, including but not limited to: income tax refunds, rebates, credits, retroactive lump sums from SSA, SSI, public assistance, Railroad

Retirement pensions, or other payments, or retroactive lump sum insurance settlements. These payments are counted as resources. ■ 3

(D) **Cost of self-employment.** Exclude the cost of producing self-employment income. ■ 4

(E) **Income of non-household members.** The income of non-household members who have not been disqualified or are not ineligible aliens is not considered available to the household. ■ 5

(F) **Charitable contributions.** Exclude cash contributions to a household from one or more private non-profit charitable organizations, not to exceed \$300 in a federal fiscal year quarter. For the purposes of this provision a quarter includes these specific months:

(i) October, November, December;

(ii) January, February, March;

(iii) April, May, June; and

(iv) July, August, September.

(G) **Department of Housing and Urban Development's (HUD) Family Self-sufficiency Program (FSS) escrow accounts.** Families participating in the HUD FSS program may withdraw money from their escrow accounts prior to completion of the program. This money is excluded both as income and as a resource.

(H) Individual Development Account (IDA). Any funds deposited in an IDA operated under the Assets for Independence Act and the interest that accrues.

INSTRUCTIONS TO STAFF

1. Examples of vendor payments that are excluded as income are:

(1) a friend, employer, agency, church, relative, or former spouse making payments for household expenses such as rent or utilities directly to the landlord or utility company. If the payment is made from funds not owed to the household, it is a vendor payment and excluded as income;

(2) an employer paying a household's rent or house payment directly to the landlord or financial institution as compensation, in addition to paying

regular wages. This is a vendor payment and excluded as income. If the employer provides a house to an employee, the value of the housing is not considered income;

(3) a household receiving court-ordered monthly child support payments in the amount of \$400. Later, \$200 is diverted by the non-custodial parent and paid directly to a creditor of the food benefit household. The entire \$400 is counted as unearned income to the household because the payment is taken from money that is owed to the household. Payments specified by a court order or other legally binding agreement to go directly to a third party rather than the household are excluded from income because they are not otherwise payable to the household. For example, a court awards support payments in the amount of \$400 per month and, in addition, orders \$200 paid directly to a bank for repayment of a loan. The \$400 is counted and the \$200 payment is not counted;

(4) payments by a government agency to a child care facility for the purpose of providing child care for a household member are considered vendor payments and excluded as income; and

(5) payments or allowances made by the Department of Housing and Urban Development (HUD) or by the Farmers Home Administration (FmHA) directly to mortgage holders, landlords, or utility providers are vendor payments and excluded as income.

2. (a) For purposes of this provision, an elementary or high school student includes someone who attends classes, to obtain a General Educational Development (GED), that are recognized, operated, or supervised by the student's state or local school district.

(b) The earned income of the student must be counted beginning the month following the month the student turns 18. This applies regardless of marital status as long as the student continues to live with a parent.

(c) Workforce Investment Act (WIA) on-the-job training [Section 204(b)(1)(c)] of a child who has not had his or her 19th birthday is exempt as long as the child is under the parental control of another household member regardless of student status.

3. See OAC 340:50-7-4(b).

4. See OAC 340:50-7-30(2).
5. See OAC 340:50-5-5 and 340:50-5-6.