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POLICY TRANSMITTAL NO. 07-61	DATE: OCTOBER 30, 2007
FAMILY SUPPORT SERVICES DIVISION	DEPARTMENT OF HUMAN SERVICES OFFICE OF LEGISLATIVE RELATIONS AND POLICY

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TO: ALL OFFICES

SUBJECT: MANUAL MATERIAL

OAC 340:50-5-67.

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

OAC 340:50-5-67 is revised to establish rules regarding the verification of the lawful presence in the United States for persons 14 years of age or older who are applying for state or federal public benefits.

Original signed on 10-22-07

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Mary Stalnaker, Director  
Family Support Services Division

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Sharon Neuwald, Coordinator  
Office of Legislative Relations and Policy

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WF # 07-21 (NAP)

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## **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 an "OKDHS" number, such as personnel policy at OKDHS:2-1 and personnel rules at OAC 340:2-1. The "340" is the Title number that designates OKDHS 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, OKDHS 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, OKDHS: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 405-521-4326.

### **REMOVE**

340:50-5-67

### **INSERT**

340:50-5-67, pages 1-7, revised 11-1-07

**340:50-5-67. Citizenship and alien status**

Revised 11-1-07

(a) To be eligible for food benefits an individual must be:

- (1) a United States (U.S.) citizen; ■ 1
- (2) a U.S. non-citizen national; ■ 2
- (3) an alien who is both qualified and eligible; or ■ 3
- (4) an alien not required to meet qualified alien status. ■ 4

(b) Pursuant to Section 71 of Title 56 and Section 20j of Title 74 of the Oklahoma Statutes, all persons 14 years of age and older must declare whether they are residing in the U.S. lawfully and may be required to sign Form 08MP005E, Citizenship Affidavit, in accordance with OAC 340:65-3-1(g).

**INSTRUCTIONS TO STAFF 340:50-5-67**

Revised 11-1-07

**1. (a) A United States (U.S.) citizen is a person, other than a foreign diplomat, born in the U.S., Puerto Rico, Guam, the U.S. Virgin Islands, or Northern Mariana Islands, who has not renounced or otherwise lost his or her citizenship. A person born outside the U.S. is a U.S. citizen if at least one parent is a U.S. citizen at the time of the child's birth.**

**(b) The applicant or recipient must declare the citizenship or alien status of all household members requesting food benefits on the application form. Form 08MP022E, Declaration of Citizenship Status, is used to declare citizenship or alien status when new household members are added to the food benefits after certification.**

**(c) If a household member's U.S. citizenship is questionable, the household member must provide verification. Verification of citizenship is made by examining:**

- (1) birth certificate;**
- (2) baptismal certificate;**

(3) U.S. passport; or

(4) certification of citizenship or naturalization provided by the U.S. Citizenship and Immigration Services (USCIS), such as identification card for use of the resident citizen of the U.S., USCIS Form I-179, or USCIS Form I-197.

(d) If verification of citizenship cannot be obtained and the household provides a reasonable explanation for why verification is not available, the worker accepts a signed statement from someone who is a U.S. citizen who declares under penalty of perjury that the person in question is a U.S. citizen. The signed statement must contain a warning that "if you intentionally give false information to help this person get food benefits, you may be fined, imprisoned, or both." When the person is 14 or older, he or she may also be required to complete Form 08MP005E, Citizenship Affidavit, in accordance with OAC 340:65-3-1(g).

(e) Members of the household whose citizenship is in question are ineligible and their income and resources are considered available to any remaining household member in accordance with policy for eligible aliens until proof of U.S. citizenship is obtained.

(f) When the applicant declares that some or all of the household members applying for benefits are aliens, the worker must follow the SAVE procedures described at OAC 340:65-3-4 to determine if the documents provided to verify legal alien status are valid.

2. A U.S. non-citizen national is a person born in outlying possessions of the U.S. on or after the U.S. acquired possession or his or her parent(s) is a U.S. non-citizen national. Examples of outlying possessions are American Samoa or Swains Island.

3. (a) A qualified alien is a person who at the time he or she applies for or receives food benefits is:

(1) lawfully admitted for legal permanent residence (LPR) in the U.S. under Section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act of 1988;

(2) granted asylum under Section 208 of the Immigration and Nationality Act (INA);

(3) an alien whose deportation is being withheld under Section 243(h) of the INA as in effect before April 1, 1997, or removal is withheld under Section 241(b)(3) of the INA;

(4) a refugee who is admitted under Section 207 of the INA;

(5) a Cuban or Haitian entrant under Section 501(e) of the Refugee Education Assistance Act of 1980;

(6) paroled into the U.S. under Section 212(d)(5) of the INA for at least one year;

(7) granted conditional entry pursuant to Section 203(a)(7) of the INA as in effect before April 1, 1980;

(8) a battered spouse, battered child or parent or child of a battered person with a petition pending under Section 204(a)(1)(A) or (B) or Section 244(A)(3) of the INA; or

(9) a victim of a severe form of trafficking and/or his or her eligible relatives.

(A) A victim has a letter of certification issued by Office of Refugee Resettlement (ORR). The victims and their eligible relatives also have a T Visa.

(B) To verify the validity of ORR issued letters and to inform ORR of the benefits for which the victims have applied, call the victims verification toll-free number 1-866-401-5510.

**(b)** To be eligible, a qualified alien must meet at least one of the criteria listed in (1) through (9) of this Instruction to Staff (ITS) and is not limited in participation unless otherwise stated. The qualified alien:

(1) is a veteran of the U.S. military who was honorably discharged for a reason(s) other than alienage. The veteran must have at least 24 months of active service or if the veteran was called to active duty for a specified time less than 24 months had completed the specified number of months of service. The veteran's spouse and unmarried dependent children are also eligible with no time limits. The term veteran also includes:

- (A) military personnel who die during active duty service; and
  - (B) persons who served in the Philippine Commonwealth Army during World War II or as a Philippine scout following the war;
- (2) is an unmarried dependent child of a deceased veteran or person who died during active duty service;
- (3) is the surviving spouse of a deceased veteran or person who died during active duty service who has not remarried and who was married to the veteran:
  - (A) for at least one year;
  - (B) before the end of a 15-year time span following the end of the period of military service in which the injury or disease was incurred or aggravated; or
  - (C) for any period of time if a child was born of the marriage or before the marriage;
- (4) is on active military duty, not including active duty for training, the alien's spouse, or an unmarried dependent child;
- (5) can be credited with 40 qualifying quarters of coverage under Title II of the Social Security Act.
  - (A) Quarters may be used both by the person working them and the persons to whom they are deemed.
  - (B) Quarters worked after December 31, 1996 are not counted or credited as part of the 40-quarter fulfillment if the alien, his or her parent(s), or spouse received any means-tested public benefit during that quarter. Means-tested public benefits are:
    - (i) Supplemental Security Income (SSI);
    - (ii) food benefits;
    - (iii) Temporary Assistance to Needy Families (TANF);

**(iv) SoonerCare (Medicaid); and**

**(v) the Food Assistance Program in Puerto Rico, American Samoa, and the Northern Mariana Islands.**

**(C) Quarters credited may be:**

**(i) earned by the person;**

**(ii) earned by a spouse during the period of the legal marriage including common law;**

**(iii) earned by a spouse now deceased during their marriage if the surviving spouse has not remarried;**

**(iv) earned by parents, natural or adoptive, while the alien child was under 18 years of age and unmarried. This includes quarters earned before the birth of the person. The alien child can continue to count these quarters after he or she reaches age 18;**

**(v) earned by a stepparent during the marriage to the alien child's natural or adoptive parent. The alien child can continue to count these quarters after he or she reaches age 18. The step relationship is based on the marriage of the child's parent to the stepparent. The quarters can be credited from the quarter in which the marriage occurred through the quarter the child attains age 18. During a marital separation, the quarters are counted. If the marriage ended by the death of the stepparent, the stepparent's quarters are counted. If the marriage ended because of divorce, the stepparent's quarters are not counted; or**

**(vi) deemed back and forth within the family group, from spouse to spouse, and parent to child, but not from child to parent. For example, mom and dad each have 20 countable quarters which can be deemed to each other as well as any of their minor children living in the home, making them all eligible;**

**(6) is currently receiving disability or blindness payments under programs described in OAC 340:50-5-4(a)(2) through (a)(8)(B);**

(7) has resided in the U.S. as a qualified alien for five years since date of entry;

(8) has been admitted to the U.S. as:

(A) a refugee to the U.S. under Section 207 of the INA;

(B) an alien granted asylum under Section 208 of the INA;

(C) an alien whose deportation is being withheld under Section 243(h) or 241(b)(3) of the INA;

(D) an Amerasian admitted pursuant to Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988;

(E) a Cuban or Haitian entrant under Section 501(e) of the refugee Education Assistance Act of 1980; or

(F) a victim of a severe form of trafficking and his or her eligible relatives; or

(9) is a child under age 18 regardless of when he or she was admitted.

**(c) When the applicant declares that some or all of the household members applying for benefits are aliens, the worker must follow the SAVE procedures described at OAC 340:65-3-4 to determine if the documents provided to verify legal alien status are valid.**

**4. Aliens not required to meet qualified alien status are:**

(1) American Indians born in Canada to whom the provisions of Section 289 of the INA [8 United States Code (USC) 1359] apply and members of an Indian tribe as defined in Section 4(e) of the Indian Self-Determination and Education Assistance Act. [25 USC 450(e)] This provision was intended to cover American Indians who are entitled to cross the U.S. border into Canada or Mexico. This includes among others, the:

**(A) St. Regis Band of the Mohawk in New York State;**

**(B) Micmac in Maine;**

**(C) Abanaki in Vermont; and**

**(D) Kickapoo in Texas; or**

**(2) persons who are lawfully residing in the U.S. and were members of a Hmong or Highland Laotian tribe at the time the tribe rendered assistance to the U.S. personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964 and ending May 7, 1975. The spouse or unremarried surviving spouse and unmarried dependent children of such person may also be eligible for food benefits.**