
POLICY TRANSMITTAL NO. 09-51	DATE: SEPTEMBER 30, 2009
FAMILY SUPPORT SERVICES DIVISION	DEPARTMENT OF HUMAN SERVICES OFFICE OF LEGISLATIVE RELATIONS AND POLICY

TO: ALL OFFICES

SUBJECT: MANUAL MATERIAL

OAC 340:50-5-67 and 50-7-29.

EXPLANATION: OAC 340:50-5-67 Instructions to staff (ITS) are revised to: (1) change the number of months Afghans admitted in special immigrant status may be eligible for Supplemental Nutrition Assistance Program (SNAP) benefits; and (2) update legal cites used for special immigrants.

OAC 340:50-7-29 ITS are revised to help clarify policy regarding: (1) garnisheed wages; and (2) how to consider income of household members who are away from home for over 30 days.

Original signed on 9-24-09

Mary Stalnaker, Director
Family Support Services Division

Sandra Harrison, Coordinator
Office of Legislative Relations and Policy

WF # 09-V (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 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

340:50-7-29

INSERT

340:50-5-67, pages 1-8, revised 10-1-09

340:50-7-29, pages 1-6, revised 10-1-09

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 340:50-5-67Revised 10-1-09

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;

(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 surviving spouse who has not remarried and unmarried dependent children of such person may also be eligible for food benefits;

(3) Iraqis admitted in special immigrant status as defined in Section 101(a)(27) of INA [8 U.S.C. 1101(a)(27)], and per Section 1059, Public Law (P.L.) 109-163, the National Defense Authorization Act for Fiscal Year 2006, and Section 1244 of P.L. 110-181 the National Defense Authorization Act for Fiscal Year 2008 pursuant to Section 525 of Division G of P.L. 110-161, the Consolidated Appropriations Act of 2008, and Section 1244 of P.L. 110-181, the National Defense Authorization Act for Fiscal year 2008. They may be eligible for food benefits for up to eight months from the date they are granted special immigrant status if they meet all other program requirements. If they meet qualified alien status, as shown in ITS 3 of this Section, they may be eligible for food benefits beyond the eight month time limit.

(A) When the household includes members subject to the time-limit and members not subject to the time-limit, a normal certification period may be assigned. For example, when some but not all household members are under 18 or have been granted a qualified alien status, a normal certification period may be assigned. When all household members are subject to the time-limit, the maximum number of months the household is approved for benefits is eight months.

(B) Examples of how to determine the number of months persons are eligible for benefits includes an Iraqi family who is granted special immigrant status in:

(i) April and does not apply for benefits until July. The adults may be eligible for benefits for five months while the children in the family are not time-limited; or

(ii) June and applies for benefits in July. The adults may be eligible for benefits for seven months while the children in the family are not time-limited; or

(4) Afghans admitted in special immigrant status as defined in Section 101(a)(27) of INA [8 U.S.C. 1101(a)(27)] and per Section 1059 P.L. 109-163, the National Defense Authorization Act for Fiscal Year 2006, and Section 602, Division F, P.L. 111-08, the Omnibus Appropriations Act, 2009, pursuant to Section 525 of Division G of P.L. 110-161 of the Consolidated Appropriations Act, 2009. They may be eligible for food benefits for up to eight months from the date they are granted special immigrant status. If they meet qualified alien status, as shown in ITS 3 of this Section, they may be eligible for food benefits beyond the eight month time limit.

(A) When the household includes members subject to the time-limit and members not subject to the time-limit, a normal certification period may be assigned. For example, when some but not all household members are under 18 or have been granted a qualified alien status, a normal certification period may be assigned. When all household members are subject to the time-limit, the maximum number of months the household is approved for benefits is eight months.

(B) Examples of how to determine the number of months persons are eligible for benefits includes an Afghan family who is granted special immigrant status in:

(i) April and applies for benefits in July. The adults may be eligible for benefits for five months while the children in the family are not time-limited; or

(ii) June and applies for benefits in July. The adults may be eligible for benefits for seven months while the children in the family are not time-limited.

340:50-7-29. Income inclusions

Revised 6-1-09

(a) **Earned income.** Earned income is income which a household receives in the form of wages, self-employment, or training allowances and for which a person puts forth daily, physical labor. The types of earnings listed in (1) through (4) of this subsection, including money from the sale of whole blood or blood plasma, are considered earned income.

(1) **Wages.** All wages and salaries for services performed as an employee, including sick pay paid by the employer to an employee who plans to return to work when recovered, are considered as earned income. ■ 1 Wages that are garnisheed or diverted and paid to a third party for a household's expenses are also included. ■ 2

(2) **Self-employment.** The total gross income from a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, but excluding the cost of producing the income and payments from roomers or boarders and rent from rental property are considered self-employment income. Income from rental property is considered earned income only if a member of the household is actively engaged in management of the property an average of at least 20 hours per week. ■ 3

(3) **Title I payments of the Domestic Volunteer Services Act.** Payments under Title I of the Domestic Volunteer Services Act of 1973 as amended [Public Law (P.L.) 93-113] are considered as income unless excluded in OAC 340:50-7-22.

(4) **On-the-job training.** Income earned in on-the-job training positions is considered earned income. This includes on-the-job training provided under Section 204(b)(1)(c) or Section 264(c)(1)(A) of the Workforce Investment Act for persons 19 years of age or older. ■ 4

(b) **Unearned income.** In general, unearned income is that income which a household receives and is not in the form of wages, self-employment, or training allowances and for which a person does not put forth any daily, physical labor. The types of income listed in (1) through (5) of this subsection, while not all inclusive, are considered unearned. ■ 5

(1) **Assistance payments.** Assistance payments from a federally aided public assistance program, such as Supplemental Security Income (SSI), Temporary

Assistance for Needy Families (TANF), or assistance programs based on need, such as State Supplemental Payments are considered as unearned income. ■ 6

(A) A household's food benefit amount does not increase when the benefit received from another program is reduced, suspended, or terminated because of a penalty imposed for an intentional failure to comply with a requirement of that program. The other program must be a means-tested, federal, state, or local welfare or public assistance program which is governed by welfare or public assistance laws or regulations and which distributes public funds, such as, SSI and TANF. Policy at OAC 340:10-2-2 explains the TANF penalty considered for SNAP. ■ 7

(i) When a worker is not able to obtain the necessary information and cooperation from another federal, state, or local means-tested welfare, or public assistance program to comply with the provision in (A) of this paragraph, Oklahoma Department of Human Services (OKDHS) is not held responsible. The worker must make a good faith effort to get the needed information and record the details and results of this effort in the case file.

(ii) The household's current food benefit amount is not reduced, suspended, or terminated when the benefits under another assistance program are decreased.

(iii) When eligible members are added to the food benefit, the benefit must be adjusted regardless of whether the household is prohibited from receiving benefits for the additional member under another federal, state, or local welfare or public assistance means-tested program.

(iv) Changes in the household circumstances which are not related to the penalty imposed by another federal, state, or local welfare or public means-tested assistance program are not affected by the provision in (A) of this paragraph.

(v) The application of the provision in (A) of this paragraph applies for the duration of the imposed penalty.

(B) The provision in (A) of this paragraph does not apply to persons or households subject to disqualification from SNAP for noncompliance with a comparable work requirement under Title IV of the Social Security Act or an unemployment compensation work requirement.

(2) **Pension and Social Security.** Annuities, pensions, retirement, veterans' or disability benefits, workers' or unemployment compensation, survivors' or Social Security benefits, and strike benefits are unearned income. ■ 8

(3) **Support and alimony.** Support and alimony payments that are made directly to the household from non-household members, money deducted or diverted from court-ordered support or alimony payments, or other binding written support or alimony agreement, to a third party for a household expense must be considered as income when the court order directs that the payment be made to the household. ■ 9

(4) **Grants and interest payments.** Payments from government sponsored programs, such as Agricultural Stabilization and Conservation Service Programs, dividends, interest, royalties, and all other direct money payments from any source which can be construed to be a gain or profit are considered as income. Income from royalties is treated as unearned income.

(5) **Monies which are withdrawn or dividends which are or could be received by a household from trust funds.** Dividends which the household has the option of either receiving as income or reinvesting in the trust are considered as income in the month they become available to the household.

(c) **Income of disqualified or ineligible household members.** A complete list of reasons for disqualification of household members is found in OAC 340:50-5-10.1. Income of disqualified persons and unqualified aliens is counted as indicated in paragraphs (1) and (2) of this subsection.

(1) **Income of a person disqualified for failure to comply with food benefit Employment and Training (E&T) Program requirements or willful misrepresentation, fraud.** All income of a person disqualified for failure to comply with food benefit E&T requirements or willful misrepresentation, fraud, is counted as available to the remaining household members. Utility, medical, dependent care and excess shelter deductions continue to apply to the remaining household members.

(2) **Income of persons disqualified for reasons other than willful misrepresentation or failure to comply with E&T requirements.** Income of persons disqualified for reasons other than those stated in paragraph (1) of this subsection is prorated among all household members.

(A) A pro rata share of the income of a disqualified person is considered as income available to the remaining members. This pro rata share is calculated by first subtracting the allowable exclusions from the disqualified member's income

and dividing the income evenly among the household members, including the disqualified member.

(B) All but the disqualified member's share is considered as income available to the remaining household members. The earned income deduction from OKDHS Appendix C-3, Maximum Food Benefit Allotments and Standards for Income and Deductions applies to the prorated income attributed to the household if it was earned by the disqualified member.

(C) That portion of the household's allowable shelter and dependent care expenses which are either paid by or billed to the disqualified member is divided evenly among the household members, including the disqualified member. When the household is using the utility standard, it too is evenly prorated. All but the disqualified member's share is considered as a deductible shelter expense for the remaining household members.

(3) **Determining eligibility and benefit level.** The needs of a disqualified or ineligible household member are not considered when determining the household's size for purposes of assigning a benefit level to the household or for purposes of comparing the household's monthly income with the income eligibility standard.

INSTRUCTIONS TO STAFF 340:50-7-29

Revised 10-1-09

1. **Only the excess benefit allowance, after all insurance costs are deducted, is considered as income for persons whose employers pay a benefit allowance to purchase insurance. Examples of insurance include life, health, dental, vision, accidental death and dismemberment and insurance for dependents.**

2. Examples of wages garnisheed or diverted and paid to a third party for a household's expenses include wages withheld to pay:

(1) child support;

(2) rent, even if the employer is also the landlord; or

(3) the employer for uniforms or tools required to be purchased for use on the job.

- 3. When a household member is not actively engaged in the management of the property at least 20 hours each week, the income is considered unearned. The person is allowed business expenses as described at OAC 340:50-7-30(8).**
- 4. This provision does not apply to household members under 19 years of age who are under the parental control of another adult household member, regardless of school attendance. For the purpose of this provision, earnings include monies paid under the Workforce Investment Act and monies paid by the employer.**
- 5. (a) Income is not considered for a household member who:**
 - (1) is away from home due to reasons such as military deployment or employment in another state; and**
 - (2) does not return for part of each month.**

(b) When a portion of the absent member's income is made available to the rest of the household, it is considered as a contribution. This applies even if the absent member's wages are deposited in a joint bank account.

(c) The absent member who does not return for part of each month is not considered a member of the food benefit household.
- 6. (a) Foster care payments for children or adults who are considered members of the household are counted as unearned income. The household may choose to exclude the person(s) in foster care from the food benefit household and exclude the foster care payments. Guardianship payments, such as kinship care, are treated the same as foster care payments.**

(b) Adoption subsidy payments are counted as unearned income.
- 7. See OAC 340:10-2-2 to determine when Temporary Assistance for Needy Families (TANF) penalty income can be removed.**
- 8. For this provision, disability pay is considered unearned income if the client is no longer considered an employee of the company and the disability benefits are paid by an agency outside the company. If the client is still considered an employee and paid disability benefits by the company, it is counted as earned income.**
- 9. Child support is considered income to the parent.**

(1) Child support is documented in Family Assistance/Client Services (FACS) case notes and coded in FACS on the child(ren) if the child(ren) is included in the food benefits unless:

(A) child support is paid to a parent whose child(ren) is no longer in the food benefit; or

(B) the parent is an ineligible or disqualified household member.

(2) In the circumstances listed in (A) or (B) of this Instruction, the child support is coded in FACS on the adult as a contribution.