

Secretary of State  
**PERMANENT RULEMAKING**

A Statement of Need and Fiscal Impact must accompany this form.

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted upon filing by the

Department of Human Services, Office of Self-Sufficiency Programs			461
<b>Agency and Division</b>			<b>Chapter Number</b>
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to become effective January 1, 2016. Rulemaking notice was published in the November 2015 Bulletin.

**RULEMAKING ACTION**

**AMEND:** 461-120-0125, 461-170-0103, 461-175-0200, 461-175-0220, 461-175-0250, 461-175-0340, 461-195-0521, 461-195-0621

**REPEAL:** 461-170-0103(T), 461-175-0200(T)

ORS 409.050, 411.060, 411.070, 411.095, 411.101, 411.816, 412.006, 412.009, 412.016, 412.049  
Stat. Auth.

7 CFR 271.7(f), 7 CFR 273.12(e)(1)  
Other Auth.

ORS 183.415, 183.417, 409.010, 409.050, 411.060, 411.070, 411.081, 411.095, 411.097, 411.099, 411.101, 411.103, 411.640, 411.816, 411.825, 411.837, 412.001, 412.006, 412.009, 412.016, 412.049, Or Laws 2015, ch 269  
Stats. Implemented

## Summary

OAR 461-120-0125 relating to alien status is being amended to: remove Afghan and Iraqi aliens granted Special Immigrant Status (SIV) as qualified non-citizens; add Afghan and Iraqi aliens granted Special Immigrant Status (SIV) as meeting the alien status requirements in the ERDC, TA-DVS, and TANF programs; add victims of trafficking as qualified non-citizens; and increase eligibility for OSIPM and QMB by expanding individuals who meet the alien status requirements.

OAR 461-170-0103 about actions resulting from changes in household circumstances and OAR 461-175-0200 about notice situations are being amended to allow JPI (Job Participation Incentive) payments to be closed with a basic notice (instead of a 10-days advance notice with a right to continuing benefits) when a client reports a change in income that results in eligibility for increased SNAP benefits. The JPI program is a \$10 food benefits. This amendment covers situations in which net benefits are not decreasing. This makes permanent temporary rules adopted on October 1, 2015.

OAR 461-175-0200 about notice situations generally; OAR 461-175-0220 about notice situations for disqualifications; OAR 461-175-0340 about notice situations for voluntary actions; and OAR 461-195-0621 about intentional program violations are being amended to clarify that a signed IPV waiver qualifies as a final order and therefore no further notice to the client who signed the IPV waiver is required. It is also clarified that other members of the benefit group do receive notice if the benefits of the remaining members are reduced as a result of the disqualification based on a signed IPV waiver.

OAR 461-175-0250 is notices required when there are mass changes (such as a cost-of-living adjustment or federal government shutdown) is being amended to: state that the Department is not required to send notice of intended action to each SNAP client when the federal government changes a benefit or standard that results in the mass suspension or closure of SNAP benefits; describe the kinds of notification the Department may undertake instead; and state that there is no right to a hearing or continuing benefits in this situation. This is in compliance with [7 CFR 271.7\(f\)](#), [7 CFR 273.12\(e\)\(1\)](#), and ORS 411.095 as amended by [SB 225](#) (Oregon Laws 2015, chapter 269).

OAR 461-195-0521 about the calculation of overpayments is being amended to clarify that an underpayment of benefits can be credited against an overpayment only when they occur in the same program. This aligns with existing practice and with OAR [461-195-0551\(4\)\(b\)](#).

In addition, non-substantive edits are being made to improve clarity and ease of reading such as updating terminology, alphabetizing programs, correcting and updating statutory and rule references, and correcting formatting and punctuation.

- (1) For purposes of this chapter of rules, an individual is a "qualified non-citizen" if the individual is any of the following:
- (a) A non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 *et seq.*).
  - (b) A refugee who is admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157).
  - (c) A non-citizen who is granted asylum under section 208 of the INA (8 U.S.C. 1158).
  - (d) A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1253(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 1231(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996)).
  - (e) A non-citizen who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year.
  - (f) A non-citizen who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980.
  - (g) A non-citizen who is a "Cuban and Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980).
  - ~~(h) An Afghan or Iraqi alien granted Special Immigration Status (SIV) under section 401(a)(27) of the INA.~~
  - ~~(ih) In all programs except the SNAP program—a battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c) and is in the United States on a conditional resident status, as determined by the U.S. Citizenship and Immigration Services.~~
  - ~~(j) In the SNAP program—a non-citizen who has been battered or subjected to extreme cruelty in the United States by a spouse or parent or by a member of the spouse or parent's family residing in the same household as the non-citizen at the time of the abuse; a non-citizen whose child has been battered or subjected to battery or cruelty; or a non-citizen child whose parent has been battered.~~
  - (j) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).

- (j) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).
- (2) In all programs except the REF and REFM programs, an individual meets the alien status requirements if the individual is one of the following:
- (a) An American Indian born in Canada to whom the provisions of section 289 of the INA (8 U.S.C. 1359) apply.
- (b) A member of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e)).
- (3) In the ERDC, TA-DVS, and TANF programs, an individual meets the alien status requirements if the individual is one of the following:
- (a) An individual who is a *qualified non-citizen* (see section (1) of this rule).
- (b) A non-citizen who is currently a victim of domestic violence or who is at risk of becoming a victim of domestic violence.
- ~~(c) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).~~
- (c) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the INA.
- ~~(d) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).~~
- (4) In the OSIPM and QMB programs: an individual meets the alien status requirement if:
- (a) The individual is a non-citizen who entered the United States or was given *qualified non-citizen* status on or after August 22, 1996 and has been in the U.S. for five years beginning on the date the non-citizen received his or her *qualified non-citizen* status; or
- (b) The individual meets the requirements of one of the following subsections:
- (A) An individual granted any of the following alien statuses--
- (i) Refugee--under section 207 of the INA.
- (ii) Asylum--under section 208 of the INA.

- (iii) Deportation being withheld under section 243(h) of the INA.
- (iv) Cubans and Haitians who are either public interest or humanitarian parolees.
- (v) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.
- (vi) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).
- (vii) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).
- (viii) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the INA.
- (B) Effective October 1, 2009, an individual is a qualified non-citizen and is under 19 years of age.
- (C) Was a *qualified non-citizen* before August 22, 1996.
- (D) Physically entered the United States before August 22, 1996, and was continuously present in the United States between August 22, 1996, and the date *qualified non-citizen* status was obtained. An individual is not continuously present in the United States if the individual is absent from the United States for more than 30 consecutive days or a total of more than 90 days between August 22, 1996 and the date *qualified non-citizen* status was obtained.
- (E) Is under the age of 19 and is one of the following:

  - (i) A citizen of a Compact of Free Association State (i.e., Federated States of Micronesia, Republic of the Marshall Islands, and the Republic of Palau) who has been admitted to the U.S. as a non-immigrant and is permitted by the Department of Homeland Security to reside permanently or indefinitely in the U.S.
  - (ii) An individual described in 8 CFR section 103.12(a)(4) who belongs to one of the following classes of aliens permitted to remain in the United States because the Attorney General has

decided for humanitarian or other public policy reasons not to initiate deportation or exclusion proceedings or enforce departure:

- (I) An alien currently in temporary resident status pursuant to section 210 or 245A of the INA (8 USC 1160 and 1255a);
  - (II) An alien currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 USC 1229b);
  - (III) Cuban-Haitian entrants, as defined in section 202(b) Pub. L. 99-603 (8 USC 1255a), as amended;
  - (IV) Family Unity beneficiaries pursuant to section 301 of Pub. L. 101-649 (8 USC 1255a), as amended;
  - (V) An alien currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;
  - (VI) An alien currently in deferred action status pursuant to Department of Homeland Security Operating Instruction OI 242.1(a)(22); or
  - (VII) An alien who is the spouse or child of a United States citizen whose visa petition has been approved and who has a pending application for adjustment of status.
- (iii) An individual in non-immigrant classifications under the INA who is permitted to remain in the U.S. for an indefinite period, including those individuals as specified in section 101(a)(15) of the INA (8 USC 1101).
- (F) In the OSIPM program, is receiving SSI benefits.
  - (G) In the QMB program, is receiving SSI and Medicare Part A benefits.
  - (H) Meets the alien status requirements in section (2) or (6) of this rule.
- (a) ~~A *qualified non-citizen* meets the alien status requirements if the individual satisfies one of the following situations:~~
- (A) ~~Effective October 1, 2009, is an individual under 19 years of age.~~
  - (B) ~~Was a *qualified non-citizen* before August 22, 1996.~~
  - (C) ~~Physically entered the United States before August 22, 1996, and was continuously present in the United States between August 22, 1996, and~~

~~the date *qualified non-citizen* status was obtained. An individual is not continuously present in the United States if the individual is absent from the United States for more than 30 consecutive days or a total of more than 90 days between August 22, 1996 and the date *qualified non-citizen* status was obtained.~~

- ~~(D) — Is an individual granted any of the following alien statuses:~~
  - ~~(i) — Refugee under section 207 of the INA.~~
  - ~~(ii) — Asylum under section 208 of the INA.~~
  - ~~(iii) — Deportation being withheld under section 243(h) of the INA.~~
  - ~~(iv) — Cubans and Haitians who are either public interest or humanitarian parolees.~~
  - ~~(v) — An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.~~
  - ~~(vi) — A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).~~
  - ~~(vii) — A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).~~
  - ~~(viii) — An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the INA.~~
- ~~(E) — Meets the alien status requirements in section (2), (6), or (7) of this rule.~~
- ~~(F) — In the OSIPM program, is receiving SSI benefits.~~
- ~~(G) — In the QMB program, is receiving SSI and Medicare Part A benefits.~~
- ~~(b) — A non-citizen meets the alien status requirements if the individual is under the age of 19 and is one of the following:~~
  - ~~(A) — A citizen of a Compact of Free Association State (i.e., Federated States of Micronesia, Republic of the Marshall Islands, and the Republic of Palau) who has been admitted to the U.S. as a non-immigrant and is permitted by the Department of Homeland Security to reside permanently or indefinitely in the U.S.~~

- ~~(B) — An individual described in 8 CFR section 103.12(a)(4) who belongs to one of the following classes of aliens permitted to remain in the United States because the Attorney General has decided for humanitarian or other public policy reasons not to initiate deportation or exclusion proceedings or enforce departure:~~
  - ~~(i) — An alien currently in temporary resident status pursuant to section 210 or 245A of the INA (8 USC 1160 and 1255a);~~
  - ~~(ii) — An alien currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 USC 1229b);~~
  - ~~(iii) — Cuban-Haitian entrants, as defined in section 202(b) Pub. L. 99-603 (8 USC 1255a), as amended;~~
  - ~~(iv) — Family Unity beneficiaries pursuant to section 301 of Pub. L. 101-649 (8 USC 1255a), as amended;~~
  - ~~(v) — An alien currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;~~
  - ~~(vi) — An alien currently in deferred action status pursuant to Department of Homeland Security Operating Instruction OI 242.1(a)(22); or~~
  - ~~(vii) — An alien who is the spouse or child of a United States citizen whose visa petition has been approved and who has a pending application for adjustment of status.~~
- ~~(C) — An individual in non-immigrant classifications under the INA who is permitted to remain in the U.S. for an indefinite period, including those individuals as specified in section 101(a)(15) of the INA (8 USC 1101).~~

- (5) In the GA and GAM programs, an individual meets the alien status requirement if the individual is one of the following:
- (a) An individual who is blind or has a disability was lawfully residing in the United States on August 22, 1996, and is now a *qualified non-citizen*.
  - (b) An individual granted one of the following statuses, but only for seven years following the date the status is granted:
    - (A) Refugee--under section 207 of the INA.
    - (B) Asylum--under section 208 of the INA.

- (C) Deportation being withheld under section 243(h) of the INA.
  - (D) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.
  - (E) Cubans and Haitians who are either public interest or humanitarian parolees.
  - (F) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).
  - (G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).
- (c) An individual who meets one of the alien status requirements in section (2) or (6) of this rule.
  - (d) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the INA.
- (6) In all programs except the ERDC, REF, REFM, and TANF programs, a *qualified non-citizen* meets the alien status requirement if the individual is:
- (a) A veteran of the United States Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty service requirements described in 38 U.S.C. 5303A(d).
  - (b) A member of the United States Armed Forces on active duty (other than active duty for training).
  - (c) The spouse or a dependent child of an individual described in subsection (a) or (b) of this section.
  - (d) In the SNAP program, a qualified non-citizen who meets the requirement in section (10) of this rule.
- ~~(7) Except as provided in section (2), subsection (4)(a), and sections (5) and (6) of this rule, a non-citizen who entered the United States or was given *qualified non-citizen* status on or after August 22, 1996:~~
- ~~(a) Is ineligible for the OSIPM and QMB programs for five years beginning on the date the non-citizen received his or her *qualified non-citizen* status.~~

~~(b) — Meets the alien status requirement following the five-year period.~~

(78) In the REF and REFM programs, an individual meets the alien status requirements if the individual is admitted lawfully under any of the following provisions of law:

- (a) An individual admitted as a refugee under section 207 of the INA (8 USC 1157).
- (b) An individual granted asylum under section 208 of the INA (8 USC 1158).
- (c) Cuban and Haitian entrants, in accordance with requirements in 45 CFR part 401.
- (d) An individual paroled as a refugee or asylee under section 212(d)(5) of the Immigration and Nationality Act (INA) (8 USC 1182(d)(5)). For purposes of this section, "Lautenberg" parolees, humanitarian interest parolees, and other public interest parolees do not qualify.
- (e) An Amerasian from Vietnam who is admitted to the U.S. as an immigrant pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Pub. L. No. 100-202 and amended by the 9th proviso under Migration and Refugee Assistance in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. No. 100-461 as amended)).
- (f) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended.
- (g) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).
- (h) Iraqi and Afghan aliens granted special immigrant status under section 101(a)(27) of the Immigration and Nationality Act.

(89) In the SNAP program, an individual meets the alien status requirement if the individual meets the requirements of one or more of the following subsections:

- (a) An individual granted any of the following alien statuses--
  - (A) Refugee--under section 207 of the INA.
  - (B) Asylum--under section 208 of the INA.
  - (C) Deportation being withheld under section 243(h) of the INA.

- (D) Cubans and Haitians who are either public interest or humanitarian parolees.
  - (E) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.
  - (F) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).
  - (G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).
  - (H) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the INA.
- (b) *A qualified non-citizen* under 18 years of age.
  - (c) A non-citizen who has been residing in the United States for at least five years while a *qualified non-citizen*.
  - (d) A non-citizen who is lawfully residing in the United States and who was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (as defined in 38 U.S.C. 101).
  - (e) The spouse, the un-remarried surviving spouse, or an unmarried dependent child, of an individual described in subsection (d) of this section.
  - (f) *A qualified non-citizen* who has a *disability*, as defined in OAR 461-001-0015.
- (910) A client who is lawfully admitted to the United States for permanent residence under the INA and has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act, or can be credited with such qualifying quarters as provided under 8 U.S.C. 1645, meets the alien status requirements for the SNAP program, subject to the following provisions:
- (a) No quarter beginning after December 31, 1996, is a qualifying quarter if the client received any federal, means-tested benefit during the quarter. Federal means-tested benefits include SNAP, TANF, and Medicaid (except emergency medical).
  - (b) For the purpose of determining the number of qualifying quarters of coverage, a client is credited with all of the quarters of coverage worked by a parent of the

client while the client was under the age of 18 and all of the qualifying quarters worked by a spouse of the client during their marriage, during the time the client remains married to such spouse or such spouse is deceased.

- (c) A lawful permanent resident who would meet the alien status requirement, except for a determination by the Social Security Administration (SSA) that the individual has fewer than 40 quarters of coverage, may be provisionally certified for SNAP program benefits while SSA investigates the number of quarters creditable to the client. A client provisionally certified under this section who is found by SSA, in its final administrative decision after investigation, not to have 40 qualifying quarters is not eligible for SNAP program benefits received while provisionally certified. The provisional certification is effective according to the rule on effective dates for opening benefits, OAR 461-180-0080. The provisional certification cannot run more than six months from the date of original determination by SSA that the client does not have sufficient quarters.

Stat. Auth.: ORS 411.060, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 414.231  
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.014,  
412.049, 414.025, 414.231, 414.826, ~~414.831~~

461-170-0103

~~Temp. Eff. 10-1-15 through 3-28-16~~

Eff. 1-1-16

Actions Resulting From Changes in Household Circumstances; Simplified Reporting System (SRS); SNAP, JPI

In the SNAP program and JPI, benefits may be changed for an individual using SRS -- based on information obtained other than through the Interim Change Report -- only as follows:

- (1) The benefit level is increased if the information demonstrates the individual is eligible for greater benefits.
- (2) The benefits are closed or reduced if any of the following subsections apply:
  - (a) The household requests a closure of benefits.
  - (b) The action is based on information that is *verified upon receipt*. Information is considered *verified upon receipt* if--
    - (A) It is not questionable and the individual making the report has first-hand knowledge of the information reported; or
    - (B) Verification is provided with the reported change in accordance with OAR 461-115-0651.
  - (c) The individual reports information that results in loss of *eligibility* (see OAR 461-001-0000).
  - (d) The individual reports *financial group* (see OAR 461-110-0530) income exceeding the SNAP program *countable* (see OAR 461-001-0000) income limit.
- (3) The Department acts on information reported through computer matches when the Interim Change Report is processed, when the individual is recertified, or when the monthly match with the Department of Corrections indicates a member is incarcerated.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.081, 411.816, 411.825, 411.837

## Notice Situations; General Information

- (1) In the EA program, a *basic decision notice* (see OAR 461-001-0000) is sent for all situations.
- (2) In the SNAP program, a *basic decision notice* is sent for all actions on applications for assistance.
- (3) In the JOBS program:
  - (a) A *basic decision notice* is sent whenever a request for a support service payment is denied.
  - (b) No decision notice is required if request for a support service is approved.
- ~~(4)~~ A *basic decision notice* is sent to close JPI benefits when the filing group (see OAR 461-110-0310) reports a change during the reporting period in which SNAP benefits do not decrease.
- (45) In the TANF program, a notice approving benefits informs the client, within one month following eligibility determination, of the opportunity to volunteer for JOBS participation and of the procedure for JOBS program entry.
- (56) In the Pre-TANF program, a *basic decision notice* is sent when payment for basic living expenses is denied or when payment for other support services in the JOBS program is denied. No other notices are required for this program.
- (67) In the TA-DVS program, a *basic decision notice* (see OAR 461-001-0000) is sent to a safe mailing address or hand delivered for all situations. This includes when the program is approved, denied, or closed (prior to the end of the 90 day eligibility period) and when a payment under the program is denied.
- (78) In all programs except the Pre-TANF program, unless stated differently in this rule or another rule, the Department mails or otherwise provides the client with (sends) a *decision notice* (see OAR 461-001-0000) as follows:
  - (a) A *basic decision notice* is sent whenever an application for assistance, including retroactive medical assistance, is approved or denied or a request for a support service payment in the JOBS program is denied.
  - (b) A *timely continuing benefit decision notice* (see OAR 461-001-0000) is sent whenever benefits or support service payments authorized by OAR 461-190-0211 are reduced or closed, or the method of payment changes to protective, vendor, or two-party.
  - (c) A *decision notice* is sent whenever the Department adjusts previously underissued cash assistance or SNAP benefits.

(89) In all programs:

- (a) Notwithstanding any rule in Chapter 461, to the extent permitted by OAR 137-003-0530, the Department may take any of the following actions:
  - (A) Amend a *decision notice* with another *decision notice* or a contested case notice.
  - (B) Amend a contested case notice.
  - (C) Delay a reduction or closure of benefits as a result of a client's request for hearing.
  - (D) Extend the effective date on a *decision notice* or contested case notice.
- (b) Except as provided in subsection (a) of this section or when a delay results from the client's request for a hearing, a notice to reduce or close benefits becomes void if the reduction or closure is not initiated on the date stated on the notice. If the notice is void, a new notice is sent to inform the *financial group* (see OAR 461-110-0530) of a new date on which their benefits will be reduced or closed.
- (c) No *decision notice* is required in each of the following situations:
  - (A) Benefits are ended because there is no living person in the *benefit group* (see OAR 461-110-0750).
  - (B) A notice was sent, the client requested a hearing, and either the hearing request is dismissed or a final order is issued.
  - (C) The client has signed a voluntary agreement that qualifies as a final order, including a signed IPV waiver, under ORS 183.417(3)(b) (see OAR 461-175-0340(2)).
  - (D) A *decision notice* that included the eligibility begin and end dates was given for TA-DVS program benefits and the 90 day eligibility period ends.
- (d) When the Department amends a *decision notice* with another *decision notice* under subsection (a) of this section, the date of the amended notice restarts the client's deadlines to request a hearing or continuing benefits, or both.
- (e) When a contested case notice extends an effective date or delays a reduction or closure, the date of the amended notice restarts a client's timeline to request continuing benefits.
- (f) When a client has a pending hearing request or is receiving continuing benefits, and the Department amends a notice under this section, the client need not re-file the hearing request or renew the request for continuing benefits.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 414.231

Stats. Implemented: ORS 183.415, 183.417, 411.060, 411.070, 411.117, 411.404, 411.706, 411.816, 412.014, 412.049, 414.231, 414.826

## Notice Situation; Disqualification

- (1) If a *benefit group* (see OAR 461-110-0750) or individual is disqualified for a SNAP voluntary job quit or for failure to apply for or provide an SSN, pursue assets, cooperate in the JOBS, JOBS Plus, or OFSET program, or assist the state's efforts to collect support, the Department sends the following type of notice:
  - (a) If benefits are reduced or closed because of the disqualification:
    - (A) A *continuing benefit decision notice* (see OAR 461-001-0000) is used when changes are reported on the Interim Change Report form.
    - (B) A *timely continuing benefit decision notice* (see OAR 461-001-0000) is used when changes are not reported on the Interim Change Report form.
  - (b) If benefits are opened without the disqualified individual in the *benefit group* or if the entire *benefit group* is denied assistance, a *basic decision notice* (see OAR 461-001-0000) is used.
- (2) For a JOBS, JOBS Plus, or OFSET disqualification, and for a SNAP voluntary job quit by an individual receiving SNAP benefits, the notice includes the following information:
  - (a) The client action that resulted in disqualification.
  - (b) The length of the minimum disqualification period.
  - (c) The reduced benefit amount.
  - (d) How the client may end the disqualification after the minimum period.
- (3) For a voluntary job quit by an individual applying for SNAP benefits, the notice includes the following information:
  - (a) The action that resulted in the disqualification; and
  - (b) The length of the disqualification period.
- (4) For an IPV disqualification:
  - (a) The Department does not send a notice of termination to an individual disqualified for an IPV after a court order, ~~or a~~ final order from an administrative hearing, or a signed waiver (see OAR 461-175-0200(c)(C) and OAR 461-195-0621(2)) that imposes the disqualification.

- (b) The Department sends a continuing benefit decision notice when benefits for other individuals in the benefit group are closed or reduced because an individual in the benefit group is disqualified for an IPV.
- (5) For a disqualification due to being a fleeing felon or in violation of parole, probation, or post-prison supervision (under OAR 461-135-0560):
  - (a) A *basic decision notice* is required if benefits are opened without the disqualified individual in the *benefit group* or if the entire filing group is denied benefits.
  - (b) A *timely continuing benefit decision notice* is required if an individual in the *benefit group* is disqualified.
- (6) The notice situation for a disqualification due to a transfer of assets is covered in OAR 461-175-0310.

Stat. Auth.: 411.060, 411.070, 411.404, 411.816, 412.014, 412.049

Stats. Implemented: 411.060, 411.070, 411.404, 411.816, 412.014, 412.049

## Notice Situation; Mass Changes

- (1) If benefits are reduced or closed to reflect cost-of-living adjustments in benefits or other mass change under a program operated by a federal agency or to reflect a mass change to payments in a program operated by the Department:
  - (a) Except as provided in subsection (b) of this section, the type of *decision notice* (see OAR 461-001-0000) used is the same as otherwise applies to the reduction or closure of benefits under the rules of this division.
  - (b) In the SNAP program, a *continuing benefits decision notice* (see OAR 461-001-0000) may be used if the rules in this division of rules would otherwise require a *timely continuing benefits decision notice* (see OAR 461-001-0000).
  - (c) OAR 461-175-0010(2) and (3) modify the content requirements for the *decision notice* that apply to other decision notices under OAR 461-175-0010(1).
- (2) In the SNAP program, no *decision notice* is required when the Department makes the following mass changes:
  - (a) An annual adjustment to income limits, the shelter deduction, or the standard deduction.
  - (b) An annual adjustment to a standard utility allowance.
- (3) In the SNAP program, notwithstanding any other rule in chapter 461, when the federal government changes a benefit or standard that results in the suspension or closure of SNAP benefits for the entire caseload or a significant portion of the caseload of recipients in Oregon:
  - (a) No *decision notice* is required. The Department and the Authority are not required to mail a notice of intended action.
  - (b) The Department publicizes the change using one or more of the following methods:
    - (A) Informing the public through the news media.
    - (B) Placing posters in the offices that serve affected recipients, in the locations where SNAP is issued, and at other sites frequented by SNAP clients.
    - (C) Mailing a general notice to the households of affected recipients.
  - (c) There is no right to hearing to merely dispute this federally required suspension or closure of benefits and no right to continuing benefits.

## Notice Situation; Voluntary Action

- (1) Unless the Department chooses to proceed as described in section (2) of this rule:
  - (a) For all programs except the SNAP program, if the *primary person* (see OAR 461-001-0000), another adult member of the filing group, or the authorized representative:
    - (A) Makes an oral request to end or reduce benefits, a *timely continuing benefit decision notice* (see OAR 461-001-0000) is sent.
    - (B) Makes a signed, written request to withdraw, end, or reduce benefits, a *basic decision notice* (see OAR 461-001-0000) is sent.
    - (C) Makes an oral request to withdraw an application for benefits, a *basic decision notice* is sent.
  - (b) In the SNAP program, when the *filing group* (see OAR 461-110-0370) states it wishes to withdraw its benefits request, or states it wishes to reduce or no longer receive benefits:
    - (A) If the request is made by phone to end or reduce benefits, a *timely continuing benefit decision notice* is sent.
    - (B) If the request is made in person to reduce benefits, a *basic decision notice* is sent.
    - (C) If the request to reduce benefits is signed by the *primary person* (see OAR 461-001-0000), another adult member of the filing group, or the authorized representative, a *basic decision notice* is sent.
    - (D) If the request to end benefits is signed by the *primary person*, another adult member of the *filing group*, or the authorized representative in the presence of a worker, no notice is required. If it is not signed in the presence of a worker, a *basic decision notice* is sent.
    - (E) If the client withdraws a signed request for benefits, a *basic decision notice* is sent.
- (2) The Department may reduce or terminate benefits to an individual when the individual completes a voluntary agreement on a Department form used for this purpose. The Department provides the individual with a copy of the completed agreement and except to the extent provided by OAR 461-175-0220(4)(b) no other notice is required. The individual may request a hearing to set aside this agreement on the grounds of fraud,

duress, or reliance on misinformation provided by the Department, subject to the time limits for hearing requests in OAR 461-025-0310.

- (3) In the SNAP program, a *timely continuing benefit decision notice* is sent if the *filing group* returns a signed Change Report form with information that requires a reduction or closure of benefits.

Stat. Auth.: ORS 411.060, 411.816, 412.014, 412.049, 414.042

Stats. Implemented: ORS 183.417, 411.060, 411.816, 412.014, 412.049, 414.042

## Calculation of Overpayments

This rule specifies how the Department calculates an *overpayment* (see OAR 461-195-0501).

- (1) The Department calculates an *overpayment* by determining the amount the client received or the payment made by the Department on behalf of the client that exceeds the amount for which the client was eligible.
- (2) When a filing group, OCCS Medical programs *household group* (see OAR 410-200-0015), ineligible student, or *authorized representative* (see OAR 461-115-0090 and OAR 410-200-0015) fails to report income, the Department calculates and determines the *overpayment* by assigning unreported income to the applicable budget month without averaging the unreported income, except:
  - (a) A client's earned income reported quarterly from the Employment Department is considered received by the client in equal amounts during the months identified in the report.
  - (b) In the ERDC, MAA, MAF, REF, SNAP, and TANF programs, a client's actual self-employment income is annualized retrospectively to calculate the *overpayment*.
  - (c) In the OCCS Medical programs, if actual income is not available for the months in which an *overpayment* occurred, a client's actual self-employment income (see OAR 410-200-0015) received during the year when an *overpayment* occurred is annualized to calculate an *overpayment*.
- (3) When using prospective budgeting (see OAR division 461-150) and the actual income differs from the amount determined under OAR 461-150-0020(2), there may be a *client error overpayment* (see OAR 461-195-0501) only when the filing group, ineligible student, or *authorized representative* withheld information, failed to report a change, or provided inaccurate information. In such a case, the Department uses the actual income to determine the amount of an *overpayment*.
- (4) When using anticipated income for the OCCS Medical programs and the actual income differs from the amount determined under OAR 410-200-0310, there may be a *client error overpayment* only when the OCCS Medical programs *household group* (see OAR 410-200-0015) or *authorized representative* (see OAR 410-200-0015) withheld information, failed to report a change, or provided inaccurate information. In such a case, the Department uses the actual income to determine the amount of an *overpayment*.
- (5) When a filing group, ineligible student, or *authorized representative* fails to report all earned income within the reporting time frame, the earned income deduction (see OAR 461-160-0160, 461-160-0190, 461-160-0430, 461-160-0550, and 461-160-0552) is applied as follows:

- (a) In the OSIP, OSIPM, QMB, and REFM programs, the Department allows the earned income deduction.
  - (b) In the MAA, MAF, REF, and TANF programs, the Department allows the earned income deduction when *good cause* (see section (6) of this rule) exists.
  - (c) In the SNAP program, no deduction is applied to earned income if the amount or source of income was not timely reported.
- (6) For the purposes of OAR 461-195-0501 to 461-195-0561, "good cause" means circumstances beyond the client's reasonable control that caused the client to be unable to report income timely and accurately.
- (7) When support is retained:
- (a) In the TANF program, the amount of support (other than cash medical support) the Department of Justice retains as a current reimbursement each month is added to other income to determine *eligibility* (see OAR 461-001-0000). When a client is not eligible for TANF program benefits, the *overpayment* is offset by the support the Department of Justice retains as a current reimbursement.
  - (b) In the medical programs, the amount of the cash medical support the Department retains each month is excluded income and not used to determine *eligibility* for medical program benefits. When a client has incurred a medical program *overpayment*, the *overpayment* is offset by the amount of the cash medical support the Department retains during each month of the *overpayment*.
- (8) In the REF and TANF programs, when a client directly receives support used to determine *eligibility* or calculate benefits, the *overpayment* is:
- (a) If still eligible for REF or TANF program benefits, the amount of support the client received directly; or
  - (b) If no longer eligible for REF or TANF program benefits, the amount of program benefits the client received.
- (9) When an *overpayment* occurs due to the failure of an individual to reimburse the Department, when required by law to do so, for benefits or services (including cash medical support) provided for a need for which that individual is compensated by another source, the *overpayment* is limited to the lesser of the following:
- (a) The amount of the payment from the Department;
  - (b) Cash medical support; or

- (c) The amount by which the total of all payments exceeds the amount payable for such a need under the Department's rules.
- (10) Benefits paid during a required *notice period* (see OAR 461-175-0050, OAR 410-200-0120) are included in the calculation of the *overpayment* when:
- (a) The filing group, OCCS Medical programs *household group* (see OAR 410-200-0015), ineligible student, or *authorized representative* (see OAR 461-115-0090 and OAR 410-200-0015) failed to report a change within the reporting time frame under OAR 461-170-0011 or OAR 410-200-0235; and
  - (b) Sufficient time existed for the Department to adjust the benefits to prevent the *overpayment* if the filing group, OCCS Medical program *household group* (see OAR 410-200-0015), ineligible student, or *authorized representative* (see OAR 461-115-0090 and OAR 410-200-0015) had reported the change at any time within the reporting time frame.
- (11) In the SNAP program:
- (a) If the *benefit group* (see OAR 461-110-0750) was categorically eligible, there is no *overpayment* based on resources.
  - (b) For a *filing group* (see OAR 461-110-0370) found eligible for SNAP program benefits under OAR 461-135-0505(1)(a) to (c), and the actual income made the group ineligible for the related program, the group remains categorically eligible for SNAP program benefits as long as the *eligibility* requirement under OAR 461-135-0505(1)(d) is met. A *benefit group* of one or two individuals would be entitled to at least the minimum SNAP program benefit allotment under OAR 461-165-0060.
  - (c) For a *filing group* found eligible for SNAP program benefits only under OAR 461-135-0505(1)(d), and the actual income equals or exceeds 185 percent of the Federal Poverty Level, the *filing group* is no longer categorically eligible. The *overpayment* is the amount of SNAP program benefits incorrectly received.
- (12) In the OSIP and OSIPM programs, when a client does not pay his or her share of the cost of services (see OAR 461-160-0610) or the OSIP-EPD or OSIPM-EPD program *participant fee* (see OAR 461-160-0800) in the month in which it is due, an *overpayment* is calculated as follows:
- (a) All payments made by the Department on behalf of the client during the month in question are totaled, including but not limited to any payment for:
    - (A) Capitation;
    - (B) Long term care services;

- (C) Medical expenses for the month in question;
  - (D) Medicare buy-in (when not concurrently eligible for an MSP);
  - (E) Medicare Part D;
  - (F) Mileage reimbursement;
  - (G) Special needs under OAR 461-155-0500 to 461-155-0710; and
  - (H) *Home and community-based care* (see OAR 461-001-0030), including home delivered meals and non-medical transportation.
- (b) Any partial or late liability payment made by a client receiving *home and community-based care* in-home services or *participant fee* paid by an OSIP-EPD or OSIPM-EPD program client is subtracted from the total calculated under subsection (a) of this section. The remainder, if any, is the amount of the *overpayment*.
- (13) When a client's liability is unreduced pending the outcome of a contested case hearing about that liability the *overpayment* is the difference between the liability amount determined in the final order and the amount, if any, the client has repaid.
- (14) In the OCCS Medical programs, OSIPM, QMB, and REFM programs if the client was not eligible for one program, but during the period in question was eligible for another program:
- (a) With the same benefit level, there is no *overpayment*.
  - (b) With a lesser benefit level, the *overpayment* is the amount of medical program benefit payments made on behalf of the client exceeding the amount for which the client was eligible.
- (15) When an *overpayment* is caused by *administrative error* (see OAR 461-195-0501), any *overpayment* of GA, OSIP, REF, SFPSS, or TANF program benefits is not counted as income when determining *eligibility* for the GAM, OCCS Medical programs, OSIPM, and REFM programs.
- (16) Credit against an *overpayment* is allowed as follows:
- (a) In the GA, REF, and TANF programs, a credit is allowed for a client's payment for medical services made during the period covered by the *overpayment*, in an amount not to exceed the Department fee schedule for the service, but credit is not allowed for an elective procedure unless the Department authorized the procedure prior to its completion.

- (b) In the SNAP program, if the *overpayment* was caused by unreported earned income, verified child care costs are allowed as a credit to the extent the costs would have been deductible under OAR 461-160-0040 and 461-160-0430.
  - (c) In the SFPSS and TANF programs, if the *overpayment* is caused by reported earned income, a credit is allowed for the Post-TANF grant if the client meets *eligibility* under OAR 461-135-1250 and the client has received less than 12 months of Post-TANF program benefits.
  - (d) In all programs, for an underpayment of benefits in the program in which the overpayment occurred.
- (17) In the SNAP program, in compliance with the American Recovery and Reinvestment Act of 2009, effective April 1, 2009 through September 30, 2009, the amount between the normal Thrifty Food Plan (TFP) benefit amount under this section and the increased TFP benefit amount under OAR 461-155-0190 is not counted in the *overpayment* amount unless the filing group was ineligible for SNAP program benefits.

Normal TFP for October 1, 2008 - September 30, 2009  
SNAP Payment Standard (TFP)

No. in Need Group	Monthly Amount
1	\$ 176
2	323
3	463
4	588
5	698
6	838
7	926
8	1,058
Each additional individual	132

- (18) In the REF program, when an individual used or accessed cash benefits in violation of OAR 461-165-0010(8)(a), the amount of the *overpayment* is the amount of cash benefits the client used or accessed.
- (19) In the SFPSS and TANF programs, when an individual used or accessed cash benefits in violation of OAR 461-165-0010(9)(a), the amount of the *overpayment* is the amount of cash benefits the client used or accessed.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.660, 411.706, 411.816, 412.014, 412.049, 412.124, 414.231, HB 2089 (2013, Section 10)  
Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.620, 411.630, 411.635, 411.640, 411.660, 411.690, 411.706, 411.816, 412.014, 412.049, 412.124, 414.231, 416.350

## Intentional Program Violations; Penalties and Liability for Overpayments

- (1) Disqualification penalties resulting from intentional program violations and other violations of law are listed in this rule. An individual may be subject to disqualification for an *intentional program violation* (IPV) (see OAR 461-195-0601) only if the individual was advised of the disqualification penalties prior to committing the IPV. A disqualification established in another state or established in the Food Distribution Program on Indian Reservations continues in effect in Oregon.
- (2) In the ERDC program, if an IPV is established against an individual through a contested case hearing, a waiver of the right to hearing, or by a state or federal court, that individual is liable for repayment to the Department of the full amount of *overpayment* (see OAR 461-195-0501) the Department has established. The amount of restitution to the Department ordered by a court as part of a criminal proceeding does not lower the amount owed to the Department. Payments of restitution to the Department are credited against the amount owed. A client is not subject to an IPV disqualification but is still required to repay *overpayment* amounts.
- (3) A child care provider found to have committed an IPV is ineligible for payment for child care as follows:
  - (a) A child care provider with an IPV established between April 1, 2001 and September 30, 2005 is permanently disqualified to receive payment.
  - (b) A child care provider who has incurred an *overpayment* established as an IPV claim after September 30, 2005 is ineligible for payment---
    - (A) For six months and until the full amount of the *overpayment* is paid; or
    - (B) Permanently, if the Child Care Program Manager finds that such ineligibility is in the public interest. The following is a non-exclusive list of reasons that support a determination of permanent ineligibility: safety concerns; or, the likelihood of future violations; or, the degree of egregiousness of any of the established IPV's; or, the degree of primary involvement in the violation by the provider.
- (4) In the SNAP and TANF programs, when an IPV is established against an individual through a contested case hearing, a waiver of the right to hearing, or by a state or federal court:
  - (a) That individual is liable for repayment to the Department of the full amount of *overpayment* the Department has established, regardless of any restitution ordered by a court.

- (b) Except as otherwise set forth in this section, the individual is disqualified from receiving benefits in the program in which the IPV was committed for a period of 12 calendar months for the first IPV, 24 calendar months for the second IPV, and permanently for the third IPV.
- (c) An individual found by a federal, state, or local court to have traded a controlled substance for SNAP benefits is disqualified from participation in the SNAP program as follows:
  - (A) For a period of two years upon the first occasion.
  - (B) Permanently upon the second occasion.
- (d) An individual found by a federal, state, or local court to have traded firearms, ammunition, or explosives for SNAP benefits is permanently disqualified from participation in the SNAP program.
- (e) An individual convicted of *trafficking* (see OAR 461-195-0601) benefits for a value of \$500 or more is permanently disqualified from participation in the SNAP program.
- (f) An individual is disqualified for a 10-year period, except if permanently disqualified under subsection (b) of this section, from receiving benefits in the program in which the individual committed fraud if the individual --
  - (A) In TANF program:
    - (i) Is convicted in state or federal court of having made a fraudulent statement or representation with respect to the place of residence of the individual in order to receive assistance simultaneously from two or more states under programs that are funded under Title IV or XIX of the Social Security Act; or
    - (ii) Is found in an IPV hearing or admits, in a written waiver of the right to an IPV hearing, to having made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive benefits simultaneously from two or more states.
  - (B) In the SNAP program, is found to have or admits to having made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple SNAP benefits simultaneously.

(5) If the TANF grant is affected by the IPV penalty imposed under this rule, *eligibility* (see OAR 461-001-0000) for and the level of SNAP benefits are determined in accordance with OAR 461-145-0105.

~~(6) The Department issues notice of disqualification in accordance with OAR 461-175-0220. The disqualification provided for in this rule begins the first of the month following the month in which the notice period ends.~~

(7) Once a disqualification period begins, it continues uninterrupted until completed, regardless of the *eligibility* of the filing group (see OAR 461-110-0310) of the disqualified individual.

Stat. Auth.: ORS 409.050, 411.060, 411.816, 412.049

Stats. Implemented: ORS 409.010, 411.060, 411.816, 412.049