

OFFICE OF THE SECRETARY OF STATE

SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 461
DEPARTMENT OF HUMAN SERVICES
SELF-SUFFICIENCY PROGRAMS

FILED

12/30/2021 12:07 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Proposing Permanent Rule Changes to Two Department Asset Treatment Rules

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 01/24/2022 11:55 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Meorah Solar
503-602-7545
meorah.a.solar@dhsosha.state.or.us

2885 Chad Drive
Eugene, OR 97408

Filed By:
Meorah Solar
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 01/24/2022

TIME: 9:00 AM - 12:00 PM

OFFICER: Meorah Solar

ADDRESS: Virtual Hearing - No Physical Location

Phone 1-971-277-2343, code 428 959 418#

Microsoft Teams link also available

No Physical Location, OR 0

SPECIAL INSTRUCTIONS:

Everyone has a right to know about and use Oregon Department of Human Services (ODHS) programs and services. ODHS provides free help. Some examples of the free help ODHS can provide are: sign language and spoken language interpreters, written materials in other languages, braille, large print, audio and other formats. If you need help or have questions, please contact Meorah Solar at (503) 602-7545, 711 TTY, or meorah.a.solar@dhsosha.state.or.us at least 48 hours before the meeting.

NEED FOR THE RULE(S)

OAR 461-145-0140 about Earned Income Tax Credit (EITC) and Child Tax Credit, needs to be amended to adopt into permanent rule temporary rule changes about how Department programs treat the Child Tax Credit and general updates to EITC verbiage.

OAR 461-145-0210 about Gifts and Winnings, needs to be amended to place into permanent rule temporary rule changes about how Department programs treat gifts and winnings, especially aligning the rule to current Department rule and policy about how the SNAP program treats winnings.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

USDA Memo- Final Rule: Implementation Memo for Lottery and Gambling Winners, available here:
<https://www.fns.usda.gov/snap/final-rule-implementation-memo-lottery-and-gambling-winners>

USDA Memo- FDPIR, TEFAP, and CSFP Income Exclusions under the American Rescue Plan Act of 2021, available here: <https://www.fns.usda.gov/usda-foods/fdpir-tefap-and-csfp-income-exclusions-under-ARPA-2021>

American Rescue Plan Act of 2021 (PL 117-2), available here: <https://www.fns.usda.gov/pl-117-2>

FISCAL AND ECONOMIC IMPACT:

The Department is unable to estimate the fiscal impact of amending OAR 461-145-0140 on individuals receiving or applying for SSP programs or APD medical programs because it is unknown who will choose to receive the monthly advance Child Tax Credit payments or how the payments may have impacted eligibility if treated differently than indicated in this rule. The Department estimates that these amendments will have no fiscal impact on the Department, other state agencies, local government, and business including small business. There is no cost of compliance for small business.

The Department estimates that amending OARs 461-145-0210 will have no fiscal impact on individuals receiving or applying for SSP programs, the public, the Department, other state agencies, local government, and business, including small business. There is no cost of compliance for small businesses. No small businesses are subject to this rule.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

See Fiscal and Economic Impact

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not involved in the development of these rules but are invited to provide input during the public comment period.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

461-145-0140, 461-145-0210

AMEND: 461-145-0140

RULE SUMMARY: OAR 461-145-0140 is being amended to adopt temporary changes about how the Child Tax Credit is treated by various Department programs.

CHANGES TO RULE:

461-145-0140

Earned Income Tax Credit (EITC) and Child Tax Credit ¶

(1) There are federal and state earned income tax credit (EITC) programs for low-income families. ¶

(1a) An EITC may be received claimed in one of two ways: ¶

(aA) As one annual payment received at the time of the normal income tax return or the time an income tax return is filed with the Internal Revenue Service (IRS). ¶

(bB) As an advance in the employee's paycheck. ¶

(2b) The EITC is excluded from assets (see OAR 461-001-0000) in the month of receipt and then for a maximum of 12 calendar full months starting with the month following the month of receipt of the refund or payment. All funds remaining after the 12-month period are counted as a resource.

(2) The Child Tax Credit is determined and administered by the IRS.

(a) A Child Tax Credit may be claimed in one of two ways:

(A) At the time an income tax return is filed with the IRS.

(B) As monthly advance Child Tax Credit payments from the IRS.

(b) The Child Tax Credit is excluded from assets in the month of receipt and then for a maximum of 12 calendar full months starting with the month following the month of receipt of the refund or payment. All funds remaining after the 12-month period are counted as a resource.

Statutory/Other Authority: ORS 329A.500, 409.050, 411.060, 411.404, 411.706, 411.816, 412.049, 413.085, 414.231, 414.685

Statutes/Other Implemented: ORS 329A.500, 4090.010, 411.060, 411.083, 411.404, 411.706, 411.816, 412.049, 414.231

AMEND: 461-145-0210

RULE SUMMARY: OAR 461-145-0210 about Gifts and Winnings, is being amended to permanently adopt temporary changes about how lottery and gambling winnings income is treated by various Department programs.

CHANGES TO RULE:

461-145-0210

Gifts and Winnings ¶

(1) For the purposes of this rule:¶

(a) "Gifts" are items given to or received by an individual on or for a special occasion, such as a holiday, birthday, graduation, or wedding. "Gifts" are not given or received on a regular basis.¶

(b) "Winnings" are prizes given to an individual in a contest, game of chance, or similar event. "Winnings" in the form of money may be distributed in different payment frequencies, such as monthly, periodically (such as monthly/quarterly), or in a lump-sum/single payment.¶

(2) In the ERDC all programs, gifts (see section (1) of this rule) and winning gambling losses are not subtracted from gambling winnings (see section (1) of this rule) in determining the individual's countable (see OAR 461-001-0000) income.¶

(3) In the ERDC program, gifts (see section (1) of this rule) and winnings are excluded.¶

(34) In all programs except the ERDC the OSIP, OSIPM, and QMB program and, except as provided otherwise in sections (4) and (57) of this rule:¶

(a) In-kind gifts and winnings are treated according to the rule applicable to the specific type of asset. In the OSIP, OSIPM, and QMB programs, except for, if an individual is offered a choice between an in-kind item and cash, the cash amount is considered unearned income, even if the individual chooses the in-kind item and regardless of the value, if any, of the in-kind item.¶

(b) The value of gifts and winnings in the form of money or credit card company gift cards are treated as periodic or lump-sum cash are treated in accordance with the rule applicable to the payment frequency: stable income under OAR 461-150-0070, variable income under OAR 461-150-0080, periodic income (see under OAR 461-140-0110 and 461-140-0120). In the OSIP, OSIPM, and QMB programs, gambling losses are not subtracted from gambling winnings in determining the individual's countable (see OAR 461-001-0000) income.¶

(c) In all programs except the OSIP, OSIPM, and QMB programs, e, or lump-sum income under OAR 461-140-0120.¶

(c) The value of a gift card or certificate is considered income in the month it is received if the gift card or certificate can be used to purchase food or shelter or can be resold. There is a rebuttable presumption that the gift card can be resold.¶

(d) Monetary gifts given for educational purposes are treated in accordance with OAR 461-145-0145.¶

(5) In the SNAP program, except as provided otherwise in section (7) of this rule:¶

(a) A filing group immediately loses SNAP benefit eligibility due to lottery or gambling winnings when provisions of section (1) of OAR 461-140-0262 are met.¶

(b) In-kind gifts and winnings are treated according to the rule applicable to the specific type of asset.¶

(c) Gifts and winnings, except cash prizes from lottery or gambling subject to section (1) of OAR 461-140-0262, in the form of money or credit card company gift cards are treated in accordance with the rule applicable to the payment frequency: stable income under OAR 461-150-0070, variable income under OAR 461-150-0080, periodic income under OAR 461-140-0110, or lump-sum income under OAR 461-140-0120.¶

(d) Establishment-specific gift cards are excluded as income and not considered a resource/sets (see OAR 461-001-0000).¶

(d6) In the OSIP, OSIPM, and QMB programs, the value of a gift card or certificate is considered income in the month it is received in all programs except the ERDC, OSIP, OSIPM, QMB, and SNAP programs and except as provided otherwise in section (7) of this rule:¶

(a) In-kind gifts and winnings are received if the gift card or certificate can be used to purchase food or shelter or can be resold. There is a rebuttable presumption that the gift card can be resold.¶

(b) Gifts and winnings in the form of money or credit card company gift cards are treated according to the rule applicable to the specific type of asset.¶

(4) For employment-related items, see OAR 461-145-0130.¶

(5) In the OSIP, OSIPM, and QMB programs, monetary gifts given for educational purposes are treated in accordance with the rule applicable to the payment frequency: stable income under OAR 461-150-0070, variable income under OAR 461-150-0080, periodic income under OAR 461-140-0110, or lump-sum income under OAR 461-140-0120.¶

(c) Establishment-specific gift cards are excluded as income and not considered a resource.¶

(7) For employment-related in accordance with gifts or winnings, see OAR 461-145-014530.

Statutory/Other Authority: ORS 329A.500, 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685

Statutes/Other Implemented: ORS 329A.500, 409.010, 411.060, 411.070, 411.404, 411.700, 411.706, 411.816, 412.014, 412.049