Secretary of State

NOTICE OF PROPOSED RULEMAKING

A Statement of Need and Fiscal Impact accompanies this form.

Oregon Health Authority (Authority), Division of Medical Assistance Programs (Division)	410
Agency and Division	Administrative Rules Chapter Number

Sandy Cafourek	500 Summer St. NE, Salem, OR 97301	503-945-6430
Rules Coordinator	Address	Telephone

RULE CAPTION

Align with Department of Human Services OAR Chapter 461 Rules

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing

ADOPT:

AMEND: OAR 410-120-0006

REPEAL:

RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: ORS 413.042

Other Auth.:

Stats. Implemented: ORS 413.042, 414.065

RULE SUMMARY

In coordination with the Department of Human Services' (Department) revision of rules established in OAR chapter 461 for all overpayment, personal injury liens, and estate administration, the Division is amending OAR 410-120-0006 to assure that the Division's rule aligns with and reflects information found in the Department's amended rules. In OAR 410-120-0006, the Division adopts and incorporates Department rules and must update OAR 410-120-0006 accordingly. The Division is amending this rule that incorporates rules established in OAR Chapter 461 for all overpayment, personal injury liens, and estate administration for Authority programs covered under OAR 410-200. References to OAR Chapter 461 in contracts of the Authority are deemed to be references to the requirements of this rule.

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

June 17, 2016 by 5 p.m. Send comments to: dmap.rules@state.or.us

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

Karen Wheeler	Karen Wheeler	4/19/16
Signature	Printed name	Date

Note: Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin.* A Rulemaking Hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following notice publication or 28 days from the date notice was sent to people on the agency's interested party mailing list, whichever is later. In such cases a Hearing Notice must be published in the *Oregon Bulletin* at least 14 days before the hearing.

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Health Authority (Authority), Division of Medical Assistance Programs (Division) 410

Agency and Division — Administrative Rules Chapter Number

Align with Department of Human Services OAR Chapter 461 Rules

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: The amendment of OAR 410-120-0006

Statutory Authority: ORS 413.042

Other Authority:

Stats. Implemented: ORS 413.042, 414.065

Need for the Rule(s): Need for the Rule(s): In coordination with the Department of Human Services' (Department) revision of rules established in OAR chapter 461 for all overpayment, personal injury liens, and estate administration, the Division is amending OAR 410-120-0006 to assure that the Division's rule aligns with and reflects information found in the Department's amended rules. In OAR 410-120-0006, the Division adopts and incorporates Department rules and must update OAR 410-120-0006 accordingly. The Division is amending this rule that incorporates rules established in OAR Chapter 461 for all overpayment, personal injury liens, and estate administration for Authority programs covered under OAR 410-200. References to OAR Chapter 461 in contracts of the Authority are deemed to be references to the requirements of this rule.

Documents Relied Upon, and where they are available: ORS 413.042

Fiscal and Economic Impact: None

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): None

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: None

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: None

c. Equipment, supplies, labor and increased administration required for compliance: None

How were small businesses involved in the development of this rule? N/A

Administrative Rule Advisory Committee consulted?: N/A If not, why?: Aligning with the Department of Human Services OAR Chapter 461.

Karen Wheeler — Karen Wheeler — 4/19/16

Signature — Printed Name — Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

410-120-0006

Medical Eligibility Standards

As the state Medicaid and CHIP agency, the Oregon Health Authority (Authority) is responsible for establishing and implementing eligibility policies and procedures consistent with applicable law. As outlined in OAR 943-001-0020, the Authority and the Department of Human Services (Department) work together to adopt rules to assure that medical assistance eligibility procedures and determinations are consistent across both agencies.

(1) The Authority adopts and incorporates by reference the rules established in OAR Chapter 461 for all overpayment, personal injury liens and estates administration for Authority programs covered under OAR chapter 410, division 200.

(2) Any reference to OAR chapter 461 in contracts of the Authority are deemed to be references to the requirements of this rule and shall be construed to apply to all eligibility policies, procedures and determinations by or through the Authority.

(3) For purposes of this rule, references in OAR chapter 461 to the Department or to the Authority shall be construed to be references to both agencies.

Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 413.042 & 414.065

Oregon Secretary of State

Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact

Department of Human Services, Office of Self-Sufficiency Programs			461
Agency and Division			Chapter Number
Kris Skaro	Human Services Building 500 Summer St NE, E-48 Salem, OR 97301	503-945-6067	kris.a.skaro@state.or.us
Rules Coordinator	Address	Telephone	Email Address

Rule Caption: *Amending rules relating to public assistance programs*

In the Matter of: *The amendment of OAR 461-120-0330, 461-135-0835 and 461-145-0380*

PUBLIC RULEMAKING HEARING

Date:	Monday, May 23, 2016	**Time:**	11:30 AM
Location:	500 Summer St. NE Room 255 Salem, OR 97301	**Hearings Officer:**	Kris Skaro

This location is accessible for people with mobility impairments and auxiliary aids are available upon request.

RULEMAKING ACTION

AMEND: 461-120-0330, 461-135-0835, 461-145-0380

ORS 409.050, 411.060, 411.070, 411.404, 413.042

Stat. Auth.

None.

Other Auth.

ORS 409.050, 411.060, 411.070, 411.404, 411.708, 413.085, 414.685, 416.310, 413.340, 416.350

Stats. Implemented

Rule Summary

OAR 461-120-0330 about the requirement to pursue assets is being amended to align with federal policy regarding converting pension and retirement plans to monthly income if eligible. The rule currently states that individuals must pursue assets to which one has a legal claim or right; however it does not address situations in which one has a legal right to pursue a source of income from an existing resource. This amendment clarifies that individuals must pursue (i.e. set up) monthly payments or distributions from a pension or retirement fund if eligible to do so.

OAR 461-135-0835 about limits on estate claims is being amended to state that recovery for medical assistance benefits paid in the time period of October 1, 1993 to July 18, 1995 is limited to probate estates and that recovery of Medicare Part D "clawback" paid after December 31, 2013 is limited to benefits paid to an individual age 55 or older.

OAR 461-145-0380 about pension and retirement plans is being amended to state that in the Oregon Supplemental Income Program (OSIP), the Oregon Supplemental Income Program Medical (OSIPM), and the Qualified Medicare Beneficiary Disabled Worker (QMB-DW) program, if the equity value of a plan is counted as a resource, payments received from the plan are considered the conversion of a recourse and are not counted as income.

In addition, non-substantive edits may be made to these rules to: ensure consistent terminology throughout self-sufficiency program rules and policies; make general updates consistent with current Department practices; update statutory and rule references; correct formatting and punctuation; improve ease of reading; and clarify Department rules and processes.

The Department requests public comment on whether other options should be considered for achieving the substantive goals of the rules while reducing the negative economic impact of the rules on business. Written comments may be submitted until Friday, May 27, 2016 at 5:00 p.m. via email to kris.a.skaro@state.or.us, faxed to 503-373-7032, or mailed to Kris Skaro, Rules Coordinator, 500 Summer Street NE, E-48, Salem, Oregon, 97301.

Need for the Rules

OAR 461-120-0330 needs to be amended because the current rule is not in line with federal policy. Amending the rule to specify the requirement to pursue monthly distributions from existing pension or retirement plans when an individual is eligible to do so brings the rule in line with federal policy.

OAR 461-135-0835 needs to be amended because the rule is inconsistent with Oregon law. Specifically, as currently written, section (4)(f)(B) allows recovery from non-probate assets for medical assistance benefits paid in the time period of October 1, 1993 to July 18, 1995. This is contrary to Oregon law which prior to July 18, 1995 only allowed recovery against probate assets. Additionally, section (5) allows recovery of all Medicare Part D "clawback" paid after December 31, 2013, regardless of the age of the assistance recipient. Oregon law effective January 1, 2014 limits recovery of "clawback" to benefits paid to an individual after reaching age 55, starting with benefits paid after December 31, 2013. The changes bring the rule into compliance.

OAR 461-145-0380 needs to be amended because the current rule does not accurately reflect policy regarding counting an asset as income and a resource in the same month. Although OAR 461-140-0010 states that assets may not be counted as a resource and income in the same month, the amendments to OAR 461-145-0380 will clearly state the policy and ensure correct and consistent application of the policy.

Documents Relied Upon

SSA POMS on Retirement Funds available at https://s044a90.ssa.gov/apps10/poms.nsf/lnx/0501120210.

Fiscal and Economic Impact

The Department estimates that amending OAR 461-120-0330 will have no fiscal impact on the Department in regards to OSIPM clients because these assets were countable resources if individuals were eligible to apply for payments; therefore, these individuals would be over resources for OSIPM and the additional income would be irrelevant. The fiscal impact on the Department in regards to Medicare Savings Program (MSP) clients is unknown as it is too early in the year to know if the elimination of the resource limit has increased caseloads. If this change proves to preclude a significant amount of individuals from qualifying for Medicare Savings Programs due to excess income, then it will have a positive fiscal impact on the Department; however, the Department has no way of knowing how many current or potential clients possess eligible retirement or pension accounts. This change will have no fiscal impact on OSIPM clients, as these assets were countable resources if individuals were eligible to apply for payments; therefore, these individuals would be over resources for OSIPM and any increase in income would be irrelevant. The impact on Medicare Savings Program (MSP) clients is unknown because it is too early in the year to know if the elimination of the resource limit has increased caseloads. If this change proves to preclude a significant amount of individuals from qualifying for Medicare Savings Programs due to excess income, then it will have a negative fiscal impact on existing and potential clients; however, the Department has no way of knowing how many current or potential clients possess eligible retirement or pension accounts. The Department estimates no fiscal impact on other state agencies, providers, the public, local government, or business, including small business. No small businesses are subject to this rule. There is no cost of compliance for small business.

The Department estimates that amending OAR 461-135-0835 will have no fiscal impact on the Department or clients because any recovery made under rules inconsistent with state law would not be enforceable. The Department estimates no fiscal impact on other state agencies, providers, the public, local government, or business, including small business. No small businesses are subject to this rule. There is no cost of compliance for small business.

The Department estimates that amending OAR 461-145-0380 will have an unknown fiscal impact on the Department and clients because data is not available to provide an estimate. However, the impact is not anticipated to be significant because when these plans are counted as a resource, the value of the plans is likely to result in ineligibility, which means counting the income from the plans should have had no impact on eligibility. The Department estimates no fiscal impact on other state agencies, providers, the public, local government, or business,

including small business. No small businesses are subject to this rule. There is no cost of compliance for small business.

How were small businesses involved in the development of this rule?

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

Administrative Rule Advisory Committee Consulted? If no, why not?

Yes.

461-120-0330 ~~Eff. 1-1-14~~ Eff. 7-1-16
Requirement to Pursue Assets

(1) In all programs, except the ERDC and SNAP programs, an individual must make a good faith effort to obtain any asset (other than support and medical coverage, which are covered in OAR 461-120-0340 and 461-120-0345, respectively) to which the individual has a legal right or claim, except as follows:

(a) A *parent* (see OAR 461-001-0000) or *caretaker relative* (see OAR 461-001-0000) who is exempt from participation in the JOBS program is not required to apply for unemployment insurance benefits.

(b) Except as specified by law, an individual applying for or receiving any program benefits from the Department is not required to apply for other programs it administers or for supplemental security income (SSI).

(c) An individual applying for the EA program is required to pursue, obtain, and use an asset only if the asset can be made available in time to meet the emergent need.

(d) An individual is not required to borrow money.

(e) An individual is not required to make a good faith effort to obtain any asset if the individual can show good cause for not doing so. Good cause means a circumstance beyond the ability of the individual to control.

(2) In all programs except the ERDC, SNAP, and medical assistance programs:

(a) The effect of failing to comply with this rule is that everyone in the filing group is ineligible. In addition, when a REF, SFPSS, or TANF program payment ends due to the penalty described in this subsection, eligibility for and the level of SNAP benefits are determined as if the individual were receiving benefits without the effects of this rule.

(b) The penalty provided by subsection (2)(a) of this rule is effective until all members of the filing group comply with the requirements of section (1) of this rule.

(3) In the medical assistance programs:

(a) The requirement to pursue assets includes individuals in the *benefit group* (see OAR 461-110-0750) applying for monthly or periodic payments from a retirement or pension plan (see OAR 461-145-0380) if the individual is eligible to apply under the terms of the plan.

(A) When an individual can choose a lump sum or an annuity as a payment method for the retirement or pension plan, the individual must choose the annuity.

(B) Where an application has been made for a lump sum withdrawal of the monies on which a potential annuity is based and the benefit source permits the individual to change the individual's decision and apply for the annuity, the individual must pursue the change to be eligible for medical benefits. If the benefit source does not permit such a change, accept the individual's word that the decision is irreversible, absent evidence to the contrary.

(C) An individual is not required to file when only a lump sum payment is available.

(a) An individual is ineligible for benefits if ~~he or she~~ the individual fails to comply with the requirements of this rule.

(b) The penalty provided by section (3)(a) of this rule is effective until the individual complies with the requirements of section (1) of this rule.

Stat. Auth.: ORS 411.060, 411.070, 411.087, 411.404, 411.706, 411.816, 412.006, 412.014, 412.024, 412.049, 412.124, 414.231
Stats. Implemented: ORS 411.060, 411.070, 411.087, 411.404, 411.706, 411.816, 412.006, 412.014, 412.024, 412.049, 412.124, 414.231

461-135-0835 ~~Tech. Eff. 2-1-16~~ Eff. 7-1-16
Limits on Estate Claims

(1) The Estate Administration Unit is designated and authorized to administer the estate recovery program for the Oregon Health Authority and the Department of Human Services, and to present and file claims for payment. This rule sets out some of these claims.

(2) For the OSIP program (see OAR 461-101-0010):

(a) The amount of any payments or benefits, including overpayments (see OAR 461-195-0501), are a claim against the *probate estate* (see OAR 461-135-0832) of any deceased recipient.

(b) The claim for correctly paid payments or benefits under OSIP are deferred until the death of the *spouse* (see OAR 461-001-0000) or *domestic partner* (see OAR 461-135-0832), if any, of the deceased recipient.

(c) If the deceased recipient has no *probate estate*, the enforcement of the claim has been deferred, or there are insufficient resources in the *probate estate* to pay the claim in full, the *probate estate* of the *spouse* or *domestic partner* of the deceased recipient, if any, is charged for any payments or benefits paid under OSIP to the deceased recipient, the *spouse*, or *domestic partner*.

(d) The claim for correctly paid payments or benefits under OSIP may not be enforced if the deceased recipient is survived by a *child under age 21* (see OAR 461-135-0832), a *child with a disability* (see OAR 461-135-0832), or a *child with a visual impairment* (see OAR 461-135-0832); and the child survives to the closing of the *probate estate*.

(e) Transfers of real or personal property without adequate consideration, by recipients of payments or benefits under OSIP, are voidable and may be set aside under ORS 411.620.

(f) Except when there is a surviving *spouse* or *domestic partner*, or a surviving *child under age 21*, a *child with a disability*, or a *child with a visual impairment*, the amount of any payments or benefits provided is a claim against the *estate* (see OAR 461-135-0832) in any conservatorship proceedings and may be paid pursuant to ORS 125.495.

(3) For *General Assistance* (see OAR 461-135-0832):

(a) The amounts of any payments or benefits, including overpayments, are a claim against the *probate estate* of any deceased recipient. The amount includes the state's monthly contribution, paid prior to January 1, 2014, to the federal government for the recipient's Medicare Part D prescription drug coverage.

(b) The claim for correctly paid payments or benefits under the *General Assistance* program is deferred until the death of the *spouse* or *domestic partner*, if any, of the deceased recipient.

(c) If the deceased recipient has no *probate estate*, the enforcement of the claim has been deferred, or there are insufficient resources in the *probate estate* to pay the claim in full, then the *probate estate* of the *spouse* or *domestic partner* of the deceased recipient, if any, is charged for any payments or benefits to the deceased recipient, the *spouse*, or *domestic partner*.

(d) The claim for correctly paid payments or benefits under the OSIP program may not be enforced if the deceased recipient is survived by a *child under age 21*, a *child with a disability*, or a *child with a visual impairment*; and the child survives to the closing of the *probate estate*.

(e) Except when there is a surviving *spouse* or *domestic partner*, or a surviving *child under age 21*, a *child with a disability*, or *child with a visual impairment*, the amount of any assistance paid is a claim against the *estate* in any conservatorship proceedings and may be paid pursuant to ORS 125.495.

(4) For *Medical Assistance* (MA, as defined in OAR 461-135-0832):

(a) In determining the extent of the *estate* resources subject to the claim of the Department for correctly paid benefits, except as provided in subsection (b) of this section, the Department must disregard resources in an amount equal to the *value* (see OAR 461-135-0832) of resources excluded in the most recent eligibility determination under OAR 461-160-0855, based on payments received under a *qualified partnership policy* (see OAR 461-001-0000). The disregard of resources specific to the estate recovery claim applies to MA benefits received after the effective date of the MA eligibility determination in which a *qualified partnership policy* was considered and approved. The amount of any MA incurred in a prior MA eligibility period where *qualified partnership policy* benefits were not considered is not subject to the estate resource disregard.

(b) There is no disregard of resources under subsection (a) of this section if the recipient, or the *spouse* of the recipient, at any time transferred the *value* of the *qualified partnership policy* excluded resource amount to another individual for less than fair market value prior to the death of the recipient or the recipient's *spouse*, or exhausted the disregarded resource amount by purchasing things of *value* to the recipient or the recipient's *spouse* while either was living.

(c) The amount of any incorrectly paid payments or benefits, excluding an administrative error overpayment (see OAR 461-195-0501), are a claim, against the *probate estate* of any deceased recipient.

(d) The claim for correctly paid payments or benefits under MA is deferred until the death of the surviving *spouse*, if any, of the deceased recipient. After the death of a surviving *spouse*, the deferred claim of the deceased recipient is a claim against

the following *assets* (see OAR 461-135-0832) or their proceeds in the *probate estate* of the *spouse*.

(A) For a recipient who died prior to October 1, 2008, the Department has a claim against the *probate estate* of the *spouse* for *medical assistance* (see OAR 461-135-0832) paid to the recipient, but only to the extent that the *spouse* received property or other *assets* from the recipient through any of the following:

(i) Probate.

(ii) Operation of law.

(B) For a recipient who dies on or after October 1, 2008, the Department has a claim against the *probate estate* of the recipient's *spouse* for *medical assistance* paid to the recipient, but only to the extent that the recipient's *spouse* received property or other *assets* from the recipient through any of the following:

(i) Probate.

(ii) Operation of law.

(iii) An *interspousal transfer* (see OAR 461-135-0832), including one facilitated by a court order, which occurs:

(I) Before, on, or after October 1, 2008; and

(II) No earlier than 60 months prior to the first *date of request* (see OAR 461-135-0832) established from the applications for MA of the recipient and the recipient's *spouse*, or at any time thereafter, whether approved, withdrawn, or denied.

(e) The claim for correctly paid payments or benefits under MA may not be enforced if the deceased recipient is survived by a *child under age 21*, a *child with a disability*, or a *child with a visual impairment*.

(f) For recipients who are not *permanently institutionalized* (see OAR 461-135-0832):

(A) The amount of any payments or benefits paid prior to October 1, 1993 to or on behalf of a recipient 65 years of age or older are a claim against the *probate estate* of any deceased recipient.

(B) The amount of any payments or benefits, paid on or after October 1, 1993 and prior to July 18, 1995, to or on behalf of a recipient 55 years of age or older are a claim against the *probate estate* of any deceased recipient.

(C) The amount of any payments or benefits, paid on or after July 18, 1995 and prior to October 1, 2013, to or on behalf of a recipient 55 years of age or older are a claim against the *estate* of any deceased recipient. All correctly made payments on or after January 1, 2010 for *Medicare cost sharing* (see OAR 461-135-0832) are excluded from a claim.

(D) The amount of any payments or benefits, paid October 1, 2013 or later, to or on behalf of a recipient 55 years of age or older, during the time the Department was paying any of the cost of care of the individual in a nursing facility, *home and community based* care (see OAR 461-001-0030), or in home services through the *State Plan Personal Care Services* (see OAR 411-034-0010), are a claim against the *estate* of any deceased recipient. All correctly made payments on or after January 1, 2010 for *Medicare cost sharing* are excluded from a claim.

(g) For *permanently institutionalized* individuals, a claim includes amounts calculated according to subsection (f) of this section and the following:

(A) The amount of any payments or benefits before July 18, 1995 to or on behalf of a recipient who was *permanently institutionalized* is a claim against the *probate estate* of the deceased recipient.

(B) The amount of any payments or benefits paid between July 19, 1995 through September 30, 2013 to or on behalf of a recipient who was *permanently institutionalized* is a claim against the *estate* of the deceased recipient.

(C) The amount of any payment for services provided in a nursing facility, an intermediate care facility for an individual with intellectual or developmental disabilities, a psychiatric institution, or other *medical institution* (see OAR 461-135-0832) paid after September 30, 2013 to or on behalf of a recipient who was *permanently institutionalized* is a claim against the *estate* of the deceased recipient.

(5) The amount paid, <u>for a recipient age 55 or older,</u> after December 31, 2013, to the federal government for the recipient's Medicare Part D prescription drug coverage is a claim against the *estate* of the deceased recipient.

(6) For trusts that comply with OAR 461-145-0540(10) and (11), the maximum distribution to the Department is the total of all MA payments or benefits paid to or on behalf of the deceased recipient. Subsections (4)(d) and (4)(e) of this rule do not apply to this section.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 413.042, 413.085, 416.340, 416.350
Stats. Implemented: ORS 93.969, 125.495, 411.404, 411.620, 411.630, 411.708, 411.795, 413.085, 416.310, 416.350

461-145-0380 ~~Eff. 1-1-16~~ Eff. 7-1-16
Pension and Retirement Plans

(1) Pension and retirement plans include the following:

(a) Benefits employees receive only when they retire. These benefits can be disbursed in lump-sum or monthly payments.

(b) Benefits that employees are allowed to withdraw when they leave a job before retirement.

(c) The following retirement plans if purchased by an individual with funds from the plans authorized by section 401 of the Internal Revenue Code of 1986:

(A) Traditional Defined-Benefit Plan.

(B) Cash Balance Plan.

(C) Employee Stock Ownership Plan.

(D) Keogh Plan.

(E) Money Purchase Pension Plan.

(F) Profit-Sharing Plan.

(G) Simple 401(k).

(H) 401(k).

(d) Retirement plans purchased by an individual with funds from plans authorized by section 403 of the Internal Revenue Code of 1986 at subsections (a) or (b).

(e) The following retirement plans and annuities if purchased by an individual with funds from the plans authorized by section 408 of the Internal Revenue Code of 1986 at subsections (a), (b), (c), (k), (p), or (q), or at section 408A:

(A) Individual Retirement Annuity.

(B) Individual Retirement Account (IRA).

(C) Deemed Individual Retirement Account or Annuity under a qualified employer plan.

(D) Accounts established by employers and certain associations of employees.

(E) Simplified Employee Pension (SEP).

(F) Simple Individual Retirement Account (Simple-IRA).

(G) Roth IRA.

(f) The following retirement plans offered by governments, nonprofit organizations, or unions:

(A) 457(b) Plan.

(B) 501(c)(18) Plan.

(C) Federal Thrift Savings Plan under 5 USC 8439.

(g) In all programs except the OSIP, OSIPM, and QMB programs, an annuity purchased by an individual with funds from a plan authorized under subsection (c), (d), or (f) of this section.

(2) An annuity purchased by the *spouse* (see OAR 461-001-0000) of an individual with funds from a retirement plan described in subsection (1)(e) of this rule is not considered a retirement plan and is treated in accordance with OAR 461-145-0020 and OAR 461-145-0022.

(3) Except as provided in subsection (c) of this section, ~~B~~benefits an individual receives from pension and retirement plans are treated as follows:

(a) Monthly payments are counted as unearned income.

(b) All payments not covered by subsection (a) of this section are counted as *periodic income* (see OAR 461-001-0000 and 461-140-0110) or *lump-sum income* (see OAR 461-001-0000 and 461-140-0120).

(c) In the OSIP, OSIPM, and QMB-DW programs, if the *equity value* (see OAR 461-001-0000) of the pension or retirement plan is counted as a resource under section (4) of this rule, any payments received are considered the conversion of a resource and are not counted as income.

(4) In the OSIP, OSIPM, and QMB-DW programs:

(a) Except for an annuity purchased with funds from a retirement plan described in subsection (1)(e) of this rule:

(A) The *equity value* ~~(see OAR 461-001-0000)~~ of a pension or retirement plan is excluded as a resource if the individual is eligible for monthly or periodic payments under the terms of the plan and has applied for those

payments. When an individual is permitted to choose or change a payment option, the individual must select the option that --

(i) Provides payments commencing on the earliest possible date; and

(ii) Completes payments within the actuarial life expectancy, as published in the Periodic Life Table of the Office of the Chief Actuary of the Social Security Administration, of the individual.

(B) The *equity value* of all pension and retirement plans not covered by paragraph (A) of this subsection that allows an individual to withdraw funds, minus any penalty for withdrawal, is counted as a resource.

(b) The *equity value* of an annuity purchased with funds from a retirement plan described in subsection (1)(e) of this rule is excluded as a resource if it meets the payout requirements of OAR 461-145-0022(10)(c). Otherwise, the *equity value* is counted as a resource.

(c) For an individual in a *standard living arrangement* (see OAR 461-001-0000), pension and retirement plans owned by a non-applying *spouse* are excluded. Dividends and interest earned on pension funds owned by a non-applying *spouse* are excluded as income.

(5) In the QMB-BAS, QMB-SMB, and QMB-SMF programs, dividends and interest earned on pension funds owned by a non-applying *spouse* are excluded as income.

(6) In the SNAP program, the value of retirement accounts identified in sections 401(a), 403(a), 403(b), 408, 408(k), 408(p), 408A, 457(b), or 501(c)(18) of the Internal Revenue Code, or in a Federal Thrift Savings Plan account are excluded resources.

(7) In all programs except the OSIP, OSIPM, QMB, and SNAP programs, the *equity value* of a pension and retirement plan that allows an individual to withdraw funds before retirement, minus any penalty for early withdrawal, is counted as a resource.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816, 412.014, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.014, 412.049