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Creating Summer Jobs for Youth

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On January 19, 2010, the Administration for Children and Families (ACF) and the Employment and Training Administration (ETA) issued a joint letter encouraging "workforce and human services agencies to work together to explore all funds available for the creation and expansion of subsidized summer employment programs for low-income youth." In particular, the letter highlighted the availability of funding under the TANF Emergency Fund and the possibility of using these funds to support summer jobs for youth.[i] This may be an especially attractive option for states that do not otherwise expect to draw their full allotment of TANF Emergency Funds before the fund expires on September 30, 2010. Moreover, most of the youth employment funding provided through the American Recovery and Reinvestment Act of 2009 (ARRA) was spent last summer, and Congress has so far failed to provide additional funding for this summer.

TANF agencies and workforce investment boards (WIBs) previously have worked together to use TANF funds to support summer jobs for low-income youth. However, the TANF Emergency Fund's requirements are complicated, and may be particularly confusing to workforce agencies that are not already familiar with the underlying TANF rules. This document explains the rules and requirements, based on TANF regulations and guidance issued by ACF.

Overview of the TANF Emergency Fund

Section 2101 of the ARRA created a new $5 billion TANF Emergency Fund under which states could receive 80 percent federal funding for spending *increases* in federal Fiscal Year (FY) 2009 or 2010 compared to a base year (the lower of FY 2007 or 2008) in three categories of TANF-related expenditures, including subsidized employment. In other words, states that increase combined spending from TANF and state funds claimed as maintenance of effort (MOE) on subsidized employment in FY 2009 or 2010 (compared to the equivalent quarter in FYs 2007 or 2008) can receive 80 percent of that increase back as additional federal dollars (See the box on the next page for a detailed explanation of federal funds and state MOE expenditures). Moreover, because employer costs of supervising and training participants can be claimed as in-kind contributions and counted as part of state spending, it is possible to design subsidized employment programs for some groups that require minimal additional funding beyond what is available from the Emergency Fund.

As of April 15, 2010, state applications had been approved for $2.2 billion from the TANF Emergency Fund, including $318 million for subsidized employment.[ii] States can receive up to 50 percent of one year's TANF block grant during FYs 2009 and 2010, from a combination of the pre-existing TANF Contingency Fund and the new Emergency Fund. As of April 15, only North Carolina had exhausted its allocation. Some states were close to doing so, while others have significant funds still available. Therefore, workforce agencies interested in accessing the TANF Emergency Fund to support summer jobs should check with their state TANF agency to determine the availability of funds before investing time in planning.

TANF and MOE Expenditures

States qualify to receive TANF Emergency Funds based on their combined spending of TANF funds and state funds that count toward the "maintenance of effort" (MOE) requirement.

TANF funds include funds received from the block grant, supplemental grants, the Contingency Fund, and the Emergency Fund.

Spending that can be claimed toward the maintenance of effort requirement is referred to in the statute as "qualified state expenditures" but is more often described as "state MOE funds." Certain rules determine what spending can be claimed as MOE funds:

- MOE funds can include both direct expenditures from state general revenue and spending or in-kind donations by third-party entities, including local governments and private donors, so long as the third party agrees. HHS has stated explicitly that employers' costs of supervising and training participants can be treated as in-kind donations.
- MOE funds must be spent on benefits or services that have been provided to or on behalf of members of eligible families. By regulation, eligible families must "include a child living with a custodial parent or other adult caretaker relative (or consist of a pregnant individual)."
- MOE spending cannot include funds that originated from another federal program or that are a condition of eligibility for another federal program. That excludes any spending that is a match for other federal funds, or part of a maintenance of effort requirement for another federal program
- For state and local governmental expenditures, any spending on programs that existed in 1995 but were not part of the state's IV-A (AFDC and related) programs can only be claimed to the extent that they are higher than stat (and local governments) spending on that program in 1995.

In general, both TANF and MOE funds must be spent on activities that further one of the four purposes of TANF:

1. assisting needy families so that children can be cared for in their own homes;
2. reducing the dependency of needy parents by promoting job preparation, work and marriage;
3. preventing out-of-wedlock pregnancies; and
4. encouraging the formation and maintenance of two-parent families.

States set their own income definitions for "needy" and can use different limits for subsidized jobs or other services than they do for cash assistance. Many states have established much higher limits, such as 200 percent of the Federal Poverty Level. A number of rules apply to families that receive "assistance" funded by TANF or MOE funds, but subsidized jobs do not count as assistance.

For a detailed explanation of these rules, see *Helping Families Achieve Self-Sufficiency: A Guide on Funding Services for Children and Families through the TANF Program*, http://www.acf.hhs.gov/programs/ofa/resources/funds2.pdf

Flexible Program Design

Questions that often arise include: "What kinds of employers can participate in a summer jobs program funded with the Emergency Fund?" "How long does the program have to last?" "What wages are participants paid?" "How much of the wages are subsidized?" "Can we include classroom-based training for the participants?"

With the key exception of the target population (discussed below), TANF rules give states and their partners nearly total discretion about these issues. Public sector organizations, private sector companies, and nonprofit organizations can all participate as employers of participants in these summer jobs programs.[iii] States can determine the length of a program, the wages paid, and the share subsidized, and the program components. These choices can all vary within a state.

There are no federal performance measures that apply to summer jobs funded from the TANF Emergency Fund.

Eligible Participants

Several categories of individuals can qualify to participate in a subsidized job program under TANF, and thus under the Emergency Fund:

- children in needy families;
- resident parents or relatives of children in needy families, including needy pregnant individuals; and
- non-custodial parents of minor children in needy families;
- needy non-custodial parents of minor children; and
- possibly, other non-custodial parents of minor children.

Note that the income limit for "needy" is determined by each state and does not have to be the same as the income limit for receiving cash assistance under TANF. States could choose to limit a subsidized jobs program to families currently receiving TANF assistance but could also serve a broader low-income population. However, there must be a means test for the program.

For eligibility for cash assistance, a needy family must include a minor child.[iv] However, for purposes of providing services that do not count as "assistance" -- including subsidized jobs programs – HHS has said that a state may use a state definition of "child" that is broader than the federal definition of "minor child." According to the preamble language cited by HHS, if states use a different definition, they "must be able to articulate a rational basis for the age they choose," and that HHS expects them to use "some other definition applicable under State law." As many states have definitions of "child" that reach to higher ages for some purposes (such as for eligibility for coverage under a parent's health insurance), they can use these definitions to serve older youth with subsidized jobs. In a recent webinar, HHS stated that it considered age 24 a reasonable upper bound for state definitions of a child.

HHS has indicated that low-income youth who meet the state's definition of "child" and who are living independently can be defined as a "family of one" and thus be eligible for TANF-funded services.[v] However, because of the definition of "eligible families" for MOE requires the child to be living with a parent or caretaker relative, spending for such independent youth cannot be claimed as MOE. This means that the employers' costs of supervision and training cannot be claimed as in-kind donations. While there are ways to address this issue with TANF-only funds, if a summer jobs program has access to WIA funding as well as to TANF funding, the simplest solution is probably to serve these youth with WIA funds.

HHS has not issued any explicit statements about serving non-custodial parents in subsidized jobs programs, but some guidelines can be derived from previous statements. Non-custodial parents of minor children[vi] can be served if they are needy or if they are the parents of minor children in needy families. HHS has indicated that the term non-custodial parents is meant broadly and is not limited to parents with paternity established or child support orders in place. Non-custodial parents of needy children qualify for services funded with either TANF or MOE funds under purpose one if the state opts to define them as members of the needy family.[vii] Needy non-custodial parents can qualify for TANF-funded services under purpose two of TANF, which addresses "needy parents," but they could not be served with MOE funds unless they are members of eligible families.[viii]

Alternatively, if HHS accepts the argument that providing subsidized jobs to non-custodial parents serves TANF purposes three and four, non-custodial parents could be served regardless of income.[ix] This would apply both to TANF and MOE funds, because the regulations implementing the Deficit Reduction Act created an exception to the "eligible families" requirement for MOE funds with respect to activities that are aimed at purposes three or four and allowable under the Healthy Marriage and Responsible Fatherhood grants. Subsidized employment is an allowable activity under the Responsible Fatherhood grants.[x]

The ban on providing TANF funded benefits or services to most legal immigrants for five years after arrival does apply to the funds received from the TANF Emergency Fund. It does not apply to funds claimed as MOE. Therefore, a state may provide subsidized jobs for work-eligible non-citizens, as long as they have some flexibility to move funds around. To do so, it must use non-TANF state funds to subsidize the jobs, claim the spending as MOE, and then use the Emergency Funds received as a result for whatever purpose the general revenues were originally intended.

Understanding the Flow of Funds

By statute, the Emergency Fund reimburses 80 percent of increased expenditures (combined TANF and MOE) compared to the applicable base year. The base year is FY 2007 or 2008, whichever had the lower total expenditures on subsidized employment. Note that while states may use a different base year for different components of the Emergency Fund (for example, they can use 2007 for subsidized employment, but 2008 for basic assistance), they must use a single base year for all forms of subsidized employment (they cannot use 2007 for summer jobs for youth but 2008 for subsidized jobs for adults).

If a summer jobs program occurred in previous years and was claimed as MOE, the previous spending will be part of the base year expenditures. If a program was funded in previous years with state or local general revenues that were not claimed as MOE, HHS may require states to adjust the base year data for comparability, so that only true increases in spending are counted. Note that if a summer jobs program was funded in the base year with other federal funding streams (such as the Workforce Investment Act (WIA) or the Community Services Block Grant (CSBG)), these do not need to be counted because they could not have been claimed as MOE.

HHS has said that participating jurisdictions may apply for funds for the upcoming quarter based on "reasonable estimates" for caseloads and expenditure data, rather than waiting until they have spent the funds. If a jurisdiction submits an estimate of expenditures that is substantially higher than previous levels, HHS requires it to explain the change it has made to the program that results in the higher estimates. The jurisdiction must revise the estimates as actual data becomes available. This means that states do not need to lay out all the funds upfront.[xi] Because the Emergency Funds themselves can be counted as part of the increased expenditure, this can also be thought of as a 4:1 match – if the funds received from the Emergency Fund are reinvested in the program. Most subsidized jobs programs are likely to use the matching approach, but the reimbursement approach may also be appropriate if the initial funds are available from the TANF block grant or a third-party such as a foundation and there is a need to carry over funds until after September 30.

Reimbursement Approach (80%)	Matching Approach (4:1 leverage)
By September 30, 2010, state spends $1 million on activities that qualify for Emergency Fund reimbursement	State tells HHS that it plans to spend $5 million on activities that qualify for Emergency Fund reimbursement by September 30
HHS reimburses state 80 percent -- $800,000	HHS reimburses state 80 percent -- $4 million.
$800,000 may be used for any allowable TANF purpose, except for transfers to SSBG or CCDBG and may be carried over past September 30.	State must spend $5 million–$1 million of existing money and $4 million from Emergency Fund–on activities that qualify for Emergency Fund Reimbursement by September 30, 2010.

Eligible Costs

On April 3, 2009, HHS issued a Policy Announcement on the TANF Emergency Fund (TANF-ACF-PA-2009-01)[xii] that directed participating jurisdictions to draw on the existing definition of "work subsidies" from the ACF-196 spending reports.[xiii] This definition includes "payments to employers or third parties to help cover the cost of employee wages, benefits, supervision or training." Moreover, HHS specifically directs states to include "all expenditures related to operating a subsidized employment program, including the cost of overseeing the program, developing work sites, and providing training to participants." In a recent webinar, HHS repeated that payments to employers to cover costs such as FICA and workers compensation can be covered.[xiv]

HHS has determined that employer costs of supervising and training participants can be assumed to be equal to 25 percent of wage costs without documentation. This means that, under some circumstances, states can operate subsidized jobs programs with wages fully funded from the TANF Emergency Fund. [See box for a simple example.] If a state wishes to claim supervision and training costs greater than 25 percent of the wage costs, it must submit documentation justifying these costs to HHS. HHS has verbally clarified that the 25 percent deeming can only be applied to wage costs (whether or not they are reimbursed); the value of any benefits or employer taxes cannot be added to the base.

Simple Wage Reimbursement Example

- Assume wages of $8 an hour.
- Employer costs assumed to be 25% of wages, or $2 an hour.
- State reports total costs of $10 an hour ($8 wages, $2 in-kind contribution from employer)
- HHS reimburses 80% of $10 – equals $8 an hour.
- Wages are fully reimbursed

A summer jobs program typically includes significant costs in addition to wages, such as recruiting and screening participants, recruiting employers, providing job readiness training and other support services to participants, transportation costs, and payroll costs. These are all eligible costs for reimbursement as part of a subsidized employment program under the TANF Emergency Fund, but a source of funding must be identified for the non-reimbursable 20 percent. In addition to state or local general revenue, possible sources include contributions from local foundations or businesses.

States do not have to fully subsidize wages for summer jobs, but HHS has said explicitly that unreimbursed wage costs are not a subsidy and thus cannot be claimed as MOE. HHS has not directly addressed the question of whether unreimbursed benefits provided by the employer could be claimed as MOE, but it appears that the same logic would apply.

Application Process and Timing

The only entities that can receive funding from the TANF Emergency Fund are states, territories, and Indian tribes operating tribal TANF programs. The application must come from the agency that administers the TANF program. Other state agencies, cities or counties must work with the TANF agency to draw down Emergency Funds.

States may apply for funds either after a quarter has ended or prospectively as much as one month before the start of the quarter. This means that states may now apply for funding for expenditures in any quarter of FY 2009, or for the first three quarters of federal FY 2010 (e.g. through June 2010). States can apply for the last quarter of federal fiscal year 2010 (July through September) on or after June 1, 2010.

All spending that qualifies for reimbursement under the Emergency Fund must occur by September 30, 2010. Note that funds must actually be expended, not simply obligated. In the instructions for Form OFA-100, HHS states that the initial request for a funding quarter must be submitted by September 1, 2010, to allow sufficient time to obligate all emergency funds before September 30, 2010. HHS will accept revisions to prior data after that date. All jurisdictions must submit final Emergency Fund data by March 31, 2011.

Any funds that have not be awarded to states by September 30, 2010, will revert to the U.S Treasury, and HHS will not have the authority to make any additional awards even if states determine that they have expended more funds than they had claimed. However, there is no penalty for projecting higher expenditures than actually occur–the state must simply return any excess funds. Therefore, it makes sense to estimate high rather than low when submitting Emergency Fund requests.

Congress is considering several proposals to provide additional funding through the Emergency Fund for FY 2011. However, it appears highly unlikely that the current allocations will be extended.

Effects on Cash Assistance

Families that receive cash assistance under TANF are subject to a number of rules, including time limits on federally funded benefits and work participation requirements. These rules do *not* apply to individuals who are receiving wage subsidies as part of a summer jobs program unless they also are receiving a cash assistance payment.

If the individual participating in a summer jobs program is a member of a family receiving TANF assistance and is a "work-eligible individual," hours worked may be counted as "subsidized employment", which is a core activity under TANF and can count toward all hours of a TANF recipient's required hours of participation.

Providing a non-custodial parent with TANF services, including a subsidized job, need not cause the state to count the family as a two-parent for the purpose of the TANF work participation rate. However, if the family is receiving assistance, the state will need to include information on the entire family in the TANF data report. Regardless of whether the family is receiving assistance, the state is required to report the number of non-custodial parents participating in work activities funded with either TANF or MOE dollars.

For minor teens who are members of families receiving TANF assistance, states have the option to disregard all of their earnings in determining the family's TANF eligibility and benefit, and many have done so in the past. This is an appropriate way to encourage teens to develop work experience and to contribute to their families' well-being.

The Food and Nutrition Service, which operates SNAP (Supplemental Nutrition Assistance Program, or food stamps), has recently ruled that income from TANF-funded subsidized jobs, including jobs funded under the Emergency Fund with either TANF or MOE funds, should be counted as earned income for SNAP purposes.[xv]

[i] Letter is posted at http://www.acf.hhs.gov/programs/ofa/policy/jointeta.html and http://wdr.doleta.gov/directives/attach/TEN/ten2009/ten24-09.pdf

[ii] See http://www.clasp.org/resources_and_publications/publication?id=0664&list=publications This figure represents a lower bound on state use of the Emergency Fund, as a number of other states have applications pending before HHS, and the states that have already received funds can apply for additional funds. Document is updated regularly as HHS announced additional awards.

[iii] Because funds that come from a federal program or that are claimed as match for one cannot be claimed as MOE, if an employer is entirely federally funded, or all of its non-federal funding was a match (such as a regional office of a federal agency, or a Head Start agency receiving 100% of its funding from the federal government), its costs of supervision and training cannot be claimed as MOE, and thus cannot be claimed towards the Emergency Fund.

[iv] Under section 419(2) of the Social Security Act, a minor child is defined as either under age 18, or under age 19 and a full-time student in a secondary school (or in the equivalent level of vocational or technical training).

[v] Some have suggested that older non-parenting youth could also be served in TANF if a state made the claim that summer jobs programs promote the out-of-wedlock pregnancy reduction or marriage promotion goals of TANF (purposes three or four) and provided evidence to support that claim. HHS has told states that they do not believe the case has been made for justifying summer jobs for youth who are not parents under purposes three or four. States might still want to pursue this argument if they wish to serve non-needy youth or youth who do not meet the state's definition of "child" or if they wish to serve non-custodial parents who are not members of needy families, as discussed below. Use of a purpose three or four claim does not get rid of the inability to claim spending on independent youth as MOE, because of the regulations that limit MOE spending on non-needy families under these purposes to activities eligible for healthy marriage or responsible fatherhood grants.

[vi] The limitation to minor children is part of the regulatory definition of "noncustodial parent." See 45 CFR Sec. 260.30, as published at 64 Federal Register 40290 on July 26, 1999.

[vii] See discussion in the preamble language at 64 Federal Register 17823 and following, published on April 12, 1999. Note that including a NCP in a TANF family can have implications for data reporting requirements.

[viii] In the preamble language published at 64 Federal Register 17861 on April 12, 1999, HHS said "In other words, in order to receive assistance or MOE funded services, the NCP must be associated with an eligible family."

[ix] It is not clear that HHS's concerns about justifying subsidized jobs programs under purposes three and four apply to programs for non-custodial parents.

[x] See 45 CFR section 253.2(a)(4)(ii) as published at 73 Federal Register 6827 on February 5, 2008, and Section 403(a)(2)(C)(ii)(III) of the Social Security Act, as amended by the Deficit Reduction Act of 2005.

[xi] Once an application for funds is approved, the funds are allocated to the state's account with the U.S. Treasury. Under standard Cash Management Improvement Act rules, states cannot draw down those funds until they are actually needed.

[xii] The Policy Announcement is available online at: http://www.acf.hhs.gov/programs/ofa/policy/pa-ofa/2009/pa200901.htm

[xiii] The ACF-196 form and instructions are available online at: http://www.acf.hhs.gov/programs/ofa/policy/pi-ofa/2003/pi2003-2.htm.

[xiv] While many benefits may be reimbursed, health insurance cannot because there is a statutory prohibition on using TANF funds to pay for medical costs. This limitation carries over to funds received from the TANF Emergency Fund. MOE funds can be used for this purpose.

[xv] FNS Memo on Treatment of TANF-Funded Subsidized Employment Income, March 26. 2010. http://www.fns.usda.gov/snap/rules/Memo/2010/032610.pdf FNS subsequently clarified that this policy was effective as of the date of the memo. See: http://www.fns.usda.gov/snap/rules/Memo/2010/042010.pdf