

Dear Senators LODGE, Broadsword & Werk, and  
Representatives BLOCK, Nielsen & Henbest:

The Office of the Legislative Services, Research and Legislation, has received the enclosed rules of the Dept. of Health & Welfare: IDAPA 16.03.08 - Rules Governing Temporary Assistance for Families in Idaho (Docket No. 16-0308-0801) - Temporary and Proposed.

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 5-23-08. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 6-20-08.

\_\_\_\_\_The germane joint subcommittee may request a statement of economic impact with respect to a proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement, and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has been held.

To notify Research and Legislation, call 334-2475, or send a written request to the address or FAX number indicated on the memorandum enclosed.

## MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Health & Welfare Committee

**FROM:** Research & Legislation Staff - Paige Alan Parker

**DATE:** May 6, 2008

**SUBJECT:** Department of Health and Welfare - IDAPA 16.03.08 - Rules Governing Temporary Assistance for Families in Idaho (Docket No. 16-0308-0801) - Temporary and Proposed

By this Temporary and Proposed Rule docket, the Department of Health and Welfare amends chapter 03.08 of title 16, Idaho Administrative Code (Docket No. 16-0602-0801) (hereinafter, "temporary and proposed rule"). According to the Department, the temporary and proposed rule is authorized pursuant to section 56-202, Idaho Code, and by 45 CFR parts 260-65. Section 56-202(b), Idaho Code, provides the Department with broad rulemaking authority to carry out Idaho's public assistance law. Volume 45 of the Code of Federal Regulations deals with public welfare. Parts 260 through 265 address: 260 - General temporary assistance for needy families (TANF) provisions; 261 - Ensuring that recipients work; 262 - Accountability provisions--general; 263 - Expenditure of State and Federal TANF funds; 264 - Other accountability provisions; and 265 - Data collection and reporting requirements. Each of these Parts contain detailed sections. The Department fails to identify specifically upon which CFR Part it relies and fails to provide a copy of the relied upon part as required by section 67-5223(1), Idaho Code.

The Governor's justification for the temporary rule is the conferring of a benefit to TAFI participants. The temporary rule went into effect on May 1, 2008.

The Department states that the temporary and proposed rule seeks to align the methodology used to calculate income for self-employed individuals who apply for TAFI cash assistance with that used in the Food Stamp rules. The Department believes that the use of the same methodology for these two programs will simplify the process for determining income for self-employed individuals who are applying for both TAFI and Food Stamps and reduce the

opportunity for error when different methods are used to determine eligibility for these two programs. According to the Department, the new TAFI methodology allows two options for deducting self-employment expenses: A standard 50% deduction from gross income deduction or a deduction of the applicant's actual expenses. The changes contained in Docket No. 16-0308-0801 are revised from those contained in Docket No. 16-0308-0701 which was rejected by the Legislature in SCR 126 (2008).

According to the Department, no fee or charge is imposed by the temporary and proposed rule and there is no fiscal impact to the General Fund imposed by the temporary and proposed rule. The Department states that public hearings will be scheduled if requested in writing by 25 persons, a political subdivision or an agency not later than Wednesday, June 18, 2008. All written comments must be delivered to the Department on or before Wednesday, July 25, 2008. The Department does not address whether negotiated rulemaking was conducted.

### **ANALYSIS**

The temporary and proposed rule represents a complete rewriting of sections 229, 230 and 231 of IDAPA chapter 16.03.08.

Under section 229 of the temporary and proposed rule, the Department defines "self-employment income" as income from a business that is a sole proprietorship. A "sole proprietorship" is defined as a business owned by one person. Under this definition, a corporation or a limited liability company may qualify. Deleted from section 229 is the procedure for calculating self-employment income for those self-employed for at least one year or for less than one year.

The temporary and proposed rule overhauls section 230 to provide the means for average self-employment income. When self-employment income is considered annual support by the household, the Department averages the self-employment income even if the income is received for less than twelve months and other sources of income are received by the household. Seasonal self-employment income is averaged for only the part of the year that income is intended to cover. Eliminated from section 230 are the enumerated sixteen operating expenses that were to be deducted from self-employment income (ex., labor, materials, rent, etc.)

Section 231 of the temporary and proposed rule now provides the methodology for calculating self-employment income. Under the rewritten section, self-employment income is calculated by adding monthly income to capital gains and subtracting a deduction for expenses.

Determining gross monthly income depends on whether income fluctuations are expected. If no income fluctuations are expected, average gross monthly income is projected. If past income is not reflective of expected future income, a proportionate adjustment is made to expected gross monthly income. The temporary and proposed rule does not state how the proportionate adjustment is to be made. Any additional capital gains income, including profit from the sale or transfer of capital assets used in self-employment, is added to monthly income to determine the gross monthly income.

Subsection 231.03 of the temporary and proposed rule provides for determining the self-employment expense deduction. Eliminated from the subsection are a list of non-allowed, self-employment expenses: savings; depreciation; labor paid to a family member; loss of farm income; personal transportation; and net losses. Two methods are used to determine deductible self-employment expenses. The default method provides for a standard 50% of the gross monthly income deduction. Alternatively, if the applicant claims and proves that the actual allowable expenses exceed the standard deduction, actual allowable expenses may be deducted. Excepted from actual allowable expenses are: net losses from the previous tax year; federal, state and local income taxes; money set aside for retirement; work-related personal expenses such as transportation to and from work; and depreciation.

### **SUMMARY**

The Department's temporary and proposed rule changes appear to be authorized under section 56-202(b), Idaho Code.

cc: Department of Health and Welfare  
Sherri Kovach & Genie Sue Weppner

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.03.08 - RULES GOVERNING TEMPORARY ASSISTANCE FOR FAMILIES IN IDAHO (TAFI)

DOCKET NO. 16-0308-0801

### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is May 1, 2008.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-202, Idaho Code, and 45 CFR Parts 260-265.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than Wednesday, June 18, 2008.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

The Department is aligning the methodologies used to calculate income for self-employed individuals who apply for Temporary Assistance for Families in Idaho (TAFI) cash assistance with those used in the food stamp rules. Use of the same methodologies will: (1) simplify the process for determining income for self-employed individuals who are applying for TAFI and food stamps, and, (2) reduce the opportunity for errors that may occur when different methods are used to determine eligibility for these two programs.

New language is being added to the rule that provides for two options in the determination of self-employment income. These are the same options being added to the food stamp rules in this same *Bulletin* under Docket No. 16-0304-0801. The new language includes:

1. Use of a standard 50% deduction from gross income;
2. Use of methodology that would allow an applicant's actual income and actual expenses to be used in the calculation of self-employment income when determining eligibility for TAFI Program benefits.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate because it confers a benefit to TAFI participants.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

There is no anticipated fiscal impact to the state general fund related to this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary rule, contact Genie Sue Weppner (208) 334-5656.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, July 25, 2008.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0308-0801**

**229. CALCULATION OF SELF-EMPLOYMENT INCOME.**

*Countable self-employment income is the difference between the gross receipts and the allowable costs of producing the income, if the amount is expected to continue. Self-employment income must be calculated by one (1) of the methods listed in Subsections 229.01 and 229.02. For the purposes of these rules, self-employment income is from a business that is a sole proprietorship. A sole proprietorship is a business owned by one (1) person.* ~~(7-1-98)~~(5-1-08)T

**01. Self Employed at Least One Year.** *For individuals who are self-employed for at least one (1) year, income and expenses are averaged over the past twelve (12) months.* ~~(7-1-98)~~

**02. Self Employed Less Than One Year.** *For individuals who are self-employed for less than one (1) year, income and expenses are averaged over the period of time the business has been in operation.* ~~(7-1-98)~~

**230. AVERAGING SELF-EMPLOYMENT ALLOWABLE EXPENSES INCOME.**

*Operating expenses deducted from self-employment income are listed in Subsections 230.01 through 230.16.* ~~(7-1-98)~~

**01. Labor Annual Self-Employment Income.** *Labor paid to individuals not in the family. When self-employment income is considered annual support by the household, the Department averages the self-employment income over a twelve (12) month period, even if:* ~~(7-1-98)~~(5-1-08)T

**a.** The income is received over a shorter period of time than twelve (12) months; and (5-1-08)T

**b.** The household receives income from other sources in addition to self-employment. (5-1-08)T

**02. Material: Seasonal Self-Employment Income.** *Materials such as stock, seed and fertilizer. A seasonally self-employed individual receives income from self-employment during part of the year. When self-employment income is considered seasonal, the Department averages self-employment income for only the part of the year the income is intended to cover.* ~~(7-1-98)~~(5-1-08)T

**03. Rent.** *Rent on business property.* ~~(7-1-98)~~

**04. Interest.** *Interest paid to purchase income producing property.* ~~(7-1-98)~~

**05. Insurance.** *Insurance paid for business property.* ~~(7-1-98)~~

**06. Taxes.** *Taxes on income producing property.* ~~(7-1-98)~~

**07. Business Transportation.** *Business transportation as defined by the IRS.* ~~(7-1-98)~~

**08. Maintenance.** *Landscape and grounds maintenance.* ~~(7-1-98)~~

**09. Lodging.** *Lodging for business related travel.* ~~(7-1-98)~~

- ~~10. **Meals.** Meals for business related travel. (7-1-98)~~
- ~~11. **Use of Home.** Costs of partial use of home for business. (7-1-98)~~
- ~~12. **Legal.** Legal fees for business related issues. (7-1-98)~~
- ~~13. **Shipping.** Shipping for business related costs. (7-1-98)~~
- ~~14. **Uniforms.** Business related uniforms. (7-1-98)~~
- ~~15. **Utilities.** Utilities for business property. (7-1-98)~~
- ~~16. **Advertising.** Business related advertising. (7-1-98)~~

**231. CALCULATION OF SELF-EMPLOYMENT EXPENSES NOT ALLOWED INCOME.**

~~Self-employment expenses not allowed are listed in Subsections 231.01 through 231.09. The Department calculates self-employment income by adding monthly income to capital gains and subtracting a deduction for expenses as determined in Subsection 231.03 of this rule. (7-1-98)(5-1-08)T~~

~~**01. Payments on the Principal of Real Estate How Monthly Income is Determined.** Payments on the principal of real estate mortgages on income-producing property. If no income fluctuations are expected, the average monthly income amount is projected for the certification period. If past income does not reflect expected future income, a proportionate adjustment is made to the expected monthly income. (7-1-98)(5-1-08)T~~

~~**02. Purchase of Capital Assets or Durable Goods Capital Gains Income.** Purchases of capital assets, equipment, machinery, and other durable goods. Payments on the principal of loans for these items. Capital gains include profit from the sale or transfer of capital assets used in self-employment. The Department calculates capital gains using the federal income tax method. If the household expects to receive any capital gains income from self-employment assets during the certification period, this amount is added to the monthly income, as determined in Subsection 231.01 of this rule, to determine the gross monthly income. (7-1-98)(5-1-08)T~~

~~**03. Taxes Self-Employment Expense Deduction.** Federal, state, and local income tax. The Department uses the standard self-employment deduction in Subsection 231.03.a. of this rule, unless the applicant claims that his actual allowable expenses exceed the standard deduction and provides proof of the expenses described in Subsection 231.03.b. of this rule. (7-1-98)(5-1-08)T~~

~~**a.** The self-employment standard deduction is determined by subtracting fifty percent (50%) of the gross monthly self-employment income as determined in Subsections 231.01 and 231.02 of this rule; or (5-1-08)T~~

~~**b.** The self-employment actual expense deduction is determined by subtracting the actual allowable expenses from the gross monthly self-employment income. The following items are not allowable expenses and may not be subtracted from the gross monthly self-employment income: (5-1-08)T~~

- ~~i. Net Losses from previous tax years. (5-1-08)T~~
- ~~ii. Federal, state, and local income taxes. (5-1-08)T~~
- ~~iii. Money set aside for retirement. (5-1-08)T~~
- ~~iv. Work-related personal expenses such as transportation to and from work. (5-1-08)T~~
- ~~v. Depreciation. (5-1-08)T~~
- ~~**04. Savings.** Monies set aside for future use such as retirement or work related expenses. (7-1-98)~~
- ~~**05. Depreciation.** Depreciation for equipment, machinery, or other capital investments. (7-1-98)~~

- ~~06. *Labor Paid to Family Member. Labor paid to a family member. (7-1-98)*~~
- ~~07. *Loss of Farm Income. Loss of farm income deducted from other income. (7-1-98)*~~
- ~~08. *Personal Transportation. Personal transportation. (7-1-98)*~~
- ~~09. *Net Losses. Net losses from previous periods. (7-1-98)*~~