

Dear Senators LODGE, Broadsword & LeFavour, and
Representatives BLOCK, Nielsen & Rusche:

The Legislative Services Office, 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. 16-0308-1001).

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 6-22-10. 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 7-21-10.

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 334-4845, or send a written request to the address or FAX number indicated on the memorandum attached.



Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

Jeff Youtz
Director

MEMORANDUM

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

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

DATE: April 27, 2010
(Mailed June 3, 2010 - delay is due to LSO waiting for new GEMS computer program to be installed to process rules & is not yet complete)

SUBJECT: Department of Health and Welfare - IDAPA 16.03.08 - Rules Governing Temporary Assistance for Families in Idaho (Docket No. 16-0308-1001 (Proposed))

By this Proposed Rule docket, the Department of Health and Welfare amends chapter 03.08 of title 16, Idaho Administrative Code (Docket No. 16-0308-1001)(hereinafter, "proposed rule"). According to the Department, the proposed rule is authorized pursuant to section 56-202, Idaho Code, 45 CFR, parts 260 through 265 and Public Law 111-118.

Section 56-202(b), Idaho Code, provides the Department with broad rulemaking authority to carry out Idaho's public assistance law. Parts 260 through 265 of the Code of Federal Regulations are extensive, dealing with many aspects of the federal Temporary Assistance for Needy Families Program. Without more specific guidance, this broad citation of authority does not help in preparing this analysis. Fortunately, the Department has provided section 8120 of P.L. 111-118 as support for its proposed rule submission. Section 8120 amends the Refugee Crisis in Iraq Act of 2007 and the Afghan Allies Protection Act of 2009 to strike an eight month limit for receiving benefits and to provide that benefits are to be provided for the same periods of time as other refugees that have been granted special immigrant status..

Not cited by the Department as rulemaking authority is section 56-203, Idaho Code, which provides the Department with various powers, including to cooperate with the federal government in carrying out the purposes of any federal acts pertaining to public assistance or welfare services, to define persons entitled to medical assistance in such terms as will meet

Mike Nugent, Manager
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requirements for federal participation in medical assistance payments and to determine the amount, duration and scope of care and services to be purchased as medical assistance on behalf of needy eligible individuals.

The Department provides several purposes for the proposed rule. First is the exclusion of temporary income earned while working for the U.S. Census from countable income for eligibility in the Temporary Assistance for Families in Idaho (TAFI) Program. According to the Department, this will treat income in the TAFI Program the same as other benefit programs. A second purpose is to align the chapter with federal regulations related to special immigrant length of stay. Third is to remove barriers that have excluded participation under the Career Enhancement (CE) services to help participants obtain or maintain employment.

According to the Department, no fee or charge is imposed by the proposed rule, but the Department anticipates that the proposed rule's impact to the General Fund will be \$2,502. The Department states that negotiated rulemaking was not conducted since the rule confers a benefit and is governed by federal regulations. 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, October 15, 2008. All written comments must be delivered to the Department on or before Wednesday, October 22, 2008.

ANALYSIS

Sections 131.09 and .10 of the proposed rule eliminate the eight month eligibility period limitation on TAFI benefits for Afghan and Iraqi special immigrants. This is consistent with P.L. 111-118.

Section 215.38 adds wages paid by the Census Bureau for temporary employment related to U.S. Census activities for up to six months to the income excluded to be eligible for TAFI benefits. This is consistent with changes made by the Department with regard to other benefit programs. See Docket No. 16-0612-1001 with regard to the Idaho Child Care Program.

Regarding Career Enhancement Assistance, section 369 of the proposed rule no longer allows a Food Stamp Job Search Assistance Program Plan to qualify as a Career Enhancement Service Plan. Section 370.10 of the proposed rule eliminates an Energy Assistance to Needy Families with Children payment within the past twelve months as a disqualification to receiving Career Enhancement Assistance.

Additional changes in the proposed rule deal with prohibitions on Support Service expenditures. Under section 376, use of Support Service expenditures for arrearage payment on motorized vehicles is no longer prohibited. Also, security deposits, payments on arrearages, current monthly payments and future monthly payments of housing and utility costs are no longer prohibited Support Service expenditures.

SUMMARY

The Department's proposed rule changes appear to be authorized under section 56-202(b) and 56-203(b) and (g), Idaho Code.

cc: Department of Health and Welfare.
Tamara Prisock & Genie Sue Weppner

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

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

DOCKET NO. 16-0308-1001

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 56-202, Idaho Code, 45 CFR Parts 260-265, and Public Law 111-118.

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 May, 19, 2010.

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 a nontechnical explanation of the substance and purpose of the proposed rulemaking. These rules were adopted as temporary rules with effective dates of December 19, 2009, and January 1, 2010. The temporary rule docket published in the April 7, 2010, Idaho Administrative Bulletin, Vol. 10-4, pages 16 through 21.

In order to better support and assist Idaho's low-income individuals in need of temporary assistance, the Department is amending these rules to align with federal regulations and other Department chapters on excluded resources and special immigrants. The U.S. Census that is conducted every ten years hires temporary employees to conduct this field work. The Department is excluding this temporary census income from countable income in order to treat income for TAFI the same as other benefit programs. Federal regulations updated the special immigrants length of eligibility and these rules are being amended to align with those updates.

The Department is removing barriers that have excluded participation under the Career Enhancement (CE) services to help participants obtain or maintain employment. These changes will align with Emergency Assistance services by: removing the requirement to have a job search assistance plan, removing the restriction from CE services for anyone who received emergency assistance payments in the past 12 months, and removing housing and utility costs from prohibited supportive service expenditures.

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.

The Career Enhancement (CE) program is 100% federally funded and this rulemaking has no anticipated fiscal impact to the state general fund for excluding this temporary income for TAFI participants. The fiscal impact in federal funds is \$300,000 for CE benefits, and \$24,700 for special immigrants.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because these changes provide a benefit and align Department rules with federal regulations.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the proposed rule, contact Genie Sue Weppner at (208) 334-5656.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before May 26, 2010.

DATED this 29th day of March, 2010.

Tamara Prisock
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P.O. Box 83720
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THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 16-0308-1001

131. CITIZENSHIP AND QUALIFIED NON-CITIZEN CRITERIA.

To be eligible, an individual must be a member of one (1) of the groups listed in Subsections 131.01 through 131.10 of this rule. (5-8-09)

- 01. U.S. Citizen.** A U.S. Citizen; or (3-20-04)
- 02. U.S. National, National of American Samoa or Swains Island.** A U. S. National, National of American Samoa or Swains Island; or (3-20-04)
- 03. Full-Time Active Duty U.S. Armed Forces Member.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) currently on full-time active duty with the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard, or a spouse or unmarried dependent child of the U.S. Armed Forces member; or (3-20-04)
- 04. Veteran of the U.S. Armed Forces.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) honorably discharged from the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard for a reason other than their citizenship status or a spouse, including a surviving spouse who has not remarried, or an unmarried dependent child of the veteran; or (3-20-04)
- 05. Non-Citizen Entering the U.S. Before August 22, 1996.** A non-citizen who entered the U.S. before August 22, 1996, and is currently a qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c); or (3-20-04)
- 06. Non-Citizen Entering on or After August 22, 1996.** A non-citizen who entered on or after August 22, 1996, and
 - a.** Is a refugee admitted into the U.S. under 8 U.S.C. 1157, and can be eligible for seven (7) years from their date of entry; or (3-20-04)
 - b.** Is an asylee granted asylum into the U.S. under 8 U.S.C. 1158, and can be eligible for seven (7) years from the date their asylee status is assigned; or (3-20-04)
 - c.** Is an individual whose deportation or removal from the U.S. has been withheld under 8 U.S.C. 1253 or 1231(b)(3) as amended by Section 305(a) of Division C of Public Law 104-208, and can be eligible for seven (7) years from the date their deportation or removal was withheld; or (3-20-04)
 - d.** Is an Amerasian immigrant admitted into the U.S. under 8 U.S.C. 1612(b)(2)(A)(i)(V), and can be eligible for seven (7) years from the date of entry; or (3-20-04)
 - e.** Is a Cuban or Haitian entrant to the U.S. under Section 501(e) of the Refugee Assistance Act, and can be eligible for seven (7) years from their date of entry; or (3-20-04)
- 07. Qualified Non-Citizen Entering on or After August 22, 1996.** A qualified non-citizen under 8 U.S.C. 1641(b) or (c), entering the U.S. on or after August 22, 1996, and who has had a qualified non-citizen status for at least five (5) years; or (3-20-04)

08. Victim of Severe Form of Trafficking. A victim of a severe form of trafficking in persons, as defined in 22 U.S.C. 7102(13); who meets one (1) of the following: (3-20-04)

- a. Is under the age of eighteen (18) years; or (3-20-04)
- b. Is certified by the U.S. Department of Health and Human Services as willing to assist in the investigation and prosecution of a severe form of trafficking in persons; and (3-20-04)
 - i. Has made a bona fide application for a temporary visa under 8 U.S.C. 1104(a)(15)(T), which has not been denied; or (3-20-04)
 - ii. Is remaining in the U.S. to assist the U.S. Attorney General in the prosecution of traffickers in persons. (3-20-04)

09. Afghan Special Immigrants. An Afghan special immigrant, as defined in Public Law ~~110-161~~ 111-118, who has special immigration status after December 26, 2007, is eligible ~~for eight (8) months~~ from the date they enter into the U.S. as a special immigrant or the date they convert to the special immigrant status. (3-11-09)F()

10. Iraqi Special Immigrants. An Iraqi special immigrant, as defined in Public Law ~~110-181~~ 111-118, who has special immigration status after January 28, 2008, is eligible ~~for eight (8) months~~ from the date they enter the U.S. as a special immigrant or the date they convert to the special immigrant status. (5-8-09)()

(BREAK IN CONTINUITY OF SECTIONS)

215. EXCLUDED INCOME.
The types of income listed in Subsections 215.01 through 215.378 of this rule, are excluded. (5-8-09)()

- 01. Supportive Services.** Supportive services payments. (7-1-98)
- 02. Work Reimbursements.** Work-related reimbursements. (7-1-98)
- 03. Child's Earned Income.** Earned income of a dependent child, who is attending school. (7-1-98)
- 04. Child Support.** Child support payments assigned to the State and non-recurring child support payments received in excess of that amount. (7-1-98)
- 05. Loans.** Loans with a signed, written repayment agreement. (7-1-98)
- 06. Third Party Payments.** Payments made by a person directly to a third party on behalf of the family. (7-1-98)
- 07. Money Gifts.** Money gifts, up to one hundred dollars (\$100), per person per event, for celebrations typically recognized with an exchange of gifts. (7-1-98)
- 08. TAFI.** Retroactive TAFI grant corrections. (7-1-98)
- 09. Social Security Overpayment.** The amount withheld for a Social Security overpayment. Money withheld voluntarily or involuntarily to repay an overpayment from any other source is counted as income. (7-1-99)
- 10. Interest Income.** Interest posted to a bank account. (7-1-98)
- 11. Tax Refunds.** State and federal income tax refunds. (7-1-98)
- 12. EITC Payments.** EITC payments. (7-1-98)

13. **Disability Insurance Payments.** Taxes withheld and attorney's fees paid to secure disability insurance payments. (7-1-98)
14. **Sales Contract Income.** Taxes and insurance costs related to sales contracts. (7-1-98)
15. **Foster Care.** Foster care payments. (7-1-98)
16. **Adoption Assistance.** Adoption assistance payments. (7-1-98)
17. **Food Programs.** Commodities and food stamps. (7-1-98)
18. **Child Nutrition.** Child nutrition benefits. (7-1-98)
19. **Elderly Nutrition.** Elderly nutrition benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965. (7-1-98)
1981. 20. **Low Income Energy Assistance.** Benefits paid under the Low Income Energy Assistance Act of 1981. (7-1-98)
9101. 21. **Home Energy Assistance.** Home energy assistance payments under Public Law 100-203, Section 9101. (7-1-98)
22. **Utility Reimbursement Payment.** Utility reimbursement payments. (7-1-98)
23. **Housing Subsidies.** An agency or housing authority pays a portion of or all of the housing costs for a participant. (5-8-09)
24. **Housing and Urban Development (HUD) Interest.** Interest earned on HUD family self-sufficiency escrow accounts established by Section 544 of the National Affordable Housing Act. (7-1-98)
25. **Native American Payments.** Payments authorized by law made to people of Native American ancestry. (7-1-98)
26. **Educational Income.** Educational income, except that AmeriCorps living allowances, stipends, and AmeriCorps Education Award minus attendance costs are earned income. (7-1-98)
27. **Work Study Income of Student.** College work study income. (7-1-98)
28. **VA Educational Assistance.** VA Educational Assistance. (7-1-98)
29. **Senior Volunteers.** Senior volunteer program payments to individual volunteers under the Domestic Volunteer Services Act of 1979, 42 U.S.C. Sections 4950 through 5085. (7-1-98)
30. **Relocation Assistance.** Relocation assistance payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. (7-1-98)
31. **Disaster Relief.** Disaster relief assistance paid under the Disaster Relief Act of 1974 and aid provided under any federal statute for a President-declared disaster. Comparable disaster assistance provided by states, local governments, and disaster assistance organizations. (7-1-98)
32. **Radiation Exposure Payments.** Payments made to persons under the Radiation Exposure Compensation Act. (7-1-98)
33. **Agent Orange.** Agent Orange settlement payments. (7-1-98)
34. **Spina Bifida.** Spina bifida allowances paid to children of Vietnam veterans. (7-1-99)

- 35. Japanese-American Restitution Payments.** Payments by the U.S. Government to Japanese-Americans, their spouses, or parents (or if deceased to their survivors) interned or relocated during World War II. (3-30-01)
- 36. Vista Payments.** Volunteers in Service to America (VISTA) payments. (3-30-01)
- 37. Subsidized Employment.** Employment for which the employer receives a subsidy from public funds to offset a portion or all of the wages and costs of employing an individual. This type of employment is a short-term placement, pays prevailing wage, and a specific skill is acquired. The employment is prescribed through a memorandum of agreement with no guarantee of permanent employment for the participant. (5-8-09)
- 38. Temporary Census Income.** All wages paid by the Census Bureau for temporary employment related to U.S. Census activities are excluded for a time period not to exceed six (6) months during the regularly scheduled ten (10) year U.S. Census. ()

(BREAK IN CONTINUITY OF SECTIONS)

369. CAREER ENHANCEMENT SERVICE PLAN.

All individuals receiving Career Enhancement Assistance must have a written Career Enhancement Service Plan ~~or a Food Stamp Job Search Assistance Program Plan (JSAPP).~~ (5-3-03)()

370. CAREER ENHANCEMENT ASSISTANCE ELIGIBILITY CRITERIA.

The individual must meet the criteria in Subsections 370.01 through 370.14. (5-3-03)

01. Application and Service Plan. An application form must be completed for Career Enhancement Assistance, unless the family already receives services from the Food Stamp Medicaid, Idaho Child Care or Child Support Services programs. A Career Enhancement service plan must be completed for all eligible individuals. (5-3-03)

02. Verification of Career Enhancement Eligibility. SSN must be verified. Other eligibility criteria are verified at the discretion of the Department. (3-30-01)

03. Eligible Individual. The individual must not have failed, without good cause, to comply with a previous Career Enhancement Service Plan. The individual must be a parent or a caretaker relative with a dependant child in the home, a pregnant woman; or a non-custodial parent legally responsible to provide support for a dependant child who does not reside in the same home. (5-3-03)

04. Need for Work-Related Services. The individual must be in need of work-related services to maintain employment or participate in work programs. The individual must participate in meeting the need to the extent possible. This requires the individual to meet a portion of the need if possible, and to explore other resources available to meet the need. (3-15-02)

05. Income Limit. The family must meet the income limit for only the first month of the service to receive Career Enhancement Assistance. The family's income must be below two hundred percent (200%) of the federal poverty guidelines, or the family must be eligible for Food Stamps, Medicaid or ICCP. For non-custodial parents, the family's income must be below four hundred percent (400%) of the federal poverty guidelines, or the family must be eligible for Food Stamps or Medicaid. (5-3-03)

06. Citizenship and Legal Non-Citizen. The individual must be a citizen or must meet the legal non-citizenship requirements of Section 131. (7-1-99)

07. SSN. An SSN, or proof of application for an SSN, must be provided for the individual. (3-30-01)

08. Residence. The individual must live in the state of Idaho and must not be a resident of another state. (7-1-99)

09. Duplication of Services. Career Enhancement Assistance must not be provided for a need already met by Emergency Assistance under IDAPA 16.06.01, "Rules Governing Family and Children's Services," or by a one-time TAFI cash payment. (5-3-03)

10. TANF Restrictions. The family must not be receiving TANF or TAFI benefits or be serving a TAFI sanction. Participants must not receive Career Enhancement Assistance if they have received five (5) years of TANF benefits. The family must not be receiving TANF Extended Cash Assistance. ~~If the participant received an Emergency Assistance to Needy Families with Children payment within the past twelve (12) months, the participant cannot receive Career Enhancement Assistance.~~ The participant cannot receive Career Enhancement Assistance if they have received it within the past twelve (12) months. (~~5-3-03~~)(____)

11. Controlled Substance Felons. Individuals convicted under federal or state law of any offense classified as a felony involving the possession, use or distribution of a controlled substance can receive Career Enhancement Assistance when they comply with the terms of a withheld judgment, probation or parole. The felony must have occurred after August 22, 1996. (5-3-03)

12. Fleeing Felons. Felons who are fleeing to avoid prosecution, custody or confinement after conviction of a felony or an attempt to commit a felony cannot receive Career Enhancement Assistance. (5-3-03)

13. Probation or Parole Violation. Felons who are violating a condition of probation or parole imposed for a federal or state felony cannot receive Career Enhancement Assistance. (5-3-03)

14. Fraud. Individuals convicted in a federal or state court of fraudulently misrepresenting residence to get TANF, AABD, Food Stamps, Medicaid, or SSI, from two (2) or more states at the same time, cannot receive Career Enhancement Assistance for ten (10) years from the date of conviction. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

376. PROHIBITED SUPPORTIVE SERVICE EXPENDITURES.

Supportive Service expenditures must not be authorized for the following types of expenses: (5-3-03)

01. Child Care. Child care of any type. (5-3-03)

02. Medical Services. Medical services, including medical exams. (5-3-03)

03. Vehicles. Motorized vehicle purchases, and down payments, ~~and payment arrearages.~~ (~~5-3-03~~)(____)

~~**04. Housing and Utility Costs.** Security deposits, payments on arrearages, current monthly payments, and future monthly payments.~~ (~~5-3-03~~)

054. Services for Children. Services or payments for a child, such as counseling, clothing, and school supplies. (5-3-03)

065. Credit Card Accounts. Payments on charge cards. (5-3-03)

076. Household Items. Furniture and major home appliances. (5-3-03)

087. Fines. Any type. (5-3-03)

098. Professional Union or Trade Dues. Any type. (5-3-03)

109. Any Service. Available through another resource. (5-3-03)