

Appendix B
Subsidized Employment Program Questions and Responses
January 4, 2010

USE OF FUNDS

Question #1:

May a county department of job and family services use these funds to subsidize positions within the agency?

Response #1:

The county agency cannot re-categorize program administrative staffing costs as subsidized employment. These funds are not intended to cover the existing costs of TANF program administration.

Question #2:

We have been approached by the County Board of Elections and Sheriff's Department who both offices will be hiring and are interested in the TANF Subsidized Employment Program. Can these agencies receive these funds?

Response #2:

Yes, public sector subsidized employment is an allowable activity. This could be in any setting including, local or county office or in State or Tribal government, except as indicated in response #1.

Question #3:

What is the difference between "...limit eligibility to TANF-eligible individuals (however, not required to be OWF-eligible)"?

Response #3:

TANF-eligible means eligible under the federal TANF law. OWF eligible means eligible for Ohio Works First cash assistance under the Ohio Revised Code. Someone who is TANF-eligible is not necessarily on OWF; nor is eligibility limited to those who would be eligible for OWF.

The TANF federal requirements and state requirements for PRC in the PRC Reference Guide at <http://jfs.ohio.gov/owf/prc/PRCReferenceGuide.stm>

Counties can set income limits and participants in PRC as long as the federal TANF requirements are met. Since this type of program would presumably meet purpose 2 of the TANF purposes, "to end the dependence of needy parents on government benefits by promoting job preparation, work and marriage", which means that the program must have, at a minimum, the following components:

- (1) participants that consist of a family with a minor child, a pregnant woman or a noncustodial parent;
- (2) an income eligibility standard that demonstrates that the family is needy (e.g. 200% FPL);
- (3) and social security numbers of all participants provided to the county agency.

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Question #4:

Who is considered the employer for unemployment compensation purposes?

Response #4:

The employer is responsible for paying the unemployment compensation. The CDJFS is not the employer.

Question #5:

Can we use any of this money to print fliers and advertise for the program?

Response #5:

Promotion and recruitment is an acceptable use of the funds since it would be part of the operation of the program.

Question #6:

Is there a maximum on the amount of subsidy reimbursement to the employer?

Response #6:

No, the CDJFS may establish the amount of the subsidy.

Question #7:

Can SEP contracts be with non-Ohio employers?

Response #7:

Yes. There are no federal prohibitions so if a CDJFS chooses, it may contract with out of state employers.

Question #8:

If an employer hires an eligible person, can the employer and the participant both receive \$1,000 after the probationary period is over?

Response #8:

It would be permissible to use this fund to pay a retention bonus at the end of the probationary period as long as it was part of the subsidized employment program, it is included in the agreement with the employer, and the bonus to the participant is paid by the employer. Payments by the CDJFS to the participant would not qualify as a "wage subsidy" to the employer, which is the federal definition of "subsidized employment," especially for purposes of qualifying for TANF stimulus dollars. A payment to the employer is acceptable.

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Question #9:

Is it OK to enter into a SEP that pays minimum wage or must the SEP pay a higher wage? Has the State put any requirements on this?

Response #9:

There are no requirements regarding the wage that the employer must pay participants. County agencies may determine what the wage is that qualifies for SEP.

Question #10:

For the subsidy, outside of customer eligibility and the employer meeting the requirements such as no regular employees on lay-off, do we have to justify the SEP, such as documenting that the participant needs training, similar to what was done under JTPA and now under WIA? Or is this just simply a "wage subsidy program" to help the customers achieve employment?

Response #10:

The subsidy must meet TANF purpose #2. As part of the contract, you should indicate what the subsidy will be used for. With some employers, the entire subsidy may be going to the participant, while in other situations there will be a training component. It should be specified in the contract; if the records are audited, there should be sufficient documentation to support what was provided to the employer.

Question #11:

Can funds be used for a substantive training program, prior to starting any employment? If someone has an offer of employment, but has to complete a 3-6 month training as a pre-requisite for being able to start the employment, are we able to use these SEP funds to pay for the training?

Response #11:

No, these funds cannot be used for a training program prior to starting employment as these funds are considered "work subsidies". 45 CFR 260.31 defines "work subsidies" as payments to employers or third parties to help cover the cost of employee wages, benefits, supervision, and training". In order to pay for training under these funds, the subsidy would be paid to the employer or third party (i.e., employment agency) for training of the employee. A county could cover the cost of training for a prospective employee through its own PRC funds if allowable in its plan, but not through these special administrative funds.

Question #12:

As part of our SEP program the client goes through 2 weeks of unsubsidized job readiness program is it possible to use this as part of SEP so it does not count against the Job Search hours?

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Response #12:

No. Job search and job readiness activities are not part of a subsidized employment program. These special administrative funds are to be used for wage subsidies to employers. If you require job search activities, they must be reported as job search activities and not subsidized employment.

EMPLOYER ISSUES – DISPLACEMENT, UNEMPLOYMENT COMPENSATION, WORKERS COMPENSATION

Question #1:

Must there be a sign off form from the union who has a contract with the employer that is contracting with the CDJFS? Must we ensure that we are not circumventing a contract that specifies hiring and/or promotion protocols?

Response #1:

The individual works for the employer, not the CDJFS. The employer would need to abide by collective bargaining contracts in place when placing any individual in a union position. While this is something that can be included in a contract with the employer, it does remain the responsibility of the employer to follow any collective bargaining contracts within that organization.

Question #2:

Must we ensure that no workers are on lay off before we place someone with an employer and ensure there are no 'call back' rights?

Response #2:

42 USC 607(f) prohibits employing or assigning an adult in a work activity funded by federal funds when any other individual is on layoff from the same or a substantially equivalent job; or if the employer has terminated the employment of a regular employee or otherwise caused an involuntary reduction of its workforce to fill the vacancy with an adult in a TANF work activity. In addition, Section 5107.65 of the Revised Code addresses the displacement policy for the Ohio Works First program. For additional information, consult Legal Brief 99-05, which was prepared by ODJFS Legal staff - <http://innerweb/ols/briefs/brief9905.pdf>. We also recommend that you consult your legal counsel for additional guidance.

Question #3:

What happens if we enter into a contract with an employer to run the SEP for several months (6 for an example), and the participant does not work out and is let go? Will the participant draw unemployment against the employer?

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**EMPLOYER ISSUES – DISPLACEMENT, UNEMPLOYMENT
COMPENSATION, WORKERS COMPENSATION**

Response #3:

The individual works for the employer regardless of the fact that the subsidy is paid to the employer by the agency. Eligibility for unemployment compensation benefits would be based on the fact that the individual is paid wages by the employer, just like any other employee.

Question #4:

What if an employer laid off 4 years ago? How long does the prohibition apply? Does it make a difference if there was a time-limited layoff recall list? If the union signs off on the displacement, can the agency place an individual in that position?

Response #4: 42 USC 607 (f)(2) states in part:

No adult in a work activity described in subsection (d) which is funded, in whole or in part, by funds provided by the Federal Government shall be employed or assigned (A) when any other individual is on layoff from the same or any substantially equivalent job; or (B) if the employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction of its workforce in order to fill the vacancy so created with an adult described in paragraph (1).”

In addition, Section 5107.65 of the Revised Code addresses the displacement policy for the Ohio Works First program. Neither the federal or state law have a time limit attached to the prohibition. We also recommend you discuss this with your legal counsel.

Question #5:

An employer could have laid off two clerical staff - we would then NOT put a SEP participant into a clerical position - however we COULD do a SEP for a welder or assembler with the same employer?

Response #5:

The prohibition is in displacement of staff in the same or substantially equivalent job. In the situation presented, it appears that there would not be a problem placing a SEP participant as a welder or assembler as those positions will not displace a regular employee in a same or substantially equivalent job.

Question #6:

Who will be responsible for the workers compensation coverage for SEP individuals? JFS or the employer?

Response #6:

The employer is responsible for the workers compensation coverage.

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**EMPLOYER ISSUES – DISPLACEMENT, UNEMPLOYMENT
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Question #7:

Payments to employers for subsidizing wages will be reimbursements so do we have to 1099 these employers so the reimbursements are recorded as taxable income?

Response #7:

The tax responsibilities lie with the employer. The employer should contact the IRS for guidance. IRS Notice 99-3 provides details on the treatment of TANF payments for tax purposes to individuals.

FISCAL

Question #1:

Are the internal CDJFS costs for the above eligible activities reimbursable to the county?

Response #1:

Counties may charge internal costs to the SEP allocation. Coding is in existence for TANF work subsidy and the RMS code structure has been set up to accommodate this new program. The County Finance section in ODJFS Office of Fiscal Services can provide more specific instructions. Costs associated with staff performing eligibility determinations are considered administrative costs and therefore cannot be charged against this specific allocation. Costs for staff performing other services (training, outreach, etc.) are considered program costs and therefore are reimbursable against the allocation.

Question #2:

If a county decides to use a third party to assist with implementing its program delivery is an RFP for that service required?

Response #2:

The county will have to follow normal procurement processes unless the third party is already performing similar services under contract for the county.

Question #3:

Will this require a new CFDA code?

Response #3:

No.

Question #4:

Will there be fiscal instructions on the coding of these expenditures?

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Response #4:

This is the standard process and counties can contact their fiscal supervisors. Instructions have been issued.

Question #5:

What is the time frame for the availability of funds?

Response #5:

The funds are available from November 1, 2009 and must be spent by September 30, 2010.

Question #6:

Is there a RMS code for a program run by the Child Support Enforcement Agency where non-custodial parents are involved in TANF SEP?

Response #6:

There is a RMS code combination that can be selected on the CSEA RMS form. The code combination is program 998 (Non-Reimbursable) with activity 994 (Child Support TANF Allowable Activity).

Question #7:

What is the allocation methodology used to determine each county's share?

Response #7:

It is the standard TANF allocation formula that can be found in rule 5101:9-6-08 of the Administrative Code.

Question #8:

Will unspent funds be reallocated to other counties?

Response #8:

We will monitor the expenditures and make that determination if the funds are not being expended.

Question #9:

We are also seeking clarification on the end date for use of funds. Even though funding is available thru 09/30/10, is that the date we can incur expenses right up until or do all expenses and payments need to have been processed before that date?

Response #9:

All payments to the employer must be issued on or before September 30, 2010. There is no reconciliation period.

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Question #10:

Since the funds must be spent by Sept. 30, can we issue payments past Sept. 30 in the case where a SEP contract ends Aug. 31 but payments could not be processed and issued until after Sept. 30 or must all payments be made by Sept. 30?

Response #10:

All payments must be issued on or before September 30. There is no reconciliation period.

SUBSIDIZED EMPLOYMENT PROGRAM CONTRACT

Question #1:

Will there be a template for the SEP contracts?

Response #1:

There is no template mandated, but examples are available.

Question #2:

Can the length of the SEP contract vary by employer? Is there a maximum number of months for the contract period?

Response #2:

The length of contracts should be included in the PRC plan. TANF SEP funds are not available for contracts extending beyond September 30, 2010. The county may choose to use its TANF allocation as part of its PRC program to extend the program beyond September 30, 2010.

Question #3:

Should the contract state that the assumption is that the employer will continue employment with the SEP worker after the SEP expires?

Response #3:

While this is preferred, it is not required. Counties can fund transitional job placements where the work experience may not lead to a job with that company, but may give them the skills necessary for a job with another employer.

Question #4:

What constitutes completion of a SEP contract?

Response #4:

The SEP participant remains actively engaged in employment throughout the contractual period as defined by the CDJFS and employer.

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MONITORING & AUDITS

Question #1:

For reimbursement to the employer, should we be requiring timesheets?

Response #1:

While there is nothing specific in the regulations, for audit purposes, you would want to ensure that there are invoices that meet the requirements of TANF.

Question #2:

Would the county be subject to U.S. Department of Labor audits?

Response #2:

The TANF SEP program is part of the state's TANF program. As such, it is regulated by the U.S. Department of Health and Human Services, not the Department of Labor. However, if other programs such as Workforce Investment Act programs are also incorporated into the SEP program, then the Department of Labor requirements would apply.

Question #3:

For this SEP, can we issue a flat subsidy paid to the employer without time sheets accounting for every hour worked or must we reimburse the employer dollar for dollar for actual hours worked and require customer time sheets to be used for the basis of reimbursement?

Response #3:

While collecting time sheets is not mandatory under the SEP programs for this funding, it could be an audit issue. Auditing procedures must be followed and thus verification of participation is important; how the participation is verified must meet auditing standards.

Question #4:

Are there any performance measures we have to meet?

Response #4:

There are no specific state-mandated performance measures. However, the TANF SEP funds were provided to ODJFS by the Unemployment Compensation Advisory Committee. This committee has asked for reports of the progress of the program. As a result, we have included a reporting requirement as referenced in Family Stability Letter #91. The stated goal of the TANF SEP is that programs are successful in providing employment, continuing employment past the contract period and providing skills necessary for future employment.

Question #5:

For the participants' records, is there an MIS system to enter the information or do we just maintain a hard-copy file on the SEPs?

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Response #5:

There is no system specifically for entering participant information for the TANF SEP. If the person is in receipt of OWF, the participation in SEP would qualify as a work activity and should be entered into the CRIS-E work activity subsystem and the earned income would be used for eligibility determination and amount of benefits.

REPORTING

Question #1:

If we contract with a temporary agency, how should we record it on the tracking sheet – the agency or the location where the individual is placed?

Response #1:

The actual placement location should be recorded on the tracking sheet.

Question #2:

How long past the end of the contract should we record that employee especially if not with that employer?

Response #2:

The employee should be tracked one month past the contract end date to determine if job retention did occur.

Question #3:

What would you consider to be submitted for a success story?

Response #3:

Examples include retention of employment; receiving skills that lead to new employment; and retention of employment past the contract end date. We would welcome any stories that counties would consider “success stories.”

Question #4:

If a SEP participant leaves employment in the month, should they be reported in that month as a participant?

Response #4:

Yes.

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PROGRAM ELIGIBILITY

Question #1:

If we subsidize work study, how would this income be treated for cash and food assistance?

Response #1:

For food assistance purposes, pursuant to the rules and federal regulations, state or federal work study clearly would qualify as an exception to student ineligibility. Additionally, income earned from work study would be excluded from countable income. A work study program funded by TANF SEP would be a state work study program and would qualify as an exception to student ineligibility and income earned would be exempt. Because this income is exempt for the food assistance program, it is also exempt for the cash assistance programs as set forth in rule 5101:1-23-20 of the Administrative Code.