

STATE OF HAWAII
NOTICE OF AND REQUEST FOR EXEMPTION
FROM CHAPTER 103F, HRS

18SEP'08 AM 8:46 SPO-A7

To: Chief Procurement Officer

From: Department of Human Services

Department/Division/Branch or Office

Pursuant to § 103F-101(a)(4), HRS, and Chapter 3-141, HAR, the Department requests a procurement exemption to purchase the following:

1. Title and description of health and human service(s):	The Department of Human Services seeks to provide diversion services known as the Grant Diversion Program, to TANF or TAONF eligible clients, in order to assist them in obtaining paid employment and divert them from transitioning to TANF or TAONF assistance. Services to be provided may include, but are not limited to, screening, intake and orientation, job/work activity readiness, job/work activity coaching, job/work activity placement, job/work activity retention, on-going case management, and support services delivery such as child care, transportation and work-related expenses, to assist TANF and TAONF eligible clients with finding and retaining employment.
2. Provider Name and Address:	Goodwill Industries of Hawaii 2610 Kilihau Street Honolulu, HI 96819
3. Total Contract Funds:	\$417,420
Contract Funds per Year (if applicable):	
4. Reference number of Previous Request for this Service (if applicable):	
5. Term of Contract:	Start: 10/1/08 End: 6/30/09
6. Describe how procurement by competitive means is either not practicable or not advantageous to the State:	Goodwill Industries of Hawaii was awarded the Grant Diversion program contract under competitive procurement RFP HMS-903-04-01-O for the period April 1, 2004 to March 31, 2008. The contract was extended until September 30, 2008 to allow continuity of services during the re-procurement process. Another Provider, Arbor, was awarded the contract when the service was re-procured under competitive procurement RFP HMS-08-903-10-O. Recent changes in the Federal guidelines require the Grant Diversion program be modified. Therefore, the Department is revising the administrative rules that provide the policy base for the program. The rule change is expected to be adopted by December, 2008, however, the change may be implemented as early as October, 2008. The change is expected to triple the number of clients who will be referred to the program. Arbor currently does not have the infrastructure necessary to handle the increased workload. In order to accommodate the anticipated increase in workload effective October, it is requested that Goodwill Industries continue to provide diversion services to clients. The Department plans to transition services for certain geographic areas to Goodwill until Arbor develops the infrastructure to service all clients.
7. Describe the reason for the selection of the provider including a description of how the procedure ensured the maximum fair and open competition practicable:	Goodwill Industries of Hawaii is the current service provider of the Grant Diversion program. Goodwill has the infrastructure and the program knowledge necessary to continue providing uninterrupted service to clients.

Temporary Assistance for Needy Families Program Instruction

U.S. Department of Health and Human Services
Administration for Children and Families
Office of Family Assistance
Washington, DC 20447

No. TANF-ACF-PI-2008-05 (AMENDED)

Date: May 22, 2008

- TO:** State agencies administering the Temporary Assistance for Needy Families (TANF) program under title IV-A of the Social Security Act and other interested parties.
- SUBJECT:** Diversion Programs
- REFERENCES:** 45 CFR 260.31(a), 45 CFR 260.31(b)(1), 45 CFR 260.31(b)(6), 45 CFR 261.40, 45 CFR 261.41, 45 CFR 265.2, 45 CFR 265.3(b) and (d), 45 CFR 265.8
- PURPOSE:** This Program Instruction (PI) reminds States that providing recurring basic income supports constitutes “assistance” and clarifies the meaning of “nonrecurrent, short-term benefits.”
- This PI was originally issued on May 19, 2008. We have re-issued this PI because we have changed the effective date to October 1, 2008 (FY 2009).

BACKGROUND:

The TANF regulation at 45 CFR 260.31(a)(1) and (2) specifies that “assistance” includes cash, payments, vouchers and other forms of benefits designed to meet a family’s ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses). The regulation at 45 CFR 260.31(a)(3) states that assistance also can include supportive services such as transportation and child care provided to families that are not employed.

The TANF regulation at 45 CFR 260.31(b)(1) excludes from the definition of assistance nonrecurrent, short-term benefits that:

- (i) Are designed to deal with a specific crisis situation or episode of need;
- (ii) Are not intended to meet recurrent or ongoing needs; and
- (iii) Will not extend beyond four months.

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In addition, the TANF regulation at 45 CFR 260.31(b)(6) excludes from the definition of assistance:

Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement and other employment-related services that do not provide basic income support. (emphasis added)

Since enactment of the Deficit Reduction Act of 2005 (DRA) (Public Law 104-193), a number of States have created “non-assistance” diversion programs that appear to be providing “assistance” as defined in the TANF regulations at 45 CFR 260.31(a). In some cases, a State’s diversion program appears to meet one or two of the above criteria for exclusion from the definition of assistance, but not all three and thus do not qualify as non-assistance programs.

POLICY:

The definition of nonrecurrent, short-term benefits at 45 CFR 260.31(b)(1) of the TANF regulations has three criteria. A benefit must meet all three criteria to be excluded as assistance. If a State provides recurring basic income support, then the State is providing assistance (45 CFR 260.31 (b)(6)).

Specific Crisis or Episode of Need

Nonrecurrent, short-term benefits must be designed to deal with a *family's* specific crisis situation or episode of need. This does not include a State's own programmatic challenges, such as meeting the newly strengthened work participation requirements. Nor does it include a family's general need for income support or temporary assistance. States may "divert families from the welfare rolls by providing short-term relief that could resolve discrete family problems." 64 FR, 17759 (April 12, 1999).

States have the flexibility to define the types of specific crises or episodes of need that it will cover and the types of benefits and services it will provide to address such situations. Short-term basic or special need benefits and services to address such types of crises or episodes of need could be preventative or transitional in nature and may be met via a cash, in-kind, or voucher payment. However, this provision is not intended as a substitute for the normal Federal TANF or State MOE-funded needs payment provided by the State's on-going assistance program.

Examples of a family's specific crisis situation or episode of need, as well as supportive services that could be provided to address such situations include:

- The threat of possible or persistent homelessness, eviction, and/or utility shut-off: paying overdue rental and/or utility arrearages and utility payments to prevent evictions/cutoffs; payment of security deposits; payment of first month's rent; budget and or other counseling.
- In the case of disaster victims: furniture and clothing replacement; help with securing new or temporary housing (payment of security deposit, first month rent, moving expenses).
- Employment, school, or training-related needs: purchasing appropriate work or school attire, special clothing (e.g., uniform), or tools; moving expenses to accept a job offer or to be closer to work; automotive repair integral to accepting or maintaining employment or to attending work or training activities; fee for job placement services.

The important element for a non-assistance diversion program is that a bona fide specific *family* crisis or *family* episode of need exists, rather than a chronic or continuing situation. A specific crisis or episode of need does not include payments for needs that are ongoing.

Not for Ongoing Needs

Nonrecurrent, short-term benefits must not be intended to meet recurrent or ongoing needs. In particular, these benefits are not for the purpose of providing basic income support to meet a current recurring ongoing need that is expected to continue beyond the short-term period. Providing basic income supports to eligible families that have been diverted or shifted from receiving or continuing to receive Federal TANF or MOE-funded assistance because they have barriers to work participation, undermines the intent of section 407 of the Social Security Act. Such "diversion" payments more closely resemble traditional welfare benefits because they are designed primarily to meet basic needs; therefore, the payments constitute assistance. States should not divert cases from their Federal TANF or MOE-funded assistance program solely to avoid the work participation requirements. This not only reduces State accountability for ensuring that needy families take appropriate steps toward achieving self-sufficiency, but also has the effect of inflating a State's work participation results.

... [t]here may be types of education and training benefits (e.g., stipends or allowances) that fall within the definition [of assistance]. Also, the definition does not generally exclude payments to individuals participating in work experience or community service (or any other work activity). Nor does it exclude

needs-based payments to individuals in any work activity whose purpose is to supplement the money they receive for participating in the activity. The regulatory text also indicates that benefits conditioned on other work activities (e.g., job search) are not excluded from the definition of assistance. 64 FR 17758 (April 12, 1999).

Recurring needs-based payments and other recurring income supports (e.g., stipends, allowances, or room and board payments) to participate in education and work activities constitute assistance. This is true whether such benefits are provided as part of an “up-front” diversion program, a recipient diversion program, as a condition of receiving assistance, a case management activity, or while already receiving assistance (e.g., as a recurring income supplement). This is consistent with the language of 45 CFR 260.31(b)(6) that makes clear that income supports constitute assistance.

Also, this subsection is not intended as the stepping stone or transition into the State’s ongoing assistance program upon expiration of the “short-term” period. For example, designating up to the first four months of a recurring basic needs payment as a diversion program does not meet the definition of a nonrecurring, short-term benefit if the current basic needs payment continues beyond four months. This is assistance beginning with the first payment month. The intent is that “such payments provide only short-term relief to families, are meant to address a discrete crisis situation rather than to meet ongoing or recurrent needs, and will not provide for needs extending beyond four months.” 64 FR 17759 (April 12, 1999).

Four-Month Limitation

Nonrecurrent, short-term benefits cannot extend beyond four months, but this numerical period does not mean that anything the State provides in that time frame constitutes “non-assistance.” Short-term benefit payments must also address the family’s specific crisis situation or episode of need, not a recurrent or ongoing need. For example, a family reports receiving notification of a utility cutoff because it is two months behind in payment of fuel costs and is likely to face the same crisis in the succeeding month. The State may elect to cover fuel costs for the two past delinquent months and the two current months to prevent the utility cutoff. While heat is an ongoing basic need, notification of cut-off due to the amount overdue constitutes a specific crisis situation or episode of need.

Also, this short-term period is not for the purpose of bundling more than four months’ worth of basic needs or other assistance into a single lump sum payment. This is recurrent assistance for the equivalent number of months. As we noted in the preamble to the final TANF rule in 1999: “Our intent [when we issued the proposed rule] was to keep State payments for needs that were ongoing or extended over a significant period of time within the definition assistance. We did not want a State to bundle several months’ worth of assistance into a single assistance payment in order to avoid TANF requirements for itself or the family. Our expectation for the language in the final rule is no different. It is appropriate for States to treat short-term assistance that addresses discrete episodes of need as ‘nonassistance.’ It is not appropriate for States merely to condense the time period over which they pay assistance to needy families so that they can categorize the benefits as ‘nonassistance’ and avoid TANF requirements.” 64 FR 17761 (April 12, 1999)

ACTION:

We recommend that States examine their diversion activities and other nonrecurrent short-term benefit activities in light of this program instruction. We do not require that States cease activities that represent allowable uses of Federal TANF or State MOE funds. Rather, allowable activities that have been improperly excluded as assistance, must become part of the State’s caseload of families receiving TANF or SSP-MOE funded assistance. This is in keeping with the mandate provided in the DRA to ensure the accuracy of the work participation requirements. (All relevant programmatic rules apply to families receiving assistance – e.g., assignment of rights to support, data reporting, five-year time limit on the receipt of federally funded assistance, work participation).

If we determine that a benefit or activity does not meet all three criteria in the TANF regulations at 45 CFR 260.31(b)(1) or otherwise constitutes assistance, then we will consider the benefit to be assistance and require the State to amend their data reports.

Also, a State could risk a penalty for not achieving its required work participation rates:

If a State fails to provide complete and accurate data on work participation as required under section 411(a) of the Act and §265.8 of the regulations, we may determine that a State has not achieved its participation rates, and the State will be subject to a penalty under this part. We also have the authority to penalize a State that does not report its work participation data for failure to report (under section 409(a)(2) of the Act). However . . . [when a State fails to provide complete and accurate data], we thought it would be more appropriate to penalize the State for failure to meet its work rate. 64 FR 17788 (April 12, 1999).

EFFECTIVE DATE:

October 1, 2008.

Because all relevant programmatic rules apply to families receiving assistance – e.g., assignment of rights to support, data reporting, five-year time limit on the receipt of federally funded assistance, work participations, this gives States time and opportunity to examine current practices and any impending practices toward implementing this policy.

INQUIRIES:

Please direct any inquiries to the TANF Program Manager in your Region.

/s/
Sidonie Squier
Director
Office of Family Assistance

[1]

The TANF regulations at 45 CFR 260.31(b)(2) – (b)(5), and (b)(7) list other services that do not constitute assistance.



Gwen
Murashige/obadmin/bessd/D
HS@DHS

09/30/2008 03:44 PM

To Corinne Y Higa/dags@dags

cc

bcc

Subject Request for Exemption - 09-07

Hi Corinne,

I wanted to update you on the request for exemption referenced above. The Department will be re-procuring the services once the new rules are adopted so a RFP will be issued early next year for services to begin July 1, 2009.

Please give me a call at 586-7110 if you have any questions.

Thank you,
gwen

Gwen Murashige
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