

ACF

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U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children, Youth and Families

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PROGRAM INSTRUCTION

To: State Agencies and Territories Administering or Supervising the Administration of Title IV-E of the Social Security Act (the Act); and State Independent Living Coordinators

Subject: Trust Funds under the Chafee Foster Care Independence Program (Chafee), Section 477 of the Social Security Act.

References: Sections 471, 472, 474, 475, and 477 under Title IV-E of the Social Security Act; Public Law 106-169; *Principles of Federal Appropriations Law*, General Accountability Office (GAO) Volume 1, Chapter 5, January 2004.

This program instruction (PI) supersedes the authority granted for the operation of Chafee trust funds by the approval of a State's Child and Family Services Plan (CFSP) submitted on or before June 30, 2004. It also supersedes section 4.d (trust fund certification) of ACYF-PI-93-01 issued on December 10, 1993, and section 5.b of PI-ACYF-CB-PI-02-05 issued on May 10, 2002.

Purpose: This purpose of this Program Instruction (PI) is to provide guidance to States, the District of Columbia and Puerto Rico on the use of Chafee funds to create trust funds to support eligible youth, as determined by the State under the Chafee Foster Care Independence Program (CFCIP)

The PI is being issued to clarify the conditions under which a State may establish and maintain a trust fund program under CFCIP; the rules with regard to the expenditure of trust funds; and the procedures for liquidating any funds under the former Independent Living Programs (ILP) or current Chafee program that were placed in trust funds prior to September 30, 2004.

Background: On December 10, 1993, under the former Federal Independent Living (IL) Initiative, the Administration for Children and Families (ACF) issued ACYF-PI-93-01, which contained requirements for the operation of a "trust fund" The PI indicated that jurisdictions

could establish and maintain a trust fund for the purpose of assisting youth leaving foster care with expenses identified in the youth's overall individual IL plan. These trust funds were for on-time only expenses and items associated with helping the youth make a more orderly and positive transition from foster care.

Application requirements number six of ACYF-PI-93-01 contained the following information regarding trust funds.

"If a State chooses to establish trust funds for youth leaving foster care, the State's application must indicate clearly how the trust funds will be financed, how they will be integrated into the overall individual IL plan, the rules that will govern the use of and disbursement from such funds, and the safeguards that will be employed to ensure that no Federal IL funds are used by the State for the provision of room and board."

As part of the title IV-E foster care program, the original ILP operated under the same policies and procedures regarding income and service eligibility as title IV-E foster care. Thus, a youth in care had an individual asset limit of \$1,000. In many cases, this limit prevented for self-sufficient living once they left care. The limit was also a disincentive to personal saving and employment while still in care. With the passage of the Adoption and Safe Families Act (ASFA) in 1997, the individual asset limit was increased to \$5,000.

The Foster Care Independence Act of 1999 (FCIA) was enacted in December 1999 as Public Law (P.L.) 106-169. Prior to its enactment, States used the trust funds to address transitioning and aftercare needs for older youth who were discharged from care or who were to be discharged shortly. The expenses covered included items associated with setting up a household, utility deposits, furniture and insurance. States using trust funds established eligibility criteria and procedures for accessing the funds.

FCIA amended section 477 of the Social Security Act (the Act) to replace the former IL Initiative with the newly established John H. Chafee Foster Care Independence Program (CFCIP). CFCIP provided States with more funding and greater flexibility in carrying out programs designed to help youth make the transition from foster care to self sufficiency. Also, under FCIA, the individual asset limit was increased to \$10,000.

In May 2002, ACF issued ACFY-CB-PI-02-05 containing instructions for the establishment and operation of trust funds under CFCIP. States were asked to describe the design and delivery of the trust funds under CFCIP. States were asked to describe the design and delivery of the trust fund program (section 477(b)(2)(A) of the Act), how the trust funds would be incorporated into the individual case plans of youth receiving CFCIP services, and the State policies that would govern the use and disbursement of such funds. However, that PI did not provide specific guidance on the Federal appropriations law provisions relevant to operating trust funds.

The Childre's Bureau has received inquiries from States concerning the use of trust funds for expenses associated with youth leaving foster care under the State child welfare system. We have recently learned that some States that developed trust funds under the former Federal IL

Initiative may have substantial amounts of unexpended funds in these accounts that have accumulated over a period of years.

Information: In accordance with section 477(b) of the Act, States are required to submit a 5-year plan to the Secretary of Health and Human Services (HHS) for review and approval, detailing their plans for operating the CFCIP and certifying adherence to legislative mandates. Recently, several States have submitted requests to amend their 5-year CFCIP plans to establish trust funds with Federal CFCIP dollars. If approved, the trust funds would be used to provide services that are allowable under CFCIP for youth meeting CFCIP eligibility requirements as determined by each State.

When responding affirmatively in the Child Welfare Policy Manual to the question "does Chafee legislation allow States to develop and utilize trust funds for youth" (3.3E1), ACF states that States are able to use Chafee funds to establish individual trust funds for specifically identified eligible youth, but must describe the design and delivery of the trust fund program in the CFCIP plans.

Moreover, in accordance with the provisions of section 477(d)(3) of the Act and within the terms and conditions of the CFCIP grant, funds must be expended by the State no later than September 30 of the fiscal year following the fiscal year in which they were awarded. Therefore, any funds placed into a trust account for an individually identified eligible youth must be withdrawn from such fund and expended by the State for an allowable CFCIP purpose **prior to** the expiration of the 2-year expenditure period.

A trust fund, as commonly defined, is a fund whose assets are managed by a trustee or a board of trustees for the benefit of another party or parties. Usually, such stewardship is expected to be a long-term arrangement whereby the funds are protected and disbursed over a period of a number of years. Under CFCIP, trust funds have been established by some States to assist former foster youth with expenses associated with living on their own and to provide incentives for saving. Accordingly, a pool of funds is established from which payments can be made to an indeterminate number of youth eligible under a State's guidelines.

The CFCIP grant, like most formula grants, is time-limited with regard to the period in which the funds must be expended. Therefore, although the need may extend beyond the grant period, the enabling legislation clearly limits the expenditure period to no longer than two years (i.e., the end of the fiscal year following the year in which the funds were awarded.) Thus, any continuing need on the part of eligible youth must be met with funds expended under subsequent appropriations(s).

With regard to "future years' needs", GAO's *Principles of Federal Appropriate Law*, at chapter 5.b.2., states that "an appropriation may not be used for the needs of some time period of availability." Any discussion of obligating for future years' needs inevitably leads to the issue of year-end spending. Some years ago [8 Comptroller Decision(Comp. Dec.) 346,348 (1901)], this legal issue was addressed very succinctly in a decision of the Comptroller of Treasury as follows:

"An appropriation should not be used for the purchase of an article (or service) no necessary for the user of a fiscal year in which ordered merely in order to use up such appropriation. This would be a plain violation of the law."

Thus, if an obligation were made toward the end of a grant period (as a State might propose to do with its deposit of unobligated and unexpended CFCIP funds into a "trust fund account") and it is clear from the facts and circumstances that the need relates to a time period beyond the grant period, the "bone afide needs" rule would be violated. If the need exists at present, then the obligation and expenditure must occur prior to the end of the grant period.

We are aware of situations that exist whereby States have created trust funds in past years under either the former ILP, or under Chafee. In doing so, they may have placed ILP or Chafee dollars into these trust funds sometime during the 2-year expenditure period, and subsequently, not understanding the meaning of "expenditure" in this context, reported them as expenditures to HHS without having distributed them to eligible youth. As noted previously, funds placed in a trust fund cannot properly be reported as expenditures unless they have been expended for costs incurred for program purposes within the two-year expenditure period. As a consequence, some States now have substantial balances of funds awarded to them in previous fiscal years in their trust funds that have not been expended in accordance with the guidance provided above.

Policy: We have given serious consideration as to how to best address and remedy this situation and have developed the following policy to permit States sufficient time to expend any outstanding funds.

- **Funds awarded prior to Fiscal Year (FY) 2004 (i.e., prior to October 1, 2003):**
 - Any ILP or Chafee funds awarded during this period that were **not** drawn down or placed in a State-created trust funds prior to October 1, 2004, are no longer available to the State and will be recouped by ACF and returned to the U.S. Treasury.
 - Any ILP or Chafee funds awarded during this period that were drawn down prior to October 1, 2004, and still remain in State-created trust fund, must be expended no later than September 30, 2006.
 - These funds must be expended for costs incurred for program purposes pursuant to State guidelines that were in effect at the time the funds were awarded by ACF.
 - The funds must be expended only for activities that were allowable under the ILP program, or are allowable under the Chafee program.
 - Any ILP or Chafee funds awarded during this period and not expended (liquidated) by September 30, 2006, will be recouped by ACF and returned to the U.S. Treasury.
 - **Funds awarded in in FY 2004 and thereafter (i.e., on or after October 1, 2003):**

- Any Chafee funds awarded during this period must be expended no later than one year from the last day of the fiscal year in which the funds were awarded. For example:
 - Funds awarded during FY 2004 (October 1, 2003 through September 30, 2004) must have been expended no later than September 30, 2005;
 - Funds awarded during FY 2005 (October 1, 2004 through September 30, 2005) must be expended no later than September 30, 2006;
 - Funds awarded during FY 2006 (October 1, 2005 through September 30, 2006) must be expended no later than September 30, 2007; etc.
- **The following general rules now apply:**

1. The State may develop and utilize trust funds for eligible youth, in accordance with provisions outlined in the ACF Child Welfare Policy Manual.
2. The design and delivery of the trust fund must conform to general grants administration requirements (45 Code of Federal Regulation (CFR) Part 92 and applicable terms and conditions) and general appropriations law (Chapter 5 of the *Principles of Federal Appropriations Law*) applicable to the purpose of the trust funds and the timing of the obligation and expenditure of yearly grant appropriations.
3. The trust fund account may not be established for the primary purpose of preventing funds from lapsing.
4. Funds deposited into a trust fund account utilizing a particular grant year's fund may be deposited into such account at any time during the grant period. Such a deposit will be considered to be an *obligation* of funds as of the date of the deposit. All such funds must be obligated no later than the last day of the fiscal year following the fiscal year in which the funds were awarded.
5. The full amount deposited into each trust fund must be disbursed to eligible youth prior to the expiration of the applicable grant period. An expenditure of funds (i.e., the liquidation of the obligation) will be considered to have been made on the date that monies are *disbursed* from the trust fund. All funds must be liquidated no later than the

last day of the fiscal year following the fiscal year in which the funds were awarded. Any funds remaining unliquidated after that date will be recouped by HHS.

Inquiries To: ACF Regional Administrators, Regions I-X

_____/s/_____
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