
**ASSETS FOR INDEPENDENCE
PROGRAM**

U.S. Department of Health and Human Services
Administration for Children and Families
Office of Community Services
Division of Community Demonstration Programs
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<http://www.acf.hhs.gov/programs/ocs/programs/afi>

Information Memorandum 2016-01

Date: March 8, 2016

TO: All Assets for Independence (AFI) Grantees

SUBJECT: Clarification of the Grandfather Clause at Section 405(g) of the AFI Act

FROM: The Office of Community Services (OCS), Division of Community Demonstration Programs

RELATED REFERENCES: Assets for Independence Act in Title IV of the Community Opportunities, Accountability, and Training and Educational Services Human Services Reauthorization Act of 1998, P.L. 105-285.

Background

The AFI program was authorized under the Assets for Independence Act in Title IV of the Community Opportunities, Accountability, and Training and Educational Services Human Services Reauthorization Act of 1998, P.L. 105-285 (the AFI Act). The AFI Act includes Sections 401 through 416.

Section 405(g) of the AFI Act, commonly known as the Grandfather Clause, reads as follows:

(g) GRANDFATHERING OF EXISTING STATEWIDE PROGRAMS.--Any statewide individual asset-building program that is carried out in a manner consistent with the purposes of this title, that is established under State law as of the date of enactment of this Act, and that as of such date is operating with an annual State appropriation of not less than \$1,000,000 in non-Federal funds, shall be deemed to meet the eligibility requirements of this subtitle, and the entity carrying out the program shall be deemed to be a qualified entity. The Secretary shall consider funding the statewide program as a demonstration project described in this subtitle. In considering the statewide program for funding, the Secretary shall review an application submitted by the entity carrying out such statewide program under this section, notwithstanding the preference requirements listed in subsection (d). Any program requirements under sections 407 through 411 that are inconsistent with State statutory requirements in effect on the date of enactment of this Act, governing such statewide program, shall not apply to the program.

Policy Summary

There are three key policy issues detailed in Section 405(g):

1. Criteria for deeming a statewide individual asset-building program as meeting the eligibility requirements of the AFI Act and the administering entity of that program as being a qualified entity. Otherwise, under Section 404(7) of the AFI Act, State government agencies must submit an application jointly with a non-profit organization with 501(c)(3) status in order to be a qualified entity.
2. State entities deemed to be a qualified entity under Section 405(g) may submit applications for funding from the AFI program and OCS (acting on behalf of the Secretary of the Department of Health and Human Services [HHS]) will review and consider that application without penalizing the application for the preference requirements detailed in Section 405(d).
3. Criteria for program requirements in the AFI Act that shall not apply to an existing statewide program that meets the Section 405(g) requirements.

With regard to the first issue, as stated in Section 405(g), any statewide individual asset-building program that: 1) is carried out in a manner consistent with the purposes of the AFI Act (Section 403); 2) was established under state law as of the date of enactment of the AFI Act (October 27, 1998); and 3) was operating with an annual state appropriation of not less than \$1,000,000 in non-federal funds as of the date of enactment of the AFI Act (October 27, 1998) is deemed to meet the eligibility requirements of the AFI Act as a ‘qualified entity.’ At the time of enactment, asset-building programs in Indiana and Pennsylvania met these requirements. As such Indiana Housing and Community Development Authority (IHCDA) and the Pennsylvania Department of Community and Economic Development (PA DCED) have been designated as qualified entities.

As such, and with regard to the second policy issue, IHCDA and PA DCED may submit applications for AFI funding through the Funding Opportunity Announcement (FOA) process. These applications will be reviewed and considered for funding in the manner detailed in the FOA under which they are submitted, and these applications will not be penalized for the preference requirements set in Section 405(d) of the AFI Act.

The third policy issue is whether any AFI Act requirements are waived for the statewide programs administered by IHCDA and PA DCED. As indicated in Section 405(g), HHS may only waive AFI Act requirements that are 1) from Sections 407-411 and 2) that are inconsistent with state statutory requirements that were in effect on the date of the enactment of the AFI Act (October 27, 1998). Requirements in Sections 401-406 and 412-416 of the AFI Act may not be waived under Section 405(g), thus IHCDA and PA DCED must comply fully with these sections.

Under Section 405(g), IHCDA and PA DCED are not held to any requirements under Sections 407-411 that are inconsistent with their respective statewide individual asset-building program statutes or laws that were in effect on the date of the enactment of the AFI Act. For Indiana, the relevant statute is Public Law (PL) 15–1997, House Enacted Act No. 1425, Economic Development—Community Development Corporations—Individual Development Accounts, as it existed on October 27, 1998. For Pennsylvania, the relevant statute is P.L. 247, No. 23 of 1997, the Job Enhancement Act, as it existed on October 27, 1998. All references to state statutes in this document refer to these statutes.

Amendments to State Laws after October 27, 1998

Under the Grandfather provisions at Section 405(g) of that AFI Act, where inconsistencies exist between a requirement in Sections 407-411 and the state statutes as they existed on October 27, 1998, states may implement their statutory amendments. For example, when the AFI Act was enacted, the state statutes of both Indiana and Pennsylvania were inconsistent with the AFI Act with regard to the allowable asset purchases, called “qualified expenses” in the AFI Act. OCS will allow the implementation of state statutory amendments enacted *after* October 27, 1998 in the area of qualified expenses and in other cases where there was an inconsistency that existed on October 27, 1998. OCS will *not* allow the implementation of state statutory amendments enacted after October 27, 1998 where there was *not* an inconsistency on October 27, 1998.

Implications for Current and Future AFI Projects

In addition to complying with the AFI Act, IHCDA and PA DCED are expected to implement their grant-funded projects in a manner consistent with the terms and conditions of their awards, which requires that grantees implement their projects consistent with their applications. All grantees must request prior approval for certain modifications to an existing project, such as a change in scope, as detailed in the HHS Grants Policy Statement found here:

<http://www.hhs.gov/asfr/ogapa/aboutog/hhsgps107.pdf>.

Thus, if a state amendment is enacted while the state has an active AFI project, the state may need to seek prior approval from the Office of Grants Management (OGM), an office that works with OCS in administering the AFI program at the federal level, before implementing the amendment within the active project. OCS expects that states would incorporate any allowable state statutory amendments into the future applications for AFI funding.

Qualified Entity per Sections 407 and 411 of the AFI Act

Sections 407 and 411 of the AFI Act both begin with the phrase “A qualified entity under this title, other than a State or local government agency or a tribal government...” As IHCDA and PA DCED have been deemed qualified entities and are state government agencies, they are not held to Sections 407 and 411. Other state, local, and tribal government entities must apply jointly with a non-profit organization with 501(c)(3) status in order to meet the AFI Act definition of a qualified entity.

Additional Information

Please address inquiries to:

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