

# ACF

Administration  
for Children  
and Families

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Administration on Children, Youth and Families

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## PROGRAM INSTRUCTION

- TO:** State Public Assistance Agencies, State Information Technology Executives, and Other Interested Parties
- SUBJECT:** Update and clarification regarding Administration on Children, Youth and Families' (ACYF) existing policies for Child Welfare Information System projects
- LEGAL AND RELATED:** 42 USC 674(a)(3)(C) & (D), 45 CFR PART 95, Subpart F, 45 CFR Part 92, ACF-OISM-AT-94-05, ACYF-CB-PI-06-01, OCSE Action Transmittal 06-03
- PURPOSE:** This Program Instruction (PI) updates and clarifies various ACYF policies affecting Federal Child Welfare Information System projects, including systems that meet the Federal requirements of a Statewide Automated Child Welfare Information System (SACWIS).
- BACKGROUND:** In 1990, the Federal Office of Child Support Enforcement (OCSE) issued Action Transmittal AT-90-11, which provided policy clarifications regarding the acquisition and implementation of State automated information systems. At the time of its publication, the ACF Divisions responsible for reviewing State Advance Planning Documents (APD) required under the regulations at 45 CFR 95, Subpart F were located within the Office of Information Systems Management. After OCSE-AT-90-11 was issued, the APD function was integrated into separate program offices within the Office of Child Support Enforcement and the Administration on Children, Youth and Families. On August 11, 2006, OCSE issued a program-specific replacement to OCSE-AT-90-11. That Action Transmittal (OCSE-AT-06-03) superseded the former policy document used by both OCSE and ACYF. As a result of the separation of the ACF Divisions responsible for reviewing APDs, the differences between the ACF program offices and the systems used to support their respective program areas, and changes that have occurred

since OCSE-AT-90-11 was issued, ACYF is issuing this guidance on the following topics:

- A. Alternatives Analysis and Consideration of the Transfer of Other States' Systems.
- B. Acquiring a System through Transfer of Other States' Automated Systems.
- C. Automated Features Beyond Specified Federal Functional Requirements.
- D. Cost Allocation for Equipment and Systems.
- E. Depreciation of Hardware/Individual and Unit Acquisition Cost.
- F. Free and Open Competition.
- G. Hardware Installation during Development of New Systems.
- H. Allowability of Federal Financial Participation in Failed State System Development Projects.
- I. Prompt Action on State Requests for Prior Approval.
- J. Independent Verification and Validation (IV&V).
- K. Specifying Brand-Name Products or Automated Systems in Procurement Solicitations.
- L. Office Automation.

This PI does not institute new Agency policy. The intent is to reiterate and clarify existing policy, especially for State and local staff that have assumed their positions subsequent to the establishment of these policies.

#### **ACYF POLICY CLARIFICATIONS**

- A. Alternatives Analysis and Consideration of the Transfer of Other States' Systems.*

Departmental regulations at 45 CFR 95.605, under (1) Planning Advance Planning Document (APD), call for States to provide:

“(v) A commitment to conduct/prepare the needs assessment, feasibility study, alternatives analysis, cost benefit analysis, and to develop a Functional Requirements Specification and/or a General Systems Design (GSD);” and

“(vi) A commitment to define the State's functional requirements for the purpose of evaluating the transfer of an existing system, including the transfer of another State's General System Design, which the State may adapt to meet State specific requirements.”

Additionally, Departmental regulations at 45 CFR 95.605 (2)(iii), require States to include in their initial Implementation APDs (IAPD) “[a] requirements analysis, feasibility study and a Statement of alternative considerations including, where appropriate, a transfer of an existing system and an explanation of why such a

transfer is not feasible if another alternative is identified.” It is important to note that while States must include in their alternatives analysis a consideration of the feasibility of transferring automated systems/components or general system designs from other States, States are not required to select the transfer alternative. States must include these analyses in their IAPDs.

*B. Acquiring a System through Transfer of Other States' Automated Systems.*

In order to promote maximum practical open and free competition, ACYF encourages States to create planning and procurement documents that clearly define its business problems that must be solved and/or business opportunities that could be realized by using the sought after information technology. States should focus on defining detailed business and technical requirements, and specify the parameters and limitations within which States must operate. By conveying this type of information in their procurement documents, States enable potential bidders to formulate and propose a variety of solutions targeted to resolve the specified business problems and/or provide the specified business opportunities referenced in the States' procurement documents within the parameters articulated by the States. ACYF will not approve procurement documents that articulate a preferred automated system transfer model, framework or commercial-off-the-shelf (COTS) software product, other than impartially established State-standard COTS software. Procurement documents that specify automated Child Welfare systems to transfer or the use of non-State standard COTS software, severely inhibit maximum practical open and free competition, as required by the Departmental regulations at 45 CFR 95.613.

In specifying a required solution for bidders to propose, States prevent potential bidders from offering alternative solutions that could be more economical, efficient, and/or more effective. In addition, when faced with a procurement that specifies a solution, potential bidders may choose not to participate because they are at a competitive disadvantage when working with the required solution. By not using the free market to encourage the creativity of the private sector to formulate and offer a variety of solutions, from standard to novel, the States limit competition among private sector firms and limit themselves to a narrow set of solutions which may not be optimal for their business needs.

*C. Automated Features Beyond Specified Federal Functional Requirements.*

For SACWIS, Departmental regulations at 45 CFR 1355.53(b) specify: “...the system must provide for effective management, tracking and reporting by providing automated procedures and processes ....” These regulations identify high-level system requirements that States must meet, at a minimum, in order to qualify for receiving SACWIS-level funding. These include, but are not limited to, ensuring that the system complies with the AFCARS reporting requirements; collecting information necessary to determine eligibility for title IV-E foster care, adoption assistance payments and the independent living program, and ensuring the

confidentiality of the information that is included in the system. Departmental regulations at 45 CFR 1355.53(c) identifies additional areas of system functionality that States *may* include in their SACWIS, at their discretion. Furthermore, Action Transmittal ACF-OISM-001 provides additional guidance regarding functionality that is required and optional for a SACWIS. The descriptions about each required or optional area of functionality are sufficiently general to allow States wide latitude as to how they are specifically met.

ACF expects States to justify the inclusion of any non-required functionality in their automated systems they classify as a SACWIS through a sound and thorough business case. The business case should be presented in an APD that establishes each function's business purpose as well as demonstrates that its inclusion in the final automated system would be more likely to lead to a more efficient, economical and effective administration of the programs carried out under an approved State plan for titles IV-B and IV-E.

*D. Cost Allocation for Equipment and Systems.*

In order to claim Federal financial participation (FFP) for information technology projects governed by 45 CFR 95, States are required to distribute developmental and operational costs as articulated within those regulations. This Agency's Action Transmittal ACF-OISM-001 provides additional and specific guidance regarding SACWIS-related development and operational cost allocation requirements. Although these requirements are not new, ACF has noted that States experience difficulty in meeting the project cost allocation requirements, especially the appropriate allocation of operational costs. Departmental regulations at 45 CFR 95 Subpart E establish the requirements for the:

- Preparation, submission, and approval of State agency cost allocation plans for public assistance programs; and
- Adherence to approved cost allocation plans in computing claims for Federal financial participation.

States are obligated to follow ACF's regulatory and policy requirements regarding the proper allocation of development and operational costs identified in approved APDs.

For development projects, ACYF is responsible for reviewing and approving cost allocation methodologies for State system development costs as part of its APD review and approval process. States should work with ACYF Central Office staff to develop an appropriate development cost allocation methodology. Once an automated system begins operations, all associated operational costs must be allocated based on a cost allocation plan approved by the Department's Division of Cost Allocation (DDCA). States should work with ACF Regional Office financial staff and the DDCA to establish an acceptable operational cost allocation plan for a

system's operational costs. Please note that a development cost allocation methodology is not suitable to use to distribute a State's automated system's operational costs.

At the request of States, ACF, along with the Centers for Medicare and Medicaid Services (CMS) and the Department of Agriculture's Food and Nutrition Service (FNS), created the Cost Allocation Methodology (CAM) Toolkit. The toolkit assists States in building useful cost allocation algorithms that can equitably distribute to benefiting programs the costs incurred in developing automated human services systems.

*E. Depreciation of Hardware/Individual and Unit Acquisition Cost.*

Action Transmittal Number (AT)-94-05, dated July 22, 1994, established ACF's new policies regarding the depreciation of hardware and unit costs. The AT requires States to depreciate the costs of hardware with a unit cost of greater than \$5,000, in accordance with statewide accounting practice. The significance of this change can be found in the use of the term "individual" versus "unit" when referring to acquisition cost. Now, the purchase of 50 "individual" personal computers (PC's) at \$1,000 each can be expensed in the quarter acquired, whereas under previous policy (pre-July 22, 1994) those same 50 PC's would be considered a "unit" of acquisition cost totaling \$50,000, and, being over the \$25,000 threshold, would, therefore, have had to be depreciated over the equipment's expected lifespan. The following specific principles apply to the depreciation policy first set forth in ACF-AT-94-05:

1. Individual items of ADP equipment (e.g., personal computer, or a printer, or router, etc.,) with a useful life exceeding one year and costing \$5,000 or less need not be depreciated. These individual pieces of ADP equipment may be expensed in the fiscal quarter acquired. Any individual piece of ADP equipment costing in excess of \$5,000 must be depreciated over its expected useful life.
2. For purposes of further defining the term "individual," as used in the cost of an individual acquisition, the following is provided: an *individual* piece of ADP equipment is comprised of all sub-components that make up a working piece of equipment. Computer memory chips, hard drives, motherboards, etc., are not considered to be individual pieces of ADP equipment, but rather components in an individual piece of ADP equipment, such as a computer server.
3. No equipment expensed under provisions of this policy is expected to have a useful life of less than three years. Should a State seek a shorter lifespan for its ADP equipment (e.g., 18 months), it must request approval from the respective Federal funding program(s) through the submission an As-Needed APD. Such a request must include a compelling business case.

4. Quite often, as is the case with computer servers and PC's, States procure software along with the hardware in order for the equipment to work as intended. It has been long-standing Federal policy that software purchases are not subject to depreciation requirements, regardless of the cost of the software. Federal guidance at OMB Circular A-87, 45 CFR 95.705 and Action Transmittal AT-94-05 clearly indicate that the application of depreciation applies only to equipment, including ADP hardware.
5. Under the provisions of 45 CFR 95.641, a State may request an exemption of the depreciation provisions of Subpart G. However, given the revised policies toward depreciation provided under Action Transmittal AT-94-05, any request for an exemption of depreciation will require rigorous, documented evidence that an exemption is in the best financial interest of the Federal Government.

*F. Free and Open Competition.*

Current regulations at 45 CFR 95.613 require information technology product and service procurements to be conducted in a manner that results in maximum practical open and free competition. ACF will carefully review proposed State and local procurements for potential impediments to maximum practical open and free competition. Such impediments would include, but not be limited to:

- Organizational conflicts of interest;
- The imposition of unreasonable requirements on firms in order for them to qualify to do business such as requiring firms to have an existing business presence in specified geographical areas;
- The imposition of in-State or local geographical preferences;
- Requiring unnecessary experience of firms and/or their team members, such as requiring experience to perform activities not required by the procurement;
- Excessive liability provisions;
- Sole source considerations;
- Excessive bonding requirements; and
- Unfair or restrictive evaluation processes.

Furthermore, in order to eliminate the appearance of an unfair competitive advantage, contractors who assist a State during planning phase activities, and/or develop or draft specifications, functional requirements, statements of work, invitations for bid and/or Request for Proposals (RFPs), must be precluded from competing for subsequent phases of the associated information technology projects, thereby preventing these contractors from implementing their recommendations and other creations. This preclusion also extends to sub-contractor roles on such projects.

To prevent delays, misunderstandings and procurement protests, all State solicitations for contractor services to assist with the planning phase of information technology projects should contain a clause making this point clear to prospective bidders. Moreover, any information technology development solicitation should state that any contractor who participated in the associated planning activities, developed or drafted specifications, functional requirements, statements of work, invitations for bid and/or RFPs, may not bid on the subsequent information technology system development effort.

States must also ensure that procurements for information technology software development are based upon a clear, and thorough description of the State's technical and functional requirements. Such descriptions may not contain features that unduly restrict competition by:

1. Specifying software, application frameworks and tools proprietary to a specific vendor and not available off-the-shelf to the general public;
2. Requiring proprietary software for which special consideration or relationships are required in order to acquire and use, thereby unduly limiting competition; or,
3. Otherwise containing specifications that only a single vendor could meet.

ACYF recognizes that when States plan for hardware upgrades and/or acquisitions, they must take into account current and future operational software applications that share or will share host platforms and associated ancillary supporting hardware and utility software. Some States' data processing centers have selected and use such hardware and software products that are proprietary to specific vendors. When planning to replace this proprietary hardware and software, States must assess and determine the most cost effective approach to meeting its future technical infrastructure needs. These assessments should compare the costs and technical requirements for continued use of proprietary products to the costs and technical requirements needed to migrate to and use more open-standard products, which would allow States to acquire and use information technology products from multiple manufacturers and developers. The details of the assessment must be submitted to ACF in an APD, along with the procurement document(s), that explains and justifies the information technology product acquisition.

*G. Hardware Installation during Development of New Systems.*

ACYF addresses the issues related to the early installation of hardware during a SACWIS development project in Part II of Action Transmittal ACF-OISM-001. States intending to install hardware more than three months prior to the commencement of the operation of a child welfare system, must justify the approach through a sound and thorough business case in an APD. States should keep in mind that the installation of hardware associated with a SACWIS

environment is intended to support the use of that system. If the hardware is intended to support other business needs, then the State must consider this in the allocation of both the hardware's acquisition and operational costs.

*H. Allowability of Federal Financial Participation in Failed State System Development Projects.*

Unfortunately, there are some system development projects that do not achieve all of the expected outcomes identified in an approved APDU. Either the resulting automated system a State puts into production lacks some previously planned functionality, or the project fails outright, resulting in a State canceling the project with no automated system going into production. In such circumstances, ACYF will be compelled to assess the project circumstances to determine if it must recoup any FFP that a State claimed for the system development costs per the Departmental regulations at 45 CFR Parts 95.612 and 1355.56.

ACYF will base its assessment on the requirements articulated in the Department regulations at 45 CFR 95.611, 95.612, 95.621 and 1355.56. The results of this assessment will serve as the basis in determining how much, if any, FFP ACF will recoup. As part of this process, ACYF will negotiate with States to finalize an amount of FFP that it would recoup. Additionally, ACYF will identify the conditions for approving future APDs should the State want to resume the discontinued development project or start a completely new development project. ACYF will use the guidance from regulations at 45 CFR 92.12 to identify the special conditions the State will have to meet in order to be able to claim FFP for future system development costs.

In addition to the guidance from the Departmental regulations, ACYF will also consider the answers to the following questions when assessing whether or not FFP recoupment for a failed system development project is appropriate.

1. Did the State attempt a "Good Faith" effort to plan, design, develop, install and operate an automated system that was fully compliant in all respects with the approved APD?
2. Did the State fully describe in an approved APD all of the system development activities for which it claimed FFP?
3. Did the State claim all allowable system development costs at the appropriate match rate?
4. Did the State use the appropriate cost allocation methodology for the allowable development costs?
5. Did the State claim FFP for allowable system development project tasks completed before or after the State received ACYF's notice that it was



suspending the previously approved system development ADP?

6. Did the State claim FFP for any system development costs associated with data clean-up and conversion, training, operational hardware and operating system software procurements, or system installation?
7. Did the State receive enhanced Federal financial participation and/or reimbursement under the enhanced cost allocation methodology allowed for a SACWIS-compliant system?

States should understand that ACYF, per the Departmental regulations at 45 CFR 95.612 and 95.611, may disallow Federal financial participation for system projects that fail to comply substantially with the approved APD and/or the State fails to comply with applicable Federal regulations. ACYF's suspension of a previously approved APD is not subject to appeal. A State may always request that ACYF reconsider its APD suspension or FFP recoupment decisions.

*I. Prompt Action On State Requests For Prior Approval.*

States are reminded of the provisions of Department regulations at 45 CFR 95.611(d) that specifies:

“If the Department has not provided written approval, disapproval, or a request for information within 60 days of the date of the Departmental letter acknowledging receipt of a State's request, the request will automatically be deemed to have provisionally met the prior approval conditions of paragraph (b) of this section.”

Provisional approval essentially means that the State may proceed, assured that as long as the request is approvable, Federal funding in the request is available as of the 61<sup>st</sup> day. There is, however, some risk for States in that, if the request is eventually denied and the State has already expended funds, FFP in those expenditures is unallowable. Before commencing any action in which there is an expectation of FFP, States should weigh the risks involved in pursuing activity, including any expenditure of funds, under a provisional approval scenario.

*J. Independent Verification And Validation (IV&V).*

On February 16, 2006, ACYF issued Program Instruction (PI) ACYF-CB-PI-06-01 regarding the availability of FFP for SACWIS projects, based on the status of those projects. Section 2 of the PI articulates the circumstances that may cause ACF to require a State to obtain IV&V services for the project. The PI indicates that ACF will assess the project circumstances to determine the type, scope, and frequency of IV&V services that the State must acquire in order to continue receiving FFP. The basis for this section are the Departmental regulations at 45 CFR 92.12 regarding special grant or sub-grant conditions for "high-risk" grantees.

States should keep in mind that ACYF will continue to assess projects to determine whether or not to invoke this provision. ACF looks favorably upon the use of IV&V reviews to assess project circumstances and identify remedies for identified project problems. While States may have implemented quality assurance processes, the circumstances of a project may reflect a need for a “point-in-time” IV&V assessment. Should States decide, on their own that such an assessment is appropriate, ACYF would look favorably upon a request for this Agency’s approval of the activity within the context of an appropriate business case.

*K. Specifying Brand-Name Products or Automated Systems in Procurement Solicitations.*

Historically, ACF has sought to ensure States’ and local jurisdictions’ acquisition of information technology products were through open and free competition. To that end, the Department’s regulations and policies have reflected Federal statute and policies that require the acquisition of products and services through maximum practical open and free competition.

As part of its commitment to open and free competition, the Federal government has historically not supported State and local procurements requiring vendors to offer brand-name products or features of products produced by only one source. Such procurements have been found to limit open and free competition and reduce the likelihood that the organization will obtain optimal value from its procurement. Furthermore, the specification of a particular product in procurements precludes vendors from proposing alternative solutions that may offer greater value than the specified product. As a result, ACYF has required State and local governments conduct procurements that are vendor neutral by not specifying products by name.

Achieving vendor neutrality in procurements usually requires that the procuring organizations specify only functional and/or operational objectives. To specify a product by name or design, or to describe functional or operational specifications that are available from only one source would result in a procurement that failed to achieve vendor neutrality.

Federal guidance has also demonstrated a preference for vendor neutral procurements in order for these acquisitions to remain open and free competitions. The Federal Acquisition Regulations (FAR) at 48 CFR 11.105 preclude the specification of brand name products except under only a few certain circumstances. Additionally, the Office of Management and Budget issued an April 11, 2005 memorandum on the use of brand name specifications, instructing all Federal agencies to take steps to mitigate brand name usage in order to provide for maximum competition.

When a State or local jurisdiction specifies a particular product that vendors must deliver, rather than a set of functional and/or performance characteristics, open and free competition is limited, favoring the organization that created the specified product, and precluding the offering and consideration of otherwise suitable

solutions.

Departmental regulations at 45 CFR 95.613 specify that State and local information technology procurements are subject to requirements for maximum practical open and free competition. Naming a brand name product has historically been viewed by ACYF as an impediment to achieving maximum practical open and free competition for reasons previously mentioned in this document. This long-standing policy that ACF determined necessary to foster open and free competition to the maximum extent practicable continues to be relevant today.

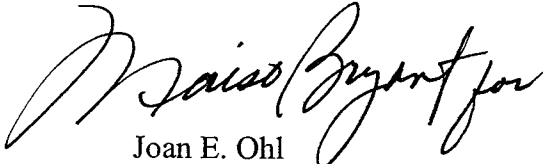
*L. Office Automation*

Child welfare agencies rely on office automation to support their ongoing business needs. While not defined in the Departmental regulations, the topic of office automation is briefly addressed in Action Transmittal ACF-OISM-001. Historically the tools that make up office automation could be clearly differentiated from a complex automated application software specifically developed to support foster care, adoption and other child welfare services.

Office automation tools include, but are not limited to, office productivity software, such as Microsoft® Office® or OpenOffice, electronic mail specific software, or digital imaging and print production software, such as that produced by Adobe Systems Incorporated. Other components that have been considered office automation tools, such as personal computers, file servers, network operating systems, etc., have become integrated into the technical infrastructure that support the use and operation of automated application software.

Typical office automation products, as well as the underlying technical architectures upon which child welfare automation is or will be based have and will continue to become more sophisticated and capable. As a result, the software typically associated with office automation has or will have the potential to be integrated into and be a component of complex automated application software. As with any approach, ACYF will expect States to justify their technological approach in thorough and compelling business cases contained in APDs if they intend to integrate office automation products into their child welfare automation.

**INQUIRIES:** HHS – Children’s Bureau, Division of the System

  
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