

**NEW YORK STATE OFFICE FOR THE AGING**

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Andrew M. Cuomo, Governor

Greg Olsen, Acting Director

An Equal Opportunity Employer

**PROGRAM INSTRUCTION**

**Number: 18-PI-17**

**Supersedes: 81-TAM-III-B-6, 82-PI-III-17,  
83-PI-III-B-35, 84-PI-6,  
90-TAM-5, 90-PI-23, 92-PI-56,  
92-PI-56, 03-PI-05, 14-TAM-01**

**Expiration Date:**

**DATE:** July 27, 2018

**TO:** Area Agency on Aging Directors

**SUBJECT:** NYSOFA Contributions and Other Program Income Policy

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**ACTION REQUESTED:** Review this Program Instruction (PI) against local policies, procedures, and documents and make any necessary modifications to ensure that contributions and other program income received is appropriately solicited, collected, protected, and used to expand and support services.

**RESPONSE DUE DATE:** There is no reply necessary at this time. However, Area Agencies on Aging (AAA) must comply with this policy. A review of local policies should be undertaken as soon as possible and appropriate corrective actions or policy enhancements must be made.

**PURPOSE:** To ensure proper implementation of statutory and regulatory provisions for program income and to ensure that the necessary internal controls exist to properly account for and protect program income collected by the AAAs and their contractors.

**BACKGROUND:** Section 315 of The Older Americans Act (OAA) deals with Consumer Contributions, i.e., Cost Sharing and Participant Contributions. Various laws and regulations, specifically including federal regulations at 45 CFR § 1321.67, state law at Section 214(4)(k) of the NYS Elder law, and state regulations at 9 NYCRR §§ 6654.5 and 6654.6, also impose requirements on program income.

## **I. Statutory and Regulatory References**

**A.** Section 315 of The Older Americans Act addresses consumer contributions, i.e., cost sharing and participant contributions.

1. Cost Sharing – Section 315(a) allows cost sharing for certain OAA-funded services provided that the state implements a cost sharing policy complete with a formal sliding scale to be used to determine each older person’s share of the cost of the service. Section 315(a) also details several other requirements for a state implemented cost sharing policy including a provision that permits AAAs to request a waiver from the state policy.
2. Contributions - Section 315(b) of the OAA states that “Voluntary contributions shall be allowed and may be solicited for all services for which funds are received under this act provided that the method of solicitation is noncoercive. Such contributions shall be encouraged for individuals whose self-declared income is at or above 185 percent of the poverty line, at contribution levels based on the actual cost of services.” AAAs and service providers may not means test for any service for which contributions are accepted or deny services to any individual who does not contribute to the cost of the service. OAA § 315(b)(4) requires AAAs to ensure that each service provider will:
  - a) provide each recipient with an opportunity to voluntarily contribute to the cost of the service;
  - b) clearly inform each recipient that there is no obligation to contribute and that the contribution is purely voluntary;
  - c) protect the privacy and confidentiality of each recipient with respect to the recipient’s contribution or lack of contribution;
  - d) establish appropriate procedures to safeguard and account for all contributions; and
  - e) use all collected contributions to expand the service for which the contributions were given and to supplement (not supplant) funds received under this Act.

**B.** Federal regulations - 45 CFR § 1321.67 imposes requirements on program income.

**C.** NYS Elder Law § 214(4)(b)(3), as of the date of this policy’s issuance, requires the NYSOFA Director to provide by regulation the requirements for any participant contributions and fee schedules used for community service projects and the manner for the accounting and use of any such revenue.

Section 214(4)(k) requires NYSOFA to implement a cost sharing policy for in-home (housekeeping/chore and homemaking/personal care), ancillary, and non-institutional

respite services provided under the Expanded In-home Services for the Elderly Program (EISEP).

Section 214(4)(k) also requires cost share for EISEP-like in-home services and non-institutional respite services under the Community Services for the Elderly Program (CSE). NYSOFA regulations at 9 NYCRR §§ 6654.5 and 6654.6 impose requirements on program income under state funded programs.

Section 6654.5 deals with participant contributions and Section 6654.6 provides program regulations for cost sharing called for under Section 541.4(k) of the NYS Executive Law.

## **II. Definitions**

### **A. Program Income**

Income from sources other than federal or state grants. This would include, for example, private pay income and income from the sale of units to a Managed Long Term Care (MLTC) plan. This would not include fundraising, endowments, bequests or other gifts, or private grants.

### **B. Types of Program Generated Income**

1. Contribution – Unless specifically stated otherwise, the term contribution shall mean funds voluntarily paid to the AAA or a contracted service provider by a service participant or their family member and/or caregiver at the time of or as a result of delivery of one or more services.
2. Cost Share - When used in this Program Instruction, unless specifically stated otherwise, the term cost share or cost sharing means a mandatory fee for in-home services, ancillary, or non-institutional respite services provided in accordance with EISEP standards. Such fees are based on the service recipient's income with allowances for factors such as housing expenses.
3. Sale of Assets Purchased with Grant Monies - Proceeds from the sale of assets that were originally purchased with grant funds and required matching funds.

### **C. Terminology**

1. Cash – Cash may refer to currency, checks, money orders, or a combination of any or all of the three.
2. Client – When used in this policy “client” will generally refer to the service recipient unless the term is somehow qualified to imply a different meaning.
3. Consumer – Consumer can be the service recipient or a family member or other caregiver.

4. EISEP In-home Services, including consumer directed – Homemaking/personal care and housekeeping/chore services funded under the Expanded In-home Services for the Elderly Program (EISEP).
5. EISEP-like Services including consumer directed - Homemaking/Personal Care, Housekeeping/Chore, and non-institutional respite services funded under the Community Services for the Elderly Program (CSE).
6. Invoice – An itemized statement of services, which requires payment of a certain amount.
7. Payment(s) – Funds received by the AAA or contractor. Payments may be for contributions, cost sharing, or other purposes.
8. Service Provider – The AAA, a contractor of the AAA, or a contractor of NYSOFA that administers programs to provide services to older New Yorkers and/or their families and other caregivers.

### III. Contributions

#### A. General Standards

1. Contributions are not appropriate for all services. Those services for which there is normally a charge in the community should generate contributions. Other services may be inappropriate for the generation of contributions because they are typically free in the community (e.g., information and assistance or outreach). However, contributions can be accepted for all activities funded and/or operated by the AAA and for the general operation of the AAA and its contractors as well.

Services for which contribution policies and procedures must be developed include:

adult day services	housekeeping/chore
caregiver services	legal assistance
case management	nutrition counseling
congregate meals	personal emergency response
homemaking/personal care	residential repair/renovation
home-health aide	shopping assistance
home delivered meals	transportation
in-home contact and support	assisted transportation
health promotion	

AAAs can choose to develop contribution policies and procedures for other services as appropriate.

2. Providers are not required to set either a suggested amount or a suggested range for contributions. Should the provider choose to set amounts, the suggested amounts should be based on the actual cost of services.
3. AAAs must consult with relevant service providers and older adults in the AAA's planning and service area to determine the best method for accepting contributions.
4. For OAA-funded programs, individuals whose self-declared income is at or above 185 percent of the poverty line must be encouraged to contribute at the actual cost of services.
5. Consumers of services must be informed of and provided with the opportunity to voluntarily contribute to the cost of the services funded by any program administered by or through NYSOFA. However, if the service recipient is required to cost share, no contribution shall be solicited for that service.
6. Caregivers can similarly be informed of the opportunity to voluntarily contribute.
7. Consumers of services must be informed of the purpose for and use of contributions (see Section VII of this policy).
8. No service recipient may be denied a service because of inability or unwillingness to contribute.
9. Periodic communications about contributions may be sent, with a frequency not to exceed once per month for the same service to the same client.
10. Providers are required to allocate contributions to expand the service for which it was given.
11. Contributions for multiple services received at one setting or in one continuous sequence must be accounted for with consideration for the program requirements of the program funding the services, the most predominant requirement being to expand services under the program that funded the original service. If the various services are funded under one program, e.g., CSE, the client may be advised to make one contribution for all services received. If the services are provided under more than one program, they must be accounted for separately by some means, e.g., color coded envelopes.

If contributions are received for contracted services, and funding is provided under an Older Americans Act program, all contributions must be accounted for and utilized by the contractor that has provided the applicable service.

Potentially, these requirements may make it difficult to account for

contributions when multiple services are provided. AAAs are encouraged to discuss the more complex situations with their assigned program and/or fiscal NYSOFA staff.

12. When a special event (holiday party, picnic, etc.) is reported as a congregate meal all contribution requirements relating to a congregate meal must be applied to the special event. In addition, if federal and/or state funds (including county funds as match) are used to fund part or all of the event, all requirements specific to the funding stream(s) utilized must be followed.

## **B. Establishing Suggested Contribution Amounts**

1. The suggested amount for contributions may not exceed the cost of the service.
2. Actual costs must be considered in setting the suggested contribution level.
3. Recommended contribution amounts are to serve only as guides to service users and are not to be used in a coercive manner.
4. Service providers should not attempt to support the entire program from contributions.
5. AAAs must consider the income ranges of older adults in the AAA's planning and service area and the service provider's other sources of income when the AAA is developing a contribution schedule.
6. Suggested contributions may be either:
  - a) Fixed or flat rate not to exceed the cost of the service (e.g., \$3.00 per meal, \$1.50 per trip or zone); or
  - b) Sliding scale contribution. At the top of the scale, the suggested contribution would be set at the full cost of service for those with incomes of 185% or more of the Federal Poverty Level (FPL). In setting up schedules, be realistic about the maximum and minimum points of the scale.
7. Program/Service Specific Information.
  - a) Congregate and Home Delivered Meals:

Electronic benefit transfers (EBT) under the Supplemental Nutrition Assistance Program (SNAP) program may be accepted for Congregate and Home Delivered Meals contributions.
  - b) Cost Share Services:

Contributions cannot be solicited from an individual who pays a cost share for that specific service.

### **C. Methods for Informing Individuals of the Opportunity to Contribute**

1. Regardless of the medium used to relay the contributions request, AAAs should take the same care with all communications. These rules apply to any request for contributions.
2. Communications, electronic or otherwise, may include information concerning services and contribution policies and may request but not demand contributions from individual consumers.
3. When discussing contribution amounts, AAA or contractor staff may advise service recipients of the actual cost of the service, suggested contribution amount (if any), and the opportunity to make a voluntary contribution. Materials reflecting suggested contribution levels, e.g., sliding fee scales, service costs, etc., may be given to the client for guidance.
4. Great care must be taken in the development and use of statements of actual costs of services to ensure that they are not perceived as being coercive or resemble an invoice or bill in any way.
5. Any reference related to a suggested contribution amount that implies a fee, e.g. "you should pay," "you ought to be able to afford," or "your fair share is," is prohibited.
6. For those services for which contribution policies and procedures are developed, methods of informing participants include the use of letters, signs, and other materials.
7. Communications, printed or electronic, from AAAs and/or contractors specifically soliciting contributions,
  - a) must meet the following requirements:
    - i. Due recognition must be given to the source of the program funds, generally the US Department of Health and Human Services - Administration on Community Living (ACL) and/or NYSOFA. If other entities provide funding, e.g., County Government, it would be reasonable to give them due recognition also.
    - ii. A statement that explains that contributions made as a result of receiving service(s) are completely voluntary and that services will not be affected because of an inability or unwillingness to contribute.

- iii. If a suggested contribution amount is included, it must be clear it is only a guide and, if participants choose to contribute, their contribution should reflect their own circumstances. However, individuals whose self-declared income is at or above 185% of the FPL shall be encouraged to contribute at the actual cost of services.
  - iv. An explanation of the purpose for and use of contributions, and that all contributions are to be used to expand the service for which the contributions were given.
- b) may include:
- i. The amount of the suggested contribution for specific services.
  - ii. Information on the full cost of the service.
  - iii. A statement that a receipt may be provided for contributions made.
- c) must not include:
- i. Use of the word “donation” when referring to a “contribution.”
  - ii. Using the word “free” to describe a service which is funded under the Older Americans Act or the New York State Elder Law.
  - iii. Language that suggests there will be any consequence because the client decided not to contribute.
  - iv. Language that suggests that income is a factor in determining eligibility for a program.
  - v. Any indication that the contribution will be tax-deductible.
  - vi. Terms such as “amount due,” “your fair share,” or any other language that suggests the recipient is required to pay an amount.
- d) Written communications soliciting contributions may not be distributed more than once a month for the same service to the same client.

## 8. Signs.

- a) Signs may be used at the point of service (e.g., transportation, health promotion activities).
- b) When a sign is used, it must:

- i. State the voluntary nature, purpose, and use of contributions; and
  - ii. Give credit to the funding sources, e.g., ACL, NYSOFA, the county, etc.
- c) A sign may state:
  - i. The suggested amount of contribution; and
  - ii. The actual/approximate cost of the service.
- d) For Congregate Nutrition Sites:
  - i. Signs are required.
  - ii. Signs must state the suggested amount of contribution, including the full cost of service and/or guest meal.

**IV. Cost Share-** Under the EISEP and CSE programs - certain clients who receive EISEP or EISEP-like services other than case management must cost share according to the sliding scale developed by NYSOFA. Cost sharing policy is extensively documented in the EISEP standards and regulations and the cost sharing forms and income levels are updated on an annual basis. Therefore, this policy will only address cost sharing from the standpoint of proper accounting and safeguards for cash received.

**V. Sale of Assets Purchased with Grant Funds**

- A.** When selling or trading assets purchased with state or federal grant funds, the overriding principle is that the proceeds from the sale (i.e., income) will stay with the program where the funds to purchase the asset originated.
- B.** If the program funding used to purchase the asset no longer exists, the proceeds from the sale must be used in other programs administered by the AAA or contractor that meet the same need or serve the same program area.
- C.** If the asset was sold or traded-in to acquire a replacement asset, the replacement asset must be used for substantially the same purposes as the asset being disposed.
- D.** The NYSOFA Equipment Inventory & Disposition Form is designed to account for the original funding for the purchase of the asset and to eventually document and account for the disposition of the asset. It also provides very good documentation for an agency's inventory purposes. A copy of this form can be obtained from the fiscal team at NYSOFA.

## **VI. Confidentiality**

- A.** Program-generated income must be handled in a manner that protects the privacy and confidentiality of all individuals. Envelopes may be made available for participants to make contributions. They may be encoded to facilitate accounting for contributions by program or service, but not so that the contributor can be identified.
- B.** Cost share income is not confidential as the payee's identity must be known by the AAA or its contractor so that proper accounting records can be maintained. However, the financial information known about the program recipient may never be used for any purpose other than calculating or collecting the required cost share amounts or determining eligibility for participation in other program(s).

## **VII. Use of Income**

### **A. Expansion of Services.**

- 1. All program-generated income must be utilized to expand or support services delivered under the program for which it is collected.
  - a) For all Older Americans Act programs, contributions must be used to expand the services of the provider that collects the contributions. Under state programs and federal programs not regulated by 45 CFR § 1321.67 (i.e., not established under provisions of the OAA), service expansion must comply with item VII.A.1. above although not necessarily at the same service provider.
  - b) One exception to this rule is cost share receipts collected under EISEP, which may be transferred to CSE and used to expand CSE services.
- 2. All program income must be utilized to expand or support services during the program period in which it is collected. If a service is provided during the 12th month of a program period and a contribution is received by the service provider in the first month of the subsequent program year, services must be expanded in the latter period. Program income may not be accumulated and used to form a fund balance.

### **B. Use of Income as Match.**

- 1. Income generated through the provision of services funded by Older Americans Act-funded programs may not be used for local matching purposes.
- 2. Contributions generated under CSE and EISEP can be used as a "match of last resort." The term "match of last resort" implies that without using these contributions as match, there are not sufficient local funds available to match the state grant, services to older New Yorkers would need to be curtailed, and state funds would go unexpended. When local funding is available to match

CSE and EISEP, contributions may not be used as match.

3. Cost share receipts may not be used as local match under NYSOFA's current cost share policy.

### **VIII. Safeguards for Program Income**

- A.** Except as provided in paragraph B below, all paid staff members, both AAA and contractor staff, who handle program income must be bonded with the exception of government employees (who are already covered) and attorneys providing legal services (who already operate under standards for client funds contained in the Rules of Professional Conduct, enforced by the Appellate Divisions of the Supreme Court).

Bonding is insurance against the misappropriation of funds. Should there be a theft, the bonding company will cover the losses (subject to potential limits and deductibles) so that the programs for older adults will not suffer. Agencies can obtain a "Blanket Fidelity Bond" for all employees. Volunteers who jointly count program income with a staff member are not required to be bonded. A volunteer must never count program income without a bonded employee present.

- B.** As an alternative to bonding, a provider may obtain a commercial insurance policy that would cover losses arising from employee theft. If a provider has an insurance policy covering for losses due to employee theft, fraud, or embezzlement, the AAA may accept such proof of insurance coverage as a substitute for bonding. If a provider seeks to use insurance as a substitute for bonding, the provider should be required to produce proof of such insurance to the AAA. The AAA is responsible for verifying that the insurance coverage is a comparable substitute for bonding of provider staff and is adequate to safeguard program income.
- C.** After program income is initially counted and recorded on cash receipts logs (or ledgers), the fewest possible number of people must handle cash. Staff preparing cash receipts for deposit should count the cash and reconcile it to the cash receipt logs before preparing the deposit. Discrepancies should be explained and corrected.
- D.** Program income must not be taken home. The entire amount of program income collected should be deposited in a bank on a daily basis. When this is not possible, funds must be stored in a secure location at the AAA or contractor office daily and deposited in a bank no less frequently than weekly.
- E.** Under no circumstance will it be acceptable to make withdrawals or loans or cash checks from program income received. The entire amount of the program income collected must be deposited into a bank account and then used for the purpose intended, i.e., expansion or support of program and services.
- F.** Periodic, but no less than monthly, reconciliations of cash receipt records (certifications of daily contributions and cash receipt logs), deposit slips and bank statements must be performed and any discrepancies investigated and explained to

the AAA Director's satisfaction. When possible, the person performing these reconciliations should not be involved in collecting, counting, or depositing the program income.

- G.** Records of program income received at congregate sites, on each meal and transportation route, and in the service provider or AAA office should be maintained and periodically analyzed. Irregularities should be brought to the AAA Director's attention.
- H.** Variations in safeguards for handling different types of program income that is collected in different settings.
  - 1. Contributions Collected in a Congregate Setting.
    - a) Contributions must be deposited into a locked box by the program participant. For confidentiality purposes, envelopes may be provided to the participants.
    - b) Congregate Meal staff/volunteers should not have access to the contents of the locked box other than to count contributions at the end of the meal service. Contributions must be jointly counted daily by at least two people, as described in VIII.A above.
    - c) Each person counting the contributions must sign a form certifying the amount collected for each day. If contributions are received for services funded by more than one program (e.g., III-C-1 and WIN), the accounting system must capture the amount of contributions generated by each program.
  - 2. Contributions Collected by Home Delivered Meal Route Drivers.
    - a) Contributions must be deposited into a locked box. The deposit should be made directly by the service recipient when possible. When it is not possible or practical for the service participant to place the contribution into a locked box, the contribution should be given to the person delivering the meal in a sealed envelope that can be placed in the locked box upon return to the vehicle. The driver must not have access to the contents of the locked box. The locked boxes should be returned to the AAA or contractor at the end of each route.
    - b) The locked boxes must be opened at the AAA or contractor and counted daily by two staff members when possible. Each person counting the program income must co-sign a form certifying the amount of cash counted for each day. If contributions are received for services funded by more than one program (e.g., III-C-2 and WIN), the accounting system must capture the amount of contributions generated by each program.

- c) When feasible, drivers should be rotated among routes.
3. Contributions Collected by Transportation Drivers.
- a) Contributions must be deposited into a locked box. The deposit should be made directly by the senior when possible. For confidentiality purposes, envelopes may be provided to the participants. The driver must not have access to the contents of the locked box. The locked boxes should be returned to the AAA or contractor at the end of each route.
  - b) The locked boxes must be opened at the AAA or contractor's office and counted daily by two staff members when possible. Each person counting the program income must co-sign a form certifying the amount of cash counted for each day. If contributions are received for services funded by more than one program (e.g., III-B and CSE), the accounting system must capture the amount of contributions generated by each program.
  - c) When feasible, drivers should be rotated among routes.
4. Contributions, Cost Share, and Other Income Received at AAA or Contractor Offices.
- a) Program income received through the mail or dropped off at AAA or contractor offices should be recorded in ledgers by the staff person receiving and opening the mail. Receipts should then be forwarded to appropriate staff for preparation for deposit.
5. Contributions Collected by Legal Services: In regard to the Legal Assistance Program, there are exceptions to some of the general requirements for contributions. These are:
- a) Bonding: Because all attorneys operate under standards for client funds contained in the Rules of Professional Conduct, enforced by the Appellate Divisions of the Supreme Court, it is considered unnecessary for the attorneys to obtain performance bonds. This should not be considered in any way to lessen the obligation to account for contributions; these funds should be treated in the same manner as client funds, and should be accounted for according to normal budgeting requirements.
  - b) Daily counting of contributions: Because the provisions of the New York Rules of Court and the Rules of Professional Conduct are applicable to this area, daily reporting is considered unnecessary.

c) In all other respects, the contributions policy for legal assistance must conform to the requirements of this policy on program income.

I. Receipts shall be provided upon request of the service recipients or those acting on their behalf.

**IX. Accountability For All Program Income:** An audit trail of all incoming program income must be maintained by program (e.g., III-B, III-C-1, CSE). Within EISEP and CSE, contributions and cost share must be accounted for separately. The ledger and supporting documentation (e.g., deposit slips, certified forms, etc.) must provide a clear audit trail so that at any given time it is known how much and what type of income has been collected from each program. Whenever possible, accounting records must be kept by someone not involved in handling cash receipts.

### **X. Fundraising Activities**

A. Fundraising activities aimed at the general public are permissible and encouraged. However, as noted below, the cost associated with fundraising activities is not allowable under NYSOFA administered grant programs but the costs may be offset against the revenue derived from the fundraising activity.

1. 2 CFR § 200.442(a) applies to both municipalities and not-for-profit organizations. It states that “Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable. Fund raising costs for the purposes of meeting the Federal program objectives are allowable with prior written approval from the Federal awarding agency. Proposal costs are covered in § 200.460 Proposal costs.”

B. Donations that are not received as a direct result of a delivery of a service may be used as appropriate under the laws governing their type of organization (i.e., Municipal Law or Not-for-Profit Incorporation Laws). These donations may come from fundraising activities or as an unsolicited gift.

**XI. Approval of Contractor Program Income Procedures** - Procedures used by AAA contractors to implement these policies are subject to prior approval by the AAA.

**PROGRAMS AFFECTED:**

<input checked="" type="checkbox"/> Title III-B	<input checked="" type="checkbox"/> Title III-C-1	<input checked="" type="checkbox"/> Title III-C-2
<input checked="" type="checkbox"/> Title III-D	<input checked="" type="checkbox"/> Title III-E	<input checked="" type="checkbox"/> CSE
<input checked="" type="checkbox"/> WIN	<input type="checkbox"/> Energy	
<input checked="" type="checkbox"/> EISEP	<input checked="" type="checkbox"/> NSIP	<input type="checkbox"/> Title V
<input type="checkbox"/> HIICAP	<input type="checkbox"/> LTCOP	
<input type="checkbox"/> NY Connects	<input checked="" type="checkbox"/> Other: Any NYSOFA program which generates Program Income	

**CONTACT:** Aging Services Representative