COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CHILDREN AND FAMILIES
DCF RFIS&S: Support and Stabilization Services RFI

RFI COVER SHEET and CHECKLIST

Please use this cover sheet and checklist as the first page of your response materials

RESPONDER INFORMATION

The Department appreciates the completion of the Responder Information section, but responders may remain anonymous.

Responder Type: Click on the appropriate box to indicate whether responder is an organization or an individual.

☒ Organization

☐ Individual

Responder Name and Title: Disability Law Center, Inc.

Rick Glassman, Director of Advocacy

Responder Mailing Address: 11 Beacon Street Suite 925, Boston MA 02108

Responder Phone Number: 617 315 4606 Email Address: rglassman@dlc-ma.org

Organization Name (If Applicable): Disability Law Center, Inc.

Vendor Code # and/or FEIN (If Applicable, Optional but Requested):

Organization Main Phone Number (If Applicable): 617 723 8455

RFI DOCUMENTS (Click on appropriate box to indicate completion of document. All Response Sheets and individual question are voluntary.)

☐Cover Sheet

☐Section 3 Response Sheet (Diversity, Equity, and Inclusion)

☒Section 4 Response Sheet (Life Cycle of a Case)

☐Section 5 Response Sheet (Evidence-Based Practices)

☐Section 6 Response Sheet (Service Delivery Issues)

☐Section 7 Response Sheet (Evaluation and Continuous Quality Improvement)

☐Section 8 Response Sheet (Additional Comments)

Attachment A

Section 4 Response Sheet

You are invited to respond to any or all of the questions presented in the RFI, using the child welfare lens of achieving safety, permanency, and well-being for all children. All responses to this RFI are voluntary and the number of questions to respond to is left to your discretion.

Responders from different backgrounds will bring different perspectives and approach these questions based on their experiences. You may choose to respond to whichever questions are relevant to you, based on your background and perspective.

Please insert your answer after each specific question, where "*Begin response here*" is located.

When a question asks for a detailed description of service attributes, the below list is a summary of possible attributes to include. A full description of these service attributes can be found in Section 2.3 of the RFI. It is not necessary to provide details for every service attribute.

- **Characteristics of Consumers Served:** For whom is this service designed?
- **Timing:** When would the service be appropriate for use (e.g., intact family, after a home removal, in a kinship home, prior to and during reunification, adoptive family)?
- **Goal**: What behaviors or needs will the service address?
- **Methodology**: What is the frequency, intensity, duration, and modality of the service?
- **Type**: What type of service or services is it (e.g., skill-based education, talk therapy, alternative therapy, psychoeducation, coaching, service navigation)?
- **Estimated Costs:** What are the estimated salaries of the staff who provide the service and how many estimated hours per week do they work? What is the estimated total cost for delivering the service?
- **Delivery**: How could the service be organized to promote connections and convenience for families and children?

Section 4 of the RFI: Life Cycle of a Case

Section 4.5: Additional Comments

17. **Do you have any additional comments that are not addressed in the questions included in this section?**
    Begin response here.

Response of the Disability Law Center (DLC) to the December 30, 2021 Department of Children and Families (DCF) RFI Solicitation (Sec. 4.5):

DCF's Practice of Collecting Social Security Administration (SSA) Benefits of Foster Care Youth to Offset DCF's Own Expenses, and Not Saving Benefits for the Beneficiary's Transition to Adulthood

Executive Summary

The Disability Law Center, Inc. (DLC), is the Commonwealth's Protection and Advocacy system under federal law, a nonprofit organization advocating for human rights, empowerment, and justice for people with disabilities. Our authority under federal law includes monitoring and investigating abuse and neglect, representing individuals on a range of civil legal matters, pursuing legislative and administrative advocacy, and engaging with policymakers on issues of concern to the disability community. We also investigate representative payees for the Social Security Administration (SSA) and provide technical assistance to legal services and private attorneys handling SSA disability benefits cases.

We offer comments to request that the Department of Children and Families (DCF) change policies to better serve children with disabilities under its care, specifically ***to no longer use Social Security benefits of foster care youth to pay for DCF's financial obligations, and instead to retain and conserve these funds to assist foster care youth with their transition to adult life and financial independence.*** The State of Maryland has adopted a similar policy.

In Massachusetts, children in foster care placements are having Social Security benefits, including SSI, taken from them – sometimes without their knowledge – ostensibly to offset the cost of fulfilling the financial obligations of the agency. The rationale is that DCF is compensating itself for services rendered, yet these children already have a legally mandated right to foster care services under both federal and state law, without a debt of any kind being owed.

Moreover, this policy is inequitable, treating children with disabilities differently than others in DCF's care, because children with disabilities essentially pay for their own care while other foster youth do not. And it is inconsistent with the spirit, if not the letter of state law, M.G.L c. 119, § 23, which charges that DCF "shall have the responsibility, including financial

responsibility, for providing foster care for children *through its own resources or by use of appropriate voluntary agencies*" (emphasis added).[1]

Therefore, through these comments, DLC asks that DCF change its policies as follows:

- **End the practice of taking, for the agency's own financial obligations, a foster child's SSI benefits and Title II Dependent/Survivors' benefits on a parent's Social Security wage record;**
- **For foster care children on SSI, establish an Achieving a Better Life Experience (ABLE) account, where these benefits can accrue until the child is either adopted or "ages out" of foster care;**
- **For foster care children receiving Title II Dependent/Survivors' benefits on a parent's Social Security wage record, use these assets to build savings accounts for transition to adulthood;**
- **Automatically screen all children in its care to determine if they are eligible for SSI, or Title II Dependent/Survivors' benefits;**
- **Provide notice to a child and their guardian, attorney, or other interested family member or adult, when DCF has been named their representative payee, and continue providing notice should the child's benefits continue to be used by DCF;**
- **Share data openly with SSA and proactively seek the substitution of representative payees other than DCF. If a child's benefits continue to be taken by the DCF, the agency must document exactly how the funds are being used for that child's unique and specific needs, as opposed to using funds to relieve costs charged to DCF to the state budget; and**
- **Adopt universal screening for youth transitioning out of foster care, for adult SSI and adult Title II eligibility, and provide assistance and support to foster care youth in applying for these benefits.**

Several of these policies are already mandated by constitutional requirements, statutes, and regulations, and should be enforced. Others are legal obligations established by caselaw around the country or are sound public policy. Compliance with these responsibilities also comes at a small cost to DCF. The money taken from these children is modest relative to the overall annual funding that foster care agencies around the country, including DCF, receive for foster care. For instance, "the Congressional Research Service reports that state child welfare agencies spent approximately $33 billion in FY2018. Based on the Child Trends data from that year cited by NPR, the $180 million collected in Social Security benefits amounts to about .05 percent of overall spending."[2] In Massachusetts, according to Child Trends, DCF had 101.6

[1] M.G.L c. 119, § 23(a).
[2] Dan Lips, *Using Fostering Independence Accounts to Protect Children's Social Security Benefits*, FREOPP (July 12, 2021), available at https://freopp.org/using-fostering-independence-accounts-to-protect-childrens-social-security-benefits-d5850cf35f73.

million dollars in foster care expenditures in 2018.[3] Only 907 foster children receive SSA benefits (411 receiving SSI and 496 receiving Title II benefits as dependents of an adult with a wage earning record).[4] Removing the value of these benefits, only 6.31 million dollars in 2018,[5] from DCF's coffers should not affect the scope of services rendered. Yet, this money could make a critical difference to the children for whom it is intended.

Children who pass through the foster care system, especially those who age out and are not adopted before the age of 18, are in very vulnerable circumstances, with worse statistics in virtually every relevant metric,[6] such as the likelihood of homelessness, finishing high school or attending college. These problems are only magnified for children who also live with disabilities. Not only are they entitled to their benefits by law, but they need these funds to have a chance at success as they begin their independent lives.

Discussion

1. **End the practice of taking children's SSI and Title II Dependent/Survivors' benefits, and instead establish Achieving a Better Life Experience (ABLE) accounts, where these benefits can accrue until the child is either adopted or "ages out" of foster care.**

We urge DCF to end the practice of collecting and using Social Security benefits of foster care youth for its own purposes. Similar policies have drawn widespread criticism from the

[3] See March 2021 report available at https://www.childtrends.org/wp-content/uploads/2021/03/ChildWelfareFinancingReport_ChildTrends_March2021.pdf, Appendix C, reporting on 2018 data.

[4] Congressional Research Service, *Children in Foster Care and Social Security Administration Benefits: Frequently Asked Questions* (November 23, 2021) available at https://sgp.fas.org/crs/misc/R46975.pdf, Table B-1 p. 47.

[5] Michelle Pitcher et al., *These States Take Money Meant for Foster Children*, The Marshall Project (May 17, 2021), available at https://www.themarshallproject.org/2021/05/17/these-states-take-money-meant-for-foster-children.

[6] Foster children suffer from PTSD at twice the level of U.S. war veterans. Over one-third of these children who age out never graduate from high school, only 3% complete college, less than 50% find employment, 80% suffer from mental health issues, over one-third face homelessness, and almost 75% of males become incarcerated by age 26. Daniel L. Hatcher, *Stop Foster Care Agencies From Taking Children's Resources*, 71 Florida Law Review Forum 104, 105-106 (2019), available at http://www.floridalawreview.com/wp-content/uploads/Hatcher_Publish.pdf. In addition, identity theft is common in the foster care system. This is in large part because so many people have access to a child's Social Security number. "Identity theft can have devastating consequences. Former foster youth may face problems finding safe and adequate housing; they may be denied loans for cars and other larger necessities, and they may be denied financial aid and the opportunity to attend college, all as a result of identity theft that occurred while they were in foster care." Melanie Delgado et al., *The Fleecing of Foster Children-How We Confiscate Their Assets and Undermine Their Financial Security*, The Children's Advocacy Institute and First Star i, vi (2011), available at http://www.caichildlaw.org/Misc/Fleecing_Report_Final_HR.pdf.

national media,[7] and commentators and experts,[8] and raise significant legal and policy questions for the DCF, discussed below.

There are two types of benefits at issue. First, Supplemental Security Income (SSI) or Title XVI benefits, is a needs-based benefit available to persons (including children) who meet the program's disability and strict financial eligibility criteria. It is essentially a federal welfare program for persons with significant disabilities. Individuals must have less than $2,000 in countable assets to become and remain eligible.[9]

Second, some children receive Title II Dependent/Survivors' benefits on the Social Security (FICA tax) wage record of a parent who has died or who receives Social Security Disability Insurance (SSDI) or Retirement Insurance Benefits.[10] Children under age 18 receive these benefits by virtue of being a minor child of the Social Security wage earner. These Dependent/Survivors' Benefits are *not* disability benefits. Title II benefits are not needs-based

---

[7] *See e.g.,* Eli Hager and Joseph Shapiro, *State Foster Care Agencies Take Millions Of Dollars Owed To Children In Their Care*, NPR (Apr. 22, 2021), available at https://www.npr.org/2021/04/22/988806806/state-foster-care-agencies-take-millions-of-dollars-owed-to-children-in-their-care; Lips, *supra*; Pitcher et al., *supra*; Joseph Shapiro, *Consultants Help States Find And Keep Money That Should Go To Foster Kids*, NPR (Apr. 28, 2021), available at https://www.npr.org/2021/04/28/991503850/consultants-help-states-find-and-keep-money-that-should-go-to-foster-kids; Joseph Shapiro, *Movement Grows For States To Give Back Federal Funds Owed To Foster Children*, NPR (May 3, 2021), available at https://www.npr.org/2021/05/03/992993650/movement-grows-for-states-to-give-back-federal-funds-owed-to-foster-children; Steve Volk and Julie Christie, *Philly took $5 million in foster children's Social Security payments without telling them*, The Philadelphia Inquirer (Dec. 15, 2021), available at https://www.inquirer.com/news/foster-parenting-philadelphia-social-security-payments-20211215.html.

[8] *See e.g.,* Congressional Research Service, *Children in Foster Care and Social Security Administration Benefits: Frequently Asked Questions* (November 23, 2021) available at https://sgp.fas.org/crs/misc/R46975.pdf; Delgado et al., *supra*; Hatcher (2019), *supra*; Daniel L. Hatcher, *Foster Children Paying for Foster Care*, 27 Cardozo Law Review 1797 (Feb. 2006), available at https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=1293&context=all_fac; Daniel L. Hatcher, *Purpose vs. Power:* Parens Patriae *and Agency Self-Interest*, 42 New Mexico Law Review 159 (Spring 2012), available at https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=1291&context=all_fac; Katherine M. Krause, *Issues of State Use of Social Security Insurance Beneficiary Funds for Reimbursement of Foster-Care Costs*, 41 Family Law Quarterly 165 (Spring 2007), first page available at https://www.jstor.org/stable/25740601; Ian Marx, *Reforming Foster Care's Social Security Benefits System*, Building the Path Forward For Change in the Child Welfare System, Congressional Coalition on Adoption Institute, July 2021, available at https://s3.amazonaws.com/ccai-website/Building_the_Path_Forward_-_2021_Report.pdf; Emily W. McGill, *Penny Wise, Pound Foolish: Child Welfare Agencies as Social Security Representative Payees for Foster Children*, 58 Case Western Reserve Law Review 961 (Spring 2008), available at https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1758&context=caselrev; Umar Moulta-Ali et al., *Child Welfare: Social Security and Supplemental Security Income (SSI) Benefits for Children in Foster Care*, Congressional Research Service 1 (updated Sept. 28, 2012), available at http://congressionalresearch.com/RL33855/document.php#:~:text=An%20estimated%2030%2C000%20children%20receive%20Supplemental%20Security%20Income,from%20families%20with%20low%20incomes%20and%20minimal%20assets; Jim Moye, *Get Your Hands Out of Their Pockets: The Case Against State Seizure of Foster Children's Social Security Benefits*, 10 Georgetown Journal on Poverty Law & Policy 67 (Winter 2003), first page available at https://heinonline.org/HOL/LandingPage?handle=hein.journals/geojpovlp10&div=8&id=&page=.

[9] 20 CFR § 416.1205.

[10] These are sometimes known as Retirement, Survivors and Disability Insurance (RSDI) or Old Age, Survivors and Disability Insurance (OASDI) benefits. They end at age 18, unless the youth is still in secondary school, in which case the benefits end at the earlier of age 19 or graduation from high school. 20 CFR §404.350, 404.352.

and do not have an income or asset limit. Children receiving these benefits do not need to keep countable assets below $2,000 to be eligible.

All of these benefits are the property of eligible children, including those in foster care, to which they are entitled. Yet child welfare agencies, going as far back as the seminal Supreme Court case *Washington State v Keffeler*,[11] have argued that these benefits cannot be saved separately for children because doing so would quickly cause the $2,000 threshold to be surpassed, which would then result in the child being ineligible. This argument has no merit when applied to children receiving Title II Dependent/Survivors' benefits where, as noted above, there is no asset limit. For these children, their money cannot be withheld on the rationale that DCF does not wish for them to lose eligibility.[12]

As to children receiving SSI, the $2,000 threshold, first established in 1989, is antiquated,[13] and may be changed by Congress in pending federal legislation (the Supplemental Security Income Restoration Act).[14] However, even without a change to the statute, there are assets that can be owned that will not count against the limitation. This includes owning a car or a home.[15]

Most importantly, there is something critical DCF can do to transcend altogether the asset limitation. Representative payees may now assist beneficiaries in establishing ABLE accounts. As Dan Lips, visiting fellow with the Foundation for Research on Equal Opportunity, explained:

> [T]he Achieving a Better Life Experience (ABLE) Act of 2014 allows states to establish tax-free savings options for people who become disabled before age 26. Under federal law, funds used in an ABLE Account can be used to "pay for disability-related expenses," such as "housing, education, transportation, health, prevention and wellness, employment training and support, assistive technology and personal support services," according to the Internal Revenue Service.[16]

When DCF redirects beneficiaries' assets to meet the agency's financial obligations and does not utilize ABLE accounts, DCF overlooks tools and resources that could be critical to the long-term success of these youth. If DCF regularly used SSA resources to establish ABLE accounts for beneficiaries, then foster care youth could receive the state-funded care they are entitled to, and still have a "nest egg" of funds to accommodate their unique disability-based

---

[11] *Washington State Dept. of Social and Health Servs v. Guardianship Estate of Keffeler*, 537 U.S. 371 (2003).
[12] Children in foster care receiving Title II Dependent/Survivors' benefits will also not have a $2000. asset limit in MassHealth because there is no such limit for individuals under 65, unless they receive home and community based services. For this reason, for Title II recipients, DCF can simply save funds for transition using ordinary savings accounts.
[13] Moulta-Ali et al., *supra*, at 8.
[14] S.2065 - Supplemental Security Income Restoration Act of 2021.
[15] Hatcher (2019), *supra*, at 108.
[16] Lips, *supra*. See also https://www.ssa.gov/payee/able_accounts.htm

goals and needs upon embarking on their independent lives.[17] DCF could accomplish this by working closely with the Massachusetts Educational Financing Authority (MEFA), the state sponsor of Attainable, the ABLE Savings Plan. MEFA establishes ABLE savings accounts which are tax-free and are not counted against SSI asset eligibility, for account amounts up to $100,000. This money "[f]osters and supports the independence and quality of life of individuals with disabilities" and is professionally managed by Fidelity Investments.[18]

ABLE accounts can also be used to save retroactive lump-sum payments of SSI benefits paid to foster care youth.[19] Since 1986, when lump sums exceed six times the benefit amount, they must be deposited into a dedicated interest-bearing account to be used only for the disability-related needs of beneficiaries. This does not include regular monthly maintenance expenses. 42 U.S.C. sec. 1383(a)(2)(F).

Other options are special needs trusts, and Plans for Achieving Self-Support (PASS), and Individual Development Accounts (IDAs). PASS is "an individual plan for employment designed by an SSI beneficiary with the assistance of a state vocational rehabilitation agency, disability service organization or Ticket to Work Employment Network and approved by the SSA." Also, "[r]esources included in an approved PASS are not counted against the SSI

---

[17] One 2005 study, now very dated, found that on average parents give $38,000 to each child between the ages of 18 and 34 for college tuition, housing costs and other financial assistance, in addition to an extensive range of non-material assistance. *Youth Transitioning from Foster Care* (2011), Congressional Research Service, available at https://www.everycrsreport.com/files/20110801_RL34499_3fd3d85cc2aad60613138e4d66501ea48e2541b0.pdf p. 6 (citation omitted).

[18] *Attainable Savings Plan*[SM], MEFA (website maintained as recently as 2021), available at https://www.mefa.org/save/attainable-savings-plan. Massachusetts ABLE accounts may be opened online, have no fees, can be used with prepaid or debit cards and allow for deposits of up to $16,000 per year as of 2022 and sometimes more. See https://www.disabilityscoop.com/2022/01/03/irs-raises-limit-for-able-accounts/29640/ and *Debunking ABLE Myths*, The ABLE National Resource Center (website maintained as recently as 2021), available at https://www.ablenrc.org/service-providers/debunking-able-myths/. It is important that DCF work closely with MEFA and SSA as there are some pitfalls for youth with ABLE Accounts when the representative payee changes.

While it is outside the scope of these comments, we add here a few additional comments concerning ABLE accounts: An individual may have only one ABLE Account, but anyone can deposit funds into it for the individual's use for qualified disability-related expenses (QDEs). The representative payee's duty is to be able to show SSA that a beneficiary's Social Security funds, including those deposited into an ABLE Account, were used on the beneficiary in the beneficiary's best interests. The payee's duty is complicated if funds other than SSA funds are deposited into the ABLE Account. In addition, under an SSA rule, when a representative payeeship ends, the payee must return conserved funds to SSA for accounting and redistribution to the beneficiary or a new payee, or this may result in problems or penalties under the IRS rules for ABLE Accounts. Social Security - Representative Payee Program - Payee and ABLE Accounts (ssa.gov).

We understand that DCF does make limited transition resources available to some foster care youth, including its Discharge Support Program for youth leaving DCF custody. 110 CMR §23.07. These funds can be used for first month's rent and similar expenses but are not given as of right and not comparable to the amount of SSA benefits, if conserved in ABLE accounts. We also acknowledge and appreciate DCF's tuition waiver and fee assistance program. See https://www.mass.edu/osfa/programs/dcffoster.asp

[19] Smaller lump sums of benefits that do not trigger the Dedicated Account requirement could be deposited voluntarily into an ABLE Account and spent on anything meeting the definition of a qualified disability-related expense, including basic needs. However, benefit amounts that trigger the Dedicated Account rule must be spend on disability-related needs and cannot be spent on basic needs. ABLE Accounts will not work for these. Unspent portions of a child's regular monthly SSI benefit may be deposited in an ABLE Account as regular monthly benefits are subject only to the representative payee's duty to spend the funds on the child in the child's best interests.

resource limits. There is no limit to the amount of resources that can be excluded as part of a PASS and these resources can include money set aside to pay for elements of the PASS such as training or items purchased as part of the PASS such as assistive technology devices."[20]

IDAs are "matched savings accounts that allow families and persons with low incomes to set aside money for education, the purchase of a home, or the creation of a business." In addition, "[m]oney saved in a qualified IDA, including the state contribution and any interest earned, is not counted as a resource for the purposes of determining SSI eligibility. There is no limit to the amount of money in an IDA that can be excluded from the SSI resource calculation. However, there are limits to the amounts states and other entities can contribute to IDAs."[21]

In the face of these alternatives, the Commonwealth should cease the practice of collecting benefits of foster care youth to offset its own financial obligations. In 2018, the state of Maryland passed a law, titled "Protecting the Resources of Children in State Custody" adopting similar reforms. Now in Maryland, when a foster youth turns 14, 40% of their Social Security benefits are put into a trust account. At age 16, at least 80% of funds must be conserved, and 100% when they turn 18. When they leave foster care, they receive these funds.[22] It appears that other jurisdictions also decline to collect all SSA benefits of foster care and apply them to the expenses of child welfare agencies and others are re-assessing or revising their current policies.[23] Maryland also requires that any money collected by its child welfare agency be spent on "services for special needs not otherwise provided by the Department" or conserved for future needs through tools such as PASS or ABLE accounts, and that the child and their attorney receive an annual accounting, and that the child receive financial literacy training after attaining the age of 14 years. Md. FAMILY LAW Code Ann. § 5-527.1 (c)(1) and (3) through (6).[24]

---

[20] Moulta-Ali et al., *supra*, at 29. DCF should also reach out to the Work Incentives Planning and Assistance (WIPA) programs to obtain work and benefits counseling for youth in their care. Pursuant to the Workforce Innovation and Opportunity Act (WIOA), the WIPA programs prioritize transition age youth.

[21] *Id*.

[22] Md. FAMILY LAW Code Ann. § 5-527.1; Shapiro, *supra* (May 3, 2021). See also Daniel L. Hatcher, "States Diverting Funds from the Poor" excerpted from *Holes in the Safety Net: Federalism and Poverty* (ed. Ezra Rosser) Cambridge University Press 2019, available at https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=2102&context=all_fac, p. 155-157.

[23] See e.g.., West's Ann.Cal.Welf. & Inst.Code § 13750-57 (revised screening saving and workgroup requirements). As of the date of this submission, we have not been able to identify an exact number of states which utilize SSI benefits for their own purposes. Much of the published information on this topic is contradictory and unclear. As discussed below, NPR found that 36 states engage in this practice. The Congressional Research Service report from November 23, 2021 indicated this could be as many as 38 states; however, the practices are not likely to be uniform in scope. Congressional Research Service, *Children in Foster Care and Social Security Administration Benefits: Frequently Asked Questions* (November 23, 2021) available at https://sgp.fas.org/crs/misc/R46975.pdf, p. 25-26.

[24] Available at https://casetext.com/statute/code-of-maryland/article-family-law/title-5-children/subtitle-5-child-care-foster-care/part-iii-child-welfare-services-foster-care/section-5-5271-protection-of-resources-of-child-in-state-custody#:~:text=Download-,Section%205%2D527.1%20%2D%20Protection%20of%20resources%20of%20child%20in%20State,the%20custody%20of%20the%20Department

DCF should adopt processes to conserve Social Security benefits for foster children. In doing so, DCF should not wait until a foster youth turns 14 to begin saving their benefits, and should instead do so immediately, regardless of the child's age. For children in foster care, DCF is acting as a proxy for parents who otherwise would have retained custody, Ideally, resources permitting, parents of children with disabilities should obtain ABLE accounts at the earliest possible time in order to save for their child's transition to adulthood. DCF should hold itself to no lesser standard.[25]

Currently, DCF's sub-regulatory policy, "SSI and RSDI Child Benefits Policy," Policy # 84-007, available at https://www.mass.gov/doc/ssi-policy/download has detailed provisions concerning the management of SSA benefits of foster youth, but none addressing the child's interest in conserving benefits for the transition to adulthood. The policy does not even mention ABLE accounts and discusses the SSI asset limit only in the context of the need to "spend down" assets to avoid breaching the limit. No doubt this is large part because there are fewer benefits to conserve after the foster care child's benefits are applied to DCF's own financial obligations.[26]

a. Decide that taking foster youth's Social Security benefits does not follow the letter or intent of state law.

M.G.L c. 119, § 23 addresses among other issues, the "[r]esponsibility of [the] department to provide foster care for children".[27] Importantly, subsection (a) states, "[t]he department shall have the responsibility, including financial responsibility, for providing foster care for children *through its own resources or by use of appropriate voluntary agencies,* according to the rules and regulations of the department" (emphasis added).[28] The language is significant in two respects. First, it assigns to DCF the "financial responsibility" for paying for the cost of foster care, an obligation it already carries under federal law. Second, by enumerating the sources of revenue permitted to satisfy this obligation -- DCF's "own resources" or "appropriate voluntary agencies" without more expansive language (e.g., "such as" or "including") -- it is reasonable to assume that other potential sources of revenue were not contemplated or authorized by the legislature.

---

[25] Another option would be for DCF to cap its own compensation from SSA benefits at 33% of the benefit amount and to retain the balance as short and long term savings for the foster care youth. See Ian Marx, *Reforming Foster Care's Social Security Benefits System*, Building the Path Forward For Change in the Child Welfare System, Congressional Coalition on Adoption Institute, July 2021, available at https://s3.amazonaws.com/ccai-website/Building_the_Path_Forward_-_2021_Report.pdf, p. 36.

[26] DCF pays a stipend of approximately $897.30 per month to a foster parent for care of a foster child 13 years or older, not including a clothing allowance and other incidental expenses.

[27] M.G.L c. 119, § 23.

[28] M.G.L c. 119, § 23(a). Compare this, for example to Nebraska's statute which provides that its child welfare agency "shall take custody of and exercise general control over assets owned by children under the charge of the department." Even operating under this language, Nebraska's child welfare agency sets aside $1,000 from the benefits of each foster child to forward to them at age 19 when they leave the system. https://omaha.com/news/state-and-regional/govt-and-politics/nebraska-among-states-claiming-social-security-owed-to-foster-kids/article_faf5d4f6-c306-11eb-a542-d705c371d6f2.html.

Certainly, had the General Court intended to direct the agency in this manner, it was capable of drafting language to that effect. Later in this same statute, there are instances enumerated where the Commonwealth may reimburse itself specifically from the funds of the child. For instance, in subsection (d), which concerns paying funeral expenses for a deceased child who was in its care, it states "[t]he commonwealth shall have the right of reimbursement from whatever resources may exist in the estate of the child."[29]

The text of § 23 indicates that DCF has been assigned total financial responsibility for children in its care, except in fairly narrow exceptions detailed later in the statute. Yet DCF's current regulations, , 110 C.M.R. §4.00, and specifically 4.08B, 4.08C, and 4.09(1)(b), contradict this statutory language. Section 4.08A, "Fees for Voluntary Substitute Care Services,"[30] perhaps seems like one of the enumerated exceptions from M.G.L. c. 119, § 23, which contains the language "or by use of appropriate voluntary agencies."[31] Yet 4.08B refers to "Fees for Nonvoluntary Substitute Care Services,"[32] 4.08C refers to "Fees for All Services Other Than Substitute Care",[33] and 4.09(1)(b), the most relevant provision, describes how, when DCF becomes the representative payee of a child in its care, it will absorb the vast majority of the child's Social Security benefits -- 90% -- to "reimburse the Department for the cost of the entitled child's care."[34]

This regulatory practice of DCF reimbursing itself conflicts with the spirit if not also the letter of the statute. Regardless of whether DCF should ever be able to compensate itself for services rendered to foster children through their Social Security Administration benefits, the statute enumerates instances where the MA legislature believed this was permitted. For nonvoluntary and other services, this is not enumerated. The legislature chose not to include such instances among their exception to the overall tenet that DCF ultimately has financial responsibility for support of foster children.

b. Recognize that children who age out of foster care are at increased risk of homelessness and need continued support. Allowing them to retain their Social Security benefits is better for them, DCF, and the Commonwealth.

While over a quarter of jurisdictions choose not to do so, The Marshall Project and NPR found that:

> in at least 36 states and Washington, D.C., state foster care agencies comb through their case files to find kids entitled to these benefits, then apply to Social Security to become each child's financial representative, a process permitted by federal regulations. Once

[29] M.G.L c. 119, § 23(d).
[30] 110 C.M.R. 4.08A.
[31] M.G.L c. 119, § 23(a).
[32] 110 C.M.R. 4.08B.
[33] 110 C.M.R. 4.08C.
[34] 110 C.M.R. 4.09(1)(b). DCF's regulation imposes a $2,000. cap on accumulation of personal needs allowance (PNA) funds, even if the funds originate solely from **T**itle II Dependent/Survivors' benefits or the Veterans' Administration and are not subject to a federal $2,000. cap.

approved, the agencies take the money, almost always without notifying the children, their loved ones or lawyers.[35]

Their reporting also detailed the harrowing stories of six children raised in foster care who had their benefits taken without their knowledge.[36] For instance, Jaime, a talented musician who played classical cello, experienced the murder of his mother by his father. Since this deeply traumatic event, not only did he lose his cello and could not afford another one, but "he could hardly afford to eat."[37] Yet the Alaska's Office of Children's Services had taken over $20,000 in survivors' benefits from him. His and the five other stories of former foster youth are from Alaska, a state where currently there is an appeal of a class action lawsuit involving more than 250 current and former foster youth "demanding that the state pay their Social Security money back."[38]

Children who age out of foster care are especially vulnerable. Among other hardships, they are foreseeably susceptible homelessness. Jodi Rosenbaum Tillinger is founder and CEO of More Than Words, a Massachusetts "nonprofit social enterprise that empowers youth who are in the foster care system, court involved, homeless, or out of school to take charge of their lives by taking charge of a business."[39] On October 25, 2021, she submitted written public testimony to the Joint Committee on Children, Families, and Persons with Disabilities, in support of S.85/H.248, legislation "to provide residential or custodial services to ensure positive transitions for at-risk youths."[40] To accompany this, she included compelling testimony from Jacob and Janaya, former foster children who were helped by More Than Words.[41]

In Jacob's testimony, he described how he would have aged out of foster care, but he signed on to remain with DCF when he was 18. Yet, when only a couple months later he was arrested for the first time in his life, DCF cut off all services. He was at perilous risk of homelessness and had to couch surf. Jacob stated that "[b]etween 30-50% of our homeless youth population is coming straight out of DCF. And we know that nationally, nearly 80% of adults in prison were once in foster care."[42] Janaya, in her testimony, details how she was also at serious risk of becoming homeless when she turned 18 because DCF was anxious to close her case. With the help of More Than Words, she was able to continue pursuing her goals and is now a 20-year-old college student.[43]

---

[35] Hager and Shapiro, *supra.*
[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] More Than Words (2018), available at https://mtwyouth.org/.
[40] *MA H248 | 2021-2022 | 192nd General Court*, Legiscan, available at https://legiscan.com/MA/bill/H248/2021.
[41] Jodi Rosenbaum Tillinger, *Testimony in support of S85/H248*, More Than Words (Oct. 25, 2021) (on file with the author).
[42] Jacob, *Testimony in support of S85/H248*, More Than Words (Oct. 25, 2021) (on file with the author).
[43] Jayana, *Testimony in support of S85/H248*, More Than Words (Oct. 25, 2021) (on file with the author). For additional adverse outcomes for foster care youth, including health and behavioral health issues, see the Social Security Advisory Board Statement available at https://www.ssa.gov/oact/ssir/SSI14/SSAB_Statement.html, p. 3-4.

What both harrowing and inspirational stories like these tell us is that children in foster care need our support. This does not end when they turn 18. And just because a child has been arrested or has had difficulty in school does not mean that they should live in a society where there is "a child welfare cliff with youth falling into homelessness" as Jacob wrote in his testimony.[44] Foster youth need supports and a safety net for when they begin independent living, something so many youth who have never been in foster care take for granted. For young people with disabilities, the problem is even more acute. This is why benefits that are rightfully theirs must be conserved, so that they do not risk the perils of homelessness.

Not only are these outcomes terrible for the foster youth who experience them, but they are bad for state government as well. The irony is that, while states may take this money to pay itself for foster care agency and other state obligations, it costs the state more later and in the long run to provide these youth with proper support -- especially those who age out. Melanie Delgado, Staff Attorney at the Children's Advocacy Institute, and fellow authors, described this as follows:

> Moreover, the poor outcomes of foster youth are costly to states. One analysis estimated that the cost of each annual cohort of youth aging out of the foster care system is approximately $5.7 billion; these costs come in the form of lost earnings (and thus lost revenues), criminal justice system expenditures, and unplanned pregnancy expenses such as government cash assistance and health programs. On an individual level, each foster youth who drops out of high school costs the public sector $209,100 over a lifetime due to lost wages and greater need for public support services.[45]

Providing a financial safety net to foster care youth who age out of DCF services provides resources that will those youth with support that parents would otherwise provide: shelter, stability, vocational or college education, health needs, transportation and funds for addressing emergencies and unexpected expenses.

i. Income and Expenses for the Care of Foster Children with SSA Benefits in DCF Custody.

DCF estimates costs for 13+ year old youth in foster care, in the form of a daily stipend of $29.91 or $897.30 per month.[46] To compensate itself for this expense, DCF uses its authority as representative payee for the foster youth recipient and applies as much as 90% of the SSI benefits towards their own costs.

---

[44] Jacob, *supra*.
[45] Melanie Delgado et al., *supra*, at 4.
[46] https://www.mass.gov/service-details/resources-for-foster-parents

In 2022, the maximum SSI federal benefit rate (FBR) is $841 per month.[47] The amount may be reduced by one-third, to $560.67, if the foster youth lives in a "household of another" and is not paying a pro rata share. In addition to the FBR, the recipient will receive a state supplement program (SSP) benefit. The full amount is $114.36, which is reduced to $87.56 for those in the household of another, and $30.40 for those with shared expenses. The maximum benefit then, is $955.36 ($841 + $114.36). This amount exceeds the monthly payment of approximately $897.30 paid to the foster family. DCF's policy provides that "No disbursement to the Department will exceed the actual costs of the child's care and maintenance."[48] However, it is not clear that the difference between SSI benefits and stipends paid to foster families is being saved for the benefit of the foster youth.

As noted above, a foster youth may receive Title II Dependent/Survivor's benefits as a minor child of a parent who is receiving SSDI or SSA Retirement benefits - or who has died with insured status under Title II. This amount is often less than the full FBR for SSI. While the average monthly benefit for SSDI is $1282, the amount will be a smaller amount for the dependent, and if there are multiple dependents, the amount will be divided between them.[49]

Since Title II Dependent/Survivor's benefits for foster care youth are likely to be smaller than the SSI FBR, Title II benefits alone are less likely to present the scenario of income of the foster youth that exceeds DCF payments to the foster family. However, when the foster care youth qualifies for SSI on the basis of their own disability, it is possible that the foster care youth may receive both SSI and Title II Dependent/Survivor's benefits.[50] In this case, it would again be necessary for DCF to account for, and preserve, the difference between the total benefits it collects on behalf of the child as their representative payee, and the amount DCF pays out to the foster care family in monthly stipend expenses.

ii. Reconciling Title IV-E Maintenance Payments, Other Federal and State Funds, and SSA Benefits.

[47] The maximum amount will be reduced by the beneficiary's countable income, of any. In addition, the SSI benefit amount may be reduced depending on the beneficiary's living arrangement.
[48] https://www.mass.gov/doc/ssi-policy/download p. 2.
[49] When the parent is alive, the dependent benefit is limited to an amount calculated on top of the parent's primary insurance amount (PIA) for dependents (a rough estimate is about 50%) and further limited if other dependents are also eligible. If the parent has died, the parent's benefit amount is included in the family maximum on which eligible survivors can draw, up to the amount allowed for their class of benefit. The amount of the child's benefit will depend on the wage/work history of the parent (which determines the PIA), the number of dependents drawing on the parent's wage record, and whether the parent is alive or deceased.
[50] If the child meets the child disability standard and if the amount of the Title II Dependent/Survivor benefit (less a $20 unearned income disregard) is less than the amount of SSI the child is eligible to receive, then the child could receive SSI in the amount of the difference between the child's SSI maximum payment amount and the countable amount of the Title II benefit - plus the relevant SSP.

DLC would like to discuss with the Department whether it collects both SSI and Foster Care, Prevention, and Permanency Title IV-E payments[51] for the same foster youth, and whether Title IV-E reimbursement is done on a child-by-child basis or only in general terms using the Department's penetration rate. We also seek clarification as to the extent to which DCF uses Title IV-E administrative funds, or other federal or state funds to help cover its costs for foster care youth who receive or who are eligible to receive SSI. As one news report noted, "Nationwide, foster care agencies are funded through a complicated web of federal and state grants and subsidies, paid for by taxpayers."[52] When DCF collects federal and state funds to cover the costs of care for a foster care child, out of fairness it should not then collect SSA benefits to cover the same or similar expenses. Also, to the extent DCF is collecting SSA benefits, they must be used directly for the recipient's benefit, and must not be swept into the General Fund.

If DCF could collect both SSI and Title IV-E maintenance payments, the state would benefit by taking advantage of federal FMAP reimbursement.[53] However, our understanding that is that this is generally not possible. Title IV-E maintenance payments are countable as income to a SSI child in foster care, although other types of IV-E benefits are not.[54] Presumably, it is possible for DCF to cover the costs of foster care by using other federal funds, such as IV-E administrative funds which may be collected simultaneously with SSI. See Congressional Research Service, *Children in Foster Care and Social Security Administration Benefits: Frequently Asked Questions* (November 23, 2021) available at https://sgp.fas.org/crs/misc/R46975.pdf, p. 21-22; p. 25 n. 117. By avoiding IV-E maintenance funds, which may be considered countable income for SSI purposes, and instead using non-countable federal and state sources of revenue, the full amount of SSI benefits could be preserved in ABLE accounts for the age of transition.

This issue likely arises for less than half of the Department's SSI recipients. It is estimated that 60% are not eligible for Title IV-E maintenance support. (Many or all of these

---

[51] Hereafter, "Title IV-E."

[52] https://www.npr.org/2021/04/22/988806806/state-foster-care-agencies-take-millions-of-dollars-owed-to-children-in-their-ca

[53] States and tribes operating a IV-E program are required to provide foster care maintenance payments and adoption assistance payments to eligible children, and the federal government is obligated to reimburse them for a part of the cost of those payments." Federal Medical Assistance Percentage (FMAP) Increase for Title IV-E Foster Care and Permanency Payments (Feb. 16, 2021), available at https://www.everycrsreport.com/reports/IN11297.html. For Massachusetts this rate is currently 56.20%." *Federal Medical Assistance Percentage (FMAP) for Medicaid and Multiplier*, Kaiser Family Foundation (website maintained as recently as 2021), available at https://www.kff.org/medicaid/state-indicator/federal-matching-rate-and-multiplier/?currentTimeframe=0&soreverycrtModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D. As we understand it, reimbursement may further depend upon the penetration rate.

[54] See e.g., SSA POMS SSA - POMS: SI BOS00830.410 - Verification of Title IV-E Payments to Children in the Custody of the Massachusetts Department of Children and Families (DCF) (TN 5-264 - 11/2017) - 04/09/2021 and POMS provisions cited therein. For a discussion of different types of IV-E funding, see Social Security Advisorty Board Statement available at https://www.ssa.gov/oact/ssir/SSI14/SSAB_Statement.html, p. 2.

Our understanding is that other federal sources of revenue such as Social Service Block Grants (SSBG) are also not countable.

youth will be from families who were not eligible for Temporary Assistance for Needy Families (TANF) benefits.) Finally, as to Title II Dependent/Survivor's benefits, Title IV-E maintenance benefits and other federal and state benefits do not count against a child's Title II benefits. Therefore, for Title IV-E eligible youth, Title II benefits could be conserved in savings accounts (even without ABLE accounts) to assist with the transition to adulthood, while the Department uses Title IV-E and other federal and state dollars for foster care costs.

2. Automatically screen all children in DCF's care to see if they are eligible for SSI or Title II Dependent/Survivors' Benefits.

Screening children in foster care to see if they are eligible for benefits is a very important aspect of planning for their well-being. The reports we have received anecdotally are that DCF does not engage in universal screening practices. Besides the financial benefits themselves, determining eligibility serves a number of other purposes. As the Congressional Research Service (CRS) described:

> Screenings by child welfare staff can help to determine an individual child's needs and to secure extra benefits and services not normally available in foster care, such as housing modifications [….] [A] child's eligibility for SSI or another Title II Social Security benefit[55] may extend beyond his/her stay in foster care, and the benefit could provide crucial support for the child outside the system. (For instance, the benefit could offset the cost of therapeutic care to the families of children who leave care due to adoption or reunification.) [….] Children in foster care may also gain from screenings because presumably, the child welfare agency would go on to help the child apply for benefits and appeal any decisions regarding the benefits. For children who receive benefits, they would continue to receive the benefits even after leaving care (assuming they are under the age of 18), and upon reaching the age of 18, SSA would automatically review their cases to determine if they meet the SSI disability standard for adults. Receipt of SSI can also be beneficial because most recipients are automatically eligible for certain other federal (and state) benefits, including Medicaid.[56]

DCF must take responsibility for screening foster children for eligibility regardless of whether it takes the benefits for agency use. DCF has a fiduciary duty to the child under both state and federal law. As Professor of Law Daniel Hatcher noted:

> Under state laws, child welfare agencies exist to serve and protect the best interests of abused and neglected children, establishing a fiduciary obligation. Further, the agencies assume an additional layer of fiduciary obligation under federal law when they become representative payees for children's Social Security benefits. Under the core [tenet] of fiduciary law, child welfare agencies must act in the best interests of their beneficiaries (the children) and can never use the fiduciary power to prioritize their own interests over

[55] The other Title II benefits referred to here are dependent/survivor benefits as a child of a wage earner which may continue after age 18 if the child themselves meets the adult disability standard.
[56] *Id*. at 22-23.

the interests of the children. The agencies violate their fiduciary obligations when they take control over foster children's Social Security benefits and use those benefits for agency/state interests rather than for the children.[57]

An integral part of DCF fulfilling its fiduciary duty to children under its care is determining their eligibility for Social Security benefits.

3. **Provide notice to a child and their guardian, attorney, or other interested family member or adult, when DCF has been named their representative payee, and continue providing monthly notice should the child's benefits continue to be used by the Department.**

DCF must provide notice to a child and their guardian, attorney, or other relatives or interested adults, when they have petitioned to become the child's representative payee, and regular notice on its significance (i.e. a monthly report on how much money they are taking). While the Supreme Court in *Keffeler* did not address this issue, the Maryland Supreme Court in the 2013 decision *In re Ryan* found children in foster care and their lawyers have a due process right to notice when a foster care agency has applied to be representative payee, and if this application is successful, before they are deprived of property, in accordance with the 14th Amendment.[58] In addition, foster care agencies must "provide regular accountings of how the money is used."[59] "After receiving notice, foster children can challenge the appointment of the foster care agency as their representative payees and request a different payee that will truly protect their interests."[60]

At a bare minimum, DCF must notify these children when it has applied to be their representative payee (and whether or not this application was successful) and provide notice as to how benefits are being used and offer further opportunity to find a more suitable payee. We believe this is necessary to comply with due process and principles of fundamental fairness. Notice should be given so that potential objections and appeals can be made, and should be explained to the child. Under SSA's regulations, 20 C.F.R. § 416.630,[61] the minor child has an independent right to appeal the decision. For this reason, when DCF receives these notices as legal guardian it is important that this information be shared with the foster youth repeatedly and that DCF provide assistance in exercising their right to appeal, should they wish to do so.

[57] Hatcher (2019), *supra*, at 109.
[58] *In re Ryan W.*, 434 Md. 577 (2013); Hatcher (2019), *supra*, at 110.
[59] *Id.*
[60] *Id.* See generally https://www.themarshallproject.org/2021/04/22/were-you-ever-in-foster-care-here-s-how-to-find-out-if-the-government-took-your-money
[61] Available at https://www.ssa.gov/OP_Home/cfr20/416/416-0630.htm.

4. **Share data openly with the Social Security Administration (SSA) and take a proactive position in finding a more suitable representative payee than DCF. If a child's benefits continue to be taken, document exactly how the funds are being used for that child's unique and specific needs, as opposed to for DCF generally, or for the general state budget.**

The need for sufficient notice involves an equally important issue: ensuring that the child has a suitable representative payee. Foster care agencies are listed last, or next to last, on SSA's list of ideal representative payees. See e.g., 20 C.F.R.§ 416.621. Once an agency is assigned representative payee, there is a legal duty under federal law to continue looking for more suitable people to assume this role. Section 103(a) of the Strengthening Protections for Social Security Beneficiaries Act of 2018 requires SSA to "enter into agreements with states to share and match child welfare and SSA data on a monthly basis," to identify represented minor beneficiaries who are in foster care, and for beneficiaries "whose foster care arrangements have changed, [to] redetermine the appropriate [payee]."[62]

The obligation is similar under Massachusetts law. M.G.L. c. 119, § 23(c) describes the role of DCF to search for any relatives "or other adult person who has played a significant positive role in that child's life".[63] While this applies to placement, and not being assigned as representative payee, it still stresses the preference for virtually anyone other than a foster care agency serving as caretaker to look after the child's well-being.

Importantly, the Strengthening Protections for Social Security Beneficiaries Act also includes "a provision for [the Government Accountability Office] to evaluate the number of represented minor beneficiaries in foster care under the responsibility of a state, and for those beneficiaries, the type of representative payee *and how the Social Security funds were used*" (emphasis added).[64] Unfortunately, while "[t]he [SSA] conducts regular oversight of state foster care agencies that obtain kids' benefits [….] the Office of the Inspector General for the [SSA] has found in at least four reports that this oversight is inconsistent, resulting in young people's savings being spent in ways that do not benefit them."[65]

A critical part of finding a more suitable representative payee involves data transparency, especially with SSA. However, many states, including we believe Massachusetts, do not share

---

[62] The Honorable Ron Wyden et al., *Social Security Administration: New Data Exchanges with Some States Provide Limited Information on Foster Care Beneficiaries*, U.S. Government Accountability Office 1, 1-2 (June 3, 2021), available at https://www.gao.gov/assets/gao-21-441r.pdf.

We acknowledge that representative payment is an SSA rule, and It is SSA who decides whether a beneficiary needs a payee and who that payee will be. SSA may provide some leads on potential payees but they do not assign payees from a payee pool. A person or an agency must apply to be a beneficiary's payee. Multiple organizations or individuals may apply at the same time or seriatum. It is SSA's job to decide who is best situated to use the beneficiary's SSA benefits in the beneficiary's best interests. That said, DCF could certainly be alert to youth approaching age 18 who could be their own payees and provide management skills to the individual or to an appropriate family or other community payees to that end, and could encourage others to apply to become representative payees.

[63] M.G.L. c. 119, § 23(c)

[64] Wyden et al., *supra*, at 14.

[65] Hager and Shapiro, *supra.*

data with SSA regarding children in their care to whom the agency has been assigned representative payee.[66] This makes it seemingly impossible for SSA to know if efforts are continuing to be made to find a more suitable representative payee. It also, importantly, means that one cannot know if the money being collected from these children is going towards enhancing their individual care, or even going to the agency at all.

Representative payees who receive SSI or Title II Dependent/Survivors' Benefits on behalf of a child have a fiduciary duty to use these funds in the best interest of that child. Taking a child's money while not tracking and ensuring it is being used for that specific child and their specific needs is arguably inconsistent with this fiduciary duty.

5. **Adopt universal screening for eligibility for adult SSI and adult Title II Dependent/Survivors' benefits and provide assistance and support to foster care youth in applying for these benefits.**

It is important for DCF to screen universally foster care youth for possible SSI eligibility, or Title II Dependent/Survivors' benefits eligibility as a disabled adult, as they approach age 18. The SSI application process may take place 180 days before the child's 18th birthday.[67] However, we have been unable to identify any Department policy that requires DCF to assist with the application process for these adult benefits before a child leaves the oversight of the Department.[68] Assuming this is correct, such a policy should be developed by DCF.

***

DCF should save, rather than spend, the benefits of foster care children, retaining these resources to assist with their transition to adulthood. This supports foster care youth, benefits the state, and serves DCF by instilling more trust in our institutions. It is the right thing to do, from a legal, moral, and practical perspective. We urge you to adopt policies equal to or stronger than those now in place in the State of Maryland.

DLC formally requests an opportunity to meet with DCF officials, in partnership with other nonprofit stakeholders and foster care youth, to work towards building a better solution for all interested parties. Please let us know if DCF would be willing to do so.

---

[66] Wyden et al., *supra*, at 5.

[67] See SSA POMS DI 25202.011 https://secure.ssa.gov/poms.nsf/lnx/0425201011 See also https://www.ssa.gov/policy/docs/ssb/v73n3/v73n3p53.html, a SSA policy memo which discusses the vulnerability of foster care youth after transition and the importance of SSA benefits in mitigating risk factors.

[68] New York state, for example, requires that SSI applications be filed by their department at least 90 days before transition. See https://ocfs.ny.gov/main/policies/external/OCFS_2010/10-OCFS-ADM-04%20Filing%20SSI%20Applications%20for%20Disabled%20Youth%20Transitioning%20Out%20of%20Foster%20Care.pdf p. 4.

We look forward to hearing from you. Thank you for the opportunity to comment through this RFI.[69] [70]

Dated: January 13, 2022

Sincerely yours,

Rick Glassman
Director of Advocacy
Disability Law Center, Inc.
11 Beacon Street
Suite 925
Boston MA 02108
www.dlc-ma.org
rglassman@dlc-ma.org
Direct phone/fax/text: 617-315-4606

[69] Please also note our support for the RFI comments submitted by the MA Child Welfare Coalition, in which DLC also participates.

[70] DLC gratefully acknowledges the assistance of Jonathan Barlam in the research and preparation of these comments.