UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, DC 20202

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TO: State Directors of Career and Technical Education

FROM: Johan E. Uvin, Acting Assistant Secretary for Career, Technical, and Adult Education

SUBJECT: Questions and Answers Regarding the Implementation of the Carl D. Perkins Career and Technical Education Act of 2006 – Version 4.0

The Office of Career, Technical, and Adult Education (OCTAE) of the Department of Education (Department) issues this guidance to provide States with further information to implement the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV). The information included in this guidance document addresses the questions submitted to our office by State career and technical education directors and their staffs since the third round of questions and answers was published in May 2009. The questions, with the exception of a new section (Section J) regarding special populations, are organized into the sections we used in *Questions and Answers Regarding the Implementation of Perkins IV: Versions 1.0–3.0*, which are available at: http://cte.ed.gov/perkinsimplementation/nrg.cfm under the "Q & A's" tab.

The purpose of this guidance is to provide information on career and technical education programs funded under Perkins IV. The guidance provides the Department's interpretation of various statutory provisions and does not impose any requirements beyond those included in Perkins IV and other applicable laws and regulations. It does not create or confer any rights for or on any person. Unless otherwise noted, all references to Title I in this document refer to Title I basic grant awards under Perkins IV. Further, this guidance is not assigned an Office of Management and Budget (OMB) control number under the Paperwork Reduction Act of 1995 (44 U.S.C. § 3507(d)) because it is not intended as an information collection instrument. Therefore, you are not required to respond to this memorandum or the attachment as an information collection.

The Department will provide additional or updated program implementation guidance under Perkins IV as necessary. If you have comments or questions regarding the guidance, please contact Dr. Edward R. Smith, Chief, Program Administration Branch, at Edward.Smith@ed.gov or (202) 245-7602.

Enclosure

Questions and Answers Regarding the Implementation of the Carl D. Perkins Career and Technical Education Act of 2006 – Version 4.0

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A. STATE PLANS

Note: Questions A.1—A.11 pertaining to Perkins IV State plans were answered in the non-regulatory guidance memorandum entitled Questions and Answers Regarding the Implementation of Perkins IV – Version 1.0, which was issued on January 9, 2007.

A.12 Is a State required to hold public hearings each time the State changes its State Plan or only if the change is significant?

Section 122(a)(3) of Perkins IV, 20 U.S.C. § 2342(a)(3), requires a State to conduct public hearings to give "all segments of the public and interested organizations and groups (including charter school authorizers and organizers consistent with State law, employers, labor organizations, parents, students, and community organizations)" an opportunity to comment on its proposed State plan. The Department's regulations require a State to use the same procedures for "amendments" to a State plan as it uses to prepare and submit the original State plan. 34 CFR § 76.141. Consequently, a State must hold public hearings each time the State amends its State plan, without regard to whether the amendment is significant.

Under 34 CFR § 76.140, a State must amend its State plan if the Secretary determines that an amendment is essential during the effective period of the plan, or if the State determines that there is a "significant and relevant" change in: (1) the information or the assurances in the plan; (2) the administration or operation of the plan; or (3) the organization, policies, or operations of the State agency that received the grant, if the change materially affects the information or assurances in the plan. An example of a change that would be an "amendment," thus necessitating public hearings, would be a change in applicable State legal requirements to reassign to a different State board the duties of the eligible agency (State board) for the State's Perkins IV grant, as defined in section 3(12) of Perkins IV, 20 U.S.C. § 2302(12). Another example would be a first-time reservation of funds under section 112(c) of Perkins IV, 20 U.S.C. § 2322(c).

However, the Department has distinguished between an "amendment" and other changes to a State plan, such as a "revision." Consistent with section 122(a)(2) of Perkins IV, 20 U.S.C. § 2342(a)(2), it is the Department's long-standing interpretation that public hearings are not necessary when a State wishes to make a "revision," which would include minor, technical, or editorial revisions to its State plan. An example of a "revision" would be a new annual budget from a State that reflects the same percentages for each budget category as contained in its approved State plan, that is, a budget that retains the approved percentages but provides the dollar amount of each percentage based on the State's allocation for its new Perkins IV grant.

A.13 How many programs of study must a State offer?

A State must offer at least two programs of study. Section 122(c)(1)(A) and (B) of Perkins IV, 20 U.S.C. § 2342(c)(1)(A) and (B), use "programs of study" in the plural in requiring a State plan to include a description of: (1) the career and technical programs of study, which may be adopted by local educational agencies (LEAs) and postsecondary

institutions; and (2) how the eligible agency will develop and implement the career and technical programs of study, respectively.

A.14 Is the State, itself, required to develop programs of study?

Section 122(c)(1)(B) of Perkins IV, 20 U.S.C. § 2342(c)(1)(B), requires the eligible agency to describe in its State plan how it, "in consultation with eligible recipients, will develop and implement the career and technical education programs of study" described in section 122(c)(1)(A) of Perkins IV, 20 U.S.C. § 2342(c)(1)(A). Through this consultative development process, the eligible agency may choose to identify and adopt programs of study that were originally developed by one or more eligible recipients. The eligible agency is not required to develop a program of study independently and unilaterally, without the input of eligible recipients.

B. ACCOUNTABILITY

Note: Earlier questions pertaining to Perkins IV accountability were answered in the non-regulatory guidance memoranda entitled Questions and Answers Regarding the Implementation of Perkins IV – Version 1.0 (questions B.1 – B.28), Questions and Answers Regarding the Implementation of Perkins IV – Version 2.0 (questions B.29 – B.32), and Questions and Answers Regarding the Implementation of Perkins IV – Version 3.0 (questions B.33 – B.45).

B.46 What types of special conditions has the Department imposed in the grant award notifications (GANs) for States failing to meet the accountability benchmarks for three consecutive years?

The Department has imposed different types of conditions on States for failure to meet their State-adjusted performance levels for the core indicators of performance in section 113(c) of Perkins IV, 20 U.S.C. § 2323(c). From year to year, the Department reviews the States' performance and may make changes to the types of conditions that it imposes. However, generally, for a State that missed meeting at least 90 percent of the performance levels for the same core indicator for three consecutive years, the Department has required the State to submit quarterly reports on its progress in implementing its program improvement plan pursuant to section 123(a)(1) of Perkins IV, 20 U.S.C. § 2343(a)(1). For a State that failed to meet 90 percent of the performance levels for the same core indicator for four or five consecutive years, the Department has required the State to redirect its State administration or State leadership funds to more effectively carry out its program improvement plan. See section 112(a)(2) and (3) of Perkins IV, 20 U.S.C. § 2322(a)(2) and (3). For a State that failed to meet 90 percent of one or more performance levels for six consecutive years, the Department has required the State to redirect State administration or State leadership funds to those local eligible recipients that have missed the State-adjusted performance levels at issue. The Department has also offered customized technical assistance to these States under its Support to States national activities project.

C. DEFINITIONS

Note: All questions pertaining to Perkins IV definitions (C.1 – C.2) were answered in the non-regulatory guidance memorandum entitled Questions and Answers Regarding the Implementation of Perkins IV – Version 2.0, which was issued on June 7, 2007.

D. FISCAL CONSIDERATIONS

Note: Earlier questions pertaining to Perkins IV fiscal considerations were answered in the non-regulatory guidance memoranda entitled Questions and Answers Regarding the Implementation of Perkins IV – Version 1.0 (questions D.1 – D.14) and Questions and Answers Regarding the Implementation of Perkins IV – Version 3.0 (questions D.15 – D.27).

Monitoring

D.28 Now that the Risk Management Service (RMS) has participated in monitoring visits with OCTAE staff, what can States expect going forward on the monitoring of Perkins IV fiscal issues?

RMS has participated in OCTAE monitoring of Perkins IV fiscal issues in three States on a pilot basis. RMS and OCTAE will assess the results of those visits to determine the future of enhanced fiscal reviews within the Perkins IV monitoring process.

Maintenance of Effort

D.29 What is the Perkins IV maintenance of effort (MOE) requirement?

In general, with respect to a State's grant under Title I of Perkins IV in any given fiscal year, a State must maintain its fiscal effort from the preceding year from State sources for career and technical education (CTE), compared with its fiscal effort in the second preceding year, unless the Department specifically waives this requirement. Section 311(b) of Perkins IV, 20 U.S.C. § 2391(b).

D.30 Must a State use the Federal fiscal year in calculating whether it has met the Perkins IV MOE requirement?

No. It is the Department's long-standing position that Congress intended to permit a State to use either the Federal fiscal year (FY) or its own program year (PY) for its expenditure periods when calculating its fiscal effort for CTE pursuant to the Perkins Act.[1] See, for example, 34 CFR § 403.182, implementing the Carl D. Perkins Vocational and Technology Education Act (Perkins II).

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[1] "Federal fiscal year" means a period beginning on October 1 and ending on the following September 30. See 34 CFR § 77.1. For example, FY 2014 is October 1, 2013 through September 30, 2014. The terms "program year" and "academic year" mean the twelve-month period during which a State operates its CTE program. See, for example, 34 CFR § 400.4, implementing Perkins II, which may be found at: http://www.gpo.gov/fdsys/pkg/CFR-2007-

D.31 What options does a State have for meeting the Perkins IV MOE requirement?

A State may meet the Perkins IV MOE requirement on either an "aggregate" basis or a "per-student" basis (section 311(b)(1)(A) of Perkins IV, 20 U.S.C. § 2391(b)(1)(A)).

A State may maintain effort on an aggregate basis by spending at least the same amount from State sources to provide CTE from one year to the next.

For example, a State spent $50,000,000 from State sources for CTE in FY 2012, compared to $49,000,000 that the State spent from State sources for CTE in FY 2011. Therefore, the State met the MOE requirement for its Perkins grant for FY 2013 (that is, the grant awarded on or after July 1, 2013 from funds appropriated in the FY 2013 Federal appropriation).[2] In this example, FY 2013 is the fiscal year for which the State is making its MOE determination, that is, the "determination year."

Calculation of MOE for FY 2013 Perkins Grant Met on an Aggregate Basis

	FY 2011	FY 2012
Non-Federal aggregate expenditures	$49,000,000	$50,000,000

Alternatively, a State may maintain effort on a per-student basis – even though it did not do so on an aggregate basis.

For example, in FY 2011, a State spent $50,000,000 from State funds to provide CTE to 300,000 students. In FY 2012, the State spent only $49,000,000 to provide CTE to 290,000 students. Even though the State's aggregate effort decreased by $1,000,000, the State's per-student effort increased from $166.67 per student to $168.97 per student. Therefore, the State met the MOE requirement for its FY 2013 grant.

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title34-vol3/xml/CFR-2007-title34-vol3-sec400-4. For example, a program year may begin on July 1 and end on the following June 30. We refer to fiscal year in this document because of differences from State to State in program year, for example, PY 2013-2014 may refer to July 1, 2013 through June 30, 2014 in one State but August 1, 2013 through July 31, 2014 in another. However, in the Department's experience, it appears that many States calculate their compliance with the Perkins MOE requirement based on their own program year.

[2] The Federal funds for the July 1, 2013 grant were available for obligation from July 1, 2013 through September 30, 2014. The Tydings Amendment extended the availability of these funds for a State to obligate for another 12 months through September 30, 2015. See section 421(b) of the General Education Provisions Act, 20 U.S.C. § 1225(b).

Calculation of MOE for FY 2013 Perkins Grant Met on a Per-Student Basis

	FY 2011	FY 2012
Non-Federal aggregate expenditures	$50,000,000	$49,000,000
Non-Federal per-student expenditures	$166.67	$168.97

D.32 What costs must a State include or exclude in its MOE calculations?

A State must include in its MOE calculation all State expenditures[3] that support activities that meet the definition of "CTE" in section 3(5) of Perkins IV, except for capital expenditures, special one-time project costs, and the cost of pilot programs. Section 311(b)(1)(B) of Perkins IV, 20 U.S.C. § 2391(b)(1)(B). A State must also exclude from its MOE calculation tuition and fees collected from students. 34 CFR § 76.534.

D. 33 What else should a State consider generally in its MOE calculations under Perkins IV?

A State must calculate MOE accurately and consistently. A State must use auditable data for expenditures and record costs with supporting documentation. If a State calculates MOE on a per-student basis, the State must have internal controls and procedures in place to ensure the accuracy of student enrollment data. A State must ensure that student enrollment counts are not duplicative.

D.34 How should a State generally document its MOE calculations under Perkins IV?

As a general matter, the Education Department General Administrative Regulations (EDGAR) at 34 CFR § 76.730 require a State to keep records to facilitate an effective audit, and 34 CFR § 76.731 requires a grantee to keep records to show its compliance with program requirements. EDGAR at 34 CFR § 80.42(b) requires a State that receives an annual grant, such as under Title I of Perkins IV, to maintain such records for three years after it submits its final expenditure report for the funding period. However, EDGAR at 34 CFR § 80.42(b)(2) requires that "[i]f any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later."[4]

[3] Generally, to decide which year to include in the State's MOE calculation, a State may follow the table for determining when an obligation occurs in EDGAR at 34 CFR § 76.707. For example, an obligation for personal services by a contractor who is not an employee of the State or subrecipient is made when the State makes a binding written commitment to obtain those services.

[4] Effective for new grants made by the Department on or after December 26, 2014, 34 CFR § 80.42(b) will be replaced by 2 CFR § 200.333(a) now that the Department has adopted the cost principles in the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* contained in 2 CFR Part

D.35 What internal controls does a State generally need to ensure that it will meet the MOE requirement for Perkins IV?

Generally, a State's internal controls should include written procedures that specify the calculation it will perform to determine its compliance with the MOE requirement for each year's Perkins IV grant. For example, these written procedures could include, among other things, the source documentation for the expenditures and student counts to be used in the State's MOE calculation, the schedule for the State to perform its MOE calculation (or interim calculation) for a Perkins grant, the name(s) of particular State staff responsible for providing the necessary expenditures and student counts, the name(s) of the particular State staff responsible for conducting the computation of the State's fiscal effort for CTE, and the name of the supervisor who will confirm the accuracy of the calculation. A State should maintain documentation in accordance with the requirements discussed in question D.34 above both to support its MOE calculation and to show that it implemented its internal procedures fully and on a timely basis.

D.36 Does a State have flexibility to exclude from its MOE calculation State funds spent by its subrecipients?

Yes, in some cases a State may exclude State funds spent by subrecipients, but the State must be consistent in what it includes and excludes. A State is not required to include State funds spent by a subrecipient if the subrecipient – not the State – has control over the amount of the State funds, if any, to spend on CTE.

For example, funds provided by the State as general education funding (i.e., funds not designated specifically or otherwise required to be spent for CTE) may be considered local expenditures, for which Perkins IV does not impose an MOE requirement.

However, a State must include in its MOE calculation any State funds spent at the local level to the extent the State imposes a requirement that subrecipients use those funds for CTE.

For example, if a State requires a subrecipient to spend particular State funds only for CTE, those funds must be included in the State's MOE calculation. Similarly, where a State requires a subrecipient to spend at least a certain percentage of particular State

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200, Subpart E, as regulations of the Department. See *Federal Awarding Agency Regulatory Implementation of Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards: Final Rule, 79 FR 75867 (December 19, 2014)*. Under 2 CFR § 200.333(a), "[i]f any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken." The new regulations in 2 CFR Part 200 do not affect grant funds awarded prior to December 26, 2014, unless funds made available under those grants are carried forward into a new Federal fiscal year or a continuation grant. Furthermore, the Department has established a portal on ED.gov that provides guidance regarding 2 CFR Part 200 and will respond to questions received through that site regarding those regulations. See http://www2.ed.gov/policy/fund/guid/uniform-guidance/index.html.

funds on CTE, that amount must be included in the State's MOE calculation. In either of these examples, the Department would expect the State to audit and otherwise monitor its subrecipients to ensure that they met the requirement to spend State funds for CTE.

D.37 What is the Department's authority to waive the Perkins IV MOE requirement?

Under Perkins IV, the Secretary may waive the statutory MOE requirement for a State for one year if: (1) the Secretary determines that a waiver would be equitable due to exceptional or uncontrollable circumstances affecting the State's ability to maintain fiscal effort; and (2) the State has decreased its expenditures for CTE from non-Federal sources by no more than five percent (section 311(b)(2) of Perkins IV, 20 U.S.C. § 2391(b)(2)). "Exceptional or uncontrollable circumstances" include, for example, a natural disaster or an unforeseen and precipitous decline in financial resources. The Department's long-standing interpretation is that tax initiatives or referenda are not "exceptional or uncontrollable circumstances." See, for example, 34 CFR § 403.183(c), implementing Perkins II.

D.38 How does a State seek a waiver of the Perkins IV MOE requirement?

A State seeking a waiver of the Perkins IV MOE requirement under section 311(b)(2) of Perkins IV, 20 U.S.C. § 2391(b)(2), should submit a request for a waiver to the Assistant Secretary for Career, Technical, and Adult Education (Assistant Secretary), who has delegated programmatic authority from the Secretary to approve or disapprove such waivers.

D.39 What must a State submit with its request for a waiver of the MOE requirement?

The Department considers requests for waivers of the Perkins IV MOE requirement on a case-by-case basis. However, each State that has requested an MOE waiver in the past has submitted detailed documentation to demonstrate that its requested waiver would be "equitable due to exceptional or uncontrollable circumstances affecting the ability of the [State] to meet such requirements, such as a natural disaster or an unforeseen and precipitous decline in financial resources." See section 311(b)(2) of Perkins IV, 20 U.S.C. § 2391(b)(2). These requests have generally included the State's reason for the request, information that demonstrates a waiver is justified and would not exceed five percent of the amount that the State would otherwise be required to spend, and any additional information requested by the Assistant Secretary. For example, in the past, States have submitted specific information showing –

- The State's fiscal effort calculations for the appropriate years addressing the aggregate and per student bases for MOE;
- A description of the exceptional or uncontrollable circumstance giving rise to the MOE waiver request;
- State budgetary information addressing these exceptional or uncontrollable circumstances for the appropriate years in question, including whether the State's

budget reflects a disproportionate impact on the State's CTE expenditures compared to other educational programs or other State budget categories; and

- Any relevant independent or scholarly studies detailing these exceptional or uncontrollable circumstances.

D.40 How does a State meet the Perkins IV MOE requirement if the Department granted the State a waiver in the previous year?

If the Department approves a State's request for a waiver of the MOE requirement for a particular year's grant, the State must then compute its level of effort to determine if it has met the MOE requirement as if the waiver had not been granted for that year. This is done by comparing: (1) the amount spent for CTE from non-Federal sources in the first year preceding the determination year, and (2) the amount spent in the third year preceding the determination year. Section 311(b)(2) of Perkins IV, 20 U.S.C. § 2391(b)(2).

For example, exceptional or uncontrollable circumstances in 2012 prevented a State from maintaining its level of fiscal effort for its Perkins grant for FY 2013. In this example, (illustrated by the chart below), the State's fiscal effort for CTE in FY 2012 (the first preceding year) was less than its fiscal effort in FY 2011 (the second preceding year) on both a per-student and aggregate basis. The Secretary granted the State a waiver of the MOE requirement for the State's FY 2013 grant.

Example

Fiscal Year	Non-Federal Aggregate Expenditures	CTE Students	Non-Federal Per Student Expenditures
2014	$ 10,000,000	95,000	$105.26
2013	$10,000,000	95,000	$105.26
2012	**$ 9,500,000**	**95,000**	**$100.00**
2011	$10,000,000	95,000	$105.26

In the example, for the State to meet the MOE requirement for its FY 2014 grant (that is, the State's grant for the year subsequent to the year covered by the waiver), the State must compute its fiscal effort on the basis of the level of funding that would, but for the waiver, have been required. Therefore, to meet the MOE requirement for its FY 2014 grant, the State's expenditures for FY 2013 (the first preceding year) must equal or exceed its expenditures from FY 2011 (the third preceding year) on an aggregate or per-student basis, which is the level of funding that would, but for the waiver, have been required. Therefore, in this example, the State was required to expend $10,000,000 in State resources in FY 2013.

D.41 Does a State have to meet the MOE requirement if its Perkins IV grant decreases?

Yes, a State must meet the MOE requirement even if its Perkins IV grant decreases from one year to the next. However, the State's required level of fiscal effort, on an aggregate or per-student basis, is reduced by the same percentage as the decrease in the amount made available to the State for CTE programs under Perkins IV, that is, the amount of its Perkins IV grant. Section 311(b)(1)(C) of Perkins IV, 20 U.S.C. § 2391(b)(1)(C).

Example

Fiscal Year	Federal Funds	Decrease from preceding year	Non-Federal Expenditures	Decrease from preceding year
2014	**$ 4,500,000**	**-10%**	$ 9,000,000	0
2013	$ 5,000,000	0	**$ 9,000,000**	**-10%**
2012	$ 5,000,000	0	$ 10,000,000	0

In the example illustrated in the chart above, the State met the MOE requirement for its FY 2014 grant. Although the State's non-Federal expenditures decreased by ten percent in FY 2013 (the preceding year) compared to FY 2012 (the second preceding year), the State's Federal grant amount also decreased in FY 2014 (the year for which the MOE determination is made) by ten percent compared to FY 2013. Therefore, the State was allowed to decrease its fiscal effort level that would have been required for the preceding year (FY 2013) by the same percentage as the percentage decrease in the Federal funds.

D.42 If a State is experiencing difficulty with MOE calculations due to declining resources, what would you recommend the State do?

We strongly encourage any State that is experiencing difficulty with MOE calculations for any reason to contact its OCTAE program administration liaison to discuss whether it is correctly computing its fiscal effort on both aggregate and per-student bases and whether the State has any flexibility for addressing its specific issues, as illustrated by the response to question D.41 above.

Food at Conferences

D.43 What is the policy of the Department on States or eligible recipients using Perkins funds to pay for food at conferences where work or professional development is conducted over the lunch hour?

For guidance on the uses of Federal grant and subgrant funds for meetings and conferences, please see the Department's *Frequently Asked Questions on Using Federal Funds for Conferences and Meetings—December 2014*

Supplanting Prohibition

D.44 What are the most common types of supplanting issues that OCTAE staff finds during monitoring visits or reviews of Single Audits?

The Department relies on the Single Audit process to uncover instances of supplanting at the eligible recipient level. Our monitoring efforts for the Perkins programs tend to focus on State policies and procedures addressing supplanting. Although the circumstances in cases of supplanting vary on a case-by-case basis, the most typical cases of supplanting involve the shifts of salaries from non-Federal to Federal funding sources, or similar funding shifts for a particular program at the eligible recipient level.

Section 112(c) "Reserve" Funds

D.45 Are "reserve" funds awarded under section 112(c) of Perkins IV to an eligible recipient subject to the same Perkins IV performance requirements under section 113 as funds awarded to the eligible recipient under section 131 or 132?

Yes. The performance accountability requirements in section 113(c) of Perkins IV, 20 U.S.C. § 2323(c), apply to all CTE students in an eligible recipient's CTE program. Thus, an eligible recipient would negotiate only one set of performance levels with its State and report data for all of its secondary or postsecondary CTE students that meet its State's definition of "CTE participant" or "CTE concentrator."

Technical Skill Assessments

D.46 May an eligible recipient use funds awarded under Perkins IV to pay the fee for a student's technical skill assessment that is aligned with industry-recognized standards and that is related to the student's CTE coursework?

Yes, in certain limited circumstances. If the eligible recipient uses the technical assessment results to report performance data to the State as required by section 113 of Perkins IV, 20 U.S.C. § 2323(c), an eligible recipient may use funds awarded under Perkins IV to pay the fee for a student's technical skill assessment that is aligned with industry-recognized standards. A technical skill assessment that is aligned with industry-recognized standards is, for example, one that is recognized by a third-party association such as the American National Standards Institute. Section 135(c)(20) of Perkins IV, 20 U.S.C. § 2355(c)(20), allows an eligible recipient to support career and technical education activities that are consistent with the purpose of Perkins IV. Additionally, section 135(c)(19)(D) of Perkins IV, 20 U.S.C. § 2355(c)(19)(D), specifically allows two or more eligible recipients to pool funds for innovative initiatives which may include implementing technical skills assessments, and thus such activities meet the intent of section 135(c)(20) of Perkins IV, 20 U.S.C. § 2355(c)(20).

Nevertheless, the eligible recipient also must consider whether paying for students' technical skill assessments would be an efficient use of limited Perkins IV funds and

whether the costs would be reasonable and necessary. See former *OMB Circular A-87*, as codified in the 2013 edition of the CFR, 2 CFR Part 225, Appendix A, C. 1. a., and *former OMB Circular A-21*, as codified in the 2013 edition of the CFR, 2 CFR Part 220, Appendix A, C. 2.[5] Further, the use of funds for technical skills assessments would be subject to the supplanting prohibition in section 311(a) of Perkins IV, 20 U.S.C. § 2391(a). Finally, an eligible recipient must fund only a career and technical education program that is of sufficient size, scope, and quality to bring about improvement. See section 134(a)(6) of Perkins IV, 20 U.S.C. § 2354(a)(6).

Baccalaureate Degrees

D.47 May a State use State leadership funds to pay for programs and services beyond an associate degree and leading to a baccalaureate degree?

No. A State may not use State leadership funds for programs that extend beyond an associate degree. As set forth in section 2 of Perkins IV, 20 U.S.C. § 2301, the purpose of Perkins IV is "to develop more fully the academic and career and technical skills of secondary education students and postsecondary students who elect to enroll in career and technical education programs." The definition of "career and technical education" in section 3(5) of Perkins IV, 20 U.S.C. § 2302(5), is limited to a "sequence of courses that … provides technical skill proficiency, an industry-recognized credential, a certificate, or an associate degree." The definition does not include course sequences that extend beyond an associate degree. Thus, for example, to meet the requirement of section 124(b)(4) of Perkins IV, 20 U.S.C. § 2344(b)(4), that States use State leadership funds to support "career and technical education programs that improve the academic and technical skills of students participating in career and technical education programs," a State may only support programs that provide technical skill proficiency, an industry-recognized credential, a certificate, or an associate degree.

However, under section 124(c)(3) of Perkins IV, 20 U.S.C. § 2344(c)(3), a State may use State leadership funds to support "initiatives to facilitate the transition of subbaccalaureate career and technical education students into baccalaureate degree programs." These activities may include "statewide articulation agreements between associate degree granting career and technical postsecondary educational institutions and baccalaureate degree granting postsecondary educational institutions," "postsecondary dual and concurrent enrollment programs," and "academic and financial aid counseling." They also may include other initiatives "to encourage the pursuit of a baccalaureate degree" and "to overcome barriers to participation in baccalaureate degree programs, including geographic and other barriers affecting rural students and special populations."

[5] Effective for new grants made by the Department on or after December 26, 2014, the provisions in both sets of these cost principles concerning the requirement that costs be reasonable will be replaced by 2 CFR § 200.403(a) now that the Department has adopted the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* contained in 2 CFR Part 200, Subpart E, as regulations of the Department. The new regulations in 2 CFR Part 200 do not affect grant funds awarded prior to December 26, 2014, unless funds made available under those grants are carried forward into a new Federal fiscal year or a continuation grant. See footnote 4 for more information.

Therefore, although State leadership funds may not be used for programs and services beyond an associate degree and leading to a baccalaureate degree, the funds may be used to facilitate the transition of subbaccalaureate career and technical education students into baccalaureate degree programs.

D.48 May an eligible recipient use subgrant funds to support programs that extend beyond an associate degree?

No. Section 135(a) of Perkins IV, 20 U.S.C. § 2355(a), requires each eligible recipient to use its subgrant "to improve career and technical education programs." The definition of "career and technical education" in section 3(5) of Perkins IV, 20 U.S.C. § 2302(5), is limited to a "sequence of courses that ... provides technical skill proficiency, an industry-recognized credential, a certificate, or an associate degree." The definition does not include course sequences that extend beyond an associate degree. Thus, an eligible recipient may not use its subgrant to support or carry out programs that extend beyond an associate degree. Further, subgrant funds may not be used for the program costs of high-level baccalaureate courses or activities that are not available for credit to career and technical education students working toward technical skill proficiencies, industry-recognized credentials, certificates, or associate degrees. Costs associated with dedicated high-level courses or activities for baccalaureate degree students only are not allowable costs.

Under section 135(c)(10) of Perkins IV, 20 U.S.C. § 2355(c)(10), however, an eligible recipient may use subgrant funds "to develop initiatives that facilitate the transition of subbaccalaureate career and technical education students into baccalaureate degree programs." These initiatives may include "articulation agreements," "postsecondary dual and concurrent enrollment programs," and "academic and financial aid counseling for subbaccalaureate career and technical education students." They also may include other initiatives "to encourage the pursuit of a baccalaureate degree" and "to overcome barriers to enrollment in, and completion of baccalaureate degree programs, including geographic and other barriers affecting rural students and special populations."

Career and Technical Student Organizations

D.49 May a State or an eligible recipient use Perkins IV funds for costs related to a career and technical student organization (CTSO)?

Yes. Section 124(c)(4), 20 U.S.C. § 2344(c)(4), permits a State to use its State leadership funds for "support for career and technical student organizations, especially with respect to efforts to increase the participation of students who are members of special populations." Section 135(c)(5), 20 U.S.C. § 2355(c)(5), permits an eligible recipient to use Perkins IV funds "to assist career and technical student organizations."

However, States and eligible recipients should note that the definition of a "career and technical student organization" in section 3(6)(A) of Perkins IV, 20 U.S.C. § 2302(6)(A), includes only "an organization for individuals enrolled in a career and technical education

program *that engages in career and technical education activities as an integral part of the instructional program"* [emphasis added]. Further, as noted in questions D.26 and D.27 of *Questions and Answers Regarding the Implementation of Perkins IV – Version 3.0* and question D.52 below, there are some limitations on how funds may be used to support CTSOs.

D.50 Does the Department approve a CTSO for funding under Perkins IV?

No. The Department does not "approve" a CTSO for Perkins IV funding. However, the Department, in the past, has recognized that the educational programs and philosophies embraced by certain CTSOs at that time were compatible with the challenging objectives of education in the 21st century. Thus, we have sought to involve CTSOs in the improvement of career and technical education programs and provided website links to CTSOs for informational purposes only. The Department has also participated in meetings of a national coordinating council of CTSOs to keep abreast of their ongoing initiatives.

Nevertheless, the Department does not interpret Perkins IV as limiting the use of State and local Perkins IV funds to costs related to a fixed group of CTSOs. On the contrary, the Department would anticipate that the number and type of CTSOs may fluctuate as CTE programs change to meet ongoing economic and workforce demands.

D.51 What entity approves the use of Perkins IV funding for an eligible recipient's costs or activities related to a CTSO?

A State is responsible for determining which costs and activities related to a CTSO may be supported with Perkins IV funding in the same manner as any other costs that the State pays from Perkins IV funds. See 34 CFR § 76.770. This responsibility would include determining whether the proposed costs related to a particular CTSO would be for career and technical education activities that are an integral part of the instructional program. See the definition of a CTSO contained in section 3(6) of Perkins IV, 20 U.S.C. § 2302(6). We would expect a State to make this determination during its local application approval process for costs of eligible recipients. In making this determination, a State must consider, among other factors, the limitations on the use of Perkins IV funding for student transportation to, and lodging and meals at, a technical skills competition at a state- or national-level CTSO convention as described in question D.26 of *Questions and Answers Regarding the Implementation of Perkins IV – Version 3.0*.

D.52 May a State approve all costs related to a CTSO for Perkins IV funding?

No. A cost related to a CTSO is subject to the requirement that the cost be for career and technical education activities that are an integral part of the instructional program (as discussed above in questions D.50 and D.51 above), as well as the same requirements as other costs paid with Perkins IV funds, including requirements in Perkins IV (such as

supplanting), EDGAR, and the applicable cost principles.[6] In addition, States also should review questions D.26 and D.27 of *Questions and Answers Regarding the Implementation of Perkins IV – Version 3.0*, which describe the very limited circumstances under which Perkins funding may be used for student transportation to, and lodging and meals at, a technical skills competition at a State- or national-level CTSO convention.

State Administration

D.53 What funds must a State provide from non-Federal sources for State administration?

A State must provide, from non-Federal sources, an amount for State administrative costs that is at least equal to the amount that the State provided the previous year. Section 323(a) of Perkins IV, 20 U.S.C. § 2413(a).

If the amount made available for administration of programs under Perkins IV (i.e., the administrative costs set-aside) for a fiscal year is less than the amount that was available the previous fiscal year, the amount the State is required to provide from non-Federal sources for State administration is decreased by the same percentage as the decrease in the Federal funds from the previous year. Section 323(b) of Perkins IV, 20 U.S.C. § 2413(b).

Membership Costs and Lobbying

D.54 Can a State or its subgrantees use Perkins IV funds for costs of membership in an association?

Yes, under some circumstances, a State or its subgrantees may use Perkins IV funds to pay for the cost of a governmental unit's membership in an association if the association is not substantially engaged in lobbying and the costs meet other applicable legal requirements. (*Former OMB Circular A-87*, as codified in the 2013 edition of the CFR, 2 CFR Part 225, Appendix B, Item 28(a) and (d), *Membership, subscriptions, and professional activity costs*).[7]

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[6] *Cost Principles for State, Local, and Indian Tribal Governments* are set forth in former *OMB Circular A-87*, as codified in the 2013 edition of the CFR, 2 CFR Part 225, Appendix B. *Cost Principles for Educational Institutions* are set forth in former *OMB Circular A-21*, as codified in the 2013 edition of the CFR, 2 CFR Part 220, Appendix A. Effective for new grants made by the Department on or after December 26, 2014, both sets of these cost principles will be replaced by the cost principles in 2 CFR Part 200, Subpart E, now that the Department has adopted the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* contained in 2 CFR Part 200, Subpart E, as regulations of the Department. The new regulations in 2 CFR Part 200 do not affect grant funds awarded prior to December 26, 2014, unless funds made available under those grants are carried forward into a new Federal fiscal year or a continuation grant. See footnote 4 for more information.

[7] Effective for new grants made by the Department on or after December 26, 2014, this cost principle will be replaced by the cost principle in 2 CFR § 200.454 now that the Department has adopted the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* contained in 2 CFR Part 200, Subpart E, as regulations of the Department. The new regulations in 2 CFR Part 200 do not affect grant funds awarded prior

Costs of a governmental unit's membership in business, technical, and professional organizations, which would include dues at the State, local, or national level, are generally allowable uses of program funds, subject to the limitations described in the preceding paragraph, under governmentwide guidance from the OMB on the allowability of costs incurred by State, local, and federally recognized Indian tribal governments under grants. (*Former OMB Circular A-87*, as codified in the 2013 edition of the CFR, 2 CFR Part 225, Appendix B, Item 28 (*Membership, subscriptions, and professional activity costs*).[8] The cost principles for subgrantees that are institutions of higher education indicate that membership costs are normally treated as facilities and administrative costs. (*Former OMB Circular A-21*, as codified in the 2013 edition of the CFR, 2 CFR Part 220, Appendix A, Section F.6.b.(3) and Items 28 (*Lobbying*) and 33 (*Membership, subscriptions, and professional activity costs*).[9])

For example, a subgrantee must use Perkins IV funds awarded under section 131 of Perkins IV, 20 U.S.C. § 2351, to provide professional development programs to secondary and postsecondary teachers, faculty, administrators, and career guidance and academic counselors who are involved in integrated career and technical education programs. Sections 134(b)(4) and 135(b)(5) of Perkins IV, 20 U.S.C. §§ 2354(b)(4) and 2355(b)(5), respectively. Thus, the cost of an LEA's membership in a professional organization that is for the purpose of allowing CTE teachers to receive professional development related to Perkins IV activities and programs would be an allowable cost from funds available under section 131 of Perkins IV, consistent with the requirements of sections 134(b)(4) and 135(b)(5), provided that the organization is not substantially engaged in lobbying.

D.55 How is a governmental unit's membership in an association different from an individual's membership?

A governmental unit's membership would have to be for the benefit of its staff – not merely a particular staff member. In contrast, a membership in an association that is for

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to December 26, 2014, unless funds made available under those grants are carried forward into a new Federal fiscal year or a continuation grant. See footnote 4 for more information.

[8]Effective for new grants made by the Department on or after December 26, 2014, this limitation will be replaced by the cost principles in the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* now that the Department has adopted as regulations of the Department the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* contained in 2 CFR Part 200, Subpart E. The new regulations in 2 CFR Part 200 do not affect grant funds awarded prior to December 26, 2014, unless funds made available under those grants are carried forward into a new Federal fiscal year or a continuation grant. See footnote 4 for more information.

[9]Effective for new grants made by the Department on or after December 26, 2014, this limitation will be replaced by the cost principles in 2 CFR § 200.454 now that the Department has adopted as regulations of the Department the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal AwardsUniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* contained in 2 CFR Part 200, Subpart E The new regulations in 2 CFR Part 200 do not affect grant funds awarded prior to December 26, 2014, unless funds made available under those grants are carried forward into a new Federal fiscal year or a continuation grant. See footnote 4 for more information.

the benefit of only a single, named individual for the term of the membership would not be an allowable cost. The fact alone that a State or its subgrantee may designate only a limited number of individual staff member(s) at any given time to receive benefits under the governmental unit's membership in an association would not prevent the State or subgrantee from paying the cost of its governmental unit's membership with Perkins IV funds. However, again, the cost of the governmental unit's membership in an organization that is substantially engaged in lobbying is unallowable.

D.56 How can a Perkins IV grantee or subgrantee determine if an organization is "substantially engaged in lobbying"?

A grantee or subgrantee can use the guidance provided by OMB to determine whether an organization is substantially engaged in lobbying. OMB's Governmentwide Guidance for New Restrictions on Lobbying is available at the following link: www.whitehouse.gov/omb/grants_docs/. The OMB guidance consists of the following:

- Interim Final Amendments to OMB's Governmentwide Guidance on Lobbying (January 19, 1996)
- Notice (January 15, 1992)
- Notice (June 15, 1990)
- Interim Final Guidance (December 20, 1989)

However, in response to comments concerning the clarity of the phrase "substantially engaged in lobbying," OMB has amended the cost principle for *Membership, subscriptions, and professional activity cost* to make unallowable the cost of membership in "organizations whose primary purpose is lobbying" rather than one "substantially engaged in lobbying." See 2 CFR § 200.454(e) and the response to commenters published in 78 Federal Register 78589, 78604, and 78657-8 (December 26, 2013).[10]

D.57 Does the prohibition on the use of Federal funds for lobbying apply to the Perkins IV funds used for membership in an organization?

Yes, the costs of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans are generally an unallowable cost under governmentwide guidance from OMB on the allowability of costs incurred by State, local, and Federally-recognized Indian tribal governments under grants. (*Former OMB Circular A-87*, as codified in the 2013 edition of the CFR, 2 CFR Part 225, Attachment B, Item 24, *Lobbying*).[11] Lobbying by an applicant or grantee regarding its specific

[10] Effective for new grants made by the Department on or after December 26, 2014, the Department has adopted the OMB guidance in the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* contained in 2 CFR Part 200, Subpart E, Cost Principles, as regulations of the Department. The new regulations in 2 CFR Part 200 do not affect grant funds awarded prior to December 26, 2014, unless funds made available under those grants are carried forward into a new Federal fiscal year or a continuation grant. See footnote 4 for more information.

[11] Effective for new grants made by the Department on or after December 26, 2014, this limitation will be modified now that the Department has adopted 2 CFR § 200.450 as a regulation of the Department the OMB guidance in the

application or grant and lobbying regarding policy issues related to grant programs, such as those authorized under the Perkins IV program, are also governed by the regulations in 34 CFR Part 82, New Restrictions on Lobbying, and the OMB guidance cited in the response to question D.56 above. The Department's regulations in Part 82 implement 31 U.S.C. § 1352, the so-called "Byrd Amendment."

E. INCENTIVES AND SANCTIONS

Note: Questions pertaining to Perkins IV incentives and sanctions were answered in the non-regulatory guidance memoranda entitled Questions and Answers Regarding the Implementation of Perkins IV – Version 1.0 (question E.1) and Questions and Answers Regarding the Implementation of Perkins IV – Version 2.0 (questions E.2—E.3).

F. TECH PREP PROGRAMS

Note: Questions pertaining to Perkins IV tech prep programs were answered in the non-regulatory guidance memorandum entitled Questions and Answers Regarding the Implementation of Perkins IV – Version 1.0.

G. OCCUPATIONAL AND EMPLOYMENT INFORMATION (SECTION 118)

Note: Question G.1 pertaining to Perkins IV occupational and employment information was answered in the non-regulatory guidance memorandum entitled Questions and Answers Regarding the Implementation of Perkins IV – Version 1.0.

H. PARTICIPATION OF PRIVATE SCHOOL STUDENTS AND PERSONNEL

Note: Questions H.1 – H.7 pertaining to Perkins IV and the participation of private school students and personnel occupational and employment information were answered in the non-regulatory guidance memorandum entitled Questions and Answers Regarding the Implementation of Perkins IV – Version 3.0.

I. ARTICULATION AGREEMENTS

Note: Questions I.1 – I.7 pertaining to Perkins IV and articulation agreements were answered in the non-regulatory guidance memorandum entitled "Questions and Answers Regarding the Implementation of Perkins IV – Version 3.0."

J. SPECIAL POPULATIONS

Note: The questions and answers in this section J are intended to address only CTE programs in public secondary schools, unless specifically otherwise indicated in the question or response.

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards contained in 2 CFR Part 200, Subpart E, Cost Principles. The new regulations in 2 CFR Part 200 do not affect grant funds awarded prior to December 26, 2014, unless funds made available under those grants are carried forward into a new Federal fiscal year or a continuation grant. See footnote 4 for more information.

Although some of the principles and statutory and regulatory provisions discussed in this section may apply to postsecondary CTE programs, postsecondary education is also governed by additional and different statutory and regulatory provisions, which the questions and answers in section J do not address.

J.1 What Federal laws that apply to CTE programs protect individuals with disabilities?

Two Federal civil rights laws protect individuals with disabilities and apply to CTE programs:

- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504), and its implementing regulations, 34 CFR Part 104; and
- Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131-12134 (Title II of the ADA), and its implementing regulations, 28 CFR Part 35.

Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance. The Department's Office for Civil Rights (OCR) enforces Section 504 in programs or activities that receive Federal financial assistance from ED, including public schools and CTE programs. Title II prohibits discrimination on the basis of disability by State and local public entities, regardless of receipt of Federal funds. In the education context, ED shares in the enforcement of Title II with the U.S. Department of Justice. More information about these Federal civil rights laws is available at www.ed.gov/ocr.

In addition, Part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1401, 1411-1419, and its implementing regulations, 34 CFR Part 300, impose requirements on States and school districts relating to educating eligible children with disabilities, including those ensuring the provision of a free appropriate public education (FAPE) and due process protections. Eligible children with disabilities who attend CTE programs and their parents retain all IDEA rights and protections. For more information about the IDEA, please visit http://idea.ed.gov.

J.2 How does Section 504 apply to CTE programs?

Under Section 504, a qualified student with a disability may not, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance. 29 U.S.C. § 794; 34 CFR § 104.4(a). Any State or subgrantee that implements CTE programs and receives a Perkins IV grant or subgrant funds or any other Federal financial assistance is a recipient for purposes of Section 504 coverage. Therefore, the covered entity must comply with Section 504 in implementing the CTE program. See also Appendix B to 34 CFR Part 104, entitled *Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs* (Appendix B, text found in 34 CFR Part 100, Appendix B).

Under Section 504 and its implementing regulations, a recipient that operates a public elementary or secondary education program also must provide FAPE to qualified persons with disabilities in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. 34 CFR §§ 104.33-104.36.

Under 34 CFR § 104.33(b)(1), an appropriate education under Section 504 includes the provision of regular or special education and related aids and services that are: (1) designed to meet the individual educational needs of disabled persons as adequately as the needs of nondisabled persons are met; and (2) based upon adherence to procedures that satisfy requirements governing educational setting, evaluation and placement, and procedural safeguards in 34 CFR §§ 104.34, 104.35, and 104.36. For students who are eligible for FAPE under both the IDEA and Section 504, implementation of an individualized education program (IEP) developed in accordance with the IDEA is one means of meeting the Section 504 FAPE requirement. 34 CFR § 104.33(b)(2). Through either the IEP process or Section 504's procedures noted above, a student with a disability could receive special education and/or related aids and services while participating in a secondary CTE program.

J.3 How does Title II of the ADA apply to CTE programs?

Under Title II of the ADA, no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, or be denied the benefits of, the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity, regardless of receipt of Federal funds. 42 U.S.C. § 12132; 28 CFR § 35.130. States and their subgrantees that operate public entity CTE programs funded under Perkins IV are public entities covered under Title II of the ADA.

Furthermore, the protections of Title II can be greater, but not less, than those provided by the Section 504 regulation. 42 U.S.C. § 12134(b); 28 CFR § 35.103(a). Among other things, Title II requires public school districts to ensure that communication with students with hearing, vision or speech disabilities is as effective as communication with students without disabilities. 28 CFR § 35.160. Public schools must give "primary consideration" to the type of aid or service requested by the student when determining what is appropriate for the student. 28 CFR § 35.160(b)(2). For more information, see the Dear Colleague letter and accompanying Frequently Asked Questions Document issued by the Department's Office for Civil Rights and Office of Special Education and Rehabilitative Services, and the U.S. Department of Justice's Civil Rights Division, available at: http://www2.ed.gov/about/offices/list/ocr/letters/colleague-effective-communication-201411.pdf.

J.4 How does the IDEA apply to CTE programs?

Part B of the IDEA provides Federal financial assistance to States and, through them, to LEAs to assist in providing FAPE to eligible children with disabilities. An IDEA-eligible student's entitlement to FAPE could last until his or her 22nd birthday, depending on State law or practice. 34 CFR §§ 300.101-300.102. FAPE is a statutory term under IDEA that has a specific meaning, and includes, among other elements, the provision of special education and related services, at no cost to the parents, in conformity with an IEP developed in accordance with IDEA section 614(d). 20 U.S.C. § 1401(9) and 34 CFR § 300.17. IDEA provides protections for eligible students with disabilities and their parents, including requirements relating to: evaluations and eligibility determinations (34 CFR §§ 300.300-300.311); developing and implementing IEPs, including the provision of transition services (34 CFR §§ 300.320-300.324); educating children with disabilities with nondisabled children to the maximum extent appropriate (34 CFR §§ 300.114-300.118); participation of children with disabilities in all general State and districtwide assessment programs (34 CFR § 300.160); and procedural safeguards and due process rights (34 CFR §§ 300.500-300.536).

State educational agencies (SEAs) and LEAs must have in effect policies and procedures to implement these IDEA requirements as conditions for receipt of IDEA funds. 34 CFR §§ 300.100 and 300.201. Public schools that offer a CTE program generally would have the same IDEA obligations described above to children with disabilities and their parents as other public schools of an LEA. See also question J.5.

J.5 How do the IDEA requirements for transition services relate to participation in CTE programs?

Beginning with the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, each student's IEP must include: (1) appropriate measurable postsecondary goals based on age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and (2) the transition services (including courses of study) needed to assist the student in reaching those goals. 34 CFR § 300.320(b). In general, transition services means a coordinated set of activities for a student designed to facilitate a student's movement from school to post-school activities, based on the individual student's needs, taking into account the student's strengths, preferences, and interests. Transition services could include career and technical education. 34 CFR §§ 300.43 and 300.320(b). Decisions about a student's postsecondary goals and transition services are made on an individual basis by the participants on the student's IEP Team, which includes the additional participants listed in 34 CFR § 300.321(b) when the IEP Team meets to consider the student's postsecondary goals and the transition services needed to assist the student in reaching those goals.

It is important to note that the IDEA also addresses the provision of required assistive technology devices and services, where appropriate. 34 CFR §§ 300.105, 300.5, and 300.6. These devices and services could be particularly important for students with

disabilities in CTE programs. In particular, one of the special factors that an IEP Team must consider in developing, reviewing, or revising a student's IEP is whether the student needs assistive technology devices and services. 34 CFR § 300.324(a)(2)(v). For some high school students with disabilities, participation in CTE programs, including the provision of any needed assistive technology devices and services, could be part of the students' transition services. A student's IEP Team and/or group that makes the placement decision under IDEA should ensure that the student is appropriately referred to and placed in a CTE program. If the program has appropriate admission or enrollment criteria, the placing or referring public agency would need to ensure that the student meets those criteria. See questions J.6 and J.7 below.

J.6 May a State or another Perkins IV recipient or participating public entity impose "prerequisites"—eligibility or other criteria for admission or enrollment—for its CTE programs if such prerequisites would exclude, or tend to exclude, students with disabilities?

A Perkins IV recipient or participating public entity, including a State, may not have a policy, practice, or procedure that excludes students on the basis of disability from participation in a CTE program. 34 CFR § 104.4 (Section 504) and 28 CFR § 35.130 (Title II). This also means that a student with a disability may not be denied admission to or enrollment in a secondary CTE program because the student has an IEP or Section 504 plan. Further, admission to or enrollment in a secondary CTE program may not be conditioned on the student's forfeiture of special education and/or related aids or services. This means that a secondary CTE program may not condition a student's admission or enrollment into the program on the student's agreement or assent to forfeit any needed special education and/or related aids and services. Such practices would be inconsistent with Perkins IV, Federal civil rights laws, and Appendix B. See our responses to questions J-1 through J-3 above.

It also is important to note that, under 28 CFR § 35.130(b)(8) (Title II), a public entity may not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered. See also Appendix B. In addition, under certain circumstances, a recipient or a participating public entity may be required to make reasonable modifications to policies, practices, or procedures pertaining to admission or enrollment, including those that exclude or tend to exclude students with disabilities from secondary CTE programs, in order to avoid discrimination on the basis of disability.[12] Such determinations would be made on a case-by-case basis.

Further, it is important to note that Perkins IV does not dictate curriculum or other requirements for a specific CTE program or for a certificate or license that may be required to work in a specific program area. On its face, Perkins IV requires implementation of CTE programs consistent with Federal disability-based nondiscrimination requirements. Specifically, section 316 of Perkins IV provides, in part, that "[n]othing in this Act shall be construed to be inconsistent with ... Federal law prohibiting discrimination on the basis of ... disability in the provision of Federal programs or services." 20 U.S.C. § 2396. In general, a prerequisite for admission or enrollment would be considered a policy, practice, or procedure that must be implemented in a nondiscriminatory manner, as explained above.

J.7 May a CTE program, at either the secondary or postsecondary level, apply sequential course requirements to students with disabilities if such requirements either would exclude, or tend to exclude, students with disabilities from participation in the program?

As noted above, a public entity may not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with

[12] 28 CFR § 35.130(b)(7) and *Southeastern Comm. College. v. Davis*, 442 U.S. 397 (1979). See also United States government brief in *R.K. v. Bd. of Educ. of Scott County*, No. 14-6213 (9th Cir. filed Dec. 24, 2014) available at: http://www.justice.gov/crt/about/app/briefs_educ.php

disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.

In general, applying a sequential course requirement to all students, including students with disabilities, would not constitute discrimination on the basis of disability. Provided there is a clear nexus between the course requirement, the program content, and the expected competencies for students to acquire upon program completion, such a requirement could be deemed necessary or essential for the student's participation in the CTE program. For example, a requirement for a student to take an introductory automotive repair course in order for the student to be admitted to or to enroll in an intermediate automotive repair course, if applied to all students, including students with disabilities, generally would be necessary to the student's participation in the intermediate automotive course.

J.8 How does the Perkins IV accountability framework anticipate participation in CTE programs by students with disabilities?

Perkins IV requires that the State and an eligible recipient, such as an LEA, include in the State plan and local application for CTE, respectively, strategies for providing programs for special populations, including those with disabilities, to ensure that the State and the eligible recipient provide those students access to CTE programs and design CTE programs to enable special populations, including those with disabilities, to meet or exceed adjusted levels of performance. See sections 122(c)(9) and 134(b)(6) of Perkins IV, 20 U.S.C. §§ 2342(c)(9) and 2354(b)(6).

Consistent with these requirements, Perkins IV does not require that an eligible recipient demonstrate that 100 percent of its students meet the level or target for each performance indicator under Perkins IV. Instead, Perkins IV requires that an eligible recipient reach an agreement with the State to set targets or levels for each performance indicator, "taking into account factors including the characteristics of participants." See Perkins IV section 113(b)(4)(A)(v)(I), 20 U.S.C. § 2323(b)(4)(A)(v)(I). In other words, an eligible recipient's levels or targets should not serve as a barrier to participation by students with disabilities. Rather, an eligible recipient and the State should establish reasonable performance levels or targets based on the characteristics of the actual population of CTE students, including students with disabilities.

J.9 May curriculum that is part of a CTE program funded under Perkins IV be modified for students with disabilities and, if so, may Perkins IV funds be used for those modifications?

Yes. Perkins IV specifically contemplates that modifications to curriculum may be necessary and explicitly permits the use of Perkins IV funds for those modifications. See Perkins IV, section 3(31) (defining "support services" as services related to curriculum modification, equipment modification, classroom modification, supportive personnel, and instructional aids and devices) and section 135(c)(6) (stating that LEAs and other eligible

recipients may use Perkins IV funds for support services). 20 U.S.C. §§ 2302(31) and 2355(c)(6).

Section 324 of Perkins IV provides that Perkins IV funds may be used to pay for the costs of CTE services required by an IEP developed pursuant to the IDEA and for the costs of services necessary to meet the requirements of Section 504 with respect to ensuring equal access to CTE programs. 20 U.S.C. § 2414. CTE programs must ensure that participating students with disabilities continue to access and receive all necessary instructional modifications and related aids and services required by IDEA or Section 504 that they utilize in other classroom settings, including assistive technology. 34 CFR §§ 104.33(a) and 104.35 (Section 504) and 34 CFR §§ 300.320-300.324 (IDEA).

J.10 May local eligible recipients offer single-sex CTE programs?

Perkins IV does not address this issue, but the Department's regulations implementing Title IX of the Education Amendments of 1972 (Title IX) do not permit schools to offer CTE programs on a single-sex basis. States and local eligible recipients should refer to the response to question 5 in the Department's Office for Civil Rights' guidance on single-sex classes, *Questions and Answers on Title IX and Single-Sex Classes*, available at www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf.